EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 29 April 2009

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
12th Meeting 2009, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Adam Ingram (Minister for Children and Early Years)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 2

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 29 April 2009

[THE CONVENER *opened the meeting at 10:01*]

Subordinate Legislation

Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No 2) Regulations 2009 (SSI 2009/118)

The Convener (Karen Whitefield): I welcome members to the 12th meeting of the Education, Lifelong Learning and Culture Committee in 2009. I remind everyone present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

I propose to reorder our agenda this morning so that we take our second advertised agenda item, which is the consideration of subordinate legislation, first.

Scottish statutory instrument 2009/118 revokes and replaces SSI 2009/91, which the committee noted for information at last week's meeting. The Subordinate Legislation Committee has drawn the attention of the Parliament to the regulations on the ground that the Scottish Government failed to follow normal drafting practice in one specific instance. The Subordinate Legislation Committee also noted that one part of the regulations did not comply with the 21-day rule, but it was satisfied with the explanation that was given for that by the Scottish Government.

I see that members do not wish to make any comments on the instrument. As there have been no motions to annul, unless members have any comments now, are we agreed that the committee has no recommendation to make on the regulations?

Members *indicated agreement*.

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

10:02

The Convener: We move to our continued consideration of the Education (Additional Support for Learning) (Scotland) Bill at stage 2. We have been joined by the Minister for Children and Early Years, Adam Ingram, and his officials.

Members should have a copy of the bill, the marshalled list and the groupings. Members should note that the groupings contain the Presiding Officer's rulings on the cost of amendments. A number of amendments that appear in the marshalled list have been ruled by the Presiding Officer to have significant costs. Under rule 9.12.6 of standing orders, no proceedings can take place on such amendments as the bill does not have a financial resolution. I will not be able to call those amendments, so they will be passed over in the marshalled list.

After section 5

The Convener: Amendment 8, in the name of the minister, is in a group on its own. I invite the minister to move and speak to the amendment.

The Minister for Children and Early Years (Adam Ingram): The purpose of the amendment is to insert section 8A in the Education (Additional Support for Learning) (Scotland) Act 2004 to extend the rights of parents and young people, to enable them to request a specific assessment, such as an education, psychological or medical assessment, at any time. Currently, under the 2004 act, parents of young people can make an assessment request only when an education authority proposes to establish whether a child has additional support needs or requires a co-ordinated support plan, or when the authority is reviewing a CSP.

It is considered that that is unduly restrictive on parents' and young people's rights to request an assessment, especially for those children and young people who do not have a CSP and whose additional support needs may change over time. At present, parents may be able to make an assessment request only once during their child's school education. A further assessment may be necessary and desirable if the additional support needs change. I think that the right to request an assessment should be available at any time.

As you may be aware, the 2004 act already places a duty on education authorities to make appropriate arrangements for keeping under consideration the additional support needs and the

adequacy of the additional support that is provided to children and young persons with additional support needs. Therefore, an education authority would be failing in its duty if it did not carry out a specific assessment that it thought necessary.

The amendment provides that the education authority must take account of the results of the assessment when considering the additional support needs and the adequacy of the additional support provided for the child. Education authorities will not be required to comply with the assessment request if it is considered to be unreasonable.

I should also take this opportunity to make it absolutely clear that, under the current legislation, parents of prescribed pre-school children—generally between the ages of three and five—have the ability to request an assessment under section 8 of the 2004 act. The amendment will also enable them to request an assessment of their child's needs at any time.

We shall amend the dispute resolution regulations to provide that if an authority refuses to comply with a request for an assessment under section 8A, its decision will be a specified matter that can be referred to dispute resolution.

I move amendment 8.

Ken Macintosh (Eastwood) (Lab): I reaffirm my support for amendment 8. I was slightly disappointed that amendment 30 could not be heard on this issue.

The committee has heard evidence that there is an issue with children under three not being assessed. Although local authorities have the power to assess children under three, the 2004 act has not been taken advantage of widely and there have been a number of obstacles in the way. It is clear that amendment 8 is of specific help to all those for whom local education authorities have responsibility, but it does not specifically cover those under three. Will the minister address that?

I am grateful that the minister is reforming the dispute resolution regulations to ensure that section 8A will be covered by them. I support the amendment.

Adam Ingram: Our early years framework focuses on birth to three and what we plan there complements the 2004 act. You will also be aware that later this morning we will deal specifically with the arrangements that are in place for those aged between zero and three and I hope that we can come to agreement on that specific issue.

It is important that the amendment is accepted because we all know that a child's additional support needs might change over time. Parents are best placed to identify those changes and bring them to the attention of authorities and request assessments. This will be a significant improvement to the existing legislation.

Amendment 8 agreed to.

The Convener: I cannot call amendment 30 because it has been ruled by the Presiding Officer to have significant costs and, under rule 9.12.6, no proceedings can be taken on the amendment because the bill does not have a financial resolution.

Amendment 14, in the name of Margaret Smith, is grouped with amendments 14A to 14F.

Margaret Smith (Edinburgh West) (LD): After all our evidence taking and, indeed, in the course of our work as MSPs, we should be aware of the particular challenges that are faced by looked-after children, who are the subject of amendment 14. Time and again, those children are let down by the system and those of us who are meant to be responsible for them.

The needs of looked-after children have been highlighted in a number of submissions, particularly in the one from the Govan Law Centre. Also, in his foreword to "These Are Our Bairns: a guide for community planning partnerships on being a good corporate parent", the minister makes it clear that the attitude of corporate parents should be that looked-after children are their responsibility and in their care and that they need to do the best for them. I hope that the committee will rise to that challenge today.

Looked-after children are very often let down or abused by their own parents, and they look to local authorities as corporate parents. Although they are often well cared for, we know that they are too often left behind when it comes to educational attainment. They will often encounter council staff who will protect, support and nurture them but, given council staff's busy workload, their needs and life chances are often overlooked. Some will say that, because of the getting it right for every child programme and the inclusive nature of the 2004 act, it is wrong to pick out and give prominence to any group of children. However, I believe that these children and young people are different. Either they have no parents or their parents are unable or unwilling to care for them. They find themselves with another parent, the local authority, which very often is the gatekeeper to services. I want to ensure that no local authority is tempted to short-change any looked-after children and that no council official is tempted not to ask for an assessment or a co-ordinated support plan for such children because they are overworked, because they know that their education colleagues will not want them to make such a request or because of some other excuse.

Amendment 14 seeks to cover looked-after and accommodated children who live away from their

parents and to allow them by virtue of their status to be treated as children with additional support needs. It will not give them an automatic right to a CSP and discretion will be retained in the matter. In that respect, the briefing from the Convention of Scottish Local Authorities is wrong.

It is also worth noting that amendment 14 and the other amendments in the group seek to address certain failures by local authorities to implement duties under the current legislation. As the amendment proposes that each child be considered for a CSP, the number of assessments—and, I think, CSPs—would undoubtedly rise. At the moment, there are 4,751 children in the category of looked-after children who live away from home but who have not been identified as having additional support needs.

Clearly, not all looked-after children will either be assessed or get a CSP. For example, a council might feel that such actions are unnecessary for children who are being looked after temporarily. Some councils will choose to link this assessment to other care plan assessments that they are already carrying out for a particular child; indeed, I believe that some are already trying to pull the two processes together. However, Her Majesty's Inspectorate of Education's view is that the educational element of the care plans that are already in place could be improved. That said, amendment 14 is designed to ensure that councils at least consider the needs of each child and whether they require a CSP.

The lack of CSPs for looked-after children was flagged up as a matter of concern by the president of the Additional Support Needs Tribunals for Scotland and in HMIE's report. Although the ASNTS president noted the change programme, she wrote in her submission:

"The apparent failure of the legislation to adequately encompass the needs of … looked after children is evidenced by"

the fact that there have been no

"references to the Tribunal"

involving looked-after children. She also says:

"These children all have needs which already involve agencies other than education but there may be an absence of a person to advocate on behalf of the child to ensure that the support in relation to the child's educational development is appropriate or sufficient."

