

# **EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

Wednesday 4 June 2008

Session 3

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## EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

### 13<sup>th</sup> Meeting 2008, Session 3

#### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### DEPUTY CONVENER

\*Rob Gibson (Highlands and Islands) (SNP)

#### COMMITTEE MEMBERS

\*Aileen Campbell (South of Scotland) (SNP)

\*Ken Macintosh (Eastwood) (Lab)

\*Christina McKelvie (Central Scotland) (SNP)

\*Mary Mulligan (Linlithgow) (Lab)

\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

\*Elizabeth Smith (Mid Scotland and Fife) (Con)

#### COMMITTEE SUBSTITUTES

Claire Baker (Mid Scotland and Fife) (Lab)

Ted Brocklebank (Mid Scotland and Fife) (Con)

Hugh O'Donnell (Central Scotland) (LD)

Shirley-Anne Somerville (Lothians) (SNP)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Len Braid (Automatic Vending Association)

Eleanor Coner (Scottish Parent Teacher Council)

Dr Cathy Higginson (NHS Health Scotland)

Adam Ingram (Minister for Children and Early Years)

Claire Monaghan (Scottish Government Children, Young People and Social Care Division)

Moirra Oliphant (Scottish Government Children, Young People and Social Care Division)

Laurence Sullivan (Scottish Government Solicitors Education, Land and Pensions Division)

Colin Sutherland (Headteachers Association of Scotland)

Louise Sutherland (Scottish Government Higher Education and Learner Support Division)

#### CLERK TO THE COMMITTEE

Eugene Windsor

#### SENIOR ASSISTANT CLERK

Nick Hawthorne

#### ASSISTANT CLERK

Andrew Proudfoot

#### LOCATION

Committee Room 6



## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

*Wednesday 4 June 2008*

[THE CONVENER *opened the meeting at 10:01*]

### Subordinate Legislation

#### Further and Higher Education (Scotland) Act 1992 Modification Order 2008 (SSI 2008/draft)

**The Convener (Karen Whitefield):** I open the 15<sup>th</sup> meeting of the Education, Lifelong Learning and Culture Committee in 2008. I welcome all members and visitors to the committee and remind everyone present that mobile phones and BlackBerrys should be switched off.

Agenda item 1 is consideration of subordinate legislation. I am pleased to welcome Adam Ingram, the Minister for Children and Early Years, to the committee. He is joined by Louise Sutherland, team leader in the higher education governance branch of the Scottish Government, and Helena Janssen, senior principal legal officer in the solicitors education, land and pensions division. Thank you for attending the meeting today. I invite the minister to make some opening comments about the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2008.

**The Minister for Children and Early Years (Adam Ingram):** Good morning, colleagues. I am pleased to have the opportunity to outline the need for the modification order.

The order is required to address a specific point that has been raised by the Office of the Scottish Charity Regulator in relation to the charitable status of the post-1992 higher education institutions and the Further and Higher Education (Scotland) Act 1992. All Scottish higher education institutions are charities and are required to meet the charity test that is set out in the Charities and Trustee Investment (Scotland) Act 2005. The 2005 act provides that a body will not meet the charity test if its constitution expressly permits ministers to direct or control its activities. OSCR has indicated that it considers that the power in section 47 of the 1992 act, which enables ministers to close a higher education institution, constitutes a ministerial power of control.

Ministers consider that it is important that the charitable status of all the institutions in the HE sector is maintained. The order is important for

post-1992 institutions, whose charitable status would be at risk from ministers' power to close them. The order therefore modifies the power to close an institution that was established under an act and that has the closure power as part of its constitution. In those cases, closure will be subject to the consent of the governing body.

OSCR has indicated that it considers that such a modification represents sufficient mitigation of ministers' power to close an institution and that those institutions will not, therefore, be at risk of failing the charity test.

The amended closure power will apply to institutions that were established under the 1992 act, which therefore have the 1992 act and the closure power as their constitution, as defined by the 2005 act.

Post-1992 institutions that were established under the Companies Act or which were not established by enactment will need to consider their individual constitutions. Any changes that are considered necessary to ensure that they meet the charity test will be a matter for those institutions and will not require legislation.

The order is important to remove the uncertainty about the charitable status of the post-1992 higher education institutions as a result of the ministerial power of control that OSCR identified in the 1992 act. When the closure power is part of the constitution of a higher education institution that was established by enactment, the modified power will apply and the institution will not be at risk of failing the charity test.

**The Convener:** Committee members now have the opportunity to raise issues, concerns or questions with the minister. I will ask one question. The Government has taken the right course of action by addressing the concerns that further education establishments raised with the committee about the risk to their funding—their charitable status contributes significantly to their revenue. However, when the Parliament was considering what became the 2005 act, the voluntary sector had strong and robust views about the importance of the independence rule. Did the Government consider that and consult all stakeholders on the position? You are right to respond to the FE sector's concerns, but did you give the wider community in civic Scotland the opportunity to be involved?

**Adam Ingram:** The order's focus is narrower even than just FE colleges—it concerns only the post-1992 higher education institutions. I ask my colleague to answer your questions.

**Louise Sutherland (Scottish Government Higher Education and Learner Support Division):** The order will not exempt post-1992 institutions from the charity test; rather, it will

modify a specific power that OSCR identified in the 1992 act for the institutions concerned. The order will not change the charity test.

**Adam Ingram:** When this or another committee considers the order that deals with FE colleges, perhaps the issue that the convener raises could be addressed.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** Are you confident that the process for colleges that need to amend their constitutions will not be too difficult and will not involve complications?

**Adam Ingram:** I am not aware of problems. All the information that was available to me was that we had just one particular problem with the ministerial power in relation to HE institutions, which the order will deal with. I have no broader indication of significant problems.

**Elizabeth Smith:** So the colleges that I mentioned are not concerned that amending their constitutions could have a detrimental effect on them.

**Adam Ingram:** If colleges have such concerns, they have not been brought to my attention.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** It is good that the Government has produced the order. I have one question, which is about circumstances that might be rare. Dispute could arise about what ministers wished to do with an institution. If consent were denied, what process would be followed? Ministers will retain a legal power, but it will be amended so that it can be exercised only with consent. What would happen if consent was denied?

**Adam Ingram:** The status quo ante would apply in those circumstances. However, I do not imagine that the situation would arise. We have no plans to close any higher education institutions. The situation would be an extreme one. I would hope that the normal processes of discussion and negotiation would lead to a conclusion, but you are correct to say that ministers would not be able unilaterally to close an institution.

**Jeremy Purvis:** In the circumstances that I mentioned, the institution would be able to sustain itself—and access public funds—even though ministers had decided that it was not in the public interest for it to continue. Ministers would have no legal grounds on which to challenge the institution.

**Adam Ingram:** If I am permitted to say this, we will cross that bridge when we come to it. We do not have a blueprint for how to deal with that scenario.

**Jeremy Purvis:** The power existed for a purpose, but it is now to be negated. Given that an institution might well withdraw its consent, would it

not be better to remove the power? The Government says that it wishes to retain the power because it is there for a purpose, but it will be negated. The purpose of the power is not to deal with an institution that wishes to wind itself up or change its constitution but to deal with a failing institution. OSCR stated that the power constitutes a direction, but it would be a different scenario if it was in the public interest for ministers to exercise their power to close an institution.

**Adam Ingram:** I presume that, in the scenario that you describe, a significant public debate would be raging on the performance of the institution. Other pressures can be brought to bear on institutions. I am sure that the influence of ministers would be felt in those circumstances. The scenario that you paint is an extreme one that is unlikely to arise. I appreciate that we would have to think through how to deal with such a situation, but I am sure that we would be able to do so.

**Jeremy Purvis:** I do not deny that it might well be an extreme situation. However, the fact is that you are not repealing the power. In effect, you are making it redundant, which could potentially—

**Adam Ingram:** No, I do not think so. The power will be retained, but it will be modified.

In that situation, we would engage in dialogue with the board, and it would not be in the board's interest for ministers to make plain their view that they would like to close the institution. Ministers will still have a significant lever to influence boards.

**Jeremy Purvis:** Which gets close to the reason why OSCR was concerned in the first place.

**Adam Ingram:** Indeed, but the modification apparently satisfies OSCR.

**The Convener:** Thank you for answering the committee's questions.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2008 be approved.—[*Adam Ingram.*]

10:15

**The Convener:** The Parliament's standing orders allow us to debate the motion for up to 90 minutes. I remind members that they should make points rather than pose questions to the minister, who will have no opportunity to respond to questions.

**Jeremy Purvis:** I understand that the move has the support of OSCR, which is welcome, but I am slightly concerned that it is not clear whether alternative approaches were considered. I am also

concerned about being asked to recommend the approval of an order on the basis of an approach of, “We’ll cross that bridge when we come to it.” I will not oppose the motion, but perhaps the minister will reflect on points that were made about other institutions, which might be relevant to the next such order to come before the committee.

**The Convener:** No other member wants to comment, so I ask the minister to make closing remarks.

**Adam Ingram:** This order specifically relates to higher education institutions, but the Government will make another one that will relate to FE colleges. I hope that that will happen before the summer recess and I undertake to address the issues that you and Mr Purvis raised prior to that.

*Motion agreed to.*

That the Education, Lifelong Learning and Culture Committee recommends that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2008 be approved.

10:17

*Meeting suspended.*

10:18

*On resuming—*

### **Protection of Children (Scotland) Act 2003 (Amendment of Definition of Child Care Position) Order 2008 (SSI 2008/draft)**

**The Convener:** The Minister for Children and Early Years remains with us to discuss the order, but he is joined by other Scottish Government officials: Claire Monaghan is deputy director, children, young people and social care; Moira Oliphant is team leader, disqualified from working with children list team; and Laurence Sullivan is senior principal legal officer, solicitors education, land and pensions division. Minister, I know that this is not your responsibility, but your officials could do with snappier titles. I invite you to make opening remarks.

**Adam Ingram:** Thank you for the opportunity to make an opening statement about the amending order.

First, let me make it clear that the Protection of Children (Scotland) Act 2003 was introduced, with cross-party support, to increase the protection of Scotland’s children by preventing unsuitable people from working with them through paid work or volunteering. There are now 262 individuals on the list of those who are disqualified from working with children, who have harmed or risked harm to children or who have committed grave offences against children. Those people cannot work with

children again or work with children for the first time.

Schedule 2 to the 2003 act sets out what is meant by “child care position”, which is important in the context of the offence provisions in the act. It is an offence for any person on the list to apply for a child care position and an offence for organisations to offer work in a child care position to someone who is on the disqualified list. Although there is no legal requirement for an individual in a child care position to have a disclosure carried out, the only way of knowing whether someone is on the list is to request a disclosure from Disclosure Scotland, so it is hugely important to ensure that the definition of “child care position” is properly formulated in the 2003 act.

That is the background. I will now set out the substance of the amendment. As far as we are aware, the 2003 act—which was introduced by the previous Scottish Executive—was never intended to capture within the scope of work and, therefore, of “child care position” the business of parent councils, where they do not have direct contact with children, or activity that is intended primarily for adults. However, that is exactly the legal position, and we and many others are not comfortable with that.

