EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 21 January 2009

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

CONTENTS

Wednesday 21 January 2009

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
2nd Meeting 2009, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
*Aileen Campbell (South of Scotland) (SNP)
*Ken Macintosh (Eastwood) (Lab)
*Christina McKelvie (Central Scotland) (SNP)
*Elizabeth Smith (Mid Scotland and Fife) (Con)
*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)
Bill Kidd (Glasgow) (SNP)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Fiona Hyslop (Cabinet Secretary for Education and Lifelong Learning)
Adam Ingram (Minister for Children and Early Years)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

LOCATION

Committee Room 5

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 21 January 2009

[THE CONVENER *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Karen Whitefield): I welcome everyone to the second meeting in 2009 of the Education, Lifelong Learning and Culture Committee. I welcome, too, Alex Neil, who is attending the meeting for agenda item 2. Under item 1, we must decide whether to take in private item 6, which is our consideration of the consultation by the Review of SPCB Supported Bodies Committee. Do we agree to take item 6 in private?

Members *indicated agreement*.

Education (Additional Support for Learning) (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is the committee's continued consideration of the Education (Additional Support for Learning) (Scotland) Bill at stage 1. I am pleased to welcome to the meeting Adam Ingram, the Minister for Children and Early Years. He is joined by Government officials Robin McKendrick, head of branch 1 in the support for learning division; Susan Gilroy, policy officer in the support for learning division; and Louisa Walls, who is a principal legal officer.

Minister, I understand that you have a short opening statement.

The Minister for Children and Early Years (Adam Ingram): Yes, indeed—thank you, convener, and good morning, colleagues. I thank committee members for their work over the past few months in considering the bill. Some aspects of the bill and of the evidence that you have taken are technically quite complex, so I appreciate the committee's careful scrutiny.

The Education (Additional Support for Learning) (Scotland) Act 2004 commenced over three years ago. It has always been the intention to revisit the additional support needs legislation and the code of practice to reflect on what we have learned from our experience of implementing the 2004 act. As the committee has heard from my officials, the bill does not alter the ethos or the fundamental building blocks of the 2004 act, which is aimed at a broad group of children and young people with additional support needs. The bill amends the 2004 act in light of the reports by Her Majesty's Inspectorate of Education, the Court of Session rulings, the annual reports from the president of the Additional Support Needs Tribunals for Scotland, stakeholders' views and informed observations in light of practice.

The bill's proposals will strengthen the rights of children with additional support needs and their parents by providing the parents with the same rights as others to make placing requests to local authorities outwith their area. The bill will give parents and young people access to mediation and dispute resolution from the host authority, following a successful out-of-area placing request. It will also increase parents' and young people's rights in respect of access to the tribunals regarding failures by the education authority.

The code of practice will be amended in due course and laid before the Scottish Parliament. The redrafted code will place the 2004 act in the

context of our current policies, such as getting it right for every child, the early years framework and the curriculum for excellence. I am aware that a number of those who have provided evidence to the committee have asked for clarification of the term "significant" in the phrase "significant additional support", which is one of the criteria for a co-ordinated support plan. It is our intention that the redrafted code will develop further and clarify the definition of the term "significant". We are working with stakeholders to develop further guidance on the meaning of that term. The code will also clarify the process of making placing requests.

As members are aware, we held an extensive consultation on the draft bill and I met the Convention of Scottish Local Authorities and various other stakeholders. Most stakeholders were very supportive of the proposed amendments. However, concerns were raised regarding the enforcement of a restricted reporting order or an award of expenses. Because of that concern, the proposed enforcement amendment has now been dropped from the bill.

In addition to the amendments that are contained in the bill, stakeholders suggested a number of amendments, which I have considered carefully. I am in no doubt that the committee will wish to discuss some of those additional amendments with me, and I acknowledge that some of them may help to improve and strengthen the 2004 act. As a result, I share with the committee the three additional amendments that I am minded to explore further. The first is to enable all appeals in respect of placing requests for special schools to be heard by the tribunals. The second is to ensure that parents have a right to request an assessment of their child's needs at any time. The third is to enable tribunals to specify when a placing request should start.

I am pleased to announce that we intend to develop proposals to take forward representative advocacy support for parents. I want to ensure that parents have access to advocacy at a tribunal. As the committee knows, Independent Special Education Advice (Scotland) and Govan Law Centre are the two main voluntary organisations that support parents at tribunals. I met ISEA and Govan Law Centre in the summer and agreed short-term funding to safeguard and support those advocacy services for parents in 2008-09. As well as training advocacy organisations to build capacity, Govan Law Centre will make recommendations on how best to address the need for representative advocacy at tribunals throughout Scotland in the longer term. Its report on that is due next month.

I hope to be in a position to provide more detailed information on that at stage 2 of the bill. However, as the committee will appreciate, any proposed action will take time to plan and implement. We therefore propose to fund ISEA for a further nine months, from April 2009 to December 2009, to ensure that in the meantime parents have continuing access to advocacy at the tribunals.

I am aware that we need to do more to ensure that parents are aware of their rights under the legislation and I will be considering how we can ensure that we improve the quality of information received by parents.

I am sure that the committee will agree that some aspects of the bill are fairly technical. As a result, I seek your approval to reserve the right to respond to you in writing if required.

The Convener: Thank you for your opening statement, minister. I am sure that members will be more than happy for you to respond in writing. We have struggled with the technicalities of the bill over the past few months, so we understand. Every committee member will welcome your commitment to pay particular attention to three areas that have been raised with us repeatedly in our evidence taking at stage 1. I am sure that further questions will be asked on those areas today, but we welcome the Government's commitment and willingness to act before stage 2.

The bill's main policy principle is to extend the right to parents of children with additional support needs to make a placing request. Why do you believe that it is important to do that?

Adam Ingram: It is a question of equality, and rights under the law. You will be aware that a Court of Session ruling under Lord Macphail upheld a local authority's appeal against applications from parents with children with additional support needs for out-of-area placing requests. All other parents have that right, and we believe that children with additional support needs should have that right, too.

The Convener: I have considerable sympathy with that view, as do a number of local authorities. However, Cameron Munro, who represented Glasgow City Council at the committee last week, said that he

"would like the committee at least to consider the fact that there is already provision for a parent to make a request to have their child placed in another school in another authority area."—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 14 January 2009; c 1860.]

How does the Government respond to that, and why do you think that the legislation that you propose is required?

Adam Ingram: Glasgow City Council and, I think, the City of Edinburgh Council, describe

scenarios in which a parent can make an out-of-area placing request by submitting a request to their home authority to place their child in a school, but that is not really a parental placing request as such. In effect, the parent is asking one authority to enter into arrangements with another authority to place the child in a host authority area. That is quite different from a parental placing request. Even before the 2004 act commenced, parents could approach their home authority to do just that. It seems that Glasgow seeks to reduce parental choice in this regard; on principle, we do not think that that should be upheld.

