

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 25 June 2008

Session 3

£5.00

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

18th 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 ALSO ATTENDED:

Claire Baker (Mid Scotland and Fife) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Mark Batho (Scottish Government Lifelong Learning Directorate)

Gavin Gray (Scottish Government Lifelong Learning Directorate)

Anne Marie Hoey (Scottish Government Lifelong Learning Directorate)

Fiona Hyslop (Cabinet Secretary for Education and Lifelong Learning)

Michael Kellet (Scottish Government Schools Directorate)

Elsbeth MacDonald (Scottish Government Legal Directorate)

Kathleen Marshall (Scotland's Commissioner for Children and Young People)

Hazel Rutherford (Scottish Government Lifelong Learning Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 4

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 25 June 2008

[THE CONVENER opened the meeting at 09:45]

Scotland's Commissioner for Children and Young People (Annual Reports 2006-07 and 2007-08)

The Convener (Karen Whitefield): I open the 18th meeting in 2008 of the Education, Lifelong Learning and Culture Committee. I remind all those who are present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

I am pleased to welcome Kathleen Marshall, Scotland's Commissioner for Children and Young People, to the committee. She will speak to both of her annual reports. The committee has perhaps not been as diligent at getting you to come to the committee to hear from you as it should have been, so we have two annual reports to consider this morning. I welcome you and ask you to make an opening statement.

Kathleen Marshall (Scotland's Commissioner for Children and Young People): I thank members for giving me the opportunity to speak to my annual reports for the past two years. In many ways, it is appropriate to take them together, as many of the substantial pieces of work undertaken by my office in 2006-07 bore fruit in the many reports published in 2007-08.

The summary of the annual reports that has been set before the committee shows how the focus of the work has developed since I took up post in April 2004. Year 1 focused on establishment. In year 2, I consulted widely—particularly children and young people, as required by my founding statute—on my priorities. In year 3, I commenced the mapping and evidencing of my priority issues, as set out in the safe, active, happy action plan, which was the result of the consultation. That bore fruit in the reports published in year 4. During the 5th year, I am taking forward the recommendations in my reports in order to effect real change. That does not mean that there has not been change already as a result of our work, but the depth and nature of the change is different.

Some issues that I tackle can be addressed on the basis of applying the principles of the United

Nations Convention on the Rights of the Child to specific issues. Others involve me developing an evidence base as the foundation for recommending changes in law, policy and practice. That takes longer than the application of principle, therefore it was inevitable that my early work would be more about principle and my later work would focus on the unique evidence base that my office has created. You might say that it represents the difference between tackling acute issues through principle and chronic issues through principle and evidence.

The greatest power and privilege that I have as commissioner is to bring issues back to the Parliament that created my office. Over the past year, I have laid reports that set out a number of recommendations. I make one further recommendation in the latest annual reports, concerning incorporation of the UN Convention on the Rights of the Child into domestic law.

I will be happy to answer your questions on those and any other aspects of my work that members wish to explore.

The Convener: Thank you for your comments and for keeping them short, so that we have the maximum time for questions. Can you give the committee a little further detail on the work that you have done on the rights of children who have a parent in prison? You indicate in your annual report that your report "Not Seen. Not Heard. Not Guilty." had some impact, as the Scottish Prison Service responded positively and said that it would make it possible for there to be more support for prisoners at HM Young Offenders Institution Polmont and at HM Prison and Young Offenders Institution Cornton Vale. Can you update us on the work that has taken place within the SPS? Are you involved in that work as the SPS reviews the systems that are in operation?

Kathleen Marshall: The SPS wrote to me recently to say that it is reviewing the prison and young offenders institution rules, and that in doing so it will take account of the recommendations in the report. It also invited me to contact it to participate in those discussions, and I will certainly respond to that invitation.

"Not Seen. Not Heard. Not Guilty." has had quite a big impact in international circles as well as in Scotland, and it has been quoted widely in England. It is unique in that it is not just about mothers and babies, important though they are; it is about fathers, older children and teenagers. It tries to make children visible from the point at which a parent is arrested, sometimes in the presence of their children, through to sentencing when, although on the face of it a decision to imprison a parent breaches the child's rights to family life, that is often not even part of the decision-making process.

The report considers facilities for visits in prisons and asks whether visits can be withdrawn as a punishment for the prisoner. Who do the visits belong to? Do they belong to the prisoner or to the child who has a right to contact? How is that taken into account? The report explores further the decision to release prisoners, including on home detention curfew. Some people have commented that such aspects develop the subject further than was the case with the Scandinavian examples.

I was at the Council of Europe in Strasbourg where people talked about their child-friendly justice programmes. They were very interested in the children of prisoners report, because they had not considered that aspect. It has also appeared in the documentation of the UN Human Rights Council, which is interested in taking the report forward.

Many aspects in the children of prisoners report are critical. Although some of the things that I get involved with can be controversial, people have just not thought about the rights of prisoners' children. Once you start to think about it and go through the process, you realise how invisible such children are and how seriously their rights are affected, which makes people think. At least as many children are affected by the imprisonment of a parent as are looked-after children in Scotland, and it is amazing that there has not been more focus on them up to now.

We are taking the subject of prisoners' children forward and are considering having an international seminar on it to try to bring in other examples. For example, a decision of the Constitutional Court of South Africa introduced child impact assessments at the point of sentence. We would like to bring that example here, so that the legal fraternity in Scotland can see that the idea is not outrageous but principled, and that it can work and help.

The Convener: Obviously, you have had limited discussions with the SPS, but have you had any discussions with the Scottish Government as a consequence of the report?

Kathleen Marshall: We have had meetings with ministers in which we have covered a lot of ground. There have been a lot of reports; the focus of our meetings with ministers depends on the stage at which we want to involve them. With the children of prisoners report, for example, we flagged up the issues and told them about our recommendations, but I have to engage with other constituencies to ensure that I have their report before I make a big ask of ministers that might result in a "No" if I do not tackle those other constituencies. For example, I must try to ensure that I have the legal fraternity on board and that we show it that the recommendations would not allow parents to use their children as a shield or

whatever, but instead are focused on the rights of children and would make life better for everyone. The recommendations would also help to rehabilitate the prisoners. I have discussed the report with ministers, but I have not pushed it as much as some of the other reports, because I have more work to do before I can do that with an even firmer evidence base.

Christina McKelvie (Central Scotland) (SNP): Good morning, commissioner. It is lovely to have you here today. I notice that in all your reports you focus in particular on asylum and the detention of children and young people who are seeking asylum. One of the recommendations in your document to the UN Committee on the Rights of the Child is that the United Kingdom Government should remove its reservation to article 22 of the UN Convention on the Rights of the Child and repeal section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Will you elaborate on some of the work that you have done with the Scottish and UK Governments on those points?

Kathleen Marshall: As you know, I have been deeply concerned about those matters ever since I was appointed, because the way that children were being treated at the time was one of the most fundamental breaches of human rights. Things have got a bit better, but we are not being complacent; the situation is not all right yet.

We have followed up the issues in conjunction with colleagues across the UK, particularly the English children's commissioner. We have responded to consultations and have worked on matters with organisations such as the Scottish Refugee Council. I have had a number of meetings with the UK Border Agency on a number of asylum issues, and I keep in contact with it about cases that come to light that do not seem to reflect the appropriate standards of dignity or the procedures that it says are in place. It is fair to say, however, that in relation to the reservation to article 22 and the repeal of section 9, the focus is on Westminster.

The general point, which is that children who are in Scotland are our responsibility, is one that I have constantly had to reiterate. However, I think that that is now accepted. Recently, I have done a lot in that regard because, in the beginning, there was an issue about whether the Scottish Parliament and the Scottish Government could talk about the subject, whereas now they are talking about it. That, in itself, is progress.

Christina McKelvie: I note the progress that you made in relation to how the immigration service's staff treat young children, especially in dawn raids. Can you tell us more about how you got to that successful position?

Kathleen Marshall: Listening to the children made a big difference. In one primary school that I visited, most of the 30 children were asylum seekers, although some were indigenous Scottish children. We had a powerful meeting with those children, who told us what the experience of a dawn raid felt like from their perspective, and how the event reverberated among their friends. Two of the children burst into tears and had to leave the room. Their teachers who were supporting them were also traumatised by the whole situation. When you demonstrate the impact that dawn raids have on children, it makes people sit up and listen. I do not believe that anyone sets out to treat children in that way, but people who are involved in the process justify what they do and distance themselves from what goes on. That is why we have to keep coming back to the human face of the issue.

One of the children whom we spoke to talked about not being able to sleep at night because he was afraid that people would come into his house. I learned later that his family's immigration status meant that they would not be subject to dawn raids. However, he still had that fear, because he knew that other children were experiencing them. The fear lingers on. The way that children think is not the same as the way that other people think—they have all of those fears.

I am glad that more than 90 per cent of the legacy families in Scotland have been allowed to stay. However, for those who leave there are still issues about the transparency of the decisions that are taken, because they are supposed to be based on criminality, but we are not clear about what level of criminality or immigration offences is applied. That is important, because we are talking about radically changing the lives of children who have been here for a number of years.

Christina McKelvie: I could speak all morning, but my colleagues have questions for you. I commend you for your report.

Rob Gibson (Highlands and Islands) (SNP): I am interested in the work that you did with Children in Scotland at the European Union seminar, and would like to explore baseline information that you feel might be shared with us to our benefit and, perhaps, to that of the seminar participants.

10:00

Kathleen Marshall: Although our focus has been on the UN Convention on the Rights of the Child—partly because that is the main convention for children and partly because the UK is reporting to the UN on the convention this year—many other things are happening, such as the development of other international conventions and treaties and

developments in the Council of Europe and the EU. We need to engage with all of that if we are to have an impact on the early stages of the formulation of policies that affect children.

I attended a meeting of Eurochild in Brussels, during which we gave a presentation on our children's rights impact assessment. I listened to everything, and I feel that we really have to get a starting point in Scotland. People are drawing back from that because it is so complicated, and we are all so busy with other things.

The seminar was a starting point; we worked on it with Children in Scotland and invited policy officers from a range of Scottish children's organisations. Some Government representatives and people from the other children's commissioner offices across the UK were also present. From their point of view, it would have been pretty simple stuff, about the institutions and how policy is developing. At the end of the meeting, we felt that it had been a worthwhile start, and that the way to go forward was probably for us to identify a piece of work that we could work on together to make it a reality for us.

I spoke to Catherine Stihler MEP the night before last about whether we could identify a piece of work that would help us to learn by doing, rather than just by reading. The situation obviously has been affected by recent issues about the Treaty of Lisbon. There has been a move to incorporate children's rights in it, which, if there is not a treaty, could be put on the back burner. There are many live debates, but we are just at the beginning.

Rob Gibson: That is interesting, because at a much earlier stage in my life I was involved in the campaigns to get rid of the belt in school.

Kathleen Marshall: Good.

Rob Gibson: Indeed. The European element was vital in allowing us to raise our standards in this country. Could you give us a few keynote points about the issues and decisions? Even one or two bullet points would help.

Kathleen Marshall: The Council of Europe passed a resolution on 13 March on prison issues—about the children of prisoners—which picks up on a lot of the things that we are talking about. The council and the EU have also made resolutions and recommendations about physical punishment in general, and they are coming along a twin track on physical punishment and prisoner issues. A lot of our issues are being picked up at international level. We are partly informing those bodies, but we also have to be involved at an early stage to pick up on what they are doing and to have a chance to shape it, before we are landed with a direction into which we have not had any input.

The process is two-way, but we are not wholly engaged with it yet. We are learning. We are more involved in the Council of Europe issues than in the EU issues. I met the Council of Europe Commissioner for Human Rights when he visited a few years ago, and I wrote a report for him on Dungavel and immigration, which was reflected in his report. We are more tied into the council—the EU is a bit more of a mystery, which we are trying to unravel in order to get involved.

There are so many things that we could do. At this stage, I am reflecting on what we have done over the past four years and what our direction should be. If we were to engage properly with all of the international instruments and bodies, it would take up all our policy time. That is where we could have a fruitful interaction with organisations such as the Scottish Commission for Human Rights in parcelling out the work.

Mary Mulligan (Linlithgow) (Lab): Good morning, commissioner. In your report you raise issues around child protection, which is on all our agendas. There is often a dilemma between providing security for our children and young people, and—as you refer to in your report—adults fearing getting involved because of their concerns. How do we get the balance right? Are there things that we still need to do?

Kathleen Marshall: That is one of the deeper issues that we have been addressing. It relates to children having voted that having things to do should be a priority. If children and young people are to have more stimulating things to do, they need adults to be involved to help provide them. Our research shows the extent of adult fears about contact with children and young people, and that is where my office adds some value. When we first proposed making things for children and young people to do a priority for my office and discussed it with stakeholders such as the other children's agencies, the message that came out was that the issue was difficult.

We should consider introducing anonymity before conviction—we should consider that principle for everyone, not only people who work with children—because people are afraid of the consequences of an allegation and of being named and shamed before they ever have an opportunity to defend themselves. If that proposal came from somewhere else, it could seem to be promoting an adult agenda. The added value of me saying it is that I am clearly coming from the children's point of view. I am saying that, if we have reached a situation in which ordinary, well-meaning adults are afraid of contact with children and young people, there is a problem, and it is not helping children.

There are some practical things that we should do. We should think about how to take the heat

out of allegations. Of course there will be false allegations for various reasons but, even if there are only a few and they are unlikely to be made, people are so terrified of the consequences that the fear outweighs the statistics.

Another practical step concerns our disclosure system. As I responded to the proposals on vetting and barring, for example, it became clear that we did not have a good enough mechanism to filter out non-conviction information that had no foundation. People are rightly terrified that, if an allegation is made against them, even if it is not proven, it can turn up in an enhanced disclosure and follow them for the rest of their lives, so we must put in place a better filtering system.

People do not understand the disclosure system or where to find out about it and health and safety requirements. Some of our work, particularly on opportunities for looked-after children to engage in outdoor play, showed that people have misunderstandings about health and safety that affect the way that they operate and affect opportunities for children. For that reason, we have pointed out that much of the language about working with children is negative: it is about vetting and barring. Our research shows that everyone agrees that we must put obstacles in the way of unsuitable adults having contact with children, but we need to do something to enable other adults to have contact with children as well.

That is why we have said that we need an easily accessible central point of reference that agencies can phone up and ask, for example, whether they need disclosures for people, how to get them and how to get help interpreting what comes back; whether it is true that it is not permissible to go near water unless the child is tied by a rope to a member of staff or a tree, which we were told in some children's units; and how to strike the balance between keeping children safe and giving them a stimulating environment.

My contact with organisations, including organisations that provide such a service for their own constituency groups, shows that there is a lot of support for such a point of reference. We had a meeting with Volunteer Development Scotland, the Scout Association, sportscotland and other organisations. Some of them provide such a service for their groups, but the wee agencies at the grass roots have projects that never get off the ground because people are frightened off. We need to encourage them, enable them and give them the support and confidence to do what they want to do for children and what children want them to do. It is sad and tragic that we have such barriers in the way of healthy human contact that adults and children want.

Mary Mulligan: That is a helpful and full answer. It gives us some direction on what we

need to consider to ensure that children have the full life that we want for them.

I have a question on a side issue to child protection. In your report, you mention how part 3 of the Protection of Vulnerable Groups (Scotland) Bill was removed because there were fears that it intruded too much. I recently attended a local authority committee meeting on child protection, and I also attended a follow-up meeting of professionals on the subject of one of the Edinburgh incidents. At those meetings, issues to do with the sharing of information still arose. I am not necessarily suggesting that we put back the part that we removed from the bill, but how can we ensure that people feel secure about information that is being shared?

Kathleen Marshall: I have been involved in child protection and child protection law for 20 years, and I am aware of the concerns about information sharing. Those concerns have usually been expressed by the medical profession, often by general practitioners. However, GPs would not have been covered by part 3 of the Protection of Vulnerable Groups (Scotland) Bill. For groups that would have been covered, there was to be a duty to share information and the thresholds were to be very low. People would have been sharing information about the lives of children all over the place. We received a strong message from children and young people that, if that was to be the case, they would not access the services. Our response was based on that message and on similar views that we heard from other agencies.

In child protection, appropriate information sharing is an issue. Some years ago, I prepared a background paper for the then Scottish Executive's child protection reform exercise. In doing so, I went through all the guidance on information sharing that was available to medical staff. The guidance was ambiguous: people were told to share information, but they were also told, "Be it on your own head if you share information inappropriately." In child protection, some information has to be shared. We could have been more supportive of the medical professionals, and we could have been clearer with them about what information had to be shared.

Part 3 of the bill did not tackle the main issue and there was a risk of serious unintended consequences. Children and young people were very concerned about that.

Aileen Campbell (South of Scotland) (SNP): Commissioner, as a new MSP, I would like to say that staff in your office have been extremely helpful to me over the past year, as have you.

Kathleen Marshall: Thank you.

Aileen Campbell: I want to ask about some of your recommendations, and my questions will

relate to points that Christina McKelvie made about asylum. Some issues to do with asylum are reserved to Westminster, and you have said that your job would be easier if your remit were to be widened to give you more control over issues that are currently reserved. How could your role be enhanced? What barriers have been created by restrictions in your remit?