To some, it may seem a fairly minor matter: after all, surely it is everyone’s business to ensure children’s safety at school and to ensure that someone who is on the list of those who are disqualified from working with children cannot be a member of a parent council and contribute their ideas to the work of the school; moreover, it is straightforward to get an enhanced disclosure. However, any such sentiment is misplaced. The fact of the matter is that, with some exceptions, the provisions relating to those in a child care position and disclosure checking should be for those who have the greatest contact with children or who work in close proximity to children. Disclosure is an important part of child protection, but it should not be used inappropriately. Indeed, it is against the law, under the Police Act 1997, to obtain an enhanced disclosure inappropriately. For an organisation to access an enhanced disclosure, it must be appointing an individual to a prescribed post such as a child care position. When disclosure is appropriate, it should, of course, be used alongside good practice in working with children and robust recruitment and child protection policies.

Schools, local authorities and colleges can open up their premises to various groups as they see fit. However, unnecessary disclosure checking could act as a barrier to parental volunteering, to volunteering to take adult classes or to participating in a group meeting in a school or college. We are not in the business of having

blanket disclosure checking for the sake of it. Schools and, for that matter, colleges are community-based facilities that can even be regarded as belonging to the community. They are respected community assets.

The amendment is necessary to remove from the definition of “child care position” the work of members of parent councils that usually meet and conduct their business in schools. It is appropriate that all parental bodies should, without being in a child care position, be able to meet in schools, FE institutions or hostels that are used by pupils who are attending schools or colleges.

I make it clear that the amendment does not affect parent council members who work directly with children, for example, through running after-school clubs or other activities that involve children. Such members will, of course, be in a child care position.

I know that there has been some concern that the order does not achieve that, but I can assure the committee that it does. The amendment must be seen in the wider context of all of schedule 2 to the 2003 act, which sets out child care positions, and should not be considered in isolation, as that presents a wrong interpretation of new paragraph 2A. The amendment is, in effect, a carve-out from subparagraph (a) of paragraph 1 and new subparagraphs (c), (ca) and (cb) of paragraph 2. I emphasise again that the amendment does not impact in any way on the effect of the remaining subparagraphs of paragraph 1. Therefore, parent council members who, as part of their normal duties, care for children, wherever the caring takes place, are in a child care position. The order has been drafted in the best possible way to achieve the effect that we want. I accept that the Executive note could have included a fuller explanation of that and a new paragraph has been added.

The order also removes from the definition of “child care position” work done in schools to the extent that it involves an activity that is primarily intended for adults. The same applies with colleges, except that those lecturers and tutors who are employed by the college will be in a child care position. I am happy to provide you with our reasoning during the debate, but it is certainly disproportionate that the volunteer instructor of an aerobics, flower arranging, weight watchers, photography or information technology class that is primarily intended for adults should be defined as being in a child care position.

The amendment replaces “educational establishment” with

“a school; a further education institution; a hostel”.

That mirrors the formulation used in the Protection of Vulnerable Groups (Scotland) Act 2007.

I believe that the amendments made by the order represent a commonsense and proportionate approach. We are dealing with the issue now by amending the 2003 act because we view the matter as being highly important and we want to end the uncertainty that there has been about the issue. I stress again that the order means that certain positions will no longer be child care ones.

We would also consider, at a later date, an amendment to the 2007 act, which would be taken forward in the secondary legislation programme for that act, if approved by Parliament. The wording of any such amendment might be different in order to fit the requirements of that act, but the policy would remain very much the same.

I assure the committee that we have widespread support for our proposals. Through a number of engagement events on our plans and by speaking to others, we have secured the support of the Convention of Scottish Local Authorities, the Association of Directors of Education in Scotland, the Association of Scotland's Colleges, the majority of local authorities, a number of colleges, parental representative bodies and others. I am happy to answer questions.

**The Convener:** I thank the minister for his comments. The committee now has an opportunity to question the minister on the Scottish statutory instrument.

**Ken Macintosh (Eastwood) (Lab):** I thank the minister for his explanation. I support—as do, I am sure, other committee members—the minister's intention in bringing forward the order, which is a very important one for many of the reasons that he outlined.

The overzealous application of child protection legislation can be detrimental both to the protection of children and to volunteering. As the minister says, a blanket-ban approach can reduce the checks to being a tick-box exercise rather than a device that supports other important checks that are made into the background of people who work with children.

10:30

It is also highly important that we tackle risk-averse behaviour in our society. The one group that the minister did not mention was MSPs who hold surgeries in schools, who could have been covered by the legislation and clearly now are not, although I imagine that many of us have disclosure certificates for other reasons.

The minister will be aware of the correspondence that the committee has received—in fact, he has received it, too. I refer in particular to the correspondence from the Scottish Council of Jewish Communities, which believes



that the legislation is still open to misinterpretation. I listened to the minister's explanation carefully and I welcome it. I also sought reassurance myself from the Scottish Parent Teacher Council, which has also written to the committee—the letter was too late to be included in the published papers, but I assume that it will be added—and its interpretation confirms the minister's.

We are reassured about the intent, but it may be worth restating the position for finality and to reassure the Scottish Council of Jewish Communities and others about how the legislation will be interpreted. I will give an example that we were given. A person who, as a parent, is a member of a parent council in a school is exempt from a disclosure check as a member of that parent council. Therefore, they would not have to have a disclosure check if they applied for a job as a janitor in another school. I would like the minister's comments on that.

I appreciate that the area is complicated, but I am slightly concerned that there is room for misinterpretation. It is important that parent councils throughout the country be reassured about their obligations and that local authorities be clear. We are all aware of some local authorities that are assiduous—perhaps overly so—in their application of the legislation, so it is important that we clarify the matter once more for the record.

**Adam Ingram:** I agree with those sentiments. I made clear in my opening remarks that we want to clear up much of the confusion about whether all parent council members should have disclosure checks. I hope that I have made it clear that they should not, but I am perfectly happy to issue guidance to every parent council and local authority in the country to follow through on that point so that we ensure that the issue is cleared up.

Anyone applying for a janitor's job in a school is applying for work in a child care position and, therefore, is legally required under POCSA not to be on the disqualified from working with children list, which would require the local authority or employer to seek an enhanced disclosure certificate. The confusion has perhaps arisen through a misinterpretation of the order and the carve-out from paragraphs 1 and 2 in schedule 2 to POCSA.

I hope that that clarifies the situation for you, but I refer you to our legal expert on the panel to follow through on that.

**Laurence Sullivan (Scottish Government Solicitors Education, Land and Pensions Division):** I have read the letter from Leah Granat. The legislation does not have to explain every detail. She makes a point about work that a person does in their capacity as a parent council

member, and that reflects how the order will be interpreted.

A school janitor whose child attends the same school and who is a member of the school's parent council will remain in a child care position in his role as a janitor working in the school. He would not be in a child care position by dint of also being a member of the parent council. The order is entirely a carve-out of schedule 2 to POCSA, and the carve-out applies only to paragraphs 1(a) and 2 of schedule 2. The rest of the hooks in subparagraphs (b) to (i) of paragraph 1 of schedule 2, wherein a person can end up in a child care position, are all entirely unaffected by the order. If a person does not fall within the carve-out, they remain within the generality of child care positions.

**Ken Macintosh:** I thank the minister and Mr Sullivan for their explanations. It is therefore the case that, although adults engaged in adult business on school premises are exempt, they are exempt only for that purpose and not for any other in which they are in a position of child care supervision.

**Adam Ingram:** Exactly so. I ask Claire Monaghan to make a point or two.

**Claire Monaghan (Scottish Government Children, Young People and Social Care Division):** There is a general point around janitors and the detail of the order. There is also a more general issue behind Mr Macintosh's point about the overzealous use of disclosure checking and risk-averse behaviour by bodies when they engage individuals. Obviously, we have Disclosure Scotland oversight responsibilities, now that they have transferred to Government. We have been looking carefully at how to bolster compliance around people who apply for disclosure certificates, to ensure that the requests are legitimate and that authorities or other organisations do not stretch the rules as far as they can. The fundamental reason for that is that the whole vetting and disclosure regime must counterbalance the need to protect children with the rights of the individual and the Rehabilitation of Offenders Act 1974. Therefore, we have bolstered the compliance office in Disclosure Scotland and are working closely with it on the issues that are tripping it up and what that then means for guidance to the sector, so that the guidance that we put out nips all the issues in the bud.

There are many big issues around risk-averse behaviour that must be tackled on a number of fronts because they have a sufficiently serious impact on individuals. We are satisfied on the technicalities of the specific point that the Scottish Council of Jewish Communities raised. However, there is a much more general point about ensuring that the vetting and disclosure regime is being

used responsibly and for the child protection purposes that it was designed for.

**Jeremy Purvis:** It is a positive move that there will be guidance for parent councils, local authorities and schools because concerned parents often ask headteachers about the issue. As the minister knows, parent councils do not just meet as committees: the parents involved often attend school trips and other school activities involving children. For clarity, do normal duties with children include or exclude, for example, irregularly accompanying children on school trips, helping out at school fêtes and being involved in regular school activities that are not part of the normal work environment? It is the case, certainly in rural areas, that parents on a parent council will also be on another school's parent council and will often help at other schools, so there is a mix there.

**Adam Ingram:** The member makes the point well about how complex the area is. Perhaps I can refer his question to Moira Oliphant.

**Moira Oliphant (Scottish Government Children, Young People and Social Care Division):** Mr Purvis is right that parents are involved in many different aspects of the life of not only an individual school but other schools, and have many different roles. The formulation refers to normal duties of work in a school, and if a parent's work in a school is pre-planned, rostered and carried out a number of times a year, it would be considered to be a normal duty. For example, if a parent running the school disco, for example, frequently planned that activity, that would be considered a normal duty in a child care position. If parental involvement in the life of the school and working with children is ad hoc and not pre-planned or rostered, it will not come within the scope of normal duties.

We plan to issue further guidance in the autumn on child care positions under POCSA. That guidance will give further information on and explanation of normal duties. We recognise that there have been issues around interpretation.

**Claire Monaghan:** That is the reason why we specifically opted not to make it compulsory for those in a child care position to undergo a vetting check. The offence is to employ someone or to have someone undertaking those duties who is on the barred list.

Some members might recall that there was quite a debate on this point when we were taking the Protection of Vulnerable Groups (Scotland) Bill through Parliament. The scheme that has been developed in England and Wales is compulsory, so people who are in child care positions there must be members of the scheme. We opted for an alternative approach because the boundaries will never be crystal clear—it will depend on the

predictability of the child care, the extent to which it is rostered and the exact duties that take place. If vetting was to be made compulsory in the Scottish scheme, we would trip over the sort of issues that we have been discussing today much more regularly.

The reason for vetting people is to avoid the risk of putting someone in a child care position if they are disqualified from working with children. The number of people on the list is relatively small and we are managing the risk in the best way that we can. Compulsory vetting is much more serious. We are managing the approach to minimise the impact on individuals.

**Jeremy Purvis:** If a chair of a parent council wants to err on the side of caution and decides that all members of the parent council should go through a check, that will not be permitted.

**Adam Ingram:** No.

**Claire Monaghan:** That goes back to the point about the compliance office.

**Adam Ingram:** Parent council members are not in a child care position.

**Claire Monaghan:** If they did additional duties—

**Jeremy Purvis:** My point was that, knowing how people operate, the situation is very difficult. Schools do not have a yearly plan showing that parent A will help out on seven school trips, for example. It does not work like that.

**Adam Ingram:** No.

**Jeremy Purvis:** The parent council might want to say that all the members who will accompany the children have gone through the disclosure process, so that all parents and everyone in the school can be satisfied. However, that will not happen.