The Convener: Thank you for that clarification of the Government's views.

Several local authorities and the Association of Directors of Education in Scotland, which was represented at the committee last week, made strong representations that if the bill is enacted—and I think that there is a will for the placing requests procedure to be amended—we should consider an amendment at stage 2 to ensure that similar procedures and safeguards will exist for placing requests that are made by the parents of children with additional support needs as currently apply when a placing request is made to an independent school. Should those same safeguards be in place, or has the Government already considered and discounted them?

Adam Ingram: What safeguards are we talking about?

The Convener: Mr Munro spoke about the process. He said that Glasgow proposed

"treating such a request as equivalent to an application to an independent or independently funded school. A parent would make the placing request to their home local authority … The crucial test for the authority would be whether it could make the same or better provision within its own system."—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 14 January 2009; c 1862.]

Adam Ingram: The authorities are reiterating the argument about placing requests being made through home authorities rather than allowing the parent to be independent, to exercise their choice outwith their home authority and to apply to an independent school or a host authority. Again, we are not minded to go down that route.

The Convener: Another aspect of the authorities' argument is that, currently, independent schools cannot be involved in the local authority's decision making and make representations along with the parents when they make their request. They think it right that those same procedures should apply when a parent whose child has additional support needs makes a placing request. Has the Government considered that?

Adam Ingram: I will come back to you on that point, because I have not considered it.

The Convener: That would be helpful, because local authorities were seeking assurances on those issues. It is for the committee to decide whether we agree with them, but it would be interesting to receive more information on that.

10:15

Elizabeth Smith (Mid Scotland and Fife) (Con): Good morning, minister. You said clearly in your opening remarks that there is a fine balance to be struck between getting the legislation right and producing a code of good practice that is not enshrined in the legislation. That is central to a lot of the debate that we are having on the issue, as it raises questions about whether, just by making better legislation, we will be able to deliver better care for those who have additional support needs. That is a major issue to keep at the back of our minds.

A lot of the evidence that we have taken suggests that there is a definition problem. You referred to the fact that the word "significant" is open to question. Has the Government considered the definition of those who have a permanent disability as opposed to one that might result in the need for additional support for only a year or a couple of years? It might be helpful to tighten up the definitions in the bill by defining somebody who has a physical disability that will last for their whole life.

Adam Ingram: You will be aware that there was significant debate on such definitions when the 2004 act was under scrutiny—Ken Macintosh will remember that—especially regarding who would be eligible for a co-ordinated support plan. Those would be children with multiple, complex and enduring needs of the type that you are talking about. The debate at that time centred on whether we were creating a two-tier system. Essentially, we were providing rights to children with additional support needs and their parents, so why should we single out children with enduring, complex and multiple needs? The answer was that the system fails most often in dealing with those children with multiple and enduring needs. That is why we were concerned to ensure that resources could be maintained and targeted on that group of children.

Elizabeth Smith: Those who have provided evidence for us feel quite strongly that, at present, it is too easy for different local authorities to have slightly different interpretations. They suggest that that is partly a problem of definition within the existing legislation. That is an important point.

As the convener said, we have taken evidence from lots of different local authorities that have differing interpretations. The fact that the

definitions are not tight enough perhaps gives them a barrier to hide behind. I accept your point about having different definitions, but there are children who have long-term additional support needs as opposed to those who can get sorted out within a shorter space of time. I wonder whether we should consider including a separate definition of those children in the bill.

Adam Ingram: I think that such matters would be better addressed in the code of practice. In my opening remarks, I mentioned that I am looking carefully at the term "significant". It is a very difficult issue, although Lord Nimmo Smith, of the inner house of the Court of Session, has given us a working definition that we can start with. As you rightly say, many of the stakeholders are concerned about the definitions of the term "significant" and other terms.

I recently set up a working group on co-ordinated support plans, not least because of the low number of such plans. The group will consider definitions—it will address the definition of "significant", in particular—taking into consideration all the submissions that have been made on the definitions in the bill. That work will inform the later stages of the bill process and the revision of the support for learning code of practice.

Elizabeth Smith: That is helpful. At a time when there are budget cuts and concerns about the availability of resources, it would be helpful to have some tightening up of the definitions. It has been a thread in much of the evidence that we have taken that there is a definitional problem, and that it is too easy for local authorities to have slightly different interpretations, which does not always best serve the child.

Adam Ingram: I think that the allegation is that the term "significant" has an extremely high threshold for local authorities.

Elizabeth Smith: I am sure.

I turn your attention to the co-ordination between the two authorities that are involved in a placing request. Mr Nisbet of Govan Law Centre said that he was concerned that the reference in section 5 of the bill to a child belonging to a certain authority would pose difficulties if the child's father was in one authority and their mother was in another. Are you confident that the bill deals with that issue?

Adam Ingram: The bill clarifies the position. In particular, we clarify that the child is the responsibility of one authority at a time. Iain Nisbet was concerned about the existence of a grey area as regards which authority was responsible for, and which authority we were asking to attend to, the needs of a child in a particular situation. We are tidying up the legislation in that regard so that it is clear which authority is responsible for a child in all the relevant circumstances.

Elizabeth Smith: Do you believe that that must be done in the bill, or could it be dealt with in the code of practice?

Adam Ingram: As regards the process, the code of practice will obviously need to be clarified in that respect, but with some of the amendments that we have proposed in the bill, we should be able to clarify that issue.

Elizabeth Smith: I want to take up the convener's point about independent schools—not independent special schools, but independent mainstream schools, a few of which offer special facilities. That is a consideration. The convener is right to say that it is important to ensure that the parents of any child who requires additional support have not only special schools available to them, but independent schools that are in the main stream, some of which have specialist dyslexic units or whatever. Although local authorities have no responsibility in that area, we want to ensure that that is not lost in new legislation.

Adam Ingram: Such schools would be defined as special schools, just as local authority schools that have bases for children with particular needs are defined as special schools.

Elizabeth Smith: Okay. Thank you.

Ken Macintosh (Eastwood) (Lab): I have a question about costs that picks up on the questions that the convener asked about the principles that underpin out-of-authority placements. The local authorities put up the argument that they are responsible for providing for the needs of all their children, so if parents and children apply to another authority, the decision on costs is taken out of their hands. Do you accept that that is entirely the case? Will you give us your thoughts on the principle of costs following the child and to what extent that happens at the moment?

