

EDUCATION, CULTURE AND SPORT COMMITTEE

Tuesday 16 April 2002
(*Afternoon*)

Session 1

£5.00

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EDUCATION, CULTURE AND SPORT COMMITTEE

11th 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)

SUBSTITUTE MEMBER

*Cathy Peattie (Falkirk East) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Brian Adam (North-East Scotland) (SNP)
Mr Gil Paterson (Central Scotland) (SNP)
Nicol Stephen (Deputy Minister for Education and Young People)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERKS

Susan Duffy
Judith Evans

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Education, Culture and Sport Committee

Tuesday 16 April 2002

(Afternoon)

[THE DEPUTY CONVENER *opened the meeting at 14:09*]

The Deputy Convener (Mr Frank McAveety):

It is like a restoration comedy in here, because we have Cathy Peattie here, but Mike Russell has just gone through another door—I hope that he will appear any moment now. Given that we are now in public session, I ask those who have mobile phones or pagers to turn them off. It is important that Cathy Peattie is here, because I want to welcome her back to the committee formally. She is a committee substitute for the Labour party and is substituting for our convener, Karen Gillon, who is on maternity leave. I announce publicly she gave birth to a son, Matthew, during the recess.

The Deputy Minister for Education and Young People (Nicol Stephen): She gave birth publicly?

The Deputy Convener: No. That was a public announcement of the birth, although they do things differently in Lanark. Gil Paterson, the MSP for Central Scotland, might be present for item 3, on the health education petition. There is a possibility, although we have not had confirmation of it, that Brian Adam, the MSP for North-East Scotland, will attend for item 4, on the budget process, in his capacity as reporter for the Finance Committee.

I welcome back Cathy Peattie and hope that she will continue to make the sort of contribution that she made prior to changes within the committees of the Parliament.

Items in Private

The Deputy Convener: The first item is to consider whether we want to take item 7, on proposals for a children's commissioner bill, and item 8 in private. Both items relate to drafting a proposal for a committee bill. Concern about taking matters in private has been expressed in the Procedures Committee, but, given the nature and importance of the items, I believe that it would be fine to discuss them in private.

Michael Russell (South of Scotland) (SNP): I wondered about this question. We have had an open set of hearings about the children's commissioner bill. I do not think that the discussions that we are having today will reflect on anything other than those hearings. There might be a case for discussing our forward timetable in private, simply because we will be discussing details of committee reports. However, I do not think that there is much of a case for having the children's commissioner bill discussions in private, unless people think that it will be particularly acrimonious, which it has not been so far.

The Deputy Convener: I ask Irene McGugan to comment, given that she and Jackie Baillie have been working in detail on the proposed bill.

Irene McGugan (North-East Scotland) (SNP): I doubt that there will be anything acrimonious about the discussions that we are having with the non-Executive bills unit on the policy direction and decisions that we are making to guide the draftsmen. There are issues of resourcing, which are, perhaps, a little more sensitive. We would appreciate the opportunity to update the committee on where we are with that.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I query the idea that because something might be acrimonious, it should be kept private.

Michael Russell: That has been the story of the Tory party.

Mr Monteith: It has been the story of all your articles in *The Herald*, Mike.

If Irene McGugan's view is that issues of resources or advice that officials give us should be protected because the advice might otherwise be compromised, that is a reason for having the discussion in private. However, I can think of nothing healthier than for the public to see that we disagree quite acrimoniously.

The Deputy Convener: Do other members have views on this? I do not know whether we have unanimity.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I agree with the essence of what Brian Monteith said. We should take the

discussions in private because of the nature of the advice that we might get, rather than because we might disagree on the details or principles of the children's commissioner's appointment.

The Deputy Convener: I saw Cathy Peattie nodding there. Do we agree to take items 7 and 8 in private, while being conscious of the impact of taking future discussions in private?

Members *indicated agreement.*

Scottish Qualifications Authority Bill: Stage 2

14:15

The Deputy Convener: The second item is consideration of the Scottish Qualifications Authority Bill at stage 2. Committee members should have with them a marshalled list of amendments and the grouping of those amendments. They should also have a letter from the Deputy Minister for Education and Young People with initial drafts of regulations to be made under the bill and draft guidance for information.

I have been asked to go through the stage 2 procedure. That procedure is detailed, but it is important to outline it. The amendments are grouped to facilitate debate. The marshalled list dictates the order in which the amendments are called and moved. All amendments will be called in turn from the marshalled list and will be taken in order. We cannot move backwards through the marshalled list.

I will call the proposer of the lead amendment in each group, who should speak to and move that amendment. The member may speak to the other amendments in the same group. I will then call other members, including the proposers of all the amendments in the group. I will call members to move their amendments at the appropriate time and will clarify whether the member who moved the amendment wishes to press it to a decision. If not, they may seek the committee's agreement to withdraw the amendment. If it is not withdrawn, I will put a question on it. If any member disagrees, we will proceed to a division by a show of hands. If a member does not want to move their amendment, they should say "Not moved" when their amendment is called.

As I said, members have copies of the marshalled list of amendments. Jackie Baillie has now arrived at the meeting.

Section 1—Scottish Qualifications Authority: members

The Deputy Convener: Amendment 9 is in a group on its own.

Jackie Baillie (Dumbarton) (Lab): Timing is everything. I am grateful to the convener for being more garrulous than usual. That gave me time to get here.

I hope that amendment 9 is not a surprise to the committee or the Executive. Members consistently raised the matter in committee and in the parliamentary debate at stage 1. We felt that communication—or lack of communication—in the SQA has been an issue. Having an employee

representative on the SQA board would help matters and would be recognised as good practice—I believe that something similar was done in respect of the new water board. Therefore, I do not see a fundamental problem with the amendment and hope that the Executive will support it.

I move amendment 9.

Michael Russell: I warmly support amendment 9. With the exception of one member, the committee supported the proposal when it was previously discussed. I note Nicol Stephen's letter on the matter, which is dated 28 March, but I am disappointed by it. It seems that every time we get to this point, especially in respect of education and culture, the Executive backs off from its previous warm words and says that proposals are not appropriate at this time or in some way.

We must progress and ensure that there is proper structural involvement of staff. That is particularly so in respect of the SQA, which the staff delivered out of a difficult situation. I support the amendment and hope that Jackie Baillie will press it to a vote.

Mr Monteith: I have expressed my view a number of times in the committee and in the stage 1 debate in the chamber. The staff are catered for. The importance of the bill lies in having a tight working board. That does not require a member of staff to be on the board to represent staff. If we go down that road, we should go down it completely and have representatives from other groups and organisations. That was what happened previously and it failed. Staff can be represented on the council. Other organisations have staff representatives on their boards—that does mean that that is right or wrong. Each organisation must be judged individually on how it is set up, managed and represented. The bill's proposals are an improvement on previous arrangements. I look forward to what the minister has to say.

Cathy Peattie (Falkirk East) (Lab): I was not involved in the stage 1 deliberations, but I was involved as a committee member in the SQA inquiry. It was clear that there was a real communication problem in that organisation, which might have been alleviated had there been better staff representation.

I am at a loss to know why the minister is not happy with amendment 9. The staff need to be involved and we want the organisation to be accountable and open. Therefore, I believe that staff involvement is vital.

Ian Jenkins: I broadly agree with the idea of staff representation, although there are perhaps problems with how the choice of representatives is determined. The proposal is not about someone coming on to the board to represent the staff view

in the old way; it is about a mark of contact, so that things are not done behind the staff's backs and so that there is a statutory channel of communication. I am happy to support Jackie Baillie's amendment in theory, but I am interested to hear what the minister says.

Nicol Stephen: I start by passing on congratulations and good wishes to the convener of the committee. The news of the birth of her new baby is excellent. Having a six-month-old child, I know that the next few weeks will not always be easy for her, but they will be rewarding. I am ready to give advice, as indeed is another member of my team, Andy Beattie, who has a four-week-old child.

That has started the afternoon on a positive note, but, sadly for me, amendment 9 may quickly change all that. I understand and fully sympathise with the general intent behind the amendment to facilitate good communications and good partnership working at all levels in the SQA. The Executive supports the proper involvement of staff at all levels in the organisation and will continue to emphasise the importance of that in all its discussions with the SQA.