**Adam Ingram:** No.

**Mary Mulligan (Linlithgow) (Lab):** I will move us on from the order. Given his responses to Jeremy Purvis's questions—and I associate myself with Ken Macintosh's comments about the importance of disclosure and its use—perhaps the minister will say a bit about how disclosure is not in itself the end of the matter. We have to protect all our children, whether someone has a disclosure certificate or not, and procedures are in place to ensure that they are protected as much as they can be while still being allowed to be children.

**Adam Ingram:** As Ken Macintosh will remember, we had long debates about those points during the passage of POCSA and the Protection of Vulnerable Groups (Scotland) Bill.

In itself, the disclosure process does not protect children; people protect children. We must have a system of safe recruitment practices, and children need to be made aware of and have a proper appreciation of risk. That is part of what we should be doing with children more generally, both in our education system and as parents. We should not wrap children in cotton wool, but we must give them an idea of what the risks are and bring them up to have an appreciation of how to assess those risks.

Although I very much agree with the thrust of Mary Mulligan's comment, the disclosure process is an important safeguard. The last thing that we want is for people who we know to have evil intentions towards children to be allowed into child care positions whether in a work capacity or a voluntary capacity. We have to get the balance right.

10:45

**The Convener:** That concludes our questions.

Item 4 is our continued consideration of the draft Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008. I ask the minister to move motion S3M-1921.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the draft Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 be approved.—[*Adam Ingram.*]

**The Convener:** Once again, we have up to 90 minutes to debate the motion. I remind members that the minister will have an opportunity to respond to any points that they make when he responds to the debate. Government officials are unable to contribute to this part of our consideration.

**Ken Macintosh:** Notwithstanding the slight uncertainty about one part of the order, which we have now clarified, I welcome it and hope that it is part of an on-going process. I know that the children's commissioner and others are engaged in work that will expand on our work on the protection of children. Legislation by itself is not the answer or the only way to address the problem. It is very important that we do not provide a false sense of security through a very widespread disclosure process. I hope that the order is part of an on-going process to explore the child protection system in our country.

**The Convener:** As no one else has indicated that they wish to speak, I invite the minister to make any closing remarks that he might have.

**Adam Ingram:** I give an assurance that what Ken Macintosh suggested is being developed. Obviously, I have regular meetings with the children's commissioner; she has expressed concerns on the matter and we are working together on it.

We are looking to commence the Protection of Vulnerable Groups (Scotland) Act 2007 next year, and secondary legislation will follow, which will come to this committee. Committee members can anticipate the debate being developed through that process.

**The Convener:** The question is, that motion S3M-1921, in the name of Adam Ingram, be agreed to.

*Motion agreed to.*

That the Education, Lifelong Learning and Culture Committee recommends that the draft Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 be approved.

**The Convener:** I suspend the meeting to allow our witnesses to leave and for a short comfort break.

10:49

*Meeting suspended.*

11:00

*On resuming—*

### **Nutritional Requirements of Food and Drink in Schools (Scotland) Regulations 2008 (Draft)**

**The Convener:** Item 5 is, once again, subordinate legislation.

I am grateful to our witnesses for joining us this morning and for sending us their written submissions in advance. We have been joined by Eleanor Coner, information officer at the Scottish Parent Teacher Council; Colin Sutherland, public and parliamentary convener of the Headteachers Association of Scotland; Cathy Higginson, former chair of the expert working group on nutritional standards for the regulation of school lunches, and standards for the regulation of food and drinks outwith the school lunch—quite a title—and Len Braid from the Automatic Vending Association.

The committee is keen to move straight to questions.

**Aileen Campbell (South of Scotland) (SNP):** I will start the questioning about menus and schedule 1 to the regulations. Do you believe that a minimum of two types of fruit and vegetable is adequate?

**Dr Cathy Higginson (NHS Health Scotland):**

The standard for a choice of at least two portions of fruit and vegetables to be provided as part of the school lunch is the same as in hungry for success, which schools have embraced positively. The number of fruit and vegetable portions that we recommend that children consume is in line with the adult recommendation of at least five portions in a day. If children chose two portions of fruit and two portions of vegetables at lunch, they would almost meet the target at lunch time alone. I am not suggesting that that will happen in all cases, but it is a pretty good start in meeting the target of five portions that we are encouraging them to eat across the day.

**Aileen Campbell:** In its written submission, the SPTC expressed concerns about the vegetable aspect and said that children would be more likely to choose fruit over vegetables. Is there enough flexibility to meet the recommended guidelines?

**Eleanor Coner (Scottish Parent Teacher Council):** We have to start from where children are coming from. Many children do not get vegetables at home, so we have to be realistic and realise that we cannot suddenly make every child eat five portions of fruit and vegetables a day. I think that the provision is adequate as it stands.

**Aileen Campbell:** Do you think that enough thought has been put into schedule 1 and the gradual changing of children's palates?

**Eleanor Coner:** We have to take children along with us—we cannot impose changes on them. We have to go slowly, at their pace, so it will be a gradual move towards their finding fruit and vegetables acceptable.

**Aileen Campbell:** Is allowing deep-fried food three times a week the correct level of restriction? I know that the SPTC expressed concerns in its submission about the cloudiness of the status of chips. Do you think that the restriction is adequate and do you have any concerns about the level of fried food?

**Eleanor Coner:** We were not sure what was meant by fried food. For example, are oven chips classed as deep-fried food? The limit of deep-fried food three times a week is fine for us—we are happy with the standards.

**Dr Higginson:** I can clarify the situation of oven chips. Oven chips are deep fried as part of the manufacturing process and are therefore covered under the deep-fried food standard. That means that chips cannot be served as part of the meal five days a week. We are keen to discourage the culture of chip eating in Scotland. The standard also provides that chips can be served only as an accompaniment to other food. That is intended to address the culture of chips and cheese and chips

and curry sauce being regarded as acceptable lunchtime meals.

The requirement that fried food should be served a maximum of three times a week demonstrates the pragmatic approach to setting standards that the expert group took when we made recommendations to ministers. We do not want to be seen to be banning everything that children like to eat. Fish and chips on Friday is often part of a school's culture. We did not want to ban fish and chips—as we all know, banning a food just makes people want it more. We wanted to strike a balance and create limited opportunities for schools to continue to serve such items.

**Aileen Campbell:** Is that a lesson that you learned from the experiment in England? What other lessons have you learned?

**Dr Higginson:** The lessons that we learned in Scotland came more from our experience with the hungry for success programme, which has been in place for five years in primary schools and for a little less than that in secondary schools. A number of caterers raised the issue in the context of the need to keep secondary school children in school at lunch time. We want caterers to be able to offer a range of foods, so that children can be attracted into school to eat familiar foods and be introduced to foods that might be less familiar but which we want them to eat more of.

**Aileen Campbell:** NFU Scotland said in its manifesto—I think in the context of the debate about free school meals rather than the guidance that was being developed—that it was happy that more milk would be provided in schools but was concerned about refrigeration capacity. Will there be a problem if more milk and milk products are used in schools?

**Dr Higginson:** The guidance that we produced on the nutritional requirements, which I think the committee saw, was the subject of targeted consultation. The concerns that you describe were not raised in respect of the milk drinks that we are encouraging schools to offer.

**Rob Gibson (Highlands and Islands) (SNP):** Schedule 2, "Food and drink requirements in school meals", sets out requirements on fat, salt and drinks, including milk and fruit juices. However, children can purchase fizzy drinks from vending machines or bring them into school. Is there clarity among teachers about what children can bring into school? Should water come from the tap rather than from bottles? Do fizzy drinks have a place in schools at all?

**Len Braid (Automatic Vending Association):** We do not sell carbonated sugared drinks through vending machines in schools. The cold drink side of things has been a success, mainly because manufacturers have been willing to produce

products that meet guidelines on what is suitable for schoolchildren. There was no change in our sales when we took carbonated sugared drinks out of our vending machines.

**Rob Gibson:** Do you supply vending machines that provide tea and coffee?

**Len Braid:** Not in secondary schools, because of the hot water that would be needed.

**Dr Higginson:** Sparkling water and perhaps a sparkling fruit juice and water mix are the only carbonated drinks that would be allowed under the regulations. The diet drinks with which we are familiar would not be allowed.

**Rob Gibson:** Some schools exercise control over mobile phones. Do headteachers take a view on the food and drink that children bring into school?

**Colin Sutherland (Headteachers Association of Scotland):** We strongly discourage youngsters from bringing carbonated drinks to school. It is common practice in schools for youngsters to have bottles of water—but only water—with them, so that they can stay hydrated. In my school, if a youngster brought out a Coke, they would be told immediately to put it away. We have limited control, as it is for parents to decide what they send with their youngsters to school. However, the issue is addressed in our curriculum and as part of the overall health and wellbeing drive in schools. I am sure that nearly all schools—if not all schools—have nutrition action groups and health promotion groups. Improving nutrition in schools is a gradual process, as has been said. However, if a youngster brought a carbonated drink rather than water to class, they would certainly be told to put it away.

**Rob Gibson:** Is the intention still to promote the sale of water in bottles, rather than the use of Scottish water that comes from the tap?

**Colin Sutherland:** In my view, we should encourage youngsters to bring bottles into school and to fill them with water from fountains or receptacles. There will then be no need for them to buy water. That is the way forward.

**Rob Gibson:** Do you have a view on what condiments other than salt should be available for children to add to their basic meals?

**Eleanor Coner:** The use of salt by both children and adults should be discouraged.

**Rob Gibson:** I understand that.

**Eleanor Coner:** I know that we are talking about children—

**Rob Gibson:** We are. We are discussing these standards.

**Eleanor Coner:** We are also talking about schools—there are adults in schools. Children must learn to eat healthily and that it is not good for them to cover their food in salt. They should be taught the proper use of condiments—I love pepper on salad. Tomato ketchup contains salt and sugar, but it is not all bad—it is full of nutrients. I do not know exactly what nutrients it contains, but it consists of highly concentrated tomatoes. Instead of dictating to children, we should take them with us. We must teach them to make proper choices. I welcome the fact that we are moving slowly and taking a pragmatic approach, but we cannot just say no.

**Colin Sutherland:** The standards do not say no.

**Rob Gibson:** Indeed. I was asking a general question. Given that condiments may contain salt and sugar, how do we strike the right balance when deciding what should be available to children?

**Colin Sutherland:** Is the issue not covered by the fact that portions are very small?

**Rob Gibson:** I hope so. That is why we are asking you about it.

**Dr Higginson:** I can provide the committee with some background on the issue, which is related to a more general point about the requirements. In its discussions, the expert working group took a whole-day approach to nutrition. The advantage of the requirements is that they extend beyond school lunches, which were the sole focus of hungry for success, and enable us to look at the balance of food that is provided to young people throughout the day. We applauded those schools that succeeded in meeting the sodium target—essentially, the salt target—of not more than 33 per cent of the recommended daily amount under hungry for success, but we know that many schools found that target challenging. It was difficult to achieve it at the same time as creating the tasty, appealing dishes that young people seek.

We are accustomed to a lot of salt in our diet. Steps are being taken to reduce the amount of salt in manufactured foods, from which we get three quarters of our salt, but that is a gradual process of change. We wanted to ensure that caterers would be able to make the lunches attractive and appealing, and one of the ways to do that was to relax the salt target—the nutrient standard—for lunch a little bit. The target is phased, moving from 38 per cent initially down to 35 per cent by 2010.

