

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

Tuesday 2 September 2008

Session 3

£5.00

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# CONTENTS

**Tuesday 2 September 2008**

**Col.**

<b>INTERESTS</b> .....	1333
<b>DEPUTY CONVENER</b> .....	1334
<b>SUBORDINATE LEGISLATION</b> .....	1335
Individual Learning Account (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/204).....	1335
Education (Means Testing) (Scotland) Amendment Regulations 2008 (SSI 2008/206) .....	1341
Academic Awards and Distinctions (UHI Millennium Institute) (Scotland) Order of Council 2008 (SSI 2008/212) .....	1363
Education (Assisted Places) (Scotland) Amendment Regulations 2008 (SSI 2008/213) .....	1363
St Mary's Music School (Aided Places) (Scotland) Amendment Regulations 2008 (SSI 2008/214) .....	1363
Academic Awards and Distinctions (Additional Powers of the University of Aberdeen) Order of Council 2008 (SSI 2008/220) .....	1363
Teachers' Superannuation (Scotland) Amendment Regulations 2008 (SSI 2008/227).....	1363
<b>PETITIONS</b> .....	1364
Foreign Languages Policy (PE1022).....	1364
Schools (Class Sizes) (PE1046) .....	1364
<b>EMPLOYMENT OF PROBATIONARY TEACHERS</b> .....	1367

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## EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

**19<sup>th</sup> Meeting 2008, Session 3**

### CONVENER

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

### DEPUTY CONVENER

\*Kenneth Gibson (Cunninghame North) (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)  
\*Bill Kidd (Glasgow) (SNP)  
Hugh O'Donnell (Central Scotland) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Claire Baker (Mid Scotland and Fife) (Lab)

### THE FOLLOWING GAVE EVIDENCE:

Fiona Hyslop MSP (Cabinet Secretary for Education and Lifelong Learning)  
Stephen Kerr (Scottish Government Lifelong Learning Directorate)  
Elspeth MacDonald (Scottish Government Legal Directorate)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Nick Hawthorne

### ASSISTANT CLERK

Andrew Proudfoot

### LOCATION

Committee Room 1



## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

*Tuesday 2 September 2008*

[THE CONVENER *opened the meeting at 14:00*]

#### Interests

**The Convener (Karen Whitefield):** I open the 19<sup>th</sup> meeting in 2008 of the Education, Lifelong Learning and Culture Committee. I take this opportunity to welcome everyone back after the summer recess. I hope that you all had a relaxing and enjoyable summer.

The first agenda item is declarations of interests. I welcome Kenneth Gibson as a new member of the committee. I am delighted that he is joining us. Mr Gibson, do you have any interests that you wish to declare?

**Kenneth Gibson (Cunninghame North) (SNP):** I have no interests to declare, convener. Thank you for your welcome to the committee.

**The Convener:** We have also been joined by Bill Kidd as a substitute member for Christina McKelvie, who is unable to attend the committee. Mr Kidd, do you have any interests to declare?

**Bill Kidd (Glasgow) (SNP):** No, thank you. I have no relevant interests to declare.

**The Convener:** Thank you.

## Deputy Convener

14:01

**The Convener:** Our second agenda item is the choosing of a deputy convener. I put on record my thanks to Rob Gibson, who was deputy convener during the past few months. He has now left the committee and moved on, so we have to replace him.

Parliament has agreed that members of the Scottish National Party are eligible to be chosen as deputy convener of the committee. That being the case, I invite nominations for the position of deputy convener.

**Aileen Campbell (South of Scotland) (SNP):** I nominate Kenneth Gibson.

**Bill Kidd:** I second that nomination.

**The Convener:** There has been one nomination for the position of deputy convener.

*Mr Kenneth Gibson was chosen as deputy convener.*

## Subordinate Legislation

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

14:03

**The Convener:** We move on to the substantive part of today's agenda, which is subordinate legislation. Our first item is the Individual Learning Account (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/204). At this point, I am pleased to welcome the Cabinet Secretary for Education and Lifelong Learning to the committee. She is here to answer questions on this negative instrument, which the committee will remember it first considered at its final meeting before the summer recess.

Ms Hyslop has been joined by Stephen Kerr, the deputy director of higher education and learner support; by Elspeth MacDonald, the divisional solicitor in the development, education and local authorities division of the Scottish Government; and by David Stephen, the chief executive of the Student Awards Agency for Scotland. I thank you all for attending.

I intend to move straight to questions. I seek an indication from those members who wish to put questions to the minister.

**Ken Macintosh (Eastwood) (Lab):** Minister, will introducing means testing encourage the take-up of individual learning accounts or will it be a barrier?

**The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop):** It is quite interesting that although the ILA 100 was taken up by 4,000 students, the original plan was for take-up by 12,000 students by 2006, so clearly there has been a shortfall. However, feedback from interviews that were conducted as part of the initial research with 2,000 learners and 136 organisations, including colleges, universities, training providers, local authorities, the community and voluntary sectors, and trade unions, told us of the need for a refocusing of ILAs. Given that most courses cost more than £150, changing the rules on ILA 100 and ensuring that we concentrate on ILA 200 will improve take-up. That is one reason for taking the course that we have taken.

**Ken Macintosh:** I appreciate the importance of framing ILAs in a way that ensures maximum accessibility, but the question was whether instituting a means test will improve take-up, particularly in the case of pensioners.

**Fiona Hyslop:** It is important to understand that pensioners have always been asked to provide

information on their individual income, including pensions and earnings, but not their household income. No additional burden is therefore being placed on learners.

Is it fair or tenable that someone with an income, including pension income, of—let us say—£50,000 a year can claim ILA support? The question is whether we should concentrate on those who need support, that is, people on low incomes, the low skilled—including those with literacy and numeracy needs—and those who are in work but who need access to support. Given that the average pension income is £13,000 and the figure for accessing ILA support is to be set at £18,000, the situation for the vast majority of pensioners will not be affected at all. We need to bear in mind the fact that a relatively low percentage of people over 65 accessed ILAs in the past. The impact will be minimal.

We considered what the committee said when you discussed the matter with officials. As you know, we consulted pensioner groups, four out of six of which recognised that what we propose is fair and equitable. Indeed, one group that had expressed concern later said that it had not realised that it had always been the case that a pensioner's individual income was assessed for ILA support. It realised that nothing had changed.

**Ken Macintosh:** I appreciate the information and welcome Government consultation with groups that represent older people. That said, I hope that the cabinet secretary will acknowledge that that consultation was done only after this committee flagged up that the Government had not consulted such groups and that that was a huge gap in the consultation that had taken place. It was a mistake for the Government not to consult older people before the regulations were introduced. I am glad that the mistake was corrected.

I will put the question once more: do you believe that introducing this means test—or tightening the means test for older people—will have an impact? If so, what will the impact be on the take-up of ILAs?

**Fiona Hyslop:** We need to bear in mind the age range of the majority of those who take up ILAs. I refer to the expansion of ILA eligibility from 18 to 16-year-olds. There is also the removal of the requirement to make a contribution. In the past, pensioners had to make a contribution to their ILA. We have removed that burden. The improvements far outweigh any consequences of the changes.

**Ken Macintosh:** You are giving useful information in answer to a series of questions that I have not asked, cabinet secretary. I welcome the information nonetheless. It is fine to justify the policy, but the question that I put to you is: will the

change have a detrimental effect? Will it have an impact? I think that you said that the impact would be "minimal". Will the change put some people off?

**Fiona Hyslop:** No, I do not think that it will. ILAs will not be fully means tested. Account will be taken only of individual earnings. You should look again at the evidence and research that was conducted, even that which was done over the summer. I agree with the feedback that we received from four out of six older peoples' organisations that this change is a fair and equitable way forward.

**Ken Macintosh:** Whether it is fair and equitable is for another discussion, cabinet secretary. My question is: will the change have an impact? If so, perhaps you will tell the committee whether it is a way of targeting resources at those who are most in need. Certainly, that is a viable argument. How much will the means testing save? How many more people will benefit as a result of the additional saving?

**Fiona Hyslop:** Some will be impacted, but the figure will be marginal. The benefits will far outweigh any additional burdens.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Good afternoon, cabinet secretary. I hope that you had an enjoyable summer.

In your follow-up letter to the committee, there was no further detail on the estimate of how many individuals will be affected by the proposal. We know that the 4,400 learners who have received an ILA 100 will be affected. How many learners will be required to contribute to their education?