I welcome the initiatives that David Fraser is taking to ensure that good communication, discussion and involvement with staff take place at all levels. The Executive believes that the proper involvement of staff is right and should be achieved through a range of consultative mechanisms, good management and good communication.

There is a range of examples of good practice by which such consultation can be achieved. David Fraser is keen to introduce consultative mechanisms similar to those that are familiar to him through his experience in the national health service in Scotland. I want him to continue to take such initiatives and to recognise the fact that they will develop and mature alongside the SQA's capacity and ability to grow and improve as an organisation. In the Scottish Executive's view, that is best achieved on an administrative basis, which will allow a wide range of initiatives to be implemented and developed to suit the changing needs of the organisation.

We are concerned that amendment 9 would not provide for the involvement of all staff on relevant issues and would not provide the necessary scope for developing arrangements as the SQA moves forward. It is hard to envisage how one member of staff will be able to represent the views and interests of the full range of staff who work at the SQA. In my view, that problem underscores the need for the sort of arrangements about which I have spoken.

Members will be familiar with the Scottish Executive's policy on public appointments, which

offers wide opportunities for members of the community to play a role on the boards of public bodies and which ensures that the best people for those roles are appointed on the basis of merit alone. The amendment would run contrary to that policy, which has developed over the years through rigorous examination and consideration. In recent times, the Nolan procedures have significantly strengthened the approach that ministers take to those appointments. I urge the committee to think carefully about that matter in considering the amendment.

The Executive supports the principle that the SQA staff, at all levels, should participate and make a positive contribution. We welcome the changes that John Ward and David Fraser are making to achieve that objective and look forward to further developments.

The amendment would not provide participation by the full range of staff and it is not in line with the Executive's current policy on open appointments based on merit. However, if members support the amendment, the Executive would like to discuss with the committee and with Jackie Baillie the most appropriate way of implementing it in terms of its wording and any supporting regulations.

Jackie Baillie: I listened carefully to what the minister said. I have to express some disappointment. As he will recognise, amendment 9 is not designed to replace the welcome partnership approach that David Fraser and John Ward are adopting. The issues are not mutually exclusive. It is critical that there is staff representation at the level of the SQA board, given the communication failures of the past. Our desire to ensure that those failures are not repeated prompts the amendment.

The amendment is not about taking a stakeholder approach, which was the previous approach. It is not about creating institutional clutter. It is about addressing the problems that occurred in the previous diets, which led to the need to reform the SQA to make it more robust.

I have always believed in consistency in the Executive. The Executive's approach to Scottish Water, whereby there is an employee representative on the board, is welcome. In that case, the problems that Nicol Stephen highlighted in relation to appointments being based on merit and meeting the requirements of Nolan and of the Executive's policy on public appointments seem to have been overcome. I refer the minister to his colleague who dealt with the Water Industry (Scotland) Bill, which created Scottish Water—he will find that employee representation on the board was possible in that case. I beg to differ with him that such a provision is not possible in relation to the SQA. I will press the amendment.

The Deputy Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
Peattie, Cathy (Falkirk East) (Lab)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Monteith, Mr Brian (Mid Scotland and Fife) (Con)

The Deputy Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 9 agreed to.

The Deputy Convener: Amendment 1 is grouped with amendments 2 and 3.

Nicol Stephen: Amendment 1 makes a small technical change to ensure that ministers have the option of paying members of the SQA board allowances and other expenses incurred in connection with their duties. The original wording in the bill, which specified only the payment of allowances, allowed for some ambiguity over whether expenses payments were also permissible. That is being tidied up.

Amendment 2 is a consequential amendment arising from amendment 1. It amends paragraph 11(4) of schedule 1 to the Education (Scotland) Act 1996 and reflects the introduction of remuneration for board members. To maintain consistency with other provisions, it introduces a reference to expenses. That would make the two subparagraphs that list the restrictions on the chair and members identical. Those two subparagraphs are therefore merged into one.

Amendment 3 ensures that ministers can pay advisory council members travelling and other expenses incurred in connection with their duties. That will ensure consistency with the provision for payment of expenses to SQA board members as introduced by amendment 1.

I move amendment 1.

14:30

The Deputy Convener: There is agreement in the committee on the amendments. I presume that you have made your submission and that there is no need for you to conclude.

Nicol Stephen: I waive my right to sum up.

The Deputy Convener: That is very generous of you.

Amendment 1 agreed to.

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

Section 1, as amended, agreed to.

Section 2—Power to regulate SQA procedures

The Deputy Convener: Amendment 4, in the name of Mike Russell, is grouped with amendment 6.

Michael Russell: Amendment 4 builds on the debate that we had about amendment 9 and is not dissimilar in its intent. Amendments 4 and 6 seek to strengthen the role of the Scottish Executive within the reconstituted SQA.

When the director of education in North Lanarkshire gave evidence to the committee, he said—even when pressed—that the SQA is not a normal non-departmental public body. Its structure is not that of a normal body. Why is it not a normal body? Because it has gone through a difficult period. The SQA's work was saved from total meltdown only by direct intervention from the Scottish Executive in a way that is not normal when operating a non-departmental public body.

The minister knows that I was initially concerned that the Executive was not following the route of making the SQA an agency. However, I accept the argument from the SQA board and chair, and from some others, that to do that would be too much of a disruption, so I am happy to back the proposals.

However, we also need some sort of safeguard. It is possible for the minister to have an observer at the SQA board and I presume that, under the regulations, there could be an observer at the advisory council. Amendments 4 and 6 make it a right and a duty that the minister will be represented at the board and advisory council by somebody who can see what is taking place.

It might be said that we should just re-establish the SQA and let it go, but that would be irresponsible at this time. There is still public concern and amendments 4 and 6 add to the belt-and-braces approach that would reassure many parents and children in Scotland who are worried about the performance of the examinations systems. These small amendments would allow the Scottish Executive to continue to know at first hand what is happening within the SQA.

That will lead to better governance and communication. The amendments do not give the minister or the Executive rights of veto or interference. They provide a better means of communication similar to that which was so helpful to the SQA during its recovery. The amendments are positive; they move the bill a small stage forward and would make for a better SQA.

I move amendment 4 and formally move amendment 6.

The Deputy Convener: Are there any observations by other members?

Martin Verity (Clerk): Amendment 6 cannot be moved yet.

The Deputy Convener: It was just keenness.

Michael Russell: I was keen to move amendment 6 but the clerk tells me I cannot. I will just move amendment 4 and have done.

The Deputy Convener: I would hate to think you had made a mistake, Mike.

Michael Russell: So would I.

Jackie Baillie: The matters of principle raised by amendments 4 and 6 are absolutely right and, throughout consideration of all the amendments, the committee will adopt a belt-and-braces approach to ensure that there is no chance of a repetition of what has happened. I confess to not understanding legal jargon so I would welcome some clarification from Mike Russell. I am minded to support amendment 6—which he has not yet formally moved.

Michael Russell: I was not allowed to.

Jackie Baillie: Well, let us not go there just now.

Amendment 6 is very helpful, but if we have amendment 6 I am not sure that we need amendment 4. I would therefore welcome a technical clarification on whether the amendments do separate things.

Michael Russell: They do: amendment 4 refers to meetings of the SQA whereas amendment 6 refers to meetings of the advisory council. We are dealing with two separate bodies.

Jackie Baillie: That is fine.

The Deputy Convener: As no other members wish to speak, I invite the deputy minister to respond.

Nicol Stephen: I will speak to amendment 6 first and then amendment 4. I intend to accept amendment 6. I will give the reasons behind that and, in so doing, explain why I am reluctant to accept amendment 4.

The Executive expects that officials from the education department will often attend advisory council meetings to give the Executive's perspective on all issues under discussion, to offer advice and to provide information as appropriate. However, it was never intended that the Executive would participate as a member of the council. The council has a responsibility to provide advice not only to the SQA but—if it feels it appropriate—to ministers. We want to ensure that the council operates independently in providing that advice.

We did not expect to put such an arrangement on a statutory basis. However, amendment 6 is fully in tune with our aims and objectives. The amendment avoids any requirement for a representative of ministers to attend meetings of the advisory council; it simply enables such a presence. It ensures that ministers will always have a right to representation at meetings if circumstances demand. We envisage such attendance being more or less routine, to provide support to the council. However, we think that it would be wrong to require such attendance in statute. We do not want to impose a presence at all times. Amendment 6 is helpful. It will allow the regulations that establish the advisory council to include provision for the presence of a representative of Scottish ministers to observe and participate in the advisory council meetings.

