EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 22 April 2009

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
11th 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:

THE FOLLOWING GAVE EVIDENCE:

Adam Ingram (Minister for Children and Early Years)
Robin McKendrick (Scottish Government Schools Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 4

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 22 April 2009

[THE CONVENER *opened the meeting at 09:31*]

Subordinate Legislation

Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91)

Repayment of Student Loans (Scotland) Amendment Regulations 2009 (SSI 2009/102)

The Convener (Karen Whitefield): I welcome everyone to the 11th meeting in 2009 of the Education, Lifelong Learning and Culture Committee. I remind everyone that mobile phones and BlackBerrys should be switched off.

The first item on today's agenda is consideration of subordinate legislation. We have two Scottish statutory instruments in front of us—one on the regulation of care and the other on the repayment of student loans. I point out to members that the first one, SSI 2009/91, which deals in particular with the fitness of employees in relation to care services, has been revoked and will be replaced by an SSI that we will consider at next week's meeting. Do members have any comments on SSI 2009/102, which is on student loans?

Members: No.

The Convener: In that case, I advise members that no motions to annul have been lodged and that the Subordinate Legislation Committee determined that it did not need to report SSI 2009/102 to the Parliament.

Do members agree that we have no recommendations to make on SSI 2009/102?

Members *indicated agreement*.

Schools (Consultation) (Scotland) Bill: Witness Expenses

09:33

The Convener: The second item on our agenda relates to forthcoming business, when the committee will consider the Schools (Consultation) (Scotland) Bill. Do members agree that the committee should arrange for the Scottish Parliamentary Corporate Body to pay witness expenses under rule 12.4.2 of standing orders?

Members *indicated agreement*.

The Convener: Do members have any objection to delegating to me the power to decide on individual claims and the details of any claims for witness travel expenses?

Members: No.

The Convener: I briefly suspend the meeting to allow witnesses to join us for the next item on our agenda.

09:34

Meeting suspended.

09:50

On resuming—

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

The Convener: The third item on the agenda is stage 2 consideration of the Education (Additional Support for Learning) (Scotland) Bill. I welcome to the meeting the Minister for Children and Early Years, Adam Ingram; Robin McKendrick, head of branch, support for learning division; and Louisa Walls, the principal legal officer.

The purpose of this evidence-taking session is to discuss amendments to the bill that the Presiding Officer has ruled would require a financial resolution if they were agreed to either on their own or cumulatively. However, any amendment that has been determined as having a de minimis cost will not be discussed this morning.

As members are aware, there can be no proceedings at stage 2 on amendments that, if agreed to, would require a financial resolution. As a result, this session will ensure that the committee has the chance to discuss the policy intentions behind the amendments and any disputes over costings before it continues its stage 2 proceedings.

I intend to discuss the amendments in question in the order in which they have been grouped for stage 2. Members who lodged the first amendment in each group will speak first, followed by other members who either have an amendment in the group or wish to contribute to the debate. After the minister responds to the comments made on each group, I will allow some discussion on his response.

Amendment 23, in the name of Ken Macintosh, is the first amendment in the first group in which an amendment appears that the Presiding Officer has ruled will have either a significant cost or a potential cumulative cost. I therefore invite Mr Macintosh to speak first.

Ken Macintosh (Eastwood) (Lab): I hope that I will be able to juggle the many notes that I have made on these amendments.

Other committee members might well share my view that, although I am pleased that we have been able to reach a compromise on the issue and that we are able to have this discussion, I have found the turn of events in recent weeks to be very unsatisfactory. One of the principles behind the Parliament is transparency, but I have to say that the whole process has been very opaque. Although I am pleased that the minister has, this morning, presented us with a paper on the financial costings of his amendments and the Executive's thinking on the other amendments, it would have been particularly helpful if we had had notice of the paper.

I do not for a second blame the Presiding Officer, who has been trapped in a situation that is not of his making. Indeed, I believe that he has referred the matter to the Standard, Procedures and Public Appointments Committee. I hope that members will support a similar referral from the committee, because the situation is not very helpful for anyone, no matter whether they are in the Executive or a member of this committee, the Standards, Procedures and Public Appointments Committee or the Parliament, and it needs to be resolved before it happens again.

I do not believe that there is a fundamental difference between the minister's amendment 8A and amendment 23, which is in my name. The purpose of both is to ensure that parents have the right to request an assessment of their child's needs at any time. That right already exists—in theory, at least—in the Education (Additional Support for Learning) Act 2004; unfortunately, however, because the act linked such assessments to the opening of a co-ordinated support plan, it has in practice not proved as easy as one might have hoped for parents to have their child's needs assessed.

Before I proceed, I mention in passing a point that I am sure that many of us will want to explore more fully. To implement the 2004 act, local authorities were given substantial sums of money. Those funds remain in the local government settlement, despite the fact that far fewer costs or burdens have been placed on authorities by parents or children exercising their rights than was originally allowed for. Given that many of the amendments that we are dealing with now do not create new rights, but are simply designed to ensure full and fair implementation of the 2004 act, the question must be asked: are any new funds required?

I am sure that we will return to that argument, but I will focus on amendment 23. It suggests a couple of modest extensions—I would call them improvements—to the minister's amendment 8A. The minister's amendment restates the right to an assessment, but not in a way that is tied to the opening of a CSP; it is a right or duty that would be restricted, in that it would cover those children for whose school education the local authority is responsible.

Amendment 23, in my name, extends the same right to those for whose school education an authority is not responsible. The intent is to include pre-school children and those who are home educated. That is a group of quite limited

numbers—my understanding is that it is certainly not big enough to trigger any concerns over costs.

Amendment 23 would also extend the right to privately educated children. It is here, I believe, where concerns over costs arise, although I believe such concerns to be misplaced. It is important to remember that some children are placed in private schools—Rudolf Steiner schools, for example—because of their additional support needs. The argument also applies to children who are educated at home, which sometimes happens because the parents and the local authority have fallen out over their respective understanding of the child's needs. Cases in which a parent simply chooses a fee-paying school for their child but wishes to take advantage of a publicly funded assessment system would not qualify under the provisions of amendment 23, as that would be deemed unreasonable. The number of pupils concerned is therefore fairly modest; I would have thought that it is not that dissimilar to the number who would be covered by the minister's amendment 8A.

Amendment 23 is not intended to create extensive or expensive new rights for tens of thousands of pupils; it is designed to ensure that a small number of families, whom we know experience difficulty in having their children's needs assessed, enjoy the same rights as the vast majority of other Scots.

Local authorities would still make all the decisions in such cases, but instead of asking parents to prove that councils were being unreasonable, we should ask councils, when they say no, to demonstrate that the parents were being unreasonable.

I would like to hear from the minister this morning the Scottish Government's estimate of the cost attached to amendment 8A. We have received a paper now, but I would welcome the minister's comments on the record, for the benefit of all.

I would also welcome the minister's comments on how many children amendment 8A would affect and why he believes that amendment 23 would change the calculation so dramatically.

Putting the question of cost to one side for a second, I also wish to establish in principle whether the minister is opposed to extending the right to an assessment to pre-school or home-educated children, or just those who attend private schools.

I wish to highlight another crucial difference between amendment 23 and amendment 8A, on which I would welcome the minister's and the committee's views. Under amendment 8A, parents would not be able to refer a refusal of a request for an assessment—or a dispute over who should carry out an assessment—to dispute resolution. I will explain why. The dispute resolution regulations, which are contained in a Scottish statutory instrument, refer specifically to section 8 of the 2004 act, and I believe that those regulations would not apply to proposed new section 8A. My amendment 23 would amend section 8 of the act, so the dispute resolution regulations would therefore apply to requests for assessments.

I do not believe that the issue raises any substantial cost implications, although the principle involved is quite important. Do we want differences between local authorities and parents to be resolved at an early stage? I think that the committee has reached a conclusion on that principle. I ask the minister whether he agrees that accompanying the right to request an assessment should be the right to refer any refusal of a parental request to dispute resolution.

So, just to recap, convener—

10:00

The Convener: Before you recap, I should point out that the minister's amendment is actually amendment 8, which inserts a new section 8A. I make that clarification so that others who are following these proceedings are not as confused as I initially was. I just want to ensure that you get your amendment numbers correct.

Ken Macintosh: Apologies, convener. I am bound to confuse you again. When I refer to 8A, I am referring to new section 8A, which is proposed by amendment 8.

To recap, the issues are: the cost of the minister's proposal; the numbers who are affected by the proposal in his amendment in comparison with the numbers who are affected by the alternative proposal in amendment 23; the principle of extending rights to an assessment to pre-schoolers, the home educated and the privately educated; and the right to refer the refusal of an assessment request to dispute resolution.

Kenneth Gibson (Cunninghame North) (SNP): First, I should say that I do not know what Ken Macintosh is getting at when he talks about compromise. I do not remember even being consulted, as deputy convener of this committee, on the timing, content or structure of this meeting. Given the talk about democracy at the previous meeting, I think that that is quite appalling.

Amendment 23—which I do not think that we should even be debating today, given that it is outwith the financial memorandum—would extend the process of assessment to children and young people for whom the education authority is not

responsible. Obviously, that could be costly and burdensome and, frankly, it would be unworkable. Education authorities cannot prepare a CSP for anyone for whom they are not responsible and, therefore, no action would follow the assessment of children in independent schools. Quite clearly, if the proposal were agreed to, it would be a waste of resources.

Mr Macintosh said that he thought that there was money in the pot from 2004. I have to say that no one in the Convention of Scottish Local Authorities would agree that that money is just sitting there waiting to be spent on this unnecessary proposal.

The Convener: Before I allow any other member to come in, I should say that I do not think that it is particularly helpful if we talk about the committee's processes when we are supposed to be considering the amendments. I have no desire to limit discussion of how the committee considers the bill, but we can talk about that at the end of this morning's business. I point out that the structure of today's meeting was not something that was agreed by the clerks to the committee or the convener; the Parliamentary Bureau decided that today's meeting should take place in response to the legitimate concerns of a number of MSPs that it was undemocratic that the Parliament would be unable to consider amendments that had been lodged because no financial resolution accompanied the bill.

Did Christina McKelvie indicate that she wanted to speak to this group?

Christina McKelvie (Central Scotland) (SNP): Yes. I believe that the proposal in amendment 23 would mean that education authorities would become responsible for assessing pupils in private schools, even though those private schools would not be obliged to carry out recommendations arising from an assessment. That would be of no advantage to the child and would be a straightforward waste of public money.

Currently, 29,800 children attend private schools. If we go by the Warnock report's finding that around 20 per cent of children will need some sort of additional support during their school career, around 6,000 assessments would have to be carried out in relation to privately educated children. Depending on whether we base the calculations on the Scottish Parliament information centre's figure of £800 an assessment, the costs involved could come to a lower figure of about £1.3 million or a higher figure of £4.8 million, which is a substantial sum to spend on a proposal that would be of no benefit to the pupils, the parents or the local authority.

Finally, my opinion is that amendment 23 is outwith the scope of the bill. I would like to see a scoping exercise that would prove to me that it is within the scope of the bill.

Aileen Campbell (South of Scotland) (SNP): Convener, you said that you do not want to talk about process, but the process is clearly different from what has happened in the past, and I cannot help but think that stumbling along, going with the flow and discussing it at the end of this morning's business might be a topsy-turvy way of approaching things.

The Convener: Miss Campbell, I have already made it clear that we will return to the process at the end. I have given members leeway to make comments, but I remind you of what I asked members to do and that I made it clear that we would have a full discussion on the process at the end of our consideration of all the amendments. I ask you to speak to amendment 23.

Kenneth Gibson: Excuse me, convener. It would have been helpful if you had said that before Mr Macintosh spoke to amendment 23. Everybody would then have operated on a level playing field. Mr Macintosh was allowed to make his remarks, but there has been an attempt to stop us talking in a similar vein. Surely it would have been more consistent to have explained to him that we would discuss the amendments first and then everybody would discuss the process at the end, rather than have one rule for him and apparently another for the rest of us.

The Convener: I certainly did not cut you off, Mr Gibson; I allowed you to have your say for exactly that reason. Your comments are unhelpful. I have asked all committee members to draw a line under our discussion of the procedures that are being followed, which we will return to at the end of our consideration of agenda item 3. I ask Miss Campbell to speak to amendment 23 if she has any comments to make on it.

