

# **EDUCATION, CULTURE AND SPORT COMMITTEE**

Tuesday 21 January 2003  
(*Afternoon*)

Session 1

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## EDUCATION, CULTURE AND SPORT COMMITTEE

### 3<sup>rd</sup> Meeting 2003, Session 1

#### CONVENER

\*Karen Gillon (Clydesdale) (Lab)

#### DEPUTY CONVENER

\*Cathy Peattie (Falkirk East) (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)

#### COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)  
Murdo Fraser (Mid Scotland and Fife) (Con)  
Fiona McLeod (West of Scotland) (SNP)  
Karen Whitefield (Airdrie and Shotts) (Lab)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Fiona Hyslop (Lothians) (SNP)  
Stewart Stevenson (Banff and Buchan) (SNP)

#### WITNESSES

Gerald Byrne (Scottish Executive Education Department)  
Craig Harvie (Scottish Executive Legal and Parliamentary Services)  
Mike Watson (Minister for Tourism, Culture and Sport)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Susan Duffy

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

Committee Room 3



## Scottish Parliament

### Education, Culture and Sport Committee

*Tuesday 21 January 2003*

*(Afternoon)*

[THE DEPUTY CONVENER *opened the meeting at  
14:10*]

**The Deputy Convener (Cathy Peattie):** Welcome to the Education, Culture and Sport Committee. I am standing in for Karen Gillon, who is stuck in traffic but will be here soon.

### Item in Private

**The Deputy Convener:** Do members agree to take item 5 in private?

**Members** *indicated agreement.*

## Gaelic Language (Scotland) Bill: Stage 1

**The Deputy Convener:** I welcome Mike Watson, Minister for Tourism, Culture and Sport, and Douglas Ansdell, head of the Gaelic unit in the Scottish Executive education department. Is Bob Irvine on his way?

**The Minister for Tourism, Culture and Sport (Mike Watson):** Bob Irvine has been called away on other business and is unable to attend.

Thank you for inviting us to give evidence on the Gaelic Language (Scotland) Bill. I will make an opening statement that I hope will amplify, to an extent, the comments in the submission that I sent to the committee in November.

From the evidence that the committee has heard so far, it is evident that there is widespread support for a more secure future for the Gaelic language in Scotland. I state unequivocally that that is my aim, both personally and as a minister. Reports that I have read indicate that there is support for a Gaelic language bill. However, notwithstanding the considerable support that there is for the bill, which I acknowledge, there are some reservations about it.

I want there to be no doubt that I believe the Gaelic language in Scotland has official recognition and official status. Several points signify that. I am appearing before the committee as the first Cabinet minister with responsibility for Gaelic. I say that in all modesty, as I am speaking about the post, not the person. To an extent, the post may be responsible for the progress that has been made on Bòrd Gàidhlig na h-Alba—the Gaelic language board.

Further evidence of official support within the Executive for Gaelic is found in the establishment of Bòrd na Gàidhlig, which has conferred significant status on and recognition of the language and culture. I can produce more evidence to support that claim; I will refer to some of that evidence directly and to other parts of it in response to questions.

The subject of secure status for Gaelic has generated much discussion and debate. A wide-ranging and ambitious paper produced by Comunn na Gàidhlig in 1999, entitled “Draft Brief for a Gaelic Language Act”, which is often referred to, outlined what a language bill might contain. It is fair to say that if we measure the provisions of the Gaelic Language (Scotland) Bill against the proposals outlined in the paper, they fall short of expectations in some respects. However, if we measure the action taken by the Executive against those same proposals, we can demonstrate considerable achievements. I will not detail those

achievements, but there is evidence that we have delivered on several of the proposals, such as access to Gaelic-medium education, support for Sabhal Mòr Ostaig and Bòrd na Gàidhlig and developments in Gaelic broadcasting.

As the committee knows, the first meeting of Bòrd na Gàidhlig took place in Glasgow last week. I was pleased to attend and to wish Duncan Ferguson and the board members every success in their work. That meeting demonstrates significant additional status for and recognition of the language because it represents the formation of a non-departmental public body, or quango, when there is a clamour for them to be disbanded and when many are being disbanded. I had to win that argument with Cabinet colleagues and, based on support for Gaelic language and culture, I am pleased to say that I did so.

Those were last week's developments. Yesterday, as many members will have seen in today's newspapers, the Executive gave approval for the deployment of bilingual Gaelic/English road signs in the Highlands. That decision will make a positive contribution to the Executive's Gaelic language policies and will supplement the efforts that are being made already.

I asked my civil servants to prepare for the committee a list of achievements and successes since the formation of the Parliament in 1999. They supplied me with a list of 16, but members will be glad to know that I will not go through them all. The list ranges from the establishment of Bòrd Gàidhlig na h-Alba to the opening of the Glasgow Gaelic School, which is outgrowing its premises as a result of the continuing upward trend in the number of children being taught in Gaelic-medium education at pre-school, primary and secondary level. The list also includes the publication of "An Leabhar Mòr"—the "Big Book of Gaelic"—and the establishment of Ionad Chaluim Chille—the St Columba Centre on Islay, which I was proud to open last August. In addition, Sabhal Mòr Ostaig was honoured with a Queen's anniversary prize, and the Scottish Parliament has appointed a second Gaelic officer.

14:15

Those achievements are indications of the extent to which progress has been made since the establishment of the Parliament. Some people ask what difference the Parliament has made—if anyone wants to see 16 differences that it has made to the Gaelic language, I would be happy to make the list public.

I repeat my comment—I accept that it will be seen as controversial in some quarters—that the Gaelic language has official recognition and status. I also repeat that the Executive has delivered in the ways that I outlined.

Let me highlight some of the Executive's difficulties with the bill. Since I wrote to members outlining our reasons for not supporting the bill, others have given evidence to the committee. I have not read all the evidence in detail but I note that various groups have expressed reservations about the bill.

Gaelic is available at all levels of education, with improved resources and materials that were allocated in this financial year, and is included in the framework of national priorities in education. The Executive monitors and measures the extent to which education authorities respond to parental demand for Gaelic. Those measures were secured through legislation, and I understand that, with one or two exceptions—largely due to the remoteness of the schools concerned—there is no evidence that parents who want their children to be educated in Gaelic-medium schools have been disappointed. I want the number of children in Gaelic-medium education to increase. I am not suggesting the Executive is complacent.

It would be inappropriate for the Executive to commit to particular legislative proposals before Bòrd na Gàidhlig has the opportunity to consider in more detail what could be achieved through legislation. Last Friday, I discussed the bill with members of Bòrd na Gàidhlig, who also expressed reservations about the bill as introduced. It is a proper acknowledgement of the role and status of Bòrd na Gàidhlig that it should be allowed to offer a view on this important matter, and it has not had the opportunity to do so yet. If the Executive gave its support to the bill just as Bòrd na Gàidhlig was being established, that would undermine the importance that the Executive has attached to the board and to Duncan Ferguson and his colleagues. I note that several groups, including Western Isles Council, the ministerial advisory group on Gaelic, which has since been disbanded, and Comunn na Gàidhlig, have also referred to that issue in their evidence.

I will not dwell on the geographical provisions in the bill, which I mentioned in my submission. However, there has been considerable Gaelic development and activity in areas not listed in the bill, not least of which is Glasgow.

From my point of view, the bill is removed from current Executive priorities for the Gaelic language and culture. The Executive wants to increase the number of trainee teachers, which is the only way that Gaelic language will have a future. If more teachers are trained, more young people and adults will learn Gaelic. That is where the bulk of the resources that the Executive is putting into Gaelic are going. Next year, the resources will increase by 20 per cent on this year's figures, and the trend will continue in the following year. The year after that, there will be further increases.

The Executive has been involved in a number of developments, which shows that we are positive about Gaelic and that we want to prioritise it. The main function of Bòrd na Gàidhlig will be to produce the Gaelic language plan. I have asked for the plan to be with me—or with my successor, should that be the case—within six months. The language plan will show a way forward on which Bòrd na Gàidhlig will certainly want to consult.

For the reasons that I have outlined today and in my written submission, the Executive is unable to support the Gaelic Language (Scotland) Bill. As I said, the bill runs contrary to our current priorities and has the potential to cause division within the Gaelic community, some of which has been evidenced already. I have not gone into the financial and technical uncertainties, which will affect bodies such as the Scottish public services ombudsman, and the bill does not give due recognition to the role and functions of Bòrd Gàidhlig na h-Alba.

For those reasons, the bill does not reflect current developments in Gaelic. I am aware of public statements that show a greater awareness of the need for a Gaelic language plan. The board will have responsibility for producing the plan, which will be the most effective way of achieving the secure future for the Gaelic language and culture that I, all members of the committee and everyone else in this room want to see.

**Jackie Baillie (Dumbarton) (Lab):** I thank the minister for his opening statement, but I want to press him a little on what he said. Everyone, including the bill's sponsor, agrees that it is far from perfect as it stands. In the evidence that we have heard, people have expressed similar reservations to those of the minister about the provisions on geographical coverage and the bill's financial implications. Although I recognise the considerable efforts that the Executive is making, I do not think that the bill and the Executive's approach are necessarily mutually exclusive. If the bill could be suitably amended, would the Executive agree to its principles?

**Mike Watson:** In preparation for today's meeting, I tried to establish just what the general principles of the bill are. Other than formally enshrining legal status for the Gaelic language and providing parity with English, I am not sure what they are. No doubt, Mr Russell will clarify them when he gives evidence.

I am not sure that it would be feasible to amend the bill. Even if we were to retain the general principles—if they are as I outlined them—I am not sure that the time scale for lodging amendments would enable us to complete the process within the time available to us. I have just spoken to the Minister for Parliamentary Business—although not about the bill—who told me that she has 12 bills to

go through Parliament in the nine weeks before dissolution.

I would not like Michael Russell to take this the wrong way, but it seemed to take an inordinate time to publish the bill. I remember discussing it with him in March last year. I am sure that there are good reasons for that delay—having introduced a member's bill, I know the meticulous way in which the parliamentary draftspeople look at members' bills—but that is an issue.

I hope that it will be possible to introduce in the near future a Gaelic language bill that is perhaps narrower and more precise than the bill that is before us. One problem with the bill is the way in which it deals with the section on the ombudsman: all the emphasis seems to be on complaining and on redress for people's grievances, but such an approach is unnecessary.

I do not think that there is evidence to support the view that people believe if only a language bill was on the statute book and Gaelic had legal status, they would be able to have their children educated in Gaelic-medium education or feel more secure about the future of Gaelic. In evidence, I plead the Executive's record over the past three and a half years.