I sympathise with the intention behind amendment 4—to have a representative of Scottish ministers attending and participating in meetings of the SQA board. The important distinction between amendments 6 and 4 is that one refers to the advisory council and the other refers to the board. Senior officials of the education department now routinely attend SQA board meetings on behalf of ministers. Any official from the Executive—from the finance department, for example—may attend a board meeting by arrangement with John Ward and the board. The current view is that those arrangements are beneficial to everyone concerned—to the Executive, to the SQA and to all the stakeholders involved in ensuring the smooth running of the exam system. The provisions of the bill ensure that, should difficulties arise in future, ministers will be able to require the attendance of their representative if necessary. It is important to emphasise that that power exists. However, as I have made clear, the Executive does not believe that it is necessary to impose such representation always. Amendment 4 would require a representative of Scottish ministers to attend all meetings of the SQA board, but we prefer to leave the position as it is at present.

I would compare amendment 4 with amendment 6 by saying that amendment 4 requires an Executive representative to attend board meetings whereas amendment 6 enables such presence at advisory council meetings.

We are currently attending meetings of the SQA board and we envisage that that will continue. If it became a problem at any stage, there are powers through regulations to require such attendance. However, we do not propose to go further by putting a requirement in the bill. I hope that that gives a clear explanation of the Executive's position on the two amendments.

Michael Russell: Nicol Stephen has given an

explanation, although I am not sure whether it is entirely clear. Given that an Executive presence was very important in addressing past problems with the SQA, and that we anticipate that the best way to avoid such problems in the future is to ensure close communication and knowledge, many people would expect us to enshrine that presence in the bill. It should be clear that the Executive has a member on the board who is present at meetings, can see what happens and can communicate. I see no harm in that. It would be a useful step forward to include a provision for something that already happens—the purpose of legislation is to codify what already happens. It would not be disadvantageous to the SQA or the Executive, but would be advantageous to parents and pupils, who would gain extra reassurance. I would like to press the amendment.

The Deputy Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Peattie, Cathy (Falkirk East) (Lab)

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

Amendment 4 disagreed to.

Section 2 agreed to.

Section 3—Power to regulate SQA procedures

The Deputy Convener: Amendment 5, in the name of Mike Russell is grouped with amendments 7, 8 and 10. I call Mike Russell to move amendment 5 and to speak to all amendments in the group.

Michael Russell: Should I speak to all amendments? Amendment 10 is Jackie Baillie's amendment.

The Deputy Convener: Jackie Baillie will speak to her amendment and any others, but you may speak to all amendments, too.

Michael Russell: As I am supporting amendment 10, I would be delighted to speak to it. The purpose of all the amendments is broadly similar, yet they complement each other and are all necessary to make the advisory council work better. I welcome the draft regulations that have been circulated to the committee, which take us a step forward.

Amendments 5, 7, 8 and 10 strengthen the role of the advisory committee and ensure that, were there to be a difference of opinion between the advisory committee and the board, ministers would know about it and would be able to react to such serious circumstances. In order for that to work we require written responses from the SQA to the advisory council—that is the purpose of amendment 10. We also require that advice given by the advisory council to the SQA should be copied to Scottish ministers so that they are in the loop, given that one of the problems in the past was that ministers were out of the loop. Furthermore, we must be certain that if there is a conflict, and the SQA is not acting on advice from the advisory council, the Scottish ministers know the reasons why the SQA is not acting on that advice.

The four amendments represent yet another belt-and-braces approach and provide security in the structure. We all welcome and support the advisory council, but we must ensure that it has a mechanism to ensure that, should the situation become serious or difficult, its work can be drawn to the attention of ministers, and that there is a mechanism for the SQA to respond. We must be assured that there is formal communication between the bodies, of which there is a record and a trail that can be followed, should we need to do so. More important, the amendments are proactive: members of the advisory council and the board will recognise their respective responsibilities and respect the processes of the two bodies. The amendments represent important and helpful developments in the role of the advisory council. I commend them to the minister and the committee.

I move amendment 5.

The Deputy Convener: I invite Jackie Baillie to speak to amendment 10. Continuing this generous reciprocity towards each other's amendments, she may also speak to the other amendments in the group, if she wishes.

Jackie Baillie: Thank you very much. The fact that the four amendments are largely similar should not surprise the minister. The issues were flagged up at stage 1, both in committee and in the stage 1 debate.

14:45

As Mike Russell said, the purpose of amendment 10 is to address communication failures and to ensure that the stakeholders' advice is heeded and responded to. The advice need not always be followed. It is to be regretted that, in the past, instructions were issued from other quarters that were never implemented and that people did not take the advice that was given.

It is perfectly legitimate for the SQA board to take the view that the advisory council is wrong on a particular occasion, but we need to ensure that we have a written record of that kind of debate or transaction—call it what you will.

I am equally attracted to Mike Russell's amendments as I am to amendment 10. We need a belt-and-braces approach. However, I feel that it is not essential that the advice be copied to ministers. If amendment 6 were accepted, ministers would be party to the advisory council, so I would assume that they would receive the advisory council's minutes as a matter of course. However, I will not split hairs with Mike Russell.

The minister might want to take away our suggestions to consider them further before returning at stage 3 with an amendment that best reflects what the committee is after and that also meets the technical requirements.

The Deputy Convener: If no other members wish to contribute, I invite the minister to speak.

Nicol Stephen: At the outset, let me say that I fully support the amendments' intention of ensuring that the advisory council conducts its affairs in an open and transparent way, especially in the provision of its advice to the SQA board. There should be good communications among the board, the advisory council, all the stakeholders involved in the exams process and the Scottish Executive.

I want to place on record my view of how the process should work, so that the process is clear. I also undertake to look further at the issue of whether the regulations should state how agreement should be reached between the SQA board and the advisory council. As Jackie Baillie suggested, I will undertake to look further at that, but I want to avoid making the process overly bureaucratic and formal. I am therefore likely to come back with proposals that fall short of an amendment that would place these suggestions on the face of the bill. I will try to explain the reasons for that as I progress with my remarks and comments.

The Executive wants the workings of the advisory council to be open. We anticipate that, in its role as a key voice of the SQA's wide range of stakeholders, the advisory council will carry out most of its work in the public domain. The advisory council will also have the power to provide its advice directly to ministers as well as to the SQA board. We anticipate that much of the council's advice would be published in order to demonstrate to stakeholders that their views are being transmitted accurately. The Executive's intention is that the advisory council should operate on a general presumption of openness, which will ensure that the flow of advice and decisions is

transparent to all stakeholders involved.

I will now discuss each of the amendments in turn. Amendment 5 seeks to ensure that the advice that is given by the council to the SQA is available to ministers. However, the amendment goes beyond a general presumption of openness and gives Scottish ministers a statutory place in the flow of advice between the advisory council and the SQA board.

I envisage that, as Jackie Baillie suggested, the minutes and the advice will be available to Scottish ministers. I oppose amendment 5 because it raises issues about the role of ministers at one point in the process. As a non-departmental public body, the SQA can and should take its own decisions. That is the ability that we are trying to encourage. The SQA should make decisions about—and take action on—the responsibilities that fall within its locus. It is important that its decisions are based on evidence and good advice. The SQA must be encouraged to retain responsibility for appropriate decisions.

Amendment 5 rightly emphasises the importance of openness and transparency. It would ensure that ministers were kept informed of advice that the advisory council gives to the SQA. However, to some extent, the amendment risks undermining the independence of the SQA, by giving ministers a statutory involvement in the provision of that advice.

I realise that some of my points are at the margin—

Michael Russell: They are over the margin.

Nicol Stephen: It is important that we encourage the right spirit from the start. Much of what we intend to achieve will not be achieved by words on a sheet of paper, words to the committee, or words in the bill, but by the correct spirit among the advisory council, the SQA board, the stakeholders and ministers. Good communication is extremely important. There will be times when the advisory council will advise the SQA board on relatively minor issues and there will be times when there will be a lot of advice, perhaps in the form of a document. It would be wrong to involve the SQA board in having to formalise a response to all aspects of the advice. It would be wrong to make the process too bureaucratic. I will come to that issue when I speak to the other amendments in the group. Good communication will be achieved only if we set up the organisation in the correct way.