**Fiona Hyslop:** First, I should point out that, under the existing scheme, everyone who received the ILA 100 or the ILA 200 had to contribute, because an initial contribution had to be made. That requirement has been removed, which is a benefit to everybody.

Of the 6,000 learners aged over 65, only a small number—5 per cent—received an ILA 100. The number of people who will be affected by the proposal is in the hundreds.

**Jeremy Purvis:** Paragraph 6 of the Executive note on the regulations says:

"Since the scheme launch in December 2004 over 99,000 people have opened an individual learning account and over 63,000 learners have attended courses."

What proportion of those will now contribute more to their education, and do you have an estimate of how much that contribution will be?

**Fiona Hyslop:** It depends on the income of the individual, as the ILA 200 is means tested. As the average income of the people whom we are

talking about is £13,000, the vast majority will not be affected by the £18,000 threshold.

**Jeremy Purvis:** You say "the vast majority", but I have asked you what the estimate is. You assert that the vast majority will be unaffected, but there is no evidence to back that up. I have asked you specifically how much those who will be affected will be asked to contribute, but you are not able to tell us. I just want to know what the evidence is for your assertion.

**Fiona Hyslop:** The research into learners and their experience showed that learners over 50 were more likely to be in the A and B social grades than younger learners are. The learners in the E social grade were mostly retired, and the bulk of them would, obviously, be earning less than £18,000, so they would have access to the ILA 200.

**Jeremy Purvis:** I do not think that we are going to get any more details than that, which I regret, because, given your assertion, I think that you should at least be able to give an estimate of the numbers of people who will be affected. You should also be able to give an estimate of the amount of additional contribution that learners will have to make, but I gather that the Government has not estimated that either. Am I correct?

**Fiona Hyslop:** More than 6,000 learners over the age of 65 have attended courses. Only 5 per cent of the people who received the ILA 100 were over 65. That indicates that the numbers that we are talking about are small. The issue is to do with whether we are producing a system that is fairer and more equitable and whether the rejection of the proposal will cause people greater difficulty in accessing learning. I think that those who are in work, those on lower incomes and those between the ages of 16 and 18 will benefit from the proposal, and that far more people will benefit from the proposal than will be disadvantaged.

**Jeremy Purvis:** I acknowledge that. It is worth noting, for the record, that there will be an acceleration of means testing to allow individuals to access learning. In other areas, the Government has moved away from means testing in order to allow open access regardless of income. For example, with regard to the graduate endowment, the Government's policy position was that, regardless of their income or background, there would be equitable access to learning. Will the literacy and numeracy courses that are currently available through colleges and community education providers continue to be free, or will learners be expected to use their ILAs to contribute to the costs of such courses?

14:15

**Fiona Hyslop:** Numeracy and literacy courses in colleges can be financed through the traditional method. Clearly, some of the community learning and development—to which we as a Government have provided additional funding and support over the past year—will continue. We also want to ensure that we can expand the pilots on adult literacy and numeracy in the workplace. If we are to tackle adult literacy and numeracy problems in this country, we need to deal with the many people in work who have difficulties. That problem is holding us back as a country and we need to tackle it. The regulations will ensure that, for the first time ever, literacy and numeracy courses for people who are in work can be financed using ILAs. That is all to the benefit and has been welcomed by employers, as it was not possible to do that previously. Obviously, the committee must decide whether it wants to support that by ensuring that the regulations come into force.

**Jeremy Purvis:** Cabinet secretary, you and I both know that literacy and numeracy courses are provided free for those who are in work and those who are out of work by colleges and community education providers in local authorities. Will those continue to be free as at present or will people be expected to contribute through their ILAs for literacy and numeracy courses?

**Fiona Hyslop:** I expect that the current situation—which has been enhanced by the Government—for community learning and development funding for literacy and numeracy courses will continue. The difference—which I think is what you are asking about—will be that, for the first time, people who are in work will be able to access literacy and numeracy courses using an ILA. That is to be welcomed. That extra will enable more people, especially those who are in work, to access such courses.

We know that in Scotland we have a social contract form of delivery for literacy and numeracy work, and we want that to continue. Such adult literacy and numeracy provision applies not only to the groups that we have discussed but to those who need English for speakers of other languages courses. Our support for ESOL shows that we as a Government are keen and determined to ensure that we improve access to adult education both for those who have English as a second language and for those who have literacy and numeracy problems. We already do that through colleges and community partnerships, but the new regulations will also help people who are in work to access literacy and numeracy courses.

**Jeremy Purvis:** Is it not worth while making it clear that existing literacy and numeracy courses that are free to the learner will continue to be free?

**Fiona Hyslop:** Currently, adult literacy and numeracy courses are funded in two ways. Some funding streams go through colleges; others go through community learning and development partnerships, which work with local authorities and have outreach activity. I expect that that resourcing and funding will continue as normal. The regulations will make available additional funding for people who are in work. An important point is that the regulations will also reduce the age of eligibility for ILAs from 18 to 16, to bring in more people. We are also removing the minimum contribution completely, so we are actually removing a cost that previously existed so that we can help people to access ILAs.

**Jeremy Purvis:** Just so that there is no doubt, will the courses continue to be free? Yes or no?

**Fiona Hyslop:** If you could give me examples of what you are talking about, we could contact the colleges concerned to ask them. If such a college is in your constituency, I would be more than happy to find out what the situation is there. However, I cannot tell you just now what the situation is at your local college.

**Jeremy Purvis:** Will that apply to all the courses for 16 to 18-year-olds that currently are provided free?

**Fiona Hyslop:** Until we introduced the regulations, 16 and 17-year-olds were not even eligible for ILAs.

**Jeremy Purvis:** That has been the whole point of my questioning. My concern is that the extension of ILAs to 16-year-olds will result in some learning providers asking for contributions for courses that previously were free to 16 to 18-year-olds. Because ILAs are now open to them, they may be expected to use their ILAs for literacy and numeracy courses that previously were free.

**Fiona Hyslop:** I do not expect anyone to introduce a cost for something that previously was free. If you have any evidence of that, I would be more than happy for you to send it to me.

**Jeremy Purvis:** I am grateful for that clearest, final answer. I am pleased with that.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** The question that I had intended to ask has been answered.

**The Convener:** That exhausts our questions for the minister on the regulations. No motion to annul has been lodged. Before I move to the question, I invite further comments from members.

**Ken Macintosh:** It is worth noting in passing that the minister has introduced the policy without being willing to defend the move to a tighter means test. Given the policy moves on central heating, bus passes and other matters affecting



older people, it would be better if the Parliament had a clearer grasp of when means tests will be used for older people and of when a universal approach is preferable. In the absence of that, however, I accept the minister's right to present the policy move, which the Parliament will either accept or not.

**The Convener:** The question is, that the committee has no recommendation to make on the Individual Learning Account (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/204). Are we agreed?

**Members** *indicated agreement.*

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

**The Convener:** Once again, the Cabinet Secretary for Education and Lifelong Learning is here to answer questions on the regulations. Her officials have remained with her. Members will recall that we considered the regulations prior to the summer recess.

**Mary Mulligan (Linlithgow) (Lab):** I start by apologising to the cabinet secretary and my fellow committee members for arriving late. We have a motion in my name to annul the regulations, which I lodged because there is no way to amend the instrument. I hope that annulment will not be necessary and that I will hear a response that will allow us to progress.

I will explain where my question arises. At the previous committee meeting when we considered the matter, I raised an issue that had been brought to me by a constituent. I make no apologies for doing so again, as the situation could be seen to cause individual students severe hardship. The matter concerns regulation 3, which concerns the definition of a partner of a parent of a student who is receiving assistance. Following her parents' marriage breaking up, my constituent moved out of the parental home and went to stay with her grandparents. When it came to her student allowance being assessed, it was her mother's income that was taken into account. Now, her mother has a new partner. Under the regulations that are before us, as I understand them, that partner's income would also be assessed. That partner has never had any responsibility for my student constituent, however, and has never really taken on the kind of parental responsibility that some new partners might. This vulnerable student, who is living in a different circumstance from a normal family situation, is now to be put into a situation where her assistance might be reduced.