**Jackie Baillie:** I accept entirely that legislation is not the panacea that people sometimes view it as. However, the time scales and the time that is available are not necessarily issues that the committee should consider in arriving at a position on whether it supports the principles of the bill.

We heard a lot of evidence from one area in particular about the provisions on geographical coverage. We also heard that the bill might create a false distinction if it were to take effect only in certain areas. I understand from the bill's sponsor that it is intended to take a gradual approach. Does the Executive have a preferred route for achieving the same ends, or will you follow the geographical outline that is in the bill?

**Mike Watson:** The bill is certainly restrictive. I have discussed the matter with Michael Russell, so I understand why it was drawn up in that way. In my discussions with the ministerial advisory group and with individual members of Bòrd na Gàidhlig, the view was that those provisions would be seen as divisive by Gaelic speakers and those who regard themselves as being part of Gaelic culture. Another view was that if, for the sake of argument, that part was taken out and the bill was applied to the whole of Scotland, or even to a larger part of Scotland—some areas around Glasgow were suggested—that might unrealistically raise levels of demand. Personally, I want to see demand raised. Glasgow is a good example of what can happen when a Gaelic-medium school is provided. People want their

children to be educated there, and one of the most telling statistics is that 60 per cent of the parents who send their children to the Glasgow Gaelic School do not speak Gaelic themselves. That is an important point for the future.

We must take account of the extent to which we can balance the idea that there is not enough demand for Gaelic with the idea that, if that demand is created, it might not be possible for local authorities to meet it in the near future. I suppose that that is a rather long way of answering your question, which was, "Does the Executive have an alternative plan?" to which the short answer is no. However, if there is the need for a Gaelic language act—perhaps to enshrine the language's status or even to enshrine the status of Bòrd na Gàidhlig, which has been suggested to me—I hope that that could be achieved in the Parliament's next session. I do not have in mind a staged process for how much of Scotland should be covered and at what stage other areas should be bolted on.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** You said in your opening remarks that Gaelic has official status, but we have heard evidence that agencies such as the national lottery people do not give grants to organisations that work in Gaelic—although they give money to organisations that operate in Welsh—because it is not an official language. Do you accept that that is an intolerable situation?

**Mike Watson:** That issue was raised with me by Comhairle nan Sgoiltean Àraich, the pre-schools organisation, whose representatives came to see me about three months ago. I believe that the New Opportunities Fund was the agency in question. I accept what you said, but it seems to me that the situation is just plain wrong. I am taking the matter up with the NOF, because its interpretation is far too restrictive. If it says that, in order to be eligible for funding, CNSA must open its nurseries and pre-school activities to non-Gaelic-speaking children, that is not how the rules on grants were meant to be interpreted and shows a basic misunderstanding. The situation may be partly related to the fact that the NOF is remote from Scotland, or from certain parts of Scotland. I will be making that case to the NOF. I take your point, but I think that the problem is short term and not insurmountable—certainly, I do not see it as such.

**Ian Jenkins:** The problem would be solved if there was an act that said, "Gaelic is an official language of Scotland." I have suggested to Michael Russell that, if the bill does not look as if it is going to run, we might have such a one-line act. We could produce change quickly, which would solve the problem.

**Mike Watson:** The idea of a one-line act was mentioned to me by members of Bòrd na Gàidhlig

as a possible way forward for the future. I do not deny that there is an anomaly that we must certainly not allow to continue. We must find a way of overcoming it, and I accept that a Gaelic language act would be one way of doing so. However, there are other issues to consider. The problems that you raised are an effect of the anomaly but they are not a reason for going ahead as you suggested.

**Ian Jenkins:** Just before I asked my first question, you went some way to answering the next question that I was going to ask. Do you foresee a Gaelic act of some sort in the next session?

**Mike Watson:** Like members of other parties, I am involved in discussions with colleagues on our manifesto. I have argued the case that there should be a Gaelic language act in the next session. I will not be so presumptuous as to suggest that my party will form part of the Administration, although I hope that it will. If that happens, I hope that my party and that of Ian Jenkins will make such a commitment, but the matter remains to be decided. I made my views clear, but they are in the internal party machinery at the moment, as all members will understand.

**Irene McGugan (North-East Scotland) (SNP):** I would like to expand on what Jackie Baillie said about the gap between what the Executive feels and what the bill proposes. Your written evidence is clear that the Government's commitments include working towards secure status for Gaelic. Will you say clearly for the *Official Report* how the Scottish Executive sees secure status? How should secure status be achieved?

14:30

**Mike Watson:** Secure status can be achieved only by ensuring that more people learn to speak the language as a living language and not just as a hobby. It is particularly valuable for children to be taught through the medium of Gaelic. I have no doubt that we need to extend such teaching as far as we possibly can while encouraging adults to learn and use the language. Even in the parts of Scotland where the language is quite widely spoken, a number of people still do not speak it. A secure future means as many people as possible learning the language.

Resources must be put into training teachers and making facilities available, which we have done this year. We have put additional resources into providing more teacher-training places and I have committed additional resources to Lews Castle College in Stornoway so that it can ensure that people who want to learn to teach through the medium of Gaelic, but who for whatever reason cannot travel from the Highlands and Islands to



Jordanhill College where they are obliged to do part of the course, can complete the course by distance learning. Those resources will come on stream and are a direct response to a request that Lews Castle College made to me. I thought that there was clearly a need for resources to be made available.

There is no other way in which to proceed. I am not convinced that simply to confer legal recognition will in itself mean a sudden sea change or that it will wake people from their slumber. People who want to learn the language are largely doing so, and those who want to have their children educated in the medium of Gaelic are largely doing so. I accept that there is a need to increase demand, but there is no point in increasing demand unless resources exist that will provide teachers, so that parents who want their children to be educated in Gaelic can have that.

**Irene McGugan:** The evidence shows that the number of Gaelic speakers is not rising fast enough to save the language, and that the kind of means of voluntary enabling that you describe have not, to date, been sufficiently effective to secure the language. I use the word "secure" in its normal sense. Are you ruling out absolutely any legislation of any kind to achieve secure status for the language?

**Mike Watson:** No, I am not—I covered that in my answer to Ian Jenkins. I do not believe that legislation will in itself achieve a step change, or that people are hanging back and waiting for legislation. Parents who have Gaelic as part of their background and who want their children or grandchildren to have it are being accommodated, perhaps not 100 per cent—we could probably never achieve that—but to a great extent. People should be shown that Gaelic-medium education is available and that they can access it. The issue is about putting resources into providing teachers and places in schools rather than simply about passing an act that says that Gaelic has secure status. Perhaps I am missing something—I know that it is not my job to ask questions of members, but why would passing an act make such a dramatic difference? I understand the symbolism of an act, but not what its practical effect would be.

**Irene McGugan:** You said that you expect the Gaelic board to produce a language plan for Gaelic. Would not legislative support assist the board in helping Gaelic to survive? Would such support be useful for its work?

**Mike Watson:** It might be. I would expect the board to tell me such information when it gives me—or whoever is in my post—its language plan in about six months, or in the autumn. I cannot give assurances about what will happen eight months down the line, but if the Executive establishes a body specifically to give advice and

draw up a language plan for Gaelic, and that body reports that what is needed must be underpinned by legislation, that would be powerful evidence to the Executive and it would be likely to do what the board sought. I cannot be more precise than that—you will understand why; I might not be in this post—but that is my understanding of the natural process, of which the establishment of Bòrd na Gàidhlig is part.

**Irene McGugan:** That would be quite similar to the Meek report recommendations.

**Mike Watson:** The Meek report made two basic recommendations in May last year and, within a month, I announced that we had accepted one of them. The other recommendation was that there should be a language act. We are not there yet, but progress is not bad when it is allied to all the other things that we are doing.

Several other reports, of which many people here will be aware, such as the Macpherson report and so on, did not make so much progress. I do not say that to gain any personal plaudits, but other reports have not been acted on to the same extent as the Meek report. Although it is not 100 per cent, progress has been made in the relatively short time since May last year.

**Michael Russell (South of Scotland) (SNP):** I will follow up on the Meek report because it is important. The minister and I will disagree on virtually everything in his paper. Therefore, I am not going to waste the committee's time in going through it line by line, although that would be possible.

The minister said that one recommendation of the Meek report has been honoured, which is the formation of the ministerial advisory group on Gaelic, to give it its real name. However, as he said, he has not implemented the first recommendation, which was:

"That immediate action is taken to develop and implement a Gaelic Language Act to establish secure status for the language."

The paragraph goes on to say that

"The creation of such an Act is seen as vital by the Gaelic community and is fundamental in establishing community confidence and in securing the future prosperity of the language."

On secure status for Gaelic, page 14 of the report, where those statements are expanded, states:

"The Gaelic community was encouraged by the scale of cross-party commitment to 'secure status' in the run-up to the Scottish Parliamentary elections in 1999. This was further reinforced by the promise from the Minister for Gaelic, Alasdair Morrison, at Còmhdhail 1999 in Portree '...to put Gaelic development on a fast track'. It has to be said"

—these are the words of the ministerial advisory group—

"that since then the rhetoric from Government has emphasised "working towards" legislation. There is a very strong feeling within the Gaelic community that at best the timetable has been extended, or at worst that all parties have reneged on their commitment to legislate for the language."

The authors of the report said in evidence to the committee that they wished the minister and the Executive to put aside objections that were not principled and to try to make the bill work. When those people gave their evidence, I gave a commitment that there was nothing in the bill that I would not see changed if such a change would mean that there would, in the first Scottish Parliament for 300 years, be a Gaelic language act that would secure the language. Why will the minister not give the same commitment?

**Mike Watson:** First, I reject the idea that objections to the bill are not principled—I would not have put them forward if they were not principled. "Working towards" secure status for Gaelic is taken from the wording of the Labour Party's manifesto for the 1999 elections. In doing that, we are simply meeting that manifesto pledge, albeit that we are not going far enough for some people, which I accept.

On the wording of the report, it is clearly the ministerial group's job to advise the minister, which it has done. The group has advised Alasdair Morrison and me. I received the group's report and we have begun to act on it. We cannot do everything immediately, but I have given my longer-term view on what the position should be in relation to a language act in my responses to questions from Ian Jenkins and Irene McGugan.

The questions are: What have we done so far? What will we continue to do? Do we believe that secure status can be achieved only through a language act? I do not think that that is the case, but that does not mean that there will not be a language act in the future. However, for the reasons that I have given, I do not think that the bill is the way to achieve secure status.

**Michael Russell:** The ministerial advisory group said that it is vital that we use the word "immediate". The Executive's submission to the committee talks about the establishment of Bòrd Gàidhlig na h-Alba, although not, of course, on a statutory basis. The submission goes on to say that, having been established, the board would consider the particular proposals for legislation

"ahead of the Bòrd having the opportunity to consider in more detail what can be achieved through legislation."

