

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 18 June 2008

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

17th 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:

David Cowan (Scottish Government Schools Directorate)
Councillor Isabel Hutton (Convention of Scottish Local Authorities)
Fiona Hyslop (Cabinet Secretary for Education and Lifelong Learning)
Adam Ingram (Minister for Children and Early Years)
Barbara Lindsay (Convention of Scottish Local Authorities)
Robert Nicol (Convention of Scottish Local Authorities)
George Reid (Scottish Government Education Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 2

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 18 June 2008

[THE CONVENER opened the meeting at 09:30]

Subordinate Legislation

Charity Test (Specified Bodies) (Scotland) Order 2008 (Draft)

The Convener (Karen Whitefield): Good morning. I open the 17th meeting of the Education, Lifelong Learning and Culture Committee this year. I remind all those who are present that mobile phones and BlackBerrys should be switched off.

Agenda item 1 is consideration of the draft Charity Test (Specified Bodies) (Scotland) Order 2008. I am delighted that the committee has the opportunity this morning to hear from Fiona Hyslop, the Cabinet Secretary for Education and Lifelong Learning. She is accompanied by Sean Ledger, the head of charity law in the civil law division; George Reid, head of the college strategy team in the further and adult education division; and Lorraine Stirling, principal legal officer in the development, education and local authorities division of the legal directorate.

My apologies to Siân Ledger—I pronounced her name incorrectly at the beginning; I might even have performed a sex change inappropriately. I am sorry about that, Siân. I invite the minister to make some opening comments on the draft order.

The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop): Good morning, convener and committee. I am pleased to have this opportunity to outline the need for the Charity Test (Specified Bodies) (Scotland) Order 2008. It addresses a specific point that was raised by the Office of the Scottish Charity Regulator in relation to the charitable status and independence of the incorporated further education colleges. All incorporated Scottish further education colleges are charities. As such, they must meet the charity test as set out in the Charities and Trustee Investment (Scotland) Act 2005. The act states:

“A body ... does not ... meet the charity test if ... its constitution ... expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities,”

or if its assets can be distributed

“for a purpose which is not a charitable purpose”.

As part of its pilot rolling review in July 2007, OSCR concluded that John Wheatley College failed the charity test, because ministers' powers over the college meant that it did not meet the independence requirement. OSCR found that the college also failed the charity test because, in one instance, college assets are not tied to charitable purposes. The relevant ministerial powers are contained in the Further and Higher Education (Scotland) Act 1992, and they apply to all colleges that are incorporated under the act. Therefore, all those colleges will also fail the charity test for the same reasons that John Wheatley College did.

Following OSCR's ruling, we carefully considered the three options that were available to us. First, we could do nothing, which would result in colleges losing their charitable status. Secondly, we could remove or amend all the powers of control and the asset distribution provision so that colleges could pass the charity test. Thirdly, as a last resort, we could exempt the colleges from the independence requirement and the asset distribution requirement of the charity test.

Ministers considered it important to maintain the charitable status of all the incorporated colleges. We believe that charitable status is entirely consistent with the standing and activity of colleges, the challenges that they address and the way in which they conduct themselves. We share OSCR's view that colleges have an inherently charitable purpose and deliver substantial public benefit. Therefore, taking no action was simply not an option.

After detailed consideration of and consultation on the various powers and whether they could be amended or removed, we concluded that the most appropriate way forward is to amend the provision on asset distribution in the 1992 act to tie it to charitable purposes. That will be done through an order that will be laid later this year. However, we agreed that it is not appropriate to amend or remove all the powers of control. That is because we need to retain control over college powers and constitutions to ensure that they continue to operate within a framework that reflects relevant policies and priorities. An example of the need for that power arose when previous ministers asked Parliament to amend the powers of colleges to enable them to deliver their now highly acclaimed programme of skills courses for young people who are still at school.

We have therefore decided to proceed with the draft order that is now before the committee, which requires the approval of Parliament, to exempt all the incorporated colleges from the independence requirement because of their unique governance structure, the distinctive role that they play in Scottish society and the significant amount of public funding that is invested in them.

The draft order is the first of two that will address the issues that OSCR identified and enable colleges to retain their charitable status. The second order, which amends the provision on asset distribution in 1992 act, will be laid later this year. It will be a technical amendment. Since the creation of the Scottish Further and Higher Education Funding Council, ministers no longer have a direct interest in the funding issues of individual colleges, including what happens to the proceeds of any assets of which they dispose.

I highlight the fact that the order exempts the colleges that are listed in it only from the requirement under section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005 for charities to be free from ministerial control. The colleges will still be subject to all the other aspects of the charity test, including the asset distribution provisions and all the requirements of charity law. However, without the exemption, they would lose their charitable status.

Four publicly funded colleges are not incorporated under the 1992 act. They do not face the problem that OSCR identified because the ministerial powers of control in the act do not apply to them. Accordingly, they do not need to be included in the order.

The order is important, as it addresses the uncertainty that incorporated colleges face about their charitable status following OSCR's ruling on ministerial powers.

The Convener: Thank you very much for those comments, minister. Members of the committee now have an opportunity to ask questions.

Elizabeth Smith (Mid Scotland and Fife) (Con): I compliment the Government on the move to exempt our colleges. It is vital for their future that it take place as soon as possible.

Colleges have their own constitutions. Is the cabinet secretary confident that individual colleges will not have to rewrite their constitutions to accept the order?

Fiona Hyslop: There will not have to be any rewriting for the purpose of maintaining charitable status. We have thought about that carefully, which is why we have taken the steps to exempt colleges as a last resort. The order will provide the powers that we need to exempt them from the requirement for independence from ministerial direction, so the responsibility is the Government's and the colleges are not required to change their constitutions.

Elizabeth Smith: Do you anticipate that any of the colleges will have to change their structure or organisation, educational or otherwise?

Fiona Hyslop: No, we do not anticipate that.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I, too, welcome the move and agree with Elizabeth Smith. I will ask one question for clarification. The order covers the colleges' boards of management, which means the colleges themselves, but many colleges have subsidiary or partnership organisations, such as trading operations; are they covered by the order as well?

Fiona Hyslop: I ask George Reid to answer that.

George Reid (Scottish Government Lifelong Learning Directorate): Jeremy Purvis is right that many colleges have set up subsidiary organisations. They are not covered by the 1992 act, so they do not require to be covered by the order.

Jeremy Purvis: That is helpful.

Fiona Hyslop: The convener will remember—because, I think, she was convener of the committee that considered the Charities and Trustee Investment (Scotland) Bill—that the Further and Higher Education (Scotland) Bill was being considered at the same time as the Charities and Trustee Investment (Scotland) Bill. That was one of the key constraints at the time.

I welcome Jeremy Purvis's and Elizabeth Smith's support for what we are trying to do. I hope that the rationale that we have set out is clear enough, but we are more than happy to provide further briefing if the committee needs it.

Ken Macintosh (Eastwood) (Lab): To continue the spirit of consensus, I also welcome the order. We are all agreed that it is important that colleges retain their charitable status, because it would have a huge detrimental impact if they did not. Did any of the consultation respondents object to retaining charitable status through exemption and, if so, how were those concerns addressed?

Fiona Hyslop: The Scottish Council for Voluntary Organisations raised concerns similar to those that were raised during the passage of the Charities and Trustee Investment (Scotland) Bill. We have now had some time for the Charities and Trustee Investment (Scotland) Act 2005 to bed in, and it is important to reflect that we are approaching the matter very much in the spirit of the act, which emphasises the importance of charities being independent. That is why we are rolling back some of the ministerial powers that we might want to have over colleges, but we have to maintain the powers to determine and alter board constitutions and to change the powers that are given to boards of management to enable initiatives such as the skills relationship with schools that I mentioned earlier. In the spirit of the act, we recognise that colleges are unique and that they have a particular governance structure and public interest that we need to protect.

The SCVO's concerns are more about the importance of the Government protecting the independence of charities, which we want to do—that is reflected in our approach. The exemption that we will bring forward later on the disposal of assets for charitable purposes will be an important signal of the importance that we give to the independence of charities.

The Convener: I was indeed the convener of the Communities Committee when it considered the Charities and Trustee Investment (Scotland) Bill. This issue concerned the committee at the time, so I welcome what the Government is doing and agree with my colleagues that it is the appropriate course of action.

Mr Macintosh picked up one of the big issues that the Communities Committee wrestled with when it was considering the bill: the importance of the independence of charitable organisations. Following on from Mr Macintosh's question, are you confident that these proposals will not in any way undermine the independence of other charitable organisations or allow challenges to be made? I am sure that the Government considered that, because it has been widely debated, but it would be helpful if we could get an assurance that it did.

Fiona Hyslop: Yes, we did. We examined the other options first, because one of those might have been the easiest and simplest way to reflect the thinking behind the charities legislation. However, we also have to consider the matter in the context of the Further and Higher Education (Scotland) Act 1992.

Colleges are distinct. Because of the establishment of the Scottish funding council by the Further and Higher Education (Scotland) Act 2005, the Government is to a great extent removed. We cannot interfere with individual colleges in matters such as employment issues or the funding of particular courses, although a number of MSPs frequently write to ministers to ask them to do so. Remarkable independence has been established through the development of the Scottish funding council, which—as other charitable organisations can reflect on—means that there is no ministerial responsibility and direction for individual colleges, although we provide strategic guidance for the sector as a whole.

The Convener: Item 2 is continued consideration of the subordinate legislation. We have the opportunity to debate the matter, but I am not sure that there will be a lengthy debate.

Motion moved,

That the Education, Lifelong Learning and Culture Committee recommends that the Charity Test (Specified Bodies) (Scotland) Order 2008 be approved.—[*Fiona Hyslop.*]

The Convener: I see that members have no additional points to make. Cabinet secretary, do you have anything to add? We do not have much of a debate for you to respond to.

Fiona Hyslop: I thank the committee for its co-operation in this matter, which is important to many colleges and their students.

Motion agreed to.

That the Education, Lifelong Learning and Culture Committee recommends that the Charity Test (Specified Bodies) (Scotland) Order 2008 be approved.

The Convener: I suspend the meeting briefly to allow for a change of witnesses.

09:43

Meeting suspended.