We recognise that relationships are changing in various ways, and I accept that it can be difficult for legislation to keep up with that. However, good

legislation should cover all eventualities. Therefore, my constituent's situation should be recognised, and there should be some way in which we can protect people, such as her, who may be financially vulnerable. We need to ensure that the change in her mother's relationships does not affect my constituent's support. I am looking for reassurance from the cabinet secretary that the proposed changes address the difficulties that I have outlined.

**Fiona Hyslop:** It is important to stress the key issue: we are trying to move away from a system with anomalies that disadvantage and discriminate against married couples and civil partners. That is the gist of the proposals.

Issues to do with relationships are clearly very sensitive. One cannot necessarily legislate for relationships or the continuation of what they might mean. Responsibility for looking after, funding or supporting a child might not be taken in families in which the parents are married or in those in which the parents are not married.

A person who lives with their grandparents and therefore does not live with, or is estranged from, their parents would be regarded as being independent; as a result, the income of his or her parents would not be relevant in assessing the level of student support. Obviously, if the mother was responsible for the individual, her income would—as previously—be taken into account. If the student's parents are divorced and live with new partners, the situation will not change under the new means test. The student will still be regarded as being independent and will be assessed as such.

Regardless of what I have said, if a person's situation means that they will be in hardship because they cannot access funds from somebody in such a removed situation, they should consider the discretionary funds that we have set up and are funding at the universities to support people who will find themselves in hardship as a result of the changes. I have written twice to the universities to explain the new regulations—Mary Mulligan's constituent should be made aware of those funds. It should also be made clear to her that if she is living with her grandparents and it is impossible or increasingly difficult for her to rely on or to access the income of somebody whom she is not living with and is estranged from, what I have just explained will pertain.

**Mary Mulligan:** I suspect that other members will return to letters that have been issued. It is clear that the letter that was sent to my constituent asked for information about her mother's and her mother's new partner's income. Students will provide such information in all honesty when it is

asked for, but the minister is saying that that should not necessarily have been asked for.

I am a little concerned about discretionary payments and support where hardship has been identified. We all acknowledge that discretionary payments for hardship are needed because we have not got the legislation right in the first place and people have fallen outwith it, and we are all aware that the discretionary funds tend not to cover all the needs that are identified. I do not want my constituent or any other member's constituents to be disadvantaged by such a situation. I have pointed out that relationships change and that we need to cover as much in the legislation and predict as many situations as we can. However, the regulations are very general; they do not really deal with the reality of the situation. We must be careful not to generalise about such situations; rather, we should consider the reality.

**Fiona Hyslop:** What we are proposing is similar to what the previous Administration wanted to introduce to address anomalies in means-testing assessments.

**Mary Mulligan:** I criticised that, too.

**Fiona Hyslop:** You are right. Families are changing, but in predicting who will be affected, it would be wrong for us to legislate on the basis that a person with a partner as opposed to a civil partner, husband or wife will be unlikely to provide support for the child in question.

We acknowledge that there have been anomalies, but the system that we propose involves the same situation as operated in further education for many years. It is the same as legislating for household income provision as part of the collection of the council tax, for example, and is exactly the same as is implemented in England for student support, so this is not an unusual situation to be in.

The issue is whether we legislate with the belief that, in the majority of cases, there will be breakdowns in families such that the partners of the birth mother or father would not want to contribute to the individual student concerned. However, it would be limiting to legislate in that way. By and large, most people who are part of a new relationship recognise their responsibilities. The Family Law (Scotland) Act 2006 addressed some of the issues about how we can move to a situation that reflects modern families as they are.

14:30

**Mary Mulligan:** Will the minister consider examining the situation over the next 12 months and ascertaining whether there is a way of identifying whether a student is not resident with

their parents, as happened in the case to which I referred in which the mother's income was being assessed? Is there a way of identifying when that happens? You said earlier that the student in such a situation would be independently assessed. Why was that not done on this occasion?

**Fiona Hyslop:** The new arrangements to change means testing began about four years ago under the previous Administration. The difficulty is that there was no collection of information that would have allowed us to predict how many people would be in the situation to which Mary Mulligan refers. We intend to ensure that from now on we have information about the numbers involved, so that we have a better sense of which students are affected and what their circumstances are. Many members will know, because I have answered parliamentary questions on the issue, that we have not been able to do that up to now because the previous Administration did not capture that information for us. Mary Mulligan asked whether we would identify that information now: the answer is yes.

**Jeremy Purvis:** You said that the previous Administration did not capture the data. Just so that I am clear about this, was it your understanding when you came into office that the previous Administration intended to introduce the regulations that we now have in front of us?

**Fiona Hyslop:** Yes.

**Jeremy Purvis:** That has not been published anywhere, has it?

**Fiona Hyslop:** What has not been published?

**Jeremy Purvis:** The intention of the previous Administration to introduce the measure that we now have in front of us.

**Fiona Hyslop:** I am not sure whether it has been published or not. I know that the Liberal Democrats had a manifesto commitment to review the means testing and I think that it was widely known that the previous Government intended to do that. It was discussed with some of the key players who were involved in bringing the system together. I am not sure why you have asked the question.

**Jeremy Purvis:** You stated that you were under the impression that the previous Administration intended to introduce regulations such as those that we have in front of us. I am just not sure where the evidence of that is.

**Fiona Hyslop:** It is the case that the work was actively started under the previous Administration.

**Jeremy Purvis:** Not actively enough to capture the data that would have brought it about, as you have said.

**Fiona Hyslop:** Unfortunately not.

**Jeremy Purvis:** Now that all the applications are in, have you been able to capture the data and ascertain how many students have been affected by the changes?

**Fiona Hyslop:** Part of the new process is that we will be able to do that. I remind the committee that the instrument came into force on August 1. Of the 130,000 or so applications that are anticipated, more than 90,000 have been processed already. Clearly, we will be able to analyse in the future the data that have been processed over the past month. To be fair to those who are administering the applications, they are busy trying to get the money into the hands of students rather than trying to analyse the information. However, we will be able to capture that in the future.

**Jeremy Purvis:** The reason for my question is that you said that it was unfortunate that the previous Administration did not capture the data. However, this Administration has not captured the data.

**Fiona Hyslop:** We are in the process of capturing the data.

**Jeremy Purvis:** This Administration will know about the data only when they have been passed and gone through, so we do not know how many applicants will receive less funds than under the previous regulations, do we?

**Fiona Hyslop:** That is because we are in the process of administering the applications according to the regulations that came into force on August 1. You are looking for an analysis of the figures when the work is in progress and the administration is being conducted to ensure that, as of now, students start to receive the money that they need to help them go forward.

The imperative in processing the applications is to ensure that students receive the money that they expect to support them. Once all the applications are in, we should be in a position to provide a better analysis in order to capture the necessary information. One of the intentions of the new process is to ensure that we have that information. Under the previous Administration, the applications information was unfortunately not to hand—but I reassure the committee that we intend to provide it from now on. It is work in progress: 1,000 applications are currently dealt with every day.

**Jeremy Purvis:** The committee wants to know—which is fair—that information before it decides whether the regulations, which change the current situation, fit with your statement in the policy rationale that there will be

“a fairer system”.

We do not know how many students will be worse off under the regulations. You have said that it is work in progress, so we will only be able to know whether it is a fairer system, and that students will not be adversely affected, when you have completed the process, and when we know how many applications there have been to hardship funds. Is that correct?

**Fiona Hyslop:** Absolutely—that is a perfectly commonsense analysis of the situation.

**Jeremy Purvis:** Do you think that there is any problem with the fact that there is a parliamentary process to decide whether a new system is fair, and yet we are not able, while tasked with scrutinising the system, to know what the effect is on students?

**Fiona Hyslop:** As I said, a system in which household income is analysed is currently in place for further education colleges. Far more students go through FE colleges than the number of students that we are considering today, and that system has been viewed as being fair and equitable. Indeed, 2.5 million people, and households, are assessed for council tax on the same criteria of fairness and equity. That is a fairly reasonable research base on which to analyse whether it is a fair system to take forward.

**Jeremy Purvis:** It comes down to the issue of whether the approach is correct. England and Wales took a different approach, which you rejected because the Government considered it to be too expensive and complicated to have two parallel information technology systems running and to have—as in England and Wales—a situation in which the assessment of the criteria of existing students will last for the duration of their degree courses. That is something that the Government here has rejected because it said that it was too expensive.

With regard to the financial implications, paragraph 12 of the policy rationale states:

“The Scottish Ministers recognise that some students may receive less support from the Government than in previous years.”

