EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 25 March 2009

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
† 10th 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:

Adam Ingram (Minister for Children and Early Years)

CLERK TO THE COMMITTEE

Eugene Windsor

ASSISTANT CLERK

Linda Smith

SENIOR ASSISTANT CLERK

Nick Hawthorne

LOCATION

Committee Room 1

† 9th Meeting 2009, Session 3—held in private.

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 25 March 2009

[THE CONVENER *opened the meeting at 10:02*]

Education (Additional Support for Learning) (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): I open the 10th meeting of the Education, Lifelong Learning and Culture Committee and remind everyone present that BlackBerrys and mobile phones should be switched off for the duration of the meeting.

The first and only item on the agenda is the committee's consideration of the Education (Additional Support for Learning) (Scotland) Bill at stage 2. Members should have in front of them a copy of the bill, the marshalled list and the groupings. I welcome to the meeting Adam Ingram, the Minister for Children and Early Years.

Section 1—Placing requests

The Convener: Amendment 17, in the name of Ken Macintosh, is grouped with amendment 18. I invite Mr Macintosh to move amendment 17 and speak to amendment 18.

Ken Macintosh (Eastwood) (Lab): These amendments are designed to ensure that, when a child with a co-ordinated support plan transfers to another authority, the new host authority reviews that CSP in a timely and appropriate manner. It is already the case under the bill that a plan should be reviewed as soon as practicable, but amendment 17 would set an absolute time limit of 90 days. Amendment 18 would place a duty on the host authority to consult those in the home authority who were involved in drawing up the initial CSP.

The amendments have been suggested by Independent Special Education Advice (Scotland) and, as with other suggestions from that organisation, are informed by its experience.

The bill currently addresses the problem of delays in reviewing CSPs when children transfer from one authority to another by stating that a CSP should be assessed

"as soon as practicable after the date of transfer."

In ISEA's experience, that has proved problematic. It states:

"For example, in one case we have a family that has moved from one of the islands to a mainland town. The co-ordinated support plan was completed to the parent's satisfaction. The receiving authority is presently reviewing it, but in the interim the authority is not providing the child with the support currently provided therein. The authority has refused our suggestion to contact the professionals who have worked with the child to expedite matters. The time delay is resulting in the child not receiving the support required."

ISEA therefore suggests that the phrase, "as soon as practicable" remain unchanged but that an extra timescale, or backstop, be added.

In addition, for the reasons described in the example that I gave, a further amendment should be included placing a duty on the receiving authority to consult, as far as practicable, the transferring authority and the professionals previously involved with the preparation of the co-ordinated support plan to ensure that the review is completed within the legislative timescale.

I move amendment 17.

The Convener: I invite other members to indicate whether they wish to say anything.

As no other member wishes to speak, I invite the minister to respond.

The Minister for Children and Early Years (Adam Ingram): The bill provides that, following a successful out-of-area placing request, the new host authority is required to carry out a review of any co-ordinated support plan as soon as practicable after the date of transfer of the CSP from the home authority to the host authority. As Mr Macintosh said, amendment 17 seeks to set a long-stop date for reviewing any CSP at no later than 90 days after the date of transfer.

Although I completely agree with Ken Macintosh that a timescale is required for such a review, I consider that the most appropriate place for such a timescale is the co-ordinated support plans regulations rather than the bill. Those regulations currently prescribe all the time limits and exceptions to such limits for the preparation and review of a CSP, arrangements for keeping the plan, arrangements regarding the transfer of a plan to another authority following a change of residential address, and arrangements for the discontinuance, retention and destruction of a CSP.

As a result, and with a view to keeping all the relevant time limits in the one place, I am sure that the committee will agree that the CSP regulations are the most appropriate place to set a long-stop date by which the review of a CSP must be completed. I take the opportunity to assure Ken Macintosh that the CSP regulations will be amended in due course.