Adam Ingram: The cost arrangements for interauthority transfers are well understood by the education community and especially by education authorities. The relevant legislation is section 23 of the Education (Scotland) Act 1980. We are talking about the additional costs that arise from additional support needs provision. The host authority can, rightly, send a bill to the home authority for the additional costs, which obviously must be justified. An incentive is built in to the system for home authorities to develop additional support needs provision in their area if they are concerned about the number of children who are going outwith the area to receive provision. It is incumbent on home authorities to provide a broad range of provision that satisfies the needs in their own areas. The system therefore reinforces the

need for authorities to make provision in their own area.

Ken Macintosh: To what extent do you think that funding follows the child—particularly a child with additional needs?

Adam Ingram: Do you mean funding for education authorities from the Government?

Ken Macintosh: Yes.

Adam Ingram: My understanding is that the funding follows the child. There might be a year's delay in transferring funds because they are based on the school census figures, but my understanding is that that system works well.

Ken Macintosh: Do the school census figures provide additional funding when a child is identified as requiring additional support that means additional costs?

Adam Ingram: No—what is transferred is the funding for the particular school place. Any additional costs for additional support needs provision must be paid for by the home authority when the child transfers.

Ken Macintosh: Exactly, but the local authorities argue that they do not have a say in addressing the needs. In other words, a child's parent can apply to another authority for a range of services when additional needs might not have been diagnosed or recognised at that stage. Local authorities think that the principle of another authority providing a range of services but billing the entire amount to the home authority is problematic when the home authority is responsible for all the other needs.

Adam Ingram: I do not doubt that they think that. All I would say is that the provision for the circumstances that you describe has been settled for some 30 years now, so the system clearly works. I return to my point about the incentives in the system for all authorities to build up provision in their own areas. We hope that that would reduce the demand for out-of-area placing requests, which can be costly.

Ken Macintosh: It is interesting that you suggest that there is an incentive for home authorities to develop their resources. The committee has heard the opposite argument—that the system introduces a perverse incentive to parents to apply to special schools because there is an appeal process for such schools.

I was pleased to hear the measures that you outlined earlier. I was gratified to hear your thinking on a range of issues, including the one about appeals for all special schools being dealt with through the tribunals system. However, some local authorities have said that the danger is that that creates a perverse incentive. Several have suggested that we will see the growth of independent special schools because they will be dealt with in a different way and their funding will be slightly different. The implication is that such schools would be under less control from local authorities. The suggestion was that local authorities with children with severe needs would have an incentive to send the children to other authorities.

10:30

Adam Ingram: We need to remember that checks and balances are built into the system. Obviously, host authorities can refuse placing requests. Schedule 2 to the 2004 act provides a number of criteria that apply in such circumstances, so any spurious or irrational requests should be sifted out of the system at that point.

Incidentally, I welcome your welcome for the extension of the tribunal's jurisdiction. I point out that I have been consistent on the issue, given that I moved amendments to that effect during the original bill's passage through Parliament in 2004. However, those amendments were defeated.

Ken Macintosh: I hate to think who might have voted against those amendments.

Adam Ingram: You did.

Ken Macintosh: Hindsight is a wonderful thing.

I have a final question on costs. You have said several times that the current system is well understood and works well, but I am not entirely sure that that is the case. For example, as far as I can see, none of the adjudications that have been made by the Executive under section 23 of the 1980 act have actually been observed by the local authorities. Although the majority of authorities do not have an issue with the legislation, none of those for which it has been an issue have observed the decisions under section 23, which take years to reach in every case. All the decisions have been appealed to the Court of Session, where they might be appealed again. That does not sound like a system that is well understood or working.

Adam Ingram: To be fair, we are talking about a relationship between two authorities. Those are the only decisions that have come to Scottish ministers. The issue is something of a long-running saga, as you well know, given that East Renfrewshire and Glasgow City Council are the two authorities concerned.

An interesting point is that the directions given by Scottish ministers were upheld by Lord Penrose in the outer house of the Court of Session. It is up to the host authority where it goes from here. The host authority came to Scottish

ministers, who made a direction. The authority then went to the outer house of the Court of Session, which upheld that decision. Really, the ball is in the court of the host authority. I do not think that it can be said on that basis that the system is not working. I do not know whether it is appropriate for me to say much more on that.

Ken Macintosh: Although the decisions have all been consistent, they have not all been observed yet. I suggest that the payment and cost issue needs to be resolved. Although only two authorities are involved, I think that other authorities are looking at the principle closely to ensure that they have the relationship right.

Adam Ingram: As I said, the situation that we are describing is anomalous. The fact that local authorities have made very few submissions to ministers under section 23 of the 1980 act—the only submissions have arisen from that specific interauthority relationship—suggests that the system is working and people understand how it operates. The lack of disputes, rather than their incidence, is remarkable.

Ken Macintosh: Possibly. Would you be sympathetic to an amendment that tightened up the legislation on that issue?

Adam Ingram: I would need to see what the amendment said.

Ken Macintosh: You do not think that there is a problem.

Adam Ingram: No, I do not see a problem.

Ken Macintosh: Convener, if I may, I will come back later to my other question, which is on general issues rather than on costs.

The Convener: In that case, we move on to Mr Gibson.

Kenneth Gibson (Cunninghame North) (SNP): Good morning, minister. I welcome the fact that you have welcomed Ken Macintosh's welcome.

One of the amendments that you mentioned would result in all placing request appeals being heard by tribunals. Would that mean that a co-ordinated support plan would be needed or could an appeal progress without one? Argyll and Bute Council, for example, believes that CSPs do not reflect the complexity of children's needs.

Adam Ingram: Yes, we are, in respect of out-of-area placing requests to special schools, extending the jurisdiction beyond children with CSPs.

Kenneth Gibson: How are you extending it and what will that mean?

Adam Ingram: A parent who applies to an authority for a place in a special school, but whose application is refused, can go through the dispute resolution process and can eventually appeal to the tribunal.

Kenneth Gibson: Do you believe that that will increase or reduce the number of appeals?

Adam Ingram: It will reduce the complexity of the system, which is an important—

Kenneth Gibson: It will also reduce the confusion that surrounds it.

Adam Ingram: Yes. There is significant demand, but there is also a natural ceiling on demand for places in special schools, so I do not anticipate a large increase, although we have factored in additional costs that will need to be taken into consideration in the financial memorandum to accommodate extra provision in special schools. The placing requests figures for 2006-07 show that 14 special school placing requests were referred to education appeal committees and none was referred to the sheriff. When we transfer cases to the tribunal, the cost is £2,000 per case, so we need to make available an additional sum—the total would come to something like £40,000.

Kenneth Gibson: Parents have expressed to us—in formal and informal meetings—considerable frustration about the time it takes to go through the appeals process and so on. Will the changes that are being made expedite decisions or will there still be the same long drawn-out process that some families have experienced?