Neither the committee nor the Government knows how many, so how can there be a proper assessment of whether the new system is fair?

**Fiona Hyslop:** The system is fair for the 2.5 million people who are assessed for council tax, and for the many students who have gone through further education. I make it clear that this policy position is not intended to save money, but to provide a better system: people will benefit from it. We are extending the young students bursary scheme to include people under 25 who have children over the age of three, and to students under 25 who are married or have a partner, and have dependant children.

We are helping more students on lower incomes and we are encouraging students who are in receipt of sponsorships and scholarships, whose income will no longer be classed as student income. We are also disregarding unearned income and making payments available to care leavers. People will benefit from the statutory instrument that is already in place, but—to go back to the other point that was made—until we have processed the applications, it will be difficult to assess how many students will have to apply for the hardship fund.

What we can do—and are doing—is ensure that we monitor the situation. I have twice written to universities, and I will continue to keep a close personal interest in the application of the discretionary funds to ensure that if anyone does find themselves in genuine hardship, we will be able to support them. That is one of the issues that we have to address.

It is very simple and straightforward. Over 70 per cent of applicants for this year have already had their applications processed, and 1,000 applications are being processed as we speak.

Jeremy Purvis said that the decision not to take forward a dual approach of running two systems at once was to do with cost issues. There were cost issues, but the final judgment was made in relation to the risk to the system. I did not want a system failure that would prevent students from receiving the student support money that they need. We made the right decision, but we will ensure—through the application of discretionary funds—that anyone who finds themselves in hardship as a result of it is supported.

Clearly, a number of people will benefit from the decision. It would be risky for us to run two systems. Fewer than 40,000 applications are still to be processed. If the motion in the name of Mary Mulligan is agreed to, the receipt of student funds and benefits will be delayed and there will be chaos in the system. That would be a difficult situation. If the statutory instrument is not implemented in its current form, there is an extensive risk of operational system failure. Payments to tens of thousands of students would be at risk.

**Jeremy Purvis:** Seventy per cent of applications have been processed. In advance of coming to Parliament today, did you ask the Student Awards Agency for Scotland how many students have been refused an award because of the new eligibility criteria? Have you asked universities how many applications have been made to hardship funds?

**Fiona Hyslop:** Only five out of 93,157 students have formally challenged the process.

**Jeremy Purvis:** That is not an answer to my question. How many students have been refused an award because of the new eligibility criteria?

**Fiona Hyslop:** We are talking about assessment for student support. No one is refused an award. If there were concerns about the system and the awards that are being made, the number of formal challenges to the process would be far higher than five out of 93,157.

**Jeremy Purvis:** Do you know how many students have received a lesser award?

**Fiona Hyslop:** I addressed that issue in my answer to a previous question. We are processing 1,000 applications a day—more than 90,000 have been processed so far. Now that the new system is in place, it will be much easier to identify differences. Based on the experience of further education colleges, which have operated a household-income provision for some time, we do not anticipate difficulties. Discretionary funds are in place to ensure that we can support individuals who experience hardship or difficulties.

**Jeremy Purvis:** Do you know how many applications have been made to hardship funds?

**Fiona Hyslop:** No, because we are in the process of making awards. We have had four weeks of operation, and awards are being given out. I have written twice to universities to make clear that the purpose of the discretionary funds is to support individuals who find themselves in hardship. At the end of November, we will be in a better position to know what call has been made on discretionary funds as a result of the change. The academic year has only just begun. As members know, many students are not in the country or are just returning from their summer holidays. Colleges have reopened, but we will be in a better position to understand what is happening when students return to university. We will monitor the situation closely, but at the moment it appears that people are accepting the new system, which has been in place for the past month.

**Jeremy Purvis:** The cabinet secretary and members will have seen the letter from SAAS. I am not sure whether the representations that the cabinet secretary has received from MSPs—including me—on behalf of their constituents are captured in the five challenges to which she referred. SAAS's letter states clearly that the Government has made a decision and that the regulations that we are debating are the rules; it does not state that they are being debated by Parliament. It would be unusual for applicants, parents of applicants or partners of applicants to query a letter that states clearly that a decision has been taken. If applicants or parents were aware that a parliamentary process was on-going,

they might wish to make representations or to query the change, but they have been given no opportunity to know that. Issues have come to light only because the committee has been asking questions. Parents or applicants would not be aware that there were any justifiable grounds for querying the Government's approach—which has been called a big-bang approach in the past—because SAAS's letter states that the matter has been decided.

14:45

**Fiona Hyslop:** It is a negative instrument, which came into force on 1 August. Obviously the committee considered it previously. The process that was undertaken by SAAS was not unusual: it has been used in previous cases and it is entirely legitimate for SAAS to anticipate the use of powers under regulations before they have come into force, to ask for information from students, as it did in March, and to make assessments based on that information.

The agency carried out that practice under the previous Labour and Liberal Democrat Executive, and there are two examples. The Graduate Endowment (Scotland) Regulations 2001 were made on 27 July 2001 and came into force on 1 August 2001. Students began applying for student support in April, which was four months in advance of the regulations coming into force. The second example is the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, which were made on 7 June 2006 and came into force on 1 July 2006. Applications for fee loans were being processed by SAAS from the previous April, which was three months before the regulations came into force.

The normal administrative process used by SAAS in dealing with the current regulations is exactly the same as that used previously, so it is not unreasonable that SAAS should carry out its duties. The statutory instrument came into force on 1 August—unless we hear otherwise from the committee—and SAAS has been operating and administering the regulations as they came into being on 1 August.

**Claire Baker (Mid Scotland and Fife) (Lab):** Cabinet secretary, at the previous committee meeting, I asked questions about the differences in the way that means testing was introduced in England. I think that Jeremy Purvis has covered some of that, but it is worth noting that it was introduced in England during a period of increases in loans and student support, while in Scotland it felt like a small pot of money was being moved around within the system.

I acknowledge that you have outlined the groups that will benefit from the regulations, and that it

brings the HE system in line with the FE system. However, concerns remain about students who were already at university when the changes were introduced and the support that there will be for those who have seen a reduction in their income. As I understand it, the savings from year 1 will go into a discretionary fund for year 2, but there was some leeway around introducing funds in year 1. What assurances are there for after year 2 that future savings will be put back into the system to support students, particularly those affected by the changes who are currently studying?

**Fiona Hyslop:** I assure you that we intend to support those students who need support. The system will be fairer. As I have indicated, we are trying to improve the situation for several people, including care leavers and those who are married and have dependent children, and they will benefit from the changes. We are talking not about saving resources but about having a fairer system. Should any savings be made, we will apply them to the system. As I said in my correspondence with the committee, any savings will be applied to the discretionary funds to support individuals.

We had to decide whether to phase in the changes, and whether a system that has been under pressure for some time would be robust enough to deal with them. We decided that it was more important for students to have security and to ensure that they got their payments and that there was no potential for the computer system to fail. Therefore, we were quite right to make our decision on the basis that we do not want anyone to be worse off. Anyone who finds themselves in genuine hardship can apply for those discretionary funds, which have been boosted by Government contributions.

**Claire Baker:** What level of awareness was there among students that the changes were about to be made? What level of awareness is there among the students who have been affected by the changes that they can apply for those discretionary funds?

I cannot remember whether, at the previous committee meeting, the civil servants confirmed that students in hardship would be treated as a priority when they applied for discretionary funds.

**Fiona Hyslop:** On the latter point, the Government has written twice to the universities to clarify the new arrangements and to make it clear that discretionary funds should be used for any students who find themselves in hardship as a result of the changes. Such applications should be assessed and supported.

It was important that the Student Awards Agency for Scotland communicated the changes, which have been published in a number of places. The accompanying news release on the

Government's website was produced on 15 February and the information is on the SAAS website. Details of the changes are also on the SAAS application form and in the guide to student support, which students have obviously been accessing over recent months and which SAAS issued to every student on receipt of their application. In February, SAAS also wrote to all continuing students, their parents and spouses, as well as to colleges, universities, the Association of Scotland's Colleges, Universities Scotland and the National Union of Students outlining details of the revised income assessment. SAAS staff have also been available at a number of academic session events, with dissemination planned for another 80 events.

We are conscious of our responsibility to communicate the changes that have happened. We cannot guarantee that the information has filtered through to everybody but, when concerns are raised, we highlight the fact that the discretionary funds can be used to support those who find themselves in an adverse situation.