However, the first page of the report of the ministerial advisory group on Gaelic states:

"The Ministerial Advisory Group on Gaelic have thus concluded that the time for reviews and discussions on the best way forward for the Gaelic language should now come to an end. It is now time to implement actions that can meet the expressed aspirations of the Gaelic community".

The report continues by recommending timing for the establishment of Bòrd Gàidhlig na h-Alba—which was established a year after the ministerial group proposed a time scale

"because the continuing process of review since October 1999, has retarded, if not paralysed, development."

Those are strong words from a ministerial advisory group, yet the minister's paper is full of further consultation and review and further time for debate and discussion. Is not it time to take a legislative step and to take action before we find that, after having reviewed, considered and consulted on the matter, Gaelic is dead?

**Mike Watson:** That is an over-dramatisation of the position.

**Michael Russell:** It is not, according to the ministerial advisory group, an over-dramatisation.

**Mike Watson:** The advisory group made two recommendations, one of which has been implemented. That is a 50 per cent success rate so far.

The speed with which that recommendation has been implemented should not be disregarded. Michael Russell said that it is a year late according to the recommendation in the advisory group's initial report, but can he give me evidence of another non-departmental public body that has been established and up and running within nine months of its establishment's being recommended? As I said, we have been swimming against the tide on that. Michael Russell and others should give a little bit of recognition to the progress that has been made on one plank of the Meek committee report.

I have already outlined the position on the Meek report's other recommendation, so there is no point in my repeating it. I have taken notice of what the advisory group said and I have moved forward on what is arguably the more difficult of the two major recommendations, which is more difficult because it will cost money. Things might not be moving as fast as some people would like, but they are moving faster than they have moved in the past.

**Michael Russell:** The Gaelic language is declining faster than it has declined in the past. In some way, we need to acknowledge both those things—

**Mike Watson:** I am not sure that Gaelic is declining faster than in the past. Can Michael Russell justify that remark?

**Michael Russell:** We will see in the census results.

**Mike Watson:** Why would the language be declining faster when more children are in Gaelic-medium education? I do not think that people are dying quicker. People are living longer, so the

decline must be at least being arrested to some extent, although I do not suggest that the trend has been turned round.

**Michael Russell:** There is no evidence for that.

**Mike Watson:** We now have 2,000 children in Gaelic-medium education at primary level. I do not mean to make a trite point, but because the national health service is, I presume, prolonging life for people in general, I challenge Michael Russell's point that the language is declining faster than it has ever done. That cannot be the case.

**Michael Russell:** So, should we look to the national health service to keep Gaelic speakers alive?

**Mike Watson:** That is an aspect, but in addition to putting money into the national health service—we are putting record levels of investment into the NHS—the Government can put in record levels of investment at the other end of the age scale. More children are being taught in Gaelic-medium education than has been the case for a long time. I do not know how long it is since 2,000 children were being taught in Gaelic-medium education, but that number is far higher than it was five or 10 years ago.

**Michael Russell:** All right—if the minister is confident of that fact, I will ask my final question, which his department could not answer when I asked it as a parliamentary question. Can the minister now tell me how many Gaelic speakers he wishes to see in the census of 2011 and 2021? If this is a target-driven Government, what is the Government's target to ensure that Gaelic flourishes? Will the numbers increase? How much will they increase by? Where are we going with this?

**Mike Watson:** I cannot see the sense in putting a figure on that, because it involves all kinds of imponderables. I will say that I would like to see the number of children who are taught in Gaelic-medium education being on a continuing upward trend. That is my target for as long as I am Gaelic minister. Indeed, on a purely personal level, as a Scot and as someone who has a Gaelic background—albeit from three generations ago—I want to see continually more children going into Gaelic-medium education. To repeat the point that I made earlier, that is the only way in which we will secure Gaelic language and culture in Scotland. The issue is not about putting figures on the numbers of Gaelic speakers but about ensuring that we are on an upward trend. That is all that we can realistically aim for.

**Michael Russell:** But we are on a downward trend at the moment.

**Mike Watson:** I am talking about an upward trend for the numbers who are being taught in

Gaelic medium.

**Michael Russell:** When do we turn the corner?

**Mike Watson:** I do not know—I am not in a position to say. I do not believe that there is necessarily a threshold at which a language becomes viable or non-viable. I talked earlier about the need for Gaelic to be a living language. People need to be living in the language and not simply treating it as something that they do in their spare time. How can one put a figure on that? What will the population of Scotland be in 2050? We have no idea about all sorts of trends that could change. All that we can do is provide resources to allow the maximum number of children to be educated in Gaelic. One hopes that those children will then want their own children to be educated in Gaelic and that they will be able, as far as possible, to use the language in their daily lives.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I want to pick up on the answer that the minister gave to Irene McGugan. You mentioned that a minister could have a recommendation from the Gaelic board in about six months' time. Are you saying that, if the board recommended that there should be an act to secure Gaelic's status, it would therefore be possible to see an Executive bill being introduced within a year, or perhaps a little longer to take account of consultation periods and so on? I am just trying to pin that down. If you got such a recommendation, what time difference would there be between Mr Russell's bill and a possible bill from the Executive?

14:45

**Mike Watson:** There are two things to say about that. First of all, I cannot say what Executive there might be in the latter part of this year. Secondly, I do not know what other competing bills there will be after the election.

As I said, I would like a bill to be introduced in the next session. I would want Bòrd na Gàidhlig to advise the minister of the time on what that bill should contain and what it should seek to achieve, on whether it should be a one-line or two-line bill or whether it should go further, and on whether it should enshrine Bòrd na Gàidhlig itself in statute. That last point may or may not be necessary. Some non-departmental government bodies are statutory and some are not, and some have a charter. Being a statutory body does not really add to an NDPB's importance. If we had sought a statutory basis for Bòrd na Gàidhlig, it could not have had its first meeting last Friday, but would have had to wait for months or possibly even years. I think that we did the right thing by getting it going as soon as possible.

I would like the new Administration to be able to legislate for a Gaelic language bill in the next

session of the Parliament. I would be being a hostage to fortune to say within what period that might happen, but my personal wish is that that should happen within the next session of Parliament.

**Cathy Peattie (Falkirk East) (Lab):** I would like to look at enforcement. The minister has been fairly critical about the bill's intention to enforce the language plans by means of the ombudsman. Could you tell us what you think should be in place to ensure that local authorities make sure that their education departments make Gaelic available for our children in schools?

**Mike Watson:** The Scottish Public Services Ombudsman Act 2002 is on the statute book; it came into being last year and provides people with the ability to claim against what would be determined a service failure, but I would like to put the matter in much more positive terms. At the moment, local authorities in areas where there is demand for Gaelic-medium education are given specific grant by the Executive; they ask us for the money and we provide it. That is why there are Gaelic-medium units in such places as Forfar, Condorrat and Kilmarnock. The local authorities in those places have met the demand.

I want to ensure that local authorities meet demand. If there is a feeling that demand is not being met, that has not been brought to my attention. I am not saying that there will not be some disgruntled parents somewhere—I know that there are problems in Thurso and at the new Ardnamurchan High School, because it is difficult to attract teachers to go to those areas. From that point of view, I would like to see the matter in terms of local authorities' knowing what their obligations are and meeting them on the basis of demand. At the moment, the ombudsman provides a general recourse, but I would not want people to feel that they had to complain about the lack of a facility. I would like to think that, with our funding, local authorities would meet demand.

**Cathy Peattie:** Two weeks ago, we had witnesses from the Convention of Scottish Local Authorities before us, and there was a real discussion about demand. I wonder how you gauge demand. Their general message appeared to be that, if there is no demand for Gaelic in an area, that means that people are not interested. Is not there a role for educators to ensure that there is an opportunity to educate people in Gaelic?

**Mike Watson:** I agree with that in general terms, but I am not sure whether that would mean going into areas where there has hitherto been no demand. How would you know how to start?

**Cathy Peattie:** Well—how would you know?

**Mike Watson:** Indeed. There would be no point in establishing a Gaelic-medium unit where there

is demand only from one or two parents, because such a unit would not be viable. I mentioned the effect that the school in Glasgow has had, but there would be doubt in the minds of education authorities about the extent to which just establishing schools would attract people.

**Cathy Peattie:** Does not that turn the whole argument about secure status on its head? Is not it a chicken and egg situation? You said that unless people are calling for access to Gaelic education and unless there is a real demand, there is no need for secure status. Some people feel that, unless there is secure status, with more youngsters coming through school—it is encouraging that many are coming through Gaelic-medium education—the language will start to fade and little will be done in areas where there is no access to Gaelic-medium education or, indeed, to any form of Gaelic education.

**Mike Watson:** I do not see why that should necessarily be the case, although I suppose that it could be in certain areas of Scotland. At the moment, demand is being met where parents come forward and ask for Gaelic-medium education, provided that teachers can be attracted to those areas. I do not see that there is any evidence that what Cathy Peattie suggests would happen. In places such as Condorrat, a number of parents have been attracted to the school who would never have considered Gaelic-medium education had the school not been there. I accept that, but the school was established there because there was an initial small demand.

**Cathy Peattie:** The schools created a demand—that is my point.

**Mike Watson:** Yes. I accept that, but the creation of the school was based on an initial demand. I accept the chicken-and-egg aspect of the argument. If there is evidence that there is untapped demand that would be met if schools were set up in areas, that is for local authorities to act on. They can approach us for specific grant to do that now, so I do not see how that is holding back the development of the language. I reiterate my earlier point; the last thing that I want is to hold back development of the language. What I have been trying to drive forward in my period as a minister shows that that is the opposite of what I want.

**The Convener (Karen Gillon):** Where do you think the major gaps in the bill are?

**Mike Watson:** The major gaps? I am not even convinced of the need for the bill per se at the moment. There is some kind of view being put forward that the Executive is not doing enough and that passing a bill is what we need to do to go the extra mile. It is not so much a question of gaps, but there are flaws in the way the bill defines

geographical areas and in the way it would use the Scottish Public Services Ombudsman Act 2002.

Also, from my point of view, the fact that Bòrd na Gàidhlig has not had the chance to input to the bill—although that is not a flaw in the bill—is a difficulty, because the bill could cut across what the board wanted to do. Members of the board have expressed to me their views on the bill. It is not a question of there being gaps in the bill; I would not put it that way.

**The Convener:** If the bill were to pass stage 1, do you believe that there would be a need for major amendment to the bill to make it workable?