11:15

In order to achieve the target across the school day, we came down quite strongly on salt outwith the school lunch. As my colleague says, the

restriction on the portion sizes of condiments is quite significant, as there is a big difference between picking up and tearing open a 10ml sachet, and grabbing hold of a pot of ketchup and pouring it all over whatever you are eating. It is a significant restriction, as sauce products are generally very high in salt.

The restrictions and the specifications for savoury snacks will also reduce the amount of salt that is available to young people outwith lunch. Overall, we are encouraging lower-sodium products to be procured within schools for consumption throughout the day. We took a number of steps to try to address the issue while supporting the uptake of school lunches.

**Rob Gibson:** That is very helpful indeed. I have a couple of questions. I noticed that the portion size of fruit and vegetable juice is restricted. That raises the question about concentrated and diluted forms of juice. Has there been a concern that youngsters would gorge themselves on those kinds of items? What was the rationale for that restriction?

**Dr Higginson:** The rationale for restricting the portion size of fruit juice is that, although fruit juice is in some respects a healthy product, it is also very high in sugars. Unfortunately, our teeth do not make any distinction between the fructose, or fruit sugar, that we get from fruit juice, and the sucrose, or common form of table sugar, that we find in carbonated drinks.

The decision was about striking a balance between encouraging consumption of amounts of fruit juice that will not be overly detrimental to dental health, while—because fruit juice counts for one portion of fruit and vegetables a day—encouraging some consumption of it. We know that those drinks are popular, so it is not so much about encouraging consumption as keeping a cap on it and encouraging children to drink other drinks such as milk and water, which we know are absolutely safe for dental health.

**Rob Gibson:** I have a small point about the drinks that are allowed, which include tea and coffee. Is decaffeinated coffee included?

**Dr Higginson:** Yes, that would be allowed. We have not made any specifications about the type of coffee.

**Rob Gibson:** Thank you very much.

**Ken Macintosh:** My question follows on from Rob Gibson's question about portion sizes. We were approached and lobbied by a manufacturer that suggested that the portion sizes are not very practical, as they do not equate to the sizes of the popular products that are vended. I am not sure whether this is a question for Cathy Higginson or Len Braid. The implication was that if we are trying

to encourage children to learn to make healthier choices, not just in school but out of school, we should not discriminate against the sizes in which popular healthy products are available. Does that make sense? In other words, we should try to get children used to making the healthier choice when they have a range of products available to them outside school. Taking the pragmatic approach, as we have done, we should make those healthier choices available. I have been lobbied to say that the 200ml restriction is below the normal size for vended products. Is that the case?

**Len Braid:** That is true. I cannot buy any product, fruit juice or otherwise, in a 200ml carton or bottle. The next step up is 250ml and, for a can, 330ml. Water is usually sold in larger bottles of 500ml. There is no outlet for a 200ml carton or bottle.

**Ken Macintosh:** What will that mean in terms of the availability of fruit juice? Will it be available?

**Len Braid:** If the regulation is that I can sell only 200ml of fruit juice, I cannot do that, because I cannot purchase any fruit juice to put in the machine in that size of container.

**Ken Macintosh:** I wonder whether Cathy Higginson can comment on that.

**Dr Higginson:** That issue was raised during the deliberations of the expert working group. However, the working group's representative from the association of caterers—the Association of Service Solutions in Scotland, or ASSIST—advised us that a wide range of sizes of fruit juice portions could be procured, ranging from 85ml upwards. It is true that that does not necessarily apply to vending machines.

Given the volumes of the various products that are sold through our schools, the standards could act as a driver in developing smaller product sizes. The same point also applies to the savoury snacks specifications that we have set. The standards offer manufacturers new opportunities that we hope will then extend beyond the school gate.

**Mary Mulligan:** Good morning. I have a practical question. Do caterers have the technical expertise to translate the nutrient requirements into the meals that they provide?

**Dr Higginson:** We have produced comprehensive guidance—of which the committee has seen a near-final draft version—to support caterers in implementing the standards. The guidance translates the requirements into the language of the caterers who face the daily task of producing healthy school meals.

An important point is that the hungry for success programme has been in place in Scotland's primary and secondary schools for a number of years now. Over that time, caterers have

developed considerable experience of working to guidance that is, in many respects, not very different from the new standards. The nutrient standards are framed in very much the same way as they were under hungry for success. Some of the standards, such as the sodium standard, are slightly more relaxed, so caterers will have more opportunities to use the expertise that they have developed.

More broadly, in its public health role, NHS Health Scotland—for which I work in my day job—has worked with partners such as the Royal Environmental Health Institute of Scotland and Community Food and Health (Scotland) to develop a training course. The course, which is delivered through the REHIS system, has been widely taken up by caterers. In addition, other training courses for caterers are delivered by People 1<sup>st</sup>, which is the sector skills council for the industry.

As well as having experience of the standards, caterers will have guidance available to help them and they will be able to take up the training that will support the standards. I should also mention that there is a lot of good will out there and a lot of positive work that has already been done. The expert working group was very confident that the standards could be implemented at a practical level.

**Colin Sutherland:** For me, it is vital that the food is presented attractively. Youngsters should want to have a school dinner. For example, we should not have mouldy fruit. We need fresh, attractive, well-priced produce that is slickly presented. That is the key. Everyone needs to work together so that the local authority, the caterers and the schools speak one message. For instance, the sports centre next door should also serve healthy food and licences should not be given to chip vans round the corner. All of those issues need to be part of an holistic approach.

**Mary Mulligan:** Absolutely. That brings me to a practical concern about whether schools will be able to cope in providing such food for children. As Eleanor Coner mentioned earlier, we need to present pupils with some choice. However, my experience tells me that those at the back of the dinner queue might not have the same choice as those at the front, so those at the back are more likely to opt out by going elsewhere. In practical terms, how do we make a difference on that within the school environment?

**Colin Sutherland:** We have to try to be creative. We can do things such as grab-and-go lunches, where youngsters can order things for lunch during the interval. We can have different sittings, perhaps with junior children being first in the queue one day and senior children the next. Clearly, however, if every youngster wants to take

a school lunch, we will struggle. Most schools in the land would struggle in those circumstances.

We could have longer lunches, but that ties into issues to do with pupil behaviour, litter, school clubs that meet at lunch time, and so on. It is a balancing act, but we can work creatively.

**Mary Mulligan:** Absolutely. I appreciate that we are again placing demands on headteachers and staff in schools who have to try to accommodate the changes. Have headteachers bought into the agenda? Are they committed to taking forward the benefits of a healthy meal at lunch time?

**Colin Sutherland:** Yes. As you know, the issue is part of the overall health and wellbeing agenda, the promotion of which is a duty of every teacher in Scotland under the curriculum for excellence, along with numeracy and literacy. It is at the centre of what all teachers have to do, whether they are an English teacher, a French teacher or a primary teacher.

It is vital that the school buys into the agenda. The traditional tuck shop that raises money for the rugby team can no longer sell Coke and Mars bars. We must all buy into the same thing. The curriculum that we offer in home economics buys into that as well. We must all give the same message.

**Mary Mulligan:** Absolutely. That brings me to my next question, which is about nutrient standards. Do nutritionists now agree that the nutrient standards in the regulations are pitched at the right level? It seems to me that they have changed a little since hungry for success. Will there be further developments or is there now agreement about the standards?

**Dr Higginson:** The expert working group included seven nutritionists from a wide range of organisations in Scotland. There were 11 of us in the group, seven of whom were qualified in nutrition in one way or another, including me. As I mentioned earlier, we went out to consultation as part of the process of developing the guidance, and a good few of the people who responded also have expertise in nutrition.

No significant issues have been raised in relation to the standards. Nutritionists—to the extent that I can represent them, and certainly to the extent to which they have spoken to me—appreciate the pragmatic issues that have to be considered when standards are set. As my colleague from the SPTC comments in her submission, there is no point in offering food if children do not eat it. We need to get children to consume the food.

As you said, the standards are slightly different from the previous standards under hungry for success, but there are clear reasons for that and

the expert nutritionists in the group supported the changes. I do not foresee any problems in the form of challenges to the requirements from nutrition colleagues.

**Len Braid:** We have been trialling in different schools healthy options that fall within the guidelines. In consultation with headteachers and pupil councils, we came to a 50:50 split between healthy products that fall within the guidelines and the conventional chocolate bar and packet of crisps. We found that, where there was a 50:50 split, there was no difference in uptake. There was a good mix, the machines were used, and the pupils stayed in the school. Where 100 per cent of the products were healthy options that fall within the guidelines, sales dropped by 75 per cent. The children did not use the cafeteria but went out to retail units and bought burgers and chips and things like that. The change drove them out of schools rather than keeping them in. We could probably increase the proportion of healthy options to, say, 75 per cent, but the manufacturers would still have to produce them.

11:30

**Mary Mulligan:** We want to give children and young people choice, but there is clearly a problem about how they respond to it. We have heard a lot about whether children should be allowed to go out at lunch time and whether councils should give licences to the chip vans that are parked outside schools—something which, unfortunately, has happened in the past. We all have views on such matters. You are certainly right to say that we need to address the issue of choice.

**Len Braid:** Many schools that we deal with are community schools that are open to the general public out of school hours. As a result, we have received quite a few complaints from, for example, people playing five-a-side football who have been looking for, say, a health drink and a Mars bar but have been unable to get them.

**Mary Mulligan:** That brings us back to the earlier point that this issue affects not just children and young people. We all have to develop healthier attitudes.

My final question is whether there should be a single set of standards from P1 to P7. Earlier, I heard a group talking about the provision of milk, which Aileen Campbell also mentioned in her questions. The group made the point that girls who are entering puberty—which might well happen at the end of their primary school education—might find it helpful to have more of that. Do you think that, given the age range in primary schools and given that children develop at different rates, it is appropriate for these nutritional standards to cover the whole primary sector?

**Eleanor Coner:** I should point out that there is also an issue about full-fat and semi-skimmed milk with regard to very young children, who should be getting as many nutrients as possible from that particular source.

**Dr Higginson:** Under hungry for success, a set of standards was introduced for four to six-year-olds and another for seven to 10-year-olds. From that experience and in light of the feedback that we received, we realised that it was simply impractical to set different standards and to stipulate that different food or different amounts of food should be provided to children. Children might queue up for lunch in different shifts, but there will always be a mixture of ages in each queue.

Moreover, as you have pointed out, needs vary quite considerably across that particular age range, and it is up to those who serve the food to judge what constitutes a suitable amount for a child. Of course, that might pose some challenges for staff training; there might need to be some careful awareness raising to ensure that, for example, staff do not offer a child who seems pretty big for their age more food than might be appropriate. In short, we set a single standard to deal with some practical catering issues and to raise awareness among the staff who work with the children.

**Mary Mulligan:** That is helpful.

**Christina McKelvie (Central Scotland) (SNP):** After looking at the schedule covering the use of oils and fats, I wondered whether your merry band of nutritionists on the working party had discussed limiting the use of bad fats such as trans-isomer fatty acids. As we see in Asda, Tesco and the like, ethical manufacturers have been labelling their produce to let the customer know that, for example, it contains no hydrogenated fat. Have you come up with any guidance on the use of trans fats?