Aileen Campbell: I have nothing to say about amendment 23, but I am concerned about why the Presiding Officer deemed that some of the costings are underneath the £300,000 trigger point. I do not know where the Presiding Officer got those figures from or whether we should have had that information in the first place so that we knew what we were comparing things with. We have figures from the Government but no understanding as to why the Presiding Officer ruled the amendments as being adequate for us to discuss today.

The Convener: The Presiding Officer has taken a decision. He has considered all the information that the Government and individual members provided to him, information that was prepared by SPICe and the advice that officials gave him; he has made a ruling; and he has made it clear that he will not enter into a debate about how he

reached his decisions. That is in keeping with the practice of all Presiding Officers in the Parliament when they take positions and make rulings on whether amendments are within the scope of legislation or rulings on costings.

Elizabeth Smith (Mid Scotland and Fife) (Con): I would like some clarification. Did the Presiding Officer consider the paper that was presented to us at half past 9 this morning in any of his deliberations?

The Convener: The Presiding Officer has not had sight of the paper that has been given to the committee. I understand that it was provided to officials and that officials used the information in it in preparing their advice to the Presiding Officer. However, he has not seen the paper.

Elizabeth Smith: Thank you.

Aileen Campbell: So what did he base his decisions on? I understand what you have said, convener, but if the figures differ widely, it might have been helpful to have had an indication of why the amendments are within the scope of today's discussions.

The Convener: I am not here to justify the Presiding Officer's decisions. He has taken a decision and made a ruling, which stands.

Aileen Campbell: Convener, I am not necessarily content with that. It is clear that the Presiding Officer has made a decision, but the figures that we have today represent huge sums of money. I do not understand why they have been disregarded or deemed not to be—

The Convener: Miss Campbell, if you are unhappy with that, you should not raise the matter here; it would be for you and your party to take it up with the Presiding Officer at the Parliamentary Bureau. I remind you that the Presiding Officer is under no obligation to advise the Parliament of how he reached his decision or of the information that he used. I have made it clear this morning that a ruling has been made, and the Parliamentary Bureau has been advised of that. Following that decision, we are taking evidence based on it. It is time for us to move on.

Elizabeth Smith: I accept what you say, convener, but the fundamental point is that the bill is about the best interests of the children involved with additional support for learning and their parents, families and carers, and that should be paramount in anything that we decide.

If we are to be true to our principles as parliamentarians, our judgments need to reflect that best interest, based on as much information as is available at the time. I question, on the public record, whether that is happening, because I would have preferred to see a range of figures—quite frankly, some of us have been working in the dark to produce our own figures—and because this debate has affected, although not necessarily in a detrimental way, the process by which we make judgments in the best interests of those children.

The Convener: I remind members that I clearly asked them to save their comments about the process until the end of our deliberations on specific amendments. I understand and accept that the matter is key to the overall consideration of amendment 23, and I have personal views about the imperfections of the process, but this is not the appropriate point to discuss it on the record. We should have a discussion about it at the end of the meeting; members will have to use their judgment, make their points about their feelings about the financial costings that have been provided—imperfect or otherwise—and point out why they believe that those are flawed in relation to specific amendments as we consider them.

I will allow Margaret Smith to come in, but I ask her to be mindful of the advice that I have given the committee.

Margaret Smith (Edinburgh West) (LD): My point is one of clarification. I do not disagree with what you say—we need to get on with our consideration of the amendments—but it is important that committee members' concerns are on the record. I would like clarification that the discussion that you say that we will have on how the situation has come about will be on the record, rather than being an informal discussion among committee members.

Aileen Campbell and Elizabeth Smith are right: the process is flawed, and I do not think that any of us feel that we have had access to the information that we need to make the best possible judgment. We are, therefore, not doing our jobs properly, and we are all concerned about that.

The Convener: I think that we unanimously agree on that. I intend that that discussion will take place on the record—I have no desire for us not to be transparent and open in all our dealings in relation to our consideration of this piece of legislation.

I see that no one else wishes to make any further comments on amendment 23, so I invite the minister to respond.

The Minister for Children and Early Years (Adam Ingram): Thank you, convener, and good morning, colleagues—I hope that we are all refreshed after our Easter break. I will preface my remarks in a similar vein to Ken Macintosh. I made it perfectly clear when the bill was introduced that I intended neither to tamper with the ethos of the

2004 act, nor to extend its scope or the associated financial envelope in any significant way.

I must point out that the general principles of the bill were agreed to at stage 1 on the basis that the bill did not require a financial resolution, and I was therefore surprised when I was accused of being anti-democratic and trying to stifle debate by not accepting the need for a financial resolution.

If truth be told, I suspect that most members of the committee did not realise that the amendments that they had lodged had significant financial implications and could not be moved in the absence of a financial resolution.

10:15

With regard to the Presiding Officer's ruling on which amendments required a financial resolution, I will start by saying that I am really surprised that he had not seen a copy of the paper that we presented to the clerks on 15 April. I am concerned about that. I will also say that I do not recognise the costings that the Presiding Officer has associated with amendments 10 and 19. In my opinion, my officials provided robust estimates that were based on the cost of publishing and disseminating information. I have made available to members my officials' estimates and the basis of their calculations. It appears to me that the Presiding Officer's ruling may not include all the necessary elements that are associated with amendments 10 and 19. However, the methodology used to calculate the costs has not been made available to me or my officials.

That said, I welcome the opportunity to enter into the cut and thrust of debate with members on the policy behind the amendments. My hope is that, at the end of the day, the consensus that marked the stage 1 process might reassert itself. Like Liz Smith, I refuse to believe that we cannot agree on a bill that is designed to meet the educational needs of children who require additional support in order to fulfil their potential.

I turn to amendment 23. Ken Macintosh referred to the Government's amendment 8, because the two are linked, and said that the purpose of amendment 8 is to insert new section 8A into the Education (Additional Support for Learning) (Scotland) Act 2004, to extend the rights of parents and young people and to enable them to request a specific assessment, such as an educational, psychological or medical assessment, at any time. That would clarify the current legislation in this area.

Ken Macintosh asks specifically what we would do in relation to the regulations on dispute resolution. We shall amend the regulations to provide that, if a local authority refuses to comply with a request for an assessment under proposed new section 8A, its decisions will be a specified matter that can be referred to dispute resolution. I hope that that answers Ken Macintosh's point.

We believe that amendment 23 is totally unworkable—basically, because it places a duty on education authorities to respond to requests from parents or young people to assess or examine children or young people for whom the education authorities are not responsible, unless the authorities can prove that the particular requests are unreasonable. However, as Christina McKelvie said, around 29,000 pupils attend independent primary and secondary schools. Do we really expect education authorities to arrange for psychological, medical or educational assessments to be carried out on pupils in those schools, when the authorities are not responsible for the pupils' education? The pupils have been sent to those schools by their parents precisely because the parents do not want their children to be educated by the education authority. Furthermore, and again as Christine McKelvie said, even if an education authority arranged for an assessment to be carried out in such circumstances, there would be absolutely no requirement on whoever was providing the child's education to take any account of the result of the assessment. The whole procedure could therefore be a costly waste of time. The arrangements proposed in amendment 23 would be extremely burdensome and costly for education authorities.

Ken Macintosh raised other points in relation to pre-school education. At next week's meeting, we will discuss an amendment that relates to the under-threes, so we can return to the discussion then.

Convener, I think that I have covered all the points that were raised.

The Convener: Thank you, minister. Does Ken Macintosh, or any other member of the committee, need any further clarification from the minister?

Ken Macintosh: I welcome the minister's comments about the regulations on dispute resolution, but I ask for further clarification. If an authority refused to accept a request for an assessment, the matter would go to dispute resolution. I understand that, currently, if a parent disagrees with the choice of person to carry out the assessment, which can be contentious, the issue is covered by the regulations. Will that also be a matter for amendment?

Adam Ingram: Yes.

Ken Macintosh: I welcome the minister's assent.

As the minister said, we will return to the issue of under-threes when we consider another amendment. At our previous meeting,

amendments 7A and 7B, which touched on the issue of pre-school children, were not moved. If we agree next week to the amendment to which the minister was referring, will the parents of pre-school children have the right to request an assessment? I am not sure that the amendment will have that effect, which I have tried to capture by lodging amendment 23.

I know that it is difficult to balance the many aspects of the issue, but the minister did not mention home-educated children. There is a small number of such children, but in my experience children are often home educated specifically because of difficulties or differences of opinion about how to deal with additional needs. Given how amendment 23 is framed, it would not necessarily enable parents who had chosen permanently to opt out of the state system to opt back in at will, because that would be unreasonable. However, at the point of dispute, it is important that parents should have the right to request of the state system an agreed assessment of their child's needs, so that there can be common ground on which to base a decision whether to keep the child in the state system.

I apply the same argument to private schools, although amendment 23 would not automatically bring in every child who attends a fee-paying school. Perhaps, rather than discuss what amendment 23 would or would not do, we should consider the intention behind it, because if we can agree on that I can redraft the amendment to ensure that it more accurately captures the intent.

Parents often opt out of the state system and into the fee-paying, independent system because of disagreements and worries over additional support needs. I know of children who attend Rudolf Steiner schools because their parents think that they did not get the support that they needed from the state system and that the Steiner schools more appropriately address their needs. There was no other reason for opting out of the state system; the parents are not anti state schools. I do not think that a child who is permanently in the independent sector should be able to opt back in at will and ask for an assessment whenever they want one—that would be unreasonable—but when parents are thinking about where to send their child they should have the right to request an assessment. I do not accept that we are talking about large numbers of children.

Amendment 23 captures the ethos of the minister's proposed amendment, which is to ensure that families can exercise the right to an assessment and that there are no obstacles that enable authorities to refuse such requests with the result that parents have to justify their case and batter down the doors to get one. As I said, large numbers of people will not be affected: amendment 23 simply effects a slight shift in the balance of power towards parents and away from local authorities. If the minister agrees in principle, the amendment could be redrafted to capture those points.

Adam Ingram: I would like time to consider some of Mr Macintosh's points, but I must say that the 2004 act allows parents many options. For example, they can make a placing request to an independent school. That covers much of Mr Macintosh's point on parental choice in terms of determining in which authority or school they would like their child to be educated. He also made a point on requests for assessment. That is part of the whole process of establishing additional support needs for a child. When the child has been educated in an authority, that assessment is a right.

I do not quite understand what Mr Macintosh is driving at in seeking to allow parents to remove themselves from a local authority and avail themselves of their rights, which seem to impose burdens on the authority. He seems to be setting up something of a conflict, and I cannot agree with his interpretation of the situation.

Ken Macintosh: That is on the private schools. Can I have clarification on the pre-school and home-educated situation?

Adam Ingram: Again, home education is a choice that parents make. I imagine that, before they make that decision, most parents seek the best possible outcome for their child and go through a process with their authority in terms of assessment and all the rest of it. Mr Macintosh is using a sledgehammer to crack a nut.

Ken Macintosh: And on pre-school?

Adam Ingram: Pre-school is a similar situation. Section 5 of the 2004 act covers the scenario that you raised, Mr Macintosh.

Ken Macintosh: You said that you will address the issue in an amendment that we will consider next week. I seek clarification on whether the amendment will give parents of pre-schoolers—children below the age of compulsory schooling—the right to request an assessment.

Adam Ingram: I will bring in my officials. I ask Robin McKendrick to explain the point.

Robin McKendrick (Scottish Government Schools Directorate): In terms of the home-educated and children in independent schools, the 2004 act provides that a parent or school manager can request an assessment of additional support needs, for example if those additional support needs would lead to a co-ordinated support plan. Under section 7 of the act, an authority has the power—not a duty, but the power—to make such an assessment. If they believe that a child for

whom they are responsible requires a co-ordinated support plan, they must inform the parent and school manager of the provisions that would be in such a plan.

Parents and school managers in the independent sector can make requests of their education authority, which has the power to comply with the request if it believes it to be reasonable. Likewise, parents in the independent sector have an existing right to request an assessment and, if it believes that the request is reasonable, the education authority has the power, but not the duty, to make an assessment.

Ken Macintosh: I am fully aware of that; I would not have lodged the amendment otherwise. We debated the issue in 2003 and 2004, and the point of the amendment is to change the power to a duty. You have made your view clear on public schools, private schools and on home education. What is happening with pre-school children? Will you grant pre-school children the right to an assessment and place a duty on local authorities to respond to that?