09:47

On resuming—

Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008 (Draft)

The Convener: Item 3 is a further piece of subordinate legislation. I am grateful to the Minister for Children and Early Years for coming to the meeting a little earlier than he would have expected. I am delighted to welcome him.

The minister is joined by three Scottish Government officials: Mike Gibson, who is head of the support for learning division; David Cowan, who is a policy officer in the support for learning division; and Laurence Sullivan, who is senior principal legal officer in the solicitors education, land and pensions division.

The Minister for Children and Early Years (Adam Ingram): Good morning. Our vision for Scotland is that we will live longer and healthier lives. We are all aware of the health challenges for Scotland's young people. As I am the Minister for Children and Early Years, my focus is on ensuring that young people get the best possible start in life.

The Schools (Health Promotion and Nutrition) (Scotland) Act 2007 will play an important role in addressing the challenges. The act places Scotland at the forefront. We are one of the first nations to focus on the importance of diet and health promotion in schools, and we want to bring coherence and integration to a range of food and health issues that link to the economy, education, health and environmental stewardship.

Parliament voted unanimously in favour of the act in the previous session of Parliament, and the Government has welcomed its responsibility to

implement it. Last month, we issued the health promotion guidance for the act, along with draft experiences and outcomes for health and wellbeing, within the curriculum for excellence. Taken together, the package provides a comprehensive approach to developing the skills, knowledge and experience needed to support children and young people to lead healthy lives, now and in the future.

Today, we are considering the draft Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008, which are designed to complement and support the wider health-promoting schools approach of the act. If approved, the regulations will, with the health promotion guidance, help to break Scotland's unhealthy eating culture and ensure that children and young people opt to eat healthier food both in and outwith school.

As members know, the regulations are based on the recommendations of an expert group that was set up by the previous Administration. I put on record my thanks for the group's hard work.

I realise that not everyone is happy with the regulations. Some people feel that they are too strict, others that they are not strict enough. However, if we are to change Scotland's eating culture, we must be prepared to hold the line and build on hungry for success.

I have listened to the concern that has been expressed by some local authorities that, if the regulations are introduced this August, they might have a negative impact on school meal uptake in some secondary schools. As a result, I have decided that, if the regulations are approved, their commencement in secondary schools will be delayed until August 2009.

In reaching that decision, I have also taken account of Her Majesty's inspectorate of education's second progress report on the implementation of hungry for success, which found that the policy's progress in secondary schools has been slower. The year's delay will give the secondary schools that need it more time to make a phased transition to the new regulations. Of course, the schools that feel able to make the changes effectively from this August will be encouraged to do so. Indeed, I am encouraged that some councils are planning to introduce the new requirements into secondary schools in the new term.

I have also responded to requests from food and drinks manufacturers for more time to plan for the changes, and I urge them to take this opportunity to support our work in schools and to develop more products that meet the high standards that we are setting. I will keep the situation under review and consider whether any further action is

needed to ensure that an adequate selection of healthier products is available.

We are all responsible for our young people's health and wellbeing, and Scotland is already leading in the strategy to bring about cultural change through food education in schools and to embed that message in communities. The Parliament in the previous session threw its full support behind the Schools (Health Promotion and Nutrition) Act 2007. If the committee does the same today and recommends that the draft regulations be approved, we can together realise our common goal of a healthier Scotland.

The Convener: Thank you, minister. Do members have any questions or wish to raise any concerns following our evidence-taking session on this topic?

Elizabeth Smith: You said that the response to the regulations has generally been quite favourable but that some councils have expressed concern about implementation. Do those councils make up quite a large minority?

Adam Ingram: No. We are talking about one or two councils—I am thinking, in particular, of Glasgow City Council. Moreover, the concerns that have been expressed do not necessarily apply to a whole authority; they might apply only to particular schools.

We want to ensure that we maintain and do not disrupt the progress in school meal uptake that we have made in recent years. I have listened to the representations made by some authorities and decided to delay commencement in secondary schools for a year to allow them to get up to speed. As members will know, hungry for success itself was a wee bit slower to take off in secondary schools.

Elizabeth Smith: So the year's delay is less to do with concerns about the policy itself and more to do with administration and helping schools to implement the regulations.

Adam Ingram: Absolutely. It is a question of implementation. Delaying the introduction of the regulations will allow some local authorities to get fully up to speed with introducing healthy eating, particularly in secondary schools.

Elizabeth Smith: Do you have on record a considerable amount of concern that the regulations might have a detrimental effect on the uptake of school meals?

Adam Ingram: No. I know that the committee has heard concerns about that and has considered the English example as a warning. However, the reality is that we have had the experience of hungry for success for five years, so we are well ahead of the game on the introduction of healthy choices in schools. There has been a

little bit of to-ing and fro-ing in school meal uptake, but the latest figures suggest that roughly half of Scottish school pupils take meals at school and that the figure has stabilised. We do not envisage a significant change in uptake as a consequence of the regulations. I hope that, over time, we can improve uptake.

Ken Macintosh: Do you collect information on the voluntary arrangements that are already in place? I imagine that such arrangements are in place in most schools, although it might only be in some. In my local authority area, very few schools sell sweets or fizzy drinks. Do you collect information on the impact of those voluntary arrangements for healthier choices?

Adam Ingram: Do you mean in schools?

Ken Macintosh: Yes.

Adam Ingram: I am not sure about that. I invite my colleague to answer the question.

David Cowan (Scottish Government Schools Directorate): I am sorry, but I ask Ken Macintosh what he means when he talks about voluntary schemes.

Ken Macintosh: Most schools in my authority do not sell sweets or fizzy drinks, although they might sell chocolates. Do we have information on the impact of those voluntary restrictions on uptake and changes in diet?

David Cowan: Do you mean for local authorities that have removed those products voluntarily?

Ken Macintosh: Yes.

David Cowan: We do not have hard and fast information on that. We have anecdotal information from authorities that have made that transition already. The situation varies across the piece. Some authorities used hungry for success money to offset the initial losses that they had as a result of removing those products. From what we have heard from places such as North Lanarkshire and East Ayrshire, there were initial losses, but the situation has pretty much stabilised—the accounts have been rejigged and the councils are not noticing any loss of income.

Ken Macintosh: I was thinking about the impact on diet rather than the impact on finances.

An issue has been brought to my attention by several fair trade groups in schools. It is not just about the income that fair trade products generate for those groups but about the way in which those products tend to be pushed through schools, rather than through local shops or newsagents. Although there is fantastic growth in fair trade generally throughout Scotland, it has been led by school and church groups and others. If we do not make an exception for fair trade products such as chocolate, we might be taking a step backwards.

Did you consider making an exception for fair trade chocolate, which some might argue is not as bad for children as chewy sweets or fizzy drinks are?

Adam Ingram: That is arguable. We did not consider making an exception for fair trade products, although we support the fair trade campaigns. As you know, there are a range of fair trade products. Fair trade has been promoted using chocolate to bring the issue to the attention of people, particularly children. We seek to remove confectionery in schools across the board, but that is not to say that we cannot promote fair trade products in schools. For example, we all know about fair trade fruit. Perhaps we should focus on those products, rather than on chocolate.

I do not know whether committee members have seen the evidence in the Food Standard Agency's sugar survey, which reported in March this year that 17.4 per cent of the diet of Scottish children was made up of sugar-type products such as confectionery, chocolate, sweets and so on. The recommended level is less than 10 per cent. That shows the scale of the challenge that we face to improve children's diet. I do not think that we can make exceptions for fair trade chocolate.

10:00

Ken Macintosh: The sugar survey is interesting—I look out for it avidly every year. Another report that came out yesterday suggested that Scottish pupils are second in the world for fruit consumption, so there might be encouraging signs.

Perhaps I overemphasised fair trade chocolate. One of the most popular snacks is Geo cereal bars, which are fair trade. We share the desire to improve children's ability to make healthier choices, but the question is whether, by making Geo bars and other such confectionery available, we will encourage them to do that or whether they will just sidestep school altogether. Two weeks ago, we heard interesting evidence that where the healthier option is made available alongside more traditional options, uptake of the healthier option is noticeable but that, where such a choice is not made available, people vote with their feet and go elsewhere.

It is a question of what works. That is why I asked how we monitor the situation, and how we will ensure that the regulations are working after 2009, when they are introduced in secondary schools. Clearly, the products will not be sold to children, but how will we monitor whether children are buying fewer sweets altogether or just getting them outside school and bringing them in? We heard evidence about mini black markets in schools. How do we monitor such things? What

role will the Government play in ensuring that the regulations are a success?

Adam Ingram: There will be a range of measures to which we can refer. You mentioned the World Health Organization report on the very good figures for 11-year-olds in Scotland eating fruit, which are encouraging. Perhaps that was a consequence of hungry for success and the pushing of fruit in primary schools and nurseries.

We have our own growing up in Scotland survey, which will be very detailed and should be able to track changes in behaviour over time. I mentioned the curriculum for excellence and the health promotion guidance in my opening remarks, and HMIE will monitor those. We will move towards a mainstreaming of inspection activity that is focused on the new curriculum for excellence, so that issues such as health and wellbeing outcomes and literacy and numeracy will be reported on over time. We should be able to monitor what is happening with behaviours in schools by using that range of surveys and inspections.

I take Ken Macintosh's point about removing products from schools. I will watch that carefully, because we do not want to tip the situation over to the point at which children leave school to find other choices. We have to strike a balance.

The Convener: Minister, you said that you will monitor statistics. In North Lanarkshire, we have fulfilled the hungry for success guidelines and most of our tuck shops are healthy tuck shops. There is a greater emphasis on the products that are sold, such as toast or other snacks, being made in schools. However, I have spoken to a number of primary schools in my area, and if there are insufficient resources, some schools will not have a tuck shop in the mornings next term.

In many deprived communities, children come to school having had nothing to eat before they leave the house. If there is no breakfast club, their first chance to get something to eat in the morning is to buy something at the school tuck shop. Many of those children buy toast. If there is no tuck shop because the school is worried about meeting the guidelines, or if there are insufficient resources and cost issues about the provision of a tuck shop first thing in the morning, some of those children, who probably include some of our most vulnerable children, will go without anything until lunch time. Alternatively, they might buy something on the way to school, which will be a much less healthy option.