**Dr Higginson:** Trans fats were discussed at the working group, as they have been in the nutrition community and elsewhere. However, current intakes in the United Kingdom are not as high as you might expect from all the media attention that they have received. They are more damaging to health than saturated fat, but manufacturers have responded positively to an increasing awareness of those dangers and have taken them out of many food products.

Saturated fat is a much bigger risk to our dietary and overall health. We set the standards for total fat and saturated fat, making specifications for the amounts of other fats in oils and spreads, confident that trans fats would be looked after in that process. If you are strict on the total amount of fat that is provided, you will be cutting down on



the amount of trans fats in that. Manufacturers are taking it out of products anyway. Originally, it constituted only a relatively small part of the diet. Trans fats are disappearing quite fast out of most foods and would form a very small part of children's diets. We did not feel that we needed to identify them specifically.

On the point about milk that my colleague raised in response to an earlier question, the recommendation is that if there are any concerns about their growth, children up to the age of 5 should be offered full-fat milk, and that between the ages of 2 and 5, a transition should take place, where appropriate—if the child is growing well—from full fat to semi-skimmed milk. The general recommendation is that by the age of 5, assuming that poor growth is not a factor, semi-skimmed milk—and, for some children, should they choose it, skimmed milk—is the default milk of choice. Generally, though, the standards recommend semi-skimmed milk.

**Jeremy Purvis:** According to information received by the committee, the take-up of school meals in secondary schools in England is down to 38 per cent; that is lower than take up in Scotland. If we are talking about the health of children across the board, as the guidance states in its first paragraph, then a slightly less healthy school meal might still be considerably healthier than the alternatives for youngsters who go out of school to eat. What balance do schools and parents think should be struck? What do the nutritionists think? We could go much further down the line in restricting the options for school meals, but if that makes the youngsters leave the school to eat, it might have a perverse impact on obesity levels and behaviour.

**Colin Sutherland:** There is a balance to be struck, but my reading of the guidance is that the balance is pretty good. It is important to have firm rules, as the regulations demonstrate. It is a case of chipping away throughout the school community and involving youngsters in the school nutrition action group and so on. We recommend the existing balance. It is a difficult issue. Free choice is part of the human condition. We said in our submission that we must be aware of where schools are at present. Some schools may have gone beyond the guidance. For instance, at my school we have chips only once a week, and we would not go from once a week to three times a week, but other schools are still at the chips and gravy stage and need to be weaned off that.

**Eleanor Coner:** I agree. The balance is good. However, first and foremost, children have to eat. As Len Braid said, when they are offered only healthy products, they use their feet and go and get something that they really want. It is all about giving them a choice. As Colin Sutherland said,

there is lots going on out there. For example, to combat the chip van that used to go round the schools in Fife, there was a mobile snack shop that sold healthier options. It proved very popular.

It is all about imagination and the time and training that is given to staff to use their imaginations with food. Young people will eat wraps and things like that—they do like them. I have been in supermarkets at lunch time when they are bombarded by secondary school children, and although a lot of them take away unhealthy things, a good minority of them take away the meal deals—the sandwiches, the fruit juice and a snack, which might be sliced-up fruit. It would be a good idea to examine good practice, such as the reward schemes, to find out what is working and to show schools what they can do.

**Len Braid:** It is about taking a sensible, balanced approach—such as the 50:50 split between healthy and conventional snacks—that gives the children a reasonable, balanced choice of things to buy that they will enjoy. Water and soft drinks have been a huge success and I like to think that vending can complement the queues in the dinner halls.

**Jeremy Purvis:** Ms Higginson, did you research the nutritional value of the meals that youngsters are typically buying outside the school environment?

**Dr Higginson:** I will come to that once I have commented on uptake. I am delighted to hear the positive responses from my colleagues in the Headteachers Association of Scotland and the Scottish Parent Teacher Council about getting the balance right, because that was absolutely what the expert working group was trying to achieve. I have said that we wanted to be pragmatic and to set achievable, realistic standards that would continue to build on the achievements of the hungry for success initiative in driving up standards.

Colin Sutherland said that the food is not the only thing that contributes to whether young people stay in school at lunch time. We know that there are all sorts of other reasons for going outside school. Pupils from north Edinburgh conducted a study on that last year, interviewing headteachers and other students. The reasons that were given for getting out at lunch time were to have a bit of freedom, more time to do what you want, and just to be away from the teachers and to get out of school—in the same way that we like to get out of the office at lunch time and have a break. The study also found that the surroundings were as important as the food—and in some cases, more important—in the decision about whether to stay in school. I applaud the efforts that have been undertaken to try to improve the dining environment within schools. I know that Her

Majesty's Inspectorate of Education has, in its most recent report on the implementation of hungry for success, identified some examples of good practice that could be shared throughout Scotland. Although food plays a part, it is not the only part; I am not trying to say that the food is the only issue.

That said, we have tried to offer a lot of flexibility about what can be offered. There is a long list of the foods—which I will not bore you with—that meet the standards to be vended or sold in tuck shops. The list includes savoury snacks, which, as you may be aware, have not been permitted in England. That may account for some of the issues that they have suffered there. Nuts and seeds, without any added salt, sugar or fat, are as far as England has gone on that, whereas we have set a specification that will include a certain number of savoury snacks, although it is admittedly a limited number at present. There are opportunities for manufacturers of savoury and packaged snacks to produce versions of crisps through to other cracker-type products with cheese, for example, that could be included. There is, as I said, a range of drinks. There are foods such as fruit juice, smoothies and dried fruit, which public health advice tells us we should caution young people not to eat every day.

There are also foods that are not disallowed under the regulations, but which do not fit with the ethos of a health-promoting school. Schools that still have the chips and gravy culture that Colin Sutherland mentioned have the opportunity to move gradually towards full adherence to the range of recommended foods. There is a lot of flexibility, but I am delighted to hear that colleagues feel that we have got the balance right on the requirements side.

The expert working group did not take evidence specifically on what is eaten outside schools, although I know that the Scottish Consumer Council has recently done work on that. Anecdotally, we know that some pupils go to the chip shop for deep-fried pizzas, but healthier options are available and that is to be encouraged. There is a mixture of provision. On the whole, the food that is available in outlets outside schools will be higher in fat, salt and sugar than the food that we hope will be available inside schools.

11:45

**Jeremy Purvis:** I have one more question on nutrition, which follows on directly from that point. In many areas, youngsters have the choice to go out and buy from the competition, which offers an equivalent to the chips and gravy environment that schools are moving away from. In that regard, I am interested in what the guidance says. It is interesting that the potato is not classified as a

vegetable because it is a starchy product, but you say that pupils who are hungry or who have larger appetites should be encouraged to fill up on extra bread, which is a starchy food.

I do not know whether Mr Sutherland's school offers roast potatoes and wedges, but the restriction on food that has been deep fried might have a perverse effect. I note with interest that, as I understand it from information that the committee has been provided with, the draft guidance proposes an increase—it is only a marginal increase, but it is still an increase—in the fat content that was allowed under the 2003 guidance. The amount of deep-fried food that can be provided is being restricted while youngsters can fill themselves up on bread, either as an addition or accompaniment to a meal, or can eat sandwiches that contain mayonnaise or spread. That could be worse for them nutritionally than eating oven-cooked potato wedges that have been deep fried as part of the manufacturing process, which could have a lower fat content. Why have you gone down the route of being so prescriptive about deep-fried food when, in other areas, you have given schools the flexibility to meet the nutritional guidelines for a daily lunch according to their circumstances? That does not seem to be a consistent approach.

**Dr Higginson:** One of the challenges is that there are so many different types of food that if we were to try to set standards for all foods, we would inevitably fail because we would miss certain things out and would produce extremely unwieldy and cumbersome legislation.

With the standards, we opted to focus on key areas in which we know that there are particular issues—to encourage uptake of fruit and vegetables and to rein in consumption of deep-fried foods, for example. In other areas, we have sought to provide clear and firm guidance, which—given the response to hungry for success—we are advised will be followed fairly closely.

You mentioned mayonnaise. In the guidance, we point out that sauce products such as mayonnaise are high in fat and should be used in moderation. They can be mixed with products such as yoghurt to lower the fat content. The guidance is complementary to the regulations in that it seeks to plug some of the gaps that the regulations leave.

It is extremely important to emphasise that the measures under discussion have been proposed in the context of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007, which is about health promotion and fostering a health-promoting ethos. As Colin Sutherland says, the aim is to ensure that health promotion is a core part of schooling and that staff pick up on that.

**Jeremy Purvis:** If a school provides fish and chips on a Friday, which I understand is fairly typical, the guidance will mean that the school will be able to provide chips, wedges or roast potatoes on only one other day of the week. If 10 or 20 youngsters stay in school for lunch because wedges or roasts, which have a low fat content—it could be lower than that of a bread-based alternative—are on offer, it is possible that the guidance will mean that, on the days of the week when such food is not available, those kids will be turned away and will go outside the school environment for a far healthier option. The guidance could turn youngsters at secondary level in particular towards more unhealthy options. It might be better for those youngsters if wedges, roast potatoes or other options were oven cooked and made available in the school as part of a mixed diet, even though those products might well have been deep fried as part of the cooking process. It would be perverse to drive youngsters away to eat pizzas, chips or burgers outside the school environment. The risk of that does not seem to have been assessed or researched.

**Dr Higginson:** As I said, some work has been done on what children are eating. We know from the uptake figures the number of children who do not take school lunches. More than half of secondary school pupils go outwith the school for lunch. That is definitely one of the challenges that we face, as some of my colleagues said.

I take your point that it might be better to eat an oven chip in school than a deep-fried chip down the road, but the requirements seek to show young people the breadth of healthy foods that are available and what a healthy diet looks like. We want to encourage them, through the ethos of health-promoting schools, to get behind that.

We will not change the Scottish diet without winning hearts and minds and we will not do that by setting regulations. We need to show people what healthy food is and give them the opportunity to choose it. If they do not choose it, they might go outwith school. However, it would not be right for us to promote a chip culture even if the chips are oven baked in the school. We need to take young people with us. That is the consensus and the majority view in the group.

**The Convener:** I move on to the subject of snacks, which our witnesses have already touched on briefly in response to some of the questions that have been asked.

My understanding of the primary legislation that was introduced is that it responded to the fact that, although many schools in Scotland had embraced hungry for success, some schools had not embraced it in the way in which we wanted. The legislation aimed to ensure that all schools did so.

It covers not just school lunches but the snacks that can be served in tuck shops.

Recently, I visited a number of schools in my constituency, many of which embraced hungry for success and moved to healthy tuck shops a number of years ago. They now tell me that I am personally responsible for killing off their tuck shops. I am probably more responsible than other members around the table because I was the convener of the committee that considered the primary legislation.

I am interested to know exactly what tuck shops will be able to sell in the future. Mr Braid alluded to the problem that we might reach a situation where young people do not buy anything in tuck shops. I remember the evidence that the Communities Committee took and the clear recommendation in its stage 1 report that the food industry should step up to the plate and develop products. Dr Higginson mentioned the need for that. However, I see no evidence that, in the 14 or 15 months since the legislation was passed, the food industry has followed through and developed snack products that Mr Braid and his members can sell in their vending machines, or which schools can serve in their tuck shops.

**Len Braid:** The drinks industry has stepped up to the plate and produced products. That has been a success for our industry. However, the manufacturers of snacks and confectionery make chocolate, and they know that children will buy chocolate, be it from a vending machine or a tuck shop or on their way to school. If they do not buy it, their parents do. The manufacturers know that the market is not going to dip. Some snacks have been produced, but children will try them once and not buy them again, because they have no taste and children get no enjoyment from eating them. When the snacks are first put into the machine, children will try them, but they will not buy them again—they will go elsewhere.