10:30

Adam Ingram: With respect, Mr Macintosh, that is the subject of amendment 26. Amendment 23 focuses on a different area. We could extend to a general discussion on the bill, or we could focus on amendment 23. As I say, I intend to come forward next week with a comprehensive response on the issue of pre-school children.

The Convener: I appreciate that there are other amendments that will relate to pre-school children, but Mr Macintosh's amendment, which is being considered today, specifically relates to pre-school children. It would help the committee if you could respond to the specifics of pre-school children in relation to amendment 23, which is being considered today, irrespective of whether there is a further amendment that will be considered at a later date.

Adam Ingram: I do not really have anything to add to what I have already said with regard to pre-school children and amendment 23.

Ken Macintosh: There is not much point in continuing the line of questioning. I am slightly disappointed, because my question was not a difficult one. Amendment 26 will address some of my concerns, and I think that the committee and the minister were close to agreement on the issue, but as far as I am aware amendment 26 does not extend the right to request an assessment to pre-school children. If the minister thinks differently, he has the opportunity to tell us.

Is the minister in favour of extending that right? I would like to know so that I have an opportunity to redraft amendment 23 before Friday. I do not believe that extending the right to an assessment to pre-school children will have significant cost implications. It is an important issue and, if the minister thinks that there are significant cost implications, perhaps he should say so now and save us all from discussing the issue again.

Adam Ingram: As I said, I need time to reflect and consider that. I am afraid that I cannot make an instant decision on Mr Macintosh's suggestion.

The Convener: Christina McKelvie seeks further clarification.

Christina McKelvie: I thought that we were summing up, and I wanted to reiterate—

The Convener: This is not a stage 2 debate, so unless you are seeking further clarification—

Christina McKelvie: I did have a point of clarification. I asked earlier about whether amendment 23 was outside the scope of the bill. Have the clerks done a scoping exercise? If so, can the committee have sight of that? It would allow me to determine whether I can take forward my opinions on amendment 23.

The Convener: I have ruled on the scope of the bill, based on the legal advice that was provided to me. That decision has been taken, and the amendment is within the scope of the bill.

Christina McKelvie: Can we have sight of that legal advice?

The Convener: No. That is a decision for the convener of the committee, in accordance with the standing orders of the Parliament.

We move to the next group and amendment 13, which the Presiding Officer has ruled would involve significant and/or potentially cumulative cost. Ken Macintosh lodged amendment 13.

Ken Macintosh: The purpose of amendment 13 is to repeal the word "significant". As members will know, this important issue was raised by several if not all witnesses during our discussions on the bill. The word has been a barrier, and it is clear that its use has produced a distorted interpretation of the new rights enshrined in the 2004 act.

At worst, the word has become a barrier that prevents some children from accessing the appropriate level of support. The minister clearly recognises the problems and has gone to significant lengths to address the issue, in particular by establishing a working group to consider the definition. Leaving aside the lack of parental representation on that group, I welcome its efforts, although they have served only to highlight the difficulties that are inherent in relying on an interpretation of the term.

The minister's answer—to rely on the code of practice—sounds less like a solution and more like a way of avoiding the problem. To my mind, it would be far better, simpler and fairer to remove the term altogether. Even without it, a child would need to fulfil several criteria. A CSP will be given if the child

"needs additional support from more than one agency, that child requires the support in order to benefit from school education, and that support is additional to or different from the support offered to children of the same age in mainstream schools."

There is already a test of some magnitude. Not only is the additional requirement of significance unnecessary but, in practice, it invites regional discrepancies as each agency—each health board and social work department—effectively sets its own standards for what is regarded as significant.

I would welcome the minister's comments on how much it would cost to remove the term "significant", why he thinks that doing so would cost a significant amount—I am sorry to use the term again—and require a financial resolution, and whether we need to amend the bill rather than use a code of practice to address this thorny issue.

Kenneth Gibson: Although I understand the point that Mr Macintosh is trying to make, I have concerns that extending eligibility for a CSP to every child or young person with enduring complex or multiple additional support needs would put an additional burden on education authorities without providing any real gain to the children themselves. It would be disproportionate for many children and young people who, at the moment, receive support only infrequently—for example, once or twice a year. The draft guidance that has been prepared would cover the issue.

It is also important to think about the benefits to the children relative to the overweening costs that the proposal would impose. I understand that the costs that the Government has worked out were prepared by an economic advisor in the education analytical services division—the Government's analytical services unit—and a team leader in the finance directorate. They say that the proposal would cost somewhere in the region of £3.4 million to £11.3 million a year. Westminster is about to impose savage cuts on the Scottish Government from next year, and I do not see where that money will come from.

Notwithstanding the point about costs, the proposal is unnecessary and would impose a bureaucratic nightmare. Without a financial resolution, it should not proceed, even in this surreal debate.

Margaret Smith: We could approach the matter in different ways. First, we could go down the route that Ken Macintosh suggests and take away the word "significant". Many organisations regard that route positively because of complete and utter frustration at the actions of certain local authorities in their role as gatekeepers to services. If any member doubts that local authorities are not, in certain cases, doing what they are meant to do, they need only look at the financial memorandum, which reflects on the number of CSPs that have been granted compared with those that were estimated in the financial memorandum for the 2004 act.

Paragraph 41 of the memorandum states:

"Education authorities have therefore already received excess funding for their work in this area."

In fact, local authorities would have to go to considerable lengths to bring the number of CSPs up to the level for which they have been funded since 2004. That is what the financial memorandum says; in addition, that is the information that I received from SPICe and, I think, is what Joe FitzPatrick was told in response to a parliamentary question.

We know that there is a long way to go before we reach the number of CSPs that was expected. The financial memorandum to the 2004 act estimated that there would be between 11,200 and 13,700 CSPs at any one time. Currently, the number of CSPs has risen to 2,694, which means that there is a gap of up to 11,000. That covers the financial side of the issue: there is some slack in the system that could be taken up, as the Government has acknowledged in its financial memorandum.

Notwithstanding that point, it is much more important that we as a committee decide what is most likely to address the concerns that parents and others have brought to us. Removing the word "significant" from the 2004 act might well address those concerns, but they could also be addressed through the guidance that is produced as a result of the work of the working group. I have discussed the matter with people in the field and their response has been that the information that will come out of that group is the kind of information that they would have found helpful over the past few years.

On balance, my preference would be to go down the route of the working group and its guidance, which it is intended will give examples so that practitioners in the field have a much better understanding. That will mean that we do not get into a situation in which, as Kenny Gibson said, even if a child is seen only once every year they automatically need a CSP. My understanding is that the guidance will make the position clear.

If amendment 13 were agreed to, there would be cost implications, but what is most important is that we improve the service that is available to

people. The evidence that we have heard is that the present service is not what we would have hoped it to be; it is certainly not what people in 2004 hoped or intended it to be. There is an important financial issue—local authorities have received considerable funding to undertake work that the Government says that they have not undertaken—but with amendment 13, as with all the amendments, the much more important issue is about the service. On this occasion, it might well be possible to improve the service without removing the word "significant", through the work that the working group is doing to put flesh on the bones of what the provision of significant additional support means in practice.

My only concern is that over the past few years local authorities have, on occasion, proved that they will use any loophole that exists and will work to the letter of the law rather than to its spirit. I can understand why some people might look favourably at Ken Macintosh's amendment, given that, in some cases, local authorities have failed to do what they have been given the opportunity to do, and should have been doing, over the past few years. That partly explains the attractiveness of amendment 13. I seek as much information as possible from the minister about the guidance that will be prepared for practitioners, which has the potential to improve the service that is available to parents and to children and young people who have special needs.

The Convener: I invite the minister to comment.

10:45

Adam Ingram: I agree very much with a lot of what Margaret Smith said. Removing the word "significant" from the eligibility criteria effectively removes the discretionary element of deciding whether a co-ordinated support plan should be prepared. That would have a major impact on the ethos of the bill and in financial terms, as Kenny Gibson pointed out.

Amendment 13 would require a CSP to be provided for every child or young person who had complex or multiple additional support needs likely to continue for more than a year for which additional support is provided from two or more sources. It might sound like every such child or young person should automatically have a CSP, but amendment 13 would enable a situation in which a child with dyslexia or English as a second language who receives support from an allied health professional once or twice a year can have a CSP. Clearly, that would be disproportionate and not something that we would want to happen as a matter of course.

Amendment 13 could have substantial implications for local authorities by requiring them to assess a large number of children and young people for co-ordinated support plans even though the level of support that they receive from outwith education services requires little or no co-ordination. Authorities would also have to prepare an annual review of the CSPs for all children and young people who, as a result of the amendment, required one. That would be very bureaucratic and not cost efficient.

The word "significant" works as a qualifier to enable a commonsense decision to be taken on a case-by-case basis. We appreciate that there are concerns about the definition of "significant" and, as members know, a co-ordinated support plan short-term working group was formed to advise the Government on CSP matters and to help facilitate the development of any further CSP guidance or training. One of the group's tasks was to draft further guidance on the definition of "significant" for inclusion in the revised supporting children's learning code of practice. In taking forward that task, the group had to consider carefully recent Court of Session inner house opinions, which provide clarity on the legal interpretation of the term "significant".

As members know, I wrote to the committee on 17 March to provide a copy of the draft guidance on the definition of "significant" produced by the working group and to seek its agreement that the best place to clarify the definition of "significant" is in the revised code. It is anticipated that the definition in the revised code will include exemplars of the kind sought by Margaret Smith and, more important, practitioners in the field. It will help them to make up their minds as to what comes under the term "significant".

Before we remove one of the CSP criteria, we need to be clear about what the outcome of a change to the primary legislation would be. I doubt whether there is any silver bullet that will resolve all the issues around the CSP. If the term "significant" were dropped, might we not start having arguments about what are complex or multiple factors and so on?

I have offered what I consider to be a sound definition of the term "significant" for the code to which authorities, the tribunals and the Court of Session must have due regard before making a decision. It is my view that that is the best way forward, and I hope that that satisfies committee members.

Ken Macintosh: I want to clarify two separate issues, the first of which is about cost. I was intrigued by the minister's paper on costings, which suggests that removing the word "significant" would automatically mean that around 8,500 pupils would qualify for a CSP. I will not go into the argument about whether that is the case, although I do not mind exploring the issue further.

I have a different view about the number who would qualify. I am intrigued to know how many pupils the minister thinks would qualify if the code of practice were used to amend the definition of "significant". Currently, 2,694 pupils have a CSP. The minister suggests that if the primary legislation were amended to remove the word "significant", 8,500 pupils would automatically benefit. If we took the alternative approach of using the code of practice, how many would benefit?

Adam Ingram: I reiterate that my view—and the Government's view—is that not enough CSPs are being produced up and down the country. The purpose of establishing the CSP working group, of defining the term "significant" appropriately and of reworking the code of practice—the committee should remember that the code will be presented to it and the rest of the country for consultation in due course—is to ensure that all children with additional support needs are appropriately supported. When a CSP is appropriate, we want it to be put in place. As I have suggested, the best way to proceed is through the code of practice, which we hope will change what is happening in practice.

You ask how many pupils I estimate would have CSPs. I would like the level of CSPs to approach that which was expected when the original legislation was passed. In the past year or so, the number of CSPs has increased significantly and I want that increase to continue. The proposal in amendment 13 would not help that process; it would muddy the waters, to say the least. The amendment would be overburdensome and counterproductive.

Ken Macintosh: I welcome the minister's comments. The clear difficulty is that the code of practice is not amendable by us, whereas the bill is.

Adam Ingram: We will issue a draft of the code of practice and we will take on board people's views and amend the draft accordingly before the code of practice is presented to Parliament.

Ken Macintosh: It is worth noting in passing that we cannot discuss an amendment that might or might not cost the sums of money that have been mentioned, but the minister can produce regulations that will cost that money and which are not subject to amendment. That is interesting. The regulations do not require a financial resolution, although it seems that they will cost more than the bill. If the minister expects the code of practice to extend the use of CSPs to exactly the same number of pupils as it is suggested my amendment would cover, introducing the code will cost more than passing the bill. However, I will put that to one side.

I draw to the minister's attention a couple of issues with the code of practice route. The minister knows that although many organisations that represent parents were pleased that the working group was established, they were concerned that it was dominated by local authorities and that it had no parental representation. Even now—before the code of practice has been produced for consultation—can voluntary sector parental groups be represented on the working group, which could have their input?