We know that looked-after children have a statutory entitlement to a care plan, but thousands of them still have no such plan. There needs to be a focus on their education, and I believe that the bill is the right place for such a focus.

Although costs will be involved, I believe that many of them are already covered by the funding that has been in place since the 2004 act came into force. If every looked-after child living away from their parents were to be given a CSP, the number of plans would increase by around 4,500. That would bring the total number of CSPs up to approximately 6,500 across Scotland, which is still substantially less than the 13,500 CSPs that were anticipated in the financial memorandum to the 2004 act and for which funding has been provided in subsequent budget allocations to local authorities.

10:15

Funding is important, but even more important is the fact that the Parliament should respond to on-going concerns about looked-after children. I acknowledge the work that the minister has done on this matter. Ensuring that these children have the best possible childhood and the best possible future is the most important work that we can do. I know that we all share that concern, and I therefore urge colleagues to support amendment 14.

I move amendment 14.

Ken Macintosh: From the evidence that we have heard, members will be aware that many children and young people whom we would like to have a CSP have not been given one. HMIE identified in particular looked-after children, carers and young people with a mental disorder as missing out in that regard. The National Deaf Children's Society has also identified deaf, partially deaf, blind and partially sighted children as being similarly overlooked.

None of the amendments that we are discussing automatically grants a right to a CSP; they merely grant the right to an assessment. I should state, for the record, that I would not wish any category of children to be automatically granted a CSP, as that could return to the problems of the old record of needs system. The point of the 2004 act was to extend new rights to all children with additional needs, not just those with a document created in statute.

However, five years on from the 2004 act, it is clear that there are particular problems with the act's implementation and that there is widespread variation across the country in terms of how the act has been put into practice. The problem is not just that some children are not getting a CSP; it is that too many children are not even being assessed.

Each of the amendments in this group offers a practical solution to the problem of underassessment. It is difficult to argue with the proposition that any child meeting the criteria that are set out in these amendments will have additional needs.

Margaret Smith has already made the case for looked-after children, and I will not repeat her arguments. However, I emphasise that the committee's report highlighted the needs of that group as being of particular concern.

I believe that the same arguments that apply to looked-after children apply to carers and young people with a mental disorder. Who is there to ensure that a young carer's needs are identified, never mind met? The responsibilities of adulthood are already resting on their too-young shoulders, and we should not expect them to negotiate their own way through the labyrinth of additional support needs legislation and provision. As with children with a mental disorder, young carers should be automatically assessed, and their needs should be met, with or without a CSP.

For children with a sensory impairment, the evidence and the argument are equally convincing. The National Deaf Children's Society has circulated a comprehensive briefing on why the amendments are necessary, including some good examples of case studies. I will not repeat the whole briefing, but I will quote selectively from it.

With regard to the definition of additional support needs in the 2004 act, the briefing points out that a deaf child has an additional support need arising from a complex factor that

"has a significant adverse affect on their school education".

It goes on to say that ministers have confirmed that

"there is a gap between S4 attainment rates of deaf children in Scotland when compared to their hearing peers".

A deaf child requires

"high level involvement from audiologists, ear, nose and throat specialists, speech and language therapists, as well as specialist education support"

and has a long-term need of such support.

The briefing continues:

"Despite meeting these criteria, relatively few deaf children appear to be receiving a CSP. For example, in one local authority area alone, NDCS has established that whilst there are over 180 deaf children identified as receiving support from the education authority and NHS services, less than a fifth of these deaf children have a CSP or an IEP in place."

It is believed that that is because of underassessment. There are a number of theories about why that happens, but it is worth pointing out, as the NDCS does, that

"Only around 40% of deaf children are diagnosed at birth—the remainder acquire permanent hearing loss later in childhood".

The briefing says:

"Currently, we believe that there is too much emphasis on parental responsibility—if a parent does not present their child as potentially requiring a CSP, it is very rare that a child will be assessed for one. This is a great burden for parents to shoulder, at what is often a very emotional time for them—90% of deaf children are born to hearing parents with no prior experience of deafness. We believe that information from Audiology departments confirming hearing loss should be the trigger point for deaf children to have their additional support for learning needs assessed automatically … Even if that assessment concludes that a CSP is not the appropriate plan for that child … parents can be satisfied that their child's needs have been fully assessed and will have access to the findings of that professional assessment as a basis on which to negotiate an IEP or other form of support plan, and teachers working with that deaf pupil, particularly in mainstream teaching environments, will have a full understanding of that child's needs."

Finally, it is interesting to note that there is a legal precedent. The briefing says:

"The Requirements for Teachers (Scotland) Regulations 2005, a Scottish Statutory Instrument … establishes a legal requirement of teachers employed wholly or mainly to work with hearing impaired pupils to have an appropriate qualification to teach such groups of pupils. Therefore there is a precedent in law which states that hearing impaired children have needs which require additional support beyond that which would normally be provided by teachers without a specialist qualification.

These Regulations also cover teachers working with visually impaired pupils, and those who are both hearing and visually impaired."

Therefore, I believe that it is appropriate to expand amendment 14 to include those groups of children.

I will not move amendment 14F. That amendment was drawn up with the best of intentions and it enjoys the support of many parents and children with a disability, but it is clear that that support is far from unanimous. The amendment could provide practical help, but I have no wish to impose it without that unanimity.

I move amendment 14A.

Aileen Campbell (South of Scotland) (SNP): We heard much about the need to care adequately for looked-after children and young people during our evidence-taking sessions, and I support any moves to ensure that looked-after children and young people have the same opportunities and support that their non-cared-for peers have. In light of the publication of "These Are Our Bairns" last September, the Government recognises the need to provide greater support and to strengthen support. However, under the 2004 act, local authorities are already under a duty to make arrangements to identify those who need additional support and a CSP, including children and young people who are looked after. Therefore, subsection (2) of the section that amendment 14 seeks to introduce does not add to the bill or the 2004 act. Moreover, the amendment is flawed because it assumes that every looked-after child

and young person has an additional need. I grant that a higher proportion of looked-after children and young people have additional support needs, but the amendment's approach is disproportionate, and it assumes that no looked-after child could ever be capable of making good educational progress.

On amendments 14A to 14F, I again point out that local authorities are already duty bound to identify children and young children for whose education they are responsible who have additional support needs. That means that many of the groups that are listed in the amendments are dealt with in the 2004 act. Extending the list of children who are automatically deemed to have an additional support need in that way is therefore unnecessary. The amendments could also weaken the act because listing categories in the way that Ken Macintosh has done means that other children and young people will be missed out. I am sure that people with an interest in, for example, children and young people with attention deficit hyperactivity disorder or autism, Gypsy Traveller children, children who are being bullied, or children for whom English is an additional language, will be concerned about being missed out by those amendments.

We have received a briefing from Children in Scotland saying that amendment 14 and amendments 14A to 14F represent

"a significant step backwards in law and policy"

and that the

"basic principles of inclusivity and equality would be undermined by Amendment 14".

The briefing that we have received this morning from North Ayrshire Council says that the amendments

"fundamentally undermine the basic premise of the legislation itself".

No matter how well-intentioned amendment 14 and amendments 14A to 14F are, it appears to me that they could be damaging, disproportionate and not in keeping. I therefore urge committee members to reject them all.

The Convener: As no other member has indicated a wish to speak, I invite the minister to contribute to the debate on this group of amendments.

Adam Ingram: Convener, I beg your indulgence—I have fairly lengthy notes here, because I want to cover each group of people who will be affected by the amendments.

The Convener: It is a pretty detailed group of amendments, minister, so I am sure that we can allow you the discretion to address all the points that you wish to address.

Adam Ingram: Thank you, convener.

I think we all agree that we want to do all we can to ensure that children and young people who are looked after away from home have the best possible opportunities to make the most of their education. We know that this is an area in which practice can be strengthened. However, I believe that amendment 14 is not the best way of achieving that.