I put on the record that it is my intention that advice that is provided should be made known to ministers and to all relevant stakeholders. However, I distinguish that from the statutory involvement of ministers in the process, which comes back to my point about not having such a

measure in the bill. I see no need for amendment 5 in achieving the objective of keeping ministers and others informed. I am concerned that giving ministers a statutory role in the flow of advice between the advisory council and the board might undermine the board's responsibility for taking its own decisions.

I have made it clear on previous occasions that the Executive intends that the advisory council's work should be managed by an agreed annual work plan. I anticipate that the advisory council, ministers and the SQA will agree a memorandum of understanding that will set out the way in which the three will interact, particularly the requirements for making public the council's advice.

I discussed that approach with John Ward at lunch time today—we had a meeting at 12 o'clock—and he agreed to it. We will consider whether the memorandum of understanding would be sufficient or whether there is a need for regulations. There are no such regulations in the group of draft regulations that have been circulated to the committee, so new regulations would be required. I would advise the committee about that before stage 3, if we agree to proceed on that basis.

Amendments 7, 8 and 10 would introduce a requirement on the SQA board to respond to the advisory council and to ministers when it received advice. Amendments 7 and 8 would require an explanation from the board only when it decided not to act on the council's advice, and amendment 10 would introduce a wider requirement for a response to all advice that was received.

I am sympathetic to the idea that the board should be proactive in responding to the council's advice, and particularly in explaining the reasons for its decisions. In previous statements, the Executive has made it clear that it intends the relationship between the board and the council to be constructive and involve the two bodies working closely together. That was the primary reason for our decision to appoint an existing board member to convene the council.

However, we have also made it clear that we are concerned that a statutory requirement would be an inappropriate way of achieving that aim. Although the general intention behind the amendments coincides with the Executive's policies, the imposition of a requirement for a formal response from the board to the council would seem bureaucratic in its day-to-day effect on the secretariat that would be responsible for the process.

For big issues, the management of a clear trail of advice, decision and explanation would be relatively straightforward. When the SQA has taken into account more general advice in

reaching decisions on a range of smaller issues, such a formal process may act as a constraint on meaningful two-way communication.

The Executive has made it clear that it expects the board to keep the council properly informed of the reasons for its decisions, regardless of whether the council provided advice, and that the two bodies should be proactive in consulting each other on key issues. A statutory requirement for a chain of formal advice, decision and response would risk preventing the two bodies from engaging in a more constructive dialogue on the SQA's future, so I ask Mr Russell to withdraw amendment 5 and not to move amendments 7 and 8. I also ask Ms Baillie not to move amendment 10.

I repeat that I am committed to tackling the issue through regulations or by using the powers in relation to the advisory council and the SQA board that are available to ministers under the bill, and/or tackling the issue administratively, through a memorandum of understanding between the council and the board. Both actions may be required.

Jackie Baillie: At the start of the minister's speech, I was on the point of agreeing with him, but by the time he reached the end, I was not so sure. I think that we share the same aim, but my concern is that I have not seen the regulations or the terms of the memorandum of understanding, which seems to have been put in place at the 11th hour in the 59th minute.

Nicol Stephen: The memorandum is not in place.

Jackie Baillie: I am being more generous to you than you deserve.

We started off with the SQA being required to have regard to some matters. We are keen to move to a duty to respond. Because of the communication failures, we cannot rely on what the minister said about a spirit of partnership between the organisations. It is incumbent on the legislature to ensure that we establish the organisations appropriately. The students who suffered in the 2000 exam diet would not appreciate the distinction between spirit and the word of law.

I strongly recommend that the minister reflect again before stage 3. I accept his notion of regulations and a memorandum of understanding, but I would still like him to go further. If the minister does not close down that possibility, I will be prepared not to move amendment 10. If the minister is saying that the possibility has been closed down, I will be inclined to move my amendment.

Nicol Stephen: We are all agreed on the

objectives. The question is how they are achieved. I am not closing down any option at this stage. However, I do not think that making four amendments to the bill is the best way of achieving those objectives.

I will consider all the options for amending the bill at stage 3 and for regulations and administrative measures that could achieve the intent behind amendments 5, 7, 8 and 10, on which I believe we are agreed. I will notify the committee as soon as possible not only about amendments but about the regulations that might be required and about the memorandum of understanding between the council and the SQA board. I am likely to be able to provide only a draft of that memorandum of understanding before stage 3.

15:00

Michael Russell: I am tempted to start by saying that the best is the enemy of the good. When the committee considers legislation, quite often discussions such as this take place, a commitment is given to consider something and members of the committee withdraw amendments. However, thereafter, what we get is not what we expected.

For example, the Scottish Qualifications Authority Bill proposes advisory council regulations, but the draft regulations do not mention the key point—to which the minister referred twice—that the convener of the advisory council shall be a member of the SQA. For me, that is a crucial part of the regulations, but it is not included in the draft regulations.

The word "public" is mentioned only once in the draft regulations, but the minister used it about a dozen times. The commitment to public meetings in the draft regulations is not unequivocal. Regulation 9(4) states:

"The Council shall hold meetings which any member of the public may attend, at least once in every year."

There is a drafting problem, because regulation 9(4) implies that only one such meeting might be held. I am worried about that because openness and accountability in the operation of the advisory council and the SQA board are crucial.

Why should that be important? The committee learned much from its inquiry, including one vital point—the word "expect" is not enough. During the inquiry, we thought—we expected—that, within a non-departmental public body, there would be an audit trail of information that would tell us what had happened, but that audit trail did not exist. We expected that there would be openness and accountability in relation to how the body operated, but the information did not exist. We expected that a non-departmental public body

would respond to information, advice and criticism from ministers, but that did not happen.

The members who sat around the table and took part in the inquiry—four of those members are still on the committee—know that some things never happened, despite the fact that we all agree with the minister that we would have liked them to happen. It is one of our jobs to ensure that the system cannot go wrong again. That is why it is crucial that we get the relationship between the advisory council and the SQA right. If the minister had come to the committee with a proposal that would meet that aim, of course amendments 5, 7 and 8 would have been withdrawn—I would have been delighted to withdraw them. However, he has not come with such a proposal. He has come with a set of draft regulations that have been issued to members and that do not address the matter, despite the fact that the document is headed “Advisory Council ... Regulations”.

Now we are talking about some kind of concordat or memorandum of understanding between the board and the advisory council, which we will have no opportunity to influence before stage 3—indeed, today is the first that we have heard of it. I would prefer us to agree to the amendments, as that would put an onus on the minister to come back with something better—if that is possible. Philosophically, I do not think that regulations or concordats are the right way forward. The relationship between the board and the advisory council is central to the Scottish Qualifications Authority Bill and will be crucial to the operation of the SQA.

If we place in the legislation requirements to give information to ministers, we will not bring ministers into the decision-making process—I regret the sophistry of some of the arguments. The amendments would enhance the flow of information. The blockages in the flow of information and the way in which the organisation operated up to 2000 created a crisis for Scotland’s young people. We can do better than sophistry—we could include in the legislation requirements that would make a difference. I hope that the committee will agree to the amendments. I give the commitment that, if the minister comes forward with a better scheme—I am sure that, given all the resources of wisdom and intelligence that are available to him, he will be able to do so—I, for one, will be entirely happy for the amendments to be overcome at stage 3. However, he may be unable to come forward with a better scheme and, if so, the committee has an obligation to improve the bill on behalf of the young people of Scotland, so that the communications disaster that took place in 2000 cannot happen again.

The Deputy Convener: Do you wish to press or to withdraw—

Michael Russell: I think that I was indicating that I wish to press my amendments. I hope that Jackie Baillie will also press amendment 10, so that there is something in the bill for the minister to change.

The Deputy Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Peattie, Cathy (Falkirk East) (Lab)

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

Amendment 5 disagreed to.

Amendment 6 moved—[Michael Russell]—and agreed to.

Amendment 3 moved—[Nicol Stephen]—and agreed to.

Section 3, as amended, agreed to.

Section 4 agreed to.

Section 5—Advice to SQA

The Deputy Convener: Amendment 7 has already been debated with amendment 5.