Have you considered that, and will you monitor the situation?

Adam Ingram: The question of tuck shops has certainly been raised. I guess that we come at it from the perspective that, if we are promoting

health in schools, it would be perverse to allow tuck shops to sell unhealthy choices. If we did so, we would be accused of sending out mixed messages.

I agree that local authorities could consider providing food for children early in the morning, and particularly breakfast clubs. I visited an interesting project in Edinburgh, where the local Heart of Midlothian Football Club and local businesspeople are sponsoring breakfast clubs. The idea is to have a breakfast club in every school in Edinburgh, and they are well on their way towards achieving that. That is a good initiative, and such work is to be encouraged throughout Scotland. For example, Learning and Teaching Scotland has a health and wellbeing network, which could perhaps be used to try to spread that best practice throughout the country.

I do not know whether that adequately answers your question, convener, but that is the broad thrust of where we are coming from.

The Convener: I do not think that anybody would object to the provision of breakfast clubs, although it is unlikely that Airdrie United would have the resources, even in partnership with local businesses, to provide breakfast clubs in every school in my constituency. Nor would that necessarily be welcome in Shotts, where people are much more likely to be Motherwell fans than Airdrie fans.

I am keen to find out whether the Executive will monitor what happens after the guidelines are implemented. Will you monitor whether we still have tuck shops in many of our schools in the 32 local authorities and exactly what is sold in them, or whether as a consequence we do not have tuck shops? At that point, an issue might arise, because we might be forcing children to purchase their morning snack elsewhere. I would prefer them not to do that. I would much prefer them to have a piece of fruit or some toast at school.

Adam Ingram: Clearly, we are keen for tuck shops of the type that you describe to be available to children. We will focus on that area in monitoring progress with the Schools (Health Promotion and Nutrition) (Scotland) Act 2007. We will do so as a matter of course.

Rob Gibson (Highlands and Islands) (SNP): We heard evidence, and you mentioned this morning, that the food and drink industry wants time to adapt its products to meet the regulations. At the same time, there is an issue about how procurement works in local authorities, and particularly their ability to source local, nutritious food. Do those issues impinge in any way on the draft Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008? Food that is sourced for tuck shops or is made in

schools should contain safe, healthy and, if possible, local ingredients.

Adam Ingram: Local authorities will refer to the regulations for the types of food to be procured. The member asked how food will be procured. The issues of sustainability, seasonality and local produce are covered in the Schools (Health Promotion and Nutrition) (Scotland) Act 2007. Sustainability should be a feature of procurement. I know that some local authorities have made significant progress on that front. My home area of East Ayrshire is an exemplar and has done excellent work on sourcing local, organic and non-processed foods.

Rob Gibson: Earlier we heard good news about the amount of fruit that youngsters eat. It is to be hoped that it will also be possible to measure factors such as seasonality. In the growing up in Scotland surveys, which measure how well children are progressing, are we measuring how well local authorities are coping with the move towards increased sustainability and seasonality?

David Cowan: We are conducting a scoping exercise right now to get a sense of what local authorities in Scotland are doing. We have issued a short survey that asks authorities whether they have initiatives to increase local sourcing or to meet other sustainable development objectives. We are awaiting the returns from the survey, as we want in the first instance to see what is happening. We have not yet established a formal mechanism for collecting information on such issues, but we will keep an eye on that possibility.

We are talking again to Learning and Teaching Scotland, health and wellbeing networks and hungry for success networks. At some point in the future, we will speak to procurement officers across the piece to encourage them to look more closely at sustainable procurement guidance, to make them aware that, under the 2007 act, they have a duty to do so, and to encourage them to use the guidance more regularly. We have not set out the entire process, but we intend this summer to issue a refreshed, revised version of the guidance that reflects recent experience and to encourage local suppliers to become engaged. We will keep an eye on that body of work as it goes forward.

Rob Gibson: I am sure that you would be happy for the procurement process to feed into work on nutrition, so that tuck shops can have much more local food.

Adam Ingram: Absolutely.

Jeremy Purvis: My question follows on from the valid points that Rob Gibson has made. Whereas the 2003 guidance refers to the provision of two portions of fruit and vegetables, the regulations that are before us stipulate:

"Not less than 2 types of fruit shall be provided every day."

Ensuring that two types of fruit are available all year round in term time may have an impact on the issues that Rob Gibson raised.

As Ken Macintosh and other members of the committee have suggested, instead of relying on other, more generic surveys of pupils' activity and health initiatives, we have an opportunity collectively to carry out specific monitoring of how the regulations are being implemented in schools and how pupils are reacting to them. Such monitoring could take place live, as the regulations are implemented. You have not yet indicated that the Government proposes to take that approach, but the committee believes that it might be worth exploring. What are your thoughts on commissioning specific research on the impact of the regulations and on youngsters' reaction to them, which is of key importance and will be reflected in uptake?

10:15

Adam Ingram: We have annual reports on uptake in schools. Nevertheless, the member makes a valid point and I will consider what research we can pursue to tackle the issues that he raises. I do not think that we have commissioned any such research at the moment, have we?

David Cowan: We have commissioned no research specifically on the regulations. However, as part of the survey of local authorities that we are undertaking, we are looking at what assessment local authorities themselves have made of healthy eating and health promotion initiatives. We are also conducting an international literature review of the research on what goes on in schools in other parts of the world as well as in Scotland. All that information should have been gathered towards the end of the summer. One of our reasons for doing that is that we need to decide what else we need to do specifically in Scotland—what longitudinal research we might undertake and whether there are any gaps that we need to fill.

A lot of organisations conduct research in the area, including the Food Standards Agency and the Scottish Consumer Council, which will shortly produce a report on what kids are eating outside school at lunch time. Work is also being done in our health department. If we are going to do something, we must ensure that we work with the research that already exists so that, rather than duplicate the on-going work, we add value to it.

Jeremy Purvis: That is welcome.

A difference between the regulations and the existing guidance is the fact that the allowed fat

content of school meals—both saturated fat and other fats—is being increased. That seems counterintuitive. We were unable to get clarity from the expert group, when we took evidence from it, and from others on that change. Can the Scottish Government officials explain it?

Adam Ingram: I will have a crack at it.

There has been some relaxation on the sodium content, too. The guidance permits a school meal to contain 33 per cent of the recommended daily allowance of sodium; we have increased that to around 38 per cent. The reason for that is that we want children to eat healthy school meals. Relaxing the restrictions on sodium and fat a little will allow tastier school meals to be prepared, which will develop youngsters' palates and tastes. The intention is to draw back again from the proposed levels and reduce them; however, we first want to entice youngsters to eat the meals that are on offer. It is following the experience that we have had over the past five years, with the hungry for success initiative, that those minor moves have been made. To compensate, we are being a little more restrictive on the snacks that are allowed to be made available throughout the day. So, over the piece, the balance will be restored.

Jeremy Purvis: That was a very good crack, minister. That satisfies me.

The regulations require the provision of drinking water in schools free of charge at all times. Ministers have the powers legally to make that provision apply to all schools, but it is being restricted to public schools and hostels that are provided by education authorities. Why should not that provision apply to all schools in Scotland?

Adam Ingram: You mean independent schools.

Jeremy Purvis: Yes.

Adam Ingram: I think that the 2007 act did not cover all schools, which is why the regulations do not cover all schools. Nonetheless, I imagine that the Scottish Council of Independent Schools will look carefully at the regulations and will want to respond appropriately to them.

Aileen Campbell (South of Scotland) (SNP): You talked about sharing best practice. I would like to draw your attention to an Irish project that realised the importance of making healthy food fun and cool, and the need to change children's thoughts about food. The project involved cartoon characters called food dudes and junk punks.

Is the Government actively considering not only statistics but the psychological aspect of children's thoughts about food, in order to help them make a healthy choice?

Adam Ingram: Such work starts early. Guidelines for nursery schools are in place, and they help to develop children's palates so that they get a taste for healthy food early on.

Primary schools have taken up the hungry for success programme with enthusiasm. However, the issue is about not only food choices, but the environment in which children eat the food, which can be made fun. In secondary schools, all sorts of things can be done to make the dining environment attractive, to encourage children to stay in school at lunch time.

We will issue leaflets to parents to inform them of the changes that are being made in relation to health promotion and healthy food promotion. Other leaflets will be issued to teachers, to explain what we want them to do. There is a case for conducting a marketing exercise of the kind that you describe.

The Convener: That concludes the committee's questions to you, minister

Motion moved,

That the Education, Lifelong Learning and Culture Committee recommends that the draft Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008 be approved.—[*Adam Ingram.*]

The Convener: We have up to 90 minutes in which to debate the motion, but that might be slightly excessive. As this is a debate rather than a question-and-answer session, the minister will respond to any points when he winds up.

Jeremy Purvis: The challenge will be to ensure that youngsters who wish to avail themselves of a healthy school meal are presented with a choice that is attractive to them. It would be perverse if the guidance resulted in such children choosing alternatives that are less healthy. In that context, I welcome what the minister said about monitoring the effect of the implementation of the regulations.

I commend the minister on the way in which he brought forward the regulations and on the detailed responses that he gave to the committee.

Ken Macintosh: I will continue in the same vein. It is clear that we are engaged in a common endeavour to drive up food nutrition standards in our schools, improve the healthier choices that are made available to our youngsters and tackle the growing obesity problem in Scotland.

The regulations are a step in the right direction, and I think that they will be successful. However, there is no guarantee of success. Rightly, most of the questions today showed that there is concern about what the impact of the regulations—which are a rather blunt instrument—might be on the complex psychology of children.

I think we are all agreed that it is important for schools to set an example, and not to undermine the parental role by offering children sweets and fizzy drinks that they might not be encouraged to have at home. However, everything about our schools these days is focused on developing the ability of children and young people to make choices, in terms of citizenship and so on. My main concern is that there is a slight contrast between banning items and removing choice, and encouraging children to take control themselves.

Over the past month or so, when I have visited schools, one issue has been raised repeatedly; I do not know whether the convener, too, has found that to be the case. The children feel that there is a little bit of, "Do as I say, not as I do" about the regulations. I never fail to be amazed by children's sophistication in being aware of such aspects. Most young people are switched on to, and aware of, what is healthy and good for them and what is not, although that does not mean that they always follow their reasoning.