**Mike Watson:** The way in which the process works is that, if the bill proceeds to stage 2, it will be eligible for amendment, and the Executive would have to respond to the situation if that was where we found ourselves. Obviously, we could not just sit back with our arms crossed and do nothing. I do not want to suggest that thought has not already been given to that; that is the job of civil servants in the Scottish Executive. At the same time, I am not even sure whether that process could be completed in the amount of time that is available. It certainly seems unlikely, but if the bill reached stage 2 there would clearly have to be a response from the Executive, and I am sure that there would be.

**The Convener:** There has been some confusion expressed by witnesses about what the bill would and would not do and about what people want the bill to be that it is not. One of the issues that arose concerned Gaelic-medium education. In your view, as minister, what would the bill do to promote and secure Gaelic-medium education that is not being done already?

**Mike Watson:** Not a great deal, as I said. I accept the symbolism of the bill, but there would be far more to the matter if the feeling was that insufficient resources were going in. I accept that—as with every other part of my portfolio and other ministers' portfolios—we could always put in more money, but I do not think that the bill has identified that as an issue, so I do not think that it would advance things greatly, other than symbolically. I accept the point that was made earlier about status and lottery funding, but that is not really within the priorities that we have been pursuing with what I consider to be reasonable success.

**The Convener:** Thank you very much for your evidence. We may or may not be hearing from you again.

I suspend the meeting until 3 o'clock, just to let members get organised, and to get our spears sharpened.

14:54

*Meeting suspended.*

15:02

*On resuming—*

**The Convener:** The committee will now take evidence from Michael Russell, MSP. I understand that you wish to make some of your comments in Gaelic. The committee does not have translators present, so I trust that you will translate for members.

**Michael Russell:** I will indeed. Thank you for the opportunity to give evidence in support of the Gaelic Language (Scotland) Bill.

*The member continued in Gaelic.*

Tha mi a' tòiseachadh le bhith ag ràdh beagan anns a' Ghàidhlig airson dearbhadh gu bheil e comasach dhuinn uile a bhith a' tuigsinn cho cudthromach is a tha e a' chànain a chleachdadh. Chan eil mi fileanta, ach tha mi air a bhith nam neach-ionnsachaidh fad iomadh bliadhna agus tha mo làn thaic ris a' chànain agus ri a leasachadh san àm ri teachd.

*Following is the translation:*

I make my introduction in Gaelic largely to show that it is possible for all of us, even a long-term learner like myself, to be mindful of the need to use the language in certain circumstances. As I have just demonstrated, I am not a fluent speaker, but I have been a learner for many years and I am strongly committed to the language and its future.

*The member continued in English.*

Unless there is action now, the future of Gaelic is in severe doubt. The number of those who speak the language continues to fall, and virtually every expert who has given evidence to the committee has stated that the first vital step—not the only step—that must be taken is to legislate to provide secure status for Gaelic. Indeed, the ministerial advisory group on Gaelic, which I quoted earlier, makes secure status its first and most significant recommendation.

The bill that I have introduced allows that process to start now. It is only a start, but it is a significant start, and not only in a symbolic sense. There is still time for the bill to become law in the first Scottish Parliament for 300 years, and the effect that that would have on the Gaelic community cannot be underestimated. If the Parliament fails the Gaelic community at this time, I am afraid that it will have played a part in continuing to drive down the language.

As I have frequently done in the committee and elsewhere, I appeal not only to the committee, but to the Parliament and the Scottish Executive to

take the necessary action to start the process to put legislation in place that will underpin and support the language—Gaelic deserves no less than that and it deserves such actions now. We will know in less than a month's time, from the census figures, that the number of Gaelic speakers is continuing to fall, no matter what the minister has said today.

**Cathy Peattie:** I am interested in encouraging local authorities and others to provide access to Gaelic-medium education and opportunities to learn the language in schools and communities, but I am concerned about the compulsion element in the bill. I am not sure whether the Parliament should tell councils how to do a particular piece of work. What are your views on that?

**Michael Russell:** I am sorry to say that the bill does little directly for Gaelic-medium education. I would like it to do more, but that is outwith the scope of the bill—and of members' bills in general. With John Farquhar Munro, I proposed an amendment to the Standards in Scotland's Schools etc Act 2000 that would have given the right to Gaelic-medium education, but the Executive resisted that, too. I agree with the thrust of your earlier questioning. It is important to create opportunities by allowing Gaelic-medium education to be taken.

However, I should stress that that is not the be-all and end-all of Gaelic. There is a sense in which, no matter how much Gaelic-medium education is provided, there will be only a limited take-up of it. It may not even produce the number of teachers that are required for the next generation. Other actions must also be taken, including providing Gaelic as a second language as a subject in schools. Last week, the committee heard from the Welsh Language Board how important a part of its work such provision is. Gaelic in education is not as simple as it has been presented to be, but giving a right to it is important. I would go further and in time would like to give children a right to take Gaelic as a second language in other schools that are not Gaelic-medium schools.

I heard what the minister said about enforcement. Two issues arise. First, if the present draft of the bill—which is a fail-safe draft in terms of the ombudsman—is as offensive to the Executive as it appears to be—and the offence has not simply been stimulated as a result of appearing in front of the committee—I am happy to change the enforcement provisions. It is possible to remove them and for the bill still to fall within the remit of the ombudsman—I do not think that there would be any difficulty in doing so.

I point out, however, that the provisions for enforcement in the bill are as nothing compared to the provisions in Comunn na Gàidhlig's original

documentation and proposals for secure status—and fortunately, one of the people who was involved with those proposals is in this room. The proposals had a very strong set of enforcement proceedings that I thought were entirely out of keeping with the spirit of the time. The provisions in the bill are the mildest ways in which authorities can be encouraged to produce a Gaelic language plan and involve ordinary citizens in the process. The terms of the bill are very inclusive. It is up to ordinary citizens to make representations. They can push an authority, ask it to do things and comment on them, and can go back and tell it that something has not worked.

There are no sanctions in the bill. I fail to see how enforcement can be regarded as draconian if there are no sanctions. The only sanction in the bill is naming and shaming, which is not much of a sanction. The bill is not draconian; it does not force people to do things against their will. Most authorities should be doing what is proposed anyway, or should be thinking of doing so—the committee has heard from a number of bodies that are doing such things. As for the rest, I endorse the approach of the Welsh Language Board: to negotiate, discuss and encourage over a period of time. Nothing in the bill stops that from happening.

**Cathy Peattie:** Do you accept that that would take time for some local authorities in which provision is poor?

**Michael Russell:** I am happy to consider the implementation date of the bill in that regard. There could be a rolling implementation. The committee has heard passionate evidence at its last five meetings. Many people think that Gaelic is almost at the point of no return. There must be some pressure to stop that happening. If we believe that language is important, there must be some way to push or enforce a local authority or public body that refuses to pay some attention to Gaelic, despite the presence of a requirement and the demand of society and the Parliament.

**Jackie Baillie:** We received submissions from a variety of organisations. The submission from the Commission for Racial Equality caused a degree of consternation and concern. Its submission states,

“that the Bill could actually militate against new duties on public bodies in Scotland to promote race equality.”

What is your considered view of that statement?

**Michael Russell:** I do not understand what the Commission for Racial Equality means. I regard the CRE's submission to be positively dangerous as a contribution towards language and its place in Scotland. It borders upon the racist, which is a surprising thing to say of the Commission for Racial Equality.

I was especially concerned with the penultimate paragraph of the submission, which is an astonishing statement that says,

"The CRE feels that, in dealing with minority languages, it is potentially damaging to race relations to promote one language and its associated culture above others to the degree that this Bill proposes."

The bill does not propose any such thing.

I examined the submission quite closely and also looked at other work that the Commission for Racial Equality has done on minority languages. The CRE in Wales, which appears to be a much more enlightened part of the same organisation, has a compact with the Welsh Language Board, which is an agreement of how they will operate. The compact states:

"The task of both organisations is to promote equality, and we share common values. We respect each other's aims and responsibilities, and recognise they are compatible."

It is not possible to put those two documents together. One must be the position of the CRE as I know it, which is an open, accountable and positive organisation and the other must be a momentary aberration, either by the CRE or its officer Mick Conboy, the acting head of the CRE in Scotland. I have written to Mr Conboy suggesting that the CRE withdraw that evidence in light of the CRE's actions in every other place.

**Jackie Baillie:** That is helpful clarification.

You raised the question of targets with the minister, and our parliamentary love of targets and achieving them. If the bill became an act, how would that impact on targets for the number of Gaelic speakers in Scotland? What percentage measure would you consider successful in the next census, for example?

**Michael Russell:** All governments should have a target for the number of speakers. If the number of Gaelic speakers revealed on 13 February is below 60,000, any government must aim by the next census in 2011 at least to have stopped the decline, and hopefully reversed it so that the numbers have risen above 60,000. It is not particularly helpful to simply call in aid the national health service in that regard—we will have to do more than that.

The bill is the start of a process of turning things around. I am absolutely mindful of the material from the ministerial advisory group on Gaelic from which I quoted earlier. I have been involved in the language for over 20 years. Around 1980, the then parliamentary leader of the SNP, Donald Stewart, attempted to introduce a bill for what was then called legal status in the House of Commons. The argument has been going on for a long time.

It is felt that the language should have a degree of recognition, not just symbolically, although that

is important. It should be practically plugged into certain things. Examples include a right to ensure that public bodies think about using Gaelic, a right to Gaelic-medium education and perhaps to take Gaelic as a second language, a right for the language to be treated in equality in courts of law and elsewhere. All those things contribute to turning the situation round, but they do not do it themselves. Many other things are required.

I declare an interest because I have made money by making Gaelic programmes for television. Although such programmes are one of the priorities, that is no longer the be-all and end-all of where Gaelic policy should go. Additional resources must be given to education to provide the option of taking Gaelic as a second language at school. A lot of work will be required to encourage people to learn Gaelic and to take it to fluency, applying the most modern methods and making it very accessible. It is difficult for people who want to learn Gaelic to do so now, and modern methods could reduce the number of hours required to 1,000 or less.

A range of measures is required, but the biggest change needs to be in our heads. Society's understanding of its expectation of the language is important. If the law says that the language should be treated on an equal basis with English, that is a start for those who have no experience of Gaelic to realise that it is important and that something should be done about it.

15:15

**Jackie Baillie:** Although I will not argue with Mike Russell's analysis, he mentioned resources, which give practical effect to what is in anybody's head at any given time and make an issue real to people in communities across Scotland.

I recognise that members who wish to introduce a member's bill face constraints. However, if the financial implications of producing a plan are £3,000, the financial implications of implementing it properly will be much more than that. Was any work done on the scope of the likely resource requirements?