Kathleen Marshall: At the beginning of my term of office, many voices said that I had no right to speak on asylum. I was adamant that I had a right to speak on it—indeed, I felt that it was a duty.

There can be a tendency to divide children's lives into parts. When groups of children have problems, they are often multifaceted. We can take poverty as an example. Some issues relating to poverty come within the remit of the Scottish Parliament; I am thinking about the provision of services and about assistance from local authorities. However, other issues such as benefits, employment and minimum wages do not come within the remit of the Scottish Parliament.

There can be confusion when people have different roles. That has not affected me as much as it has my counterparts in Wales and Northern Ireland, because I do not have a role for individual complaints. If I had such a role, things would become more complex. I am not saying that that is a reason for my not having that role, because there are arguments for developing it. Depending on which part of the United Kingdom they are in, a commissioner might be able to take up a complaint on one issue but not on another.

The disadvantages of the fragmented approach across the UK have been mitigated by the fact that all the UK children's commissioners work very well together. That has been great, but had we not worked well together, it could have been mayhem. However, we often feel the same about issues, and we have the same agenda. We have worked together closely on asylum issues, for example. However, if we had been sending out different messages, the voices that said that I had no right to speak on asylum would have been even louder.

The focus should be on children. The devolution settlements are complex and the interface between Westminster and the devolved Governments is different in different parts of the UK. For example, in Wales juvenile justice and family law are not devolved, whereas in Scotland they are. However, we professionals should deal with any complexity and not leave it to children and families. We should not have to say, "That's not my job." That is a terrible thing to have to say to any child or person who is in distress. We should be able to deal with whole people.

10:15

Elizabeth Smith (Mid Scotland and Fife) (Con): I compliment you on all the work that you have done to flag up many important issues in this area of debate.

I return to the issue of child protection. About a year ago, I remember you speaking very eloquently on Mary Mulligan's point about getting sufficient adults to volunteer to help with activities. You raise some interesting issues. I am not convinced that we have got the right playing field that will enable us to take this further. The problem is very serious and because a lot of the legislation is not good, it comes in the way of adults volunteering and participating.

I would be very interested if you would consider doing an inventory, during your work, of the legislation that you feel is a hindrance rather than a help in getting more adults involved with children. It is difficult for us, as MSPs, to get the all-round picture. You must come across the problem regularly; I am sure that people in the legal profession do so as well. I would be interested in a list of legislation that is a barrier to some of the work that you do.

Kathleen Marshall: Sometimes the issue is not so much the legislation as the interpretation and application of it, which can be inconsistent. That is where problems often arise and cause conflict. Some of the interpretation and application might be affected by the Crerar moves towards more streamlined scrutiny.

For example, when all the agencies met to discuss our idea of having an enabling unit, which they supported, one of the women, who runs nurseries, talked about one agency coming in and saying to her, "You should have woodwork" and then another agency saying, "If we see hammers and nails in here, we'll close you down." One agency says, "You should have healthy eating and the children should be involved in preparing the food" and the other says, "No eggs, because eggs are dangerous and the children shouldn't touch the food because it's unhygienic."

People are subject to a welter of different rules and they do not know where to go, what to do, or what might cancel out something else. I spoke about that to the front-line play agencies at a conference, where I had a good session with about 30 front-line workers. I asked them, if there was one thing that I could do for them, what that would be. At that point, their answer was about the Scottish Commission for the Regulation of Care and they focused on all the different regulations, risk aversion and so on. However, when I met members of the care commission and told them what had been said, they sighed and said that one of the care commission's priorities is stimulating

play, but that it is not always about the care commission's standards; sometimes, it is about the local authorities' standards. There is also an issue about how consistently inspectors interpret and apply standards locally.

Much of the discussion about legislation is around that level. I am not sure that some of the disclosure system needs primary legislation; how we operate the system is more important. However, if we start from the point at which people are having problems and find out where the obstacles are, that will be more effective than looking at the system from the top down. The messages that people at the top think they are giving are not always the messages that people are receiving further down the line. Moreover, people receive messages from so many different places that they are confused.

There is a lot at stake when it comes to child protection. In the middle of their confusion, people react defensively, which can be paralysing, and they then opt out. That is why I suggested the idea of an enabling unit, even one that lasted for only three years and was based in another organisation. We need to try to instil some confidence back into people. When I am asked how we tackle the seemingly enormous culture of fear that we have, I point out that one of the depressing—but possibly encouraging—things is that this culture of fear has developed relatively quickly. Even 10 years ago, we would not have had quite the debates that we have now. We will not change that culture overnight, but we can make some explicit commitments and take some steps to give people confidence that they will be treated fairly. We can assure them that they will be given information and that they will be supported and encouraged, instead of being left in that welter of confusion and fear.

Elizabeth Smith: I totally accept what you are saying. Last week's newspapers contained the story of a school sports day that had been cancelled because the playing field was not even. I am sorry, but that is going far too far. It was the most ridiculous thing that I had ever seen. The decision upset numerous parents and teachers, as well as the children concerned. That is not just about the interpretation of law; it shows a lack of common sense in considering what motivates children. I am deeply concerned that that is not just an isolated example. As with the example of the canoeist being required to be tied to a tree, the person who wrote that legislation has never been in a canoe and has probably never been up a tree either. We need to get rid of that kind of thing. Otherwise, we will not be able to do half the things that you are suggesting.

Kathleen Marshall: I agree with you completely, but no legislation requires that a canoeist be tied to a tree or that playing fields be level. We need to

go back to what the legislation says. One example of risk aversion in children's residential units meant that children were not allowed to ride a bike unless they signed a risk assessment, wore protective gear for head, ankles and elbows and were accompanied by a member of staff carrying a first aid kit and a puncture repair kit. Now, that just would not happen. When the Scottish institute for residential child care followed that back—we commissioned SIRCC to carry out the research for us—it found that the practice was based on 1992 Strathclyde Regional Council guidance, which was in turn based on 1980s guidance for schools that had been devised for organised groups that were involved in activities such as cross-country biking. In that context, it made perfect sense to require that a risk assessment be carried out and that a member of staff have a puncture repair kit and first aid kit. Part of the climate of fear is that, when people do not have rules to apply, they take them from another context.

Similarly, in our report "Handle with Care" on the moving and handling of disabled children, we found that people were taking standards that had been developed for hospitals and applying them to home care. We highlighted the ridiculous situation in which carers who know that they can help a young person to the toilet without a hoist—this is a young person who has some mobility—are prevented from doing so by a blanket ban on lifting and handling. Often, out of sheer human kindness and compassion, carers just do away with the rule and actually help the young person. However, by doing so, the carers put themselves outside all employment protection and open themselves to disciplinary action—with which some have been threatened—if they are found out. If there is an accident, the carer is not protected.

Such practices, guidance and rules are supposedly developed to protect children, but instead they protect the institution. Some of them are supposed to protect the workers, but kind-hearted people subvert rules that are not sensible or humane and, in doing so, they make themselves vulnerable. We constantly need to ask what the agenda is behind the rules. Some of the standards were developed for nurses who are dealing with such people day in, day out in hospitals where they have all the equipment, but the standards were then being applied in the child's home. As a result, some children lose the mobility that they have because they are not allowed to use it and are put up in a hoist unnecessarily.

There are many such issues. Fear is part of it. People are fearful and lacking in confidence, and they are looking for boxes to tick so that they can say, "I ticked these boxes and I did the right thing. It's not my fault." That is not a healthy or satisfying way of approaching critical human relationships.

Ken Macintosh (Eastwood) (Lab): The issue is of concern to all committee members—we are all aware of examples of such risk-averse behaviour. I wonder whether the Education, Lifelong Learning and Culture Committee can do anything to address what you call the culture of fear; the other term is the culture of blame. You have experience of high-profile inquiries. The first thing that happens afterwards is that the finger of blame is pointed everywhere. It is not surprising that many people—for example in local government—take a defensive attitude. We need more practical suggestions. An enabling unit is a good idea, as is the idea of an enabling culture.

The Parliament could do more to produce guidance or legislation—although legislation must be proportionate, so I do not know how we would frame that one—on the way in which fatal accident inquiries and other inquiries are handled, so that people could contribute to those inquiries without feeling that they will be fingered in the media or elsewhere. That issue was being looked into, but I do not know what has happened to it. I am not sure that anonymity is the answer. The answer might be to create a different culture. What steps could the Parliament take and, in particular, what role could the committee take to address those issues?

Kathleen Marshall: You say that you do not think that anonymity is the answer. We did some follow-up research on adult attitudes, which we have not yet published formally. We were trying to get under the skin of the issues. We thought, "We've evidenced the problem. Let's see if we can evidence the solution." We asked focus groups to go through various scenarios and ask themselves, "What is the fear? What would help?" We asked the researchers not to mention anonymity up front. If anonymity had not been mentioned by the end, the researchers were to ask the groups whether it would help. In fact, anonymity emerged as one of the things—not the answer—that would help people feel that they were not being judged at the beginning. Standard phrases are dotted throughout the research, such as "Guilty till proven innocent" and "Devastating consequences". We suggest that anonymity would give people the confidence that they will be treated fairly. Anonymity is a complex issue—it is linked to all sorts of other things. We thought that it might be appropriate to refer the issue to the Scottish Law Commission, so that it can consider the history and so on. What does open justice mean? Why do we have it? How would anonymity impinge on it? How have things changed?

We could even have an inquiry into how we reduce the barriers and fears between children and adults, and how we give people the confidence that the issue is acknowledged and is being addressed at a high level. As I said, that is

part of the added value of my office. However, I realise that I am walking a fine line on this issue. I am sometimes quoted on it in the same context as other quotations about all of these malicious children and how we have to punish them. I have to distance myself from that. If we do not take the heat out of the consequences of allegations for adults who are innocent, that other line of argument will continue to come to the fore, in which we hear people saying that if children have made false allegations they should be prosecuted for it.

That is exactly how to squash genuine abuse cases and prevent them from surfacing. Over the years, we have learned that, when children have been abused, they do not speak out about it because they feel that they would not be believed or because they have been threatened with the consequences of their not being believed. If we say that we will listen to the children but that, if we do not believe them or if the case cannot be proven, we will prosecute them for telling lies or sue them for defamation for maligning somebody's character, that will squash the real progress that we have made in helping children to speak. I would rather take the heat out of the situation by lowering the stakes for adults if the allegations that are made are untrue. Maintaining people's anonymity is one of the things that we could do to help the situation, as well as tackling the disclosure issue about how we use non-conviction information.

10:30

We instructed another small piece of research, "Toe in the Water", about disclosure systems in six or seven other countries that are mostly in Europe, but which included New Zealand. We wanted to see the state of the debate in those countries. We discovered that we are off the scale in our use of non-conviction information—we have a lot to teach other countries and could be world leaders in the field. We are ahead of the game in ways that some of those countries would like to be. Some of them are still struggling to create systems that would allow them to have checks for the criminal records of people who apply to be scout leaders, and so on.

We are way ahead in a good way; however, because we are so far ahead, we are dropping off the cliff edge. We must think about what we are doing. The research showed that none of the seven countries that it covered has evaluated the impact of its disclosure system. Are we making life safer for children? At what point do we lose the benefits and start to get into the negatives? Those are questions for us to think about.

We must hold to the principle of putting up as many barriers as we can to prevent unsuitable

adults from working with children while trying to find the tipping point at which we start to put barriers in the way of innocent, well-meaning adults and create a climate of fear. We must have that debate. If we do that, we can send a message to the rest of the world, which has not yet got anywhere near where we are on this.

Ken Macintosh: Has your work in this area produced evidence about the anxiety that men, in particular, face in working with children?

Kathleen Marshall: Absolutely. It is much worse for men. When I was working on the secondary research, I asked one man what he thought would help his situation and he said, "A gender change." Men have a fear of working with children, and that is very damaging because there are many young men who need good male role models in their lives. I have heard residential care workers say that people tend to think that there must be something about men who want to work in that area. We must address that and ensure that men feel more comfortable and supported in taking on that role. There is always a balance to be struck. We do not want to roll back from all the valuable work that we have done; we just want to find a balance and redress the situation. That is a valid point.

The Convener: Thank you for your attendance at the committee. We are likely to reflect on and return to some of the issues that we have discussed—especially those concerning vulnerable groups—when we consider the secondary legislation under the Protection of Vulnerable Groups (Scotland) Act 2007 later this year. We might even want to have a session on the rights of the children of prisoners, and we will hope to engage with you at that point. I also look forward to seeing you tonight, as I understand that you will be back in the Parliament for the members' business debate on the age of leaving care.

Kathleen Marshall: Thanks very much. Tonight's debate is important, because one of the conclusions of the report was that there is a culture of leaving care at 16. The more people who say that that is not right, the better. I therefore thank members for tonight's debate as well.

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

10:34

Meeting suspended.

10:37

On resuming—

Petition

Schools (Class Sizes) (PE1046)

The Convener: Agenda item 2 is the committee's continued consideration of petition PE1046, from the Educational Institute of Scotland, on class sizes.

I am delighted to welcome Fiona Hyslop, the Cabinet Secretary for Education and Lifelong Learning. She has been joined today by Michael Kellet, who is the deputy director of the teachers division in the Scottish Government. I understand that the minister has a short opening statement.

The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop): Since I last appeared before you to discuss the EIS petition on 19 December last year, you have taken evidence on the petition from a number of organisations, and I have read the *Official Reports* of your meetings with interest.

The EIS naturally put up a strong defence of its policy of across-the-board class size reduction, but support for the principle of class size reduction also came from the headteachers associations and the Association of Directors of Education in Scotland, so it appears that there is a degree of consensus on class size reduction among education professionals. Let us not forget that around 80,000 people signed the EIS petition, which calls for

"significant reductions in class sizes".

However, that is not to say that the support from education professionals or from the signatories to the petition extends to the EIS's ultimate goal—which David Drever of the EIS set out to you in his evidence on 21 May—of reducing the size of all classes from primary 1 to secondary 6 to a maximum of 20.

That general support is hardly surprising. We know that smaller class sizes can lead to more sustained interaction between teachers and pupils, more higher-order questioning and more feedback on work, and to teachers spending less time on routine supervision, classroom control and housekeeping. Other developments, such as formative assessment, assessment is for learning and more group work in classes, will also benefit from smaller class sizes.

As we all appreciate, poverty and deprivation can have an impact on life chances and educational achievement from the earliest years, and there is a convincing body of research evidence that supports smaller class sizes in the

early years, especially for children from deprived backgrounds. The student teacher achievement ratio—STAR—project and, more recently, the class size and pupil ratio project in England provide evidence in support of that policy.

I understand the EIS's long-term goals and the reasons behind them, but a start needs to be made somewhere. The EIS recognised that in its evidence to the committee. The evidence points to a start in the early years, which is why our focus is on class size reduction in those years and why we think that deprived areas should be targeted first.

Our manifesto commitment was to reduce the size of P1 to P3 classes to a maximum of 18, and we are honouring that by embedding it in the concordat that we signed with local government on 14 November last year. Our reasons for doing so are simple: we want to work with local government to drive down class sizes in the early years, when literacy and numeracy are embedded most effectively in young people. There is also evidence that early intervention to deal with problems prevents later problems such as violence, ill health or children not achieving their full potential. Local government has agreed to deliver year-on-year progress on that objective, and I will do all I can to help local authorities contribute towards it.

The Convener: Thank you very much for that statement. I am sure that committee members have a number of questions that they would like to pursue with you this morning.

You said that there is a "convincing body" of evidence on the policy of class size reduction. Will you tell the committee a little bit more about the academic research that the Government has used to inform its decision on reducing class sizes, particularly in P1 to P3?

Fiona Hyslop: The STAR project is the definitive research. It is considered the gold standard for research into class size policy and certainly indicates that the best results from class size reductions are found among pupils from deprived areas. The more recent research in England on class size and pupil ratios also has an impact. There are also issues around sustainability.

The committee has heard from Valerie Wilson. Hers was desk research—an academic review of other people's work—but her assessment also considers current developments in school and curriculum reform in Scotland. The committee has spent a great deal of time considering the petition and the Government's proposals but, as much as class sizes are important, there is a range of other issues that have an important impact on young people's educational achievement and attainment.

In her evidence to you, Valerie Wilson made a point that is central to our proposals. In answer to a question from, I think, Rob Gibson, she said:

"We are now asking teachers to implement a new curriculum, which starts from a completely different philosophy. It would be easier to do that with smaller numbers in the class. We are also asking teachers to cope with a wide range of abilities and needs. It does not seem to make that much difference whether you put in a classroom assistant or classroom aid to help the teacher; the quality time is the time that is spent with the teacher. Anything that you can do to allow pupils to have more dedicated teacher-pupil engagement will be an improvement and will ultimately lead to improved attainment. The evidence of research is that that will probably be necessary. However, it will not be sufficient in itself, because other things will also need to happen."—*[Official Report, Education, Lifelong Learning and Culture Committee, 21 May 2008; c 1075.]*

Although class sizes are important, we should view them in the context of other matters that Valerie Wilson covered in her desk research and analysis and on which she gave evidence. It is important to bear that point in mind.

However, the primary evidence for the original proposals comes from the STAR project, which showed that class size reduction has the biggest impact in the early years and in deprived areas.

The Convener: As you know, the EIS's petition is about class sizes not only in P1 to P3 but throughout a pupil's school life. Will you tell us a little bit more about the Government's policy on class sizes throughout school?