The first part of amendment 14 would require local authorities to treat all children and young people who are looked after away from home as if they have additional support needs, regardless of whether those children or young people actually need additional support in order to benefit from school education. However, we know that there are children and young people who are living with foster carers and are making perfectly good progress in school. I do not believe that those young people would want or need to be treated as having additional support needs. Their foster carers would not want it, either.

Any child or young person who is looked after away from home and who does require additional support in order to benefit from school education is already covered by the 2004 act. Amendment 14 would introduce a twin-track approach, with one system for those who are looked after away from home, and another system for those who are not. In doing so, amendment 14 would undercut the current regime. Currently, a child or young person only has additional support needs if additional support is required in order for that child to benefit from school education. Amendment 14 would create a hierarchy of rights.

The second part of amendment 14 would require education authorities to consider whether every child or young person who is looked after away from home, and for whose education the authorities are responsible, requires a co-ordinated support plan. However, again, the 2004 act already covers this. Under section 6, the act requires education authorities to make arrangements to identify, from among the children and young people for whose education they are responsible, those who have additional support needs and who require a co-ordinated support plan. The duty then includes, and applies to, children who are looked after away from home. Therefore, the second part of amendment 14 would add nothing to existing duties and is not required. All children and young people who are looked after away from home and who have additional support needs are already covered by the 2004 act. In certain cases, there might be no actual additional support needs, which would leave the education authority in the bizarre position of being under a duty to provide something that a child did not actually require.

In the majority of cases where it is already accepted that the child has additional support needs, how will the authority assess those needs? The answer would surely be to assess what the child needs in order to benefit from school education—but that is precisely the test that amendment 14 would prevent the authority from applying. The original test could not be applied, because it could have the effect of undeeming the deeming provision. So, amendment 14 would deem a child to have additional support needs without providing a meaningful test to apply in assessing those needs.

If, on the other hand, the existing test is somehow still meant to apply to deemed cases—we do not believe that the drafting of amendment 14 would achieve that—the amendment is pointless, as it would simply bring us back to the existing position and achieve nothing. The only certain result of the amendment would be to add confusion to the 2004 act's provisions.

10:30

Please be assured that we want to do all we can to ensure that looked-after children and young people have the same opportunities and support as their non-care peers. I believe that we need to look at the whole range of factors that can be barriers to looked-after children fulfilling their potential, including educational ones. That is why the role of local authorities as corporate parents is vital in ensuring that all partners play their part in improving outcomes for looked-after children. As Margaret Smith and others have pointed out, we published in September last year, to assist local authorities, "These Are Our Bairns—A guide for community planning partnerships on being a good corporate parent". We have also employed a champion to work with them to raise awareness of corporate parenting and to challenge them to improve. We know that this is an area in which practice can be strengthened and are committed to working with authorities to improve outcomes for all looked-after children.

It is important to note that the Scottish Government has produced, in partnership with COSLA, local authorities and Learning and Teaching Scotland, guidance entitled "Designated Senior Managers for looked after children and young people within educational and residential child care establishments". The guidance was published in September last year and lists core tasks to clarify the roles and responsibilities of the designated senior manager for looked-after children and young people in each school or residential establishment. One of the tasks of the person who undertakes that important role is to ensure that looked-after children and young people with additional support needs have appropriate additional support needs assessment and planning in place, and that those are reflected in care planning documentation—things have moved on over the past couple of years or so. The revised ASL code of practice will reiterate the task to ensure that, where appropriate, looked-after children and young people are assessed and that the assessment is linked to other planning arrangements.

The committee may be interested to know that on 26 March this year a guide for local authorities and service providers was published. That signifies the completion of the Scottish Government-funded programme of local authority pilot initiatives that are aimed at improving the educational attainment of looked-after children and young people. To achieve the best outcomes for our looked-after children and young people and care leavers, we need to ensure that the right sorts of support, guidance and educational stimulation are available at the appropriate ages and stages of their lives, from early years through to further and higher education. The pilot initiatives and national research have helped to identify professional practice that can make a real difference to our looked-after children and young people.

Additionally, the Scottish Government is issuing a chief executive's letter to all health boards to clarify their responsibilities to looked-after children and young people and care leavers. The letter will ask boards to nominate a responsible director to champion the needs of looked-after children and to take responsibility for the board's meeting those needs. It is essential that health services are aware of their responsibilities to looked-after children and that they work effectively with partner agencies to provide the services that they need. Multi-agency assessment of need and child-centred planning and service delivery are essential to improving outcomes for this vulnerable group.

I was slightly surprised that amendment 14—and amendments 14A to 14F—were judged to be admissible. I accept that that is entirely a matter for the convener, but introducing the deeming provision would change the essential character of the 2004 act system, which is based on each individual child being assessed so that they get the provision that they need to benefit from school education. The amendment not only does not make sense in itself, but will confuse the existing test.

I will talk about amendments 14A to 14F, although I understand that Mr Macintosh will not move amendment 14F. I appreciate the sentiment behind the amendments, but everything that I said on amendment 14 applies equally to them. They would exacerbate the twin-track approach, would risk categorising as having additional support

needs children who require no additional support in order to benefit from school education and are—as far as the effect of subsection (2) of the proposed new section that amendment 14 would insert goes—unnecessary.

However, even if amendment 14 were agreed to, amendments 14A to 14F would, if accepted, destroy a fundamental principle that underpins the 2004 act. The act rests on a broad definition of additional support needs and deliberately avoids drawing out specific groups of children for particular treatment. To start to draw out and list specific groups now would undermine the ethos of the act. One danger of the list is that stakeholders who are not included in it would feel second class. As Aileen Campbell said, there is no mention of children who have autistic spectrum disorder, dyslexia, attention deficit hyperactivity disorder or English as an additional language or whose education suffers because of parental substance misuse. I could go on.

In its parliamentary briefing for the bill, Children in Scotland said:

"The original ASL Act is an aspirational and visionary piece of legislation. The Scottish vision of 'additional support for learning' still covers physical conditions and behavioural difficulties, but also includes a range of other personal obstacles to success in school—including limited English, being a young carer, bullying, depression, living in secure accommodation ... The ASL Act covers any circumstance that impedes a child from succeeding at school."

Amendments 14A to 14F run counter to that inspirational and much-admired vision. They would provide that certain limited categories of children and young persons were automatically deemed to have additional support needs, whereas children who do fall into those categories would not. At the same time, all children and young persons who fell into those categories would be categorised as having additional support needs regardless of whether they required additional support to benefit from school education.

I said that I appreciate the sentiment behind amendments 14 and 14A to 14F. We will consider what we can do in the revised code of practice to reinforce and strengthen our advice and guidance to education authorities to ensure that all the children who are mentioned in the amendments will benefit from the bill. However, I believe that the amendments would seriously undermine the ethos of the 2004 act.

Members should be assured that my aim is that every child and young person should know that they are valued and will be supported to become a successful learner, an effective contributor, a confident individual and a responsible citizen. To achieve that aim, we are undertaking a number of policy initiatives to improve education provision for the specific groups of children that amendments 14 and 14A to 14F target.

We have developed a young carers services self-evaluation guide with HMIE. It is intended to support all services that are in contact with young carers to ensure that the best possible provision is available for that group. It focuses on delivering positive outcomes for young carers through partnership working.

We are, throughout 2009, revising our national carers strategy for Scotland, in partnership with COSLA. The strategy will include a lift-out young carers section that will focus on the specific needs of that group. That section will also examine how young carers can be best supported to reach their full educational potential. We are committed to ensuring that the strategy has a strong young carer voice and that it reflects the views that were highlighted by young carers who attended the young carers festival last September. It will focus on delivering positive outcomes for young carers and their families.

We are working with national health service boards and other partners to deliver the objectives that were set in "The Mental Health of Children and Young People—A Framework for Promotion, Prevention and Care", "Delivering a Healthy Future—An Action Framework for Children and Young People's Health in Scotland" and "Delivering for Mental Health". Those provide a combined framework that has key timetabled milestones, with attention to training and workforce planning; increasing bed numbers; early intervention; supported transitions; improved primary care; and better planning and delivery of specialist care for children and young people with mental health problems.