Sense Scotland produced a paper on the term "significant" that I think that the working group would find useful. Will the minister ask Sense Scotland for its thinking on the matter and have that discussed by the working group, whoever its members are?

Adam Ingram: I understand that the working group's short term is over and that the group has reported. The consequence is the revision of the code, which I hope that you will see and comment on in due course.

Of course I want to involve parents, particularly parents from the coalition for Scotland's disabled children, which I have met on occasions. I very much want to involve parents in the development of the code, the regulations and other secondary legislation further down the line. I want to ensure that all stakeholders are engaged in the process. The working group largely considered technical matters, so the scope for input from parent groups was not great. However, I have undertaken to consider such issues in the future, to ensure that parents are appropriately represented when we set up working groups.

The Convener: The next amendment that the Presiding Officer has ruled has a significant or potentially cumulative cost is amendment 15, which was lodged by Claire Baker.

Claire Baker (Mid Scotland and Fife) (Lab): Amendment 15 would ensure that parents were provided with a supporter or advocate when necessary and would bring the bill in line with the Adults with Incapacity (Scotland) Act 2000. The amendment arose from concerns that were expressed during stage 1 by witnesses and by committee members from different political parties. It attempts to address the gap between the right to advocacy and the delivery of that right, by placing a duty on local authorities to provide or fund the right to support and independent advocacy.

At stage 1, the committee heard evidence of the increasingly adversarial nature of some tribunals. I think that we all want measures to be put in place to address the issue. We all agree that successful mediation is the preferred route, but there will be cases that need to be heard by the tribunal, and

parents must be properly supported before and during the process.

In evidence at stage 1, the minister said that he values advocacy and support services. He said:

"I want to ensure that parents have access to advocacy".—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 21 January 2009; c 1905.]

Amendment 15 would enable that to happen. The minister also told the committee that he hoped to be in a position at stage 2 to provide more detailed information on how the Government would address the need for representative advocacy. I hope that the debate on amendment 15 will give him an opportunity to do that.

The committee heard at stage 1 that several authorities have provided advocacy services through Parent to Parent and other organisations. Amendment 15 would give all parents such a service.

The bill team told the committee:

"We will consider each proposed amendment individually and judge it on its merits."—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 3 December 2008; c 1746.]

It is unfortunate that, so far, amendment 15 has been judged solely on cost and not on merit. I welcome the minister's comment that no member intended to be in such a position. That is particularly true in my case, given that this is the first stage 2 that I have experienced.

I accept that advocacy and support services come at a cost and that it has been difficult to determine the cost. However, the minister has acknowledged the importance of advocacy and support and amendment 15 would achieve the provision of such services.

Aileen Campbell: This is my first stage 2, too. I am a wee bit concerned about amendment 15, although I take on board what Claire Baker said and understand that she is well intentioned. It is unclear from the amendment whether the intention is to provide for either advocacy or support, or both, which has cost implications. I understand that we must base the discussion on the Presiding Officer's determination on costings, but according to the Scottish Government paper similar approaches have cost more than £2 million, which is far more than the £300,000 trigger for a financial resolution. Therefore, amendment 15 should not be part of our consideration of the bill, especially as there appears to be nothing in the 2004 act that would prevent an authority from providing an advocate or supporter.

11:00

Margaret Smith: Amendment 15 is really important. It is also quite difficult to cost. We have heard from organisations that provide support and advocacy that the cost would be considerably less than the Government has suggested, but the Government's suggestion is based on costs for advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003, and there are definitely similarities.

I will not make a judgment on the financial arguments because we have had a relatively short time to consider them, but I will return to what has led to Claire Baker's lodging of amendment 15. The 2004 act created a right to support and advocacy but did not create an accompanying duty on councils to provide independent support and advocacy. That was different from how it treated mediation.

One thing that was highlighted to us in evidence was parents' experience of tribunals. We wrestled with the reality of what happens at tribunals where parents find themselves up against legal teams that sometimes include Queen's counsels. All members of the committee feel that there is a basic unfairness and fundamental inequality of arms in the system. However, we decided as a committee—as, in fact, our predecessor committee decided in 2004—not to balance up arms by saying that parents should have access to legal aid, which would have brought with it its own financial constraints. We decided that to do so would not only simply benefit lawyers but compound a situation about which were all concerned and that we did not want to be maintained: the increasingly litigious and legal character of a system that was set up to try to work matters through much more informally and in a much more parent-friendly, child-friendly and, as one of our witnesses said, council-friendly way.

That takes us back to how we should redress the balance. If we do not take the legal route to equalise it, we need to find other ways in which parents can get the support that they require. There has to be some middle way between that as the justification for Claire Baker's amendment 15 and the position at which we have arrived, which is to throw out the amendment on the ground of finance.

That is not to say that the finance is not significant, but amendment 15 is designed to address one of the fundamental problems with the working of the current system. Many members think that we will not consider the legislation on additional support needs again for some years and, when they see something in the current legislation that is patently not working and is being unfair, they do not want to let the opportunity to address it go by. The minister might disagree with that and say that it is not in the ethos of the bill but, having heard the evidence that the committee has taken and knowing the evidence of our

constituencies, we know that it is part of the system that is failing not only parents and children, but everybody at the moment.

I seek some sort of Government response to Claire Baker's amendment 15 that provides a way to address the issue and to give parents greater support than they already have. The Government has put funding into Independent Special Education Advice (Scotland), for example, but that came at the 11th hour. ISEA and other organisations like it live hand to mouth. It is good that the Government funds and continues to fund them, and next week we will consider an amendment in my name to ensure that information about such organisations is made available to parents nationally. However, we must try to find some way in which to square the circle, support parents and make the system fairer without having to spend multiple millions of pounds to do so.

We need to find a way of working together to address the issue, because it is a central problem with the system and it would be deeply unfortunate if we let the opportunity go by us without having tried to address it.

Ken Macintosh: I endorse the comments that Claire Baker and Margaret Smith have made—and indeed the consensual position in the committee's report following our consideration of the matter. Even if the minister is not able to follow the line that amendment 15 suggests, does he agree in principle that there should be a funded advocacy service? If so, what are his thoughts on the form that such a service should take?

Adam Ingram: It might be helpful to split the issue into two parts. There is the question of advocacy services for parents who are speaking to the local authority about their children's needs and are seeking representation at that level; there is also the question of the advocacy services that are required for representation at tribunals. I will deal with those two matters separately.

Although I am fully supportive of parents having the ability to access advocacy at local authority level when they are dealing with council officials, the reality is that we are unable to provide for that service in terms of cost. We would obviously like parents to have supporters or advocates when they need them. The point was recognised, as Mr Macintosh will remember, under the 2004 act. Basically, we did not decide to make access to advocacy unlimited.

Margaret Smith highlighted the use of advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003. I think that her purpose in using that example in her workings was to show that such advocacy is demand led, and that the demand tends to grow rather rapidly over time, as people get to know about the service. There was a huge growth in the advocacy that was provided under the 2003 act during years 1 and 2, and that was the basis of some of the calculations that have been made for the bill before us.

Committee members should be aware that, after the 2004 act was implemented, an additional support needs advocacy services scheme for eight education authorities was funded by the Scottish Government in 2005-06, at a cost of nearly £250,000. Even allowing for no growth at all, the cost of rolling that out to all education authorities would amount to £1 million per annum. If we add on growth from a demand-led service, a lot of money is involved. Amendment 15 puts the burden to pay for the service on to the education authority.

On the other side of the equation, and as I said during the stage 1 debate, I am committed to establishing a representative advocacy service at tribunals for all parents and young people throughout Scotland. I propose the allocation of £100,000 per annum for a service to represent and/or support parents and young people effectively at tribunals.

Such a service, which would offer additional provision to that of the existing advocacy and representative organisations for parents and young people in Scotland, would support parents and young people from such time as they had grounds to make a referral to the tribunal. I would also expect the service to help parents and young people with independent adjudication and with other remedies that are open to them to resolve disputes with education authorities.

My officials are considering the exact terms and conditions of that representative and support service. Once those have been finalised, a fair and open competitive grants scheme will be advertised to relevant organisations and further details will follow in due course. I hope that the situation that Margaret Smith described, in which organisations currently work from hand to mouth, can be put behind us.

The Convener: We will come to Margaret Smith's amendment in a minute, but I will first allow Claire Baker to respond to the minister's remarks.

Claire Baker: Briefly, the minister's response is helpful. All committee members have recognised that the way in which the current legislation operates gives parents a right to advocacy without placing a duty on anyone to deliver that service. That has been a problem—we heard that during stage 1—as has the adversarial nature of the tribunal, which is an issue of concern. I welcome the minister's commitment to fund representative advocacy support services.

I understand that the minister's officials are still working on the details of the proposal, but do we have an idea of when the scheme will come into operation? Does the minister feel that such a service will meet the need for advocacy at that level? Will there be enough capacity to deliver advocacy for all parents?

Adam Ingram: Yes. The bidding process should kick off in the autumn, so I hope that we can move seamlessly from the current situation to the new one in the new year.

Claire Baker: In addition, the minister mentioned the eight pilot authorities. In evidence at stage 1, I think that Highland Council was mentioned as one of the authorities that uses Parent to Parent. What is being done to encourage other authorities to go down the path of providing that type of service? The purpose of amendment 15 is to impose a duty on education authorities to provide such services. If we are not to go down the road of imposing a duty, how can we encourage authorities to provide such services?

Adam Ingram: Clearly, a number of local authorities already fund local advocacy services within their areas, but it is really a matter for them to respond to the wide variety of demands for advocacy that exist. Such demands are not just focused on additional support needs. I would certainly like to see advocacy services expand, as I think that there is a need for them. I have asked officials in my department to carry out a mapping exercise of advocacy services in Scotland, so I will want to look at that before I consider any proposals to beef up provision. However, I am broadly supportive of encouraging local authorities to develop advocacy services, as I think that they are important.

The Convener: On that point, does the minister have any concerns that anecdotal evidence—particularly from Who Cares? Scotland, which provides advocacy services to 31 local authorities—suggests that several authorities have substantially reduced the advocacy services that they offer? One or two local authorities are even considering ending the provision of independent advocacy.

Adam Ingram: It would be a retrograde step if authorities were to go down that line without considering any alternative.

11:15

Ken Macintosh: At stage 1, the minister said that he had commissioned a study into the issue from the Govan Law Centre. I cannot remember exactly, but I thought that he said he would have that paper before or during stage 2—or, certainly, before stage 3—and would share it with us. Is that the case?

Adam Ingram: Yes; I mentioned that I had commissioned the paper and that I hoped to update the committee on what we intended to do on advocacy services by the time that stage 2 arrived. If I recall, that was what I said. I will need to look it up again, but I assume that I am fulfilling my obligation to come back to the committee at stage 2 with the announcement that I made.

The Convener: The next group of amendments that the Presiding Officer has ruled have a significant or potentially cumulative cost contains amendments 10 and 19. Elizabeth Smith, who lodged amendment 10, will speak first. Margaret Smith, who lodged amendment 19, will then make her remarks.

Elizabeth Smith: What struck me most frequently when we took evidence—particularly from the National Autistic Society, the Scottish Government schools directorate and the Additional Support Needs Tribunals for Scotland—and when I consulted two experts in ASN support, was the contrast between Scotland and other countries when it came to the provision of adequate and accurate information on the rights of parents and their children in assessing good-quality care and support. I was particularly struck by examples from countries where, from the day that a specific additional support need is identified, a clear parent-partnership officer structure was put in place with a mandatory obligation on local authorities to provide a clear set of policies, support and a code of practice, plus a full list of the rights of parents associated with those two provisions.

Although some local authorities in Scotland are exceptionally good at that, sadly some are not, with the result that their children's support services either fall woefully short of the expected standard or, in some cases, are non-existent. There is a clear need to provide a level playing field in that respect and ensure that we do anything possible to identify all the cases in which there are additional support needs. My belief is that, if people are much better informed, it will save costs in the long run because, the sooner we identify some of the issues, the sooner we are able to pick them up and ensure that they do not protract into longer difficulties for the parents, with the trauma and stress that goes with that.

That is the intention of amendment 10, which I will move next week.