It is proposed that, following a successful out-of-area placing request, when a child or young person has a CSP, the CSP should be transferred to the new host authority. The timescale for the transfer of the CSP from the home authority to the host authority will be four weeks from the date when the child starts at the new school or, if the child has already started school in the new host authority, four weeks from the date on which the home authority becomes aware of the change. On receipt of the CSP, the new authority must treat the plan as if it had been prepared by the new authority.

It is proposed that the CSP regulations will provide that, when a child or young person moves from a school in one authority area to a school in another authority area as a result of a successful out-of-area placing request, the CSP must be transferred. It is also proposed that, on receipt of the transferred CSP, the new host authority must complete the required review of the CSP within 12 weeks, with a possible extension up to 20 weeks. Those are the time limits currently set for the reviews of plans, and there is merit in having a consistent approach.

I hope that the committee will be assured that any amendment such as those to the CSP regulations will be consulted on fully and that the views of stakeholders will be considered carefully before we lay any Scottish statutory instrument in Parliament. I therefore ask Ken Macintosh to seek to withdraw amendment 17.

The Convener: Mr Macintosh, you now have the opportunity to wind up the debate on this group of amendments. In so doing, will you also indicate whether you wish to press amendment 17?

Ken Macintosh: I am not sure whether it is possible to hear the views of committee members at this stage. I understand what the minister is suggesting—in fact, the explanatory notes to the bill make it clear that a timescale would be brought forward in regulations—but what will that timescale be? It has been clarified that a review would require to be completed within 12 weeks, with a possible extension up to 20 weeks.

There is another question. Should the timeframe be in the bill or the regulations? The minister suggests that all the timescales are in the regulations, but it is clear that there are quite a lot of regulations—

The Convener: I will remind members of parliamentary procedure. It is perhaps some time since some of us considered technical amendments at stage 2 of a bill, and I recognise that there are new MSPs who have not had the privilege or opportunity of engaging in stage 2 proceedings.

The procedures are clear. The member who is moving an amendment should remember that they have the opportunity to question the minister when they are doing so, not in winding up. The minister will not have another opportunity to respond. Once a member has spoken to the amendment that they are moving, other committee members should take part in the debate if they think that doing so is appropriate so that the committee will have a sense of whether they support the amendments in the group.

I remind members of the procedure, as it is some time since we considered a bill at stage 2.

Ken Macintosh: I appreciate that, convener, which is why I started my comments by suggesting that members had possibly missed the opportunity to contribute to the debate and that you could perhaps show discretion if members felt motivated to speak now.

My questions to the minister were actually rhetorical rather than real. I think that I answered them, but I was looking for a nod of the head.

The deadline for a review of a CSP would be 12 weeks, with a possible maximum of 20 weeks. As I have said, the committee must consider whether the timescale should be in the bill and whether the 90 days for a review that I have suggested or the 12 to 20 weeks that the minister has suggested is an appropriate timeframe.

As the minister suggested, many of the timescales are laid out in the regulations, but timescales have also been established in statute—I refer in particular to the Education (Additional Support for Learning) (Scotland) Act 2004, which includes the provision that a CSP must be reviewed after 12 months. That is one reason why it is worth considering whether a timescale should be included in the bill.

There is a slight problem with my amendment 17. Although I have suggested a timescale of 90 days, most CSPs are, as the minister suggested, transferred within four weeks. I think that we would want to encourage most local authorities to carry out a review as speedily as that. My worry is that a timescale of 90 days might create the opportunity for authorities to take longer to review CSPs, so I am minded to seek to withdraw amendment 17.

I am quite keen on amendment 18. I am not sure whether it would work without amendment 17 being agreed to, but I think that it would. I will refresh members' memories. Amendment 18 does not refer to the timeframe; rather, it would ensure that the new host authority contacted the home authority and those initially involved with the CSP to get their views so as not to—

The Convener: For your information, Mr Macintosh, amendment 18 could stand alone.

Ken Macintosh: That is good. I am therefore minded to seek to withdraw amendment 17 with a view to possibly revisiting the matter at stage 3 on the basis that my suggestion of a 90-day timeframe and the minister's suggestion of a 12-week timeframe are on the long side. Twenty weeks is a totally unacceptable timeframe in a child's life—half of the school term would be gone. Something closer to four weeks would be more appropriate.