Fiona Hyslop: We have some sympathy with the EIS's proposals but, as I said in my opening remarks, the biggest impact will come from tackling class sizes in the early years, which is where the initial focus must be. Everybody recognises that it would be desirable to have smaller classes, but we have to deal with the resources that we have and our current circumstances.

The previous Government's proposal, which was supported by guidance, was to reduce class sizes in S1 and S2 to 20 in mathematics and English. However, the latest figures show that, after four years of that policy, only 67 per cent of pupils were in classes of 20 for maths in S1 and S2. There is still a challenge to realise that aim, even though it was four years in development. Numbers in classes for technical subjects are limited, but, obviously, we want to move forward.

10:45

I want to make a point that might explain our approach to reductions in class sizes. Projections by the General Register Office for Scotland on 5 February this year show a 6.3 per cent reduction in pupil numbers in secondary schools, so there will automatically be a reduction in class sizes. In

its settlement with local government, the Government has ensured that there will be sufficient resources to maintain teacher numbers at 53,000. Had we not done so, I suspect that local authorities would have reduced teacher numbers in secondary schools because of falling pupil rolls.

In certain areas, pupil rolls have reduced substantially. For example, Dundee is down 6.4 per cent, Glasgow is down 8.9 per cent and Inverclyde is down 11 per cent. North Lanarkshire has one of the lowest reductions, at 3.4 per cent. In Renfrewshire, the figure is 7.9 per cent. If the Government had maintained the status quo, local authorities would have been able to reduce the number of teachers in secondary schools. However, we have provided resources to allow teacher numbers to be maintained at 53,000.

Local government might decide to maintain teacher numbers in secondary schools, or to put resources into primary schools to reduce class sizes, which is our preference. Because of falling rolls in secondary schools, there will be scope over the coming years for class sizes in secondary schools to reduce anyway. However, there will be challenges, and committee members may have heard colleagues pointing out in the chamber that class sizes tend to be smallest in S5 and S6 for pupils doing the most advanced qualifications. Educationists might argue that pupils in the earlier years of secondary have more need of time and attention.

It is an attractive idea to allow headteachers flexibility in determining what they do in secondary schools. However, the EIS made a good point to the committee when it asked how localised our standards could be and whether people could expect class sizes to be standardised across the country. Like previous Governments, this Government has had to wrestle with such questions. I am sure that the committee will have views to offer.

The Convener: I am sure that we will discuss teacher numbers later, but I am keen to continue discussing the Government's policy on class sizes.

Does the Government remain committed to having class sizes of no more than 20 for S1 and S2 in maths and English, with some flexibility for headteachers?

Fiona Hyslop: Originally, the previous Government intended a reduction to an absolute class size of 20. The target was then changed to an average class size of 20. I know of some schools where the headteachers want to have 30 pupils in one maths class but 10 in another, in order to concentrate resources on those 10 pupils. The previous Government made that change, saying that the figure was not an absolute figure but an average figure.

The guidance on the reduction to 20 still stands. The 2007 circular to local authorities on class sizes for S1 and S2 in maths and English indicated that there should be an average of 20 in each subject and in each year group. The guidance and proposals in that circular are being maintained by this Government.

The Convener: Is it this Government's hope that S1 and S2 English and maths classes throughout Scotland will have an average of 20 pupils?

Fiona Hyslop: We continue to support the guidance that was issued by the previous Government. However, I emphasise that it is guidance, not regulation by statute.

The Convener: Why, then, do I read in the *Official Report* of chamber business on 19 June that Maureen Watt said that it was a matter for local authorities? Is it a matter for local authorities or a matter for guidance?

Fiona Hyslop: It is a matter for local authorities, informed by Government guidance. However, guidance is not regulation.

The Convener: Okay. Your manifesto commitment was to reduce class sizes to 18 in P1 to P3. How will you define progress and monitor whether it has been made in reducing class sizes?

Fiona Hyslop: As you know, the class size commitment has now been embedded in the Government's concordat with local government. It might be useful to repeat on the record that agreement with local government.

One of the commitments in the concordat is to improve

"the learning experience for children and young people by improving the fabric of schools and nurseries; developing and delivering *A Curriculum for Excellence*; and, as quickly as is possible, reducing class sizes in P1 to P3 to a maximum of 18 and improving early years provision with access to a teacher for every pre-school child. The provision of additional capital allocation and specific arrangements for local authorities to maintain teacher numbers in the face of falling school rolls will allow significant progress on this policy over the Spending Review period. 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."

Your question was about evidence of progress, as agreed in the concordat with local government. We have arrangements and agreements with local government as a whole to deliver the class size reduction policy, and part of our on-going discussions with the Convention of Scottish Local

Authorities is about how we will monitor that progress.

I do not want simply to echo the points that I made on 19 December, but in previous years the Parliament could monitor progress in class size reduction only after the publication of the school census material. The census tends to take place in September, but it is not reported on until February the following year. Therefore, for example, the Parliament could hold the previous Government to account on its commitment to class size reduction in P1 to 25 and in S1 and S2 to 20 only in February this year—almost a year after it had demitted office.

That system is not acceptable, and we want to find a better way of reporting progress. Progress will be reported by COSLA to national Government, and we have agreed that COSLA will provide information to us in September following the development of local government plans. As members will know, we are in the middle of class size preparation and class constructions for next year. COSLA will collate the information and report to national Government on progress.

The agreement in the concordat is for significant progress to be made. I am pleased to see that progress is being made, and we think that the resources are available to enable significant progress to be made, but at this stage I cannot report what progress will be made. However, we will try to put in place mechanisms that mean that, instead of having to wait until the February after the September census, we will know the situation several months earlier.

The Convener: The difference in approach is that, whereas class size reductions in S1 and S2 English and maths were governed by guidance to which local authorities referred, the policy on P1, P2 and P3 class sizes is determined by the concordat.

Fiona Hyslop: Yes—that is part of our new relationship with local government. Much of what we do, not just in education, is done in agreement with local government rather than by micromanaging or dictating. That is the change to the relationship.

The Convener: So no guidance will be governed by the single outcome agreements or the concordat.

Fiona Hyslop: Not at this stage.

The Convener: Does the Government have a clear picture of how many P1, P2 and P3 classes are currently at 18 and therefore meeting the target?

Fiona Hyslop: Currently, the figure is 12 per cent—that figure was released in February and

comes from last September's census. I think that the figure was 11 per cent the year before.

The Convener: You are keen for local authorities to make progress on increasing that figure as soon as practicable. How will you determine whether a local authority has made progress? Will an increase of 1 or 2 per cent be progress, or will it have to be more than that?

Fiona Hyslop: As per the concordat, we will judge whether there has been significant progress by local government as a whole. It will be for COSLA to determine whether each individual authority is making significant progress to enable local government as a whole to meet its side of the agreement under the concordat.

The Convener: So local government will decide whether progress is being made. The Government has a policy, but it is not able to ensure that local authorities meet that policy.

Fiona Hyslop: We have an agreement with local government. Under that agreement, COSLA will monitor the progress that is made by individual local authorities. As a national Government, we will determine whether we think that significant progress is being made across Scotland as a whole in order to meet the agreement that is set out in the concordat.

The Convener: Without guidance and without any determination to make the commitment a reality, the Government might be accused, if one is being kind, of paying lip service to the policy or, if one is being unkind, of an unforgivable breach of a promise.

Fiona Hyslop: It is interesting that, for three years, the previous Government pursued a policy of class size reduction in P1 and in S1 and S2 without guidance. The circular was produced only in 2007, so for three years the process of reducing class sizes took place based on policy intent, which was supported by guidance at a later stage.

However, you are right to identify the changed relationship that we have with local government. Yes, it is a big test and challenge for local authorities to ensure that, within the resources that they are given, they deliver on that part of the commitment, which is contained in the concordat. That is very much part and parcel of that changed relationship.

We expect local government to deliver on a range of issues and we are now in the process of signing single outcome agreements. The challenge to local government is to deliver on the Government's national indicators and to ensure that they produce change and improvement in the local area. We are in a very different landscape of relationships between national Government and

local government in which class sizes is only one issue.

Over a range of issues, local government has been given far greater freedom—which you might criticise—and, clearly, that freedom to deliver is being picked up with relish by many local authorities. The ending of ring fencing provides local authorities with great opportunities to pursue different policies on children's issues including, certainly in South Lanarkshire, class size reductions.

The change in the relationship has been welcomed with open arms by local government. Trust and mutual respect are part of the concordat, so we need to deliver policies in partnership. The arena that we are in is quite different from the one that the previous Government was in. Some people might not agree with it or like it, but that is the new position that we are in. Most people of good will believe that that change will be progressive for Scotland as a whole.

The Convener: I do not disagree that we have a new landscape and that there are major differences between the current Government and the previous Government, especially on the issue of reducing class sizes.

Councillor Isabel Hutton, who is COSLA's education spokesperson, told the committee:

"We have not agreed in the concordat to reduce ... P1 to P3 class sizes".—[*Official Report, Education, Lifelong Learning and Culture Committee*, 5 December 2007; c 413.]

The previous Government put in place the resources and guidance to reduce class sizes in S1 and S2 in English and maths. At that point—on 17 August 2005—you said:

"Cutting class sizes was a laudable pledge but making it knowing that you would fail is unforgivable."

What is different between August 2005 and now? You have a policy pledge that commits the Government to reducing class sizes but you have neither the means nor the mechanism to make it happen.

Fiona Hyslop: We certainly have the means and the mechanism. We are giving local government an increasing share of the £34.9 billion national budget. We are investing £3 billion in capital for local government—£115 million extra in this year alone—which can be used for education.

The budget for education and young people constitutes just under 50 per cent of local government's total spend, and the local government settlement recognises the importance of a whole range of issues that are contained in the concordat, of which class sizes is one.

I, too, will quote Councillor Isabel Hutton's evidence:

"What we have said is that local government, over the piece, will reduce class sizes".—[*Official Report, Education, Lifelong Learning and Culture Committee*, 18 June 2008; c 1236.]

A number of leading councillors have agreed, as part of the concordat, that local government will deliver smaller class sizes over the period of the settlement and will make year-on-year progress on that. For the record, Councillor Pat Watters, Councillor Neil Fletcher, Councillor Alex MacDonald, Councillor Corrie McChord and Councillor Rob Murray were the signatories to the concordat.

11:00

The Convener: But there is no definition in the concordat of what will constitute progress, no definition of how much progress will be made and no definition of how much the policy will cost. COSLA told us last week that it has no idea how much it will cost. It also said that the evidence of ADES to the committee was not relevant because the policy was not going to be implemented. So, my final question to you, for the moment, is this: will the Government fulfil its manifesto pledge to ensure that all P1 to P3 class sizes are reduced to 18 in the lifetime of the Parliament, as Alex Salmond, the First Minister, stated in September?

Fiona Hyslop: We will deliver the proposals that have been put forward and agreed with local government in the concordat, which will take forward our manifesto commitment to reduce class sizes in P1 to P3 to 18. I am pleased that, throughout the country, local government is taking forward that policy and will, as of this summer, deliver smaller class sizes. At the end of the day, this is not about a political spat between different parties; it is about the education of young people. Most people in this country think that the Scottish National Party Government is doing the right thing in reducing class sizes. They also agree that we are right to focus on the early years—indeed, most educationists think that that is the right thing to do.

I am pleased that North Lanarkshire Council, which is in your constituency, has chosen, as of this summer, to reduce the size of all P1 classes to a maximum of 23 in 2008-09. The council has a strong education budget, which has been increased by 5.5 per cent. We are seeing progress in North Lanarkshire on the reduction in class sizes, which I think is to be welcomed.

Resources are also being made available to maintain teacher numbers at 53,000, which will involve the training of 20,000 new teachers by 2011. Bearing in mind the fact that our current cohort is 53,000 and the fact that we need to train

20,000 new teachers to replace those who are retiring, a considerable investment is required from the Government to ensure that we maintain teacher numbers and, with falling school rolls, deliver smaller class sizes. That is happening throughout the country.

The Convener: My mail bag contains letters from a number of constituents who are not happy about the council's policy of setting a maximum class size of 23 pupils for P1 classes, resulting in a number of primary schools in my constituency—never mind throughout North Lanarkshire—having composite classes for the first time. Some parents are particularly unhappy about that and about the fact that the resources are not being made available to have dedicated teachers and smaller class sizes, as was promised by the SNP Government. However, that is a matter to which, I am sure, we will return.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Let us return to the issue of demographics. When we asked the EIS about that, we were told that the concordat says that demographics will be a key driver for the reduction in class sizes. You, too, cabinet secretary, have indicated that that will be a key area. How will that operate in practice? The Government has said that it will maintain teacher numbers at 53,000. Historically, local authorities have made an adjustment every year to the figures for their areas on the basis of school rolls. For example, an area such as the Borders, which has increasing school rolls, will receive additional resource to cover that, whereas an area in which the school rolls are falling will receive less resource through grant-aided expenditure. Will that situation change?

Fiona Hyslop: When we put £34.9 billion into the overall local government settlement, we ensured that sufficient resources were available to maintain teacher numbers. We also ensured that there was recognition, through resources, for areas with increasing populations—although we should perhaps call them areas with populations that are not decreasing.

The General Register Office for Scotland produces census information, and the February data on the Government's website show that a fall of 1.9 per cent in primary school rolls and of 5.4 per cent in secondary school rolls is expected in the Scottish Borders up to 2010.

We have to ensure that places such as the Borders can maintain teacher numbers. Every year, 6,000 teachers retire, and that number will grow over the next few years. We need local authorities to use their existing budgets to replace those teachers. However, they might not replace the teachers at secondary level, because in some areas secondary rolls are falling faster than primary rolls—the Scottish Borders is a good

example of that. There has to be provision for secondary subjects, but local authorities will have headroom and leeway to employ primary teachers in order to take account of the different rates at which the rolls are falling.

Capacity is also an issue. In the Borders and other rural areas, there are some very small schools with tiny rolls. In the Borders, five schools have a roll that is under 50 per cent of the school's capacity, and 31 schools have a roll that is under 75 per cent of the school's capacity. Not being at capacity allows leeway and allows schools to start to make progress.

It is up to local authorities to deliver their local policies. Local authorities are accountable to their electorate and they will want to demonstrate improvements in the attainment of their electorate's children. It will be up to local authorities to work with COSLA to deliver their part of the agreement in the concordat.

Jeremy Purvis: An issue arises to do with the number of teachers in primary and secondary schools, which committee members might come on to.

The local government settlement covers the spending review period, but there can be year-on-year adjustments to take account of the different demographics of each local authority. If there are fewer pupils, fewer teachers will be required, and budget adjustments can be made accordingly. However, no mechanism exists to allow correlation between the number of teachers required and the type of teachers available. For example, to reduce primary class sizes, X teachers might be needed. The local authority might have X teachers available overall, but they might be higher maths teachers rather than P1, P2 or P3 teachers.

Fiona Hyslop: In areas where the rolls are decreasing faster than elsewhere, the demographics will influence the level of the local government settlement. We can see differences between the east and the west. In the west, the general population is falling, but the pattern in the east is different. In the west, falling school rolls have meant increased capacity, which can allow local authorities to make certain decisions. If a secondary school teacher retires, the local authority might replace that teacher directly, or it might decide that it had headroom to do something else. Some secondary school rolls will reduce by 10 per cent over the next few years, so we do not necessarily expect the number of secondary school teachers to be maintained. Directors of education might decide to deploy teachers in the early years. Many local authorities will be doing that from this summer.

Jeremy Purvis: You have already said that you are not satisfied with the fact that only 67 per cent

of S1 and S2 pupils are in classes of 20, and that there is a lot of progress to be made. You want secondary schools to retain the lower class sizes, which they do by retaining staffing levels while rolls are falling. That is how it works. If teachers are retiring, local authorities cannot free up resource from the secondary schools and put it into the primary schools. The Government has not set up any mechanism, either through guidance or through legislation, to enforce its approach. The Government is saying that it would like something to happen, but it is not putting in place any specific measures to ensure that it happens. There is no formal mechanism for delivering the P1 to P3 class size reduction, even in areas where school rolls are falling. You said that the 67 per cent level in secondary schools is not good enough.

Fiona Hyslop: You are putting words into my mouth. I reported that the experience, as of February this year, is that 67 per cent of S1 and S2 maths classes contain 20 pupils.

Jeremy Purvis: You said that there is still a lot of progress to be made.

Fiona Hyslop: Yes, if the target that was set is to be achieved. Local government can determine whether it wants to put the resources into achieving that. Despite the circular that was issued in 2007, local councils have not delivered on the S1 and S2 class size reduction to 20.

Of course there are judgments to be made and balances to be struck. The subject of this evidence session is the EIS petition, and we have to judge whether we should be putting teacher resources into reducing class sizes in the early years or in the later years. The Blatchford study in England shows that it is questionable whether simply reducing P1 class sizes makes an impact. That research shows that a sustained impact is important, so reducing class sizes in P1 to P3 is more likely to have a sustained effect.

The previous Government's target of reducing P1 class sizes to 25 has, by and large, been met, although it is not 100 per cent. Will that have sufficient impact, or should the resources have been put into achieving the target for S1 and S2 English and maths class sizes? If you look at our proposals for the number of teachers who are coming through, you will see that English and maths are still the two biggest subject areas that need to be resourced and that continue to see a number of teachers coming through. Local authorities—they are the education authorities—will have to decide whether to continue that.