**Michael Russell:** I have to say, with a disarming degree of honesty, no. Under the circumstances, the work could not be done. It is a question of what people are willing to do and how they wish to do it. Highland Council quoted £0.75 million upward for the work that it does. That is more than would be required for a simple language plan.

Jackie Baillie's statement is correct. The financial memorandum gives the cost of producing a Gaelic language plan based on how many hours it would take to write it down and put it through a printer. That is not disingenuous. That is honestly what we believe it would cost. However,

organisations will have to commit to wanting the plan and will have to invest in it.

Wilson McLeod made the point during a previous evidence session that organisations invest heavily in English language plans. Investing in Gaelic should not be seen as an add-on. I was fascinated by the Welsh Language Board's statement that, 15 years ago, Welsh would appear as a separate item in the budgets and accounts of organisations. It is no longer seen in that way. Welsh has become a normal part of organisations because it was something that they had to do.

I do not want to draw parallels, but I suggest that it is like having to make adaptations to a building to allow disabled access. Although there are costs involved, they are costs that society wishes to bear because they relate to inclusion and opportunity. The same principle applies to Gaelic.

**Irene McGugan:** I am sure that you are very heartened that, from the evidence that the committee has received, there is overwhelming support for a bill. However, some shortcomings have been identified also. From all that you have heard, what changes to the bill do you feel are necessary or possible to accommodate the concerns that have been raised?

**Michael Russell:** As we have shared an office for the past three years, you have lived through the process and know how long it has taken to bring the bill this far. It has been a long-term activity. I started with the hope that this bill, or a similar bill, would be introduced by the Executive and achieve all-party support. As time went on, that did not happen.

As Irene McGugan knows, I was actively encouraging such a bill behind the scenes, and at the same time had started to draft a bill myself. The drafting process took a long time because there is severe pressure on drafting resources, and we were required to run another consultation exercise, something which I had hoped to avoid because of the consultation exercise that Comunn na Gàidhlig had done. Therefore, the process went on and on and took a great deal of time.

Had the Executive introduced a bill, I would not have proceeded with this bill. I kept saying that publicly and privately. However, as the end of the parliamentary term drew closer, it was obvious that the Executive did not intend to introduce such a bill. My time scale was fixed, and I was advised that the earliest that the bill could be produced was September last year. In fact, it took a month longer because of one or two difficulties. The bill is the result of a lot of discussion, debate and consultation.

Essentially, my bill does the maximum that a member's bill can. However, since the moment that it was published—and before—I have made it

clear that nothing in the bill is set in stone, nor is my advocacy of it. If opposition to my being the member in charge of the bill meant that somebody else had a better chance of getting the bill through Parliament, I would hand the bill to somebody else without any difficulty.

My own view is that, although everything is up for grabs, the possibility of amendment centres around two areas in particular. Now, I am attracted to Ian Jenkins's idea of a bill that contains only one sentence, but that is wildly impracticable. As I have argued with Donald Meek and his committee, at the end of the day secure status is not an abstract. Secure status would exist because it applied to something. Unless the bill illustrates that secure status applies to something, secure status is an abstract, and I am not sure that one can do that, as there is no such thing as an official language within Scotland.

The possibilities for amendment therefore boil down to two areas. The first concerns the role of the Scottish Public Services Ombudsman. If the Executive honestly believes—as would appear to be the case—that there is something technically offensive about the way in which the bill's provisions deal with the ombudsman, let us remove those provisions. I am grateful for the advice that I have received on that, but if the Executive is right, whether or not the bill refers to the ombudsman will make no difference, as the ombudsman would be able to deal with the issue anyway. Rather than be prescriptive about the functions of the ombudsman, I have no difficulty whatsoever in accepting only by implication that the Gaelic language plans would be considered by the ombudsman.

I would very much like to bring Bòrd Gàidhlig na h-Alba within the scope of the bill, but the best advice that I have—which is substantial—is that it is not possible to do so. I cannot create Bòrd Gàidhlig na h-Alba in statute, and the Executive indicated today that it has no plans to do so. Without creating the board in statute, I cannot give it a role. I would be entirely happy to bring in Bòrd Gàidhlig na h-Alba as the body that would adjudicate on the Gaelic language plans, but I would first need to create the board in statute, which would mean that the bill would need to be about 15 sections long. That would be beyond the scope both of this bill and of any member's bill. Therefore, I cannot do that, much as I would like to. If the minister could find a way to allow me to bring Bòrd Gàidhlig na h-Alba into the centre of the bill, I would do so.

The second possible area of amendment is the time scale and the way in which the bill is implemented. I go backwards and forwards on this all the time. I believe that there is some sense to the implementation that the bill proposes, so I was



pleased that the Welsh Language Board supported that quite strongly. The sheer practical difficulty is that the labour market does not have the Gaelic speakers who could be quickly available to help implement the bill throughout Scotland. There might also be considerable difficulties in rolling out the bill across the whole of Scotland.

However, if the Gaelic community profoundly believes—most of them do, and I respect that—that the bill should be implemented across the whole of Scotland from the start, I would be prepared to take a risk on it. That would be the heart ruling the head.

On the other hand, it was interesting to hear Rob Dunbar's evidence, which suggested that another implementation pattern might be possible. For example, one could use the figures that will be provided next month by the Registrar General for Scotland and start by implementing the bill's provisions only in those local authority areas that had a certain number of Gaelic speakers. I am quite attracted to that idea, but it has some difficulties. Such an implementation would not be difficult for local authorities, but it would play merry hell with regional bodies of any description. For instance, if a body worked in the west of Scotland, all sorts of difficulties might arise if the bill was implemented in Glasgow, but not in Renfrewshire.

Donald Stewart's Gaelic bill extended the area of implementation to Perthshire, which at that stage was seen as an historically Gaelic-speaking area. Perthshire is no longer seen as such. That illustrates both the dangers of taking a geographical approach and, in part, the necessity of doing so. The bill would apply to areas where Gaelic is at least stronger than it is elsewhere.

I am still open-minded on the question, but if a gun were put to my head, I would say that the present provisions are the most sensible at this time. If there is a genuine opportunity to try something out, the way suggested by the bill is perhaps the way to do it. However, if somebody comes up with a brilliant idea—that is always a function of this committee—I will be open to it.

**The Convener:** If we were to accept the geographical implementation that is proposed in the bill as it stands, what would the bill do for me if I were a Gaelic speaker in Clydesdale?

**Michael Russell:** First of all, it would encourage you because it would show that the Scottish Parliament—and, by extension, the Scottish Executive—takes Gaelic seriously. For the first time, a Gaelic speaker in Clydesdale—they do exist; indeed, New Lanark was founded by Gaelic speakers—will think that we are at least making progress.

Also, the bill is clear that it would be enacted for the whole of Scotland, but would be implemented

progressively. Therefore, I suppose that the next thing that a Gaelic speaker in Clydesdale would do would be to put pressure on the Scottish minister—whoever that is after 1 May—to bring forward a statutory instrument to implement the bill in their own area.

That is the mechanism that exists. Once it has been implemented in the initial area, it will be up to the minister to bring about further implementation by statutory instrument. I presume that that Gaelic speaker will approach whoever is the member for Clydesdale at that stage and will ask him or her—perhaps I should say her or him—whether they can put pressure on the minister to get the bill implemented in Clydesdale on the ground that they want South Lanarkshire Council to be involved.

**The Convener:** What will the critical mass be? I have a slight problem with the geographical basis for implementation.

**Michael Russell:** There is probably not sufficient critical mass in Clydesdale at the moment. If there were a legal right to Gaelic-medium education and if Gaelic was offered as a second language subject at Lanark Grammar School and in Carluke, Larkhall and Biggar, that would help. Other measures need to be taken as well.

The most important aspects of the issue for our Gaelic speaker in Clydesdale are that the process has started and that it is not delayed again. I have quoted from the report of the ministerial advisory group on Gaelic in relation to such delay.

**The Convener:** Apart from hope, does the bill offer anything to someone outwith the specified areas?

**Michael Russell:** The bill is the start of the process—it will light a fire that will begin to smoulder. People in Scotland will begin to say to themselves that the issue is important. The bill will have some practical implications. If it were implemented for the whole of Scotland, South Lanarkshire Council and all such bodies would have to draw up a Gaelic plan that would be accessible—in Gaelic—by the person in Clydesdale.

There is a choice between whether it is practical to seek to make that happen immediately and whether we can start off the process in one part of Scotland and can roll it out in other parts.

**The Convener:** Is the BBC covered by the bill?

**Michael Russell:** No, not at present. The BBC is a cross-border public body; or rather, a body that is based in England. However, I think that it would operate the bill. In fact, in some places, it does. I would not want to miss the opportunity of saying that among those who are implementing

what the bill seeks to achieve is Ali Abassi, who is an example to us all and a very fine Gaelic learner.

**Ian Jenkins:** You have said several times that there is nothing in the bill that you would not change.

**Michael Russell:** There is only one phrase that I would not change, which is:

“the Gaelic and English languages should be treated on a basis of equality.”

**Ian Jenkins:** That is the principle behind the bill. I was going to ask whether the fact that you were prepared to change anything made it an unprincipled bill.

My next question is what

“on a basis of equality”

means in practical, day-to-day terms. You have a lot of emotional support for the bill. If we were to say to the Parliament that the committee recommends that it should agree to the principles of the bill at stage 1, I would want members to know what we were asking them to vote for. I invite you to give us examples of what

“on a basis of equality”

means and to indicate the kind of concerns that exist.

There is a worry that people might throw their weight about in an obstructive way by demanding this and that in Gaelic. That is an example of the negative side. There is an idea that there might be people who would say, “It is my right to speak in Gaelic, so I am going to speak in Gaelic”, even though there was no one who could reply to them. That would be part of the game.

**Michael Russell:** I would not describe the situation in that way. As a nation, we are spending about £5 million to save the capercaillie. It is worth spending some time and effort saving a language, because a language dies in the world once every fortnight.

I can give a practical example of something that is wrong that the bill would right. The creation of the two national parks at Loch Lomond and in the Cairngorms has seen no imposition on the park bodies of an absolute requirement to produce signage or information in Gaelic and English. Both park areas have a Gaelic-speaking tradition—although at Loch Lomond it is historical, while in parts of the Cairngorms it is active. In spite of the fact that the language is an important part of the topography and the heritage of those areas—one cannot understand Scottish geography without having an understanding of Gaelic—it was possible to ignore it completely in the creation of the parks.

Some people might say that, in cultural terms, that is as big an act of vandalism as taking a chainsaw to parts of the Caledonian forest. There is a sense in which there has been an act of cultural vandalism. It will not happen that way again.