**Claire Baker:** Can you guarantee that the savings that have already been committed to the discretionary funds will go back into the system beyond year 1? Will you guarantee that there will be a buffer period of longer than one year and that the money will be available for the students whom the changes affect most?

**Fiona Hyslop:** Yes. We will have to assess that when we have a better indication of what call has been made on the discretionary funds, but I am committed to ensuring that the system is fair and that if any savings are made, they can be used for student support.

**Claire Baker:** Will you confirm that there is no intention of using those savings elsewhere and that they will stay within discretionary funding? Will you guarantee that the money will continue to go back into the system and to be targeted at students who are affected by the changes?

**Fiona Hyslop:** As I said—clearly, I hope—the changes are not about saving resources but about introducing a fairer system, because the current system discriminates against married couples and civil partners. We will be in a better position to assess what is needed in future years, but the policy intention is to create a fairer system and to ensure that any savings go into discretionary funds. There might not be any savings; we will not know until we have examined the experience over the next few months. When all the applications are in, we will be in a better position to assess what savings there might be. We want to introduce a fairer system and to put the resources back into student support.

**Mary Mulligan:** You said that there may or may not be savings, that we do not know how much any savings would be and that you are trying to make the system fairer. Two things concern me a little. First, the savings would be limited, so how will we boost the discretionary awards if we rely upon savings? Secondly, I am still not clear what will happen to anybody who applies to a discretionary fund this year before you have identified any savings.

**Fiona Hyslop:** The Government has applied £16 million to discretionary funds for universities.

**Mary Mulligan:** Is that additional money?

**Fiona Hyslop:** There is £16 million in total for discretionary funds. You ask about additional funds. We have put £1 million extra into discretionary funds, in particular to help part-time students, who will no longer have to apply to the remaining funds. That should mean a £1 million boost to the system of discretionary funds. I have written twice to universities to ensure that they apply that money and are aware of the changes in the system. Should they receive applications to such funds as a result of any hardship, they would be able to apply that money. We are relying not only on efficiencies in the system; we have built in support for the discretionary funds.

**Ken Macintosh:** I will preface my question with a couple of comments. I welcome the minister's comments—[*Interruption.*] I am being attacked by something floating.

**Fiona Hyslop:** Are you being attacked by a fly, Ken?

**Ken Macintosh:** I do not know what it is. Anyway, I welcome the tone of the minister's remarks, which were more informative and diplomatic than the letter that we received at the end of the summer. The letter, which I found slightly resentful in tone, seemed to suggest that we should have warned the minister of our intention to question her further about the regulations. I sat on the Education Committee with the current minister in the previous session, and I do not think that it was her habit, as a committee member, to flag up such matters in advance. We were not aware of the difficulties that we were going to come across.

I am slightly perturbed that the minister has pressed ahead with implementing the new regulations despite the committee having indicated its concerns. The argument that she has come up with this afternoon is that if we were to annul the regulations, we would somehow be the ones who were jeopardising the awards that are given to students. However, if the regulations before us are not passed, the status quo should apply to students. In other words, for the most part they should be better off.

Paragraph 12 of the Executive note that accompanies the statutory instrument states that, under the regulations,

“some students may receive less support from the Government than in previous years.”

Therefore, if the regulations are not passed, students will receive not less support, but the same as they have always had. I do not accept the minister's argument. If anything is being jeopardised, it is because the minister is pressing ahead without receiving the assent of Parliament.

That said, I have a couple of points to put to the minister.

**Fiona Hyslop:** I might ask the officials to comment on the procedures governing negative instruments. Negative instruments come into force on the specified date. The committee obviously had an opportunity to annul the regulations and stop them coming into force at the relevant meeting in June.

Colleagues will remember that, despite a written agreement with the convener that I would come to the committee for an hour in relation to your inquiries at that time, I was kept for an additional 50 minutes—and I was more than happy to remain with the committee. Had you chosen to spend that time on the subordinate legislation that we are discussing now, I would have been more than happy to attend for that.

According to the procedure, negative instruments come into force on the date that is provided for them. The regulations state that they were made on 29 May, laid before the Parliament on 2 June and due to come into force on 1 August. That is the process of law. There were two instances under the previous Administration when exactly the same process applied.

Members might wish to consider whether it is appropriate for a committee to halt or completely change such measures. The issue is one for any minority Government, of whatever colour, and applies not just to this committee or to education, but to a range of areas in which it might be said that the formal administration of government cannot be carried out if everything must wait. A different form of statutory instrument would probably have to be devised to deal with such situations. That is a serious point.

SAAS has been operating at a rate of 1,000 applications a day, and more than 90,000 have already been processed. It has been operating in accordance with the law of the land since the statutory instrument came into force.

Of course, the committee may annul the instrument. If it does so, that would take the situation back to the previous position. Although the applications would stand, such a move would

mean having to suspend current processes. It could take six weeks to address even the current situation. Meanwhile, people would not be receiving their loans. The committee has the responsibility to decide whether it wishes that situation to arise or not.

I will ask Elspeth MacDonald to explain the legal process for implementing such statutory instruments.

**Elspeth MacDonald (Scottish Government Legal Directorate):** The cabinet secretary has explained the situation perfectly well, although I am happy to answer any supplementary questions. There is a fundamental difference between the negative and affirmative procedures. One might comment that there is a strange anomaly, in that there is a period between 21 and 40 days when the Parliament may annul an instrument, although the instrument may already be in force and lawfully acted upon until the time when it is annulled.

**Fiona Hyslop:** That has been the situation for the past eight years.

15:00

**Ken Macintosh:** It is fair to expect administrations such as SAAS to try to be as efficient as possible. However, in the two examples that the minister flagged up, students would clearly be better off because of the Executive decisions to which she referred, whereas the majority of the students whom the regulations affect will be worse off. A better approach to the regulations would have been to give us earlier notice, so that we were clear about them.

At the end of June, we flagged up the fact that the committee has no huge desire to annul instruments. The Parliament rarely annuls an Executive instrument. The difficulty is that that creates a danger of the cabinet secretary's presuming Parliament's consent. There is a fine line between efficient government and presuming Parliament's consent. As I said, the cabinet secretary's tone this afternoon has been more informative, diplomatic and helpful than was the case in the situation in which the committee found itself in June, which is why we are discussing the regulations today.

I have said that we might wish to overhaul our approach to subordinate legislation. I spent two years considering the issue as a member of the Subordinate Legislation Committee, and I am sure that we will return to it.

The minister has provided more information. She has said that she has written twice to higher and further education institutions to suggest that

students whom the changes will adversely affect should be prioritised. However, the figures are still unclear. Does the minister have even an estimate of how much the measure will save? Is the extra £1 million for discretionary funds matched by the saving?

**Fiona Hyslop:** That is expected to be the case. Some people will benefit from the regulations. You referred to previous examples in which you said that students were not adversely affected. Parliament has debated the graduate endowment fee, whose implementation adversely affected students, so I dispute what has been said. That fee has now been abolished.

As a result of the regulations, students who live with partners will be able to apply for up to £2,500 of bursary support through a dependants grant to help their children. We must recognise that. Care leavers who receive payments from local authorities will also have that income disregarded. It is important not to lose sight of the fact that the regulations will have positive effects from which people will benefit.

The regulations are about making the system fairer. The bottom line is that married couples with families should not be discriminated against. We must make a judgment on how to implement that.

We are presuming nothing; we are abiding by the procedures for a negative instrument that the Parliament has put in place to provide effective and efficient governance. It was open to the committee to take a decision back in June, but it chose not to do so. We had to operate under the procedures, which meant that the regulations came into force on 1 August. The vast majority of applications have already been processed under the regulations.

**Ken Macintosh:** I do not accept the minister's argument about the graduate endowment, which replaced tuition fees with a system that was clearly fairer. You will find that, in exploring the regulations, committee members—or at least some of my colleagues—are in favour of moving to a fairer system that treats everybody similarly. There is no difficulty with that. However, several concerns exist and it is right for us to flag them up, as we did in June. The concerns are about students who are in the middle of their studies and who will be worse off. The regulations will adversely affect them. We seek assurance on how they will be dealt with.