Jeremy Purvis: I have two final questions on demographics, which is important and pertinent to how to bring about the reduction in class sizes. If I heard you right, you just said that the S1 and S2

maths class target was, by and large, met, although not quite 100 per cent.

Fiona Hyslop: No, it was the P1 target. The S1 and S2 maths class figure is 67 per cent. I cannot recall it, but the figure for English is better—I think that it is around 80 per cent.

Jeremy Purvis: Is it the Government's policy that the S1 class size target for maths and English will be met 100 per cent?

Fiona Hyslop: We expect the guidance to be adhered to.

Jeremy Purvis: Okay, so it is 100 per cent.

In your statement to Parliament, you were quite specific about population projections and the teachers required. You stated that the population projections are such that

"an additional 450 primary teachers by 2011 and 2,100 primary teachers by 2020 will be required simply to meet those demographic demands."—[*Official Report*, 5 December 2007; c 4070.]

The Government is being specific about the level of teaching—either primary or secondary—and about what it will fund to meet those changes, but it is also saying that it is up to local authorities to determine what jobs will be available. There will be serious consequences if that is out of kilter. If the Government's policy is to shift the emphasis from secondary to primary in order to bring down primary class sizes, but still to retain, recruit, train and fund places for both primary and secondary teachers, as it has stated to Parliament that it is doing, that is a significant problem waiting to happen.

11:15

Fiona Hyslop: Not necessarily. I am glad that you appreciate that we have specific proposals for what we are resourcing.

It is important that I set the record straight: 63 per cent of S1 and S2 pupils are in maths classes of 20 or fewer pupils, and the comparable figure for English classes is 79 per cent.

Workforce planning is a critical area. Mr Purvis will know that I announced in Parliament, in answer to a question, that I have set up a teacher workforce planning review group—a short-life task force, chaired by COSLA—to look at the issue. Mr Purvis is right that there are issues around the huge number of permutations, which is why it is acknowledged in the concordat that the situation is not simple.

Mr Purvis referred to the inputs into teacher recruitment and teacher training institutions. It is essential that we maintain the quality of teachers. We have taken advice on headroom figures from colleges and higher education institutions, and

specifically on what they think is an acceptable number that would allow teacher quality to be maintained.

Mr Purvis is right that we must look at how all that pans out in the round, because there is a variety of different influences. We must recognise that, out of a total number of 53,000 teachers, 6,000 will retire this year and more than 6,000 will retire in each of the next two years, with a replacement level of 20,000 teachers coming in. Mr Purvis is right that there is scope for considering what the balance should be to ensure that secondaries have the provision that they need. However, we should bear it in mind that the projection for Scotland as a whole is for a 6.3 per cent reduction in the secondary school population over the next few years. We must marry that permutation with ensuring that we have enough primary teachers coming through to meet the class size reduction policy.

We should acknowledge that people can come into primary teaching through different routes. I do not know whether the committee will want to look at that area at some point. One route is the one-year postgraduate course, but we also have the four-year BEd course. One of the things that we have done is change the balance. Because of the previous Government's emphasis on having more people go into the one-year postgraduate course, we think that the balance is out of kilter. We are investing more in the four-year BEd, but the results of that will take some time to come through. However, we think that it is important to do that. We are also considering expanding the two-plus-two provision whereby primary teachers training under the four-year BEd can do two years of education but also have a parallel subject area. That provision is increasingly important for science and other subjects.

We also acknowledge that there are demographic pressures. Aberdeen is a good example of demographic pressures creating challenges, in particular for Aberdeenshire, in retaining and recruiting probationers. I am pleased that Aberdeenshire is taking 150. We have increased the number of teaching training places in Aberdeen to ensure that there are no pressures on vacancies in the north-east.

There is a load of different permutations, and I concur with the view that it is difficult to navigate through them. I am not completely satisfied with the workforce planning system that I inherited, which is why I have asked COSLA to convene the short-life working group, which will also involve the General Teaching Council for Scotland and the unions, to ensure that we have a robust system in place as we go forward. With 6,000 teachers retiring each year, and 20,000 new teachers in training, we must have a fine-tuned machine for

deploying people to subject areas and to secondary and primary schools, while taking into account our pledges on class size reduction. I am not convinced that what I have inherited is as robust as I would like, which is why I have set up the working group.

Jeremy Purvis: Does the Government know how many teachers would be required if every primary school in Scotland had a maximum class size of 18 in P1 to P3?

Fiona Hyslop: It would not make sense to give an absolute number because we are not doing what Mr Purvis described immediately; we are doing it over the piece.

Jeremy Purvis: Does the Government know how much—

Fiona Hyslop: We know that, if we maintain teacher numbers at 53,000, that will be sufficient to ensure that those coming through teacher training institutions are of the quality that we require; to allow us to deploy them in areas that have the capacity to move more quickly on class size reduction; and to enable us to do that in a manageable way, bearing in mind the number of retirals that are coming through. However, much of that comes down to the will of local authorities to do it. Even an area such as West Lothian, with population pressures that are similar to those in the Borders, is making significant progress this year.

Jeremy Purvis: I would like to ask another question on teacher numbers, but I know that other members want to come in.

The Convener: I was going to offer a helpful reminder to committee members and to the cabinet secretary. I know that members have lots of questions, and I appreciate that the cabinet secretary wants to impart as much information as possible. It would be helpful if both the questions and the answers remain focused, as we will cover some of the information that the cabinet secretary wants to give us as a result of our questioning. That will allow for the session to be more focused and for us to cover all the issues that we want to.

Rob Gibson: We have been talking about inheriting a system, and you mentioned your concerns about the robustness of the measurements that could be made in the past. We were talking last week about how certain councils are failing to meet targets and, as in the case of Glasgow City Council, not stepping up to the plate to try to achieve the Government's aims. Do you agree that the concordat's single outcome agreements will be a more accurate measure of progress than we have had in the past?

Fiona Hyslop: They will, because the concordat puts emphasis and responsibility on local

government as a whole, so that councils are accountable to each other as opposed to the Government accounting for each individual local authority. That will create internal pressures within local government to show that it can deliver on the concordat.

It would be difficult for local government to make significant progress without a contribution to the agenda from Glasgow City Council. I know that there are policy differences, in that Glasgow City Council is perhaps not as convinced as other councils are that class size reductions are the way forward. Having said that, I have had useful discussions with Gordon Matheson, the council's executive member for education, and Steven Purcell, the council leader, about some of the common agenda items, such as how we can provide more resources in the early years and whether there is compatibility between what the council wants to do and what we want to do. Those discussions are on-going.

Glasgow is a good example of an area in which there is a significant fall in rolls. An 8.9 per cent fall is projected in its secondary school rolls, although the projected fall in primary school rolls is only 1 per cent. Gordon Matheson has recognised and publicly stated that the council's education and children's budget is increasing, but there are concerns that the schools budget as a whole might not be. That is where some of the issues lie—I do not want to dwell too much on any individual local authority, but the EIS is taking forward the concerns in relation to Glasgow City Council.

The council is free to make those decisions, but it is important that we acknowledge that early intervention is one of the key things that we have to work on. We think that class size reduction is one of the best ways of doing that and that Glasgow, of all places, needs major improvements in its young people's educational experience. The council can take forward its own provisions to do that, but we think that it will want to play its part in delivering the local government policy. COSLA will have discussions with Glasgow City Council as to how the council will do that.

Rob Gibson: Is there a recruitment and retention issue in Glasgow, for example, or in particular parts of the workforce across Scotland? You spoke about the ability of Aberdeenshire to take on more probationers. Is that a factor that can skew the ability of local authorities to meet the kind of targets that you are talking about?

Fiona Hyslop: That may well be. However, although probationers will make a significant impact on the ability of local authorities to deliver over the next few years, for sustainability over the longer term class size reductions should not rely on probationers. For example, I know that a number of local authorities have taken on a

considerable number of probationers—a significant number of whom are funded by the Government, which will assist in doing that over the next few years. By that time, at least 18,000 teachers will have retired and we will have 20,000 training. The combination of those factors will allow for sustainable employment over the longer term.

Those local authorities that are not recruiting probationers are of concern, because that limits their ability to make class size reductions.

Rob Gibson: Has there been difficulty in recruiting and retaining teachers in general in some parts of the country?

Fiona Hyslop: There has been difficulty in rural parts of the country. The committee will be aware of my decision to help to support the development of teacher training at the Crichton campus. Dumfries and Galloway had difficulty in recruiting probationers in the first place, but a significant percentage of them—I think that it was 30 per cent, but I would need to check that figure—did not then turn up to carry out their teaching, so there was a real challenge in that area. One solution to help to maintain the University of Glasgow's presence at the Crichton campus was to introduce teacher training to that part of the country. That will also help with recruitment and retention.

By volume, most teachers are trained in the central belt, and many people's first choice is to go to Glasgow or to East Renfrewshire, as Ken Macintosh will know—they are keen to go to that area. There is an issue with local authorities' ability to recruit probationers in the first place but also with their ability to retain them, and that has an impact on local authorities' ability to move forward. The local authorities that not only take on probationers but employ them after the first year are more likely to be able to deliver class size reductions than those that do not do that.

Rob Gibson: Do you have any figures on that? I know that, in Highland, 89 to 90 per cent of probationers are kept on. Is that figure the average for the country?

Fiona Hyslop: No. There is quite a disparity between authorities.

I know that the committee is focusing on class sizes, convener, but I am asking the working group to consider the matter. There is often a mismatch between teachers' individual choices of where they want to go and where they are needed. There is also a mismatch between the number of teachers who are recruited and the number who are retained. I think that East Renfrewshire has one of the lowest continuing employment rates for probationers, but that is something that we will have to consider.

Rob Gibson: The point that I was leading to is that ADES suggested that X number of teachers will be required for the policy on class sizes to be fulfilled, so recruitment and retention are essential to that.

Fiona Hyslop: Absolutely. Recruitment and retention are essential. That is why we have to consider the matter in the round. It is not just a simple question of accounting for which local authority does what and when. That is why the concordat recognises all the various factors that have an influence. I know that you took evidence from ADES, but it admitted that some of the figures that have been quoted and reported in the media are figures for the capital cost and the number of teachers for the big-bang solution, as if we were reducing class sizes in P1 to P3 tomorrow. That is a simplistic way in which to consider the matter, and ADES recognises that it is not realistic. I think that COSLA, too, gave evidence to that effect last week.

Rob Gibson: Yes. The sophisticated analysis suggests that progress can be made, but we will have to monitor that in the future. Thank you.

Mary Mulligan: Good morning, cabinet secretary. You put forward reasonable arguments on demographics, teacher training, teacher retirements and local authorities' priorities. However, does that mean that the SNP Government is wrong to promise, as in the convener's quote earlier, that class sizes will be reduced by the end of the spending review period?

Fiona Hyslop: The manifesto commitment is embedded in the concordat with local government. We are using the concordat to take forward delivery of our policies. In a sense, there is a parallel with what happened in the previous Government with the coalition. There were manifestos from the Labour Party and the Liberal Democrats and there was a partnership agreement that took things forward. We have considered the practicalities of how we deliver the policy. The previous questioners were clear that it is a complex area, but we have put in enough resources to enable the policy to be delivered within the constraints that we have, and we expect the reduction to take place. In many local authorities, that is happening, and progress will start from this summer.

Mary Mulligan: Will it happen by the end of the spending review period?

Fiona Hyslop: By the end of the spending review period, we expect improvements and significant progress by local government, as per the concordat. We must recognise that the concordat delivers a great deal of what was in the manifesto. The concordat commitments cover a range of areas—not just class size reductions but

provisions on nursery hours, free school meals and some of the other attractive policies that people want to be put in place. I refer everybody to the concordat as the means by which the Government will take forward its commitments.

11:30

Mary Mulligan: The intention is to reduce class sizes to 18 in P1 to P3. The suggestion has been made by the EIS and in evidence to the committee from Valerie Wilson, who referred to the Blatchford report, that a rollercoaster effect will have an impact on children, because they will be in classes of 18, move to larger classes later in primary school, and then have English and maths classes in S1 and S2 that might be reduced in size—although I am not sure about that yet—but other classes in the secondary system whose size will not change. Does such an experience benefit children or would the EIS's proposal of smaller classes across the board be more beneficial?

Fiona Hyslop: I recognise the logic of the EIS's argument, but the issue is how to deliver such provision in practice. The EIS argues for central control and direction from the Government, whether in guidance or through a negotiated settlement with teachers to limit the size of class with which a teacher can work. However, achieving that over the piece for all primary and secondary classes is a big ask and is ambitious. We are dealing with the early years of primary school.

You are right about the disruption. The Blatchford study considered whether reducing class sizes to 25 in P1 would have an impact on its own. A sustained impact from the early years is desirable, which is why we have decided to reduce class sizes in P1 to P3.

Future Governments will have to decide whether to reduce class sizes steadily for new pupils and for those who were in classes of 25 last year, for example, as they go through primary school. That would mean that, by the time a P1 class reached P7, the class size would be 25 in P7. The committee might want to take the view that continuity of class configurations is useful, as proposed by the Blatchford study. We think that reducing class sizes in P1 to P3 is a useful and progressive way of achieving that.

On 21 May, Valerie Wilson referred to research studies and said:

"If I was a parent whose child had been assigned to a larger class, I would petition the school to move the child to a smaller class."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 21 May 2008; c 1068.]

The problems of moving from one class size to another do not stop parents and teachers wanting to make a start on reducing class sizes. In trying to

take a view over the piece—perhaps the committee can usefully comment on that—we consider how the country as a whole wants to deal with progression. That will not happen overnight or even in one parliamentary session. We should consider how to go forward. We as a Government will consider that, particularly given the pressures of managing the number of teachers who are retiring. It would be useful to hear whether the committee thinks that it is desirable for all of us to work towards continuity of class sizes and whether to extend smaller class sizes from the P1 to P3 cohort in the next few years to P4 to P7 in future years.

Mary Mulligan: We have heard evidence, which the convener mentioned, that one outcome of class size reduction could be an increase in the number of children in composite classes. Do you have a view on that?

Fiona Hyslop: The experiences of composite classes are different in different parts of the country. In many rural areas, composite classes are the norm. There is no evidence that composite classes are advantageous or disadvantageous. The challenge is continuity of classes for any one child. If a child progresses through composite classes, the experience seems to be better. We both come from West Lothian, so we both know that composite classes have been the norm there for some time and are generally accepted. There can be issues when composite classes are introduced in areas that have not been used to them.

I return to what I said about how the curriculum is changing, to provide for more individualised learning. Individualised learning and formative assessment are easier to achieve in smaller classes. That is the direction of education policy in general. There are issues with continuity and ensuring that teachers know how to teach in such an environment.

Currently, a child whose birthday is in December or January and who started school at four and a half years old might easily be in a class with a child who is a year older. In a composite class, there might be a year to 18 months between the oldest and youngest pupils, so the age range is not necessarily different from that in other classes. However, some parents are not familiar with composite classes and are concerned about them.

I am interested in research into the issue. I expressed such an interest in the past—I think that it was when Nicol Stephen was Deputy Minister for Education, Europe and External Affairs, during the first session of the Parliament, when composite classes were used in some areas of the country to reduce maximum class sizes from 33 to 30. Many areas have had to introduce composite classes to achieve class sizes of 25 in P1—that is currently

happening, regardless of what we are doing. I would not want to suggest that there is anything detrimental about being in a composite class; I do not think that that is the case.

Mary Mulligan: I accept that a composite class can be just as effective as a single-stage class and I do not want to generate unnecessary fear. However, parents in particular are concerned about children who enter P1 and are immediately placed in a class that contains children who are more than a year older—it depends on the child's level of development. There is also concern about children who are moved out of and then back into composite classes, which can cause difficulties with socialising—you alluded to the problem.

You are right that in my constituency and elsewhere in West Lothian composite classes work well—I have seen examples of that. However, I think that the classes that work well are fairly small. Will you suggest a limit to the size of composite classes, even in the context of class sizes of 18 in P1 to P3?

Fiona Hyslop: It is desirable to achieve a class size of 18 regardless of whether the class is composite. Currently the limit is 25 for a P4-P5 composite class, as opposed to 30 in a non-composite class.

A number of people who gave evidence acknowledged that a move to class sizes of 18 would enable teachers to provide the individual support that is needed. We must consider the policy in the context of the new curriculum, which puts greater emphasis on individualised learning and formative assessment. There has been interesting work on cross-year working, peer reading and other different approaches. Not just primary but secondary schools are increasingly encouraging children who are at different stages to work together. We should pay attention to such activity if the focus in the curriculum is increasingly to be on the individual learner as opposed to class configuration. It is obvious that the smaller the class is and the lower the teacher pupil ratio, the more we can take forward the wider education agenda, which includes quality of teachers and many other factors.

Mary Mulligan: Will you not take up the EIS recommendation of a maximum class size of 15 in composite classes in P1 to P3?

Fiona Hyslop: I think that the EIS recommends a class size of 15 for composite classes in general and suggests further reductions in class size when X number of children have additional support needs. We are not taking those recommendations forward at this stage.

Mary Mulligan: What size should a composite P3-P4 class be?

Fiona Hyslop: Under the current arrangements, the maximum size is 25.