Margaret Smith: Amendment 19 says that information about a council's ASL policy should be available on request from each school or education authority establishment, and suggests that the information should be in any school

handbook or other publication about the services that the authority provides that is given to parents. It also suggests that the information should be on any website that a school or the local authority maintains. We know from statistics that 24 per cent of adults access information about their local authorities from websites, so at least that percentage is likely to do so in this respect, as well.

As I see it, the normal course of events would be that a parent would be given the information in the school handbook when the child joined the school but could also, at any time, access it on the council or school website and should be able to ask for it from the school. In that case, the information might be in the form of a separate leaflet, but it could be a copy of the relevant part of the school handbook.

The 2004 act already requires education authorities to publish information on ASL policy, to keep it under review and to publish revised information. Some councils already do some of that, although some do not. I would echo the points that Liz Smith made about that.

The crucial point is that amendment 19 would not introduce any new requirement in respect of the production of information about ASL policy, but simply makes suggestions about where and how the existing information might be accessed. Indeed, paragraph 87 of the financial memorandum to the bill that became the 2004 act stated that, although it contained duties to publish information,

"The Bill formalises this good practice that is already occurring in local authorities and it is therefore expected that these duties will be absorbed within existing resources."

I note that the Government's view is that the information that would be provided would be additional, but I dispute that. I do not intend to introduce anything additional because the duty on education authorities to provide information already exists and, if there are reviews, they have to review that provision.

The Government also says that education authorities would be

"under a duty to send out all of this information again with any general information publications".

I point to the use of the word "request" in amendment 19. It is about people being able to get further information on request. The information would already be in key documents, such as the school handbook, and on websites. The amendment is designed to ensure that people are able to turn up at the school office and ask for something that will give them information on ASL policy, as well as the information that they would get as a matter of course.

I expect that the parents of children with additional support needs would be most likely to want to access the information. That gives us a range of between 5 per cent, that are already identified as having ASN, and Baroness Warnock's figure of about 20 per cent. We can take a stab at how many people will request the information. However, Liz Smith's amendment 10, which is about giving out information to parents of children who are identified as having ASN, would do some of what I propose and, indeed, some of it is already meant to be done under the 2004 act. Therefore, we would not be talking about the full 20 per cent.

Scottish Parliament information centre figures estimate that the cost of printing and circulating information would be £1.25 per pupil, and I have said that we could assume that something in the region of 7 per cent of parents would request information. Therefore, the cost to each council would be relatively small—about £4,500—partly because some of the costs can be spread and some are already covered in implementation of the 2004 act.

It is also worth noting that the financial memorandum for the bill does not include costs for dissemination of information about the changes that will be brought in by the bill as introduced by the Government. Therefore, it is clear that the Scottish Government shares my view on the matter. If it does not, why does its financial memorandum not include the cost of publishing information about the changes that the bill will introduce, such as access to out-of-area placements?

I have not included any one-off costs because it is clear from the 2004 and current financial memoranda that the Scottish Executive and the Scottish Government felt that such costs could be absorbed. Therefore, it seems bizarre that cost could be used as a reason to stop debate on any amendment about where and how information should be accessed. The Govan Law Centre believes that the costs that would be incurred through agreement to amendment 19 would be negligible—I agree. I expect that the costs would be associated mainly with printing of leaflets that people could request at schools and local authority offices on an on-going basis.

In evidence, we heard a great deal about parents not being aware of their rights under ASL legislation. Amendment 19, in my name, and amendment 10, in the name of Liz Smith, would go some way towards addressing that important issue. We know that some councils follow good practice, but others do not. The good practice should be identified and copied throughout Scotland. Amendments 19 and 10 would go some way towards making more parents aware of their

rights and therefore more likely to engage earlier in the process, before people's positions become entrenched and lead to disputes.

I strongly challenge the costings on amendment 19. The absence from the financial memorandum of figures on distribution of information suggests that the Government thinks that such costs could be absorbed—as was the case for the previous Government in relation to the 2004 act. It is bizarre that amendment 19, which would require information to be made available on a website or in a school handbook, is suddenly thought to require large amounts of money.

Aileen Campbell: We all want to find ways to inform and empower parents. That has been a theme in many of our discussions on the bill. However, amendment 10 would require education authorities to provide parents of children who have additional support needs with all the information that they published under section 26 of the 2004 act, whether or not parents wanted that information. The Scottish Government's figures indicate that the information might have to go to between 38,000 and 136,000 parents and young people. If we take the higher figure and assume that it costs £2 to send information out to a person, we are getting near to the £300,000 trigger for a financial resolution. Moreover, amendment 10 does not set out how information should be distributed. The Scottish Government has suggested that costs could be high and might range from £250,000 to £870,000 or so. There would be postage costs, too.

I would be interested to know what matters the Presiding Officer considered during his deliberations on amendments 10 and 19, given that Adam Ingram said that there is concern that perhaps not all aspects of the costings have been considered. If amendment 10 were agreed to, the effect would be that every time there was a review or change to the code of practice or a change in teachers, the new information would have to be sent out again, at a massive cost.

Amendment 19 would place authorities under a duty to ensure that the information that they must publish under the 2004 act was available

"(i) on request, from each place in the authority's area where school education is provided,

(ii) in any handbook or other publications provided by any school in the authority's area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and

(iii) on any website maintained by any such school or the authority for that purpose".

Therefore, every publication that included general information about the school—whatever the topic—might contain a disproportionate amount of information on additional support for learning. We are keen to empower and inform parents, but we do not want parents to drown in information, which could be an unintended consequence of amendments 10 and 19.

Ken Macintosh: As was the case for my colleagues, the inclusion of amendments 10 and 19 in the Presiding Officer's list caused me the most surprise. I do not understand why it is thought that they would attract significant costs.

It is clear that throughout Scotland there is a problem to do with getting proper information to parents. Does the minister agree in principle that a duty to supply information should be included in the bill, to address the problem?

The Convener: I point out that amendments 10 and 19 are deemed to incur not "significant" but "cumulative" costs. The committee will be able to consider the amendments next week and, indeed, agree to them, if we think that they are appropriate.

11:30

Adam Ingram: I have no argument with the policy intention of amendments 10 and 19. As Aileen Campbell intimated, my concern relates to the unintended consequences of how the amendments have been drafted, which means that they will place a particular kind of burden on local authorities. I have produced alternative amendments that I would like to share with the members who lodged amendments 10 and 19, so I would like to discuss the amendments with them prior to 12 noon on Friday, which is the deadline for lodging stage 2 amendments.

I accept that some authorities are failing in their statutory duty to provide parents with, or to signpost them to, information about their rights. I intend to exercise my direction-making power under section 27(9) of the 2004 act to ensure that the requirements of that duty are met: I will write shortly to all chief executives of local authorities to that effect. Furthermore, I will ask my officials to collate the information that is published by each authority to ensure that the statutory requirement has been met.

I do not want to explain again the burdens that amendments 10 and 19 would place, as entirely unintended consequences, on local authorities—Aileen Campbell has already gone over that ground. We do not want to turn school handbooks into additional support needs manuals, which would, according to my legal advisers, be the consequence of the amendments. Similarly, the amendments would lead to the distribution to parents of all the information that is listed in section 26 of the 2004 act. It would be useless to have such voluminous material go through

people's doors, as no one would ever read it. I would be grateful if members would consider with me how we can adjust the amendments to focus on the policy intention.

Margaret Smith: I am happy to have such discussions with the minister. The important point is to ensure that information is made available at locations and in ways that enable parents and local people to access it as easily as possible. It is clearly not our intention that school handbooks should be full of ASL information. However, it is perfectly reasonable to require that every school handbook in the country should include some ASL information, to act as a signpost for parents. I am happy to have a conversation with the minister about that prior to Friday's deadline.

Elizabeth Smith: I, too, will discuss the matter with the minister. My amendments have been costed on the basis that information will be provided not to all parents but to parents who have children with ASL needs, which may alter the conversation slightly. I am willing to share with the minister the costs of doing that, which I do not see as being significant. We can discuss the matter.

The Convener: That concludes our consideration of amendments 10 and 19. I suspend the meeting for a short comfort break.

11:33

Meeting suspended.

11:43

On resuming—

The Convener: I reconvene this meeting of the Education, Lifelong Learning and Culture Committee. We return to item 3 on our agenda.

The next group contains amendment 25, which was lodged by Margaret Smith, and which the Presiding Officer has ruled potentially has significant or cumulative costs.

Margaret Smith: Time and again we have heard that the 2004 legislation is good in principle, but that the practice does not always match the spirit of the legislation or the intent of Parliament in passing it.

It is clear to me, and probably to other committee members, that parents of children and young people with additional support needs are often among those who are best placed to comment on what is happening on the ground and on the steps that might be taken to improve the services that they use. In its report on the 2004 act, Her Majesty's Inspectorate of Education highlighted the lack of consultation with parents and young people about services.

My amendment 25 states that education authorities will have to consult on their ASN policy and the information given out about it every three years—crucially, once every council term. No council would ever be able to say, "This isn't something that's important to us"; it would have to address the matter regularly. We heard from a large number of parents and groups that some local authorities do not listen to their concerns, therefore I suggest that consultation be undertaken by an independent figure so that parties can have faith in the results, and that the report be sent to HMIE, which has flagged up its concerns.

Amendment 25 states that the council would have to consult children and young people, their parents and other persons

"as the authority considers appropriate."

That means that a local authority would not have to consult every pupil or parent, or indeed every pupil with ASN or their parents. It could consult parents and groups that it considered appropriate to get the required information on how its services were doing. However, there would be guidance from ministers about the content and publication of the information and the persons consulted. There is an element of discretion in my suggested approach, which has been supported by several children's organisations, including Children in Scotland, the National Deaf Children's Society and the for Scotland's disabled children campaign.

Given that the Presiding Officer has deemed that significant costs are attached to amendment 25, it is unlikely that it will go any further, so I seek assurances from the minister that the Government might audit councils' consultation of affected families, at least as regards additional support for learning. It would be useful if the Government considered how to develop that in a way that did not require legislation.

The Presiding Officer's office has taken the view that amendment 25 carries significant costs, but the responses that I have received from a range of sources, including SPICe, Govan Law Centre, Children in Scotland and the City of Edinburgh Council testify to the fact that amendment 25 is very difficult to cost. The costings range from £96,000 every three years, which I got from Govan Law Centre, to £9.6 million, which is from SPICe, although SPICe has since written to me accepting that the figure could be considerably reduced, given that not all parents and young people would be consulted. SPICe's original figures were based on having to consult everybody, which was not the intention of amendment 25.

Children in Scotland has told me—and it might have told the Government the same thing, because the Government uses the same

example—about a consultation that it undertook in North Ayrshire that cost £30,000. However, so many factors are involved that it is difficult to determine costs. The City of Edinburgh Council told me that it had undertaken a number of consultations but refused—or was unable—to come up with a figure for consultations under amendment 25, because it said doing so would require the detail of who was to be spoken to and what was to be asked. Councils would have discretion in determining who to consult. Consultation could involve a small number of people or a much larger group. If the local authority decided that the consultation was to be much more targeted, possibly involving consultation of representative groups only, for example, the cost would clearly be much lower.

Govan Law Centre costed amendment 25 at £96,000 every three years, which most people would agree is a fairly minimal amount of money, given that it would cover the whole country. Govan Law Centre cited the explanatory memorandum to the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005—I will give all members a copy at the end of the meeting—and the consultation undertaken by the Greater London Authority when it developed its disability equality scheme. The overall cost of the consultation for the GLA, said Govan Law Centre, was £3,000. If you multiply that by 32 councils you get £96,000 every three years. Obviously, London has a much larger population than any Scottish authority area, but each council would have to tailor its consultation to suit its needs. I am sure that it could be argued that that is but one example, and that other examples would show something else. Bearing all that in mind, and bearing in mind the fact that local authorities would seek to minimise costs, I believe that a figure of about £152,000 over three years is reasonable.

In advance of the meeting, we were in the dark as to what cost the Presiding Officer's office would attach to amendment 25. However, a ruling has now been made. I accept that, in the present climate and given the restrictions on council budgets, consultation might not be seen as a priority, whether the cost is £152,000 or significantly more. However, I return to the principle of amendment 25, which is about ensuring that councils consult properly the people who are affected by their services. I ask the minister to take that on board and to consider whether, when he writes to council chief officers to ask what they are doing on access to information, he might also ask what they are doing on consultation. Some councils have consulted from time to time. Some have had in-house consultations and others have set up independent consultations. It would be good if the councils that have not so far consulted were reminded that doing so is good practice and that other councils are undertaking it.