Adam Ingram: As I said, clarification on such issues should expedite decisions and speed up things significantly.

Kenneth Gibson: What do you mean when you say that it should speed up the process "significantly"? We have heard that some cases have lasted for up to two years.

Adam Ingram: As Kenneth Gibson knows perfectly well from his constituency cases, there can be a long and weary wait before a conclusion is reached when cases go to a sheriff. Tribunals are much more responsive. Another benefit of referring cases to tribunals is that they will be dealt with by a body of people who have expertise in additional support needs and who understand the issues, so the quality of decision making could, and should, improve.

Kenneth Gibson: Yes. So—we are looking at improved decision making and decisions being made much quicker. I know that every case is different, but is there a time within which you believe cases should be resolved? Should they be resolved within three months or six months, for example? Will there be anything in guidance to

ensure that cases are not dragged out for longer than necessary?

Adam Ingram: A timetable for tribunals is laid down in the regulations. We already have timeous dealing with cases—I have not heard evidence to suggest that there is anything wrong with the process just now. I refer to the education appeal committee route down to the sheriff and so on.

Kenneth Gibson: I know what you mean. You are saying that that is not necessarily where the bottleneck is.

Adam Ingram: Yes.

Kenneth Gibson: Given the changes that are being made, the other bottlenecks will hopefully be cleared, too.

Adam Ingram: Indeed.

Claire Baker (Mid Scotland and Fife) (Lab): I want to return to the adversarial nature of the process. In your opening remarks, you said that you are looking at representative advocacy services for parents, in recognition of the increasingly adversarial nature of the tribunals. That issue was raised by the ASNTS's president, who gave us figures on the increasing numbers of respondents and appellants who are represented by legal counsel. One suggestion from the tribunal chair was that parents could, at the discretion of the chair, receive legal support on points of law. However, local authorities tend to favour improvements to the tribunal to make it less adversarial, and suggest that the quality of decision making is part of the problem. How might representative advocacy support address some of the issues that have been raised with us?

Adam Ingram: A lot of witnesses suggested that there is an imbalance between local authorities and parents in the power of argument that can be brought to a tribunal with legal representation: local authorities are obviously better able to afford legal representation. How do we level the playing field? I do not want to make the process more adversarial and bring more lawyers into it. I want to neutralise the effect of local authorities employing solicitors. In essence, I want to try to make lawyers redundant—

Margaret Smith (Edinburgh West) (LD): Can we vote on that now, convener?

Adam Ingram: I want to make lawyers redundant in the tribunal situation, which we can do through the rules and procedures of the tribunal. We have three members on the tribunal who could be more interrogative of both sides and could limit the opportunities for legal representatives to advocate their side of the argument. The tribunal members could ask all the questions and we might not allow cross-examination by someone else's representative. I know that the president of the ASNTS has issued directions to encourage that type of thing in our tribunal conveners. I am planning to get together with the president to see how far we can take that and whether we can address the issue in that way.

10:45

Claire Baker: Why do you think local authorities have moved towards increased legal counsel at tribunals?

Adam Ingram: Their approach is very conservative and defensive. When a local authority and a parent are at odds, the local authority wants to stack the odds in its favour and to ensure that its position is represented as effectively as possible.

Aileen Campbell (South of Scotland) (SNP): It was good to hear, in your opening remarks, that you want to improve the quality of the information that parents receive about their rights regarding mediation and dispute resolution. The evidence that we have taken suggests that there is low awareness of those rights among parents. I would like to pursue the matter a wee bit further.

When Robin McKendrick came to give evidence at the start of last month, he talked about local authorities not providing information about mediation and dispute resolution in the same way. We heard a similar argument from Lorraine Dilworth, who told us what some local authorities do to promote knowledge of parents' rights. The provision of such information is pretty patchy throughout the country. What does the Government think about the need to ensure that each local authority improves parents' knowledge of their rights regarding mediation and dispute resolution? How might the Government monitor what local authorities do, or is that not an appropriate way in which to approach the issue?

Adam Ingram: I accept that that is a significant and serious issue. HMIE's report also flagged up the need to improve the quality and extent of communication with parents and young people, including information about how to resolve disagreements and the like.

I am still astonished at people's lack of awareness about their rights—despite all the statutory duties that are placed on local authorities and others to inform people of their rights, whether through the Scottish Schools (Parental Involvement) Act 2006 or whatever. We have tried several different ways of marketing—if you like—that area, but we have not cracked it yet. We will look again at the support for learning code of practice and try to address the issue through strengthening the obligation on authorities to provide information.

Let us consider the correspondence that goes backwards and forwards, especially in the dispute resolution process. For example, when the tribunal writes to parents with its decisions—especially if it is upholding the parents' case—it should point out that, if the local authority does not comply, they have rights under section 70 of the Education (Scotland) Act 1980 to pursue the matter by complaint. I understand that that does not necessarily happen at the moment. We must try to get consistency throughout the country in the methodology for informing parents, especially in the mediation and dispute resolution process. Some local authorities are better than others at providing the information.

Aileen Campbell: We have heard that. Lorraine Dilworth noted also that it is not possible to find the name of the director of education on one council's website. Such basic things need to be addressed.

We have also heard about problems in getting information out to parents in particular groups, such as Gypsy Travellers, armed forces parents and parents who are on low incomes.

We also heard from Cameron Munro about a specific issue with looked-after children in which a council may almost end up mediating with itself. What does the Government plan to do to help those groups of families in Scotland?

Adam Ingram: On Traveller children, we have the Scottish Traveller education programme. There are clearly issues with interrupted learning and assessing where Traveller children are in terms of their education when they arrive at a school. There is the same sort of issue with the children of service personnel, so we are pulling together a forum, or seminar, of local authorities to discuss the issues. The Scottish Traveller education programme has come up with a series of recommendations for addressing the issues that relate to Traveller children.

I notice that the president of the Additional Support Needs Tribunals for Scotland suggested that there should be some sort of six-monthly review to determine whether looked-after children ought to have co-ordinated support plans. I do not favour that approach, which would be overly bureaucratic and burdensome, but I am keen that every looked-after child should have a care plan from the outset of their becoming looked after. We are developing policy on that all the time: we have launched "These Are Our Bairns: A guide for community planning partnerships on being a good corporate parent", and we are developing our regulations on looked-after children, which will come through this summer. We have also designated managers within residential care establishments and education establishments to focus on looked-after children. That is the way to deal with those issues: at the source of the problem, rather than trying to build in some sort of remedial action through the tribunal process, which would be cumbersome and ineffective.