Mary Mulligan: Does that mean that a child who could be in a single-stage P3 class of 18 pupils could be put in a P3-P4 composite class of 25 pupils?

Fiona Hyslop: Sorry, I thought that you were asking about class sizes for pupils who had progressed up the school. We would expect a P3-P4 composite class to have no more than 18 pupils.

Ken Macintosh: When ADES gave evidence on the petition some weeks ago, the committee asked it whether sufficient resources were in place to deliver the class size commitment, and it said no. Was it right or wrong?

Fiona Hyslop: I think that the ADES figures were for the big-bang solution for everybody in P1 to P3 across the board from day one, and that they related to all the classrooms to provide for reductions being built within a day. ADES acknowledged in its evidence that that is not how things will be delivered. We must consider the practicalities that are involved.

There are sufficient resources to provide the significant progress that was agreed to in the concordat, and the directors of education are providing support to make progress. There is a difference between expecting commitments to be delivered within one month or even one year of a Government coming into power. As I said, it took five years for the previous Administration to get 67 per cent of pupils in classes of 20 for maths in S1 and S2; indeed, it took five years to get to the commitment on P1. I think that ADES recognises that such things take time and that there are sufficient resources in the settlement to deliver the commitment.

Murdo Maciver of ADES said:

"On the policy, the understanding is that it will be implemented over time, depending on prioritisation by authorities and the resources available. It is not a policy in relation to which the intention or advice is to have immediate implementation. Some funding, both capital and for more teachers, was made available towards the end of the previous financial year to start the move towards smaller class sizes."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 28 May 2008; c 1104.]

We started progress last year, but it is clear that the concordat, maintaining teacher numbers at 53,000, the £34.9 billion of funding that will be available, the 13 per cent funding increase for local government and the £3 billion capital investment will provide resources to reduce class sizes.

Ken Macintosh: Mr Maciver of ADES explained the figures, but the question was about whether sufficient resources are available, and the answer

to that question was no. Whatever criteria ADES wrapped around things, the answer was no, but you are saying that sufficient resources are available. In order to say whether sufficient resources are available, you must have a figure for the resources required. What resources are required?

Fiona Hyslop: Whether class sizes are to be reduced immediately will have a significant influence on whether the answer to the question is yes or no.

Ken Macintosh: I asked ADES a question, which it answered, and it told me the context in which it was thinking. You can answer the question in any way you want. You can say that the promise will be delivered over one year, two years or whatever timeframe you want. However, if the answer to the question is, as you have said repeatedly, that sufficient resources are available, you must surely be able to say what those resources are. You cannot say that sufficient resources are available without knowing what the required resources are.

Fiona Hyslop: The resources are sufficient to maintain teacher quality. Teacher retirements and the demographics that are involved have been recognised—

Ken Macintosh: I am sorry, cabinet secretary, but the manifesto commitment, the Government's promise and the concordat agreement are to reduce class sizes to 18 in P1 to P3, and you keep on saying that sufficient resources are available to do that. What resources are available?

Fiona Hyslop: Some 6,000 teachers are retiring every year for the next few years.

Ken Macintosh: They are not resources that will be available.

Fiona Hyslop: Those teachers will be replaced by at least 20,000 teachers who are in training, which we think is the number of teachers that will be required to maintain teacher numbers at 53,000. That represents a considerable local authority resource. If we had done nothing, some local authorities, with falling school rolls, could easily have removed teacher numbers from their overall cohorts and could have saved money and put it somewhere else. However, we are saying to local authorities that we have ensured in the settlement that there are sufficient resources for the thousands of teachers whom we know will be required to keep the number of teachers at 53,000.

Those 20,000 teachers in training by 2011, which mean that local authorities can maintain their teacher head count and their teacher salary budgets, are a significant resource in revenue terms. On capital resources, even if we took

ADES's figure for the capital budget required for immediate investment as of year one, it is clear that there would be sufficient resources, bearing in mind the £3 billion of capital investment and the £115 million extra every year, and the fact that, across Scotland, 870 schools have under 75 per cent capacity and 486 schools have under 50 per cent capacity. That capacity provision, the capital provision, the 20,000 teachers in training by 2011 and the maintenance of teacher salary budgets allow for the class size reductions. It is clear that significant resources are being made available. Your question to ADES will have been whether it can be done next week, and its answer will have been given in that context.

11:45

Ken Macintosh: I asked the question, and that was not it. I asked simply: are there sufficient resources in place? ADES said no.

Cabinet secretary, as a former member of the committee, you will know that our job is to hold the Executive to account and, in particular, to scrutinise the Executive budget. It is a difficult job, especially when we are presented with evidence and figures by directors of education that show that there are not sufficient resources—we would not doubt their expertise, as they handle the budgets and are responsible for implementing the class size policy at a local level.

ADES is willing to put both a figure and a timescale to the policy, whereas you have not been willing to put either. It is difficult to conclude anything other than that you are being deliberately evasive and that you are passing responsibility for a Government policy to somebody else without giving them sufficient resources. Making assertions is not enough—you have not given us any hard figures, so it is difficult for the committee to reach any conclusion other than to believe the figures that we have been given.

Fiona Hyslop: In its evidence to you last week, COSLA made it clear that it thought that the ADES figures, which were for the big-bang approach, were irrelevant. I can perhaps quote your question and the answer to which you refer. The answer is interesting, because in it Murdo Maciver reflects on funding and resources to reduce class sizes from previous Governments as much as from this Government.

Your question was:

"My question is for all panel members. Do you believe that there are sufficient funds in the system to meet the target that has been imposed on local government?"

Murdo Maciver answered:

"For as long as I can remember"—

we should bear in mind that the concordat has been in place in only recent months—

“the answer to that question has been no. On the question whether we have funding for the most effective education system that meets all aspirations, the answer will always be no.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 28 May 2008; c 1097.]

You are putting a particular interpretation on the context and what was said. I am sure that ADES can answer for itself, but since it gave evidence we have had a response from COSLA and the budget briefing. We have to work out the resources that are required, but I bring you back to the point that the concordat contains not only the commitments and national indicators of performance required of local government but the local government settlement. The settlement is a fair one, despite our receiving one of the tightest settlements from Westminster. To deliver an increased share of national Government resources to local government was a major achievement. Bearing in mind the fact that almost half of that is spent on education and young people, I think that there is plenty of scope for improvements.

Ken Macintosh: If I may say so, cabinet secretary, it is up to the committee to interpret the answers that we heard—and the answer to the question was no.

It is also a little strange to quote COSLA, as it has said so many things. In December it said:

“We have not agreed in the concordat to reduce all P1 to P3 class sizes.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 5 December 2007; c 413.]

Last week it said:

“In the concordat, COSLA has signed up to reducing class sizes”.

Then it said that it was not so sure and that

“it is up to each local authority”.

It also said:

“we aspire to reduce class sizes.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 18 June 2008; c 1229, 1249.]

To say that it has been all over the place is an understatement.

I want to ask about the enforcement of Government policies. It was interesting that you said that guidance on S1 and S2 classes still stands. What do you say to local authorities such as Renfrewshire Council and Aberdeen City Council, which have said publicly that they will not follow the guidance on reducing class sizes in S1 and S2?

Fiona Hyslop: That is an issue that we can discuss with them, but we must remember that guidance is guidance—not regulation.

With only 63 per cent of S1 and S2 pupils in classes of 20, 37 per cent of pupils are not. Your question was on whether I will pursue all local authorities. I suspect that those figures show the situation in a majority of local authorities, and we can certainly discuss that situation with them. If the committee recommends that we do that, I will listen to your request.

We can also discuss with directors of education not only how they will deliver on the concordat but how they will deliver on the previous Government's commitments. I will meet COSLA tomorrow to discuss education matters and am more than happy to raise the issue with it.

Ken Macintosh: That will be constructive. The last paragraph in the 2007 guidance states that ministers do not wish to legislate to introduce statutory class size maxima but that if guidance is not adhered to, they are prepared to consider introducing legislation to that effect. Is that your position, too?

Fiona Hyslop: The previous Government did not introduce legislation to enforce the S1 and S2 class size reductions. Ken Macintosh asked about the issue at question time last week. There are three ways of determining class sizes: through the McCrone agreement, through circulars and through guidance. The concordat introduces a fourth element. The strongest measure was the reduction in 1999 of class sizes from 33 to 30, which was enforced by regulation. The EIS might be concerned if we removed some measures from the teachers agreement and included them in guidance. It has given evidence on the issue and has indicated that it might prefer regulations to be used.

In the system that we inherited, there were three different ways of determining class sizes. Given that we inherited a differentiated system, we need to consider how we can ensure continuity and coherence over the piece—Mary Mulligan made that point. However, I do not want to give the impression that I am rushing to change the teachers agreement or to withdraw the guidance to which Karen Whitefield referred. We must bear in mind the fact that there are different ways of influencing class sizes and we must reflect on how we can bring coherence to the process in future.

Ken Macintosh: I agree that any number of mechanisms can be used. Two councils—interestingly, two SNP-controlled councils—have indicated that they will not adhere to the guidance. Will you wait until a whole cohort of students have gone through school without benefiting from smaller class sizes, or will you take action now to bring the councils back on board?

Fiona Hyslop: It took five years for the previous Administration to deliver almost, but not quite 100

per cent on the commitment to reduce to 25 class sizes at P1, and 63 per cent and 79 per cent on the commitment to reduce class sizes for English and maths at S1 and S2. Even if the concordat had not been agreed, I would have had to reflect on how to work with local authorities to identify the barriers to further progress in those areas. We should not single out two local authorities—a number of councils are not following the guidance. I emphasise the fact that it is guidance, not regulation.

The Parliament needs to reflect on what relationship it wants to have with local government. Do we want to have an open relationship of mutual respect, in which local government commits itself to meeting certain outcomes with the resources that are provided to it, or do we want to do everything through tight regulation? That is an issue for genuine debate. It has not arisen just because of the Government's actions but has been an issue since devolution in 1999, when the first measure to reduce class sizes—from 33 to 30—was introduced.

Ken Macintosh: You raise an interesting issue that is central to the delivery of Government policies. It is interesting to note that, under the previous Administration, which did not have an historic concordat, no local authorities openly defied Government in the way in which two local authorities are now doing. Those authorities have said openly that they are abandoning Government policy.

My final question relates to teacher induction schemes. The number of teachers matters if we are to meet the class sizes target. I welcome the fact that a working group, chaired by Joe Di Paola, has been set up, but I am surprised that it took so long for the group to be established. I assumed that there would be a Government press release setting out the group's remit and membership and indicating how it will be accountable to Parliament—an issue of particular relevance to the Education, Lifelong Learning and Culture Committee.

I would welcome your views on whether you believe that you have done enough to prevent a worsening of the anxiety and stress that probationers coming to the end of their course felt last year. Clearly, that has been a growing problem in the past couple of years.

Do you think that, by itself, the working group is enough? Could you give us some more detail of what the working group will entail?

Fiona Hyslop: I announced the remit to Parliament in answer to a parliamentary question. We also wrote to the Education, Lifelong Learning and Culture Committee. I am not sure whether—

Ken Macintosh: Was that an oral or written question?

Fiona Hyslop: I responded in the chamber to an oral question, then wrote to the committee. I do not want to raise issues about the internal workings of the committee, but I understood that that letter had been circulated to members. I know that the Government has written a number of letters to the committee in recent weeks, and I am more than happy to re-send that one if necessary.

The Convener: There have been many pieces of correspondence. Every one of them has been forwarded to committee members. I do not recall seeing the letter that you are talking about, so we will need to check that we received it. If we did, it will have been passed on to members.

Fiona Hyslop: We will re-send it immediately if there has been a problem. The letter set out the remit of the working group, which meets for the first time on Monday. Last year, we moved swiftly because we inherited a situation in which there was concern about probationers obtaining positions, and we invested an additional £9 million this year and last year, which resulted in the provision of 300 new jobs.

As Rob Gibson said, recruitment tension is a critical issue, and every local authority has a responsibility for employing probationers. If Glasgow and other councils are not doing that, they must consider their position. I do not want to reflect too much on any one council, however.

We will forward the remit of the working group to you, as it is right that it is shared widely.

The role of the General Teaching Council is important, but the main point is that there must be a balance in providing a choice to probationers. We have a good system, as you have said in the chamber, but we need to ensure that it meets the needs of individuals and of local authorities, in policy terms. That is one of the challenges that we must address in the working group.

Convener, can I ask what time we are finishing? I thought that we were doing an hour from half past eleven.

The Convener: I anticipate that we will end when the questions conclude. I have asked people to keep their questions succinct and I have asked you to keep your answers short as well. I hope that there will not be too many more questions, as I appreciate that you have been here for a considerable time.

Fiona Hyslop: It is just that I have an engagement.

Christina McKelvie: I have two short questions, you will be glad to hear.

Will you confirm, for the record, that local authorities got a 13 per cent rise in their budgets this year?

Fiona Hyslop: Yes.

Christina McKelvie: And do you agree that South Lanarkshire Council is to be congratulated on using that flexibility to grab with both hands the opportunity to reduce class sizes from this year?

Fiona Hyslop: I am pleased that South Lanarkshire Council used the flexibility that it was given with the end of ring fencing to do that. Clearly, it was able to take advantage of falling school rolls and it had the budget to maintain teacher numbers. I understand that it has indicated that it wants to target areas of deprivation first, which is the right thing to do.

Christina McKelvie: Earlier, Ken Macintosh mentioned the GTC workforce planning group, which you have said is meeting next week.

Fiona Hyslop: Yes, the first meeting is on Monday. I would not describe it as the GTC workforce planning group, however; it is a partnership between the GTC, the EIS and government. As councils are the employers, it is appropriate that Joe Di Paola of COSLA has taken up the convenership of the group.

Christina McKelvie: Absolutely; I was just trying to be quick.

How does the new approach differ from previous experience?

12:00

Fiona Hyslop: A workforce planning group has always met on a continuous basis. The group that I have just described is reviewing whether the mechanism that the standing group has used historically over the piece satisfies current and future demand. The group that I have just described will look at the underlying process but, year in, year out, a standing workforce planning group has taken matters forward. The basis on which it does that has to be reviewed. Rather than review itself, it will be easier if another group does so. Obviously, the players will be influenced by the concerns that have been raised and the GTC will also have a key role.

Michael Kellet (Scottish Government Schools Directorate): If it would be useful, I can outline the groups that are represented on the working group. It is chaired by COSLA and there are other representatives of COSLA. ADES is represented, the GTC is represented, the four main teacher unions are represented and the teacher training universities are represented.

The Convener: That is helpful.

Jeremy Purvis: My points follow on from Mr Macintosh's questions, which are valid questions for many parents throughout Scotland, because they thought that the situation was clear when they heard the First Minister on 5 September. He was asked whether the commitments on class sizes would be met within this session of Parliament and he gave a clear answer to the question. At that stage, he did not say that the Government was in discussions with COSLA or that it was negotiating with COSLA. He answered unequivocally yes to a question on whether the policy on a reduction in class sizes would be delivered in this session of Parliament. On anticipating how much the policy would cost to deliver in this session of Parliament—as the First Minister said on 5 September that it would be—did you, as part of the budget process, calculate what the total cost would be if it were to be delivered within this session of Parliament?

Fiona Hyslop: Clearly, as I have said in response to a number of questions, the resources provided for class size reduction are part of the concordat with local Government. I also refer to the First Minister's reply to Wendy Alexander, in a letter that I understand has been placed in the Scottish Parliament information centre, which refers to the on-going discussions with local government at the time. In November, we agreed the concordat with local government, which is the way in which we are taking forward the commitment.

Jeremy Purvis: With respect, that does not answer my question. Within Government, did the education department and education ministers calculate how much it would cost—or put in a bid for how much it would require—to deliver the reduction in full within this session of Parliament?

Fiona Hyslop: We knew that we would need to ensure—

Jeremy Purvis: It is a simple question, is it not?

Fiona Hyslop: Local government would have identified what it thought was a reasonable amount of resource to deliver on the concordat—which contains the commitments and refers to the single outcome agreements—when it agreed to it. Clearly, COSLA determined that there were sufficient resources to allow it to deliver on the concordat when it signed it. Clearly, national Government would also have calculated the resources required over a range of issues. There are 14 commitments in the concordat, there are single outcome agreements and there are national indicators. In determining the figure of £34.9 billion for local government—an increased share of national Government spending—we would have calculated what we thought was sufficient to deliver all of those things.

However, it is not only about the inputs. Remember that a number of other measures will also benefit local government financially. For the first time, local government is getting to retain its efficiency savings. Previous Governments required efficiency savings to be made, but they were taken into the centre. The ability of local authorities to retain their efficiency savings was also part of the concordat.

I understand that the Cabinet Secretary for Finance and Sustainable Growth will write to the committee shortly to outline the progress on scrutiny and regulation. That will have a material impact on local government in respect of time, which will also free up resources.

The concordat is not only about the £34.9 billion investment, which is the biggest share that local government has had since devolution began; there is also the material impact of other factors in the concordat that will bring a financial benefit for local government. Can we identify what the benefit of 2 per cent efficiency savings will be? Can we identify some of the regulation and scrutiny benefits? It is difficult to put a price on those. However, the agreement was £34.9 billion in return for delivery of the commitments and the other provisions in the concordat.