One of the kids that I talked to in a school used the example of the Horrid Henry books. I do not know whether the minister is aware of them, but they are very funny and very good. I am not saying that Horrid Henry should be an example, but he has a brother called Perfect Peter, who does not eat sweets and would, I am sure, agree totally with the regulations. However, none of us is a Perfect Peter and we do not want our children to be, either.

After hearing the minister's comments, I am reassured that he shares the committee's concerns about the impact of the regulations. In particular, I am reassured by his comment that he will further examine how we monitor the impact: not just the uptake by schools, but the impact on children and whether they buy sweets elsewhere. Aside from those concerns, I fully support the regulations.

The Convener: Like others here, I welcome the legislation's direction of travel. It is important that we send out a signal and introduce legislation that will attempt to tackle and change our unhealthy eating habits. If we are to stand any chance of tackling the issue, we should start with our youngest citizens. However, like others, I have some concerns, especially regarding the provision of healthy snacks. It is important that children have access to snacks. There are issues about the choice of prepared snacks that are manufactured outside school, as schools would be able to purchase only a very limited choice of snacks.

Both the previous and the current Governments have challenged the manufacturers to step up and meet that challenge and to come up with new products that meet the nutritional requirements. I hope that the manufacturers will listen to the

Government and do that. I also hope, however, that you will monitor the situation so that we can be confident that our young people can access healthy snacks in school and that they do not have to go for long periods of time without any access to snacks and food, which could undermine their learning experience and their ability to take full advantage of being at school.

I do not think that anyone has anything further to contribute. I hope that the minister will respond to the points that members have made.

10:30

Adam Ingram: Certainly. With regard to your point about the response of manufacturers and food producers, we have been a wee bit disappointed that manufacturers have not so far brought forward proposals or ideas for product development. Perhaps they have been waiting for the regulations to be put in place so that they know precisely what situation they face. I hope that that process will begin to happen over the coming year and, as I said in my opening remarks, I will keep it under review.

I agree with the points that Jeremy Purvis and Ken Macintosh raised. We are not looking for our children to be Perfect Peters; we want to improve their health and wellbeing. Children might get something like a third of their daily nutrition during the school day, and we can do a lot to ensure that the nutrition that they get meets their needs. We are setting an example.

I hope that, through the health promotion activities in schools, we will develop children's understanding of the link between healthy eating and health and wellbeing, and the balance between energy intake and burning off energy in physical activity, which is an aspect that we have not touched on. The committee and I are in broad agreement on where we need to go and what we need to do in monitoring the implementation of the regulations. In due course, the committee will be furnished with any relevant reports on the issue.

The Convener: The question is, that motion S3M-1920, in the name of Fiona Hyslop, be agreed to.

Motion agreed to.

That the Education, Lifelong Learning and Culture Committee recommends that the draft Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008 be approved.

The Convener: That concludes our consideration of subordinate legislation. I thank the minister and his officials.

10:32

Meeting suspended.

10:34

On resuming—

Petition

Schools (Class Sizes) (PE1046)

The Convener: The fifth item on the agenda is continuation of the committee's consideration of petition PE1046, on class sizes. I welcome to the meeting representatives of the Convention of Scottish Local Authorities. I am delighted that Councillor Isabel Hutton, COSLA's education, children and young people spokesperson, has been able to join us. She is accompanied by Robert Nicol, leader of COSLA's children and young people team, and Barbara Lindsay.

I thank the witnesses for the written evidence that they submitted to us several weeks ago and for giving us the opportunity to follow it up. Members are keen to move straight to questions.

Elizabeth Smith: Thank you very much for your written submission, which I have read very carefully. What interested me most in it—if I have read it correctly—is that you are perfectly happy to accept the general principle of reducing class sizes, but that, instead of a one-size-fits-all policy, you would have preferred a more targeted approach, because it would have benefited children in the very early years of their education and children from more deprived areas. Will you expand on the basic logic behind that position?

Councillor Isabel Hutton (Convention of Scottish Local Authorities): Evidence suggests that smaller class sizes improve outcomes in, for example, the primary school years and deprived areas; however, the evidence on whether smaller class sizes lead to widespread long-term improvements in educational achievement is far less conclusive.

Elizabeth Smith: Am I correct in thinking, then, that your slight disagreement with the Educational Institute for Scotland has arisen partly because local authorities have been asked to implement a one-size-fits-all policy of having no more than 18 pupils in primary 1 to 3 classes for the entire region? Are you criticising the policy in general or are you simply saying that you would have preferred a more targeted approach?

Councillor Hutton: In the concordat, COSLA has signed up to reducing class sizes in P1 to P3 to 18, so obviously we are not criticising the policy. Moreover, it is up to each local authority to decide its own priorities in making those reductions.

Elizabeth Smith: Are you confident in the ability of local authorities throughout Scotland to identify either the deprived areas or the particular schools in which they believe that there is the greatest

need for this policy? If so, where is the evidence for that?

Councillor Hutton: I am confident that people in local areas can decide on local priorities and, for example, on whether to target areas of deprivation or look at falling school rolls in order to achieve class size reductions.

Elizabeth Smith: Is the evidence for that coming from headteachers in specific schools or has it been decided at local authority level?

Robert Nicol (Convention of Scottish Local Authorities): Local authorities know their own areas and which of them, for example, suffer from deprivation and might benefit from class size reductions. The committee has heard a lot of evidence on these reductions, which, as last year's working group report highlighted, seem to benefit those in the very early years of primary education and those in areas of deprivation. Local authorities know where those areas are and where best to target the policy.

Elizabeth Smith: If that is true, instead of a one-size-fits-all approach that is dictated by central Government and forced on local authorities, would it not have been better to have a national policy that provides local authorities with more flexibility to make decisions at a local level? Would you have preferred a policy that could have been targeted on specific areas?

Robert Nicol: Given the concordat and statements that the Government has made, we are content that we have the flexibility to deliver on reducing class sizes to 18. We feel that we are able to make appropriate progress on the matter and that councils have the flexibility to consider the areas, including areas of deprivation, where they want to make the most progress.

Elizabeth Smith: At the same time, however, directors of education are complaining that, given their financial resources, it is almost impossible to implement the national policy. You suggest that the local level of decision making would have been preferable for targeting the issues and might have gone some way towards solving the problem of the extraordinarily high level of resources that is required to implement the policy overall.

Robert Nicol: I am sure that we will discuss resources in more detail. The Association of Directors of Education in Scotland has provided figures from a survey that was based on the intention of moving to class sizes of 18 almost immediately. What we are saying—and what ADES has also said—is that flexibility is the key to making the policy work. ADES understands that we are making progress on the policy, and that we are doing so pragmatically and practically at a local level. We know that councils are affected by different circumstances and that it is natural that progress will vary throughout the country.

Elizabeth Smith: The directors of education have said that a substantial sum is required to implement the policy throughout all Scottish local authorities. Would COSLA argue that it might have been better to target the money at schools in deprived areas or at schools where there is known to be a specific problem?

Councillor Hutton: We have to move away from the top-down approach. Local and national government signed up to the policy. ADES said in its submission that it would cost in the region of £360 million to reduce class sizes, over a longer period than the period of the spending review. We are looking at a joint agreement to reduce class sizes but with local authorities deciding how they will do so.

Elizabeth Smith: You are quite happy with the policy to reduce class sizes but you are not entirely happy with how it is being implemented.

Councillor Hutton: It is not a question of whether we are happy or unhappy; it is a question of being practical. What we have signed up to in the concordat is that it will be up to each local authority to determine its priorities and to decide how it will bring about class size reduction. It will be up to each local authority to decide whether that is done by targeting areas of deprivation, by school rolls or through the school estate.

Elizabeth Smith: By happy I mean that you believe that the policy of having a reduction in class sizes is a sensible policy educationally.

Councillor Hutton: Let us move away from the emotive words “happy” and “unhappy”; it is about considering the practicalities. As we said, the evidence suggests that it is good to reduce class sizes in the early years in deprived areas.

Elizabeth Smith: In other words, it is educationally sound to reduce class sizes.

Councillor Hutton: The concordat addresses the early years—P1 to P3—in particular. There is evidence to suggest that moving towards class size reduction in areas of deprivation would be beneficial for educational attainment.

Elizabeth Smith: My point is that you are not entirely satisfied with the process of making that happen.

Barbara Lindsay (Convention of Scottish Local Authorities): What Councillor Hutton is trying to say is that although that may be an issue for the committee, it is not an issue for us. In the concordat, we have reached an agreement on having an outcomes approach to the local government settlement as a whole and on implementing a set of specific commitments. We have agreed and signed up to that jointly with the Government, and we are ready to take it forward. It is not a question of saying now whether we are

happy or unhappy; we are implementing the agreement that we have reached.

Elizabeth Smith: Parents would like to think that you are happy with the remit of the policy.

The Convener: On outcomes, will you give the committee COSLA's perspective on how the single outcome agreements as they relate specifically to class sizes are being developed?

Councillor Hutton: Evidence is already being taken on the outcome agreements.

10:45

Barbara Lindsay: As Councillor Hutton says, the outcome agreements approach is being considered in more detail elsewhere. It is probably helpful here to rehearse the point that there are two routes through the concordat. First, for the generality of the local government settlement, we have signed up to an approach of outcome agreements and have agreed a set of outcomes with the Government. Educational attainment, in the broadest sense, will be an important part of those outcome agreements. Secondly, and quite separately, there is a set of specific commitments in the concordat to which we have signed up. The single outcome agreements will be reported on by each local authority to their local community, and back to the Scottish Government; COSLA will provide a single report on the progress of local government as a whole towards meeting the specific set of commitments. That is how the two things fit together. Educational attainment, as a broad outcome, is covered through the outcome approach; the specific commitment is covered in a report on inputs, which COSLA will make on local government's behalf at the end of the year.

The Convener: Is it sufficient to record the reduction in class sizes in the concordat, without having any specifics around class size reductions for P1, P2 and P3 in the single outcome agreements? The committee heard evidence from the EIS that, without a specific reference to class sizes in the single outcome agreements, it will be difficult to see and measure whether the requirements of what has been agreed in the concordat are being met.