Amendment 17, by agreement, withdrawn.

Amendment 18 moved—[Ken Macintosh].

10:15

Adam Ingram: Convener, may I clarify that I did not speak to amendment 18—

The Convener: Minister, I know that it is some time since we considered a bill at stage 2, but I made clear that the procedure was for Mr Macintosh to move amendment 17 and speak to all the amendments in the group. In responding to him, you should have spoken not only to amendment 17 but to amendment 18. It is incumbent on your officials, who have experience of the process, to be aware of parliamentary procedure—

Adam Ingram: To be fair to my officials, the fault was mine—

The Convener: Minister, I remind you that it is not particularly wise to cut across the convener of a parliamentary committee and speak when you have not been asked to speak. On this occasion, I am willing to allow you to comment on amendment 18, but I ask everyone to listen more carefully in future.

Adam Ingram: Thank you, convener. I just wanted to point out that the fault was mine and not that of my officials.

The 2004 act places duties on education authorities to seek and take account of advice, information and views from other sources, including other agencies and the child or young person and their parents, when they consider key questions in relation to a pupil's additional support needs or CSP. The 2004 act makes it clear that that should happen when the education authority is reviewing the CSP.

It is important to remember that the people whom the education authority considers it appropriate to consult will depend on the individual child or young person's needs and circumstances. The authority might well consult the home authority, and the supporting children's learning code of practice recognises that it might be necessary to seek advice and information from elsewhere in the public sector, for example from health professionals or a voluntary organisation that has supported the child.

Amendment 18 would be overly bureaucratic and might cause the new education authority to look back on what has happened in the past rather than focus on a positive future for the child. Let us not forget that a child will be being educated in the new authority because there has been a successful out-of-authority placing request. The new authority represents a choice of destination, which is why the child or young person is there. On that basis, I ask Ken Macintosh to withdraw amendment 18.

The Convener: This is quite irregular but, given that the minister has had an opportunity to speak to amendment 18, I think that Mr Macintosh should have the opportunity to respond.

Ken Macintosh: I thank the convener for allowing the minister to comment on amendment 18, and I thank the minister for his comments. I appreciate that local authorities have the power to take account of all views, but amendment 18 would place a duty on host authorities to take account of the home authority's views. It is difficult to imagine a situation in which the host authority would not want to consult people who were involved in the case, but it is clear that that has happened in practice.

I will be honest and admit that amendment 18 is probably not the most important amendment to the bill that we will consider—although it might be the most important amendment that we consider today. I trust ISEA to have formed its view in the light of experience. Many of the amendments that we will consider today are aimed at ensuring the successful implementation of legislation whose principles we all agree on. The duty that amendment 18 would place on authorities is not onerous and overly bureaucratic, and it is difficult to imagine a situation in which it would not be in a host authority's interests to hear from professionals in the home authority. I press amendment 18.

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Campbell, Aileen (South of Scotland) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 18 agreed to.

The Convener: We move on to group 2. Amendment 1, in the name of the minister, is grouped with amendments 2 to 4.

Adam Ingram: I carefully considered all the amendments that were suggested in evidence to the committee, and I acknowledge that some suggestions will help to improve and strengthen the legislation.

One suggestion was that the Additional Support Needs Tribunals for Scotland should be able to consider all placing request appeals in respect of a place at a special school. The collective purpose of amendments 1 to 4 is therefore to allow all placing request appeals in respect of a place in a special school to be heard by the tribunal. That will include placing request appeals that concern places in public, independent and grant-aided special schools in Scotland, as well as places in special schools in England, Wales or Northern Ireland. An appeal regarding the refusal of such a placing request can be made only once in a 12-month period. The tribunal will have the power to confirm or overturn the authority's decision and specify when, as a result of a successful placing request, the child should commence at the specified school.