I am concerned that, if we do not agree to amendment 25 or a similar provision, some people might see the Parliament as a further barrier to concerns about the ASL system being heard. I seek assurances from the minister that something will be done to ensure that that does not happen.

Kenneth Gibson: The spirit of amendment 25 is good, but it is lacking somewhat on the details. The provision to which Margaret Smith referred, about local authorities consulting people whom they consider to be appropriate, drives a bit of a coach and horses through the amendment. I am also alarmed by the possibility that the cost could range from £96,000 to £9.6 million. An amendment with a possible financial impact of such a wide range cannot possibly be accepted. The proposal will have to be considered again, if that is possible. The phrase that adheres to the proposed consultations under the amendment is, "How long is a piece of string?" A further issue is that, even if there was a duty to consult, there would be no corresponding duty on the Scottish ministers to publish guidance.

Amendment 25 is well-meaning and members would like something in the bill along the lines that it sets out. However, the costings are open-ended and, even if the amendment was within the financial envelope, the fact that some local authorities might carry out a minimalist consultation whereas others might carry out a significant one would render it completely ineffective. I have concerns about the practicalities.

The Convener: I call Liz Smith.

Elizabeth Smith: I—

Kenneth Gibson: Sorry, convener. I wanted to add another point, but I forgot about it.

The Convener: I remind you that I chair the meeting and I decide who is going to speak. I will let you in on this occasion.

Kenneth Gibson: Yes—sorry, convener.

Margaret Smith said that the cost would be about £152,000 over three years. That is a fairly precise figure, but she did not explain how she arrived at it. When she sums up, will she say how she arrived at that figure? It might help.

Margaret Smith: I have workings, but I decided not to go into them.

Elizabeth Smith: I lend my support to the principle behind amendment 25, as it is yet another amendment that could improve the process by which we help parents through the difficulties of having children with additional support needs. The key priority is to place a duty

on local authorities to assess whether they are delivering good-quality services. That ought to happen as part of local authority processes in any case, but a duty is important.

I appreciate that we have been given a wide range of costings. I did a little research of my own and I was persuaded that the costs would be minimal rather than of great substance. My support for amendment 25 is perhaps slightly conditional, but amendment 25 would be a way of improving our appraisal of service delivery. There are no two ways about it—the importance that local authority policy attaches to support for parents and children is fundamental. I am minded to support the amendment, on condition that it does not result in too many costs.

The Convener: I ask the minister to respond to members' points.

Adam Ingram: Members have covered the ground. We see amendment 25 placing an onerous cost burden on local authorities—members have the methodology that brought us to that conclusion—although I agree with the policy intention. We need to establish best practice for consulting parents on the information that they require with regard to their children's needs, and we must ensure that that best practice is adopted throughout the country. When I write to chief officers, I shall refer to that point. I hope that that satisfies Margaret Smith's aims.

I should point out that we have a continuing inspection process. Given that HMIE has already flagged an issue of concern, I will ensure that it is followed up on throughout the country.

The Convener: Margaret Smith, do you have any further points of clarification that you would like to pursue with the minister?

Margaret Smith: I shall address some of the points that have been raised on my amendment 25. I share a certain amount of common ground with Kenny Gibson—that may not happen on many occasions today. My amendment 25 seeks to pick up on HMIE's concerns about consultation, and concerns that were raised with the committee. When one drafts and lodges an amendment, it is concerning that the costings are so varied. SPICe effectively rowed back on the most excessive costing when I clarified that the duty placed on councils was discretionary—they would not have a duty to consult every single person.

There remains a certain amount of latitude in the costings, due, to a large extent, to the discretion afforded to local authorities. However, local authorities will not have discretion not to consult, which is the important part of amendment 25. I would like to pursue that with the minister. It is important that a duty is placed upon councils to consult on their services within a reasonable timeframe. We cannot get away from the fact that costs would be attached to that. I, for one, would not want millions of pounds to be spent on consultations instead of on additional support for learning services—none of us would think otherwise. Being given such a range of costings is perplexing.

Ken Gibson said that my proposed process would leave no place for ministers, but amendment 25 states:

"The second duty is a duty to have regard to any guidance issued by the Scottish Ministers",

so ministers would have a role.

12:00

As regards my costings, I used as a starting point the figure for the Greater London Authority that was given to me by Govan Law Centre. Given that that authority has to come up with only one set of proposals, which it can implement across the board—albeit that the area in question is extremely large—I moved upwards from the figure of £3,000 and came up with one of just under £5,000: £4,750. I thought that that was a perfectly reasonable amount, given what consultation might consist of.

I felt that if we left the matter in the hand of councils, their instinct, at this point, would be to adopt a minimal approach. A council might take such an approach to the duty to consult regularly on one or two occasions, but it might spend more money on the process every decade or so when it considered changing services. I would have thought that the instinct of councils would be to meet the duty but perhaps to do so by approaching representative bodies and asking them to consult parents and so on, and that there would be a way of conducting such consultations across the country for about £150,000, which I consider to be a reasonable cost.

I am pleased that the minister has said that he will write to the chief officers on the matter. There is a certain veracity in his comment that because the issue has been flagged up by HMIE, councils will have to take cognisance of it. I do not doubt that some councils will do that, but councils' record on the 2004 act does not fill me with a great deal of confidence that they will all do so.

That takes me back to the fact that, even though I heard what Mr Gibson, the minister and Elizabeth Smith have said, the policy intention behind my proposal—that parents and children and young people should be consulted on such important services—has a certain amount of support around the table. My intention was to find a way to ensure that consultation occurs. Clearly, neither I nor any other member of the committee wants the cost of such consultation to be prohibitive. I would like to

discuss the matter further with the minister to establish whether my amendment 25 can be tightened up in such a way that the duty to consult remains but we know for a fact that it will not cost a prohibitive amount of money.

Kenneth Gibson: I have a point of clarification on proposed new section 26A(3) of the 2004 act. Although it states that there would be a duty on authorities

"to have regard to any guidance issued by the Scottish Ministers about … the persons to be consulted",

there is no corresponding duty on the Scottish ministers to publish guidance. That is the point that I was trying to make.

Margaret Smith: Technically, that issue could probably be swept up at stage 3, if I was allowed to do so, but I will not be.

The Convener: Minister, do you have anything to add?

Adam Ingram: I look forward to exchanging views with Margaret Smith and seeing what we can come up with.

The Convener: We now move on to amendment 16, which the Presiding Officer has also ruled would have a "significant" or "potentially cumulative" cost. I invite Margaret Smith, who lodged the amendment, to speak first.

Margaret Smith: I will give the committee my rationale for lodging amendment 16 and address others' interpretation of it, which are not the same thing. My motivation when I spoke almost in support of the point that Aileen Campbell made at the start of the meeting is exemplified in relation to amendment 16.

As far as I am concerned, amendment 16 would amend the current situation whereby a tribunal has no jurisdiction when a young person reaches 18, even if they still attend school. Jessica Burns, the president of the Additional Support Needs Tribunals for Scotland, flagged up that issue to the committee in her written submission:

"A number of cases have addressed the needs of children who are aged almost 18 and the Tribunal can't proceed to address the issues once the young person reaches that age despite the fact that the school provision may have an impact on the priority received by the young person in accessing transitional post-school provision."

She went on to say that an amendment such as amendment 16 would

"undoubtedly ease the transition process."

I have also heard from elements of the voluntary sector that parents are put off going to tribunals towards the end of their child's school career partly because of information that they receive about the age bar. Viewing it in that way, I would have thought that the Government would be content to address the anomaly, because it impacts on only a small number of individuals.

Amendment 16 seeks to redefine "young person" to mean a person over school age who is still in school education, as opposed to the current definition from section 135(1) of the Education (Scotland) Act 1980, which says that a young person is someone over school age who is not yet 18. Currently, if someone is still at school but over 18, they are not covered. Amendment 16 would extend coverage to those pupils.

According to the pupil census, 1,457 pupils in secondary school and 215 at special school are 18 or over. Assuming that 4.7 per cent of the secondary school pupils have additional support needs, that adds a further 68 pupils, which means that 283 ASN pupils are over 18. Of those pupils, 7 per cent will have CSPs, so SPICe believes that the cost involved in an annual review would be around £16,000.

The number of extra references to tribunals for children in their eighteenth year would be low. In fact, it would be of the order of one reference every few years, given that we have had, I think, only 30 tribunals in total. Such costs are absorbable by the on-going budgets for tribunal costs, which have been underspent. I refer to my earlier point on the amounts of money that have been given out for CSPs. Exactly the same argument can be made for the number of tribunals, whereby funding was made on the basis of having 300, although there have been only 75. I am sorry that my earlier figure was wrong. I recalled it from memory, which is always a bad move at my age. Tribunals and local authorities have therefore been overfunded for the past few years, so any amendments that increase the number of tribunals by no more than 225 should incur no extra cost.

A costing of £16,000 means less than £500 per local authority area, so I am puzzled by the decision to deem that as a significant cost. SPICe, ISEA, Govan Law Centre, the for Scotland's disabled children campaign and others believe that the costs associated with amendment 16 would be minimal. In fact, I lodged amendment 16 in the spirit of regarding it as a minimal, almost technical, amendment, and I still believe that its financial consequences would be small. Amendment 16 would give a small number of pupils access to tribunals and deal with the current anomaly of reduced protection for young people aged over 18.

The Government's reading of amendment 16 is obviously very different from mine. It has somehow added a further 40 people over 17 to the schools cohort, suggesting that they would seek to stay at school because of what amendment 16 would do, and added two extra years at school for

some. The Government quotes unpublished Scottish Government figures that show that 554 young people with ASN will reach 18 this year. The Government's take on the effect of amendment 16 is to include the costs for all those 554 young people, but I suggest that some of the costs are already being met. Not taking that into account is why the Government gets a cost rise of £14 million, which is clearly not the intent of amendment 16 or, indeed, of the evidence that we took about the anomaly that it seeks to amend. If amendment 16 would give rise to any untold consequences—financial or otherwise—I am keen to hear them, so that I can investigate with the minister whether the amendment can be redrafted to realise my original limited intent.

I return to my earlier point about the process. As the clerks will be aware, when the financial concern about amendment 16 was flagged up to me two or three weeks ago, I immediately asked why, because I could not understand why that should be the case. Had someone been able to tell me the reason, I would have addressed the matter in good time. It was certainly not my intent to create unforeseen consequences. On hearing the ruling that amendment 16 was still causing concern, I again sought clarification with a view to saying that I would be only too happy to make any changes necessary to ensure that the consequences did not arise. However, I was told that, in the normal course of events, information about a Presiding Officer's decision would not be made available to me or to any of us. I must say that this does not seem a very normal course of events.

If something at the heart of amendment 16 means that my intention is being pursued in the wrong way, but the Government is content for the intended technical point to be pursued, I will be only too happy to try to find ways to work with the minister on the issue. If, on the other hand, the minister has a principled position that suggests that I am completely on the wrong track, I look forward to hearing his comments. However, from my perspective, amendment 16 typifies the ridiculousness of the system that we have had to work with over the past two or three weeks. All of us around the table are just seeking to do the best that we can in trying to produce workable amendments that do not cost the earth but improve services for children with additional support needs.

Aileen Campbell: Of course I hear what Margaret Smith says, and I understand where she is coming from, but my reading of the information that we have received today is that there are concerns that amendment 16 would run contrary to all other education legislation by removing the cap at the age of 18. As Margaret Smith said, we would all want to guard against a huge cost of £14 million.

No matter how well intentioned it might be, amendment 16 could also be viewed as discriminatory against school pupils who do not have additional support needs. The result could be perpetual schooling, with adults in their 60s being viewed as young people. Of course, that would bring with it disclosure considerations. If more young people were kept within the system, there could also be a knock-on effect on school places, especially at special schools. Therefore, I do not think that amendment 16 works. It certainly does not work financially, given what we have heard.

I share Margaret Smith's concerns about the process, but I do not think that we should proceed with amendment 16 as drafted, because of the issues concerning perpetual schooling, cost and discrimination.

Ken Macintosh: I, too, was surprised that very modest amendment 16 was included in the category of amendments involving a significant cost.