Barbara Lindsay: We are satisfied with the approach that we have arrived at. To follow up Councillor Hutton's comments, the broad intent of the policy to reduce class sizes will be picked up in an outcome about improved attainment. The specific commitments are inputs, and they do not tell us much about outcomes for children, which are being reported separately. We are satisfied with the rigour of both reporting arrangements. These are joint agreements between local government and central Government and we are satisfied with how we are going forward and with our ability to provide measurable evidence.

The Convener: How can that “measurable evidence” be monitored or accessed by the committee or members of the public? My understanding is that under the concordat there must be

“year on year progress toward delivery of the class size reduction policy.”

What does “year on year progress” mean? Does it mean each local authority having one primary school where there is a class size of 18 in P1, P2 and P3, or is it more than that?

Robert Nicol: To some extent, year-on-year progress means what it says. Each council will consider the progress that it deems it can make within existing resources and under its circumstances. There is no top-down expectation—certainly on the part of COSLA—of what each council should do. Authorities must consider their own circumstances and situation, addressing class sizes where most appropriate. For instance, they might wish to focus on certain deprived areas.

The Convener: So Government ministers can say that they are committed to the reduction of class sizes for P1 to P3 to 18, yet there is no requirement on COSLA to reduce class sizes any more than “year on year” and as individual local authorities see fit and appropriate.

Robert Nicol: COSLA will not deliver reduced class sizes; councils will consider where they can make progress. It might be that classes move towards a size of 18; it might be that some classes achieve 18, while some classes of 25 get less. Progress will be made in the way in which each local authority deems appropriate. However, over the piece, local government will show year-on-year progress, which will be demonstrated in a report that COSLA will produce, as Barbara Lindsay said.

The Convener: However, the Government has expressed no expectation of the changes that will be required to allow progress to be made, and how progress on class size reductions is defined will be entirely up to the 32 local authorities. Is that correct?

Councillor Hutton: That is correct. That is why the concordat provides flexibility for each local authority to decide its priorities but the commitment is that year-on-year progress will be made in local government overall.

The Convener: Okay. The committee heard evidence from the Association of Head Teachers and Deputies in Scotland, which expressed concern that it had not been involved in the discussions on the single outcome agreements. The association believes that if class sizes are to be reduced effectively, it should be involved in the discussions. Does COSLA have a view on that?

Robert Nicol: I would think that every local authority will consult its staff and headteachers on how educational attainment under the four capacities in the curriculum for excellence is to be delivered through the outcome agreements. As Barbara Lindsay said, the inputs on class sizes are somewhat separate from the outcome agreements, but local authorities will work collectively on what they want to put into the agreements and how to implement them.

The Convener: I accept that all local authorities will engage with their staff, but I am asking a specific question about engaging with staff representative bodies and trade unions. Do you think that the trade unions that are responsible for the delivery of the services should be involved in the negotiations on the single outcome agreements?

Barbara Lindsay: All we can say is that our negotiations are between the two spheres of government in Scotland: local government and central Government. As part of our responsibilities as local authorities, employers and providers of the education service, we will, of course, want to speak to headteachers. COSLA has good relationships with them, but the negotiations are between the two spheres of government in Scotland.

Jeremy Purvis: You have been clear today that the expectation is that local government as a whole, rather than individual authorities, will demonstrate year-on-year progress. Is that COSLA’s position?

Councillor Hutton: That is correct.

Jeremy Purvis: Therefore, if any local authority was not making year-on-year progress, it would be unacceptable for COSLA or the Government to say that that local authority was at fault.

Councillor Hutton: If there were difficulties in certain areas, we would consider any barriers that might be preventing those local authorities from reducing class sizes. We would look for constructive dialogue.

Jeremy Purvis: It is now many months since the concordat was agreed and the budget settled. How many local authorities have you identified as having problems?

Robert Nicol: This is the baseline year, so we will measure progress from this year. If you are asking about what practical difficulties councils might face, school rolls must be taken into account. Clear projections show which councils have falling school rolls and which have rising ones but, as I am sure you are aware from your constituency, school rolls vary even within local authorities. We know that there are challenges and what they are, but this is the baseline year

and we will show progress from this academic year onwards.

Jeremy Purvis: Explain for me how the mechanics of that operate, because I do not understand. Local government as a whole is required to demonstrate year-on-year progress and local authorities will sign up to single outcome agreements. What is the mechanism for bringing the two together? If local authorities do not make year-on-year progress, how will local government as a whole make year-on-year progress?

Robert Nicol: We know that year-on-year progress will vary across local government. In certain circumstances, if the numbers on school rolls are rising for example, progress may be limited. However, if the majority of councils make progress, that will add up to year-on-year progress.

Barbara Lindsay: Using this year as a baseline, as Robert Nicol said, we expect by the end of the year to produce a report that shows that local government has made progress. Clearly, there is quite an active, internal debate for us to have with our membership about issues of education and young people and about what this means for individual councils. We expect to be able to deliver what we have said that we will deliver, and we will produce a report by the end of the year. I expect that Councillor Hutton's executive group will have a debate among its membership of education conveners about how individual councils are going about their work and what barriers they face. The picture is by no means one of nothing happening until we produce our report at the end of the year; there will be an on-going discussion with our membership.

Jeremy Purvis: I am interested in the procedures by which local authorities can bring that progress about. If a local authority states that it will deliver the outcomes on educational attainment but wants to use a different method from that of reducing class sizes in P1 to P3 to 18, will that be acceptable to COSLA?

Robert Nicol: In their outcome agreements, councils may say that they want to raise levels of educational attainment—that would be entirely reasonable. One way in which they could do that would be to reduce class sizes, not just in P1 to P3, but more widely. However, as you say, there are other ways in which they could raise levels of attainment. The detail of that will be in the outcome agreements.

Jeremy Purvis: If a local authority states that it does not believe in focusing its efforts on reducing class sizes for P1 to P3 only to a maximum of 18 and believes that its resources could be used to deliver better outcomes for the attainment of primary school children by doing different things, will that be acceptable to COSLA?

Robert Nicol: What is acceptable is that we raise levels of attainment and deliver on the national outcomes. COSLA is supportive of different ways of achieving that.

Jeremy Purvis: It was a straightforward question, was it not?

Barbara Lindsay: I think that Robert Nicol is saying that we are confident that we will be able to deliver what we have signed up to, which is that progress will be made across local government. That is what we have signed up to in the concordat. I think that we have answered the question.

Councillor Hutton: I am aware that we are here to speak about the EIS petition. The concordat states that local government will make year-on-year progress across the board—that is quite clear. It will be up to each local authority to decide how it wants to do that, and some local authorities may decide to use their resources in a different way. The numbers on their schools rolls might be falling anyway, depending on which part of the country they are in. It is not up to COSLA to dictate to local authorities how they spend their resources. What COSLA signed up to in the concordat is that overall local government will reduce class sizes, and that will be measured from the baseline of this year. It will be up to each local authority to decide its priorities and how it will address them.

Some local authorities might have class size reduction in their outcome agreements—I know that some of the outcome agreements are still being discussed with the Scottish Government. It is up to local authorities to decide whether they want to have that as a measurement in their outcome agreements or whether they want to address other areas—health, social policy or whatever—in order to raise the level of pupil attainment. There are many different ways in which they could do that—that is the point that we are trying to make—and we would welcome local authorities' being imaginative in how they do that.

11:00

Jeremy Purvis: Is your answer to the question that I put that if a local authority decided that its priority in bringing about the outcome of better attainment by primary school children was not to focus on reducing class sizes in P1 to P3 to 18, it would be wrong for that local authority to be criticised?

Councillor Hutton: What we have said is that local government, over the piece, will reduce class sizes—

Jeremy Purvis: You are not letting councils make local decisions, Councillor Hutton.

Councillor Hutton: What I have said is that COSLA and national Government agreed in the concordat that they will reduce class sizes over the piece and that it will be up to each local authority to decide how to implement the resources to raise pupil attainment. It is not up to COSLA to criticise. We are here to support and represent local government.

Jeremy Purvis: I was not asking you to criticise. I was asking you whether it would be wrong to attack a local authority that decided, in a local and accountable way, that reducing class sizes was not the best way of bringing about the outcomes.

Councillor Hutton: With the greatest respect, we have answered the question. I think that we are involved in the broken record technique.

Jeremy Purvis: Does that mean that you are refusing to answer any more questions?

Councillor Hutton: I have answered that question.

Jeremy Purvis: I will leave it at that, convener, but we might have to come back to the point. There is a serious concern. The evidence that was provided, and indeed provided to research assistants last week, before a debate, says that local authorities should be able to make locally accountable, democratic decisions, but COSLA—as the representative body of local authorities—is not even prepared to say that it would be inappropriate to attack a local authority that said that it wished to bring about the outcomes in a different way.

Councillor Hutton: As I said, we have answered that question. I propose that we move on. I am sure that there are many other things that people would like to ask.

The Convener: Councillor Hutton, I remind you that I chair the meeting.

Mary Mulligan (Linlithgow) (Lab): Good morning. We are all trying to get our heads around the single outcome agreements and what they will look like. I accept that some local authorities are still constructing them, but am I right to think that they will contain a commitment to raise the attainment of pupils at whatever stage rather than simply a commitment to reduce class sizes?

Barbara Lindsay: Robert Nicol is probably more familiar than I am with the exact wording of the national outcomes, but I think that there is such an outcome. The general idea is to focus the efforts of all public sector agencies on a small number of outcomes. That will be led by local government through community planning partnerships.

As Councillor Hutton said, the idea is to bring into play services across the board rather than

focus narrowly on one thing and say, “This looks like an educational issue, so it’s just for the education service.” Instead, we will start to bring in all our other services, such as leisure, health, enterprise and job creation.

Robert Nicol: I will provide a bit more detail. One outcome is the four capacities of the curriculum for excellence. With that outcome, we are saying that it is not just education that delivers the four capacities but the whole council working together. Children’s services could be used in a particular way to ensure that young people and children are prepared to learn in schools. That is the approach, and local authorities will work with their local partners to ensure that outcomes are delivered in the round.