Amendments 1 to 4 will enable parties to have their special school placing request appeals determined by a specialist decision-making body that has expertise in additional support needs rather than by the education appeal committee or a sheriff. To date, all placing request appeals with which the tribunal has dealt have related to special schools. I share the opinion of the president of the tribunal that the complex routes of appeal for parents could be clarified by the establishment of a single, clear appeal route, whereby if a placing request to a special school is refused the decision is referred to the tribunal, which is composed of members who have expertise in dealing with such issues.

I move amendment 1.

Ken Macintosh: As the minister said, the issue emerged during the committee's consideration. We kept our options open in our stage 1 report, but I think that the solution that the minister has suggested, which is that appeals on applications to special schools should go to the tribunal, is the right one.

I am sure that the minister is aware that the approach is a compromise and that to some extent we are making more complex a process that is already complex. The avenues that are open to the parent of a child with additional support needs are now many, and there are many ways to appeal a decision: an appeals committee, a tribunal or a sheriff court. We should bear in mind the fact that it is a complex matter and, although we have reached the best compromise, we may need to put more effort into the successful implementation of the 2004 act and the reforms to it. Even then, we may still need to review the bill again in a couple of years.

The Convener: No other members wish to speak, so I invite the minister to wind up the debate.

Adam Ingram: I am happy to leave the amendment to the discretion of committee members.

Amendment 1 agreed to.

Amendments 2 to 4 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 5, in the name of the minister, is in a group on its own.

Adam Ingram: Amendment 5 will extend the tribunal's power when considering a placing request appeal to enable it to specify a timescale for placing the child in the school that is specified in the request. The change is necessary to ensure the avoidance of unacceptable and damaging delays in school education that can occur if there is a delay between the tribunal issuing its decision on the placing request and the education authority placing the child in the specified school. The amendment will deliver the certainty that parents seek once such a decision is made.

It is anticipated that the commencement date of the placement would, as in any tribunal decision, be subject to parties being heard on the issue at the hearing. If the authority failed to keep to the specified timescale, the parent could refer a section 70 complaint to the Scottish ministers. Alternatively, the parent could request that the Scottish ministers issue a direction under section 27 of the 2004 act to direct the authority to comply with its duties under the act.

As the committee is aware, the extension of parental rights is a key motivation behind the bill. The amendment will provide certainty to parents as to when the placement at the specified school will start and will help to lessen any feelings of anxiety and powerlessness that they have when in dispute with an education authority.

I move amendment 5.

Ken Macintosh: The amendment addresses an issue that emerged for the committee. For the reasons that the minister stated, the timeframe for implementing tribunal decisions is of great anxiety to parents. As it happens, the amendment that the minister has produced is identical to the proposal

that the Govan Law Centre drew up, so I am happy to support it.

Amendment 5 agreed to.

10:30

The Convener: Amendment 6, in the name of the minister, is in a group on its own.

Adam Ingram: The bill as introduced amends the 2004 act to enable a tribunal to consider any placing request decision when a co-ordinated support plan has been prepared or is being considered at any time before final determination by an education appeal committee or sheriff.

That could clearly result in cases in which a placing request appeal is transferred from the sheriff to the tribunal because a CSP is being considered. If the tribunal then decides that the child or young person does not require a CSP after all, the tribunal has the discretion to transfer the placing request appeal back to the sheriff for consideration. However, it is important to note that the tribunal need not exercise its discretion and could make a decision on the placing request appeal regardless of the fact that the child or young person does not require a CSP.

Although it is intended that the tribunal should consider all placing request appeals transferred to it from the sheriff, that could be seen as a perverse incentive for parents to request a CSP in order for the tribunal to consider any placing request appeal. Therefore, the tribunal should have the discretion to transfer the case back to the sheriff. Although it is highly unlikely that a placing request appeal would transfer backward and forward between the tribunal and an education appeal committee or sheriff, amendment 6 is necessary to ensure that all eventualities can be dealt with appropriately.

I move amendment 6.

The Convener: No other member has indicated that they want to speak. It appears that the committee is content with your description of the purpose of and reason for amendment 6.

Amendment 6 agreed to.

Section 1, as amended, agreed to.

Sections 2 to 5 agreed to.