Let me first highlight the reasons for the amendment. As many of us will know from our casework if not from the stage 1 evidence, one of the most difficult moments in the life of any family that has a child with additional support needs is the point of transition to adulthood, when services drop off abruptly. As Margaret Smith pointed out, that transition can happen when the young person is still at school. Let me remind the minister and others of the recent report "Sweet 16? The Age of Leaving Care in Scotland", which was published by Scotland's Commissioner for Children and Young People. It is worth drawing a parallel with that report, which highlighted a similar problem in a different context when it flagged up the difference that statutory rights can make to young people at the ages of 17 and 18.

We currently rely on good practice, but that can easily be jettisoned. It is important to put something in statute to protect the rights of young people at school. The Government appears to believe that amendment 16 might encourage young people to stay on at school or that it would capture a group that I do not think exists—Aileen Campbell referred to older people with special needs who might be at school. I do not know who those people are, but that is absolutely not the intention. I ask the minister to confirm whether he would support amendment 16 if it was redrafted so that it was clearer that it would affect young people with additional support needs who turn 18 while they are at school.

12:15

Adam Ingram: The major problem is that 18 is the cut-off point between childhood and adulthood—that runs throughout our education legislation. My understanding of amendment 16 is that it aims to ensure that children or parents of young people have access to a tribunal if they have problems with the transition planning that relates to the move from children's services to adult services. I certainly want to address such issues, but we have a problem with legal definitions and issues such as who is entitled to school education. The proposals would upset the whole system, so we must consider that.

I do not know whether Margaret Smith has spoken to Jessica Burns about the issue, but I want to get a little more information about what the particular problem is. It seems to me that any problems with the transition process should be flagged up well before the young person reaches 18, because the arrangements for that are supposed to be established a year in advance of a young person leaving school. Why would access to a tribunal be desirable post-18? Should it not happen a long time before that? I ask the proposer of the amendment to give me convincing answers to those questions. I have not had a great deal of feedback that access to a tribunal for over-18s is a significant problem.

There is a problem with the transition to adult services and we have concerns about that. We have a policy on that, which is our 16+ learning choices policy. Under that initiative, we want young people to move into positive and sustained post-school destinations to help develop their learning and their skills for life and work in whatever type of provision best suits their needs and aspirations. The 16+ learning choices initiative is the new model for ensuring that all young people have a suitable offer to enable them to stay in learning and make the right decisions for their future. We aim to provide that for all young people, including those with additional support needs.

I am happy to discuss the details with Margaret Smith and other committee members. I am a bit doubtful about whether we can come up with something to tweak the legislation, but I have an open mind on that.

Margaret Smith: I am happy to undertake discussions with the minister on amendment 16 and the other two amendments that we discussed earlier. If there is a way in which we can address the matter that does not involve hitting the definition of a young person, that would be the best way forward, but I have been in the hands of draftsmen who have suggested that that cannot be done and have said how the matter had to be addressed.

The minister may be correct when he says that he is not aware that 18-year-olds having access to and going to a tribunal is a significant problem. It may not be a significant problem. That takes us back to the costings that I had attached to the matter. I did not think that there was a significant problem because I thought that a very small number would be involved—one person every few years—but I thought that we should consider the fact that the president of the Additional Support Needs Tribunal for Scotland flagged the matter up to us. That was backed up by more anecdotal concerns that were raised informally with me by certain children's organisations.

There are concerns that a message is, in effect, given to parents as children come towards the end of their schooling that once their kid gets to 18, whether or not they are at school, nothing can be done and they cannot go to a tribunal. Concern exists that another barrier is being put in place for certain people. That is largely the sort of anecdotal evidence that exists, but it is indicative of the concerns that have been raised with us about the issue. Parents think that all sorts of barriers to getting problems addressed or to getting some sort of redress are put in their way. I appreciate that the problem will not affect many people—hence my reading of what the consequences of amendment 16 would be. I am happy to consider the matter further with the minister to see whether any problems that a relatively small number of people might have with the current system can be addressed. We may be unable to do that because the consequences would have too many ramifications, but I am happy to enter into conversations with the minister to see what we can do.

Adam Ingram: There is only one other thing that I want to mention, which follows on from what I have said. We recognise that problems exist. HMIE pointed out that there were problems with post-school transitions. We have appointed a national transitions development officer, who will lead, manage and co-ordinate local and national partnership approaches to the effective implementation of the act. It is not as if we are not aware of the issue or that we are not taking steps to address it. Members of the committee should bear that in mind. Not all solutions are necessarily legislatively or policy driven. The example in question is an example of that.

The Convener: That concludes our consideration of amendment 16.

The final group with an amendment that the Presiding Officer has ruled as having significant or potentially cumulative costs contains amendment 12, lodged by Liz Smith.

Elizabeth Smith: Amendment 12 was lodged to address further the issue that was raised in

amendment 16 and to ensure that, through the tribunal process, measures will be put in place if a local authority fails to fulfil properly the duty to ensure that transitions are in place for young people who are beyond the school leaving age and have been identified as having additional support needs. I stress that we are talking about situations in which a local authority fails to fulfil its duty.

I note that the Presiding Officer has ruled that amendment 12 would cost in the region of £60,000; SPICe commented to me that it is likely that minimal costs would attach to the amendment; and that the Govan Law Centre, which based its figures on Government statistics, said that the cost would be up to £125,000. I do not want to comment further on that at this stage. Amendment 12 would be important where there was a failure to deliver on the statutory duty; it is a principled amendment in that respect.

Aileen Campbell: There are already dispute mechanisms in the 2004 act that relate to post-school transitions, but I agree that we must do all that we can to ensure that they work. Under the act, if a parent of a child with additional support needs feels that transition arrangements are necessary and the authority disagrees, the parent can refer the case to dispute resolution, and if the child has a CSP the case can go to a tribunal. We have heard about the problems in relation to that, so we must ensure that the process is clear and works as well as it can.

Going by what the minister said about amendment 16—that the transition process begins one year before the young person leaves school—I guess that the process could begin as early as 15. Currently, authorities must approach other agencies concerned with the child or young person when they leave school, but I agree that we must do all that we can to ensure that the transition works in the best interests of the child or young person. As mechanisms currently exist in the 2004 act, I remain doubtful about the need for further amendment, but we have some sympathy with the policy intent of amendment 12.

Adam Ingram: I refer to my response on amendment 16, when I spoke about the appointment of a national transitions development officer, which would also help to reduce the incidence of authorities' failure to comply with their duties on post-school transitions. The whole point of appointing such an officer is to address those issues. The post will be, if you like, a preventive mechanism, to prevent such failure from happening.

Elizabeth Smith: Will you clarify the cost of that appointment?

Adam Ingram: It is not associated with the bill; it is—

Elizabeth Smith: I would still like to know what the cost will be.

Adam Ingram: I do not have the information to hand, but I can certainly furnish you with the detail later.

Elizabeth Smith: That would be helpful; thank you.

The Convener: That concludes our consideration of amendment 12. I will now suspend the meeting to allow the minister and his officials to leave. Thank you, minister, for your attendance today.

12:28

Meeting suspended.

12:31

On resuming—

The Convener: I said earlier that I would give members an opportunity to express any concerns that they might have about the process, before we conclude our consideration of agenda item 3. I intend to allow every member to speak once—and once only—if they so wish, to conclude our consideration of the matter. I remind everyone that we are still in public session and that the official report is present.

Elizabeth Smith: We all said at the start of the process of looking at the Education (Additional Support for Learning) (Scotland) Bill that it was potentially one of the most important bills to go through Parliament because it is extremely important that we deliver adequate and better services for those affected. It is important that this Parliament lives up to its promise of being open and transparent and that it is able to deliver good-quality legislation. I firmly believe that, to do that, we have a right to access to all relevant information, both of an objective nature, which has been the case, and of a subjective nature—in other words, when objective information has been used subjectively by any party, the Government or officials to put forward a point of view.

If good government is about anything, it allows us to marshal our facts, look at opposing opinions and present our case on the public record. As a member of this committee and, more important, as an elected member of the Scottish Parliament, I do not feel that I have been able to do that with the rigour that I would have liked during the process of scrutinising legislation. We have been compromised by not having the necessary information available to us and, therefore, we have all had to come at it from a slightly haphazard

angle, which has made the scrutiny process extremely difficult.

I have grave reservations about what has happened over the past four weeks and about the fact that we have been compromised in our consideration of what I and, I think, colleagues around the table consider to be extremely important legislation that we are obliged to get right for the parents and children concerned. The natural conclusion to draw from the experience is that we might not be able to pass as good legislation as we might have done. That is an unacceptable circumstance.

Politics currently suffers enough from a lack of integrity and other difficulties and this experience has not helped. I thoroughly recommend that the Standards, Procedures and Public Appointments Committee look at the process. Lots of questions have been raised about the democratic process and the scrutiny that we are expected to undertake as elected members. People expect elected members to exercise democratic scrutiny, but in this instance we have not been entirely able to discharge our duties.

Margaret Smith: I agree absolutely that the Standards, Procedures and Public Appointments Committee must consider the issue. We are in a unique set of circumstances. Obviously, issues to do with financial resolutions have cropped up in previous sessions of Parliament but, on those occasions, the Government produced new financial resolutions. I accept that the present circumstances are different, because we have a minority Government rather than a majority one, but the standing orders say that it is up to the Government to produce a financial resolution.

Many committee members lodged amendments to the bill in good faith. In some cases the intent is to seek to change the bill; in others the amendments are probing ones, with the aim of getting on the record comments from the minister about issues of concern that are raised during the committee process. That happens in many stage 2 proceedings—it is how we do legislation and members who have been here for a decade have done it that way in the past.

It is not members' intention to push every amendment they lodge at stage 2 to a vote—often, that is not the intent; the process is an opportunity for committee members and the Government to put comments on the record and to give a sense that concerns are being noted and, to an extent, addressed. In many cases, addressing the concerns falls short of legislative change. This morning, we have done something very similar. In the dialogue at stage 2, a minister often suggests to a member that they might redraft an amendment or have discussions with the minister. That often happens in a good spirit and a collegiate manner.

The way in which the present process has transpired meant that, on the eve of the stage 2 consideration, when members had lodged amendments in good faith and had no knowledge that the financial resolution would be an issue, Ken Macintosh was informed that he had lodged an amendment that would trigger a problem. Other members were told informally on the morning of the committee's stage 2 consideration that we had also lodged amendments that would trigger a problem, although we were not given details of what the problems were. The clerks gave us an informal indication of the amendments that were involved. For example, I was particularly surprised to be told informally that there was a problem with amendment 16. When I sought to do something about that as early as possible, I was in effect stonewalled by process. That is in no way a criticism of any of the individuals who were involved, but the process did not allow any of us to try to remedy the situation in which we found ourselves, even if we genuinely wanted to do so.

The bill is important. We all understand the frustrations that many people have with the practice that has grown up around the 2004 act, to which we all signed up and with which we all agreed in principle. It is important that we do not come out of the present legislative process having failed parents and children again. It was incredibly difficult for us to produce our own costings in the middle of recess. We had the best help possible from SPICe and we tried to pull together information from a range of options, but none of us had previously attempted to undergo that process or been aware that it existed. That left some members with a wide range of costing possibilities. That happened to me in relation to amendment 25, which is on consultation. I am not left with any great sense that I am best placed to make a decision on the issues, and I know that other members feel exactly the same way.

Timetabling has been an issue. The situation was flagged up at tea time on the night before the first day of stage 2 consideration. We submitted our costings last Wednesday, but we were told the decision only at 7 o'clock on the following Monday evening, so we had only one full working day before today's committee meeting. That left committee members in a difficult position, although we are trying to do our jobs as best we can.

There are several questions about how the decisions on costings were taken. I understand that the common practice is that the Presiding Officer does not provide further information about how decisions were taken, but a decision was made somewhere that amendments 10, 19 and 12 would incur cumulative costs. It is arguable that it

is for the committee to decide which amendments it wants to take up the slack on the £300,000 limit that is available to us, but that option is not available.

I am not arguing against amendment 19, which I lodged, going forward to next week because at least it is being treated more reasonably than the amendments that will not proceed, but we have stumbled through a process that has at points been disrespectful to members and on several occasions been particularly disrespectful to the parents and children whom we are trying to help. The Standards, Procedures and Public Appointments Committee is required to consider the position and to ensure that standing orders are fit for every possible purpose.