Alex Neil (Central Scotland) (SNP): The bill is necessary partly because of rulings that some sheriffs have made, which have not always been in tune with the spirit of the 2004 act. As you know, I have been particularly concerned about the sheriff's decision in one case in South Lanarkshire. I will not name the case publicly, but the minister is familiar with it. People who come into the system will benefit from the bill when it is enacted, but we also have a duty to people who find themselves in difficult positions as a result of court decisions that do not necessarily follow the spirit of the act. Will those people have the right to go back to the tribunal and have it reconsider their cases and, possibly, make a ruling that runs counter to a decision that a sheriff took some time ago?

Adam Ingram: I do not want to go into too much detail about the case that Alex Neil mentioned, but parents in such situations must come back under the aegis of the education authority. Parents have the right to make placing requests annually, so if they are refused one year, they can try again another year.

If a parent—for understandable reasons—unilaterally takes the decision to send their child to a special school and to pay for it themselves, they have let the education authority off the hook, so to speak. In such a situation, the parent would have to review their own position and perhaps change tack.

Alex Neil: Under the present legislation, would the parents require a co-ordinated support plan for them to be able to go to the tribunal?

Adam Ingram: They will not require one now.

Alex Neil: They will not require one once the legislation is passed.

Adam Ingram: No.

Alex Neil: Will that be in the primary legislation or the code of practice?

Adam Ingram: It will be in the primary legislation.

Alex Neil: Okay.

I have made this point to the minister before: even if we assume that the bill will be passed, it is clear, as far as I can tell, that in cases in which parents are still dissatisfied, for the few who know about section 70 of the Education (Scotland) Act 1980 and have actually used it, it has proved to be extremely unsatisfactory. Do you have any plans to improve the way in which section 70 applications are handled?

Adam Ingram: Yes. We have had very few complaints under section 70.

Alex Neil: That is because people do not know about it.

Adam Ingram: Exactly—that is one aspect of it. When we get section 70 complaints, we need to pursue them vigorously. We should take them up on behalf of complainants in a way that encourages local authorities to respond. I have had a meeting with officials to that effect. As I pointed out earlier in response to Aileen Campbell's question on information during disputation, we have to get the message across to parents that that route is available to them.

Alex Neil: That brings me to my final point on making parents aware of their rights. As a list member, my constituency covers four local authority areas. Two of those authorities not only do not tell parents their rights, but go out of their way to avoid doing so, as I could prove in relation to a number of cases. Even the authorities that do tell parents their rights do not tell them about things such as section 70. I welcome—and I welcome everybody else's welcomes—your proposed amendment in that area.

Once a child has been assessed as requiring additional support needs, is there a need for the Scottish Government to go over the head of the local authority to ensure that the parents are given a pack of some kind that explains all their rights, rather than our relying on 32 local authorities to put together their own packs?

Adam Ingram: We support with around £400,000 the Enquire organisation and helpline, which produces leaflet packs and the like.

Alex Neil: With all due respect, many parents do not know that they can contact Enquire.

Adam Ingram: I know—I spoke about that problem earlier. Local authorities are under a statutory duty to inform parents of what is available to them. I recently attended a meeting that was called by East Ayrshire Council, which brought groups of parents together to inform them of their rights under the 1980 act. We need more such activity. The support groups that exist to help parents, such as dyslexia and autism support groups, can spread the message and help inform parents, on top of anything that the Government or local authorities provide. However, we need to get our act together on that front. I am not satisfied that parents are being properly informed.

11:00

Claire Baker: The minister partly addressed my point in responding to Aileen Campbell's question about mediation and dispute resolution. Is there a greater role for an independent element in that process? Could the voluntary sector play a bigger role in supporting parents? Aileen Campbell talked about looked-after children. Such an increased role would be a way in which to resolve the tension that exists when a local authority mediates with itself.

Adam Ingram: People have questioned the independence of the dispute resolution process because parents have to apply to the local authority to go through the process. However, I warn against removing from local authorities the duty to respond to the issue, because they are responsible for gathering together all the paperwork. It would be extremely burdensome for a parent to go through that process independently. It is important that local authorities retain the duty to provide support to parents during the independent adjudication process. Of course, the adjudication itself is absolutely independent—it involves people who are appointed by the Scottish ministers to consider individual cases. I do not see a case for tampering with those arrangements and would reject any such amendments.

Margaret Smith: We have heard, in formal and informal sessions, a great deal of concern from people about how the existing legislation is working. One of the dilemmas with which I came into the meeting was that, although there is a great deal of support for the bill, it is clear from the evidence that has been presented to us that the bill does not go far enough. We are reviewing the 2004 act, but we might be letting an opportunity slip by. However, at the risk of sounding dull and boring, I say seriously that I, like other members, welcome what you have said this morning, minister—your comments have been heartening. I am talking not only about the three items to which you alluded, to which I will return, but about what you said in your discussion with Alex Neil on the section 70 issues and the need for you to pursue that with vigour. Almost as important as the specific points that you mentioned is the need for all of us to pursue with vigour the issue that the Parliament's best intentions in the 2004 act have not seen the light of day when it comes to local authorities dealing with individual children and family circumstances. I very much welcome what you have said, minister.

I am sure that you are well aware of the joint submission that we received from a range of organisations, including Scotland's Commissioner for Children and Young People, the National Autistic Society and the Govan Law Centre. I will mention a couple of points that it raises as potential areas for amendment.

The first proposal relates to the decision by Lord Wheatley that educational support is that which is offered in a teaching environment. Most of us

assume that additional support needs encompass a wider scope than that and that other support can assist children in their education, even though it is not provided in a teaching environment. The organisations outline several such measures, such as a

"communication programme drawn up by a speech … therapist"

and

"an anger management programme".

The organisations suggest an amendment to make it clear that additional support does not mean just support in a teaching environment. Are you minded to consider that?

The second proposal is that a reference could be made to the tribunal in respect of transition planning. We all know from dealing with constituents that transition points are important for families with children who have special needs. We probably do not hear about the times when transition goes well, although we often hear about transitions that do not go well.

Will you comment on those two suggested amendments to the bill?

Adam Ingram: I thank Margaret Smith for her questions. Lord Wheatley's decision was first brought to my attention by Iain Nisbet of Govan Law Centre, who made the points that Margaret Smith described in his submission to the committee.

The intention behind the 2004 act was clear. The purpose of additional support is to allow children and young people to benefit from school education. That support should not be limited to support that is offered in a teaching environment; it can involve not only education services, but other agencies, such as health and social work services.

Lord Wheatley's decision casts doubt on the interpretation of the 2004 act. The Government's policy officials and solicitors are still considering the implications of his ruling. We intend to make the bill as clear as possible, to meet the policy intention that I described. We think that the issue is for the code of practice, but we will continue to reflect on that and we will tell the committee our further thoughts.