After section 5

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 7A, 7B and 9.

Adam Ingram: Amendment 7 relates to the definition of additional support. Our policy intention is very clear and reflects what is set out in "Supporting Children's Learning: Code of Practice". The purpose of additional support is to allow children and young people to benefit from school education. The nature of that support should not be limited to support that is offered in a classroom or school environment, and it can involve not only educational but multi-agency services such as health, social work, voluntary agency services and so on.

However, as the committee noted in its stage 1 report, the decision in the recent case of SC v City of Edinburgh Council cast doubt on that interpretation of the meaning of "additional support" in the 2004 act by suggesting that additional support is limited to educational support that is offered in a teaching environment.

I am keen to allay any concerns surrounding this issue. Therefore, the purpose of amendment 7 is to make it clear that additional support may take the form of non-educational activity and need not take place in a classroom or teaching environment. That is reflected in the code of practice, which states that additional support can be any form of support that enables the child to benefit from school education, regardless of whether it is provided by other agencies and of where such support physically takes place.

On amendments 7A and 7B, it might be useful if I explain that the 2004 act requires an education authority to provide additional support to certain disabled children in its area who are under three years old. The duty applies where such children have been brought to the attention of the education authority by a national health service board as having, or as appearing to have, additional support needs arising from a disability within the meaning of the Disability Discrimination Act 1995 and the education authority has established that they have such needs, for example following referral from the newborn hearing screening programme.

Once the health board has brought the child to the education authority's attention, the authority may establish whether the child has additional support needs arising from a disability under its arrangements for identifying and providing for children with additional support needs. If the authority then determines that the child has additional support needs arising from a disability, it must provide such educational support as is appropriate for the child.

Where a child is identified as requiring additional support, an education authority is required, prior to the child beginning pre-school education, to seek and take account of relevant advice and information from other agencies no less than six months prior to the child beginning pre-school.

I do not believe that it is appropriate to place education authorities under a statutory duty to

make provision for disabled children under three in the same way as they would under the Scottish Government amendment of the definition of additional support for children over that age. Given that health and social services, rather than education authorities, will be responsible for those children, it simply does not make sense for a similar definition of additional support to apply to this group of children as that which is generally applied for children in pre-school onwards. After all, the education authority's duty to such children is different. For children under three, the education authority's responsibility is to put in place arrangements that pave the way for a disabled child's educational experience. For children who are over three, the education authority is responsible for delivering an educational experience that helps the child to fulfil his or her educational potential.

Amendment 9 alters the bill's long title to reflect the fact that, if agreed by Parliament, the bill will cover two new topics: the definition of additional support and the ability of a parent or young person to request a specific assessment at any time.

Accordingly, I move amendment 7 and ask Margaret Smith not to move amendments 7A and 7B.

Margaret Smith (Edinburgh West) (LD): This legislation has been deemed necessary partly to restate some of the key messages of the Education (Additional Support for Learning) (Scotland) Act 2004 in the wake of various court judgments, one of which, as the minister has pointed out, was Lord Wheatley's decision. The committee was right to be concerned about that judgment, as it struck at one of the central features of the 2004 act—the definition of additional support needs.

Lord Wheatley's judgment restricted additional support to educational support offered in a teaching environment. However, as we know, a range of support is necessary to assist some children in accessing education. The code of practice, for example, lists a number of interventions that children might need, ranging from social work support to remain drug free to psychiatric support.

I very much welcome amendment 7 and the minister's willingness to address the issue. My amendments 7A and 7B are based on the suggestion that was made in the joint submission from Govan Law Centre, Scotland's Commissioner for Children and Young People, Capability Scotland and others that the bill's provisions should cover not only section 1(3)(a) of the 2004 act, as the minister's amendments do, but section 1(3)(b), which relates to early years provision, to ensure that they apply to children who are not based in school or who have a prescribed pre-school place. Those children were included in the original definition of additional support needs for a purpose.

As the 2004 act stands, additional support is restricted to educational provision—or, as the act states,

"such educational provision as is appropriate in the circumstances".