More practically, and in a more modern sense, the minister seems to believe that we are producing a new generation of Gaelic speakers through Gaelic-medium education. I believe that we are producing new Gaelic speakers, but it is not a full generation. If we are producing such people and they choose to use Gaelic as their everyday language in circumstances such as living and working in the Western Isles, they should have the right to access local services through their everyday language. It is not too much to ask for that to be possible and it would be possible under the provisions of the bill.

The bill is only a start because all that it does is get Gaelic into the minds of local bodies and their officials. We have a long way to go to get into the hearts of Scotland. That is going to take a long time, but we need to bring the language back at least to a par with English. We have a lot of work to do and the bill starts the process. I would not say that it does any more than that.

15:30

**The Convener:** I return to my first point because that is where I think there is some confusion among members. On the one hand you are saying that if someone is not in one of the designated areas, the bill will have no practical effect on them. On the other hand, you are saying that Gaelic should have the same status as English. Therefore, if I were a Gaelic speaker in Clydesdale and Gaelic had the same status as English, could I not demand the same kind of services? For example, I should be able to speak Gaelic in court.

**Michael Russell:** That might happen. However, remember the Welsh Language Board's evidence. It addressed that issue by saying that some people had feared that the legislation would be a barrack-room lawyer's charter and that there would be Welsh speakers waving the bill and demanding to be listened to. That did not happen in Wales.

I stress to the committee that things that are symbolic and give hope and encouragement are not useless things, even in legislation. If the passage of the bill begins to reverse generations and centuries of difficulty for Gaelic, and if we are at the turning of the tide, there is still an awful lot that has to happen, but it is important enough. There does not have to be a list of practical things that people can get out of the legislation. Those things will come later as the tide turns.

If the bill is accepted as it stands, there are some provisions in it that will affect the people in a certain area first of all. However, the potential for that area to be expanded exists within the bill. If the tide does turn, perhaps the thought processes of the bodies that your Gaelic speaker in Clydesdale might want to approach will change.

The principle of equality is behind such schemes. That does not mean that Gaelic will have equal validity in every circumstance, but simply that the bill will have the principle of equality. There are circumstances in which the use of Gaelic would not be most appropriate. The balance of probability in the bill would say that it is unreasonable to say that Gaelic would be appropriate in all circumstances.

I know that MSPs always think that people make unreasonable demands. However, I think that you will find that most people do not.

**The Convener:** My concern arises out of some of the evidence that we heard. I think that it was Rob Dunbar who said that if someone was elderly and Gaelic was their first language, the bill should give them the right to speak Gaelic and to be spoken to in Gaelic in their nursing home. Is that practical? Does the bill do that? I do not think that that would be a bad thing, but we have to be honest about whether the bill would achieve that.

**Michael Russell:** That is why I believe that geographical implementation is more sensible. There are places where that is possible now. My wife's great aunt lost all her English in the final five years of her life. She lived in a sheltered house in Lochmaddy and was eventually moved to a home. Her English had gone and she could communicate only in Gaelic, so it was essential that there were people around her who could speak Gaelic, or the situation would have been impossible. It is unlikely that that would happen for someone in Galashiels, because I do not believe that there are care staff there who can speak Gaelic.

We then come to the very difficult choices that human beings have. Do we take an old lady who has lost her English and has reverted to Gaelic away from Galashiels where she has lived for 50 years back to Lewis because she will be better cared for there? Is there some other solution? Those are difficult cases, but they are not necessarily ones that argue against the bill. They might argue for people being reasonable and practical. I do not believe that the bill will allow a family to go to court and say that, in those circumstances, the old lady has a right to access every service in Gaelic. I do not believe that the bill does that.

**Mr Monteith:** Is it not the purpose of the language plan to accommodate that difference? I know the Galashiels nursing home quite well

because my great aunt just died there at the age of 104 and I am not aware that anyone there speaks Gaelic or would have cause to. If that is the purpose of the language plan, is that not in contradiction with the principle of the bill when it refers to the "basis of equality"? Does the use of that phrase allow for that variety?

**Michael Russell:** The phrase is taken from the Welsh Language Act 1993, and we would be in dangerous and murky waters were we to choose another phrase. One of the things that delayed us in the drafting of the bill was the fact that we had to settle on a phrase that had a legal understanding.

You are right to say that a plan from the Church of Scotland, for example, might say that, because it is a national organisation, people could write to it in Gaelic and receive replies in Gaelic, but that it could provide Gaelic-medium nursing services only in certain places. I do not think that anybody would take the Church of Scotland to court if it did not also provide those services in Galashiels. That would not make any progress at all.

Similarly, if Scottish Borders Council was eventually required to produce a Gaelic language plan, it would be on a different basis, as representatives of the Welsh Language Board said when they gave evidence. The council would point out that it has been a very long time since Gaelic was spoken in the Borders—if it was spoken there at all, in some areas. In those circumstances, we would not expect Scottish Borders Council to do everything that Highland Council was doing. The registrar general's figures, which are to be published on 13 February, may indicate that there are only 500 or 1,000 Gaelic speakers—or fewer—in the Borders. Nonetheless, Gaelic speakers in the Borders want to know that Gaelic is a national language that is of importance to Scotland. So, perhaps the bill allows you to have your cake and eat it—or, to put it correctly, to eat your cake and have it.

**Mr Monteith:** I have no doubt that there are people in the Borders who speak Gaelic.

**Ian Jenkins:** I know that there are.

**Mr Monteith:** I have certainly received e-mails from people who have told me about shinty being played in the Borders.

**Michael Russell:** Shinty was also played in Ballarat, among other places.

**Mr Monteith:** We therefore know that there is a potential demand for Gaelic culture, if not the Gaelic language, in the Borders.

Is there any specific reason—other than the fact that you based the bill on the Welsh Language Act 1993—why you chose to use the phrase "basis of equality" rather than the term "equal validity", which is used by Comunn na Gàidhlig?

**Michael Russell:** As I said, the phrase “basis of equality” is used in the Welsh Language Act 1993. The Conservatives are responsible for the phrase being in that act, as they were not prepared to go as far as “equal validity”. The Conservative Government at that stage believed that “equal validity” would be too broad, would lead to too many legal challenges—all the things that we are talking about—and would be difficult to interpret. It felt that the phrase “equal validity” was not definable in purely practical terms and could therefore lead to the difficulties that we are talking about. It also felt that “equal validity” would give rise to unrealistic expectations—for example, of the man in Clydesdale turning up at the council offices shouting in Gaelic and expecting a response. The phrase “basis of equality” was therefore favoured by the Tories and included in the 1993 act on the basis that it would give effect to the principle that, in the conduct of public administration and justice, Welsh would be equal to English.

The meaning of the phrase has been expanded since then, but it was in that context that Welsh was to be considered equal to English. The phrase “equal validity” was considered to go too far. If Brian Monteith sides with the more radical elements in Gaelic culture, he will lodge an amendment that calls for “equal validity”. However, that would be against the traditions of his party.

**Ian Jenkins:** I still think that the “basis of equality” means just that. The word equality—

**Michael Russell:** It does not mean equal validity. This is terribly like discussions we have had before.

**Ian Jenkins:** I am prepared to accept your word for it on these terms.

**Michael Russell:** It is the lawyers who say such things. There is a choice between those two terms. I do not think there are any other choices to define the matter.

**The Convener:** All men are equal, but some are more equal than others.

**Michael Russell:** I know that that idea is dear to your heart, convener, but witnesses should not say such things here.

**Ian Jenkins:** That has never stopped you in the past.

**Michael Russell:** I have never been a witness before.

**Mr Monteith:** Let us try to pin down what you are saying. You are saying that where the two languages might be delivered together, they will be given equal respect, but a different outcome might be delivered by a public body simply because of the demands—

**Michael Russell:** I would like to stick with saying the “basis of equality”. To say anything else would put us back into rather swampy ground.

**The Convener:** In Wales, Welsh speakers have the absolute right to speak Welsh in court proceedings. Would that be the same in Scotland for Gaelic speakers?

**Michael Russell:** Not according to the bill because we are not dealing with the courts. There is already an experimental scheme in place in Lochmaddy sheriff court, in Stornoway and, I think, in Portree whereby Gaelic can be spoken in court if someone chooses to speak it. The last I heard, nobody had taken advantage of the scheme, but it exists as a possibility. At present, it is possible for people to speak Gaelic in court if they do not understand English because, in those circumstances, an interpreter would be provided. However, most Gaelic speakers understand English and that, I am sorry to say, has been their downfall.

**Ian Jenkins:** On a point of information, what is the proportion of Gaelic monoglots?

**Michael Russell:** None. There is no such thing as a monoglot Gaelic speaker. There are Gaelic speakers whose English is poor—often older people have some difficulty. There is a date for the last monoglot Cornish speaker and a date for the last monoglot Welsh speaker, so there must be a date for the last monoglot Gaelic speaker. *[Interruption.]* Incidentally, I met a monoglot Irish speaker when I was on Arran about 20 years ago. I had lunch in a house where there was an old man who had no English and who had never had any English. However, there are no more Gaelic monoglots. That does not necessarily mean that people would choose to speak English all the time.

**Ian Jenkins:** I support the scheme at Stornoway and Lochmaddy that you described.

**The Convener:** If I were an officious convener, I would be ticking Mike Russell off for speaking to members of the public during a committee meeting, in line with the recommendations of the conveners’ liaison group. However, as I am not, I will not.

**Michael Russell:** I was seeking some information to help the committee, but I do apologise. You are anything but an officious convener.

**The Convener:** I will let you speak to whomever you like as long as it helps the committee.

**Jackie Baillie:** There is a process issue that I cannot let go unremarked because it is helpful for us to understand it. Because there is a degree of cross-party sympathy for the underlying intentions of the bill and because of the attitude that the committee has taken, it is entirely irrelevant who

proposed the bill. However, Mike Russell's impassioned plea for the Scottish Parliament and the Scottish Executive to seize the opportunity and pass the bill at stage 3 before the parliamentary session ends is the process issue that I must address quickly. It is said that it takes at least nine months with a fair wind for a bill to pass through its different stages. Although I recognise that a long process was—quite rightly—gone through to develop the bill, the time scale causes us some difficulties if nine months is the accepted norm.

People have said that legislation made in haste can be repented at leisure. Because of the symbolism that Mike Russell outlined so effectively and, indeed, because of the bill's practical purpose, it is very important that we get the bill right. I am just putting down a marker. If we are attempting to do in four months what it normally takes nine months to do, we need to be very careful. This is not a question of whether the Scottish Parliament and the Scottish Executive are committed to the bill; there are issues of time. However, that should not deflect us from taking positions about the principle.