I agree that transitions are critical. However, dispute mechanisms are in place to deal with problems that parents want to address. If the parent of a child with additional support needs feels that transitional arrangements are necessary for their child, but the education authority disagrees, the parent can refer the case to dispute resolution or, if the child has a CSP, to the tribunal, for consideration of the level of provision in the child's last year at school. Margaret Smith commented in a committee meeting on the complexity of the bill and on the number of layers that exist. Adding yet another layer—a reference to the tribunal—is unnecessary and we should avoid that.

Margaret Smith: I will ask for clarity about a couple of amendments that you said that you will lodge, although I appreciate that we will see more information about them in due course.

You said that you will allow parents to ask for an assessment at any time. I understand that, at the moment, they are able to ask for an assessment only if the child has a CSP. Have I got that correct?

Adam Ingram: Yes.

Margaret Smith: Concerns have been addressed to us about the number of CSPs that are produced. The City of Edinburgh Council, from which we took evidence last week, believes that it has legitimate reasons for not having as many CSPs as people might expect it to have. I am not saying whether or not I agree with that position. Nevertheless, people have raised a concern that the number of CSPs in circulation is not what might be expected. How will giving parents the right to ask for an assessment at any time differ from the current situation?

Adam Ingram: At the moment, when a parent seeks a co-ordinated support plan for their child or asks a local authority to address their child's additional support needs, they ask for assessments at that time. However, education authorities tend to draw the line at that request—they will respond to that request but they will not respond at other times. We think that parents are in the best position to monitor the progress and needs of their child, and a child's needs change over time. In order that the parent can be satisfied that they are able to secure the best possible provision for their child's needs, they must be able to ask for an assessment at any time during the course of the child's progress through school.

Margaret Smith: That is prior to the production of a CSP.

Adam Ingram: Yes.

Margaret Smith: The parent will be able to do that whether or not the child has a CSP.

Adam Ingram: Yes.

Margaret Smith: As you say, circumstances change; therefore, assessments may or may not have been carried out previously and a CSP may or may not be in place.

Adam Ingram: Correct.

Margaret Smith: And the policy will apply across the board.

Adam Ingram: Yes.

Margaret Smith: Good. I have one final point to raise. You also said that you are minded to lodge an amendment that will allow the tribunal to say when a requested placing should begin. I welcome that. We have heard strongly in evidence that that would be a good move. We questioned the president of the Additional Support Needs Tribunals for Scotland on whether, given that that would involve its having more of a monitoring role than it has had before, it feels that it has the resources to do that. I think that she said that it does feel that it has the resources that it requires. Have you evaluated whether the changes that we are talking about, which you have announced today, will require further resourcing of the current tribunal system?

Adam Ingram: We do not believe so. I do not think that there will be any substantial increase in the burden on tribunals. As you have pointed out, the president of the ASNTS helpfully suggested that she has enough resources to tackle the new requirements.

Margaret Smith: Quite right. I think that that is why we asked the question—to tee it up nicely for you.

Adam Ingram: Thank you.

Christina McKelvie (Central Scotland) (SNP): Good morning, minister. One of the pitfalls of being the person with the last theme on the list is that by the time you get to it everyone else has asked all the questions. I therefore hope that my questions will be brief, as there are just a couple of things that I want to pick up from what you have told us this morning. Also, I join everybody else in welcoming; I do not want to be left out of welcoming the welcome to the welcome.

I want to pick up the issue of looked-after and accommodated children, which was raised at our round-table session with stakeholders. I welcome some of the points that you have made this morning about that. However, in response to Margaret Smith's questions, you said that parents will be able ask for an assessment when they think that that is appropriate, having monitored the situation. Who will be responsible for requesting assessments for looked-after and accommodated children? In response to an earlier question, you said that the local authority will be responsible for pulling together all the paperwork, as that would be an arduous task for a parent. Who will be responsible for doing that in the case of looked-after and accommodated children? Will the bill allow you to remedy the problems that exist?

11:15

Adam Ingram: I was trying to make the point that every local authority is under a statutory duty to provide a care plan for every child who is looked after, which should address the educational needs of the child. That is the stage at which additional support needs ought to be identified. If assessments are required, it is the local authority's duty, as the corporate parent, to ensure that they are carried out. As I indicated, we are making significant progress on policy development and implementation in the area. We have designated managers in schools and educational and residential establishments to take the agenda forward. I detailed all the other steps that we are taking. Can you remind me of your second question?

Christina McKelvie: It was about who will have responsibility for looked-after and accommodated children, but I think that you have answered it. Over the years, I have noticed that different local authorities have different ways of putting together care plans and educational support plans, and that some issues are prioritised over others. In many cases, I have seen quite poor results in identifying a child's educational support needs, because their social needs or the reasons that they are looked after and accommodated have become the priority. Will the code of conduct include direction on how local authorities should put together care plans to ensure that there is a holistic approach?

Adam Ingram: We are keen to emphasise the links between additional support legislation and the care planning process. We will ensure that the code of practice for the bill spells those out. I hope that that will reassure you.

Christina McKelvie: Scottish vocational qualifications and higher national certificates for care staff address the issue in a positive way. One of the units is about care planning, and the children and young people qualification places a huge emphasis on educational support needs. I saw a huge change in one member of staff who was doing the qualification and who put a care plan together inappropriately at the beginning of the process but did so appropriately at the end. The most important point is that that was of real benefit to the child concerned. However, the status of the local authority as the corporate parent could still lead to conflicts of interest when cases come before tribunals. I hope that that can be addressed by the bill and by putting in place more vociferous advocacy for young people from their key workers. There is a real failing in how we support looked-after and accommodated children.

Adam Ingram: That was a worry in relation to the number of co-ordinated support plans. When the HMIE report on improving the education of our looked-after children made the situation plain, I

asked education authorities to review their procedures. On the face of it, looked-after children are likely to be candidates not only for additional support needs provision but for co-ordinated support plans. I have tasked the short-term CSP working group to examine such issues and find out the precise number of co-ordinated support plans and what we need to do to ensure that, if there is a shortfall, it is dealt with. As I said, looked-after children will be a focus with regard to that provision.

Christina McKelvie: Some submissions, particularly the joint submission led by the Govan Law Centre, have suggested that the bill be amended to give children the right to express their views during the process. As something of a champion of children's rights, I would welcome such an approach. How would the bill allow children to give their views?

Adam Ingram: Such a provision is built into the 2004 act, which gives children over the age of 12—young people, if you like—the right to be independently consulted on co-ordinated support plans, additional support needs and the provision that has been put in place for them. As I said, we do not need to reinvent the original legislation, but to ensure that it is properly implemented.