We have delivered on our commitment to ensure that a named mental health link worker is available to every school to ensure that pupils' mental health needs are identified at the earliest possible opportunity. We have also developed the early years framework to ensure that support is in place to promote children's emotional wellbeing and help those who are finding things difficult. The early years framework builds on our existing commitment to the getting it right for every child initiative, which has a core component of streamlining planning, assessment and decision-making processes to ensure that the right help is delivered at the right time for young people who are at risk. Our soon-to-be-published policy and action plan for mental health improvement—"Towards a Mentally Flourishing Scotland"—will also include a focus on the mental health of infants, children and young people.

The Scottish Government funds the communication aids for language and learning—CALL—centre, which is based at the University of

Edinburgh and which is working with Learning and Teaching Scotland on the books for all database, which will be available to all schools via glow or the Scottish cultural resources access network. The database will allow teachers to obtain adapted curriculum materials and make them available to any pupil in Scotland. From April 2008, the Copyright Licensing Agency has agreed to extend the licence to cover people who are visually or otherwise impaired.

The Scottish Government also funds the Scottish sensory centre, which is a national centre that promotes innovation and good practice in the education of children and young people with sensory impairment. The centre provides a comprehensive programme of continuing professional development relating to the education of deaf, visually impaired and deafblind pupils, and of dissemination of best practice in the education of Scottish children who have sensory impairments. Teachers are therefore provided with training to enable them to improve the attainment and experiences of such children.

Disabled children and young people are among the most vulnerable in our society. The Scottish Government is working in partnership with a range of stakeholders, including the for Scotland's disabled children coalition, local authorities and families to support the delivery of effective, equitable and empowering services that meet the needs of all Scotland's disabled children and young people. We are providing substantial direct support to a range of organisations in the children's disability sector, including the Family Fund, Capability Scotland, Contact a Family and Sense Scotland. The support comes to more than £3.3 million in the current financial year. Under the concordat with local government, additional resources for disabled children stemming from a report in England entitled "Aiming high for disabled children—better support for families" have already flowed to local authorities. Although those resources were rolled up in the local government settlement and were not ring fenced, they are still available to support vulnerable and disabled children.

In discussion with FSDC, we agreed that the establishment of a liaison project with a dedicated project manager would be valuable in driving forward change. The liaison project will address key issues such as respite, transition, child care and the review of the Education (Additional Support for Learning) (Scotland) Act 2004 and will serve as a conduit between the Scottish Government and significant players in the sector. That will generate intelligence about services on the ground and better connect us with our key stakeholders.

10:45

We welcome Kate Higgins starting in post as the FSDC liaison project manager. Kate brings to the role a wealth of experience and energy and she will serve as a key figure in the children's disability sector by engaging with children, young people and their families, policy-makers and practitioners throughout the sector to ensure that families' needs are articulated and addressed.

I am afraid that I have to go on, convener, because I want to cover a number of other groups of children. We have recently completed a series of discussions with parents of disabled children and young people from throughout Scotland to gather at first hand intelligence about parents' experiences, priorities and desires for change, which will inform future policy. Those meetings have included extensive discussion of issues such as flexibility of services, crisis and trigger points for the release of resources, orienting services around the needs of the child in line with getting it right for every child, and a range of financial support issues.

We are revising Government guidance on disability accessibility strategies for education authorities in order to reflect the current legislative context and to showcase good practice. That guidance is scheduled to be published over the course of the next few months.

Through a two-year action plan that has been agreed by the Scottish Government and all initial teacher education establishments in Scotland, the aim is to embed inclusive approaches to teaching pupils with additional support needs and disabilities.

We have funded teaching resources to assist pupils with learning disabilities, such as the autism toolbox, which was published on 3 April, which is a resource for Scottish education authorities and schools that draws on a range of practice experience, literature and research to support education authorities in delivery of services to, and in planning for, children and young people with autism in Scotland.

We are also working to build on the central position of GIRFEC in policy that relates to all children. Under GIRFEC, every aspect of children's services will embody central principles around locating the child at the centre of planning, listening to children, building partnerships and integration, improving information sharing, having individual children's plans and having a lead professional as a single point of contact.

I hope that those examples go a long way towards demonstrating to the committee that the Scottish Government will continue to strive to improve education services for these groups of children. I will also ensure that the revised code of

practice will highlight those initiatives and encourage authorities to develop good practice for these groups of vulnerable children. In addition, I will ensure that HMIE and the Scottish Commission for the Regulation of Care continue to monitor and evaluate provision, where appropriate.

I ask Margaret Smith and Ken Macintosh to seek to withdraw their amendments in the light of my rather lengthy comments.

Margaret Smith: I do not doubt for a second either the minister's sincerity in relation to these children, or that progress is possible. The fact that progress is possible stems initially from the understanding that the system that is in place is not working. My problem with the comments that Aileen Campbell and the minister have made is that we are returning to the 2004 legislation, which has failed to deliver. They have continued to say that there are duties in the existing legislation, but the fact is that, to date, those duties have not delivered what people and Parliament wanted. The reality is that those duties are not working—looked-after children are not having assessments and CSPs or appearing before tribunals, even if their needs are not being met. The system is not working.

The minister said that amendment 14 runs counter to the inspirational backdrop of the 2004 act, but for the past five years, many local authorities across the country have acted in a way that is totally and utterly counter to the inspirational backdrop of the 2004 act. There comes a point when we as a Parliament must again underline the circumstances in which we think that action needs to be taken. I believe that amendment 14 is proportionate. As far as I am concerned, it is an acceptable position to say that children who are looked after and accommodated away from home and away from their parents have additional support needs when it comes to learning. I do not think that that is disproportionate. We are not even talking about the majority of children who are seen as being looked after.

One of my major reasons for lodging amendment 14, which I will press, is not just because of the needs that those children have in relation to other children; it is because they have a fundamentally different relationship with the council in that the council is their parent. They are in a fundamentally different position from many other children in the sense that, very often, their own parents are not there to push on their behalf. I believe that they are in the unique position of requiring our assistance and support.

I have a great deal of sympathy with the points that Ken Macintosh has made, but once we go beyond the group of looked-after and accommodated children, we risk creating a hierarchical list of children who have particular needs, depending on their prognosis. Looked-after and accommodated children have fundamentally different relationships not only with their own parents but with their corporate parent, who is the gatekeeper to services. Time and again across Scotland, the corporate parent has failed to open that gate. The educational attainment of those children is not good enough. At what point will we turn round and reiterate our views on the educational and other needs of those children, which we thought that we had made clear in 2004?

Amendment 14 says that local authorities must consider whether such children require a CSP. Like Aileen Campbell, I am utterly convinced that there are some children who will manage fine without a CSP. I am also utterly convinced that an awful lot of children would perform a great deal better in their schools if they had a CSP or a care plan—which they are statutorily required to have—in place. We know that in 2007, 76 per cent of looked-after children had care plans, which means that a quarter of them did not.

If we were in a perfect world in which local authorities were responding to the inspirational backdrop of the 2004 act as we intended and hoped that they would, I would feel able to seek to withdraw amendment 14. The sad fact is that they are not doing so, so I will press amendment 14.

The Convener: I will put the question on amendment 14 at a later point.

I invite Mr Macintosh to wind up the debate on amendment 14A.

Ken Macintosh: I again find myself entirely in agreement with Margaret Smith, so I apologise if I repeat many of the arguments that she has just made.

I acknowledge the minister's good intentions. It is clear that, despite the difficulties that we have had over recent weeks, all of us wish to help Scotland's children and address their full range of needs. Both the minister and Aileen Campbell questioned whether the amendments in group 2 were necessary and pointed out that the rights that they would grant are already contained in the 2004 act. That is the case. The amendments in question would not create new powers or provide looked-after and accommodated children with new rights; they are merely about good practice as regards implementation.