Jeremy Purvis: On 13 September, Maureen Watt was able to be much clearer than you have just been. In fact, she was very clear. Robert Brown said to the minister:

"We might need to wait for the comprehensive spending review to find out what resources can be applied to the issue".

He was referring to the Government's policy on class size reduction in this parliamentary session. He continued:

"I presume that she has made a bid to the Cabinet Secretary for Finance and Sustainable Growth to enable her to meet the commitments that have been made. If she cannot give us those figures, will she explain in some detail why not?"

Maureen Watt responded:

"Of course we have made a bid to meet those commitments. We will wait to find out what resources are available from the comprehensive spending review."—
[*Official Report*, 13 September 2007; c 1757.]

Was that true?

Fiona Hyslop: Obviously, in putting together a budget, any Government will look at what resources it has, what it is trying to achieve and work out the resources it needs. That will be done across and within portfolios and we will have a look at the provisions within those.

Jeremy Purvis: So it was true that a funding bid was made to meet those commitments. The

Government knows how much it would cost to deliver the policy within this parliamentary session.

Fiona Hyslop: The negotiations with local government were on the basis of a collective—

Jeremy Purvis: No, cabinet secretary, I am sorry to interrupt and I do not mean to be rude, but I am asking about the Government, not about your negotiations with COSLA. I am asking whether the Government has calculated how much it will cost to deliver its policy in this parliamentary session. On 13 September, Maureen Watt said:

"Of course we have made a bid to meet those commitments."

I am asking whether that is true and what the bid is.

Fiona Hyslop: The bid that any portfolio makes to the Cabinet Secretary for Finance and Sustainable Growth covers a range of issues. I do not want to labour this point, but the cost of our commitment depends on a number of variables, information about which national Government does not always have at its fingertips at any one time, not least about the number of retirees and the demographics of a local area. We can forecast and make projections and we have done so. One of the central tenets in identifying the resources might be something that you want to unpick—the cost to local government of maintaining teacher numbers at 53,000 when they have pupil projections, particularly in secondary, but also in primary, that show reductions in rolls. Having sufficient resources to be able to do that is a benefit to local government. The cost of providing 20,000 teachers in training is a national cost for us. As we meet the cost of initial teacher training, it is clear that we have identified the amount of money for that proposal. That is the amount of money that has been put into provision to maintain teacher numbers at 53,000.

Jeremy Purvis: We know today that the Government and its education department knew how much would be required to meet the commitments in this parliamentary session. You confirmed that that was part of internal budget negotiations in Government—all that predates the signature of the COSLA agreement. I ask you whether you will publish the information that you said that the education department had when setting the Government's budget.

Fiona Hyslop: You can ask the questions that you want to ask, but you cannot put words in my mouth. Part of the negotiations with local government was a recognition of what could be delivered within the resources, and the result is the wording of the concordat. As you identified, the comments that you quoted are from a time prior to the agreement with COSLA. Financial arrangements between different departments are

discussed right up until the publication of budget provisions for this Parliament.

Discussions are on-going. When we signed the concordat in November, we agreed with local government that £34.9 billion would provide what was in the concordat. Those negotiations, discussions and submissions go backwards and forwards right up to the production of the budget, as any of you who have been ministers—I think that Mary Mulligan was a minister before going into opposition—will know.

Jeremy Purvis: Those negotiations will have included the forecasting, the predictions and the cost requirements for the policy, as Maureen Watt implied on 13 September when she said:

“Of course we have made a bid to meet those commitments.”

Given that we are discussing a key Government policy, it is fair for the Education, Lifelong Learning and Culture Committee to ask about the Government's ability to deliver it and for the publication of the bid to meet those commitments.

Fiona Hyslop: With the greatest respect, I do not think that any other Government would agree to put budget preparation working in the public domain. What goes into the public domain is the budget that is presented to Parliament.

Jeremy Purvis: I will leave it there, because there is agreement that such information exists—the question is whether the Government publishes it. People will be able to make up their minds after reading the *Official Report* of the meeting.

I want to ask a question on the significant issue of placing requests, which is relevant to the EIS petition and the method by which class sizes could be reduced. You said this morning that the method by which class sizes will be reduced is the concordat; there is not going to be a Government circular or regulations. On the legal rights of parents to make placing requests, the Government is not going to provide local authorities with a circular on class size limits and on refusing placing requests. As you might know, the City of Edinburgh Council has said that it receives more than 1,000 placing requests every year. It uses legislation and the Government circular to determine whether to accept placing requests. What would be the Government's position if a parent made a placing request where there is a class of 18? If there was no change to the legislation on placing requests, it would still refer to class sizes of 25 for primary 1 and 30 for primary 2 and primary 3.

Fiona Hyslop: The legislation on placing requests still stands. I have concerns about some of the reports on placing requests and class sizes. Currently, 12 per cent of pupils are in class sizes

of 18, which is not illegal. On the situation in the City of Edinburgh Council, Mike Pringle asked me last week about placing requests. Currently, 84 per cent of parents who make placing requests have their request acceded to. There are more pressures in some parts of the country than in others. As of now, the City of Edinburgh Council is able to guarantee a place for everyone seeking a primary 1 place in their catchment school at the start of next term. That is the information that the council provided to us.

There are general issues around placing requests. There are pressures in different parts of the country. However, the only regulations on class sizes are for the reduction from 33 to 30 from way back in 1999-2000—that is the only legal compliance that we have—so even if the Government did not do anything, there could be challenges and placing requests in respect of classes of 25 in primary 1. I have been very open about that, and I volunteered information to the committee last June on the one case of a challenge in respect of class sizes of 25 in North Ayrshire. I also know that, regardless of the policy on class size reductions, East Renfrewshire Council has concerns about placing request issues. That is why it is important for local government to make steady progress on reducing class sizes, because if it does not do so, there could be challenges later.

We have no intention of changing the placing request legislation as it stands. Along with demographics, teacher retirements, quality of teachers and capital provision, it presents a challenge in taking the policy forward. Some things that are worth doing are difficult. The evidence that we have had, and which you have had, shows that reducing class sizes is most certainly worth while and provides an educational benefit to children. Just because it is difficult does not mean that we do not do it; it means that we work even harder to ensure that we make provision to tackle all the different factors that I mentioned. It is our intention to reduce class sizes.

Jeremy Purvis: The City of Edinburgh Council in its paper of assessment of primary class sizes of 18 on 3 June stated that there is some concern that without legislation Edinburgh could be challenged on holding classes at 18, particularly in many of the schools where there is a large number of non-catchment requests, because legislation and the Government circular currently require that parental choice be honoured up to a maximum class size of 25 at P1 and 30 at P2 and P3. Are you saying that that is wrong?

12:15

Fiona Hyslop: If the City of Edinburgh Council is looking for an excuse not to reduce class sizes

by relying on the fact that regulations are not in place, that is not a very robust excuse, although it is a political view that the convener of the council's education, children and families committee, Marilyne MacLaren, might wish to take. I am reluctant to get drawn into discussions about individual local authorities, but there is room for movement in Edinburgh, particularly taking into account the pupil projections. Other local authorities are able to make reductions without regulations. North Lanarkshire has class sizes down to 23, regardless of whether there is legal back-up for restricting placing requests.

If you are asking me to make legal regulations to limit class sizes to 18, my response is that I am reluctant to do that. We should rely on our relationship with local government. If such a step were taken—that is where I think the question is leading—it would cause more difficulty for placing requests. I am not in the business of causing difficulty for those parents who wish to make placing requests, and an impact on placing requests would be the consequence of having tighter regulation of class size limits. That is not something that we would plan to happen.

Jeremy Purvis: I will leave the matter there, apart from making the observation that the SNP group on the City of Edinburgh Council voted for the report that I have cited.

Mary Mulligan: I have less sympathy with placing requests outwith the catchment. You and I both know, minister, that there are examples in my constituency of children who are not getting into their catchment school because the authority is seeking to reduce class sizes. Although we might agree with doing that, there is a problem for authorities, which feel exposed because there is no legal back-up should parents continue the process and approach the sheriff court. What reassurance can you give to schools and local authorities that they will be able to maintain their stance? What reassurance can you give to parents that their needs will be addressed?

Fiona Hyslop: It is important that local children can attend their local school. Regardless of the Government's proposal for class size reductions, there are population pressures in certain parts of the country, including West Lothian, where some parents have difficulty in sending their children to the local school. That has applied not just in primary schools but in secondary schools in recent years. You will be familiar with the position at Linlithgow academy. Regardless of any class size reduction policy, there have been pressures even this year when it comes to pupils being able to attend their local school. The local authorities concerned must manage that, and they must do so day in, day out. Necessarily, that is regardless of the class size reduction policy.

It is important to consider developments in certain areas. Because of the housing pressures in Edinburgh, many young families are moving to East Lothian, Midlothian and West Lothian, and they will want their children to move to the local school. One concern in those areas is the provision of schools being one of the determinants of planning decisions. In certain areas, planning applications for housing must be refused because the local schools cannot sustain the increased numbers of pupils arising from new developments. That is not a particularly satisfactory position, but it reflects the complexity of some of the factors. We want to have a buoyant housing market, and we recognise the importance of improving population levels in East Lothian, Midlothian and West Lothian and of the levels of housing provision.

There is already pressure regardless of the class size reductions. Things will not happen overnight. Through forward planning, all local authorities should take a longer-term view and ensure that they have sufficient resources in their schools to meet the needs not just of the existing population but of any new population—perhaps migrant workers in some parts of the country. New build provision and Government policy must also be considered.

The task is not an easy one; it is a challenging one. However, we think that small class sizes in the early years are an important factor in achieving improvements in the educational experience of our young people and in creating more time and space for teachers to deliver high-quality teaching. As I say, it is not an easy task, but it is an important and worthwhile one.

Mary Mulligan: I think that the issue at Linlithgow academy is with non-catchment children. Nevertheless, the reduction of class sizes to 18 clearly adds to the pressures.

I am looking for an indication of what you are going to do to assist local authorities that are in the situation that has been described. In your discussions with COSLA tomorrow, will you suggest that local authorities refuse planning permission for houses in areas where schools are already struggling to take in the children in their catchment areas?

Fiona Hyslop: Local authorities are well aware of that pressure without my raising the matter with them.

Mary Mulligan: That is interesting.

The Convener: I have one final question. Currently, 12 per cent of P1 to P3 children are being taught in classes of 18 pupils. At the end of the Government's four years in office, what percentage of P1 to P3 pupils will need to be being taught in classes of 18 pupils for you to

consider that the policy is on its way to having been implemented successfully?

Fiona Hyslop: We will want to see significant progress, as agreed in the concordat. We will be better informed of that when we receive the first reports from COSLA on the progress that we expect to have been made this year.

The Convener: And the definition of “significant” is?

Fiona Hyslop: That is what our on-going discussions with COSLA will reveal.

The Convener: Thank you. That concludes the committee’s questions to you today, cabinet secretary. I will suspend the meeting briefly to allow a changeover of witnesses.

12:21

Meeting suspended.

12:24

On resuming—

Subordinate Legislation

Individual Learning Account (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/204)

The Convener: Agenda item 3 is subordinate legislation. From the Scottish Government, we are joined by Hazel Rutherford, the course costs team leader, and Elspeth MacDonald, the solicitor with the development, education and local authorities division. I thank them both for attending and for being patient enough to wait until now so that members can ask them questions.

Do members have any questions on the Individual Learning Account (Scotland) Amendment (No 2) Regulations 2008?

Jeremy Purvis: The Executive note on the proposed changes to ILA100, which is to be withdrawn, states:

“Uptake by end of 2007 was only 4,400.”

I would be interested to know why the uptake was determined to be “only” 4,400. If 4,400 people benefited from the scheme, that could be considered as a success. What figure would the Government have hoped for? It seems to be disappointed that only 4,400 people benefited from ILA100.

Hazel Rutherford (Scottish Government Lifelong Learning Directorate): When the scheme was set up under the previous Administration, I think that the target was higher than that. That might be where the word “only” came from.

Jeremy Purvis: I ask the question because I do not know whether the rationale for changing the ILA100 scheme is that the Government has a policy position of moving towards means testing and away from the universal offering of £100, or that that individual aspect of the scheme failed to live up to expectations. Further on, the Executive note certainly gives the impression that the move away from universal provision for ILA100, which will now be income assessed and means tested, is the result of Government policy rather than because that aspect of the scheme was a failure.

Hazel Rutherford: The regulations will implement the decisions that the cabinet secretary announced at the end of March. I think that the £100 scheme is being withdrawn for both reasons: the scheme had a low level of uptake and the policy intention is to target the ILA scheme at people who earn less than £18,000.

Jeremy Purvis: I understand that rationale, but let me just ensure that the committee is absolutely clear. We are moving away from a situation in which ILA100 provided a universal offering for some learners—ILA200 was always income assessed—to a position under the new Government in which all ILA schemes are means tested.

Hazel Rutherford: Yes.

Ken Macintosh: Convener, are we going through the instruments in order?

The Convener: Yes.

Ken Macintosh: The regulations on individual learning accounts will introduce means testing of pensioners. I assume that the uptake of ILAs among pensioners was not low. Was it not quite extensive?

Hazel Rutherford: I am not sure of the exact figures for uptake among pensioners. Again, the reason for introducing that change is to ensure that the scheme is more targeted at people on lower income levels. In effect, pension income will now be included in the assessment, whereas such income was not included previously.

Ken Macintosh: Do we not have figures on how many pensioners have taken advantage of the ILA scheme in the past?

Hazel Rutherford: I do not have the figures to hand.

Ken Macintosh: I am concerned that there has been no formal consultation on that. Obviously, I do not want to put questions to officials that I should put to the minister, but I am concerned that the Government is introducing a means test for pensioners without asking any pensioner groups or organisations for their views on what the impact of that change would be. It seems strange not to ask for their views. Was a conscious decision made not to consult?

12:30

Hazel Rutherford: I do not think that it was necessarily a conscious decision. An evaluation of the scheme took place over the past two years, the results of which were published at the end of last year; the learner report was published in March. Most changes came about because of the evaluation's findings. The feeling was that we should means test pensioners in the same way that we means test everyone else. Certainly, people who earn less than £18,000 a year would still receive their ILA.

Ken Macintosh: We are straying into a policy decision. Surely no findings concluded that we should means test pensioners. That has just got to be a policy decision. Were there any findings that

would automatically lead to the conclusion that we should means test pensioners?

Hazel Rutherford: I would need to refer back to the evaluation. I have not got that information to hand.

Ken Macintosh: I assume that that was a policy decision. It is interesting.

Jeremy Purvis: On consultation, the Executive note says:

"However, the external evaluation of ILAs provided detailed and extensive stakeholder and learner feedback".

Was Age Concern Scotland, or any representative body for older people, included among those stakeholders?

Hazel Rutherford: I am not aware that it was. The evaluation findings were from externally commissioned reports on learning providers and learners.

The Convener: That concludes the committee's questions on this matter. No motion to annul has been lodged and, as members may be aware, the Subordinate Legislation Committee determined that it did not need to draw the attention of the Parliament to SSI 2008/204. Does any member wish to comment?

Ken Macintosh: I am sorry—this is my own fault—but I was under the impression that the minister was here to talk about not just the petition, but the subordinate legislation. I have a number of concerns about SSI 2008/204 and the other SSIs on the agenda. I am concerned that we do not have a minister here to explain the policy change that is clearly reflected in the SSIs. It would be unfair to question the officials on policy. For example, SSI 2008/204 reflects a specific policy change to means test pensioners. The regulations will get rid of the £100 ILA and bring in means testing, so that everybody who would otherwise qualify will lose their eligibility.

The specific change to means test pensioners is very unusual. Or perhaps it is not unusual, given that it comes at a time of the review of the central heating grant for pensioners—and the introduction of means testing in that regard—and a review of bus passes for pensioners. To put it mildly, there are questions to be asked about this Government's policy towards older people. I am disappointed that we do not have the opportunity to put that in context with the minister. This is the last meeting in this parliamentary term of the Education, Lifelong Learning and Culture Committee. I have no doubt whatsoever that it is deliberate that we are getting all these pieces of bad news at the last meeting of the term. I am reluctant to let the minister away with such an obvious ploy. Is there any way in which we can

have a further discussion with the minister on SSI 2008/204 and the other SSIs?

The Convener: To ensure that Mr Macintosh is aware of the procedure, and to be fair to the cabinet secretary, I explain that there is no motion to annul. No member has lodged a motion to annul, and the cabinet secretary would come to the committee only if such a motion had been lodged. When she does not come to the committee, we have the opportunity to have Government officials here in case the committee wants to pursue any technical points.

Given the concerns that have been raised, I think that it would be best not to put the question today on SSI 2008/204, but to delay doing that until our next meeting. We can invite the minister to come to the committee and answer questions on the policy behind the statutory instrument. In particular, we can ask about the lack of consultation; I was going to pursue that matter. We have time to do that.

I remind members that, if they wish to lodge a motion to annul, they should do so.

Rob Gibson: We heard that no motion to annul has been lodged. We also heard some questions, which are now on the record. If you are intent on not putting the question today, convener, it would be sensible to ask the minister to respond to the questions so that, when the question is put, we are sure that we have dealt with the substantive points. Fundamentally, if members have come to the committee with a view to opposing the regulations, they should have lodged a motion to annul. However, it would be useful if we went through with the process of seeking information and got answers from the minister in writing.