Christina McKelvie: I agree that giving children the opportunity to express their views and rights is, like the issues that Aileen Campbell raised with regard to parents, more to do with awareness.

The Convener: Although I understand the Government's commitment to the historic concordat, I would have thought that Mr Neil's point about forcing local authorities on certain matters might have sat at odds with the historic concordat's ethos. Does the Government have a view on the provision of independent advocacy services, particularly for looked-after and accommodated children? Are you confident that certain local authorities are not trying to reduce that provision in order to make savings in their budgets without being noticed?

Adam Ingram: I am committed to the agenda of improving the situation for looked-after children. I am certainly aware of the issue that you raise; indeed, I have asked officials to map current advocacy support with a view to reviewing our policy. That said, I have no proposals to discuss with the committee. As I indicated, we will address the issue of advocacy provision by additional support needs tribunals. Perhaps I can come back to the committee on how we will take forward advocacy for looked-after children.

The Convener: I appreciate your personal commitment to the issue of looked-after and accommodated children. We need to pay particular attention to getting things right in this area and I believe that all parties are willing to work together on taking forward that agenda. I am sure that the committee will welcome your response to these questions.

Do you have another question, Mr Macintosh?

Ken Macintosh: Yes. Is that all right?

The Convener: Yes, if you are brief. The minister has been giving evidence for an hour and a half now.

Ken Macintosh: I will be brief as possible. I very much welcome the fact that, as usual, the minister has taken a particularly constructive approach to the committee's questioning.

I hesitate to ask this question, as I might have missed something earlier in the session. A number of people who have submitted evidence have suggested that, as Lord Wheatley's judgment specifically limited additional support to educational support provided in the classroom, the word "educational" be removed from the 2004 act. Are you sympathetic to such views? Is that an issue?

Adam Ingram: The Wheatley judgment is definitely an issue. However, as the focus of the original legislation was additional support for education, removing references to education does all kinds of things to the potential scope of the bill, so I am not in favour of such a move.

That said, we need to address the Govan Law Centre's particular question whether additional support applies only to the teaching environment. That is not the case; as the original legislation intended, such support goes much wider than that. We need to restore that intention if it has, indeed, been brought into doubt.

Ken Macintosh: It might make a difference in speech and language therapy, which is often provided by health authorities rather than by education authorities. Perhaps the minister might think about the issue and get back to the committee before stage 2.

I believe that Margaret Smith wants to ask about the same point.

Margaret Smith: I am starting to wonder whether you have been in the same room, Ken.

Now that I have the paperwork in front of me, I point out for clarification that the suggestion by Govan Law Centre and the other organisations involved in the joint submission was to

"delete the word 'educational' … and/or insert the words '(whether relating to education or not)'".

They are seeking not to take education out of the picture but to ensure that the legislation contains the broadest possible definition of "education" and

support thereof. I do not think that that suggestion is incompatible with the 2004 act.

Ken Macintosh: I appreciate that Margaret Smith raised the question earlier. I was raising the issue again simply because I was not quite sure whether I had heard the answer correctly.

Adam Ingram: We are not quite sure of the answer, either, Ken.

Ken Macintosh: I have two other questions, the first of which, about assessment, has also been raised by Margaret Smith. I am not sure that I understood the minister's response. Am I right in thinking that you were suggesting that we do not need to change the law because parents have the right to on-going assessment pretty much at any stage?

Adam Ingram: I am suggesting that we need to ensure that those provisions are actually implemented. The practice in many local authorities is to offer and provide assessment only at the outset, either when additional support needs are identified or when a co-ordinated support plan is requested. We need to make it clear that assessment is available all through the child's journey through school.

Ken Macintosh: The witnesses have suggested that that might need legal clarification, which might require the bill to be amended.

Adam Ingram: That is why we will address the matter in the primary legislation.

Ken Macintosh: I welcome the minister's comment about getting rid of lawyers. However, I find it interesting how we can all change our positions. For example, I am not entirely sure that the minister held the same view when, during the passage of the 2004 act, he moved amendments on legal aid. I suppose that we have all moved with time, and I welcome the change.

The minister has said that there are already a number of duties on local authorities, but a number of witnesses are seeking a new duty on authorities to provide support and advocacy, outwith the tribunal system, to all those who require additional support needs. Is the minister sympathetic to that suggestion?

11:30

Adam Ingram: I might be sympathetic to the suggestion but, given that we are talking about 12,000 people, it would be extremely burdensome and costly. As Ken Macintosh will well remember, we had this debate during the passage of the 2004 act and came to the view that we simply could not afford such a right.

Ken Macintosh: Will the short-term CSP working group complete its work before the bill completes its passage through Parliament?

Adam Ingram: That is the intention. We want to feed in any outputs, outcomes and recommendations into the further stages of the bill's passage or into the revision of the code of practice.

The Convener: That concludes our questions to the minister. I thank him for his attendance. The committee looks forward to receiving the further written information that he has indicated he will supply to us and, indeed, looks forward to seeing him at stage 2—if, of course, the Parliament agrees the bill at stage 1. I do not want to pre-empt anything.

I suspend the meeting for five minutes for a short comfort break.

11:31

Meeting suspended.

11:39

On resuming—

Subordinate Legislation

Further and Higher Education (Scotland) Act 1992 Modification Order 2009 (Draft)

The Convener: For item 3 we are joined by Fiona Hyslop, the Cabinet Secretary for Education and Lifelong Learning, who is accompanied by George Reid, team leader, and Anne Black, policy official, further education strategy and college-specific issues, and school-college review team—I like the title. I invite the cabinet secretary to make a statement on the order.

The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop): Good morning. I am pleased to have the opportunity to outline why the Government seeks the committee's support for the order. If Parliament approves the order, it will represent the last brick in the wall in our measures, which have attracted welcome cross-party support in the past, to protect the charitable status of Scotland's colleges of further education.

I believe that our colleges and their interests are very much worth protecting. Colleges make a huge contribution in many areas. They deliver key employment skills to keep businesses competitive, they strongly promote access and inclusion, and they encourage many people into learning, often young and disengaged people. Colleges have already started to reposition themselves to help people to cope with the impact of the economic downturn. Overall, they deliver considerable public benefit. We share the view of the Office of the Scottish Charity Regulator that colleges have an inherently charitable purpose and therefore do not believe that it is right that their charitable status should be threatened.