It is interesting to note that the amendments have been described as cost neutral by the Presiding Officer, similar to amendment 8 from the Executive. In the Executive's financial paper that was presented to us when we discussed the financial implications of all our amendments last week, the minister argued that amendment 8 was

lodged as a way of ensuring that rights that already existed under the 2004 act would be properly implemented. I think that he said that the amendment would act as a safety net. That is exactly what I hope amendments 14 to 14E will do—not introduce new rights but merely ensure that existing rights are properly implemented.

The minister presented several other arguments about why it might not be desirable to go down the route of listing groups or categories of children to whom attention needs to be drawn. Aileen Campbell mentioned that, too. It is common to debate what is called the deficit model and the social model of disability, and I will not pretend that I am not sympathetic to that inclusive approach, which we have debated at length in the Parliament, including back in 2004. Some people in this country believe that we should adopt a totally inclusive approach as in Italy. The trouble is that that is not the approach we have taken; we have always had compromises in this country, and compromises are still made all the time.

It is a question of judgment as to what needs to be stipulated in legislation and what extra action needs to be taken. As evidence of that, I quote two points. A specific exception is made in the 2004 act for those who already have a record of needs. In other words, the supposedly truly inclusive approach that we captured in the 2004 act was never an entirely principled approach without exceptions. We specifically made the exception for—

Adam Ingram: For transitions.

Ken Macintosh: For transitions—exactly. All that we are trying to do through amendments 14 to 14E is apply the same rights that we gave to children who have a record of needs—not even the same rights, actually; we are trying to grant them the same recognition. I referred earlier to the Requirements for Teachers (Scotland) Regulations 2005, which also single out certain groups of children who require special attention.

I do not think that there is a principle in the 2004 act that we are somehow undermining with amendments 14 to 14E. I am sympathetic to the deficit model versus social model of disability—more so to the latter—but it has been five years since we implemented the 2004 act and it is not working as well as it should.

The minister argued that life has moved on and that, even now, life is moving on with councils addressing the issues. He spoke about various policies that are soon to be published—strategies and action plans—all of which are laudable and which I certainly hope are effective. However, it is difficult to accept that they are currently effective. The evidence heard by the committee identified all the groups of children referred to in the practical amendments in this group as requiring a specific focus. That is all that the amendments seek to do—put a specific focus on certain groups that are underassessed. They would not give people in those groups a CSP; they just mean that their needs would be looked at, which is what should happen to every child in this country.

In talking about life moving on and councils' approaches, the minister implied that there will be a change of attitude. One of the unspoken worries about additional support for learning is that it is an underfunded area. The fact that the minister has refused to fund the bill by introducing a financial resolution does not exactly fill one with confidence that there is much money in the system to fund any additional needs that are recognised in the community. Our local authorities are working under a far tighter financial regime now than they have done in the past five years so there is no reason to think that they will have a change of heart when it comes to distributing resources.

11:00

Perhaps more important—although I almost hate to bring it up—the historic concordat that the Government is always referring to and its relationship with local government are effectively a device to explain why the Government cannot implement policies for which it has responsibility. The concordat is used all the time to explain why the Government's good intentions do not work out. That applies across a range of issues, from class sizes to school buildings, teacher numbers and everything. This is another example.

Unless the minister is signalling to me and to the committee that he is moving away from the approach that is enshrined in the concordat, which effectively hands over responsibility for all the minister's good intentions to local authorities, and unless he says that he can do something practical about the situation, I do not see how any member of the committee can have any confidence that the minister's words will be translated into action. The concordat works specifically against that.

Margaret Smith made a very good point. The minister talked about our undermining the ethos of the 2004 act. Its ethos is not undermined by the practical amendments that we are proposing; it has been undermined over the past five years by the inability of some local authorities to implement it efficiently, properly and fairly across the board.

There is a balance to be struck between the principles of legislation and the practical impact. I see our proposals as a straightforward form of practical implementation, and the parents of deaf children, among others, are united in believing that they will make a difference for them. It will be one less battle for parents to fight and one less

obstacle in the way of providing the support that a child needs. I urge members to support all the amendments in this group.

The Convener: The question is, that amendment 14A be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2.

Although I would have preferred not to have to do this, because the division has resulted in three members voting for the amendment and three members voting against I am required to use my casting vote. I vote for amendment 14A.

Amendment 14A agreed to.

Amendment 14B moved—[Ken Macintosh].

The Convener: The question is, that amendment 14B be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2.

Once again, I am required to use my casting vote. I support amendment 14B.

Amendment 14B agreed to.

Amendment 14C moved—[Ken Macintosh].

The Convener: The question is, that amendment 14C be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2.

Once again, I am required to use my casting vote. I vote in support of amendment 14C.

Amendment 14C agreed to.

Amendment 14D moved—[Ken Macintosh].

The Convener: The question is, that amendment 14D be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2.

Once again, I am required to use my casting vote. I vote in support of amendment 14D.

Amendment 14D agreed to.

Amendment 14E moved—[Ken Macintosh].

The Convener: The question is, that amendment 14E be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2.

Once again, I am required to use my casting vote. I vote in support of amendment 14E.

Amendment 14E agreed to.

Amendment 14F not moved.

The Convener: I ask Margaret Smith whether she wishes to press or withdraw amendment 14.

Margaret Smith: I wish to press the amendment.

The Convener: The question is, that amendment 14, as amended, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

ABSTENTIONS

Smith, Elizabeth (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 4, Against 3, Abstentions 1.

Amendment 14, as amended, agreed to.

The Convener: I cannot call amendment 13 because it has been ruled by the Presiding Officer to have significant costs and, under rule 9.12.6, no proceedings can be taken on the amendment because the bill does not have a financial resolution.

Amendment 31, in the name of Ken Macintosh, is in a group on its own. I invite Mr Macintosh to move and speak to the amendment.

Ken Macintosh: Just for clarification, the grouping for amendment 31 refers to the category of children under pre-school age: those who are aged nought to three. Amendment 31 is effectively a redraft of amendment 26, in case members are following the list in those terms.

When we considered the amendments at the first stage 2 evidence session back in March, the committee accepted and addressed the fact that we have an issue with how the needs of children aged from nought to three are addressed under the current implementation of the 2004 act. Amendment 31, which amends section 5 of the 2004 act, is designed specifically to help parents and their children aged from birth to three.

I will describe two scenarios. On the one hand, it is very easy for a child who has additional support needs but is otherwise healthy to go through the vital period in their learning from nought to three without any real on-going contact with the health service. Members will be aware of a number of proposed changes to the health visiting service, and it is easy to envisage that this might become the norm for many children.

On the other hand, under section 5 of the 2004 act, the NHS is the gatekeeper to additional support for those at an early age. There is no support for children if they do not have an NHS referral. Members will be aware of a lot of evidence on that point and that the diagnosis of a condition—already a stressful and difficult experience for parents—can become the only way to secure and access additional help with learning.

I have already quoted the National Deaf Children's Society, which has good examples from learning from the experience of the member, and it has highlighted the need to address that point. In its briefing it states that at present

"local authorities *can* provide support to the pre-3 age group but are not under a legislative obligation to do so for all children with additional support needs. As with access to CSPs, the decision as to whether a child under 3 has a significant additional support need arising from their disability rests with the local authority concerned."

In practice, that requires a reference from the local health board.

The society also states:

"Early years support for a deaf baby is vital in order to develop access to language and therefore the curriculum in later life. An undiagnosed deaf child aged 3 will have a vocabulary of around 25 words, compared to 700 words for a hearing child of the same age."

and that

"To complement the delivery of the forthcoming Early Years Strategy, NDCS Scotland believes that the statutory requirement to enter the process of establishing additional support for learning needs for a deaf child should not begin only once that child enters pre-school education – if it does, then the intended benefits of early intervention following diagnosis at birth could potentially be lost."

We have clear evidence of need among this age group. We also know from evidence submitted to the committee that health boards interpret their role in relation to the 2004 act in a widely different manner. Not only are they a further unnecessary obstacle to families wishing to address their child's needs, they introduce an unfair element of regional disparity.