**Eleanor Coner:** We were a bit concerned about the extensive standards on snacks and confectionery. Chocolate is not the evil substance that everybody seems to think it is. Sometimes children need a sugar hit; they need a bit of energy. A little bit of chocolate does not do anybody any harm. It is about offering children a range of options. They will vote with their feet if they just get boring food choices.

**Dr Higginson:** In making the recommendations, we had to be mindful of producing workable legislation and we had to work with existing definitions, such as the confectionery definition, which is wide ranging. The most sensible approach seemed to be to take out a raft of foods that are not beneficial to children's health. The list of what can be provided in tuck shops or vending machines—it depends whether they are ambient

or chilled—ranges from fresh fruit, canned fruit and little fruit pots through to sandwiches, filled rolls, wraps and savoury snacks that meet the specification. I have a list of such snacks that are on the market, which I would like to be longer. A number of them are available for schools to purchase for vending machines and for sale outwith lunch—selling them at lunch is precluded under the requirements.

We heard evidence from caterers in our group that in secondary schools children often buy at snack time the food that they will consume at lunch time, because they want to avoid queues at lunch time or they are going to a club at lunch time and they will not have time to grab food. The filled rolls and wraps are therefore relevant. Alternatively, children might be filling up at break time, because they are not going to eat at all at lunch time, in which case products such as jacket potatoes might be appropriate. For those who have missed breakfast, breakfast cereals, or similar snacks that meet the guidelines, are appropriate.

The green list includes pasta salads; vegetable sticks with dips; plain or fruit yoghurt without added confectionery; nuts; sushi rolls, which are quite a trendy thing for people to eat these days; water; semi-skimmed, skimmed and low-fat milk; milk drinks; and yoghurt drinks. We also permit foods such as smoothies, fruit juices, dried fruit and nuts, which would be suitable snack options, but which we caution people about for oral health reasons.

There are also foods that are permitted in theory under the requirements but which are strongly discouraged in the context of the health-promoting school ethos. However, permitting those foods would allow schools that have not travelled as far down the path to healthy eating to make the transition.

Fried foods are not permitted but, occasionally, the service might, after careful consideration, choose to provide a grilled bacon roll, grilled sausages in rolls and small portions of home baking. In the guidance, we caution schools to think carefully and to go down that route only if they really need to. Schools would not be breaking the law if they served cakes and pastries. At the healthier end of the cakes and biscuits range are scones and pancakes.

First, there is the list of foods that we would encourage and then there are the foods that we are trying to discourage but which we are not legislating against. There is quite a range. It is all about the health-promoting ethos of the school. Colleagues such as Colin Sutherland will work with their staff to take a view on what they want to provide in their school service.

12:00

**Eleanor Coner:** I want to re-emphasise a point that we made in our submission: children in hostels should not be denied treats now and again, or be penalised just because they are living in that situation.

**Dr Higginson:** In fact, the requirements are about food that is provided by institutions or organisations and they do not apply to weekends. However, during the week, children who live in hostels—assuming that they make their way freely between school and the hostel—are able to purchase foods for consumption in the hostel. It is not against the regulations for such food to be consumed in the hostel; the situation is similar to that of children bringing food from home to eat in school in packed lunches or as snacks. The regulations do not prevent children in hostels from having their treats.

**Colin Sutherland:** I emphasise that what I said about school meals applies to intervals, too. I would be very comfortable if the catering service were to provide attractive snacks, such as fresh bananas that look fresh so that people want to pick up and eat them.

**The Convener:** On the point about hostels, when the then Communities Committee considered the primary legislation, it had a videoconference with a hostel in Shetland, which was very sympathetic to that point. The Government at the time recognised that a hostel is the young person's home while they are away at school. Many young people cannot go home every weekend—they might go home only one weekend a month—and it is important that they should have access to other foods where appropriate, just like any other child in Scotland.

I want to follow up on Ms Higginson's comments. It strikes me that the nature of a tuck shop and what is being delivered is changing. A range of products might be delivered by the tuck shop, but there has been a move away from processed foods, which are bought and manufactured outside the school. The emphasis has been placed on products that have to be manufactured or prepared on the school premises, and that is where the difficulty arises; if schools outsourced their tuck shop products, some are finding it difficult to find products that they can purchase from the cash and carry. However, if their catering service is happy to deliver products that are manufactured or prepared in school, then it can be done. Is that the intention?

**Dr Higginson:** Yes; I accept your point. The reality is that fat, salt and sugar, as well as being nutrients that we consume, give us energy and serve other functions in food products. Sugar and salt, in particular, act as preservatives. As you go

down the route of producing ambient foods that are manufactured and packaged, you need to ensure that they have a sufficiently long shelf life, which has an influence on what can be included in such products. The industry has to take such factors into account when we pose the challenge to it to cut down on fat and salt. That naturally leads to the fact that the sorts of food that fit clearly at the centre of the requirements tend to be the fresher foods. I accept that, but argue that food technology developments are such that we are making progress all the time. I hope to see the industry step up still further to the plate in that regard.

**The Convener:** Another concern that was raised with me, and perhaps with other committee members, is the importance of fair trade. Several schools that I represent believe passionately in fair trade and global education, and they have successful fair trade tuck shops. They tell me that they contribute to the school and they give much of the money that they raise to other organisations to help children get the benefits from education that are taken for granted in Scotland. However, the nutritional standards mean that they will struggle to have anything to sell in a fair trade tuck shop. Did you consider that issue?

**Dr Higginson:** I thoroughly and rigorously support the principle of fair trade, both within Scotland and with other parts of the world, and I acknowledge the benefits that flow from it for communities.

The group's focus was predominantly on nutrition, so although we tried to be aware of issues such as uptake and to take them into account and be pragmatic, we did not spend an extensive period of time discussing fair trade. However, fair trade is a growing business and I have noticed more and more fairly traded products coming on to the shelves. Well-known products such as tea, coffee and drinking chocolate, which is allowed under the regulations, come under a fair trade banner and might be served by tuck shops. Fruits such as bananas are also commonly fairly traded; I think that one supermarket now sources all its bananas in that way. Pure fruit juices are often fairly traded and would be suitable for a tuck shop, with the dental health caveats that I mentioned previously. Unsalted nuts, and other fruits such as pineapples—it tends to be tropical fruits—are often fairly traded. A number of products could be sold in a fair trade tuck shop, given that they fit within the standards and are fairly traded, although I accept that there may not be enough of them to constitute a full tuck shop. The issue is sensitive and difficult.

Chocolate is a commonly fairly traded product—I suspect that it is one of the products that the tuck shops in your area sell—but it is very high in fat

and sugar. It is a confectionary item, which we want to encourage children to eat less of. Obviously children eat chocolate outwith school, which is fine as it can acceptably constitute a small part of a healthy, balanced diet, but we do not feel that it has a place in school meals or other services from a nutritional point of view.

**The Convener:** A key issue is that although changes are taking place around product development, whether or not the products are fairly traded, the regulations will unfortunately come into effect long before products are available that will allow schools to meet the requirements that are being placed on them. Mr Braid pointed out that the drinks manufacturers have gone some way to making changes in the past 15 months, but perhaps the food manufacturers have not been as willing to do so.

**Len Braid:** Unfortunately, I am not aware of any Fairtrade or Rainforest Alliance confectionary products that meet the nutritional criteria that would enable us to sell them in schools.

**The Convener:** A constituent whose company supplies many of the tuck shops in central Scotland told me that she is struggling to find products that meet the nutritional standards. Her point was that it is all very well for me as a politician to argue that food manufacturers need to change, but given that the supermarkets are the food manufacturers' main customers there is no onus on them to change and parents will still be able to buy the products from the supermarkets. We may reach the situation in which school tuck shops no longer exist, because they cannot find manufactured and pre-prepared products that they can sell. I appreciate Dr Higginson's comments about the move towards other types of food being offered in tuck shops.

**Ken Macintosh:** I share the convener's misgivings, primarily because one of the reasons that fair trade has taken off is the support that it has received from young people in this country, particularly in schools. Fair trade chocolate, for example, is becoming available; the Co-op is fantastic in that regard and some other shops are catching up.

Fair trade tuck shops have promoted the drive on fair trade chocolate. People will still eat chocolate, but surely it is better that they start to choose fair trade chocolate. Instead of helping the drive to fair trade chocolate, it is possible that, through the regulations, we will restrict it. I am slightly worried that our best intentions for improving children's diets will have a detrimental effect and promote the more commercial or potentially exploitative brands at the expense of fair trade products. Perhaps when we review the regulations at a later stage we can consider what has happened to fair trade.

On the question of choice, I think that the convener and other members found themselves in the same position as me when news of the regulations got out. In every school that I have been in recently, the regulations have been the topic of discussion. When I ask the children what they want to talk about, they say “Banning chocolates and everything in our school.”

Mr Sutherland said that we are not banning or saying no to things. I concur with that view, because we are perhaps just restricting choice. However, perhaps we could do more to promote the idea of making a positive choice—we can consider the situation from either end. Surely the emphasis must be on making a positive choice, rather than restricting choice.

Are we doing enough to promote the idea of positive choice? In other words, are we ensuring that children can make positive choices across the range in all areas at school? More specifically, rather than the Parliament or the Government being seen as the big banners, what can they do to help?

**Colin Sutherland:** As I said, what is being proposed must be viewed in the context of the overall health and wellbeing of school life and be bought into by everyone. That would ensure that the message was positive.

On the Government's role, I am not aware of much information coming out to explain the positive reasons for the new regulations. For example, there could be fact sheets on a website to which we could refer youngsters. We could make that information part of physical and social education lessons and link it to statistics about obesity, for example. There is a role for the Government's education service in the positive promotion of why the change is being made. It would be beneficial to show that we are not being killjoys and that there is a strong reason for what we are doing.

**Eleanor Coner:** I do not think that the message has been positive. Many parents have phoned up to complain to us, for example, that the headteacher of their children's school says that they are not allowed to sell crisps or chocolates at a school fête because theirs is a health-promoting school and they do not want that sort of thing being sold there. I was pleased to see that the policy for social events like that is to be examined.

We must change the view that we are banning everything that is good, and say that we are not doing that. Currently, parents and pupils hear only about what they will not be allowed to do, and the perception is that it is all the parents' fault because they feed their children the wrong things. Rather than say to anyone that it is their fault, we must work together on the issue, as Colin Sutherland said.

**Ken Macintosh:** I suppose that it is all about balance. However, it is interesting that all the pupils talk about there being one rule for adults and another for children.

**Eleanor Coner:** That is what I was alluding to. It is all very well telling children that they must not do something, but they see adults doing it.

I return to the chocolate issue. I am not a great fan of chocolate, by the way; I just use it as an example. We tell children that they will never eat chocolate in school, but if we said something similar to a group of adults at work, it would not be accepted. Okay, children are children, and adults are adults, but banning something in that way is not fair. As with everything in life, children have to learn to make mistakes, and they have to learn what is right and wrong. It is all very well telling children that they may not do something, but they will find some way of doing it. They must learn to make choices—that is the most important thing.