All incorporated Scottish further education colleges are charities and, as such, must meet the charity test that is contained in the Charities and Trustee Investment (Scotland) Act 2005. The Parliament has already made legislative changes to help colleges to meet the charity test. Under the previous Administration, Parliament repealed ministers' power to give a direction to a college's board of management. Last year, Parliament agreed to exempt colleges from the requirement to operate completely independently of ministers. This third and final step concerns the need to deal with a ministerial power that is no longer used but which nevertheless requires to be addressed because it has never been repealed. The power in section 18 of the Further and Higher Education (Scotland) Act 1992 allows ministers, where a college sells an asset, to require the proceeds or .such part of them as determined by ministers to be paid to the Government. There are no conditions on what the proceeds should then be used for. OSCR has taken the view that they could theoretically be used for a non-charitable purpose.

Nowadays, all financial issues affecting colleges are a matter for the Scottish Further and Higher Education Funding Council and the college concerned, rather than for ministers. The policy of successive Administrations has been that those issues are best dealt with by the professionalism and expertise of the funding council, free from political interference. However, ministers' section 18 power has remained on the statute book and OSCR has highlighted it as being inconsistent with an important principle of charity law, namely that the assets of a charity should not be used for a non-charitable purpose. The intention of the order is to make a change that will satisfy OSCR on that point. Given that it is now the funding council's role to oversee the funding of the college sector, it is difficult to envisage any circumstances in which ministers would now directly intervene in the financial affairs of an individual college. However, if ministers ever did use that power, the order requires that the proceeds of the disposal must in future be applied for charitable purposes. Specifically, the order provides that the proceeds must be paid to an educational charity named by ministers rather than directly to ministers.

I will explain why we are not asking the Parliament simply to repeal the offending ministerial power, even though there is little prospect of its ever being used. The Government has made a commitment to undertake, along with stakeholders in the college sector, a comprehensive review of all the powers that ministers hold over colleges. We recognise that a number of stakeholders, such as the Scottish Trades Union Congress and the National Union of Students Scotland, attach significant importance to the existence of ministerial powers over colleges as a means of ensuring the democratic accountability of colleges. Those are legitimate views that we feel the review should consider. We believe that it would therefore be wrong to repeal the ministerial power in question in advance of that review.

It is important to note that colleges will still be subject to all other requirements of charity law. If they do not conform to those requirements—for example, the standard of conduct required of charity trustees—they will, like any other charity, be liable to lose their charitable status. There is therefore no blank cheque for colleges.

Finally, I point out that there are four publicly funded colleges that are not incorporated under the 1992 act: Orkney College, Shetland College, Newbattle Abbey College and Sabhal Mòr Ostaig.

Those colleges are not caught by the problem identified by OSCR and will not be affected by the order.

The order is important as it addresses the final uncertainty that incorporated colleges face about their continuing charitable status following OSCR's ruling on ministerial powers. I commend the order to the committee and am happy to take any questions.

The Convener: Thank you for that detailed statement. Members now have an opportunity to ask questions on the order.

11:45

Claire Baker: Like other members, I very much welcome the order and the fact that a solution has been found to ensure that colleges retain their charitable status. As you have outlined, any payment would be made to an educational charity named by Scottish ministers. You suggested that it is unlikely that we would find ourselves in that situation, so this question is perhaps not very relevant, but do you have any examples of educational charities that might benefit from such a payment or of any other way in which you might direct the money? I appreciate that you have probably not thought through to that stage and that it would require an unlikely set of circumstances.

Fiona Hyslop: The power has not been used since devolution and it is unlikely that it would be used now, because we would expect the funding council to deal with such matters. The order says that any resources would be used for educational benefit—for example, an educational charity or another college—or put back into the funding council's pot for supporting colleges. That would be the most logical conclusion. We can reassure the committee that Cabinet colleagues would not necessarily want the proceeds to be used for other purposes. That is the sensible way forward.

Claire Baker: That is helpful.

The Convener: If there are no other questions, we will move to the formal debate on the motion.

Motion moved,

That the Education, Lifelong Learning and Culture Committee recommends that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2009 (SSI 2009/draft) be approved.—[*Fiona Hyslop.*]

Kenneth Gibson: Agreed.

The Convener: You have perhaps been a little premature, Mr Gibson.

Fiona Hyslop: What enthusiasm.

The Convener: Indeed. We are all enthusiastic about this. However, I am sure that the committee's enthusiasm in no way matches that of Mr Howard MacKenzie, who is sitting in the gallery watching the cabinet secretary, just in case the matter is not concluded to his satisfaction.

We now have up to 90 minutes to debate the order. I welcome the Government's commitment to address the issue. As I am sure the cabinet secretary is well aware, it is an issue that colleges raised during the progress of the Charities and Trustee Investment (Scotland) Bill in the previous session of Parliament. I was the convener of the committee that considered that bill, so I am particularly pleased that the Government has recognised those concerns. We will ensure that the measures introduced by the Government today protect not only the colleges but the integrity of the charities legislation.

Minister, do you have anything further to add?

Fiona Hyslop: No, thank you.

Motion agreed to.

The Convener: I thank the minister and her officials for their attendance. Mr MacKenzie is waving in celebration behind you. I am sure that he will write to you and tell you how pleased he is with you on this occasion.

Petition

Autism Spectrum Disorder (PE1213)

11:49

The Convener: The next item is the committee's consideration of petition PE1213, on autism spectrum disorder. The clerks have circulated a paper on the petition, along with a copy of the petition. As you will see, it is suggested that the committee defer further consideration of the petition until it has concluded its work on the Education (Additional Support for Learning) (Scotland) Bill, as that covers some of the points that the petition raises. I would be keen to receive the committee's views on that suggestion, and any other views that members have on the petition.

Christina McKelvie: I am minded to agree with the deferment. Some of the issues that are contained in the petition, such as representation at appeal panels, are ones that we have discussed this morning. Hopefully, some of them will be resolved in the passage of the bill.

Kenneth Gibson: I agree with that recommendation. However, I have some concerns about the petition, which seems to use the words "I believe" quite a lot. I am not aware of any evidence being presented for the comments that the petition makes. Some of the comments are quite prejudicial against the headmaster of the school that the petitioner refers to, although neither the headmaster nor the school is named. There does not appear to be any justification for the comments. We should ask the petitioner for evidence for her comments and allegations, because they are quite serious.

The Convener: It is fair to say that all committee members agree that we should defer the petition. I am sure that we will give full consideration to Mr Gibson's comments when we deliberate on the petition again, and when we reach a conclusion about what further action we should take.

Ken Macintosh: We should write to the petitioner to give them the chance to present us with the evidence.

The Convener: It might be best for us to write to the petitioner to explain what happened at committee today, just in case they have not been able to watch the meeting on the internet or do not read the *Official Report*. I am sure that the petitioner will want to provide further information.

11:52

Meeting continued in private until 12:10.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Monday 2 February 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by RR Donnelley