I find that particularly worrying, given that, as a result of Lord Wheatley's decision, that provision might be interpreted as referring only to support in a teaching environment and given that children under three are least likely to receive support in such an environment. It might well mean that very young children will miss out on the support that they need.

I remain concerned that by accepting amendment 7 on its own we could be leaving young children in their crucial early years at a disadvantage. We might, for example, jeopardise early communication interventions by speech and language therapists and diminish the systems of preparation for pre-school and school education for children with special and additional needs.

As a result, I urge the committee to support not only amendment 7, in the name of the minister, but amendments 7A and 7B to ensure that the provisions are as comprehensive as possible.

I move amendment 7A.

Elizabeth Smith (Mid Scotland and Fife) (Con): Convener, can you clarify for me whether amendment 7B can stand alongside amendment 7 if amendment 7A is not agreed to?

The Convener: It looks like it probably can.

Elizabeth Smith: So the answer is yes.

The Convener: Yes.

Elizabeth Smith: In that case, I support amendments 7 and 7B, because a very important distinction has been made between educational provision and provision that extends to other aspects of care, notably health care and social work. If the bill has one message, especially in the light of Lord Wheatley's ruling, it is the need to provide a holistic and fully co-ordinated care package to ensure that the child's best interests are served both inside and outside the classroom. That is why the narrow definition of educational provision in the 2004 act is unsatisfactory. I hear what the minister says about amendment 7A, but I would like to have more discussion on the matter.

Ken Macintosh: I am happy to support all the amendments in the group. There is clear agreement about and consensus on the need for the bill to address the ramifications of Lord

Wheatley's judgment and, to an extent, all the amendments do exactly that.

Although I understand the minister's reservations about amendment 7A, I prefer its more comprehensive approach to the issue. Moreover, by explicitly extending the definition of additional support needs to children from nought to three, amendment 7B is very important. After all, the issue will come up again in a number of amendments—if we ever get a chance to move them. Indeed, it came up in discussions during the passage of the 2004 act.

The minister said that local authorities have the power to address the additional support needs of anyone of pre-school age. As he made clear, however, in practice they do so only when health boards bring such children to the attention of education authorities. Children tend to be dealt with only after that statutory reference to health boards.

I find that situation unsatisfactory; it was certainly not the intention behind the 2004 act, which sought to enable health boards to use their functions to help children. The reference was not meant to get in the way of addressing the additional support needs of children of that age. Certainly there are children—for example, those with a sensory impairment—whose needs are often recognised during that vital period of learning.

Indeed, as everything that we have been told about a child's development shows, nought to three is a crucial period in a child's learning. Given that a range of Government policies and measures has concentrated on earlier and earlier intervention, I find it slightly odd that the minister has not recognised that that shift in public policy would also benefit the provisions of the 2004 act.

For those reasons, I support all the amendments in the group.

10:45

Adam Ingram: I clarify that amendment 7A is a technical amendment to allow amendment 7B to be inserted properly. Amendment 7B represents the guts of the issue.

I ask members whether it is reasonable to expect an education authority to take overarching responsibility for additional support needs provision for children from nought to three when health services have that responsibility—for example, the health service is responsible for providing speech and language therapy support for children in that age range.

Children under three are not in a teaching environment, so asking education authorities to take on the overarching responsibility for their support is unreasonable. It also flies in the face of the work that we are doing under the early years framework to encourage all agencies to work together in teams of professionals to deal with early years issues, which we all know and accept is vital to level the playing field in child development for such children.

As I said, before children are three, the education authorities' responsibility is to ensure that those children can be properly accommodated in pre-school and school provision and that all the arrangements are in place well in advance of their entering pre-school, so that those children can take full advantage of the educational experience that will be offered to them.

I strongly suggest that members weigh up where the balance of responsibilities should lie, pre-three. It would be unfair and unreasonable to place such a responsibility on education authorities when other agencies must be fully engaged and when some, such as health services, should be taking the lead.