Michael Russell: Amendments 7 and 8 were consequential to amendment 5, which was disagreed to. I deeply regret the fact that there seems to be little point in moving the amendments.

Amendments 7 and 8 not moved.

The Deputy Convener: Amendment 10 is in the name of Jackie Baillie.

Jackie Baillie: I will not move amendment 10, on the basis of the minister’s commitment that he will come back to the committee before stage 3 with something that reflects the robustness of the committee’s view.

Amendment 10 not moved.

Section 5 agreed to.

Section 6 agreed to.

Long title agreed to.

The Deputy Convener: That concludes the committee’s consideration of the Scottish Qualifications Authority Bill at stage 2.

We will have a two-minute comfort break.

15:16

On resuming—

15:07

Meeting suspended.

Petition

Health Education (Guidelines) (PE427)

The Deputy Convener: We are now a quarter of an hour behind schedule. The next item on the agenda is our consideration of petition PE427 on the Scottish Executive's health education guidelines, which has been referred to us by the Public Petitions Committee. Members have received a series of papers that relate to the petition and a copious folder that contains letters, information and various examples of materials. Members have also been circulated with a copy of the petition, a summary of responses from directors of education in Scotland and a summary of the concerns that the petitioners have submitted.

The convener and I have discussed the petition with the petitioners. I have also met the minister, who has agreed to respond to any written questions that the committee might wish to ask following its consideration of the petition and to invite members' comments on what further action, if any, to take. Gil Paterson, who is a member of the Equal Opportunities Committee, is with us for this part of the meeting; he has had the petition presented to him in his capacity as a regional list member for Central Scotland. Furthermore, one of the individuals responsible for the petition, Reverend Iain Murdoch, is in the audience. I should point out that individuals cannot participate directly in the committee's discussion. However, I hope that members will raise various issues in the course of the discussion. No ministers will be attending the meeting, and this afternoon we will focus on how to proceed with the petition. I invite remarks from committee members and will ask Gil Paterson to comment on the petition in a moment.

Mr Monteith: Clearly, there was much debate about sex education a number of years ago. The impetus for that debate was the repeal of section 2A of the Local Government Act 1986. The debate broadened out to include sex education for a variety of reasons, not least because the Executive at least attempted to reassure the public through the issuing of guidance.

The petitioners are quite right to raise their concerns. People should debate how sex education is conducted and, indeed, how the issue of drugs is dealt with. The information that has been put together by the petitioners is very useful.

If the guidance is intended not only to help teachers and the people who run schools but to reassure parents, what the petitioners are asking

for—a reassessment of the classroom materials on the resources list, alongside the guidance or the circular—would be beneficial. If the guidance is to mean anything, the materials must fit in with it. Then, quite properly, it is for the teachers or practitioners to select the appropriate materials for use in their classrooms. In conjunction with the appropriate safeguards—which are also laid down in the guidance—on involving parents in the selection of materials to be used, the professional judgment should be left to the teachers.

The materials that are made available and recommended for selection must fit in with the guidance. It would appear from the research that has been done by the petitioners—with which, having looked at it, I can only agree—that much of the material conflicts with the guidance. If one takes that view, it is only appropriate that the selection of materials be reassessed and a new list be produced. That would reassure parents about what is available and, quite properly, protect the position of teachers in making the professional judgment of how they go about teaching delicate matters in schools.

Cathy Peattie: There has been discussion on this issue for some time, and a number of MSPs receive a large amount of post about it. It is important that we consider the issues of guidance and of what materials are available for teachers' use, and that we examine what is most appropriate. We should consider the appropriate age group with regard to any materials that are used and the levels of understanding of the children concerned.

We know that there are materials among the guidance and papers available that teachers probably do not use. Those materials are not used in a number of schools, and I understand that Falkirk Council does not use the material in its schools. It might make most sense to ask for the minister's comments on those issues. It might also be useful for us to obtain a regular review of the materials that are available, particularly given the fact that some materials are not being used.

There needs to be some debate in schools on drugs. For too long, we have buried our heads in the sand on that issue and have not discussed it sufficiently with children. I feel less willing to remove some of the resources from the list with regard to discussions on drugs. As Brian Monteith indicated, we need to trust the teachers who are using the materials and the guidance notes. They are the people who are working with children on a day-to-day basis and who are able to decide what is appropriate.

The most important thing is for parents to be involved and to be happy about the materials that are being used. The Church of Scotland leaflet was useful in providing parents with information.

Parents need to understand clearly what materials are being used within the school and to know what approach the teacher is taking. It is clear that the role of parents is, if you like, to endorse or discuss what happens in class. When such issues were being discussed in school with my children, I felt that it was appropriate that I also discussed them at home. Parents should spend time on such issues with their children.

We must speak to the minister, but we must keep a level head on the issue and accept that a host of the worrying areas in the materials are not used within classrooms.

Michael Russell: I have, unfortunately, seen some of the materials before. They were sent to me in my party role as spokesperson on education. The materials were also brought to me at a constituency surgery in Carluke in Lanarkshire. I admit that I was immensely surprised and embarrassed by the materials, particularly the sexual ones. I had no idea that such materials existed and were being circulated, and had little idea that children in classes might be asked to do some of the things that are suggested in the materials.

That is the most worrying aspect. It is possible for children to get hold of all sorts of material for a variety of reasons, legitimate or illegitimate. However, it is much more difficult to understand how such materials could suggest actions for children and others to undertake in the classroom, including discussion of and writing about issues that I think, frankly, most children would find it difficult to be involved in without embarrassment or difficulty.

I want to differentiate between the sexual materials and the drugs materials. The debate on drugs involves issues about how drugs are perceived by society. We can take different views on that issue. With most, but not all, of the drugs materials, that debate lies in the public domain and there are arguments on both sides about how drugs information should be presented to young children. I wonder whether role-playing as a drug dealer is useful, but I accept that teachers might argue that that could be done properly and sympathetically in class.

It is far more difficult to make any case for the sexual materials even being used as resource materials for teachers. Something has gone wrong when such materials are devised as resource materials for teachers. I am a believer in the inherent good sense of many teachers. In fact, I think that 99.99 per cent of teachers will take only two glances at these materials—if they ever see them, because local authorities have the right not to approve them. One glance would perhaps be in shock and the second would be to decide that they would not use the materials.

I would question substantially the availability of the materials, as preferred or supported materials, to guide teachers in their decisions on sex education. I do that not as a prude or somebody who is known for having an illiberal attitude to such materials and issues, but simply because the materials appear to be entirely inappropriate for the age ranges that are mentioned. Indeed, some of the materials are inappropriate for a classroom setting.

It is more difficult to condemn the drugs materials in those terms, but perhaps they need to be thought of carefully within the context of the ongoing debate on drugs in Scotland and more widely. Therefore, it might be sensible to fine-tune those materials to make them more sensitive.

The question is what the committee should do. We have been supplied with a substantial folder of material and more material is available. Can we move the issue on? I wrote to the minister because of my constituency case and received a reply that was not much different from the reply that Mr Murdoch received when he started on his process of petitioning and complaint. The committee can say to the minister that it believes that something is wrong. I think that we should use those words for the materials that we have seen, if they are genuinely meant for the purpose for which they purport to be. We should suggest that the materials are inappropriate and should be reconsidered. That would apply to the sex materials that we have seen. However, my worry is that we have not seen everything and cannot, therefore, make a wider judgment. We might want somebody to look at the material more widely and report to us on that.

I would be more reluctant to take that action with the drugs material, but I would want to indicate to the minister and the Executive's education department that care and caution, in the light of present legislation and the emerging debate, should always be taken on drugs issues. Advice should be sought from bodies that are involved in best practice on education in the drugs matter, such as Scotland Against Drugs, health education boards and others.

15:30

Jackie Baillie: I share Mike Russell's view about the drugs education material, because increasingly it is difficult for teachers—indeed for professionals—to tell the difference between a casual drug user, a habitual drug user and a non-user. Given that many children can fool even their parents, we need to be careful and cautious but to ensure that we have a range of responses that reflect the experience of the children in the classroom.