15:45

**Michael Russell:** I appreciate what Jackie Baillie has said, as there is more than some sense in it. However, the issue has been comprehensively aired and enormously debated over such a long time. The measure is small and tightly drawn, and it could be even more tightly drawn if the amendments under discussion were accepted.

Although it is not for me to gainsay the conclusions of the committee's stage 1 report, two substantive areas have been identified for amendment; one might be difficult and one might be easier. In those circumstances, it is not impossible for the committee not only to have a stage 1 debate in the chamber but to undertake a brief period of amendment at stage 2 and still have the bill passed by the end of March.

Circumstances sometimes dictate their own timetables. The effect of passing this bill in the first Scottish Parliament for 300 years will be profound and much appreciated. It will say something about the Parliament's intention to be inclusive across Scotland, especially with languages and culture. It would be so well and positively received and so important that, as usual, I do not believe that anything is impossible.

**The Convener:** I do not think that it is impossible, but we are working to a very tight time scale. There must be seven sitting days between the end of stage 1 and the beginning of stage 2, and nine sitting days between the end of stage 2 and the beginning of stage 3. By my reckoning, we

therefore have one day for stage 2 consideration, assuming that we have a bill heard in Parliament by the end of February.

We are working to a tight schedule, although I am not saying that it is impossible. If the committee and then the Parliament agree to the general principles at stage 1, the committee will do everything in its power to get the bill through. However, we must be honest enough to say that we are working to a tight time scale. We also have other competing interests of our own for the parliamentary timetable. For example, the Commissioner for Children and Young People (Scotland) Bill has not taken four or nine months, but approximately 30 months to get this far. I know that Mike Russell understands those issues, but it would be wrong of me to give people a false impression of something that may be difficult to achieve. However, we will do everything in our power to make it happen.

**Michael Russell:** I thank the convener for that. I also thank the committee for taking a very detailed, principled and intelligent look at the bill and for asking many searching questions. The only time where some of us have delved deeply into Gaelic was in our inquiry into Gaelic broadcasting, when the committee also learned a great deal. Even if there are difficulties ahead, I am very grateful for the work that has been done to date and am pleased to have served on the committee as part of that.

**The Convener:** I seek members' agreement to take all of our business at our next meeting, which is scheduled for February 11, in private. Among the items on the agenda are our purposes of education inquiry and consideration of our stage 1 report on the Gaelic Language (Scotland) Bill. We will be meeting in Cannonball House. The meeting will have to be in the morning, as we have had to fight to get time. The proposed time is 10.00 am.

**Michael Russell:** Are you expecting to go through the final draft of the purposes of education report?

**The Convener:** If possible, I would like to do it that day. If it is not possible, we will reschedule it for another day, as it is not essential that the report is finished then. It could also be taken in private. All proceedings that day will have to be in private. If there are any initial committee reporter inquiry reports that can be given to the clerks in time for that agenda, I suggest that they are also put on the agenda.

**Mr Monteith:** When you say that we are fighting to get time for other things, do you mean that there is a problem?

**The Convener:** The committee to consider the Commissioner for Children and Young People (Scotland) Bill, which our clerks clerk, is meeting

that afternoon. We cannot have two meetings on the same day. If there were no substantial amendments to that bill, we may require only one day for that, which would be 4 February. If that were the case, the Education, Culture and Sport Committee could meet in the afternoon of 11 February. I will ask the clerks to keep members informed.

**Michael Russell:** How many amendments are there likely to be?

**The Convener:** We do not know, because it concerns the voluntary sector. There will be amendments. What line the convener and the deputy convener take on them will be interesting. We will wait and see what comes up. Do members agree in principle to meet in private in Cannonball House on the morning of 11 February? We will advise members in advance if the arrangements change. I know that Ian Jenkins has problems with that. Are members agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Education (Disability Strategies) (Scotland) Amendment Regulations 2003 (SSI 2003/10)

**The Convener:** We have two statutory instruments to consider under the negative procedure. The first is the Education (Disability Strategies) (Scotland) Amendment Regulations 2003. Abbie Maxwell from the Executive is here to answer members' questions.

**Jackie Baillie:** The committee should thank the Executive for picking up on an earlier drafting error.

**The Convener:** I thank Abbie Maxwell for coming to the meeting. I am sure that she wishes that every visit to the committee could be as pleasant. There are no strong objections, so do members agree that they do not wish to make any recommendations to the Parliament?

**Members** *indicated agreement.*

### Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (SSI 2003/19)

**The Convener:** We come to SSI 2003/19. The purpose of the regulations is to implement the 1993 Hague convention on the protection of children and co-operation in respect of intercountry adoption, which was concluded at The Hague on 29 May 1993. The UK plans to deposit the instrument on 1 March 2003, with the convention taking effect in June. Gerald Byrne and Alison Provan from the education department and Craig Harvie from the Executive's legal and parliamentary services are here to answer members' questions. Members have received a response from the Subordinate Legislation Committee—we are grateful to it for keeping us informed—which highlights several issues.

**Jackie Baillie:** This week, for the first time, I had the pleasure of being at the Subordinate Legislation Committee, so for once I know what the committee is talking about. Two concerns were raised. The first was about the fact that, although regulation 6(2) imposes obligations on certain agencies, it does not include agencies in the Channel Islands or the Isle of Man. The Subordinate Legislation Committee and the Executive have debated that point. The second concern was whether the words "in writing" cover electronic methods of communication.

**Craig Harvie (Scottish Executive Legal and Parliamentary Services):** The first point concerns taking steps to ascertain whether an applicant has criminal convictions. It is important to bear in mind the fact that the procedure for vetting applicants is

split into two stages. First, we must consider the eligibility of the applicant. Secondly, the adoption agency will determine their suitability. The policy has been determined that, under the initial eligibility criteria, which include the applicant's age and, in certain cases, their marital status and domicile, there is an automatic bar if applicants have a conviction of a certain type within Scotland, England, Wales or Northern Ireland. I understand that the reason for that was to have alignment between the various jurisdictions and to be consistent with the operation of the domestic regulations.

I will illustrate a concern. Let us say that an applicant has a previous conviction for a serious offence in Greece. That would not amount to an automatic bar to eligibility. Their application could progress to the next stage, which is consideration of suitability to adopt by the adoption panel. In such circumstances, the adoption panel would determine that the applicant was not suitable to adopt. That is the second stage of the test.

**Ian Jenkins:** The Subordinate Legislation Committee was just being picky—

**Craig Harvie:** I am sorry if I ranted on.

**Jackie Baillie:** It was not my interpretation that the Subordinate Legislation Committee was being picky.

**Ian Jenkins:** If the other jurisdictions are included, should not the Isle of Man and the Channel Islands be mentioned, too? That would ensure that the provision in regulation 6(2) that applies to the rest of the United Kingdom would also apply to the rest of the British isles. That is all that we are looking for.

**Craig Harvie:** Throughout the drafting of the regulations, issues have been raised about the use of the terms "United Kingdom" and "British isles". The intention is to follow through the intent of the Hague convention, which refers to the British islands. The use of the term "United Kingdom" comes into play only in relation to immigration matters. The intent has been to give effect to the immigration legislation.

**Michael Russell:** That is not the point.

**Ian Jenkins:** Technically speaking, should not those jurisdictions have come under the regulations by name? That is all that the Subordinate Legislation Committee was asking. Although I recognise that some sensitive issues are involved, surely it would have been possible to stipulate that England, Wales, Northern Ireland, the Isle of Man and the Channel Islands were included.

**Craig Harvie:** That is a fair point. However, the regulations are also aimed at giving effect to cross-border reciprocity. The fact that England,

Wales and Northern Ireland introduced similar regulations to ratify the convention at the same time means that those three jurisdictions can impose reciprocal obligations, whereas the Channel Islands, for example, was not party to the process, as it did not introduce its own regulations. I am sorry—I missed the point.

**Ian Jenkins:** That is the kind of explanation that the Subordinate Legislation Committee sought. I am sorry, Jackie; you were in the middle of a point.

**Jackie Baillie:** We have not had a response to the question whether the words "in writing" cover electronic forms of communication.

**Craig Harvie:** The Executive's current view is that the use of the term "in writing" would not automatically include electronic communications. It is our intention that the applications would be made in writing on a form and that supporting documents would be lodged.

**Jackie Baillie:** Given the advances in new technology and the fact that, even within the Parliament and the Executive, we are encouraged to fill out forms electronically, why have you chosen to exclude such forms of communication in this instance?

**Gerald Byrne (Scottish Executive Education Department):** One point to consider is that many of the records in such cases would continue to be in paper form—for example, the home study reports that we would receive from social work departments and the criminal record certificates that we would obtain from Disclosure Scotland. We would build up a substantial paper file. Having the initial application in writing would start that process off and would allow us to continue to have a paper trail for such cases. We would expect to receive the relevant documents largely in paper form and they would be sent overseas in paper form. There would be no advantage in the initial stage being the only part of the dossier that was in electronic format. We would end up with a substantial bundle of paper in the traditional way as the case progressed.

**Ian Jenkins:** It has been acknowledged in an awful lot of subordinate legislation that electronic and other ways of working are acceptable.

**Gerald Byrne:** As other methods develop, I am sure that they will become acceptable. However, as things stand, we will end up with large amounts of paper for intercountry adoption cases.

16:00

**Ian Jenkins:** The third point is about the reference in the preamble to the "Adoption Act 1978". Should the reference be to the Adoption (Scotland) Act 1978?

**Craig Harvie:** We have just spotted that. The preamble cross-refers to the footnote, which refers to chapter 28 of the 1978 act. I confirm that that act is the Adoption (Scotland) Act 1978.

**The Convener:** What a wonderful committee the Subordinate Legislation Committee is.

**Ian Jenkins:** We could have saved the Executive's representatives quite a lot of time and trouble if the regulations had been laid before the Subordinate Legislation Committee a wee bit earlier. All that we have just done could have been done by letter. However, because the Education, Culture and Sport Committee has had to consider the regulations on the same day as the Subordinate Legislation Committee has, the process is awkward.

**Craig Harvie:** We appreciate that and the fact that the regulations are lengthy. Unfortunately, we have been trying to choreograph the procedure with the other jurisdictions—that has been part of the problem.

**Ian Jenkins:** I understand. Thanks.

**The Convener:** I am not picking up any strong feelings from the committee, although Ms Baillie enjoyed herself on the Subordinate Legislation Committee—the Siberia of the Parliament.

**Jackie Baillie:** It was very interesting.

**The Convener:** I am glad that you enjoyed it.

**Jackie Baillie:** It has a very good convener.

**The Convener:** She is a good friend of mine; I follow her every move.

The SSI is laid before Parliament under the negative procedure and I am not picking up any strong objections, so does the committee agree that it does not want to make any recommendations to the Parliament?