Margaret Smith: There is no difference among any of us on wanting under-threes and particularly disabled children in that age group to be given the support that they need to ensure that they have everything that they can have in their favour by the time that they enter pre-school and school settings.

I remain concerned that organisations that represent the parents of such children want an amendment that is as comprehensive as possible. The minister says that the issue comes down to where the responsibility lies. He says that if amendment 7B were agreed to, the responsibility for all sorts of support would lie with the education authority. That is clearly not the intent behind my amendment, which was to ensure that the appropriate types of educational provision were the education authority's responsibility. That is what the 2004 act says, but the Wheatley judgment challenged that by saying that education provision means only that which is provided in a teaching environment.

I am minded to withdraw amendment 7A, if committee colleagues are happy to support that, and to seek further discussions with organisations and the minister, to ensure that we do not leave ourselves in a default situation in which nobody takes responsibility.

Amendment 7A, by agreement, withdrawn.

The Convener: Amendment 7B, in the name of Margaret Smith, was debated with amendment 7.

Margaret Smith: I wish to withdraw amendment 7B on the same basis as amendment 7A.

The Convener: You cannot seek leave to withdraw an amendment that you have not moved.

Are you indicating a wish not to move amendment 7B?

Margaret Smith: Can I move it, and then withdraw it?

The Convener: No. You just do not move it.

Margaret Smith: Okay.

Amendment 7B not moved.

The Convener: I can see that we will all have to have lessons on parliamentary procedure—a refresher course for some of us.

The minister must now indicate whether he wishes to press or withdraw amendment 7.

Adam Ingram: I will press amendment 7.

Amendment 7 agreed to.

The Convener: That brings to a close our stage 2 consideration of amendments for today. The next group of amendments that is due for consideration includes amendment 23, which, if agreed to, would require a financial resolution. Under rule 9.12.6 of standing orders, no proceedings can be taken on such an amendment unless the Parliament has agreed to a motion for such a financial resolution. Does the Scottish Government intend to lodge a financial resolution for the bill, to enable amendments that have been lodged to be debated?

Adam Ingram: No; it is not our intention to lodge a financial resolution. As you are aware, the Presiding Officer indicated that no financial resolution was required when the bill was introduced.

Just to clarify matters, the purpose of the bill is to address flaws in the 2004 act that have become apparent with its implementation over the past two or three years. I think that I made it perfectly plain from the outset that I intended neither to tamper with the ethos of the legislation, nor to extend the scope of the bill and the associated financial envelope in any significant way. It was on that basis that the bill's principles were agreed to at stage 1, so I do not think that it would be in any way appropriate to open up the bill to amendments that would shoehorn millions of extra pounds into the debate or place such obligations on the Scottish Government or the education authorities.

Given that explanation, I feel entirely justified in not acceding to any demands to lodge a financial resolution.

The Convener: Thank you for those comments, minister. Do committee members have anything to say on the matter?

Kenneth Gibson (Cunninghame North) (SNP): Sorry, it is not on this matter. It is just that I understand that amendment 9 has not been moved yet.

The Convener: It does not have to be moved. We will get you on the refresher course, too.

Ken Macintosh: I am very disappointed that we have come to such a position in our proceedings. Some issues of timing are perhaps not entirely in the minister's control, but it is very unsatisfactory that we find ourselves where we are.

Some of the amendments were not printed until a late stage, but the intention behind them was signalled at quite an early stage—it was certainly indicated in the committee report and had been circulated widely in the form of a briefing, if not in the form of written amendments. The minister talked about some of the amendments costing millions—I do not accept that. When the Education (Additional Support for Learning) (Scotland) Act 2004 was introduced, it was a funded provision and local authorities were given substantial sums to implement it. It is debatable whether all those sums have been spent on its implementation.

All the amendments are clearly within the scope of the bill and they are practical amendments. The committee expressed its concern that the bill does not represent a wholesale review. We accepted that the ethos and principles of the 2004 act were to be protected and valued, and that the bill was a way of improving its implementation and addressing some outstanding concerns. For the minister to come to the committee at this stage and suggest, on the ground that there is no financial resolution, that we should not even be allowed to debate some of the amendments, I find not only unsatisfactory but almost anti-democratic. The effect of what the minister is saying is that we cannot have a cross-party parliamentary discussion, when so far we have had an entirely consensual committee debate on the matter.