I confess to looking at the sex education material in the light of being a parent of a nine-year-old, and I was quite astonished by some of the material that was supplied in the pack from the petitioners. I found it difficult to understand the context in which it could be used, in particular given the level of experience and the age range that we are talking about. I took some comfort, as did Mike Russell, in the fact that I know of no teacher who, having viewed the material, would decide to use it. Clearly the material is not appropriate for the age range at which it was targeted.

I also took some comfort from the fact that the guidance in circular 2/2001 is explicit about the framework in which we should operate, and about the need for parental consultation and involvement in the process. The responsibility for sex education lies not just in the classroom; it is a responsibility for parents as well. I note that the Scottish Executive has said that it neither endorses nor recommends the resources, and that no evidence—this is supported by the Church of Scotland—of the materials appearing in classrooms has been found. For that I am grateful.

We should take more than just a passing interest in this matter. First, I suggest that we write to the Minister for Education and Young People. I would like a number of points to be addressed. The materials were devised by Learning and Teaching Scotland. What is that organisation's role? What is its relationship with the Executive? Are materials vetted by the Executive before they are included in a list, and if so, how can we tighten that up in the light of the sensitive issues involved?

Secondly, I wish to question the primacy of guidance that is given to local authorities. I am sure from the evidence that we have taken that many local authorities set up their own professional committees to vet materials. The process is stringent, and that filter helps to ensure that nothing inappropriate reaches the classroom. Is circular 2/2001, with its underpinning emphasis on stable relationships, the key that education authorities should be considering, or is the key the guidelines? It would be helpful to have that information.

Lastly, as new materials come on to the market, I am sure that the education department, if not Learning and Teaching Scotland, will want to review the five-to-14 health education guidelines. That will provide an opportunity to reflect on the list, with a view to either changing it or making absolutely explicit the context in which the list is provided.

Ian Jenkins: I think that we are at one on this matter. I agree with Mike Russell and Jackie Baillie, and I have considerably fewer reservations about the drugs material than about the sex

education material. We are dealing with a social problem, and the great education debate about problems of innocence and experience. Of course we want children to remain innocent for as long as possible, but if education is a preparation for adulthood, we also have to combat ignorance and provide knowledge. It is a matter of dealing with difficult topics in a way that matches the age of pupils and the appropriateness of materials.

Like Mike Russell and Jackie Baillie, and as a teacher myself, I think that very few, if any, teachers would use the worst of the material. There are gatekeepers, such as education authorities, teachers, and school boards, and mechanisms for consulting parents, all of which ought to mean that material of the sort that we find debatable ought not to reach the classroom. The question then arises of whether the material should be on the list at all. I am sure that screening would take out some of the materials. If there were debates to be had around the margins of other items, those debates could be held in a professional way.

The list includes materials that, as a teacher, I would have looked at once before putting them aside as things with which I did not want to work. Mike Russell made that point. Professional judgment and scrutiny of materials would filter out some items from the list. There is no reason that that should not be done without throwing out the whole idea of sex education and guidance.

In principle, I support the sentiments that are expressed in the minister's letter. In practice, I think that some of the material needs to be reconsidered. The letter from the Church of Scotland provides a basis on which we can work and endorses the principles with which we are working. In principle, I am happy with the approach that it is being taken, but in practice I think that there needs to be scrutiny of the material.

Irene McGugan: The petition reflects the concerns of a large number of people in Scotland, many of whom wrote to MSPs or visited them to share their concerns. Like other members, I regret the inclusion on the list of some materials that are clearly not appropriate for the age range for which they are alleged to be intended.

However, I was reassured by the responses that we received from some local authority directors of education. I was reassured by comments such as

"All resources checked for fitness for purpose"

and

"At primary level parents invited to attend information sessions",

as well as by the reference to an

"independent research project to study views"

of everybody involved. One local authority specifically mentioned

"that worksheets of concern ... are not used".

That underpins members' belief that, on the ground, teachers and local authorities are making the right decisions about the materials.

That leaves us with the difficulty that has been identified—that the materials do not fit with the principles that are set out in some of the later circulars that have been distributed and which local authorities have welcomed. That does not send out a clear message to anybody. One local authority said that it was

"Not persuaded that all materials on list of resources comply with SEED guidelines".

That is the root of the problem. Jackie Baillie suggested that we seek to establish what has priority and where the primacy lies in the guidance that is being sent out to schools and teachers. We should be able to clarify that.

The Deputy Convener: We will now hear from Gil Paterson, who has been waiting patiently.

Mr Gil Paterson (Central Scotland) (SNP): I am grateful to the committee for allowing me to speak today. I will start by addressing Brian Monteith's remarks. I was very surprised when I eventually got my hands on the materials, because I came to this issue in the aftermath of the debate on section 2A. To be honest, I discounted initially the claims that were being made. However, when the letters started to flow I decided that it was my duty to get copies of the materials and to examine them. In my view, many of the materials are totally inappropriate. My starting point is that they are damaging to children and that we must therefore do something about them.

It has been suggested that the materials are not designed for classroom use, but they are—they are designed to be photocopied. The documents say that they should be used in that manner. The argument has been made that more than 99 per cent of teachers would not use such materials. That is good and contains a strong message. If more than 99 per cent of teachers would not use the materials, why are they on the list in the first place? If 99 per cent—99.99 per cent, according to Mike Russell—of teachers believe that more than one child would be damaged through use of the materials, we must take that seriously.

I know some of the petitioners and I have to say that there are a lot of them. Since I became involved in the petition, I have found the subject to be nebulous. It is difficult to find someone who will take ownership of the list of materials. Every time we think that we have found somebody, they go off ducking, diving, bobbing and weaving—they

could play for the Scottish football team. The Executive has ultimate responsibility for the list, because it endorsed the materials in the first place. I ask the Executive to withdraw some of the materials.

We are aware that the drugs debate is changing. However, there are problems with the way in which the drugs message is expressed in materials for schools. We should not proceed to teach children based on the wrong premise that everyone in the class has a drug addict mummy or daddy and that the teacher might be a drug addict. I use that simply as an example, because I did not want to have to bring all the materials to the meeting today and to point out to the committee how horrific they are. However, I am cheered by the way in which the committee has responded to petition PE427. If the committee takes the actions that are proposed, I will be more than pleased.

Some people have called the petitioners the God squad. I know one or two of them intimately now and my view of the individuals who are involved has changed. They do not occupy the moral high ground. They are simply asking people not to judge the petitioners, but to look at the materials and form a judgment on them.

Michael Russell: Jackie Baillie made a sensible suggestion, which was to press for further questions on behalf of the committee, which would allow us to consider the responses. Gil Paterson has posed some questions that are additional to those that Jackie Baillie listed, and others need to be added. On the basis of a conversation that I had this morning with Gil Paterson, I understood that the circular was to be reviewed, but I have since read more on the subject and found that that is wrong. It might be wise to ask the minister whether the circular will be reviewed. If so, we can ask whether the review will take place speedily and whether it will take into account the objections to the materials that are made in petition PE427.

A number of committee members have raised other questions, but a useful way forward might be to send an urgent letter to the minister, asking him about the review. The letter should be circulated to the petitioners and other interested MSPs and we could ask for a prompt response.

Mr Monteith: Gil Paterson's comments were helpful, in particular with regard to putting us right about the petitioners. His attendance at the meeting is well worth while.

The circular that was issued on sex education guidance is of great importance to the people of Scotland. The guidance sought to reassure many people, but it will end up as gesture politics if the materials that are available do not fit with the guidance. Even if we discover that the materials are not used, it is absurd that materials that

teachers and education authorities would not touch with a barge pole are to be found on an official list. While they are on that list, questions will be raised about the guidance and those questions will undermine the reassurance that was given. I support Jackie Baillie's suggestion that we write to the minister.

If the guidance is to stick, it is important that any list of material should be produced after the guidance. As Jackie Baillie said, some materials—including board games, the details of which I will not go into—have been produced, which have been well publicised and which involve a great deal of role playing. Those materials from different academic backgrounds and commercial organisations are becoming available and are often seen in educational journals. It is suggested that because the materials are used in England, they might somehow be acceptable for use in Scotland, although there has not been the debate on the subject in England that there has been in Scotland. It is therefore important that we ensure that the list of materials from which teachers can select is updated regularly and that it fits in with the guidance. There is no point in having a list that precedes the guidance. We must ask the Executive to review its list—either directly or through an organisation such as Learning and Teaching Scotland—so that the two match up, because if they do match up, parents will be reassured.