The Convener: I appreciate your point, Mr Gibson. However, the process is a moveable feast. Sometimes, it becomes apparent that one wants to move a motion to annul only when information is provided by Government officials. That is not always apparent after one's first reading of the subordinate legislation or the explanatory notes, so I am not sure that the point you make in condemning members of the committee for not lodging a motion to annul is necessarily accurate. Also, we do not want to get into a situation whereby members routinely lodge motions to annul Government legislation just for the sake of it.

Jeremy Purvis: I understand Rob Gibson's point. However, it came to light only today that representative bodies for older learners were not consulted, even though the regulations would have a big impact on them. That information came to light only when we got factual evidence from officials; it was not available to members before the meeting. It is therefore unfair to state that a

motion to annul should have been lodged in advance. Considering the information that we have in front of us is the purpose of the committee, is it not?

Rob Gibson: We heard in evidence that evaluations were published earlier this year, in March. That information would contain such references. Also, you offered to provide us—through the chair—with that information if required.

Hazel Rutherford: Yes. The evaluations have been available on the Government's website since they were published.

The Convener: I remind committee members that the use of the term "you" is not acceptable. Since we have no sheep around, it is hard to work out to whom members are referring.

Rob Gibson: So pleasant.

The Convener: I remind members of the committee that they should be respectful of one another at all times.

I have considered the discussion that we have had on the matter. Given the concerns that have been expressed, it would not be helpful to put the question on the statutory instrument today. Instead, we should write to the cabinet secretary to seek clarification and ask her to come to the committee's next meeting, which will be in September.

Aileen Campbell: I want to make a couple of points, convener, because I believe that Ken Macintosh raised some issues that are perhaps not pertinent to the committee, such as bus travel and central heating. Last week, during First Minister's question time, the First Minister made it clear that there was no change in eligibility—

The Convener: Ms Campbell, that is just not—

Aileen Campbell: Well, I do not know how appropriate—

The Convener: I am sorry. We are not having a debate here.

Aileen Campbell: I was just clarifying—

The Convener: This is not the debating chamber, and members are not here to respond to debating points.

I think that, for today, we have reached the end of our consideration of the regulations on individual learning accounts. I am grateful to the officials for their attendance.

Education (Student Loans) (Scotland) Amendment Regulations 2008 (SSI 2008/205)

The Convener: I am grateful to Elspeth MacDonald and Hazel Rutherford for staying with

us. Do members wish to raise any concerns, questions or clarifications on SSI 2008/205?

Jeremy Purvis: I would like further information about the implications for some of the categories of learners, which—as has been highlighted—may well be affected. I looked at the review of means testing in further education and higher education in 2008-09—is that not relevant to the measure?

Hazel Rutherford: These regulations, which concern student loans, are the final change to introduce the new part-time support for higher education students. They abolish the student loan for part-time students.

Jeremy Purvis: Forgive me, convener—I am obviously following the order incorrectly. I thought that this instrument changed the eligibility for some of the students.

Hazel Rutherford: No, the regulations remove the student loan that part-time students are currently able to use for their travel and study costs. The regulations abolish that, because we have put in place new arrangements for part-time higher education students. The committee discussed those arrangements with Maureen Watt in January.

Jeremy Purvis: I am ahead of myself.

The Convener: You got carried away, Mr Purvis. I assume that you have no further questions to ask on this SSI. I see that no other members have questions—the witnesses will get off rather lightly on this item of subordinate legislation.

Once again, no motion to annul has been lodged and the Subordinate Legislation Committee did not draw the instrument to the attention of the Parliament. Unless members wish to make any comments, the question is that the committee has no recommendations to make on the Education (Student Loans) (Scotland) Amendment Regulations 2008 (SSI 2008/205). Are we agreed?

Members indicated agreement.

The Convener: I suspend the meeting briefly to allow Ms MacDonald and Ms Rutherford to leave. Thank you very much for your attendance.

12:42

Meeting suspended.

12:43

On resuming—

Education (Means Testing) (Scotland) Amendment Regulations 2008 (SSI 2008/206)

The Convener: We move to agenda item 5, which is further subordinate legislation. We are joined by Government officials. First, I apologise to Ms MacDonald, whom I tried to dismiss prematurely. She is now accompanied by different Scottish Government officials: Gavin Gray, who is the living costs support team leader, and Anne Marie Hoey, who is the policy writer.

Claire Baker MSP has joined the meeting.

12:45

Claire Baker (Mid Scotland and Fife) (Lab): I will ask about the different decision that was taken in England. I understand that when changes to align higher education means testing with further education means testing were introduced there, they did not apply to existing students—they applied only to new students. However, the Government in Scotland decided to take a big-bang approach, whereby the changes will apply to all students. Did you consider following the model that was adopted down south?

Gavin Gray (Scottish Government Lifelong Learning Directorate): We considered several options, which we presented to the cabinet secretary, who decided to go ahead with the big-bang introduction. One of those options was a phased introduction for new students only.

Claire Baker: Can you give reasons why the big-bang option was chosen? Was that the minister's decision?

Gavin Gray: Yes. Ultimately, the decision is for the minister. We tried to weigh up the pros and cons of the impact on students. Obviously, the big bang changes circumstances for some students during their course. However, we balanced that against the wider impact on the student body of running two different assessments at the same time. Having separate application forms might have caused confusion and the Student Awards Agency for Scotland might have experienced operational issues, which might have meant that students did not receive payments on time. Several such matters were considered. The advice focused on what would have the minimum impact on students in general.

Claire Baker: One or two points follow from that. One difficulty seems to be the idea of running two systems at the same time, although England ran two systems at the same time. However, the most important question is about the impact on students. Was an impact assessment undertaken in Scotland to determine how many students—

particularly those who are currently studying—the changes would affect?

Gavin Gray: On the first point, we are aware that changes have happened in England, but we have not examined them in detail. We discussed with SAAS the implications in Scotland and proceeded on that basis.

The project has been with officials for several years and, before implementing the changes, we tried to undertake modelling work on the number of students who would be affected. However, data are not available on partners' income, because that has never been a factor in assessment before. It is impossible to collect that information unless we have reason to do so—unless we assess on that basis. We have tried our best to consider such matters and to model them as much as we can, but it is impossible to collect the data on partners' income other than by assessing on that basis, because data protection law prevents us from asking for that information if it is not to be used in the assessment.

Claire Baker: So the policy will be introduced without any understanding of whom it will affect.

Gavin Gray: We know the main groups and the characteristics of the students who will be affected. As the policy papers say, we will work closely with SAAS, which will be in touch with institutions during the year, to monitor the impact on students. If anyone is to receive less support or is in danger of falling into hardship, they will have recourse to university hardship funds.

The regulations will make the means test fairer. We are making the changes because the view is that some people are being unfairly assessed, as a large chunk of their household income is not being taken into account in the income assessment. We are trying to create a fair playing field for everyone. We will have to monitor the situation as the year goes on.

Claire Baker: I appreciate that the minister has given the commitment that the savings from year 1 will go into discretionary funds for students. However, I am concerned about a gap between savings being collected in year 1 and discretionary funds being increased—savings from year 1 might be used in funds in year 2. The minister's commitment is for year 1, but have commitments been made on the cumulative savings from the policy changes beyond year 1?

Gavin Gray: We will obviously monitor the situation from year 1 to year 2, and money will be moved into the hardship funds. There will be dialogue with SAAS about its budgets; SAAS has the flexibility to move money between budgets as the year goes on.

I am not sure that there will be much of a gap. However, we are aware that we are not talking about just one year. Students already in the system might be two or three years into their course, so it will take time for things to filter out.

Ms Baker asked about future decisions. The minister's commitment is clear: we will do this in year 1, but that is on the understanding that cohorts of students still have to move through the system. Once we understand the impact of that, we will be able to factor it into future budgets for SAAS. Any change to the balance between what is paid out in fees and awards or loans and what is paid out through the hardship funds or the discretionary funds, will be factored into future budgets.

Obviously, we are not in a position to commit the minister any further than that.

Claire Baker: That was a helpful answer, thank you.

Mary Mulligan: Will any savings made in the first year be used for the hardship funds? Claire Baker was asking about the second and third years.

Gavin Gray: This is supposed to be a cost-neutral exercise, so we are not looking to generate efficiencies or savings. We are aware that less support will be available to some people as a result of the changes. However, if people are genuinely put into hardship, the hardship or discretionary funds will be used.

The first year will really be a monitoring year with SAAS. We will keep an eye on things and will talk to SAAS and the institutions. SAAS will tell us what has been spent, what needs to be transferred, and whether any additional funding is needed. The information that we gather this year will form the basis for funding decisions on SAAS's budget in future years. Such considerations will become part of the annual budgeting process for the awards agency.

Mary Mulligan: We will all be aware that demand tends to exceed supply when it comes to hardship funds. Will students who are affected by the changes be given any preference over the students who would normally apply to a hardship fund?

Anne Marie Hoey (Scottish Government Lifelong Learning Directorate): They have been made a priority this year in the guidance that has gone out to institutions. Obviously, we will have to consider the money that is to be allocated throughout the year; however, anybody who has to go to the institutions as a result of the means-test changes will be given priority.

Mary Mulligan: And guidance to that effect has already gone out.

Anne Marie Hoey: Yes.

Mary Mulligan: Regulations 9 and 10 refer to inserting, after the word “parent”, a range of possible partners of that parent—whether a spouse, a civil partner or a person living with that parent. Does the student involved actually have to reside with the parent and one of those categories of partner?

Anne Marie Hoey: At the beginning, when the student applies for support, there are different categories. Certain categories are classed as independent—for example, if the student is married or has been self-sufficient for three years. However, if the student is classed as dependent by the Student Awards Agency for Scotland, the assessment of their income will be based on what is at present called the parental income but which will be called the household income from 2008-09. If a student moves away, they will still be assessed using the household income.

Mary Mulligan: What if the student has never lived within that household? Would they still be included?

Anne Marie Hoey: If the student is classed as dependent, then yes.

Mary Mulligan: I will try one more time. If a student lives with her grandparents and has not lived in her parental home for some time, will she be included in the scheme?

Anne Marie Hoey: It depends on the circumstances of the case. If SAAS classes the student as a dependent student, they will be assessed currently on parental income and in future on household income. If it classes the student as an independent student, because they are self-sufficient and live on their own, the household income will not be taken into account.

Mary Mulligan: So the crucial factor is whether a student is classed as dependent or independent.

Anne Marie Hoey: Yes.

Mary Mulligan: That is helpful.

Jeremy Purvis: It was helpful to hear that guidance has been issued to institutions. The guidance will have been published, so we will be able to see it. In answer to parliamentary questions, the Government stated that the funding that will be saved from the first year of the scheme will be allocated to discretionary funds and that no decisions have been taken about savings in subsequent years. Is that correct?

Gavin Gray: Yes. As I said earlier, the funding will be factored into future budget decisions. We are aware that the effect of the savings is not limited to one year and that subsequent cohorts of students will be affected.

Jeremy Purvis: Am I correct in saying that nursing or midwifery students cannot apply to institutions' hardship funds?

Anne Marie Hoey: Separate arrangements have been made for nursing and midwifery students.

Jeremy Purvis: What are they?

Anne Marie Hoey: The Deputy First Minister and Cabinet Secretary for Health and Wellbeing decided that such students would receive the same level of support and would not be any worse off as a result of the changes.

Jeremy Purvis: How will the arrangements work in practice?

Anne Marie Hoey: The arrangements for student support in nursing and midwifery are very different—a different kind of support is provided and the bursary that students receive is not means tested. However, students are still eligible for a dependents allowance that is means tested—they can claim for children. Because the arrangement is unique to nursing and midwifery students, the Deputy First Minister and Cabinet Secretary for Health and Wellbeing decided that, when those students apply to SAAS, the support that they receive will be made up to the level that they were awarded in the previous year, so that they are no worse off.

Jeremy Purvis: It would be helpful if we could receive more information on how the arrangement will work in practice. I understood that nursing and midwifery students will be eligible to claim dependents grants for their partners but that partners' income will be means tested. There is means testing for nursing and midwifery students.

Anne Marie Hoey: The additional dependents allowance for children is means tested, but the bursary that nursing and midwifery students receive is not. If a nursing student is living with her partner and is claiming for a child, her bursary will not be affected by the fact that her partner has high earnings, but she may lose out on support for her child. The Cabinet Secretary for Health and Wellbeing has said that she will ensure that the same level of support that was awarded in previous years will be provided.

Jeremy Purvis: The arrangement does not apply to non-nursing and non-midwifery students in that category.

Anne Marie Hoey: No. The support to which I refer is specific to nursing and midwifery students.

Jeremy Purvis: Does SAAS have to operate a separate procedure to provide the same level of bursary to that category of students?

Anne Marie Hoey: The same application process and computer system are used to provide support for such students.

Jeremy Purvis: When the Government was asked why it opted for a big bang approach, it said that the cost to SAAS of operating two systems was estimated at £1 million. It is worth asking whether a second system is in operation for nursing and midwifery student support.

Anne Marie Hoey: No. Nursing and midwifery students are paid through the same grants and student support system.

Gavin Gray: Because the number of nursing and midwifery students is relatively small compared with the total number of students with which SAAS deals, their cases are dealt with on an individual basis—there is no need to design an entirely new system. Representatives of SAAS are not here to provide details of the operational impact of the issue on SAAS, so we will need to double-check that with the agency.

Jeremy Purvis: It might be helpful to have information on that area.

With regard to the eligibility of lone-parent students, for the first time, maintenance payments will be taken into consideration as part of the assessment. That is a policy decision, so we will ask the Cabinet Secretary for Education and Lifelong Learning about that. However, I would like to ask you whether you know how many lone-parent students who currently receive maintenance payments will be affected by the change.

13:00

Anne Marie Hoey: SAAS does not record that information, so those data are not available. Currently, SAAS does not take maintenance payments into account in any respect. The situation was different with regard to FE colleges and, because the policy was designed to align the situation in the HE sector with what has been happening in the FE sector, it was decided to take such payments into account. We are aware, however, that we do not know how widespread the impact will be, because we do not have any data for the HE sector.

Jeremy Purvis: Is it definite that students who have gone through the new process and are in considerable hardship will be able to access universities' discretionary funds? The criteria for discretionary funds are such that they are not available if a student has gone through the normal, means-tested route of applying for grants and bursaries. The students about whom I am talking will probably have gone through that process, as they are allowed to apply for everything that is

open to them. Is it absolutely the case that they will be able to apply for hardship funds for this year?

Anne Marie Hoey: Students who have been adversely affected by the changes to the means test and who are in genuine hardship can access the discretionary funds.

Jeremy Purvis: Will they be able to access the same amount that they are losing?

Anne Marie Hoey: That is a decision for the institutions. The pay-outs are discretionary.

Jeremy Purvis: When I said to the First Minister that students could face hardship, he said:

"We have put in place hardship funds to deal with exactly that contingency."—[*Official Report*, 24 April 2008; c 7935.]

However, you are saying that there will not be a like-for-like replacement of the funds that students have lost out on. The Government has not ensured that that will happen in the way that it has ensured that it will happen for nursing students.

Anne Marie Hoey: We have never made decisions about what is paid out from discretionary funds.

Jeremy Purvis: But it is not in the guidance.

Anne Marie Hoey: That the pay-outs should be like-for-like? No.

Jeremy Purvis: For those applying now, there is currently no statutory basis for the decisions. Is that correct?

Anne Marie Hoey: It was decided that SAAS should progress on the assumption that the regulations would be passed. The other option was to ask it to stop assessing applications, which would have created a bottleneck. However, anything that SAAS is doing can be undone.

Gavin Gray: No payments will be made until after the regulations come into force, although the assessments are being made at the moment. If the regulations do not come into force, the work that SAAS is doing could be reversed.

Jeremy Purvis: When are students told what the awards are?

Gavin Gray: They will already have been given an indication, in some cases. It depends on when they applied. The majority of students who have applied will already have been given an indication of their eligibility.

Jeremy Purvis: And when will we know how many students are affected?

Gavin Gray: SAAS will start to build a picture of roughly what the changes in eligibility might be.

Jeremy Purvis: So after the summer recess we will know how many students have been adversely affected.

Gavin Gray: Without talking to anyone from SAAS or any of our analytical colleagues, it is difficult to say what data SAAS will be able to mine. However, we hope that we will have a better indication of the situation.

Jeremy Purvis: Currently, however, awards are being denied on the basis that legislation might well be approved—which is to say, there is no legislative basis for the denial of those awards.

Gavin Gray: The key point is that no payments have yet been made. We are assessing the awards on the basis that the changes will go through.

Jeremy Purvis: So even though the cheque has not been sent, students who have been given an award can appeal it, because there is no statutory basis for an eligibility decision by SAAS.

Gavin Gray: We made an administrative decision to process awards in anticipation of the regulations being approved. If the regulations are not approved, SAAS will have to reassess all the applicants using the previous means-test arrangements.

Jeremy Purvis: This is quite significant. If I were a student—or indeed a lone parent—whose income had been assessed I would be able to challenge my award, because there is no statutory basis for SAAS having made its decision.

Gavin Gray: Off the top of my head, I am not sure about the legal status of the award letter from SAAS. I do not think that it is a definite statement that that is what someone will get.

Jeremy Purvis: Does the Government know?