12:15

**Ken Macintosh:** I welcome what you are saying. However, I wonder about the other way of doing things—not to relax regulations for parents, as it were, but to ensure that parents and adults set an example and to allow more flexibility with young people. The regulations might be more welcome if we say that when parents come into school they cannot buy crisps either. Actually, children could have a bit of chocolate or some sweets. Parents will give them some sweets anyway.

**Eleanor Coner:** There is a great black market in sweets in some schools. Kids go out on their bikes at breaktime to buy a load of sweets at the sweet shop and then sell them. It is great enterprise—that is the enterprise box ticked. I agree with Kenneth Macintosh that it comes back to balance. A little bit of what we fancy does us good.

**Len Braid:** I do not know of any staffrooms in secondary schools in which the vending machines comply with healthy options guidance.

There is a limit to the products that can be sold to children through vending machines. A vending machine can sell a maximum of 75 to 80 packets of crisps and 100 to 150 chocolate bars. If there are 800 to 1,000 pupils in the school, that amount is not huge in percentage terms. I appreciate that there might be more than one machine. However, there is a limit for pupils—unless we are talking about one individual emptying the machine. In most of the schools that we deal with, the vending machines are monitored. Janitors and teachers sometimes stand by them, and the pupils make their own purchase and go, rather than buying masses of items that they can sell to their friends.

**Ken Macintosh:** I wish to pursue the point about positive and restrictive choices. I remember studying such questions at university. One question was about why poor people, who we might want to eat brown bread with margarine, always buy white bread and butter. The debate about that had been going on since the Boer war, I believe. I am trying to work out what is changing in our approach, and how it will work. Have we got it right in having a positive choice as opposed to a restriction?

**Dr Higginson:** As a nutritionist of 17 years' experience, I am used to accusations of being a killjoy and telling people that they cannot have things. I always say that we do not tell people that, but that we encourage people to eat more fruit and vegetables, and more starchy carbohydrates, including potatoes. Potatoes are vegetables, but they are categorised as a starchy food—that was referred to earlier—and they have a very high starch content.

Some things are banned or precluded in the regulations, but we want to encourage a fairly good balance of foods as well as restricting some foods. We discussed fruit and vegetables, which are a clear example of the foods that we wish to encourage young people to eat. There is also the bread standard, and the guidance around starchy foods provides another good example. We have tried to communicate positively in the guidance by giving lots of practical advice about the foods that children should eat more of and creative ways of getting young people to eat fruit and vegetables. I accept that some foods that were previously allowed have been taken out of schools. Inevitably, those are the foods that young people will focus on.

You made a point about what adults, as opposed to children, may purchase in schools. There are different views on that. A lot of work is going on to promote healthy choices among the whole community, and adults are a big part of that. Many community food initiatives throughout Scotland do brilliant work in making fruit, vegetables and other foods available. Not only that, but they do terrific work for community cohesion and there are mental health benefits associated with their work, too. There are also social marketing campaigns and healthy living awards to improve the standard of catering.

There is a raft of other work, so the regulations do not stand alone. It happens that we are discussing the regulations and the work in schools today, but I would like you to consider them in that wider context. We are trying to work with the whole population in our broader public health nutrition work.

**Ken Macintosh:** I do not disagree with any of that; I just think that many young people are

already aware of what is healthy and what is not—perhaps more aware than adults are. If I go into a school to talk about the Scottish Parliament, every young person mentions the ban on smoking and they all say that it is a good thing. Young people are aware of such messages and willing to sign up to them, but we have not quite got there on healthy eating for some reason. Can we do more to get young people to enthuse about it rather than feel hard done by?

**Dr Higginson:** That is what the health-promoting school ethos is all about, as Colin Sutherland said. As part of the health and wellbeing strand of the new curriculum for excellence, there is a chunk on eating for health. It is about education, information, learning and raising awareness of the issues, including the why of it. In my submission, I set out the why of it: the escalating rates of overweight and obesity in Scotland, the low consumption of fruit and veg and our appalling dental health record. There are lots of reasons for healthy eating at a population and personal level for individual students.

The health-promoting school ethos is about getting buy-in in other ways through the life of the school so that, when children go down to the dining room or tuck shop, they do not find chocolate when they have just been told that it is high in fat and sugar, is no good for our teeth and can put us at risk of putting on weight. As you point out, young people are very quick indeed to identify inconsistencies and discrepancies. That is one of the reasons why the requirements of the regulations go beyond the school lunch to the rest of the food that is served in the school. The previous inconsistency in that did not make any sense.

**Eleanor Coner:** However, what young people get out of that message is that they are never allowed to eat chocolate, eat fatty foods or do this or that. The message that they should get is that they can have chocolate but only as part of a balanced diet and with physical activity. They know about obesity and the bad things in certain foods, so they need a more positive message. They only read the negative bits of the message and hear "You can never eat chocolate again because it is bad for you," which is not true.

**Aileen Campbell:** What consideration was given to the seasonality of fruit and veg? I represent the South of Scotland; I grew up in Perthshire and I am conscious that, every summer, there were no raspberries and strawberries in school. It seemed like a no-brainer that they would be available in schools, considering how Finland used berries to reverse its appalling health trends. In fact, we had a presentation a couple of weeks back from berry Scotland, which showed innovative ways of

presenting berries. The number of berry fields is reducing and nobody is consuming berries. It would make sense to educate children about where and how their food is grown as part of their learning about a healthy diet. I did not see any consideration of that in the evidence that we have received. Would you like to comment on that?

**Eleanor Coner:** Such work is going on. This week, a parent council that wants to set up its own vegetable and fruit garden in the school was on the phone to us. There are lots of initiatives like that. Children are learning about farms, how they work and how food is sourced. It is a matter of spreading that message. These days, children are far more aware of food and where it comes from than perhaps we were when we were young—or than I was, anyway; you are much younger than me.

**Dr Higginson:** As I said, the primary focus of the expert working group was on the nutritional aspect. We tried to be cognisant of wider issues, but that was the remit that we were given.

I was at the berry Scotland event the other week, and I agree that the berries were delicious. There is a strong case, on health grounds, for promoting berries along with all sorts of other fruit and vegetables. However, on seasonality, I refer you to the duty that is placed on schools and local authorities by the 2007 act to apply principles of sustainable development, following guidance issued by ministers, in anything that they do in relation to the requirements. I also refer you to the national food policy that the Government consulted on recently, and which, I understand, is moving forward some work on seasonality. Our discussion should be located in the context of that wider work, in which the issues of local food and sustainable food supplies arise frequently.

**Jeremy Purvis:** Before I ask about which areas the regulations will apply to, I will follow up on Ken Macintosh's earlier point. Mr Sutherland, do you think that pupils make a distinction between chocolate, in the form of chocolate bars, chocolate flakes, chocolate buttons, chocolate chips, chocolate-filled eggs and so on, and cereal bars, processed fruit sweets and sugar or yoghurt-coated fruit and nut bars? I think that children make a distinction between them and think that one is healthier than the other, but they will all be banned. What do you think about that, in a school setting?

**Colin Sutherland:** It is part of the education process. Children need to know that what appears to be a healthy cereal snack might be more full of sugar and salt than something that appears to be a worse choice.

**Jeremy Purvis:** However, if all of those snacks are banned, you will not be making a distinction that enables someone to make a choice about

what kind of confectionary bar is the lesser of two evils.

**Colin Sutherland:** I suppose that there are degrees of badness. I have already said that we would prefer someone to choose a semi-healthy or a semi-poor option than a totally poor one. I think that we should go for it.

**Jeremy Purvis:** On coverage, why should access to free water throughout the day not apply to independent schools as well?

**Dr Higginson:** I would refer that question to officials in the Scottish Government who are working on the 2007 act.

**Jeremy Purvis:** We will do that.

Will packed lunches that are provided by schools be covered by the regulations? Many small schools in rural areas are unable to provide cooked meals, so they use packed lunches.

**Dr Higginson:** The regulations are all about food that is provided by schools, so packed lunches will be included.

**Jeremy Purvis:** On timing, the HAS submission indicates that some schools will find it easy to implement the regulations but that others will find the change from the current practice to be quite dramatic. The regulations apply differently to primary and secondary schools. Is the Government's suggested timeframe appropriate for the implementation of the guidelines?

**Colin Sutherland:** I hope that all schools are currently adopting the provisions of the hungry for success programme, which means that all schools will already have moved some way towards implementing the guidelines anyway. Our submission expresses concern about the fact that schools are at various points on that journey.

There is a lot of preparatory work to be done behind the scenes, but we cannot have a guillotine between 31 May and 1 June—we must be careful. Local authorities and their catering companies have a job to do, in association with schools. I am keen on local authorities developing points systems, which are a positive way of encouraging people to eat healthily. Holding prize draws with, for example, iPods as prizes would really get the troops in and support the introduction of the new standards.

12:30

**Ken Macintosh:** I have a couple of questions about monitoring, enforcement and evaluation. You said that we should go for it.

**Colin Sutherland:** Yes.

**Ken Macintosh:** Not only do we all agree with that statement, but we are going for it. We are here because we have already agreed to go for it,



with the passage of the 2007 act. We are discussing the regulations not because we are not committed to health-promoting schools but to ensure that the regulations take us further along the path of improving diet, tackling obesity and improving our country's health. Our aim is to ensure that the regulations do what they are intended to do. I assure you that there is no lack of commitment from the committee.

**Colin Sutherland:** I did not say that there was.

**Ken Macintosh:** I worry that we are having a debate about whether the regulations are required. There is no doubt that we require them—the question is, will they work? It has been suggested on a couple of occasions that, if they are implemented in the wrong way, they could set back our cause, by removing and restricting choice and provoking an equal and opposite reaction, which can happen.

So far, HMIE has played a role in monitoring and enforcement, but I understand that health promotion is not part of school inspection—it is a separate strand of HMIE's work. Is there a way of mainstreaming health promotion in the inspectorate's work? I know that schools view HMIE inspections in a certain way, so it might be helpful to include the health promotion part of a school's ethos in inspections. I cannot help feeling that that would give the process a major kick.

**Colin Sutherland:** I am fairly sure that hungry for success is a specific part of some inspections.

**Dr Higginson:** The inspectorate employs a team of nutrition associate assessors who assess the implementation of hungry for success in a sample of all the inspections that take place each year. The assessors look comprehensively at the food that is served and talk to pupils about their experience of the school meals service. Their most recent report, entitled "Hungry for Success—Further Food for Thought", is excellent and useful. The report is not about taking schools to task—although recommendations will flow from the inspections that have been carried out—but it is a useful source of examples of good practice and innovative work in schools.

**Ken Macintosh:** I could not agree with you more. Most members of the committee have seen the report and its precursors. However, those are stand-alone documents. Would it be possible to mainstream the ideas and ethos of health-promoting schools in school inspections? I suggested to Mr Sutherland that there is greater emphasis on and greater anxiety associated with such inspections.

**Colin Sutherland:** I am certain that, increasingly, inspectors will ask schools specifically what they are doing about numeracy, literacy, and health and wellbeing, because they

are the responsibility of every member of staff. I would be astonished if inspectors did not ask schools clear questions about health promotion.

**Ken Macintosh:** How will we evaluate the success of the regulations? What kind of monitoring and enforcement will there be?