Ultimately, the Parliament's purpose is to hold the Government to account and to scrutinise and pass the best possible legislation to address the country's problems. If we are denied the opportunity to put the amendments that we lodge to a committee decision of our peers and to the Parliament of our peers, we cannot guarantee to people that we have done our jobs properly and that we have produced the best possible legislation.

I will make a practical point. In the circumstances, we have had a fruitful discussion today. It would help if we asked the official report to provide a copy of those discussions as soon as possible, and certainly as a matter of urgency, so that we can look at the debate and so that some of us can decide what we must do before the deadline for lodging amendments, which is on Friday.

The Convener: Does any other member wish to speak?

Kenneth Gibson: Everyone wants to be the last person to speak because of your ruling that we can speak only once, convener. Perhaps members should be allowed to speak more than once.

Several issues have been raised. I understood that when the bill's principles and ethos were agreed at stage 1, that was how we would proceed. I was astonished by what happened four weeks ago, when the minister was in effect hijacked by several supposed concerns about amendments that should not have been considered.

The figures that I have found from adding the minimum and maximum costs of seven of the amendments that we have discussed today—amendments 10, 13, 15, 16, 19, 23 and 25; I did not include amendment 12 because it is a bit more open ended—range from £10.4 million to £41.3 million. It is inappropriate to expect ministers of whichever party to accept amendments of such cost when Parliament has not agreed to a financial resolution.

The Presiding Officer has not helped the matter by not giving us some breakdown of how his office calculated the figures or his rationale. I understand that he had the figures on 15 April and that our clerks requested and received the figures on the same day, so I do not understand why that information was not passed to committee members sooner than this morning. Although the Presiding Officer has the right not to tell us how the figures were arrived at, it would have been better for the meeting if we had been told.

12:45

A few weeks ago, we discussed our workload. Given the workload that we have, it was wrong to abandon a committee meeting. I am sure that other work could have been found.

Further, I am not aware of any consultation with members about the status, format and timing of this meeting. The informal/formal/whatever status of the meeting would not have been particularly clear to anyone looking at our discussion. We have spent three hours on amendments that cannot be brought forward without a financial resolution. Our time could have been spent much more appropriately.

I do not understand why the marshalled list that we were sent on Monday night was not updated to include amendments withdrawn or agreed to previously. I do not know how unique these arrangements are. As far as I understood it, the procedures were the same as for every bill. However, unique circumstances seem to have developed.

Finally, at the previous meeting, the convener showed a lack of respect for the minister. Regardless of what someone thinks of an individual minister or their party, ministers should be shown the due respect of their office.

Ken Macintosh: All members have been frustrated today because we have been faced by two problems. The first is the process and the second is a far more political issue, which is the deliberate decision by the Scottish Government not to publish a financial resolution. That is a rare event that has provoked all the problems today.

I found the meeting quite constructive and was pleased that we had it because we were able to restore some of the harmony that had existed previously. We are now going to undo all of that.

The minister has responded constructively and positively to the amendments that were not allowed to be lodged and has made his own proposals in place of those amendments. That is exactly what should happen. It would not have

happened if we had not had the meeting today, and if we had not suspended stage 2 before the recess, which—as I understand it—was ordered by the Parliamentary Bureau and was not decided on by us or consulted on with us.

The process is frustrating and I am not talking only about the frustration of members. I mentioned earlier that we pride ourselves on our transparency: we are always trying to engage the public in the parliamentary process and in forming legislation, but anyone who has been trying to follow the bill will have been unable to understand anything that has been going on. That is unsatisfactory.

Like all members, I was concerned about the Presiding Officer's decisions about our amendments, so I wrote to him asking for further information. As I do not think the reply is confidential, I will share a little bit of it. He said:

"Dear Ken … As you will be aware, I am not in the habit of giving reasons for specific decisions (on, for example, the admissibility or selection of amendments). Such decisions usually involve an exercise of judgement in relation to matters about which members, understandably, often have strongly held views and entering into a detailed debate with members about such matters does not necessarily assist in reaching an impartial view, as I am obliged to do."

He went on to say that

"Without wishing to be unhelpful"

he has given me as much information as he can.

That is a position with which I think we are all familiar. When we are in the chamber, we are not allowed to challenge the Presiding Officer's decisions, which is why he is not allowed to share the reasons for his decisions. I do not believe that that is the end of the matter—it is a very unsatisfactory affair altogether. I am pleased that the PO has referred it to the Standards, Procedures and Public Appointments Committee. The PO has been entirely caught up in this. I have every sympathy with him; I am sure that he has no wish to be caught in the middle of cross-party or any other kind of political dispute about such matters. I hope that we are able to learn from this situation which parliamentary procedures would be better placed to serve members, committee scrutiny and the public, should such a situation arise again.

I return to the question why we are here today. We are here because Scottish ministers deliberately chose not to publish a financial resolution. I find that extraordinary—it is certainly a very disappointing decision. Until a few weeks ago, I had thought that the committee and the minister had worked together admirably. We had listened to the evidence and parents' views, had engaged constructively and had come together well to shape the bill more effectively. It would appear, however, that all along the minister had a hidden agenda, which was to ensure that the implementation of parental rights should come at no cost—not even potential cost—to the Administration or to local authorities.

The committee was prepared to accept its disappointment at the limited scope of the bill; no outlandish or hugely expensive amendments were lodged, even today, by committee members, who have shown every willingness to be reasonable and accommodating in seeking to achieve what I thought were shared objectives. In response, the Scottish Government has been intransigent and has shown a lack of trust in the committee and the parliamentary process, and a lack of confidence in its own arguments.

Local authorities are not allowed to take decisions on additional support for learning on the ground of cost—they may take such decisions only to address children's needs. However, too many parents tell us—as they did in evidence—that they fear that, in practice, the issue of costs is implicit in, and underpins, too many decisions. How can we expect that to change if the Scottish Government sends out exactly the same message in the bill? I worry that, instead of reinforcing parental rights with the bill, we are pulling the rug from under parents' feet.

Christina McKelvie: I agree with some of the comments that have been made around the table about our frustration with the process. This is the first time I have taken part in stage 2, and I have found it to be extremely frustrating and, in some cases, quite opaque. I did not lodge amendments because of a lack of information and support. From other members' comments and from my experience of trying to gather the evidence that would allow me to decide whether I could or could not support an amendment, it is clear that information and support were lacking. On numerous occasions, I sought clarification from the clerks and SPICe, but did not receive it in time or in a form that I found supportive. It makes me extremely disappointed that, by design, default or even by the rule of unintended consequences—which we have discussed today—some of the amendments have resulted in wrecking the bill, which has a direct impact on parents and children who need its support.

This morning we have talked a great deal about transparency, which is a big issue for me. If legal and other opinions and other evidence were gathered to allow committee members to lodge amendments, we should have had all that information, for the sake of transparency and of the dignity and integrity of the Parliament. That would have allowed me to form a much better opinion on the stance that I should adopt in relation to amendments.

Ken Macintosh spoke about the purpose of the bill, which was to amend the 2004 act, not to introduce new legislation. If a new bill were needed, we should have considered that earlier. At stage 1, when we agreed to the general principles of the bill, we agreed that the purpose of the bill was to amend the 2004 act to address some issues that had arisen under it. All the bluster from Ken Macintosh does not serve the committee and the Parliament well.

I cannot say that this has been a good learning opportunity for me, as a committee member. It has certainly been a learning opportunity, but it has taught me many negative lessons that I will follow up. I am extremely concerned and disappointed by the fact that the committee and other parts of the Parliament have not served well the bill or the people whom it is intended to help.

Aileen Campbell: We were told about the scope of the bill at the outset and we were told that there would be no financial resolution. Ken Macintosh seems to be suggesting that there has been a sudden change of mind on the part of the Government, but that is not the case: the position was clear from the outset.

It is sad that we are in this position, given that members of the committee worked well together when we gathered information about the bill. We agreed to do all that we could do to help the children and young people who will be affected by the bill. Like Kenny Gibson, I am concerned about the sudden turn in the committee. Meetings were cancelled without real consultation and the process, purpose and standing of today's meeting was unclear, which has affected our ability to scrutinise the bill. Like Christina McKelvie, I would have been happier if we had had legal advice. I think that I heard today that the convener had sought legal advice and had written to the clerks about that. I do not know why we have not been privy to that information; perhaps the convener will explain.

Like Margaret Smith, I am concerned about the huge differences between the costings that the Presiding Officer advised and the costings that the Government presented for consideration today. In essence, we have been blindly discussing the implications of amendments to the bill and we have been comparing apples with pears. Ken Macintosh said that he does not think that the amendments that have been lodged have real cost implications, but costs of £14 million are attached to one amendment, which seems fairly significant when we consider that the trigger for a financial resolution is £300,000.

I hope that we can move forward more constructively than we have been allowed to do and in a way that does not allow any of us to try to score points, so that we can do what is best for the vulnerable people whom the bill is trying to help.

Claire Baker: I agree with what many members have said. This has been a difficult process for someone who has been experiencing stage 2 for the first time. When amendments were lodged there was a lack of information about the process, the status of amendments and how to provide costings.

Margaret Smith's comments on the situation in which the minority Government finds itself were relevant. Today's discussion indicated that although costs are attached to amendments that have been lodged, members are keen to talk about the issues that the amendments address and are prepared to compromise as well as to seek concessions from the minister. If we look back at the stage 1 report, I think that we will find that all the amendments that we have considered cover issues that the minister acknowledged there is a need to address—that is particularly true in relation to advocacy. I appreciate the Government's concern about how committee members might vote but, as Ken Macintosh said, the Government should have put more trust in the committee to approach the bill in the way we approached stage 1, when we worked well with the minister and the Government. That would have been a more satisfactory way to manage stage 2.

The Convener: I will clarify the procedures that have led to our ending up in this situation. On whether stage 2 amendments are ruled admissible or inadmissible, I make it clear that that is a decision for the convener at stage 2. At stage 3, it is the decision of the Presiding Officer.

No convener or Presiding Officer would take such decisions lightly; the matter is given rigorous and careful consideration. We receive procedural advice, which is prepared by the clerks in consultation with others, and in general we follow the advice and precedent that have been set. On this occasion, and during the past 10 years in the Parliament, I have in no way deviated from that approach.

On the decision to cancel a committee meeting and not to fill it with other business, the Parliament's standing orders and our procedures are quite clear. We had not notified the public and we had no agenda for the meeting, so it would have been impossible for us to have met formally with a new agenda.

13:00

As far as today's meeting is concerned, I was not consulted on whether or not the decision that was reached was agreeable to me or to the committee—the decision was taken by the Parliamentary Bureau. If people have objections to

the decision, they should be raising them not with me, but with their business managers, who represent their parties at the Parliamentary Bureau. The committee is only fulfilling the obligation that was placed on us by the bureau.

Turning to the wider issues, I think that parents with children with additional support needs, as well as organisations that represent those children, will be looking aghast at how Parliament has conducted itself in relation to our consideration of the matters that are before us. They will be wondering just why we have behaved in this manner and, more important, why the Government has behaved as it has.

All this could easily have been avoided. None of the amendments that have been considered today was unexpected; all the issues were raised with the committee in evidence at stage 1. They were also flagged up during the stage 1 debate. For it to be a surprise that members of the committee would wish to lodge amendments, and for them not to be considered, is just unacceptable.

On the part of the staff of the Parliament, I deeply resent the suggestion that the clerks, SPICe or other staff were unhelpful in assisting any member of the committee to formulate amendments. I deeply resent the suggestion that clerks of the Parliament are in some way not capable of assisting members.

We could have had a proper stage 2 consideration of all the amendments if the Government had chosen to introduce a financial resolution. That would in no way have meant that all the amendments would have been accepted. The Government is trying to suggest that members of the Opposition parties want to steamroller through amendments that are unreasonable and costly. Members should have the confidence to marshal their arguments to convince other committee members that their amendments, although well intentioned, would have unexpected consequences. That is how Parliament has considered proposed legislation for the past 10 years, and I do not think that that system has served us badly.

The arrangements for today have perhaps served us much more adversely than the system and procedures that we have used in the past. I hope that the Standards, Procedures and Public Appointments Committee will consider the matter fully when the Presiding Officer writes to it to ask it to do so.

Meeting closed at 13:03.

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