Gavin Gray: We would have to look into it and get back to you.

Jeremy Purvis: Have legal officers in the Government considered the issue?

Gavin Gray: We have not looked at that specific point.

Jeremy Purvis: So the Scottish Government legal directorate has not considered whether it is legal to send out letters making indicative awards.

Gavin Gray: The work that we have done to try to get the regulations in place would support this. We have been working quickly to try to address the anomaly in the system and the unfairness—

Jeremy Purvis: I understand that, Mr Gray. It is a subjective point whether there are anomalies. Award letters are being sent out, presumably this week—

Gavin Gray: They will have been sent out.

Jeremy Purvis: In the award letters that have been sent out, some students will have had their eligibility changed because of the new requests from SAAS. You are telling us that the Government has not checked whether it is legal for SAAS to make those indicative awards. You need urgently to come back to the committee with clarification. I do not think that there is any more that we can ask at this point. The Government does not know, and nor do we. We need urgent clarification.

The Convener: Hopefully the officials will take that message back to the minister. It would appear that Mr Purvis's line of questioning has highlighted what could be a considerable concern.

Ken Macintosh: I am not sure how we will address that, because the parliamentary recess is looming. It is clear that the minister will need to answer our questions. I am struck by the contrast between this measure and the measure that we are about to consider. I have every sympathy for SAAS and the Government wanting to be ready to implement policy changes, but presuming parliamentary authority for something can lead to difficult situations, such as the one that we are in now. Like Jeremy Purvis, my concern about the changes is that we may have deterred students who are at university already or who are entering university from proceeding, on the basis of a letter that has no standing. It is a serious matter that the minister will need to address urgently.

I am not sure how the committee should proceed, because we cannot do anything before the summer recess. The Government has chosen a big-bang approach, but I am afraid that it has been a bit of a disaster. A big bang without permission is not good. I suggest that we write and ask the minister to suspend the implementation of the regulations immediately. If we go back to the existing regulations, no one will be worse off, whereas, if we go ahead with the planned changes, a lot of students will be worse off. That is the danger so, until the matter is finalised, the safe position would be to revert to the existing legislation right away and for SAAS to contact the students immediately.

Either in the Parliament or through the convener, we should ask the minister to withdraw the regulations immediately and ask SAAS to continue with the current system for another year—I assume that it would have to be that long. It is not difficult to ask that we ensure that new students do not have the new system. It is what has been implemented in England and Wales anyway.

Can I suggest that as a constructive way forward, convener?

The Convener: You can certainly suggest it and I am sure that it was meant constructively, but the committee does not have the power to do that. The options that lie before it are to approve or annul the regulations.

It is apparent from Jeremy Purvis's line of questioning that there are some legitimate concerns, so I suggest that, rather than ask whether we agree the regulations, I write to the cabinet secretary on the committee's behalf enclosing a copy of the *Official Report* of the meeting, asking her to reflect urgently on our concerns and requesting that she come to the committee in the first week after the summer recess to answer further questions on the regulations.

The consequences of the regulations are not clear and we have not been able to reach a conclusion. You may be right, Mr Macintosh; they may have serious consequences but, equally, they may not. Therefore, the only course of action that is open to the committee is the one that I suggest. I remind members that we have until 8 September to conclude the committee's consideration of the regulations, so it is possible for us to do everything that I suggest. Does the committee agree that that is acceptable?

Members *indicated agreement.*

The Convener: Mary Mulligan has a question for the officials.

Mary Mulligan: On regulations 9 and 10, to which I referred earlier, am I right in thinking that, when somebody applies for financial assistance, they are asked for information about their income and that that is the basis of the assessment?

Gavin Gray: Yes.

Mary Mulligan: However, because we have not agreed the regulations yet, there is no legal basis on which you can ask for that information. Is that correct?

Gavin Gray: I am not sure off the top of my head whether we would need that. We would have to check that with SAAS and our legal colleagues would have to consider further what the legal requirements would be. I cannot answer that question right now, but we can look into it further.

Mary Mulligan: How would SAAS make the assessment if somebody did not provide the information?

Anne Marie Hoey: It may be that SAAS makes provisional assessments and then seeks further information before it finalises assessments. I do not know whether provisional assessments are made in this case. We will have to check that and get back to you.

Mary Mulligan: When you say "provisional assessments", would SAAS staff base those just on the information that they had in front of them?

Anne Marie Hoey: Yes.

Mary Mulligan: But they would recognise that that might not be the whole picture, depending on how people responded.

Gavin Gray: Yes.

13:15

Mary Mulligan: I appreciate that it is difficult for the officials to answer, given that they are not dealing with such applications on a day-to-day basis, but I have concerns that are informed by issues that have arisen in my dealings with SAAS.

Following Jeremy Purvis's questions, I am concerned that students who have been given an indication of an award may decide on their future on that basis. That is extremely worrying, so the convener's suggested course of action is probably the best that we can do at the moment.

Ken Macintosh: I have another practical suggestion. For the same reason that Mary Mulligan and Jeremy Purvis outlined, single parents and lone-parent families, whose vulnerability to changes in income is well known, will be among those who are affected. Perhaps we should record our expectation—it is certainly my expectation—that SAAS contact each student that it can identify and let them know that the information that they have received so far is only a guide as to what will happen if the regulations go through. It is important that we do not just wait for two months before Parliament reconsiders the matter and that the individuals concerned are contacted and given information on their situation. If that does not happen, they might act on the wrong information and take the wrong decision for their futures.

The Convener: The committee cannot recommend a course of action to SAAS at the moment, but when the minister reads the *Official Report* of the meeting, she will realise that we have serious and highly legitimate concerns that people are being placed in an extremely difficult position and might make wrong decisions based on information they have been given. Our letter to the minister can stress the urgency of the situation.

Aileen Campbell: I, too, have a question for the officials. What is the content of the letters that have gone out? Do they contain an indication that the situation might change?

Gavin Gray: I do not have a copy of an award letter in front of me. In general, whether someone will definitely get an award or whether their award

is provisional depends on their circumstances. We can check the position with SAAS and get some copies of the award letters.

Aileen Campbell: It would be good to find out about the content of the letters—that could inform our decision.

The Convener: It is unfortunate that SAAS is not represented here today. It was up to the Scottish Government to decide which officials came along this morning, but I hope that when the minister appears before the committee in September, serious consideration will be given to bringing along a representative of SAAS who deals with such matters on a day-to-day basis, because such input would be of great assistance to the committee.

Jeremy Purvis: I absolutely support the convener's suggestion on the way forward and hope that the process can be expedited. I understand that Ms MacDonald is the divisional solicitor in this area. Tomorrow is the final day of the parliamentary term. I do not know whether it would be possible for us to get any information from the Scottish Government this afternoon on the legal position, but it is of the utmost urgency for those who have received such letters to find out what their legal status is. I agree with Aileen Campbell: we do not know the answer to that, nor does the Government and nor do students. The fact that we urgently need absolute clarity will dictate the letter that we send to the cabinet secretary. I hope that my request is reasonable; clarification is required today.

The Convener: I am not sure whether Ms MacDonald feels able to respond to that; she might feel that it would be more appropriate for the minister to respond.

Elspeth MacDonald (Scottish Government Legal Directorate): It is more appropriate for us to consider our views. I accept Mr Purvis's points on urgency, but points have been raised today that neither I nor my colleagues have had a chance to consider. We may be good, but we may not be able to respond that quickly.

The Convener: It is important that we write to the Cabinet Secretary for Education and Lifelong Learning as a matter of urgency. In the letter, we will stress the committee's serious concerns and the serious potential consequences for students the length and breadth of Scotland, and ask her to consider the issues as a matter of urgency.

That concludes our consideration of the regulations on means testing. I suspend the meeting to allow a changeover of witnesses, although I understand that Ms MacDonald will stay with us.

13:20

Meeting suspended.

13:21

On resuming—

Graduate Endowment (Scotland) Regulations 2008 (SSI 2008/235)

The Convener: The sixth and final item on our agenda is further consideration of subordinate legislation. Elspeth MacDonald and Gavin Gray have remained with us and we are joined by Mark Batho, the director of lifelong learning with the Scottish Government, to answer any questions that the committee may have.

Ken Macintosh: The issue with which the regulations deal is a matter of concern in my constituency and nationally. I have raised the issue with the Cabinet Secretary for Education and Lifelong Learning. How many students will be affected by the decision, which is a reversal of policy? How many students who are in postgraduate or continuing education have been asked to pay their graduate endowment in full?

Mark Batho (Scottish Government Lifelong Learning Directorate): The figure that we have is that 2,457 people had been allowed to defer payment of their graduate endowment under administrative procedures by the SAAS.

Ken Macintosh: How many of them have paid off their endowment in cash?

Mark Batho: I have the figures here, if you will bear with me while I look through my notes. Following March, 249 of them had paid by cash and 625 had added the amount of the graduate endowment fee to their student loan. That makes a total of 874 who had settled. I am not quite sure what the date of those figures is, but they are the latest figures that I have.

Ken Macintosh: What is the current status of the others who are included, but who have not taken a decision, so to speak?

Mark Batho: Their status is that they have not responded to a demand for payment. As the situation has unfolded in recent weeks, it has become clear that there was no formal legal legislative underpinning of the decision to defer. Technically, all the 2,457 people had an immediate liability to pay that may have crystallised at any time from 2005 onwards, depending on the length of the deferment that they were granted.

The Government's decision in relation to them is that the deferment that was originally granted should, in practice, be allowed to continue on the basis that there is a legitimate expectation on the

part of those students that they would not have had to have paid at any point up to the point at which they were told that their deferment would continue, which is the point at which they complete any subsequent higher education course beyond that for which they accrued the graduate endowment liability. In practice, as things stand, those who did not respond to the SAAS letter will receive a letter that will confirm that the deferment that was originally granted to them will be allowed to continue.

Ken Macintosh: So those who did not respond to the SAAS letter will be allowed to continue to defer and will not have to apply for a loan.

Mark Batho: They will not have to apply for a loan now. The substance of the regulations is that those students will have the choice at the end of the deferral period to either pay by cash or to take out a loan.

Ken Macintosh: Is not that the choice they always had?

Mark Batho: That is why the regulations are in front of us today. As the Government looked into the situation it became clear that, in practice, because the decision to defer did not have any legal basis, it had the knock-on effect that those students could not legally apply for a student loan when the period of deferment came to an end. Under the existing regulations, a student can apply for a student loan up to 1 April, when their liability crystallises. For example, a student who finished their first course in July 2006 became liable on 1 April 2007 and if they then deferred because they were going to go on to a one-year postgraduate qualification, they did not apply for a loan at that point, but their liability accrued at 1 April 2007, so they would not have the opportunity to apply later for a student loan, and the regulations would change that legal position to say that such students can apply for a student loan at any point up to 1 April after the second or subsequent higher education course for which the deferral was granted comes to an end.

I am sorry; that was an inordinately complicated sentence.

Ken Macintosh: That is all right. It is a difficult subject but I have a lot of cases about it, so I am aware of its complexities.

In practice, postgraduate students in the past applied for loans whether they were legally entitled to or not. Many of those students will be on one-year courses, but some will be on two or three-year courses. Will they be able to defer for two or three years?

Mark Batho: There will be no more deferment because the graduate endowment has been abolished.

Ken Macintosh: That is right, but will those who are currently in the middle of a postgraduate course that has another two years to go be able to defer until the end of that two years?

Mark Batho: Yes.

Ken Macintosh: Will the 625 who have added their liability to their loans be able to claim back interest on those loans?

Mark Batho: Technically, those loans were granted without legal authority, so they will be cancelled, the students will be able to replace them with new loans and the interest that will have accrued between the time that they took out the loan and the time of the new loan will be met for them. They will not have to pay it.

Ken Macintosh: What is going to happen to the 249 who paid cash?

13:30

Mark Batho: We are looking into that. It is not easy, but the cabinet secretary has asked us to consider the possibilities for them. The technical position is that they had a liability that they have now met. In fact, in legal terms they have had an unlooked-for benefit in that they were not allowed technically to have had that deferral take place and should have paid some time ago. The cabinet secretary has asked us to examine the position. I cannot say where that will end up because the situation is complicated.

Ken Macintosh: I am not sure that those graduates would agree that they have had some sort of benefit.

Mark Batho: I am speaking in legalistic terms. I refer back to the example that I gave before: if the liability accrued on 1 April 2007, they were due technically to pay from that time because there was no legal basis for deferment. The fact that they have not had to pay up to this point is, in legal terms, an unlooked-for benefit.

Ken Macintosh: According to the note, the financial implications are minimal, but I cannot believe that. We have offered 625 loans to students at a substantial cost to SAAS if not to the Government. Has that cost not been included in the regulatory paper?

Mark Batho: I invite Gavin Gray to respond.

Gavin Gray: The cost of providing the loans has always been accounted for in the general accounting for the graduate endowment scheme. As regards having to cancel the loans and replace any lost interest, the Student Loans Company is working with SAAS to look at each case. We are still waiting for the Student Loans Company to tell us exactly what the cost will be, but we think that it will be in the region of £10,000 to £20,000.

Although we are still waiting for confirmation from the Student Loans Company of exactly what is involved and what the cost will be, we expect the cost to be met from within the company's existing running costs.

Ken Macintosh: It might be of interest to the committee to find out exactly what that cost is, perhaps in writing at a later stage.

I am pleased that the cabinet secretary has responded to the pressure that has been put on her by my colleague Claire Baker and others: including me, actually—false modesty is a sin, is it not? I am interested in when the cabinet secretary took the decision that there was a problem. I wrote to her about the situation in March and got a response in April that suggested that there was no problem and that we were following the law. I wrote again in May and got a response by e-mail last night, interestingly. At what point between the abolition of the graduate endowment and today's debate on the regulations did the cabinet secretary cotton on to, or make moves to accept, the fact that there is a problem?

Mark Batho: May I clarify what particular problem you are asking about? There are two issues on the table, one of which is the legality or otherwise of the granting of deferment, and the other is the capacity to pay a student loan to students who have deferred. The issues are interlinked and the problem emerged when a particular case was identified that caused us to look again at the whole situation. It was at that point—I have not got an exact date, but there was a report in *The Herald*, which is easily identifiable—that we identified that there was no formal legal basis for the deferment. Within a short time, we identified the student loan issue, which changed the context in which the original decision was taken in March.

Ken Macintosh: That is interesting. I wrote in March to say that the Executive should defer payment. I received a response in April, saying that that was not the policy position of the Government. The Government is addressing the matter only because it is being forced to do so by an identified weakness in the law. Would the Government continue to penalise the students if it were not for that weakness? I suppose that that is a policy question for the minister.

Mark Batho: I cannot comment on the latter part of your question, but I can confirm that the instrument is a response to an identified weakness in the law.

Ken Macintosh: Thanks very much, Mr Batho.

The Convener: Do other members have questions that they want to ask?

Claire Baker: Ken Macintosh has covered many of the issues, but I would like to ask about deferment. The legal problems around the supplying of a loan at the stage of deferment arose only because a decision was made to withdraw the ability to defer. It is unclear who made that decision. I have received letters from the SAAS, which say that it was down to accounting procedures. However, Ken Macintosh has suggested that it was a policy decision. Can you give us some information on who made the decision? Was it a consequence of the abolition of the graduate endowment?

Mark Batho: The way it works is that there is no legal basis to defer. That was an administrative decision that was taken by the Student Awards Agency for Scotland, which was not founded on statute. Therefore, as a legal consequence of the fact that there is no power to defer, there is no power for those people who have deferred to take out a student loan in order to pay after they have missed the cut-off date, which is the point at which they originally became liable. The one absolutely follows the other. As soon as it was identified that there is no legal basis for deferment under the existing regulations, which we are replacing, there could be no payment of a student loan.

Claire Baker: So, you are suggesting that there was never any legal basis for deferment, under previous Governments or the current Government.

Mark Batho: Indeed.

Claire Baker: I understood that, previously, there had been a direction from ministers that the SAAS should allow deferment for postgraduate students.

Mark Batho: No.

Claire Baker: I am also interested in when the minister or officials became aware that there was a problem. The letters were originally sent out to students in February, but it has taken until now, towards the end of the academic session, for the amending regulations to be produced to deal with the issue. You have highlighted the fact that the coverage in *The Herald* brought the matter to the minister's attention.

Mark Batho: Yes.

The Convener: Do committee members believe that the officials have been able to answer all their questions? Are we happy to move to the question on the instrument?

Ken Macintosh: I am delighted, although I have some concerns. I am concerned that a letter from an MSP highlighting several constituency cases was not enough to illuminate the minister's view on the matter but that an article in *The Herald* was. It says something about the Government if that is how ministers proceed. Nevertheless, whatever

the decision was based on, it was the right decision. Of all the subordinate legislation that has come before us this morning, this is the one instrument that I have no hesitation in supporting.

The Convener: In that case, it is appropriate that we move to the question on the motion. No motion to annul the instrument has been lodged, and the Subordinate Legislation Committee has determined that it does not need to draw the attention of the Parliament to it. Members' questions have been covered.

The recommendation is that the committee has no recommendation to make on the Graduate Endowment (Scotland) Regulations 2008 (SSI 2008/235). Are we agreed?

Members *indicated agreement.*

The Convener: That concludes the committee's business today. I wish you all a happy recess, and I will see you in September.

Meeting closed at 13:39.

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