The minister made great play of the fact that she went for the big-bang approach rather than phasing in the changes. We are concerned that students who are in a vulnerable situation—single parents and others—and who are halfway through their studies will suddenly find that they have less money than they had planned for when they

started their degree. We seek assurance that they will receive the financial support that they need to maintain their studies and not drop out—we already have a difficulty with drop-out rates among that group of students.

Secondly, we are concerned about the lack of clarity on whether the measure will save the Executive substantial sums of money. The committee does not know how much money the measure will save. I do not doubt that your intention is to keep the money within the system and to use it to help students—you have said so a couple of times and I accept and support that. However, I would like further information about how that will work. Claire Baker asked you to give us guarantees that the money will remain in the system and will be pegged for student support. The money could stay within the system but be used for a different group of students, so our questions are absolutely fair.

You have given some helpful answers, but you do not have the information or figures that I am asking for. Do you have an estimate of the amount of money that will be saved and that therefore will need to be reapplied elsewhere in the system?

**Fiona Hyslop:** The difficulty is that we cannot gather the data on partners' income until we change the law and people apply on that basis. It is a chicken-and-egg situation. When we receive the applications and have the new systems in place, we will be able to assess the differences. We can certainly report to Parliament on that in future.

You seek reassurances. As I said, I have written twice to universities about hardship funds. The Government provides funding to universities to support the discretionary funds—£16 million has been provided this year. As I said, we want to ensure that any savings that come from the new arrangement will be used for student support. I am happy to stand by that.

**Ken Macintosh:** I want to clarify that final point. Most of the £16 million is for on-going support for students with a range of needs. The regulations will create a cohort of students who will be disadvantaged in that they expected to receive more support this year than they will receive. How much of the £16 million is additional and solely for those students? Earlier, you identified a figure of £1 million, but you suggested that that was to encourage the take-up of education by part-time students. How much of that additional £1 million is designed to support students who will be disadvantaged by the regulations?

**Fiona Hyslop:** The additional £1 million is for the new part-time higher education discretionary fund. Support for part-time students will no longer have to come from the general discretionary



funds. I will quote from the letter that we sent in February this year to discretionary fund managers and bursary and finance officers. The second paragraph on the first page, which is entitled, "New Arrangements for Further and Higher Education Means Test", talks about the need to acknowledge that

"all new and continuing students will be assessed using household income."

It continues:

"The revised means test will treat a partner's income in the same way as spouse income."

The letter goes on to explain how we expect the discretionary funds to be used.

That was the first letter that we sent, but we wrote again because of the importance that we place on ensuring that universities apply the discretionary funds to support those who are in genuine hardship and need.

**Ken Macintosh:** I will end with a request. You suggested that you might have better information at the end of November. I do not want to presume what the committee will decide this afternoon, but if you are in that position in November, will you write to the committee with a breakdown of the figures? In particular, I would like to know how many continuing students have been affected by the changes; what savings have been identified and how you will use them; and how much of the £1 million that you identified has been taken up by those students. If you can give us those figures, that would be good.

**Fiona Hyslop:** To provide that, we rely on the information that we get from universities. We expect the review to take place in November, as normal, but I am not sure whether I will be able to respond to the committee in November—it might be shortly thereafter. However, we are happy to share that information with the committee.

**Elizabeth Smith:** I want to pick up on your point that you were slightly surprised that the committee did not act on the matter when we had the opportunity to do so back in June. At that time, we did not have nearly enough information to make an informed judgment about what was right and wrong. During the summer months and from listening to your answers this afternoon, we have been furnished with a lot more information than we had previously. The process raises a debate about the integrity of the work of the committee and the Parliament.

I can remember sitting in this room at this time last year when Adam Ingram presented the committee with a fait accompli in the form of the school meals pilot. I had no problem with that policy and I suspect that I have no problem with the policies that we are discussing; the issue is the

fact that the information has been provided after the decision has been made. That does not help us, and I feel that it does not help the Government, either. Will you comment on that?

**Fiona Hyslop:** When I reflect on my time as a member of the Education Committee, it is clear to me that some of the statutory instruments that we considered were of more interest and greater importance to committee members than others. That represents a challenge for the system and the marshalling of timetables. As Ken Macintosh knows, many statutory instruments go to the Subordinate Legislation Committee in the first instance. A great deal of the Government's work is executed through statutory instruments, whether affirmative or negative. The Parliament considered the timescale in the previous session. I might be wrong, but I think that improvements have already been made to give committees more time to consider statutory instruments that present difficulties.

Increasingly, the committee will deal with statutory instruments on lifelong learning. The academic year for universities and colleges runs from August to August. In the past, many statutory instruments passed through the system in June or July so that they could be brought into force in October. More than 80 pages of analysis of all our proposals were published in February this year. The clerks will know what was furnished to members as a result of that. Clearly, you might decide that you want more information to be furnished to you directly or you might be quite content to operate as we have done in the past, whereby there is liaison with the committee clerk about what information is needed. That is an internal decision for the committee, on which it can take advice.

A great deal of important legislation is implemented through statutory instruments. I have already written to the convener—it is an issue that I raised right at the start of the new Administration—about the importance of the legislation on the protection of vulnerable groups, which contains highly technical information and on which I am keen that the committee takes the opportunity to get as much information as possible. I have volunteered to get the relevant officials to brief the committee on the child protection legislation, which it will be important that the committee has the time to examine. However, I do not organise the committee's work and it is necessary for us to work to the timescales that are prescribed by the Parliament's standing orders, which cover negative as well as affirmative instruments.

**Elizabeth Smith:** I fully accept that, but if the Government wants to introduce new legislation, it has a responsibility to provide the committee with

as many of the facts as possible about why the policy is a good one, so that it can decide whether it is necessary for the proposal to be considered by the whole Parliament. Although I have been a member of the committee for only a short time, I can name two or three occasions on which that has not happened, with the result that there has been a slight delay in our being able to assess all the information without having to do our own research—notwithstanding the fact that that might be an interesting exercise. Through the convener, I ask that we ensure that we are provided with as much information as possible, in addition to the evidence that the committee gathers.

**Fiona Hyslop:** We are more than happy to work with the convener and the clerk to ensure that the committee is regularly furnished with the information that it needs.

**Elizabeth Smith:** Today we have discovered some facts and figures that we did not have before, which helps our decision making.

**The Convener:** I am keen that we do not go off at a tangent and that we keep to the matter in hand, which is consideration of the statutory instrument. Although the cabinet secretary's offer of additional dialogue between the clerks and the Government is helpful and welcome, such dialogue already takes place. The cabinet secretary should perhaps reflect on the fact that we wanted to pursue the matter further today because the officials who appeared before the committee in June were not able to answer all our questions as fully as we had hoped. However, pursuing that issue will not get us anywhere. We must concentrate on the matter in hand.

**Jeremy Purvis:** I have a final question, which is specifically on the regulations. I understand that the Cabinet Secretary for Health and Wellbeing has put in place specific measures to help nursing and midwifery students, whose allowances the regulations will change, to ensure that those students are not adversely affected. Why has it been deemed necessary for the Scottish Government to put in place such measures for that cohort of students but not for others?

15:15

**Fiona Hyslop:** Obviously, the scale involved and the number of those concerned have an impact on the ability of the system to process the changes that are required, which I referred to earlier. Also, there was a concern that nursing and midwifery students in particular would be unable to access the dependants allowance as a result of the changes. Quite correctly, the Cabinet Secretary for Health and Wellbeing put in place measures to ensure that nursery and midwifery students would be able to access bursary support

to help with dependants. That is a positive inclusion in the provisions.

**Jeremy Purvis:** To be clear, only the students who have partners will be able to apply for dependants grants. That is the only aspect of the Cabinet Secretary for Health and Wellbeing's announcement that is different, with regard to the changes that the regulations will make.

**Fiona Hyslop:** Yes.

**Jeremy Purvis:** That has nothing to do with the Cabinet Secretary for Health and Wellbeing's statement that any students who would be worse off as a result of the change in the eligibility criteria would receive continuing support for the duration of their degree. Is that correct?

**Fiona Hyslop:** Obviously, the nursery and midwifery system is slightly different, in that the support is in lieu of income that they would get as part of a working arrangement. However, the regulations deal with the dependants arrangements in particular.

**Claire Baker:** I am sorry if this has already been explained and I have missed it, but can you confirm that the £16 million for discretionary funds was already committed to go to discretionary funds and that the additional £1 million is for part-time students only?