I cannot imagine any previous Administration not responding to the situation by automatically introducing a financial resolution and debating the provisions as they stand on their merits; I am surprised that this Administration will not do that. There is no suggestion that any member of the committee wishes to act in a financially irresponsible manner. If we look at the work that was done by the Education Committee in the previous session of Parliament, it would have been equally difficult to accuse the Opposition of being entirely financially irresponsible. I do not think that the accusation is remotely justified in this case.

I urge the minister to have a rethink. To not allow debate to take place on all the issues that have been raised in the committee report and by everyone who has given evidence to the committee would be to undermine the bill in its

entirety. It would send out entirely the wrong signal, because it would indicate that we are willing to rectify a couple of minor points but not to address the real concerns and anxieties of parents. It would say to parents, "We're not on your side. We're on the side of the local authorities and the purse keepers, who are frightened by some of the demands." They should not be anxious or frightened—they should be more sympathetic to the needs of parents.

Margaret Smith: I echo Ken Macintosh's comments. I am disappointed by what the minister said; in effect, it closes down parliamentary discussion and decision making on issues that were raised with us in our evidence sessions.

The minister is well aware of a couple of the issues that I am raising in amendments. I had the courtesy to discuss them with him well in advance, so he had knowledge of the issues that I was concerned about at stage 1 in the committee, during the stage 1 debate in the Parliament and last week, well before the unfortunate set of circumstances that meant that the amendments came out late. There is no question but that the minister was made aware at various points along the way of some of the issues that I have raised in my amendments, which I think might be caught in this way.

My amendments are responses to evidence that we received on issues that relate to information being given to parents. That was a massive issue that was raised with the committee consistently throughout our evidence-taking sessions, which we undertook in a very good and professional cross-party manner. I am not convinced, for example, that money that is spent on giving out information to parents or on consultation with parents is necessarily something that is all one way.

Some of the evidence that we heard suggested that, if parents had had more information and had been involved in a more proactive way at an earlier stage, some cases might never have ended up at tribunals, sheriff courts and so on. Although I accept that costs are associated with some of the proposals that I, as a member of the Parliament, have a right to put forward for discussion by those who heard the evidence, there will also be savings in some cases. None of us would seek to incur extra expenditure without having serious discussion and thought about the impact and purpose of that expenditure.

At the end of the day, it is not a question of shoehorning something into the bill. Committee members have lodged many of their amendments in response to evidence that has been given to the committee. It is 100 per cent anti-democratic if a minority Government has the right, by using a parliamentary device, to stop discussion of issues that have been raised in amendments. That does no service to the committee, to the evidence that we have heard or to the minister and the Government.

11:00

Elizabeth Smith: I associate myself with the comments of Mr Macintosh and Ms Smith.

The Convener: A number of members of the committee have made clear their unhappiness about the situation in which we find ourselves. The committee has received representations from a number of agencies that, throughout the bill process, have welcomed moves that the Government has made but think that the legislation could be improved. It would be nice for us to have a full and frank debate on those issues. However, under rule 9.12.6, if the Government chooses not to lodge a motion for a financial resolution, such a debate cannot take place. I urge the Government to think about whether it is in its best interests to stifle that debate, instead of winning the committee over to its way of thinking. It has until tonight to consider lodging a motion for a financial resolution.

The minister may want to give careful consideration to any precedent that may or may not have been set in previous sessions. In some instances, bills were introduced without financial resolutions, but it became apparent at stage 2 that financial resolutions were required to allow amendments to be debated. Amendment 23 is admissible, so I urge the minister to consider the matter before the end of the night.

At the end of its stage 2 consideration, the committee may want to consider asking the Standards, Procedures and Public Appointments Committee whether the existence of rule 9.12.6 is in the best interests of the Parliament and proper scrutiny of legislation.

Meeting closed at 11:03.

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