Mary Mulligan: Councillor Hutton said that she accepts that smaller class sizes could be a contributory factor, but only a contributory factor. In my area, school rolls are increasing. If schools are unable to reduce class sizes to 18 but there is an increase in attainment, would that be acceptable to COSLA under the concordat that has been agreed?

Councillor Hutton: As the constituency MSP for Linlithgow, you will know that in West Lothian, where we have a rapidly rising population, we are achieving class size reductions in P1 to P3. Additional building is taking place. West Lothian Council has decided that class size reductions are its priority and is investing to achieve them, as it views them as being part of its strategy for improving overall attainment. There may be other measures that we can take in relation to health, social policy and looked-after children to raise everyone’s attainment levels.

Mary Mulligan: Will it be acceptable if a local authority chooses to invest in health support or the other areas to which you have just referred?

Robert Nicol: You described a situation of rising school rolls, which we know is one circumstance that makes achieving class size reductions extremely difficult. However, there are other ways in which attainment can be improved. Local authorities know the areas on which they can focus to get improved outcomes, if achieving class size reductions proves particularly challenging.

Ken Macintosh: Members referred to the ADES survey, which estimated the cost of achieving the Government’s class size target at £360 million in capital costs and £62 million in recurring revenue costs. When ADES representatives gave evidence to the committee, we asked them whether there were sufficient resources to implement the policy; they said no. Is ADES right or wrong?

Robert Nicol: My understanding of what ADES said was that there are definitely challenges but that councils are seeking to identify areas in which

they can make progress. ADES also make it clear that £360 million was the amount needed to reduce class sizes to 18 across the country by tomorrow, which is completely different from what we have agreed to do.

Ken Macintosh: I will put the same question to Councillor Hutton. Regardless of your understanding of ADES's position, the committee asked it whether there were sufficient resources to meet the class size commitment. ADES said that there were not. Is it right or wrong?

Barbara Lindsay: I will let Councillor Hutton respond in a minute. I wonder whether there is confusion in ADES's mind on the issue. As part of our new relationship with the Government, we have negotiated for each council a pot of non-ring-fenced money that is to be used to achieve a set of outcomes. It is difficult to say whether ADES is right or wrong, as it may have misunderstood the arrangement that is in play. There is no separate line for class sizes—a pot of money has been negotiated for each local authority.

Ken Macintosh: I do not think that ADES was confused. We asked a straightforward question: are there sufficient resources to meet the Government's class size target? ADES said no. Do you believe that there are sufficient resources to meet the target? Is ADES right or wrong?

Councillor Hutton: I echo what Barbara Lindsay said. I have spoken to ADES, which agrees that it had assumed, when it came up with the figure of £360 million for reducing class sizes to 18, that that would happen overnight. ADES now agrees that that is not the case. As Barbara Lindsay indicated, money has been allocated to local authorities, which have the right to decide how to spend it to achieve class size reductions.

Ken Macintosh: I see that I am not going to get an answer to the question. ADES also made a constructive suggestion. It said that in certain areas it would be overly expensive to meet the capital costs, as well as the revenue costs, of the class size commitment. It suggested that one option would be to have two class teachers, instead of building a new classroom. That seems to be in keeping with the flexibility that you advocate in your submission. Do you agree with ADES's suggestion as a way forward?

Councillor Hutton: Local authorities may wish to consider that when they decide how they will reduce class sizes.

Ken Macintosh: Do you think that it is acceptable to have two teachers per classroom as a method of meeting the Government's class size target?

Councillor Hutton: It is for local authorities to decide what their priorities are and how they

intend to improve pupil attainment and meet the commitment to reduce class sizes.

Ken Macintosh: Glasgow City Council has said that there are not sufficient resources for it to meet the class size target, so it will not try to do so. Is that COSLA's position?

Councillor Hutton: It is too early to comment on all local authorities. It is up to local authorities to decide what their priorities are and how to spend their resources to maintain pupil attainment.

Ken Macintosh: I am sorry, but I do not understand that reply. Do you agree with Glasgow City Council or is it wrong? It has said that there are not sufficient resources and that it will not attempt to meet the class size target. Does COSLA agree with that position?

Councillor Hutton: Again, I say that it is up to each local authority to decide how it spends its resources.

Ken Macintosh: Does COSLA speak on behalf of any of the councils?

Councillor Hutton: We speak on overall matters, but we do not comment on individual local authorities. If Glasgow City Council approaches COSLA, we can engage with it. We spoke earlier about what the barriers might be. Perhaps we can discuss those with the council. However, it is up to each local authority to decide how to prioritise its resources.

Rob Gibson: I have questions on the whole package and the way in which we are progressing on class sizes. I understand that Glasgow City Council failed to meet the targets for class size reductions under the previous Administration. Indeed, there are areas of deprivation in Glasgow where there are classes of about 30 pupils. However, authorities such as South Lanarkshire Council have targeted areas of deprivation and put in more teachers to deal with the issue. Do you agree that there are a range of council examples—in areas where there are rising and falling populations and where there is deprivation—and that those councils are applying a variety of means to achieve the aims?

Councillor Hutton: That is correct. Again, it is up to each local authority to decide what its priorities are. Rather than take a prescriptive and top-down approach, local authorities have been given flexibility to spend their resources and decide on their priorities, whether that is tackling areas of deprivation or building additional classrooms. It is up to local authorities. The concordat commits to overall year-on-year progress, but it does not constrain local authorities in how they do that. They can investigate different mechanisms to reduce class sizes or maintain or increase pupil attainment, which is what we all want, after all.

Rob Gibson: So, we are using this year as a baseline and, at the end of it, we expect to have a more detailed picture of measures such as team teaching, phasing or targeting—perhaps for areas of deprivation—and new schools and classrooms. Can you add to that list so that we can have comfort that COSLA will consider and report back on a wide range of applications?

Councillor Hutton: I think we can, but I will let Barbara Lindsay comment.

Barbara Lindsay: We are committed to producing a report with the Government. As I said, Councillor Hutton's executive group meets regularly—that is an active debate. I am sure that the group will consider the different methods and good practice that Rob Gibson is talking about and that the group will be happy to share the results of those discussions with the committee.

Rob Gibson: That would be helpful, because the either/or approach is not getting us anywhere.

At a previous meeting, I asked ADES what its estimated £360 million is as a percentage of the total spend on education, but its representative did not know. Since then, we have found that £360 million is a small amount—it is about 10 per cent of the available capital funding during the spending period. Do you expect to be able to measure the capital spending in the next three years on the reduction of class sizes? Will we be able to measure that at the end of the period?

11:15

Robert Nicol: The figure of £360 million is a bit theoretical.

Rob Gibson: Indeed.

Robert Nicol: We are not necessarily measuring the money that is spent but the progress that is made. As has been said, authorities have a pot of money and can work within constraints that they know well. At the end of the year, we will report on their progress.

Rob Gibson: So, we will have a clearer picture by the end of the year. Are you saying that, whatever ADES said to us, its theoretical statement about the cost is unlikely to be anything like what happens in reality?

Robert Nicol: Yes.

Rob Gibson: I also want to ask about the number of teachers who are required. We have heard conflicting views about the difficulties that probationer teachers are having in getting permanent posts, and we have also seen that there are a lot of unfilled posts. In COSLA's view, is there a problem with having enough teachers to teach classes of 18? Will we be able to meet the staffing requirements?

Robert Nicol: We are aware of the figures that are in the press today. As employers, the councils are well aware of the issues around teacher employment. The picture is not too bad at the moment—the General Teaching Council for Scotland says that 93 per cent of teachers are in employment, I think. However, we know that there are pressures and that often—particularly in rural areas—vacancies do not always match availability of teachers.

A working group is being set up, which will be chaired by COSLA and will involve the Government and others. It will consider the issues, some of which are quite complex, such as balancing the number of teachers. That will help us to manage the process in the best possible way.

Rob Gibson: Do you agree that that review should consider the idea of pooling teachers between authorities in order to meet needs? In the past—for example, when Glasgow needed more maths teachers—inducements have been offered to teachers to get them to go to certain places. Will such means be necessary to deploy the workforce to meet the aims of the class size reduction policy?

Councillor Hutton: That is something that we will be considering, as Robert Nicol said. There might be situations in which teachers have to travel outwith their area. I am aware that COSLA has agreed to give evidence to you next year on teacher deployment. At that point, we will be able to give you more detailed information and tell you more about the work of the committee that COSLA is chairing to consider the situation.

Rob Gibson: In summary, you are approaching the issues of the cash for classroom development, the cash for teacher employment, the targets that are being aimed at and so on as part of one overall package.

Councillor Hutton: We are considering how to deliver the overall package. As I said, we recognise that there are pressures. However, as Robert Nicol pointed out, 93 per cent of qualified teachers are in employment. That said, we need to think about how we can better manage the difficulties around areas such as provision of maths teachers and so on.

The Convener: COSLA appeared to agree with Rob Gibson that the figures that ADES provided to the committee are to be disputed. I would like to be clear about the basis on which you dispute the figures. Do you disagree that the figures are appropriate because the implementation of class sizes of 18 in the first three years of all primary schools is what the figure was based on for 22 local authorities, or do you dispute that, if that policy were to be implemented in its entirety, it would cost that amount of money?

Robert Nicol: As I have said, ADES provided a theoretical figure, which does not relate to what we are attempting to do. On that basis, we think that the figure is almost not worth talking about.

The Convener: So, it is inappropriate for the 22 directors of education who participated in the ADES survey to work out how much it will cost to implement the policy.

Robert Nicol: As I have said, the figure is based on moving to class sizes of 18 instantly throughout the country. We have not agreed to do that, so the figure is irrelevant.

The Convener: Arriving at such class sizes overnight may not have been agreed to in the concordat, but the suggestion is that COSLA and the Government intend that year-on-year progress will be made which will ultimately result in such class sizes, whether in five, 10, 15 or 20 years, so the cost of implementing the policy is surely relevant. Do you agree?

Robert Nicol: We have said that we will make year-on-year progress through natural changes in school rolls. We have not agreed that we will necessarily have to build new schools. It is about delivering with falling school rolls.

The Convener: So COSLA's position is that the delivery of class size reductions will be based on populations declining, and that a very blunt measure will be used.

Robert Nicol: I would not necessarily agree that a blunt measure will be used; rather, a practical measure will be used.