The suggestion I propose in amendment 31 is to keep the qualifying criteria essentially the same but to remove the role of the health authority.

I move amendment 31.

Christina McKelvie (Central Scotland) (SNP): Last week, I had quite a few concerns about the original amendment. The redraft addresses all of those concerns, and I am quite happy. One of my real concerns was about who has responsibility for referral. It is a confusing landscape anyway, and the previous amendment would have confused it further. Amendment 31 defines it a bit better, and I welcome the redrafted amendment in its present form.

The Convener: As no other member has indicated a wish to speak, I invite the minister to make his contribution.

Adam Ingram: I am pleased that we have been able to find a mutually agreeable approach to the issue of how this group of children can be brought to the attention of the education authority and that as a result we now have a broader group of stakeholders, including of course parents themselves, who have the ability to act.

I have no doubt that the amendment will be of assistance to the education authority in monitoring the numbers of disabled children under three years of age who receive support and the nature of that support in order that plans can be made to ensure their needs are met on transition to pre-school provision. I am happy to support the amendment.

The Convener: I invite Ken Macintosh to wind up the debate.

Ken Macintosh: I will not add anything other than to welcome the comments of the minister and members.

Amendment 31 agreed to.

The Convener: I cannot call amendment 32 because it has been ruled by the Presiding Officer to have significant costs and, under rule 9.12.6, no proceedings can be taken on the amendment because the bill does not have a financial resolution.

Amendment 21 is in the name of Kenneth Gibson.

11:15

Kenneth Gibson (Cunninghame North) (SNP): Section 15 of the 2004 act places a duty on education authorities to arrange for independent mediation services to be provided free of charge to children or young people in the education authority area. Mediation services seek to avoid or resolve disagreements between the authority and parents of young people concerning the exercise by the authority of its functions under the act. The amendment requires all mediation services to be independent of the local authority. Independent mediation would go a long way towards increasing parental confidence in the system and its ability to uphold the rights of parents and young people.

At present, there is a patchwork of provision, with some councils buying in independent mediation services, others using mediation services from within their education authority, and others using general provision from elsewhere in the council.

Amendment 21 seeks to ensure that there is no postcode lottery for mediation services and would give all parents equal entitlement to service provision across Scotland. Both perceived and actual transparency, independence and fairness are important in giving parents confidence.

I move amendment 21.

The Convener: As no other member wishes to speak, I invite the minister to speak to the amendment.

Adam Ingram: Amendment 21 will provide that a mediation services provider that has any involvement in the exercise by the local authority of any of its functions, whether or not those functions relate to education, cannot be regarded as independent.

If the aim of the amendment is to prevent authorities from using in-house mediators and require those authorities that currently provide an in-house mediation service to employ an independent mediation service provider, it fails to meet that objective.

Removing the words

"under this Act (apart from this section)",

would mean that, as soon as a mediator enters into an agreement with an authority to provide mediation services, the mediator would be carrying out an education authority function under section 15 of the 2004 act and would therefore be excluded from providing the mediation.

Basically, amendment 21 as drafted would exclude absolutely everyone from providing mediation services. Accordingly, I ask Kenneth Gibson to withdraw it.

Kenneth Gibson: Given the comments of the minister, I seek leave to withdraw the amendment.

The Convener: Do we agree to the amendment being withdrawn?

Margaret Smith: I would like to clarify one point. As the problem is purely a drafting matter, I assume that Mr Gibson will be able to bring the issue back at stage 3, in a properly drafted

amendment, so that we can have a chance to action the proposal?

Kenneth Gibson: There are only a few words that are causing the problem, so I will certainly consider re-presenting the proposal at stage 3.

The Convener: I think that it is the wish of the committee that the proposal come back at stage 3, once the appropriate changes have been made to the wording.

Amendment 21, by agreement, withdrawn.

The Convener: Amendment 22 is in the name of Kenneth Gibson.

Kenneth Gibson: Section 16 of the 2004 act enables the Scottish ministers to require, by regulations, education authorities to put in place arrangements to resolve disputes between the authority and any parents or young people. Those arrangements must be free of charge. Regulations may prescribe which disputes relating to particular functions of the authority under the 2004 act will be subject to dispute resolution. Parents and young people will not be compelled to use any dispute resolution procedure that is put in place, nor will their entitlement to make a referral to a tribunal be affected.

Anecdotal evidence suggests that the current process is not working, as parents are required to make a reference for an independent adjudication to their local authority. Instances are cited of delays in receiving correspondence, or of the reference getting lost or simply being ignored by the authority.

Amendment 22 would put in place a process whereby the initial contact is made to ministers. That would make it easier to obtain an independent adjudication and therefore enhance the rights of parents and young people. It would also provide a more accurate picture of how many such references are made and received. Most important, it would remove the delays and problems that many parents experience and increase parental confidence.

I move amendment 22.

The Convener: As no other member wishes to speak, I invite the minister to speak to the amendment.

Adam Ingram: Amendment 22 would require that, when a parent or young person makes an application for dispute resolution, that application must be made, in the first instance, to the Scottish ministers. However, the amendment raises a number of questions about what is to happen after ministers receive an application. The words “in the first instance” suggest that the parent would then be required to do something else. Placing unnecessary burdens on parents and young people is something that we seek to avoid.

Currently, under the dispute resolution regulations, if an authority considers that an application for referral to dispute resolution relates to a specified matter and that all of the supporting material has been provided, it must send the applicant confirmation of acceptance of the application within 10 days. At the same time, the authority must send a request to the Scottish ministers for a nomination by them of an independent adjudicator. On receiving such a request, ministers must nominate a person from their panel of independent adjudicators.

I understand that some authorities can be tardy when it comes to contacting ministers to nominate an independent adjudicator, which is simply unacceptable. To address that, I intend to issue a direction under section 27(9) of the 2004 act to direct authorities to comply with the relevant timescales that are laid down in the dispute resolution regulations. The whole dispute resolution process must not exceed 60 working days.

Furthermore, I recognise that it might be beneficial for ministers to be alerted to the fact that a parent or young person has submitted an application for referral to dispute resolution. That would enable ministers to contact authorities directly on a case-by-case basis if it was brought to their attention that an authority might be in breach of the relevant timescales. However, it is vital that any new process that we introduce is as easy as possible for parents. It must not be overly onerous, and I am considering the ways in which we could best achieve that.

Accordingly, I ask Kenneth Gibson to withdraw his amendment, pending my consideration of ways of taking the matter forward.

Kenneth Gibson: The minister’s commitment to ensuring that the legislation works properly is important. I look forward to seeing the implementation of the additional measures that he refers to.

Amendment 22, by agreement, withdrawn.

The Convener: One of the members of the committee has asked for a short comfort break. Accordingly, we will suspend for two minutes.

11:24

Meeting suspended.

11:28

On resuming—

The Convener: Amendment 29, in the name of the minister, is grouped with amendments 10, 19 and 33.

Adam Ingram: Amendment 29 would place authorities under a duty to ensure that the information that they are required to publish under section 26 of the 2004 act is available, on request, from each school under the management of the authority. Therefore, the amendment would expand the range of locations from which information that is published under section 26 might be obtained.

The Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 already place local authorities under a duty to publish all the information that is detailed in section 26 of the 2004 act in printed and electronic form and to hold that information in those forms at the authority's head offices and at such public libraries as are located within the area of the education authority. The published information should also be made available on request in alternative forms such as on audio tape, in Braille or through sign language.

I intend to exercise the direction-making power under section 27(9) of the 2004 act to ensure that the requirements of that statutory duty are met in as useful and efficient a fashion as possible. However, by expanding the range of locations from which information can be obtained to include local authority schools, amendment 29 would ensure that parents can access the relevant information, either in its entirety or in part, from the school, which is the place from where they are most likely to seek it.

11:30

Amendment 29 would also place authorities under a duty to provide parents of children with additional support needs and young people with additional support needs with information on how to access the information that is published under section 26.