**Dr Higginson:** I can offer an answer to that, although it is not my specific area of expertise. I chaired a sub-group of the expert working group, which considered monitoring in particular. Previously, schools used a variety of software packages to analyse their menus. Much clearer guidance on the process of analysing menus to ensure that they comply with the standards has now been developed. I am sure that colleagues at HMIE would be delighted to provide you with more detail on that should you wish it. That process of analysing menus takes place in any school that the inspectors visit, but other things are assessed, too: the meals service is observed and pupils are spoken to, so that a well-rounded report can be produced at the end of the visit. I am afraid that that is as much as I know about the subject.

**Ken Macintosh:** Would you be disappointed if there was a fall-off in school meal uptake?

**Dr Higginson:** I am certainly hopeful that we will maintain current levels of uptake and see them grow over time. I would be naive if I did not think that there might be a bit of a fall-off initially, but the situation here is different from that in England, where there have been serious falls in uptake, because we have been working on this agenda for five years in some schools. In addition, we have good buy-in from staff and colleagues such as Colin Sutherland; many parents who are involved in parent councils are pushing this agenda forward; and we have strong support from the Government and other partners. There might be a fall-off in uptake in secondary schools, but that is less likely in primary schools, because although there was an initial dip in uptake in primary schools after the hungry for success initiative was introduced, the level has increased again strongly. We might expect to see a small fall-off, but, given all the measures that we have talked about, I am hopeful that we will see the level of uptake rebound quite quickly, so that we can build on it further.

**Elizabeth Smith:** To what extent is there a problem with school facilities, particularly kitchen facilities and the layout of dining rooms and serveries?

**Eleanor Coner:** I can speak only from a parent's perspective, but one of the big issues for children is that dining rooms are too crowded and too noisy and children do not like queuing, which is why they choose to dine elsewhere. As Colin Sutherland said, a lot of schools just do not have

the room to allow every pupil to stay in for school lunches. There are ways around that, such as having sittings, but we cannot expect every school to take on board—

**Elizabeth Smith:** What about the physical layout in the kitchen and the equipment that is used? Let us be honest: a lot of our schools are not exactly new and were designed for a style of eating that is perhaps different from what we are trying to promote. Is that a serious problem?

**Eleanor Coner:** I do not know. I can speak only from a parent's perspective. A lot of parents have told us that in their school there used to be a kitchen where the meals were cooked, but costs have been cut so the kitchen has been closed, and there are only meals on trays, which are not enough for their children. A lot of parents organise tuck shops, but they are not allowed to use the kitchen facilities in public-private partnership schools, because the kitchen is somebody else's responsibility. I do not have any figures on that.

**Colin Sutherland:** The picture is mixed throughout the country.

**Elizabeth Smith:** That brings me to another point on facilities. When it comes to running schools, there is huge pressure these days to cram everything into the curriculum. We are trying to promote a lot of extracurricular clubs and after-school activities, which does not exactly help with this business of children having a slightly more leisurely lunch. Among the criticism that we get from local authorities is that far too many children are being channelled through the school day too quickly, which means that they try to eat food that can be quickly consumed, often as they are moving, which might not be the best kind of food for them. Is that another issue?

**Colin Sutherland:** Such issues need to be weighed up in total. Lunch-time clubs in schools tend not to be the active ones—they tend to be art, jewellery-making, chess and eco-school clubs. Youngsters are given a pass to go to the head of the lunch queue, get their sandwich and take it to the room where their club meets, which helps in the sense that at least they do not eat on the move; they eat with their teacher in the room where the club meets. I expect that to be the case on the whole.

**Elizabeth Smith:** A huge issue has come through some of the panel's comments this morning. If children are not being particularly well nourished at home—if the home situation is not giving them the right food—and if a lot of them are turning up without having had breakfast, we have a real cultural issue about how children have their food. That is part of the problem, which is not necessarily to do with finance; it is to do with how

people approach the food that they eat, and it is about cultural change.

If we look at countries such as France and Italy, we see that families sit down together to meals a lot more than Scots do. Although you are doing a lot of good work on nutrition and changing attitudes within schools, I am interested in your views on an accompanying policy, because if work on nutrition is not complemented by what happens at home, we have a serious issue. Are there any policies that we as politicians, and the Government in particular, can ask to be adopted so that parents feed their children a bit better than they do now?

**Eleanor Coner:** You cannot dictate to parents. Unfortunately, in feedback on some of the projects that have been going on in primary schools, parents have told us, "My six-year-old is coming home and telling me what to cook and I'm not allowed to give him this or that." That is not the way to go. It makes me really angry when parents are dictated to that they must have this or that. At certain times of year, fruit and vegetables are extremely expensive—I do not know how young families manage to feed their children at the moment. Basically, any food is good for them, because at least they are eating something. Everybody has to work together rather than tell people what they should be doing.

Lots of good projects are taking place. We heard of one school where parents and children cook together after school and there are classes on how to cook on a budget. Such projects should be encouraged, because parents need to be encouraged, not dictated to.

**Elizabeth Smith:** I had a youngster with me yesterday who was doing work experience and she provided me with the scenario from her school where the pupils, parents and staff are all involved in helping to set menus. That seems to be highly successful. They have almost a traffic light system to indicate healthy and unhealthy foods. The fact that everyone is involved in the process rather than their being told what to do is obviously effective. Will you comment on that best practice?

**Eleanor Coner:** As I said at the beginning of the meeting, if you take children and young people along with you, they are more likely to adopt good practice. If you tell somebody, "You're not allowed to do that, you're not allowed to eat that," I do not know about you, but I am round the back of the sheds eating it. If people believe in something, they will go along with you. That is the only way to go, because you cannot dictate to people.

**Colin Sutherland:** That also links in with schools being health promoting, having nutrition action groups with pupil involvement and having school council or house council systems in which

the pupils have a voice that can be fed into the school. I recently went round the first and second-year classes in my school and asked them what was good about the school and what could be improved: food and queuing were high on their list. It was good to engage them in dialogue about the positive reasons why we do some things. The pupil voice is vital.

12:45

**Christina McKelvie:** I hope that we are coming to the end of our questions, because I think that everybody is desperate for their lunch, as we have been talking about food all morning.

A whole-day approach was mentioned earlier. Does that include breakfast clubs?

**Dr Higginson:** Yes. The new requirements apply to breakfast clubs that schools provide.

**Christina McKelvie:** The one in my area is highly popular, and it is healthy as well.

**Dr Higginson:** Yes. Breakfast clubs are an excellent service.

**Christina McKelvie:** The Headteachers Association of Scotland has said that parents are key to children's nutrition, but that little information on it goes out to them. Can children's diets be improved without first convincing their parents?

**Colin Sutherland:** Yes, I hope so, but that must be considered part of the overall picture, and if we are all on board, the chance of success is hugely increased. The point that we were trying to make was simply that school is very much part of life, but it is only one part of life, and it is important for families to sit at home and eat together. We were suggesting that, if a longitudinal study on attitudes to food and what people eat was done in the past, another could be done now and another in a few years' time, to enable us to spot national trends. There is a big job to be done to educate us all—including me—because we all know what we should do but we do not necessarily do it. The point that we were making was that there is a wider role, but doing something in school as a one-off or stand-alone is highly important.

**Christina McKelvie:** I agree. Much of the evidence shows that many children are educating their parents, which can be a good thing. Perhaps Ms Coner has more knowledge about the type and volume of information that parents should get.

**Eleanor Coner:** The information must be realistic. It is all very well saying that we need a certain amount of fruit and veg but, in some circumstances, that can be expensive. We would all like to eat fair-trade produce, free-range eggs and organic meats, but that is simply not possible for some people, so we must be realistic and

consider where people come from and where and how they live.

Eating habits have changed. I love nothing better than being round the table with my three boys and my husband having a good old family meal but, because of the way that our lives are now, we often eat in shifts, because everybody comes in at different times. We must be realistic and consider where parents are.

**Dr Higginson:** I refer the committee to my response to an earlier question, which illustrated the range of work that is going on in Scotland to improve diet and promote healthy eating among the wider population. I agree that the social aspects of eating are really important.

As a result of the recent Government concordat with local authorities and the national performance framework, targets on children's diet have been set for local government to reduce by 2018 the rate of increase in the number of children who are outwith the healthy weight range. Local authorities now have a responsibility to consider what they can do beyond the work in schools to promote a healthy diet. That will involve the wider community, not only children.

**Colin Sutherland:** I will take that on a little bit: we have already mentioned fair trade and sustainability, but although the links between health promotion and eco-schools are obvious, I am not sure that they are made as well as they could be, so I make a plea for us to try to tie them together. For instance, there is an enormous amount of packaging on the food that is sold in shops, but that is also the case for the food that school kitchens purchase. There will be hygiene reasons for that, but I cannot help but think of the mixed messages that are being sent out. Plastic bottles of water are appalling for the environment. If schools had drinking fountains at which youngsters could fill a bottle, it would help towards our eco-school, sustainability and health promotion measures. We need joined-up thinking.

**Eleanor Coner:** I suggested that to someone, only to be told that it could not be done. I was told, "Just think of the germs that are left on the bottle. It has to be properly cleaned."

**Colin Sutherland:** But it is their bottle and their germs.

**Eleanor Coner:** That is what I said.

**Colin Sutherland:** I know what you are saying.

**The Convener:** I will call Ken Macintosh, if his question is brief.

**Ken Macintosh:** It is. Can school kitchens cook puddings? I was in a local school the other day talking about fair trade, and I was told that puddings are no longer cooked in our school kitchens.

**Eleanor Coner:** Some time ago, I ate lunch in a primary school. I had a nutritious and healthy main course of roast dinner and vegetables—it was really nice—and the best chocolate sponge that I have ever had.

**Colin Sutherland:** With custard?

**Eleanor Coner:** Of course, with custard. If school kitchens put a sliced banana on top of a pudding like that, it is a perfectly healthy dessert. I return to what I said about chocolate; it is all about balance. I still remember my school dinners—mainly the puddings.

**Dr Higginson:** The technical answer to the question is that school kitchens can cook puddings. Food standards apply to school dinners, but nutritional standards have also to be met in terms of the number of calories and levels of energy, fat and so forth. Anything that is not referred to specifically in the food standards has to make its contribution to the value of the whole meal, as averaged across the week. A school kitchen can plan to leave space for a really fatty dessert. Providing that the value for the meal, as averaged over the week, is met, the kitchen can include a pudding, as long as it does not have a confectionary topping.

**The Convener:** That concludes the committee's questions. I thank the witnesses for their attendance.

12:52

*Meeting suspended.*

12:53

*On resuming—*

## Annual Report

**The Convener:** The sixth and final item on our agenda is consideration of our annual report. The clerks prepared a draft report and circulated copies to committee members. I have asked for part of paragraph 8 on the Creative Scotland Bill to be removed. Given that we are reporting on our work from May last year to May this year, it seems odd to say:

"It is expected that the Committee will publish its Stage 1 report in early June 2008."

The clerks will alter that.

**Jeremy Purvis:** On that basis, we will need to amend paragraph 1, which states:

"the Committee has acted as lead committee on two Scottish Government bills".

**The Convener:** Some of what is set out in paragraph 1 relates to the first part of the year. We acted as the lead committee in the stage 1 consideration of the Creative Scotland Bill. I propose amending paragraph 8 only as it relates to the publication of the stage 1 report.

**Jeremy Purvis:** Okay. We are removing only half of it.

**The Convener:** As committee members have no further comments, I take it that members are content with the report.

**Members indicated agreement.**

**The Convener:** That concludes the committee's considerations. I thank members for their attendance.

*Meeting closed at 12:55.*

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