The Convener: The Headteachers Association of Scotland made it abundantly clear to the committee that a blunt instrument was being used, and that reductions being dictated by natural population decline would not improve matters for all Scotland's children.

Robert Nicol: That is HAS's view. We have spoken to HAS and have a good relationship with it. It has its views and we have ours. We have a practical view on how class sizes can be reduced over the piece.

The Convener: I do not think that only HAS, which used the term "a blunt instrument", takes that view. The EIS, which submitted the petition, would also like class sizes throughout Scotland to be reduced.

Ken Macintosh: I want to make exactly the same point. I do not understand what has been said. It has been suggested that the ADES figure is theoretical. Do you have any evidence that the figure is wrong?

Robert Nicol: Do you mean the figure of £360 million?

Ken Macintosh: Yes.

Robert Nicol: The figure relates to something that we have not agreed to do, so it is theoretical.

Ken Macintosh: The directors of education are in charge of education budgets throughout the country, and they have estimated how much the policy will cost. Are you suggesting that their figure is irrelevant for the committee and COSLA?

Barbara Lindsay: Local authority leaders are in charge of council budgets throughout the country. COSLA has agreed with the Government what we think is a reasonable and fair settlement, which gives one pot of cash to each council. Things are not broken up into lines or inputs for each agreement that has been made or for each outcome that we have decided that we will deliver. We are satisfied that, at the end of this year, we will be delivering on a small number of outcomes and on the specific commitments that we agreed to in signing the concordat.

Ken Macintosh: Is it unfair of the committee to ask about the basis on which you are satisfied that you have sufficient resources? ADES said that it is not satisfied with the resources that are available, but you are saying that you are satisfied with them, although you have provided no evidence on the matter. What figures do you have?

Robert Nicol: We have negotiated a pot of money, and councils can make progress with that.

Ken Macintosh: How much will it cost to implement the policy?

Robert Nicol: It will be implemented through demographic changes. It is not expected that councils will invest in the school estate unless they choose to do so.

Ken Macintosh: Are there any costs associated with implementing the policy?

Councillor Hutton: We seem to be going round and round in circles. My understanding is that ADES gave the figure of £360 million thinking that we would build extensions to schools and new schools to reduce class sizes immediately. However, it later agreed that that had not been agreed to in the concordat.

Each local authority has been given its pot of money for its priorities, and it is up to it to decide how it will use that allocation to reduce class sizes. That might not be done through a physical school build; other mechanisms may be used to do that. It is up to each local authority to decide how it will use its allocation of funding.

Ken Macintosh: Nobody is suggesting that local authorities cannot use their allocation as they see fit; I am asking how much the policy will cost. The Government and the Parliament must scrutinise expenditure on education, and ADES has given us

a figure for that. If you are saying that that figure is wrong, there is an absolute duty on COSLA to provide us with alternative figures to back up your assumptions.

Councillor Hutton: I think we have already answered the question.

Ken Macintosh: With respect, you have not answered the question.

Councillor Hutton: ADES has said that the figure that it has come up with is what it would cost to reduce class sizes overnight. That is not what has been agreed within the concordat. I really do not think that I can answer the question in further detail.

Ken Macintosh: Can you produce a figure for the delivery of class sizes being reduced, but not overnight? Can you produce any figure for the reduction of class sizes over any period at all?

Councillor Hutton: I think we have already answered the question.

Ken Macintosh: Do you have any figure for it at all?

Barbara Lindsay: As we have said, those negotiations were part of an overall negotiation for the local government settlement as a whole. We have explained the basis on which we arrived at that settlement and on which we will report back. I do not think that Councillor Hutton can comment on individual inputs, as the agreement with the Scottish Government was not arrived at on the basis of inputs. That is our position. You may not agree with it, but we have stated our position.

Christina McKelvie (Central Scotland) (SNP): Can you confirm that local authorities overall received an increase in their budgets of around 12.9 per cent this year—the biggest increase for a number of years—and that, if local authorities have decided not to direct money towards the reduction of class sizes, that has been their choice?

Robert Nicol: Yes.

Councillor Hutton: Yes. That relates to what I have just said. Local authorities themselves will decide how to use their allocation of funding.

Christina McKelvie: So, local authorities got an increase in their budgets of around 13 per cent and certain local authorities have chosen not to direct that money towards the reduction of class sizes.

Councillor Hutton: Yes.

Robert Nicol: Yes.

Jeremy Purvis: As we heard before from COSLA, those local authorities should not be criticised for not having done so.

I have a question on the overall picture and COSLA's position, which is relevant to the EIS petition. Am I correct in thinking that COSLA does not have an estimate of when the policy of the reduction of class sizes to 18 in P1 to P3 will be delivered in every school?

Robert Nicol: We have agreed that we will make progress within the period of the concordat—that is all we have agreed to.

Jeremy Purvis: So, there is no estimate of when the policy will be delivered in all schools in Scotland.

Councillor Hutton: I think that we have answered the same question in different guises. COSLA has agreed, in the concordat, that local government across the piece will move towards class size reduction. Each local authority will decide how it will use its resources to do that.

Jeremy Purvis: My question pertains to COSLA's ability to negotiate with the Scottish Government on the basis of how much local government will invest in its own area. It is also pertinent to Ken Macintosh's previous question. Let us take West Lothian as an example. Has West Lothian Council calculated what is required to deliver the policy of class size reductions in all schools in its area?

Councillor Hutton: I do not have any figures in front of me. If I had known that the committee wanted such specific information, I could have brought it. It is up to each local authority to decide how it will use its resources to reduce class sizes.

Jeremy Purvis: It is just that, when £40 million was delivered by the Government to contribute to the reduction of class sizes, of which West Lothian Council received £2.329 million, the information that was provided under the Freedom of Information Act 2000 identified certain schools that the council said were to have an additional class base or extensions to accommodation to assist with CSR. I wonder whether West Lothian Council has calculated what is required to implement the policy in all its schools. Has COSLA asked for or received information about that, and is COSLA monitoring whether local authorities have estimated budgets for what will be required?

11:30

Barbara Lindsay: We have said that we have agreed with the Government to meet 15 national outcomes and a set of specific manifesto commitments. There are two separate lines of reporting for those and we are confident that, at the end of the year, we will be able to show that we are contributing towards those outcomes and the commitments that we have negotiated and agreed on behalf of local government within the

package of available resources. I have already explained that, as part of that approach, we are not focusing or reporting back on inputs. We will report to the Government on outcomes. I am not sure what more we can say.

Jeremy Purvis: The question was this: is COSLA monitoring the situation overall and is COSLA monitoring the budgets that are being set by local authorities for class size reduction? On 5 December, Jon Harris from COSLA told the committee that

"Councils will make their own estimates in fixing their budgets for this year, and the figures will be different from council to council. Those differences—for example on the issue of class sizes—will become clearer in the course of that budget setting. We will monitor that."

He also said:

"Councils that have different demographics and falling school rolls can use the opportunity to make progress. Some councils will use their flexibilities to prioritise class sizes in their spending. Such decisions will be made council by council, and we will monitor the situation overall."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 5 December 2007; c 417-8.]

How is that being monitored?

Barbara Lindsay: We have explained that we will have to produce a single report at the end of the year to evidence whether we have achieved the commitments in our agreement with the Government or what progress we have made towards achieving them. As I have explained, part of the process will involve a debate with our members, through Councillor Hutton's executive group, on what information we will need in order to provide that report.

Jeremy Purvis: What information will that be?

Barbara Lindsay: That discussion is on-going between us and the Government. We will provide evidence that satisfies ourselves and the Cabinet, with which we reached the agreement.

Jeremy Purvis: COSLA told the committee on 5 December:

"Such decisions will be made council by council, and we will monitor the situation overall."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 5 December 2007; c 418.]

Is it not fair for us to ask what COSLA will be monitoring? Is it school building or teacher number requirements, and by what time a local authority would estimate that those should be met?

Barbara Lindsay: Our report will be made to the Government at the end of the year. We will discuss with the Government what it requires from that report and what we think it is fair to include, and we will submit the report at the end of the year. I do not feel, at this stage, that I need to go into the details of a report that we will make to the Government at the end of the year.

Jeremy Purvis: I was not asking about what will be in the report; I was asking about the information that you will ask of councils. We know, for example, that COSLA is collating evidence from all councils on the education budget because the briefing that you sent to research assistants and communications officers of the parties before the debate in the Parliament last week said, on education budgets, that

"COSLA has contacted all councils and we are attempting to build a full national picture."

We know that you are doing that work because you have told us that you are doing it. We know, too, that you will monitor the overall situation because you told the committee in December that you would.

Barbara Lindsay: I am not disagreeing that we will have to produce the report at the end of the year and that, as part of that work, there is a dialogue to be had with our members about what evidence is appropriate and with ministers about the evidence that they need. That dialogue is on-going, and that is really all that we have to say at this point.

Jeremy Purvis: So you will be able to tell the committee what information you are asking of local authorities on the class size reduction policy.

Barbara Lindsay: I have answered the question and have no more to say about that.

Jeremy Purvis: I am asking whether, when you reach agreement with councils about the information that you will ask of them, you will tell the committee what that is.

Councillor Hutton: Barbara Lindsay has answered the question. It has been asked in several guises, and she has answered it. That information will be forthcoming when we have had discussions both with the Scottish Government and within COSLA and its education committee. That committee is made up of members of all political hues, and everyone can say what they think is appropriate to include in the report.

Aileen Campbell: What impact will smaller class sizes have on, for example, placing requests and school design?

Robert Nicol: ADES raised the issue of placing requests, which are another factor that councils must take into account. When Murdo Maciver gave evidence to the committee, he provided members with information on the issue. We are in regular contact with ADES. If reducing class sizes is having an impact on placing requests, we can try to address the issue, of which we are aware.

Councillor Hutton: It goes back to the point that I made earlier. When local authorities make decisions about class size reductions in their

areas, they must take into account the school estate, pupil placement requests and so on.

Aileen Campbell: You have indicated that you have a positive relationship with each council and that, when councils face barriers, they bring their problems to you and you work through them proactively, in agreement.