**Fiona Hyslop:** Yes, there is £16 million in total and £1 million for part-time students. That will free things up in relation to the discretionary funds. There is—in terms of value—an additional £1 million going into discretionary support.

**Claire Baker:** Am I right in thinking that, at this time, no additional money is being put into discretionary funds to meet the needs of the full-time higher education students who might be affected by the changes?

**Fiona Hyslop:** The discretionary funds have been allocated. Stephen Kerr can tell you about the timetable for that.

**Stephen Kerr (Scottish Government Lifelong Learning Directorate):** We have written to institutions to inform them of the discretionary funds that are available this year. As the academic year begins, students will start applying for discretionary funds. Calculations about how many students might be affected by the new arrangements can be done only once the first set of payments is fully processed, in November and December. The £1 million for part-time support is additional funding, but it releases an equivalent sum in the general discretionary funds that can now be used. We have written to institutions to ensure that they understand that students who are affected by the means-testing arrangements are to be regarded as priority cohorts for that extra £1

million. However, those students also have access to the wider discretionary funds.

**Claire Baker:** Is it anticipated that the Government will be able to provide more money for discretionary funds in this academic year? When you know how many students have been affected by the changes, will you be able to respond by allocating additional sums this year?

**Fiona Hyslop:** We will have to see what the situation is in November. As I said, we want to ensure that people are supported and we have provided the resources to ensure that they are. You are asking about a hypothetical situation; we will have to wait until November before making our assessment.

**Claire Baker:** I was looking for an assurance that money will be provided. I appreciate that I am asking about a hypothetical situation, but I hope that the money is not hypothetical. You must know whether there is a possibility of money being there or not.

**Stephen Kerr:** The difficulty is that this is a demand-led budget. We do not know how much will be drawn down from the funding that will be made available. With the Student Awards Agency, we have in place a system that allows us to monitor demand and the funding that is available. If, for example, funding was underspent in some of the other areas of student support, the cabinet secretary would have a greater opportunity to allocate moneys from elsewhere in the student support system.

I know that that is not a helpful answer, but it is a matter of fact that that is the way in which the system operates. We rely on the pattern of learner demand that comes through the system, and make decisions on that basis.

**Fiona Hyslop:** That is true for a variety of student support areas that are demand led. We do not know what the levels are until we have received information about demand. We can obviously look at previous predictions and patterns, but until we are in the process we cannot assess demand.

**Claire Baker:** I suppose the difficulty with this situation is that you cannot look at previous predictions because—

**Fiona Hyslop:** We did not have the information.

**The Convener:** Mr Macintosh has what must be the final question.

**Ken Macintosh:** I want just to clarify the last point. I do not want to count the £1 million twice, but when it was first allocated in the budget for support for part-time students, what exactly was it allocated for? I take it that the full £1 million will

not, or might not, be taken up. If it were fully taken up, there would be no additional money.

**Fiona Hyslop:** My understanding is that if there is anything left in the budget for part-time students, it can be moved back into the discretionary funds and used for other support. That is why we want the flexibility to ensure that the discretionary funds are there.

**Ken Macintosh:** What was actually identified for that first £1 million?

**Fiona Hyslop:** We have done a great deal to support part-time students, such as the £38 million loans-to-grants scheme that we introduced. This is about providing additional support for part-time students. We think that there is a growing cohort of part-time students for whom child care is a particular issue. Support for part-time students is one of the areas that we need to continue to support if we believe in lifelong learning. We recognise that increasing numbers of students have families and that they have to study on a part-time basis. That is why we are increasing support for part-time students through the loans-to-grants scheme and by acknowledging the additional need for discretionary support.

**Stephen Kerr:** Perhaps I can help. Let us say that we started with £15 million and that we added, as a result of bringing in the new ILA 500 rules, an extra £1 million of discretionary support, which gives us a total pot of £16 million. However, the extra £1 million has been earmarked for ILA 500, so it releases £1 million out of the general pot. If the £1 million—I hope you are keeping up with this—that we have identified for ILA 500 is not fully exhausted, we have the flexibility in the system to reallocate those moneys. The nature of discretionary funds is that they are flexible and allow us to move money around to meet needs in the system.

**The Convener:** That concludes the committee's questions to the cabinet secretary and her officials. I thank them all for their attendance.

The Subordinate Legislation Committee determined that it did not need to draw the attention of the Parliament to the regulations that we have been considering. However, committee members will be aware that a motion to annul has been lodged, which the committee will now consider. I ask Mrs Mulligan to indicate whether she wishes to move her motion.

**Mary Mulligan:** I said at the beginning of my comments to the cabinet secretary that, because of the procedures, lodging the motion was the only way to ensure that issues were addressed. I am not totally convinced that she has addressed the situation in which my constituent found herself. However, there was a suggestion that, in such circumstances, an individual assessment should

be made. I would perhaps have a little more confidence in such an assessment than in the discretionary awards system, which we have discussed. While flexible, the system is also finite and, given additional demands, I am not convinced that it is necessarily sufficient. However, that is probably more a procedural issue than a legislative one. In the circumstances, I will not move the motion to annul.

**The Convener:** Given that Mrs Mulligan has not moved the motion, does the committee agree to make no recommendation on the Education (Means Testing) (Scotland) Amendment Regulations 2008?

**Members** *indicated agreement.*

15:24

*Meeting suspended.*

15:31

*On resuming—*

**Academic Awards and Distinctions  
(UHI Millennium Institute) (Scotland) Order  
of Council 2008 (SSI 2008/212)**

**Education (Assisted Places) (Scotland)  
Amendment Regulations 2008  
(SSI 2008/213)**

**St Mary's Music School (Aided Places)  
(Scotland) Amendment Regulations 2008  
(SSI 2008/214)**

**Academic Awards and Distinctions  
(Additional Powers of the University of  
Aberdeen) Order of Council 2008  
(SSI 2008/220)**

**Teachers' Superannuation (Scotland)  
Amendment Regulations 2008  
(SSI 2008/227)**

**The Convener:** Item 6 is continued consideration of subordinate legislation. We have five negative SSIs to consider. No motion to annul has been lodged and the Subordinate Legislation Committee determined that it did not need to draw the attention of the Parliament to any of the instruments. It appears that members have no questions or comments. Is it agreed that the committee has no recommendation to make?

**Members** *indicated agreement.*

## Petitions

### Foreign Languages Policy (PE1022)

15:33

**The Convener:** Item 7 is consideration of two petitions. As previously agreed, the committee has completed its work on petitions PE1022, on foreign language learning, and PE1046, from the Educational Institute of Scotland, on class sizes. I invite comments on PE1022.

**Ken Macintosh:** The committee has been waiting for various pieces of work, including a report from the Scottish Further and Higher Education Funding Council, which has now been produced. I am happy with the clerks' recommendation that we ask for the Executive response following the funding council report so that we can get a grasp of the matter. We do not have a difficulty with the report; it will be more interesting to know whether the Executive will act on the report's recommendations.

**The Convener:** We should pursue the clerks' helpful suggestion and send the cabinet secretary a letter asking her to respond to us in writing. Are we happy with that?

**Members** *indicated agreement.*

### Schools (Class Sizes) (PE1046)

**The Convener:** PE1046 relates to class sizes. The clerks have prepared a paper on the petition. Do members have any comments?

**Ken Macintosh:** The committee has done quite a bit of work on class sizes, almost amounting to a formal inquiry. Given members' different approaches to the subject, I suspect that we would have difficulty reaching a unanimous conclusion in an inquiry.

It has been suggested that we close the petition, but I am reluctant to close our consideration of class sizes. The issue has been a dominant policy development since the start of this session and I imagine that it will remain so until we have evidence that the Government will meet its policy requirement. In the meantime, what is perhaps more important is how the Government intends to meet that requirement. I am totally unconvinced that the funding and the policies are in place that would allow the commitment on class sizes that was made at the most recent election to be met.

Although the topic is the same, the contents of the petition are not the same as the Government's policy statement. I welcome the petition. I am sure that the issue of class sizes is close to all our hearts and that it is one that we would wish to consider in depth. I do not mind closing the

petition if the committee agrees to follow up the issue in the coming weeks or months, and if it flags up today how it will do that.

**Kenneth Gibson:** The paper on the petition recommends that we write to the petitioner to detail the work that has been carried out. It also recommends that the committee

“continue to examine the issue of class sizes as part of its ongoing scrutiny of Scottish Government policy, its budget, and the concordat with local government.”