15:45

Although it is somewhat reassuring that local authorities respond and say nice things about what they are or are not doing, had we asked local authorities a year ago what they were doing about their finances, we would have heard Scottish Borders Council, for example, say what a good job it was doing. We can take the assurances of officials; however, as members have said, the materials need be used only once for great damage to be done to individual children and to the reputation of what is being taught by sensible teachers.

On drugs education, the committee is right to point out that the drugs debate has moved on, but the difficulty is that the advice—which still stands—that was issued by Her Majesty's Inspectorate of Education has not. We should expect at least that that advice be updated and consulted on, just as the guidance on sex education went to consultation. That would create a healthy debate and people would be able to air their various points of view about what should be available in the classroom. The difficulty with drugs education is that although the thinking has changed, there has not been a great deal of debate about that change. It would be healthy for

that change to be debated and, if it is supported, to be endorsed. That cannot happen without the debate.

I welcome the letter and add those points. The guidance and the list must match up. First, the list must be updated and secondly, the advice must be updated.

The Deputy Convener: I thank members for their suggestions. We should agree that a series of points be raised formally in a letter, touching on what members have said. We should also determine the position of Learning and Teaching Scotland, as distinct from the position of the Executive, on what we have defined as recommended materials, as well as the Executive's view on those materials. We should state publicly that there is no evidence to suggest that any school in Scotland has used the resources in question. Although concern has been expressed about their possible use, no indication has been given to the committee that they have been used in a classroom. Perhaps Mike Russell would like to clarify that.

Michael Russell: The petitioner gave evidence in his presentation to the Public Petitions Committee to the effect that the materials have been used. The jury is out on the matter. I do not dispute the petitioner's information, but it would be equally churlish of me to dispute the minister's contention. There is a gap between the two. What the committee proposes and is agreed on is action at the next step. We will return to the issue in the light of the answers that we receive to the questions that we will ask the Executive.

The Deputy Convener: I was trying to stress the fact that no details have been given. A general claim was made that some of the materials might be available, although no school was identified. Given the concern that has been expressed—the vast majority of adults in this room have expressed their concern about some items on the list—it would be surprising if that concern was not shared by the many elected members at local authority and parliamentary levels. We will await details.

The issue of the review of the circular has been identified by committee members and should be raised in our initial letter to the minister. That letter should also address the fact that some recommended material pre-dates the McCabe guidelines. The need to synchronise the two is an appropriate point to raise with ministers.

Mr Monteith: Can we expect to receive a draft of the letter?

The Deputy Convener: We can get something together on that and try to come back next week with a draft for the committee to approve. Are members happy with that?

Members indicated agreement.

The Deputy Convener: I thank those who contributed to the debate and those who petitioned the Public Petitions Committee and the Education, Culture and Sport Committee.

Budget Process 2003-04

The Deputy Convener: I am sorry to keep members waiting. Brian Adam has joined us in his capacity as a reporter from the Finance Committee. The item is to note the report on the "Annual Expenditure Report of the Scottish Executive". We have a note on the budget process for 2003-04 and a reporter's report on the Scottish Executive's AER. The report is to provide information to the committee concerning the spending plans of the Executive in order to inform the committee's scrutiny of the Executive's budget. Oral evidence will be taken on 23 April and 30 April.

Do members have any comments? Do you want to say anything, Brian, given that you have managed to trawl yourself over here?

Brian Adam (North-East Scotland) (SNP): I am meant to have a watching brief, rather than tell the committee what to do. I presume that the committee has been given the guidance from the adviser to the Finance Committee as to how best to proceed. I read the Education, Culture and Sport Committee's report with interest.

The Deputy Convener: I understand that all members commended it at our most recent meeting.

Michael Russell: It was strongly commended. I found it remarkably—

The Deputy Convener: Will this be the same gag again?

Michael Russell: No. I was going to be nice about the report. It was remarkably full of detail, and I cannot see your lips moving.

Brian Adam: I commend the kinds of questions that the Finance Committee's guidance notes recommend be posed to the Minister for Finance and Public Services. The minister has not so far been able to provide some of the hoped-for information on the scale of unallocated resources. That information would allow people to make choices about the kind of programmes that it might be possible to slot in, and about capital resources, because the difference between capital and revenue is important. We have not yet had a summary of the expected outputs from the new spending proposals. I hope that those will be available as we go through the process for the coming financial year.

I refer to paper FI/02/4/2, which gives guidance from Arthur Midwinter on the kinds of questions that should be asked. One of the questions is:

"Does the AER provide evidence of performance in meeting *targets* or progress towards long-term *outcomes*. Can the committee suggest *alternative measures* to strengthen this aspect of scrutiny?"

I know that the Education, Culture and Sport Committee has been among the most assiduous committees in the Parliament in dealing with the detail of the budget process and at least posing questions, if not making alternative suggestions. We are anxious to move on from criticism of the process—we want to start offering alternatives that reflect the work that committees are doing so that, on the initiative of committees, changes can be made within the budget process during the financial year.

It is not my role to come here and tell the committee what to do; rather it is to listen to what the committee intends to do.

The Deputy Convener: As a member of the most assiduous committee in the financial scrutiny process, I have a quick question. We had difficulty this afternoon because of our commitment to the committee. We received a request from Engender to consider gender proofing of budgets and we had hoped to meet people from Engender this afternoon, but because all members were attending the committee, we could not do so. Is there a specific role that we could undertake with the Finance Committee in relation to those issues, given that we missed the opportunity today to hear Engender's views?

Brian Adam: It is up to subject committees whom they wish to invite to give evidence on the balance within the budget. Engender might well be a cross-cutting group. From what I remember, it does not relate only to education.

The Deputy Convener: Engender is attempting to meet all the key committees to get a coherent and corporate view of the budget. It is addressing the issues that are raised.

Brian Adam: The cross-cutting approach to finance is a difficult area, which the Finance Committee intends to address this year. A couple of inquiries will take place, one of which will certainly impact on the Education, Culture and Sport Committee's remit. The Finance Committee will consider the cross-cutting approach to children in poverty.

The Finance Committee has decided to consider individual cross-cutting areas because the cross-cutting approach to finance is the responsibility of that committee, which is not responsible for considering the cross-cutting approach to education, culture and sport. However, where the approaches cross, it might be more appropriate for the Finance Committee to consider that. If the Education, Culture and Sport Committee was to approach the Finance Committee to say that it is interested in that area and ask whether both committees could deal jointly with the matter, that might be viewed sympathetically. However, you might want to suggest that as an area for a future

Finance Committee cross-cutting inquiry.

The Finance Committee is holding two inquiries between now and the end of the financial year. One is about children in poverty and the other is about the voluntary sector and regeneration.

Michael Russell: It is clear that we must think about our budget in the context of such issues, but we need some help in doing so. If simple information on gender proofing of budgets and how that could be considered in our budget process exists, we would welcome it whether it came from the Finance Committee or elsewhere. However, we are not going to send people out into the world to do that. Our focus is slightly different.

We would be interested in the Finance Committee's cross-cutting inquiry on children in poverty. I would certainly be interested and the issue would come within the remit of the Education, Culture and Sport Committee. I hope that the Finance Committee's cross-cutting inquiries include other committees, rather than that committee trying to do the job itself. It would be useful if the Education, Culture and Sport Committee were involved.

Cathy Peattie: I am also a member of the Equal Opportunities Committee. That committee is considering gender issues and Engender gave evidence to the Equal Opportunities Committee this morning. Engender is also interested in mainstreaming, which is relevant to the education budget in terms of how it is achieved and how money is allocated. We need to consider that issue.

The Deputy Convener: Brian Adam has hogged the show so far, so it is Irene's turn.

Irene McGugan: I am someone to whom understanding of the budget process does not come easily.

Michael Russell: Do not put yourself down.

Irene McGugan: I endorse the final recommendation about the content of the budget headings being altered. That makes scrutiny over time a little more difficult because there is no consistency from one year to the next. I remember that we raised a similar issue with the ministers last year. We are in the same position in that it is difficult to backtrack year on year and to be clear about where money is coming from and going to.