Amendment 29 is intended as an alternative to amendments 10 and 19, which were lodged by Elizabeth Smith and Margaret Smith. I note that Margaret Smith has also lodged amendment 33, which has some similarities to amendment 29. However, amendment 29 would provide parents with access to a greater amount of information than amendment 33 would. Amendment 33 would require that parents are able to access a "summary" of the published information under section 26 of the 2004 act, whereas amendment 29 would require the school to give access to all the information that is published under section 26. In that respect, amendment 29 would enable parents to access all relevant information. It is also worth highlighting that amendments 29 and 33 are alternatives. If both amendments were agreed to, the result would be a confusing and contradictory piece of legislation.

Amendment 10 would require education authorities to provide parents of children with additional support needs and young people with such needs with all the information that authorities are required to publish under section 26 of the 2004 act. However, that section was amended by the Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005. Amendment 10 does not specify how or when such information should be provided to parents or young people. The distribution method, along with the staff time involved, could have significant cost implications for authorities.

Amendment 10 would place authorities under a duty to provide the information that is published under section 26 of the 2004 act to all parents of children with additional support needs and to all young people with additional support needs, not just to those for whose school education the authority is responsible. Potentially, that means that the authority would be under a duty to provide the published information to every parent of a child with additional support needs and to every young person with additional support needs in the country. Furthermore, that could lead to a situation in which the parents of a child with transitory additional support needs would receive vast amounts of local authority information that was neither requested nor required and that would be relevant for only a short period of time. Clearly, that would be completely disproportionate.

I completely agree that more must be done to raise parents' awareness of their rights under the 2004 act, but I am not convinced that amendment 10 is the best way to proceed. Under the current legislation, authorities are required to publish, in electronic and printed form, the following details: information on the authority's policy in relation to provision for additional support needs; the arrangements for identifying children and young people with additional support needs; information on mediation; and details of a local authority officer from whom parents can seek further information and advice. I accept that some authorities are failing in that statutory duty. That is why, as I stated earlier, I intend to exercise the direction-making power under section 27(9) of the 2004 act. 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 therefore ask Elizabeth Smith not to move amendment 10.

Amendment 19 would place authorities under a duty to ensure that the information that they are required to publish under section 26 will be

available from every place that provides school education in their area, in any publications that provide general information about the school or the services that are provided by the authority, and on any website that is maintained by the school or the authority for those purposes.

As I explained earlier, the publication of information regulations already place local authorities under a duty to publish all the information that is detailed in section 26 of the 2004 act in printed and electronic form and include requirements on where the information should be published. The direction-making power under section 27(9) of the 2004 act, which I have already stated that I will exercise, will ensure that the requirements of that statutory duty are met.

Schools are under a duty to publish information in their school handbooks on the provision that is made for pupils who have additional support needs and on the number of pupils attending the school who have been identified as having additional support needs. On request, authorities must make information available on one or more addresses and telephone numbers to which a parent who considers that their child may have additional support needs may make inquiries.

Amendment 19 would have some bizarre practical implications. For example, it would require authorities to send out all the information that they publish under section 26 of the 2004 act every time they send out some general information about the school. I am sure that members will agree that it would be completely disproportionate if a single-sheet general information flyer that is relevant to every parent, and not just those parents who have children with additional support needs, suddenly turned into a vast amount of information about additional support needs that was neither requested nor required by the parent.

Further, amendment 19 would require the school handbook to contain all the published information—which of course is already published—thereby increasing the size of the handbook considerably and turning a useful handbook into a manual on additional support needs.

Accordingly, I ask Margaret Smith not to move amendment 19.

The effect of amendment 33, which appears similar in intent to amendment 29, would be that information published by an education authority under section 26 of the 2004 act is available on request from each place in the authority's area in which school education is provided. However, although amendment 29 would enable parents to access that information in full on request, amendment 33 would allow them access only to a summary of that information. It is not clear exactly how abridged such a summary might be, and an authority could meet such a requirement with a couple of simple lines explaining that they provide additional support but without stipulating how. In that respect, amendment 33 offers far less to the parent than amendment 29 does.

Amendment 33 takes a different approach to raising awareness of the information by requiring authorities to include that summary

"in any handbook or other publications provided by schools 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"

as well as websites maintained by the authority.

As I said earlier, the school handbook regulations already require schools to include in their handbooks information about the provision that is made for pupils who have additional support needs and, in the case of a school other than a nursery school, whether any pupils attending the school have additional support needs, the number of such pupils and whether the school is a special school or has a special class or unit.

Again, it must be remembered that the publication of information regulations already place local authorities under a duty to publish all the information that is detailed in section 26 of the 2004 act. As I have indicated several times, I will exercise the direction-making power under section 27(9) of the 2004 act, which will ensure that the requirements of that statutory duty are met in as useful and efficient a fashion as possible.

It should also be noted that, although amendment 29 would require that the information be made available on request

"from each school under the management of the authority",

amendment 33 would require that the information be made available on request

"from each place in the authority's area where school education is provided".

That means that amendment 33 would require education authorities to make information available in independent and special schools over whose management the education authority has no say. It would be unfair to ask that of a local authority.

As I said earlier in the discussion on amendment 29, it is not the case that either of these amendments pre-empts the other. However, should both amendments be included in the bill, the result would be a confusing and contradictory piece of legislation. In that respect, it should be considered that there is a direct choice between the two.

I emphasise that amendment 33 would allow parents less information provision than would amendment 29 and that there is already provision in place for many of the things that are required by amendment 33—for example, the duty to publish information on websites.

I am delighted to announce that, in addition to seeking to change the legislation on information provision to parents and issuing a direction to all authorities, I have been able to secure some funds from our central advertising budget to conduct an awareness-raising campaign aimed at parents. The campaign will involve the services of a creative company and a public relations company, and I expect the work to be carried out in the summer and autumn. My officials are working on the details of the campaign and I hope to be better placed to provide members with further details of it at stage 3.

Accordingly, I ask Margaret Smith not to move amendment 33.

I move amendment 29

The Convener: I invite Elizabeth Smith to speak to amendment 10 and the other amendments in the group.

Elizabeth Smith (Mid Scotland and Fife) (Con): As I said at last week's meeting, what struck me most frequently during our evidence sessions—and again when I spoke to experts in the field—were the contrasts between Scotland and some other countries regarding the provision of adequate and accurate information on the rights of parents and their children to access good-quality care and support. I was particularly struck by the examples of countries where, from day one of a specific additional support need being identified, a clear parent partnership officer structure is put in place with a mandatory obligation placed on the local authority to provide not only a plan of the educational, health and social support for the child in question, but a clearly set out code of practice plus a full list of the rights of parents associated with those two provisions.

Although there is evidence that some local authorities are exceptionally good in this area, some are clearly not. As a result, some children's support services are falling woefully short of the expected standard and are, in some cases, frankly, non-existent. There is a need to provide a level playing field in that respect and to ensure that we are doing everything possible to identify all the cases in which there are additional support needs.

It is our duty to ensure that, as soon as an additional support need is identified, the parents and carers of the child are provided with—not just told where to find—a personal support plan that includes a statement of the educational, health and social assistance that must be provided—something that should already be undertaken by local authorities. Parents and carers must also be given information about how they can access relevant additional support bodies and information about the rights of the different parties involved, including what procedures can be put in place if there is a failure to deliver the appropriate support.

I have listened carefully to what the minister has said in discussions over the past 10 days. It is my impression that the Government considers the request that is made by amendment 10 to be excessive and believes that it would burden parents and carers with too much information. I have looked again at it and I do not believe that that is the case, as there is no request to provide every piece of ASN documentation to the parents or carers of every child who has additional support needs. Instead, the amendment requests that the documentation that is provided be relevant to their specific needs and that it be provided at the same time as the support document.

11:45

From looking at best practice elsewhere and considering the evidence that four independent groups provided, I do not believe that providing that information would be particularly expensive. I am aware that additional costs would be incurred but, on the basis of the cost of similar documents that the Government has produced in the past two years, I do not consider those costs to be in any way excessive. I note that the Presiding Officer says that the cost would be £50,000, but we have no details on how that was calculated.