Those recommendations lay out exactly how the committee should follow through on the issue.

**The Convener:** It is important to clarify that the clerks recommended closing the petition not to limit the committee’s ability to consider the issue of class sizes but to ensure that, when we do consider the issue, we consider all aspects of class sizes. Prior to the summer recess, the Convention of Scottish Local Authorities told us that it was willing to talk to the committee only in relation to the petition and that it did not want to enter into discussions about single outcome agreements on class sizes. That was rather frustrating for the committee because it was one of the issues that we wanted to get to the bottom of. We wanted to know what was happening on class sizes in local authorities throughout Scotland. I hope that if we close our consideration of the specifics of the petition, we do not close entirely our consideration of class sizes. It is an issue to which we will need to return, not least in the budget considerations that will be before the committee very soon.

**Mary Mulligan:** Like other colleagues, I am reluctant to close the issue. I want to raise two points. First, I would like the committee to ask for the result of the census of class sizes that will be taken in September. That will give us a better picture of how things have progressed this year.

Secondly, over the past few days we have seen a great deal of media coverage of composite classes. The issue came up in some of our evidence sessions. I do not have the petition in front of me—I am always having to ask the clerks for it—but I seem to remember that it referred to capping the size of composite classes. The figure is currently 25, but the petition referred to 15. How would we pick up on that in relation to on-going developments? I would want to pick up that issue again as the policy progresses. The petition refers to the issue and I would like to keep it on the table and not lose sight of it.

**Ken Macintosh:** I have a constructive suggestion—Mr Gibson will soon discover that I am full of constructive suggestions.

I agree that we can return to the matter as the committee sees fit and through the budget and so on, but I am keen that we have a formal session

on it, and that we hold that quite soon. I ask for that because, in addition to the issues to which Mary Mulligan refers, the court ruling over the summer and the case that was settled before it went to court suggest that there is an immediate problem. The legally enforceable limit dates back to 1999 and even the guidance that was produced by the Labour-Liberal Executive does not have the force that we thought it had. There is an immediate problem and if we do not address it, we will be forcing parents to take local authorities to court. That is not a desirable situation for many reasons and the matter requires our immediate attention. Could we put that aspect of class sizes or the issue of class sizes more generally on our formal agenda? We could have a session with the cabinet secretary or, to begin with, we could write to local authorities and parent groups to find out what they would like us to do first. We could do that in writing and then put it on in our agenda in two or three weeks’ time.

**The Convener:** I was going to suggest that the best way forward might be to ask the clerks to prepare a paper for us, which would outline various options that would enable us to consider the various issues to do with class sizes and how and when best to pursue some of them. We would want to get the details of the census, which would provide a good basis for any further deliberations by the committee. We can give the committee an undertaking that we would prepare that over the next few weeks. It would be programmed into our timetable and not lost from sight, so there would be something on the immediate horizon for us to focus on. Is the committee happy with that approach?

**Members indicated agreement.**

**The Convener:** That concludes our consideration of the petition from the EIS. We will write to the petitioners explaining the work undertaken by the committee and our future intentions with regard to class sizes.

## Employment of Probationary Teachers

15:43

**The Convener:** The eighth and final item on the agenda is an approach paper that the clerks have circulated on the employment of probationary teachers. You will see that the clerks have suggested some work on the issue, which we said last year that we would look at. Are members content with the proposals?

**Ken Macintosh:** I am happy with them as a beginning. At the end of the brief paper, it is suggested that the committee has two options: to seek further evidence or to hold a formal committee inquiry. I am in favour of the latter approach. We have given the Government a chance to take action over the past year and a half.

15:45

Before the summer recess, the Cabinet Secretary for Education and Lifelong Learning agreed—at last—to set up a teacher employment working group. That was most welcome, but the answers that I have received to a series of parliamentary questions on the workings of that group have been unsatisfactory—they have been along the lines of, “The group will report back,” and, “No minutes will be published.”

The committee has been looking for an issue on which we can add value. All of us in Scotland have been proud of the teacher induction scheme, which I think had cross-party support when it was introduced. The scheme has been successful, but it is in danger of being undermined because of the number of probationers who are either not gaining employment or not gaining a permanent contract. We have to address that, and this committee is in a position to do so by holding an open and public debate that involves all the relevant people. If the Government and the local authorities will not, between them, accept responsibility, we could perhaps ask them why and try to find a way forward. Otherwise, we will be recruiting more and more teachers into the profession but disappointing them when there are no jobs for them. If that happens, we will lose them either to posts abroad or to other professions, and we will have wasted their time and Government money—which is taxpayers’ money.

**Kenneth Gibson:** I know that, in 2006, three out of the four probationers at St Cadoc’s primary school in Mr Macintosh’s constituency went to Australia to work after finishing their probationary year. The issue has been around for a number of years. There might have been a slight

improvement over the past year but, if so, it has been marginal.

We should certainly implement the approaches laid out in paragraph 6, paragraph 7 and the first bullet point of paragraph 8 in the paper. I have no objection at all to our holding an inquiry; I do not know whether it is necessary at this point, but I would have no objection to it. However, it might be better if the committee was informed by a programmed evidence session, after which we could decide whether to hold a full-blown inquiry. That evidence session will take place next week.

**Elizabeth Smith:** I would be very much in favour of holding another evidence session with the General Teaching Council for Scotland, because it is one of the best-informed groups on the issue of probationary teachers. We held a short session with the GTC for Scotland, but I think that its representatives have a lot more to say.

I agree with Mr Macintosh that the issue of probationary teachers will dominate the schools agenda, alongside class sizes.

**The Convener:** The GTC for Scotland is on our list. I think that it will be coming to the committee next week.

**Mary Mulligan:** I want to raise a more general issue that might impact on the issue of probationary teachers. I know that the committee was unable to agree on a date for an away day and that we have therefore not had a chance to discuss our forward work programme. Clearly, if we are taking decisions on holding inquiries, we have to do so in the context of knowing what the coming year will hold. Do we have any more ideas on that, convener?

**Kenneth Gibson:** The Scottish Government’s legislative programme will be announced tomorrow. The programme might impact on the time that we have available for various inquiries. That is another reason why it would be better to wait until next week before making any decisions. We will be better informed then.

**Mary Mulligan:** Does this mean that we are going to get lots of legislation, Mr Gibson?

**The Convener:** He is not going to tell us, Mrs Mulligan. He is keeping it a secret.

**Kenneth Gibson:** They have not told me.

**The Convener:** Mr Salmond keeps Mr Gibson as one of his closest confidants.

**Kenneth Gibson:** Absolutely.

**The Convener:** The approach paper was carefully worded so as not to limit the committee in its consideration of probationary teachers, but also so as not to tie the committee or to raise any

expectations that we might not be able to fulfil. Next week will offer a helpful opportunity for us to pursue the issues. We will then have a much clearer idea of how much work we want to do and how much detail we want to go into. Whatever we decide on whether to hold an inquiry, it will not mean that we cannot add value or make recommendations. Any inquiry would not have to be lengthy.

**Aileen Campbell:** I agree with Mary Mulligan's points and, like her, wonder how we will decide on what we will do in the year ahead. We did not have an away day, but will we have a discussion in the coming weeks? What are your plans for our work, because that will inform our choices on what to do and on whether to hold any inquiries?

**The Convener:** If you remember, the committee has already agreed to hold a number of evidence sessions. All of that has been agreed and has been published in our forward work programme. We have also agreed to hold an inquiry into prison education, although that is unlikely to take place until the new year. All those ideas have been factored in. Any decisions on the work programme will come back to the committee, to allow members to take the decisions. There will be an opportunity for us to discuss the work programme. It is unfortunate that a number of committee members were unable to attend an away day, making the idea no longer viable.

Before I close the meeting, I understand that Mr Purvis is likely to be leaving the committee. That may or may not mean that our meetings in the future will be slightly shorter.

**Jeremy Purvis:** The *Official Report* will not show the very disappointed looks on the faces of my committee colleagues.

**Kenneth Gibson:** We are fighting back the tears.

**The Convener:** We wish you well for the future, Mr Purvis. I am sure that we will have an interesting replacement for you next week.

I remind members that next week's meeting will be on Wednesday morning—we are returning to our usual slot.

*Meeting closed at 15:51.*





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