I have two simple examples from the budget process paper. The first is that the level 3 expenditure on children and young people is "significantly higher" than forecast because of the inclusion of the changing children's services fund. That is fine, but then we also see that money has been moved into budgets for young people and looked-after children from social work services training. It all becomes very confusing—for me anyway.

We also want more information about the moneys that are going into the excellence fund. Again, there is change in the way that those moneys are being allocated to local authorities.

If we could find a method that allows some consistency and easy comparisons year on year, using the same headings in the budget, that would be helpful to me.

The Deputy Convener: That parallels something that came out of the Finance Committee last year.

I am conscious of the time. Do any other members want to say anything?

Cathy Peattie: Last year and the year before, we complained about the format of the information and said that it was difficult to scrutinise. We always want the information to be better than it is, and we must be aware that we asked for changes that would make the information better and that things are moving in the direction we wanted. I had the job of considering the education budget and it was difficult to identify where money goes and how to monitor it. On the positive side, we asked for the changes that we seem now to be complaining about.

16:00

Brian Adam: I remind the committee that successive finance ministers have made commitments to offer the services of the Executive's officials in helping to work up any alternatives that committees wish. I understand why Jackie Baille is laughing, but successive finance ministers have made that offer. The process is important and I echo the remarks that have been made about difficulties in following changes. However, it is important that the Parliament should move forward and consider different approaches. The Minister for Finance and Public Services has offered help on behalf of the Executive in constructing the costs of alternative proposals.

Jackie Baillie: I accept Irene McGugan's point about transparency. The recommendation would make our scrutiny more difficult, but we cannot move beyond that until there is transparency. I accept entirely Brian Adam's comments on the opportunity not only to consider what the Executive is doing, but to suggest ways of doing things better. However, to reach that stage, we need improvements to work their way through the system, which would help us. Like Irene McGugan, I always find budget time difficult, because people change headings. There have been changes in the excellence fund, so we should take up the suggestion to "receive further information".

There are also issues relating to level 3

expenditure in schools. Money seems to have moved around. According to my calculations, there is not an exact match and money is adrift somewhere. To which heading has it gone? We need to scrutinise further and think through what the committee has considered during the year that might benefit from additional budget consideration. I also want clarification on the changing children's services fund. My recollection at the time of the announcement was that £80 million was to be made available over three years, but the figures do not add up to £80 million. Clarification about the envisaged period and how the money pans out would be useful.

I want to say something about gender budgeting. It is important that every committee of the Parliament—not just the Finance Committee—is responsible for mainstreaming equality into the budgets that they scrutinise. In education, I think that the schools division is one of the two pilot mainstreaming areas with which the Executive is proceeding. Given that we are scrutinising the part of the budget that is for schools, we should ask the Executive what impact mainstreaming has had and seek information from Engender on whether there is a toolkit that we can use in our budget scrutiny that would help in considering equal opportunities dimensions.

The Deputy Convener: I take on board those helpful comments. Over the next week, we could try to contact Engender to find out about a variety of issues and whether a toolkit is available that would assist us.

I thank Brian Adam for attending. He is free to stay, if he wishes, but I have a funny feeling that he wants to leave.

Brian Adam: I will forgo the pleasure of staying.

Jackie Baillie: We are insulted.

Brian Adam: I will attempt to join the committee on other occasions.

The Deputy Convener: We are missing you already, Brian.

Local Government Covenant

The Deputy Convener: The next agenda item is the local government covenant. Members have a paper on the proposed covenant between the Scottish Parliament and local government, on which I invite comment. The committee's views will be sent to the Local Government Committee, which will report on the covenant prior to a debate in the Parliament.

Cathy Peattie: Obviously, I welcome the paper. I remind the committee that, in the past, the committee has had a relationship with the Convention of Scottish Local Authorities. A committee member—myself, in fact—has represented the committee before COSLA and Karen Gillon has represented the committee in respect of education. She attended various meetings and has had numerous joint meetings with COSLA's education committee. It is important to continue those links.

Mr Monteith: This is the week of covenants. I hope that the proposed covenant is more worth while than that which was launched by the First Minister. I take such a jaundiced view of the document because it will be seen to be of use only when COSLA acts.

I am reminded of the attempt to have some sort of guidelines on the closure of rural schools drawn up by COSLA. That attempt got absolutely nowhere. The relationships between parliamentarians—perhaps even those in this committee, although I cannot speak for the committee—would be more harmonious were we to see some fruit of our meetings, deliberations and evidence sessions, or if something concrete came out of them. If the first concrete thing was useful guidelines on the closure of rural schools, that would be a great step forward and we could say that the document was worth while.

The Deputy Convener: In principle, do members think that the document is good and proper? Would it enhance the relationship between the Parliament and the committee and local government? In general, I think that it would. Perhaps a covenant would allow for more effective relationships and mutual leverage on the matters that Brian Monteith mentioned. The situation should not be such that the Parliament always responds to local government; the process should be reciprocal and that is what the covenant is about.

Cathy Peattie: I remind Brian Monteith that we discussed the closure of rural schools and agreed to ask the minister to pull together some kind of guidance on the closure of schools, particularly rural schools. I have been away for a while and I wondered whether we had received a reply to that.

I know that the issue is not on today's agenda, but this seems to be an ideal opportunity to mention it.

Mr Monteith: I am not aware that we have received any response.

The Deputy Convener: We have not received a written response. That is another issue that we must follow up. This meeting will result in many letters to the Executive.

Do members agree to approve and recommend the covenant and to say how we feel it will be of value?

Members *indicated agreement.*

Scottish Ballet

The Deputy Convener: Item 6 is correspondence from the Scottish Arts Council on the appointment of a director to Scottish Ballet. Members have a copy of the correspondence. I invite comments on whether we should take action or do otherwise. I think that Mike Russell might wish to make a contribution—perhaps a wee pirouette around the letter.

Michael Russell: I will try to avoid commenting on the Scottish Arts Council's new logo before I do that. It is the first time that I have seen the logo properly.

The letter from Graham Berry is a masterpiece. It is a disingenuous reply and does not answer the key point of our letter, which involved the information that was before us. That information was that the company had found all the candidates for the post to be unsuitable. I recall that the company also expressed great concern that the candidates were promised more resources for the company's change to a contemporary company. What the candidates appear to have been told was contrary to what we were assured of by Mr Duncan McGhie. One might say, "Surprise, surprise."

Given those circumstances, Mr Berry's letter is inadequate. We must go back to him and to the company to ask them to address the concerns that we understand are still felt in the company. We must also ask what will happen if the dancers in the company do not agree on a candidate. Do they have a veto, or will the candidate be imposed on them?

Mr Monteith: Michael Russell raises valid points. My only comment is that we can hardly blame Graham Berry for not responding to them, because they were not in the committee's letter. If Mike is concerned that those points were not answered, we must write to Graham Berry and include them. Mike put the points very specifically. If the points were in the original letter, they were shrouded in a way that allowed Graham Berry to respond as he did. Perhaps a more in-your-face attempt at getting information from the Scottish Arts Council is required.

Michael Russell: I concur. The points are referred to only tangentially. Our letter refers to a copy of the minutes of a meeting of the company. Graham Berry is not solely responsible for the matter—the company is primarily responsible. It would be useful to know the company's response.

Jackie Baillie: I simply note my disappointment that it is only at the second stage of the selection process that the selection committee has been widened to include a representative of the dancers and one of the executive directors. That is

welcome, but I recollect that at the committee's meeting with the Scottish Arts Council and the board of Scottish Ballet, we emphasised inclusion of the dancers from day one—not later—so that they had some ownership of the process. Perhaps some of the problems that have subsequently been recorded might have been overcome had the dancers been included at the first stage of the process.

Michael Russell: Jackie Baillie's point is worth broadening out. If Duncan McGhie had listened to the committee's recommendation—which Cathy Peattie will remember well—to include company workers on the selection board, which we have already mentioned this afternoon, we would not be having this discussion. Of course, Mr McGhie stood steadfast against our recommendations, along with one Mr Sam Galbraith.

The Deputy Convener: If I gauge correctly the feeling of the committee, we want to send a less emollient letter that spells out the points that were in the minutes of the company's meeting. We must put those robust points to Mr Graham Berry.

Michael Russell: We want an answer and we have not had one.

The Deputy Convener: We now move into private session.

16:11

Meeting continued in private until 16:26.

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