**Members indicated agreement.**

**The Convener:** Thank you.

## Petitions

### Free School Transport (PE368 and PE371)

**The Convener:** I welcome Stewart Stevenson MSP to the committee. Mr Stevenson, I take it that you are here because one of the petitions refers to Banff Academy, which is in the area for which you are the constituency member. Am I right?

**Stewart Stevenson (Banff and Buchan) (SNP):** Correct, ma'am.

**The Convener:** Members have copies of the correspondence. They will be aware that it has taken the committee some time to bring the petitions back for consideration. That was because COSLA took some months to come up with what was, in the end, a fairly non-committal response, saying that it did not believe that there was any need to change the regulations. Do members have any views on how to proceed?

**Stewart Stevenson:** I will not advise the committee on how to proceed, because I am a visitor and that might not be entirely proper, although I thank you for your courtesy in allowing me to speak.

I am deeply disappointed that COSLA is not prepared to engage with the issue. Although there are only two petitions from the 32 council areas, I know that the issue exercises people in many parts of Scotland from time to time.

The Scottish Executive response is quite proper. It draws our attention to the Education (Scotland) Act 1980—as amended by the Education (Scotland) Act 1996—which places a duty on education authorities to “have regard” to pupils' safety in relation to school transport arrangements. The Executive also draws our attention to the fact that, if councils do not show that they have given regard to the issue, they may be challenged in the courts.

At least in the case of Aberdeenshire Council—which is raised in petition PE371, submitted by John Calder—that is where the matter has been left. The council has always addressed the alteration of arrangements for school transport in Aberdeenshire as a cost-reduction issue. It claims that that, not safety, is its primary responsibility, although I have to say that I am obviously not a court.

However, I am a little disappointed that the Executive did not feel able to nudge councils more actively in the direction of showing openly and publicly that, in making such decisions, they have taken account of individual pupils' safety. After all, the situation often varies from one pupil to the next. Although a change has been made across the board, I quite accept that that will not give rise



to public safety issues for all pupils. Indeed, it will increase the exercise rate for some of them, which can only be good news. However, it does not do public policy much credit when the public feel pushed to use the legal system to secure the implementation of legislation that local authorities should be delivering.

Nonetheless, the petitioners in my constituency should take heart from the expression "councils should have regard" in the Scottish Executive's response. I and others will seek to press that point on Aberdeenshire Council. I thank the committee for facilitating this communication, albeit that the results have been less than I might have hoped for.

**The Convener:** I also welcome Fiona Hyslop MSP to the committee. Fiona, do you wish to make any comments just now?

**Fiona Hyslop (Lothians) (SNP):** I apologise for being late. I would have liked to have been here earlier, but the Parliamentary Bureau meeting has only just finished.

**The Convener:** Do members have any other comments on the correspondence that we have received?

**Stewart Stevenson:** I must apologise. The Rural Development Committee is in the middle of stage 2 consideration of a bill and I need to leave at once. I hope that the committee will excuse my apparent discourtesy.

**Michael Russell:** You are leaving just as I am about to speak.

**The Convener:** I think, then, that "understandable" is a more appropriate word than "apparent".

**Michael Russell:** Having read the correspondence, I am slightly disappointed that the point that I made a year ago when we first considered the petitions has not been taken more seriously. The petitions raise a legislative issue in connection with the changed circumstances of school transport. Indeed, the points that Fiona Hyslop made when we initially considered the petitions are still absolutely germane.

Circumstances have changed. I have recently been involved in a case in Ashgill in South Lanarkshire, where the rules have been very strictly interpreted. The case is known to you, convener. There is a need to review the issue of school transport, not least because expectations are now high. Indeed, they are higher than the legislation can support. In such circumstances, it is only fair to everybody that we review the legislation. I am only sorry that the Scottish Executive seems to have bogged the issue down in the question whether the word "safety" should be defined, whereas the issue actually centres on

the whole context of school transport and safe routes to school. Now that we live in a different world—more negatively than positively, I have to say—we need to examine matters more carefully.

**Ian Jenkins:** I agree that we need to revisit the subject, although I am not sure about the timing of any review and how it would be triggered. However, we must examine different issues, such as the increase in traffic, the greater mobility of people who wish to take advantage of youngsters who are left at the side of roads and the expense to councils that have to provide school transport. Moreover, there will always be marginal cases in which neighbours find themselves on different sides of the line. Sometimes, the line might be drawn illogically. We should debate and discuss those issues. If those discussions do not lead to new legislation, they should certainly lead to a strengthening of central guidance.

**The Convener:** We received a letter from the Minister for Education and Young People in September 2002, and my understanding is that the transport circular is to be reviewed and revised. I recall that the minister indicated that to Parliament towards the end of last year. It would be useful for the committee again to make the point to the minister that any review should take account of the new circumstances in which we find ourselves. There is a much higher volume of traffic on the roads and children and their parents are rightly far more concerned about safety than people were 50 years ago, given the nature of the threats, perceived or otherwise, that are out there.

I am well aware of the Ashgill case that Mike Russell referred to. Lines always need to be drawn and we all accept that some people will end up on what they see as the wrong side. However, there is an argument for some flexibility in interpreting the rules, particularly when one village or one street might be concerned—for example, if kids on one side of a street get transport whereas those on the other side do not, that seems pretty bizarre.

**Cathy Peattie:** I agree. Most MSPs have probably come across such issues in dealing with constituents. There is a particular problem in villages, where there is often an issue over the proximity of schools. It would perhaps be worth writing to the minister to draw our views to her attention. I support the idea of our revisiting the matter.

**Fiona Hyslop:** Having read the Executive's letter dated 26 September, I have concerns. Basically, it has taken four months to arrive at the conclusion that the status quo is sufficient. I am more comforted by the indication that there is to be a general review of the transport issues—I think that that avenue ought to be pursued. However, some sort of legislative change is needed, because, as the letter says, unless a

reasonable view of safety is taken, there could be challenges in the courts.

I remind the committee that we are dealing with two petitions, not just one. One is about traffic safety in a rural context; the other, which came from constituents of mine, relates to the safety of a 14-year-old girl—as she was then—who, because the Parliament has not been able to support her, has had recourse to the courts. The fact that a 14-year-old girl has not been able to progress what is a women's safety issue through the Parliament is a matter of concern.

If the committee is considering the transportation aspects of what the minister indicated last year, I would recommend that it focus on personal safety. There is not only a rural dimension to the issue; it concerns new towns such as Livingston, where my constituent lives. In Livingston, the roads and pavements are separate and there are questions about safety.

To reiterate, I am disappointed with the letter, but I take some comfort from the fact that there may be some action. However, the girl will have left school by the time there is a resolution of the matter. I am aware that things can sometimes grind slowly, but they are not moving quickly enough for our satisfaction in this case. I ask the committee to give some comfort to my constituents by pursuing the issue and keeping an eye on the situation. We should not just leave matters as they are now.

**The Convener:** Do you know whether a risk assessment of the route was carried out? In cases in which I have been involved, I have sometimes found it difficult to obtain copies of any risk assessment that may have been carried out. It is possible to investigate that. I am thinking of a particular case, in which Mike Russell and I were involved.

**Fiona Hyslop:** In this case, a number of councillors carried out an inspection in the daylight, although daylight conditions are obviously different from those that an individual faces walking at night, especially during winter.

As I said, we are talking about drawing an arbitrary line. There is also the potential for discrimination near the line, with children on one street having free access to school with bus passes, while others living elsewhere do not get passes. The idea that children who live in the same street, barely yards from each other, and go to the same school should be treated differently is problematic. If lines are drawn, they have to be realistic and they must not be open to misinterpretation. They have to be drawn somewhere, but their arbitrary nature presents a problem. I hope that that issue can be addressed in the wider context of the transportation aspects of education.

**Mr Monteith:** I want to go on record as saying how disappointed I am, yet again, with COSLA's response. It is becoming all too apparent that when we seek COSLA's views on issues—for which there is often cross-party sympathy, particularly on petitions—COSLA is reluctant to give its view. I hope that COSLA does not regard the Education, Culture and Sport Committee and the Parliament as bodies to be feared. I would think that, on issues such as the present one, or rural schools, the committee and the Parliament could work with COSLA.

I hope that, when we raise issues with COSLA in the future, there might be more opportunity for mutual help. I find it hard to believe that there is nothing to say on the issue of legislative change or even change to guidance with regard to transport, other than that everything is fine. It is patently clear that people in COSLA local authority areas do not think that everything is fine.

16:15

**Jackie Baillie:** I was not going to say anything, but I think that, by offering us its opinion of current legislation, COSLA has done what we requested of it. Indeed, like us, COSLA did not want to comment on individual cases or individual local authorities—that is consistent with the committee's approach.

I remain convinced that the legislation provides a robust framework. The problem has perhaps been in its implementation and in how the guidance is written to allow for issues such as personal safety to be considered. I would be happy if the minister announced a review of the guidance, as that would allow us to see where more flexibility could be afforded. A review could resolve some of the problems that have been experienced, not just by the two petitioners, but in other cases.

The convener's suggestion of writing to the minister to flag up the issue is helpful. However, if the legislation is to be reviewed, I would take a slightly different view—the problem lies not with the legislation, but elsewhere.

**Michael Russell:** I agree with Jackie Baillie that we should seek a review of the guidelines and write to the minister in those terms. It is obvious that nothing will happen before the election, but I think that it is correct to write to her. I have a sneaking sympathy with what Brian Monteith has said. Of course, if it concerns Brian Monteith, it would have to be a sneaking sympathy—

**Jackie Baillie:** I think that it is a consistent sympathy.

**Michael Russell:** Well, I have a sneaking sympathy with Brian Monteith's view of COSLA.

There are several key issues, but on the two on which we sought COSLA's advice—rural school closures and school transport—COSLA has been, frankly, a broken reed. It certainly was not much better on the Gaelic Language (Scotland) Bill.

**Jackie Baillie:** That is a biased view.

**The Convener:** I take it that members want the committee to write to the minister again in the terms that have been indicated. I will certainly undertake to do that in the near future and keep members advised on any progress of which I am aware.

**Mr Monteith:** As we are going to write to the minister, can we copy the letter to COSLA so that it can see that we are interested in the guidance and not just in changes to legislation?

**The Convener:** I am happy to copy the letter to whomever you want, Brian.

**Mr Monteith:** I will come up with a list.

**The Convener:** We will copy the letter to COSLA and to the petitioners.

We now move into private session.

16:18

*Meeting continued in private until 16:56.*



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