Councillor Hutton: We try to have a constructive dialogue. Although we aspire to reduce class sizes, local authorities must also manage their other statutory priorities. The arrangement allows local authorities to operate flexibly.

Aileen Campbell: We have heard about placing requests and school design. Have any other issues of note that might restrict local authorities' ability to reduce class sizes or to make year-on-year progress towards that goal come to your attention?

Robert Nicol: There are issues that vary at local level, but the main factor that will govern progress towards meeting the target is school rolls.

Aileen Campbell: On which areas apart from class sizes would you like to focus to improve educational attainment?

Robert Nicol: I am not an educational expert, so I leave it to our advisers in ADES to recommend such measures. It is entirely appropriate for councils, which know what is best for their areas, to identify measures that might or might not improve educational attainment at local level and, more broadly, develop the four capacities that are specified in the curriculum for excellence.

Aileen Campbell: Have lessons been learned from the previous Administration's attempts to reduce class sizes in secondary 1 and 2 maths and English?

Robert Nicol: We have learned that there is a need for flexibility and that any policy on class size reduction must be implemented flexibly, to give schools and local authorities the ability to adapt to local circumstances.

Aileen Campbell: Have councils responded well to having such flexibility?

Robert Nicol: I would say so.

Mary Mulligan: I return to the issue of placing requests. Is COSLA offering councillors who are members of appeals panels advice on how they should respond to such requests?

Councillor Hutton: Because pupil placement requests are covered by legislation, guidance on the issue is issued by the Government. COSLA does not issue guidance on pupil placement requests.

Mary Mulligan: How would you expect the appeals panel to deal with the case of a parent who tried to secure a place in a school and was told that they could not have one because the school wished to keep class sizes at 18?

Councillor Hutton: Pupil placement is covered by legislation, which supersedes the commitment to reduce class sizes to 18.

Robert Nicol: We are working on the issue with ADES. There are cases that have gone either way, so we need to monitor the situation to see whether any issues that we need to be aware of arise, and to include them in our discussions with the Government. That is all that we can say on the matter at the moment.

Mary Mulligan: There is no legislation that states that a class should have no more than 18 pupils—that is a policy decision by local authorities or someone from above. Do you expect parents to have to pursue their situation through the courts before they get a satisfactory decision?

Robert Nicol: Again, my understanding is that the situation has been variable and that, in their interpretations, sheriffs have gone both ways. They have cited council policy as a legitimate reason for turning down a placement request, but they have also gone the other way. A definite issue is involved, and we need to keep an eye on it.

Mary Mulligan: Do you have a view on whether schools should use that mechanism to reduce class sizes?

Robert Nicol: Those are local decisions that local authorities have to take.

Mary Mulligan: I turn to the slightly different issue of composite classes. Clearly, the aim is to reduce class sizes to 18. Does COSLA have a view on what size composite classes should be?

Robert Nicol: Again, those are local issues. We do not prescribe to councils how they should do things. It is entirely right for councils to look at what works locally, including whether a composite class works in certain circumstances, and to pursue it.

Mary Mulligan: The EIS, for example, has suggested in its petition that a maximum of 15 pupils should be set for composite classes. Does that suggestion seem reasonable?

Robert Nicol: We do not necessarily support what the EIS said in its petition on maximum class sizes of 20 or 15. As I said earlier, flexibility is the key factor in delivering what is appropriate locally. Schools and local authorities are best placed to take those decisions.

Mary Mulligan: In your submission, you seem to say that COSLA does not support the EIS

petition. However, given your evidence this morning, you seem to be more supportive of the EIS position—which is one of flexibility—than you are of class sizes being reduced to 18. That is interesting to note. At some stage, we might need to decide which policy we support.

Jeremy Purvis: I return to the issue of delivery and how demographic change can bring about the policy of reducing class sizes.

The committee asked the directors of education whether, for areas with falling school rolls, guidance has been provided or specific measures have been put in place to ensure that teacher numbers are retained at existing levels, thereby reducing class sizes. What is COSLA's position on guidance to local authorities on retaining teacher numbers in areas with falling school rolls?

Robert Nicol: There is no guidance; it is entirely down to councils to make the decisions that seem appropriate. The councils are the employers; they know how to deploy their staff and how best to allocate resources to deliver better outcomes. Class size reduction is a matter for councils.

Jeremy Purvis: The concordat talks of specific measures

"to maintain teacher numbers in the face of falling school rolls".

What are those special measures for areas that have that demographic?

Robert Nicol: I am sorry, but I did not catch what you said.

Jeremy Purvis: The concordat says that there are specific measures

"to maintain teacher numbers in the face of falling school rolls".

What are they?

Robert Nicol: What are you quoting from? I missed the first sentence.

Councillor Hutton: Where does it say that in the concordat?

Jeremy Purvis: If you have it in front of you, you will be able to help me out.

The cabinet secretary has repeatedly stated that specific measures are in place where there are falling school rolls to assist local authorities to deliver lower class sizes. What measures are in place to assist authorities in that way?

Robert Nicol: I am not entirely sure what the cabinet secretary was referring to in that instance. Councils have the pot of money that can be invested in class size reduction as per the concordat. Teacher numbers will be broadly maintained. As we have told the committee, we will look at how teacher numbers are monitored. I

can only assume that that is what the cabinet secretary was referring to.

Councillor Hutton: It is difficult when we do not have the quotation in front of us. My apologies.

11:45

Jeremy Purvis: No—that is fair, councillor.

Demographics is important, and there are differences among local authorities. On 5 December last year, Jon Harris of COSLA stated:

"If a commitment was made to deliver class sizes of 18 in primaries 1 to 3 in this spending review period, there would be a significant cost to that. We did not end up in that situation; we ended up with what we have in the concordat. We will deliver that throughout Scotland on the basis of the opportunities that are presented by demographic change."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 5 December 2007; c 422.]

I would like to know what those opportunities are, from COSLA's perspective, and how they will bring about reductions in class sizes.

Robert Nicol: The opportunities are falling school rolls.

Councillor Hutton: Yes, that is how I read it, from what you have said, although not having the text in front of us makes it difficult.

Jeremy Purvis: Reductions can be brought about only if teacher levels are retained. Traditionally, falling school rolls allow headteachers to free up resource, which the local authority will put into parts of its area where there are increasing school rolls. What if no mechanisms are in place—in my constituency, for example, or in any region where there are schools with falling rolls but other places where, because of the demographics, there is increasing pressure on school rolls—to ensure that the number of teachers in the schools with falling rolls is preserved, thereby bringing about the reduction in class sizes?

Councillor Hutton: As Robert Nicol pointed out, it is up to each local authority to decide whether to retain teachers to help—to act as another mechanism—to reduce class sizes.

Jeremy Purvis: COSLA's position was to negotiate on the basis of demographic change, but there has been no difference in this year's approach compared with that of last year or the year before regarding how local authorities operate if there are demographic changes in their areas. No guidance has been issued. There is no policy position from COSLA. Local authorities are operating in exactly the same way as before.

Robert Nicol: As we have said, we will make progress from this year onwards. Authorities know best how to deploy staff. They know what the

policy is. I do not think that more guidance would be particularly helpful.

Jeremy Purvis: If there are demographic changes within a local authority area, there is an expectation upon the director of education and headteachers that lower class sizes will be brought about. However, there is no mechanism—either guidance or policy—to retain teachers where the demographics are falling in order to bring down class sizes. Just keeping your fingers crossed is not a policy position.

Robert Nicol: The mechanism is that local authorities are the employer, and they know how to manage their staff.

Jeremy Purvis: But COSLA negotiated that driver for achieving the policy in the concordat.

Barbara Lindsay: I think that we have been clear that we negotiated, across local government, a move to class sizes of 18 as quickly as possible. Robert Nicol has made it clear that individual local authorities will use a range of options at their disposal to try to get there. I endorse Robert's point; I am not sure what else you are looking for from us.

Jeremy Purvis: A lot of things, actually. One of them would be COSLA's definition of "as quickly as possible".

Barbara Lindsay: I think that we have already—

Jeremy Purvis: We have never had that.

Councillor Hutton: We have answered that—it will be across the piece. The concordat says:

"Taking into account retirements, the capacity of the universities to train new teachers, changing demographic trends, and the different circumstances across authorities including accommodation pressures, it is recognised that the pace of implementation of class size reduction will vary across authorities depending on local circumstances and needs. Local government will be expected to show year on year progress toward delivery of the class size reduction policy."

Barbara Lindsay: I add that that is far from being a fingers-crossed approach, as I think we have made clear. We are in active dialogue with our own membership and with the Scottish Government, and we are confident that, at the end of the year, we will be able to produce a report that shows progress towards the commitments.

Jeremy Purvis: So you are not in a position to say what you will regard as progress. Would an overall reduction by 1 percentage point satisfy the requirement?

Councillor Hutton: We have already said—

Jeremy Purvis: Would you tell the Government that such a reduction satisfied delivery of COSLA's side of the commitment? Have you discussed that with the Government?

Barbara Lindsay: We have clearly explained what we are—

Jeremy Purvis: Have you discussed with the Government what would satisfy delivery of your side of the concordat after the first year?

Robert Nicol: As Barbara Lindsay said, we are currently discussing with the Government the basis and detail of the report.

Jeremy Purvis: Is COSLA favourable to publishing the criteria against which it will judge whether progress is being made before a statement is made with the Government that it is publishing the report that demonstrates progress? The genuine question is how progress can be monitored objectively. For objective monitoring, the criteria against which we can judge whether the requirements in the concordat are being met must be published.

Barbara Lindsay: I accept absolutely your point. All that I can say is that we have agreed to report to the Government. We can discuss with the Government how widely that report should be circulated. It is clear that MSPs have a legitimate interest in that, but I cannot say today what agreement we will reach with the Government. I am happy to take your points on board.

Councillor Hutton: I hope that we will return to the committee to share information when we have the finer details. It is difficult to give answers on specifics now, because they are still being negotiated. When we have the details, we will be happy to give evidence on them to the committee.

The Convener: That concludes the committee's questions. The committee welcomes Councillor Hutton's assurance that you are happy to return to the committee when you have completed your negotiations with the Scottish Government. Thank you for your attendance.

That concludes the public part of the meeting.

11:52

Meeting continued in private until 12:18.

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