Amendment 10 would improve the information process by creating a statutory obligation for local authorities to give parents and carers the necessary information about the holistic support plan for their child and their rights in that process. It is unacceptable for local authorities merely to flag up where people can access some of that information, as experience proves that far too many parents do not know where to look for it.

If amendment 10 is agreed to, we will hugely improve the support process in every local authority and reduce future costs by addressing ASN issues much more effectively and much earlier. I will press amendment 10.

The Convener: The only amendment that has required to be moved is amendment 29, because it is the first in the group. We will deal with whether other amendments are to be moved later.

I invite Margaret Smith to speak to amendments 19 and 33, in her name, and the other amendments in the group. I remind her that she is not to move her amendments at this point.

Margaret Smith: As Liz Smith said, the importance of access to information has been raised with us time and again. That is why I am pleased to speak to this group of amendments. I support amendment 10, in the name of Liz Smith, which would place a clear duty on local authorities to provide published information to the parents of children with additional support needs and to young people with additional support needs. I am pleased that she and I met the minister to discuss our amendments and that the Government has lodged an amendment that was to an extent inspired by the amendments that Liz Smith and I presented to the committee last week. I welcomed the opportunity to meet the minister and the bill team to discuss the issue.

The fact that the Government has lodged an amendment on access to information highlights the issue's importance and the Government's acceptance that more can and should be done to inform parents of their rights and to ensure that local authorities fulfil their duties under the 2004 act. However, the amendments that Liz Smith and I lodged are preferable to the Government's amendment.

The minister is right: the amendments in the group provide a choice to committee members. Amendment 19 or its alternative, amendment 33, would ensure that information about a council's additional support for learning policy is available on request from each school and is in school handbooks and any other publications that are given to parents about the services that an authority provides. The amendments would also ensure that such information is on any website that is maintained by a school or a local authority.

The minister is correct to say that local authorities have a duty to provide information. However, information is not necessarily being provided. Local authorities know that they should put information about their ASL policies on their websites and in handbooks. However, the sad fact is that Independent Special Education Advice (Scotland), which has monitored the situation, says that some authorities do not provide that information at all. Of those that do, some provide misleading information and others provide poor content. I could name councils that are being pursued on such issues, but I choose not to.

In the normal course of events, all parents—not just those whose children have been identified as having additional support needs—would be given the information in the school handbook when their children joined a school. They could also access the information on the council's or school's website and ask for it from the school. As I said last week, the information might be provided in a leaflet or in a relevant part of a school handbook.

I am a bit disconcerted by some of the minister's arguments. He appears to be arguing both ways at once. I lodged amendment 33 as the direct result of concern that committee members expressed last week, when Aileen Campbell said that amendment 19 could leave parents drowning in a sea of information. I am sure that many parents who at the moment cannot get information would love to drown in such a sea. However, I have taken her comments on board and, to cope with the issue, amendment 33 seeks to make it possible to produce a summary of the published information. The council would still have a degree of discretion about what constitutes a reasonable and relevant amount of information.

The Presiding Officer has determined that, if amendment 33 rather than amendment 19 were agreed to, costs would be reduced from £100,000 to £25,000. As no one wishes to be profligate with public money, amendment 33 might be preferable for the reasons that I have set out.

Crucially, amendment 33 seeks to ensure that the information will be available in schools. I am rather surprised that that has not been the case in the past and, no matter whether the committee accepts the amendment in my name or the amendment in the name of the minister—I should say that I am pleased that he has accepted the point—I think that such a move would be a step in the right direction.

It is important that the information is as accessible as possible to parents. That is why I support amendment 10 instead of amendment 29, as a result of which councils would simply direct parents to where they can receive information from a third party instead of giving them the information directly. We have to try to reduce the barriers between the parents and the information that they require.

As I have said, the 2004 act already requires education authorities to publish information on their policy, to keep it under review and to publish revised information. We know that some councils are already doing that. Indeed, I believe that a very good part of Stirling Council's website focuses on these issues. Some councils are doing what they ought to be doing, but some are not.

Neither amendment 19 nor amendment 33 seeks to introduce any new requirement with regard to the production of information about policy; they simply suggest where and how that existing information might be accessed. I expect that costs will be associated mainly with the printing of leaflets that people can access on request at schools and elsewhere, and I think it most likely that it will be the parents of the 20 per cent of children with ASN—the 5 per cent who have already been identified and the 15 per cent

who have not—who will want to access that information.

I am pleased that the Government has confirmed that, as I have contested, the duty to provide information already sits with local authorities as a result of the 2004 act and that it accepts that many councils already make the information available on websites and in handbooks. In fact, the Government has confirmed to me and Liz Smith that it has just issued guidance that revises the advice in handbooks in line with ASL legislation. However, it has said that the school handbook will also include information about the services that are available in any particular school. As we know, that is not the same as ensuring that parents are aware of their entitlements under the 2004 act.

I hope that colleagues will support amendments 10 and 33, which I believe represent the best and most proportionate way of improving the availability of information to parents.

Aileen Campbell: As I said last week, we all want to ensure that parents are as well equipped and as well informed as possible. However, I am still doubtful about the effectiveness of the amendments.

The 2004 act requires authorities to publish information about a range of specified matters relating to additional support needs and to revise it when required. Of course, we must do all that we can to enhance the provisions in the act and ensure that they work. If, as Margaret Smith says, some councils are meeting those requirements well within the scope of the act, we should look at how they have been able to do so. I do not believe that amendments 10, 19 and 33 would enhance the provisions in the act or fulfil the obvious policy intentions that Liz Smith and Margaret Smith have outlined.

If amendments 10 and 19 are agreed to, a vast amount of information will be sent to parents who have not requested it and do not require it. For example, amendment 19 would require authorities to send out all the information that they publish under section 26 of the 2004 act every time they send out general information about the school. As the minister has made clear, amendment 10 would potentially require an authority to provide information to every parent of a child with additional support needs throughout the entire country.

I hope that colleagues realise that the amendments, although they are well intentioned, are not a proportionate response, will still drown parents in paperwork and might still, despite the Presiding Officer's ruling, be very costly. We probably have not benefited from being unable to find out where the Presiding Officer got his costings from. He gives us a figure of £50,000 for amendment 10, but the Government estimates a figure of up to £2 million.

More important, though, is the fact that agreeing to amendments 10, 19 and 33 could mean that parents would not be well informed and would miss relevant and important information. That is why I would not be happy to agree to the amendments, despite Margaret Smith's assurances. An unintended consequence of their provisions would be that their practical impact would run contrary to their policy intent.

Like the minister, I believe that amendment 29 is better than amendment 33 because it would require education authorities to make all information under section 26 available on request, whereas amendment 33 would require only a summary.

We all agree that parents need to be empowered and equipped with all the necessary information, but I do not believe that amendments 10, 19 and 33 would achieve that. We have an opportunity to enhance the bill to make it better for vulnerable people, but amendments 10, 19 and 33 would not make the bill better or help vulnerable people in the way that we want. I therefore urge the committee to reject amendments 10, 19 and 33.

Ken Macintosh: I am pleased that all the amendments have been brought before us today because, as Margaret Smith said, they acknowledge that there is a problem.

Aileen Campbell pointed out that the 2004 act has provisions for giving information, but it is clear from all the evidence we have heard from parents that they cannot access required information that is convenient, suitable or readable. Amendments 10, 19 and 33 would address that issue in one way or another.

Margaret Smith made it clear that amendment 19 would not be moved, so we must choose between amendment 29 and amendments 10 and 33. The provision in amendment 29 would merely make information available to parents, rather than provide it. The key difference between amendment 29 and amendment 10 is that the latter will provide information to a parent whose child has additional support needs. I cannot understand why the minister would object to a requirement to give parents information. I would have thought not only that would it be good practice to do so, but that it should be the first thing for any education authority to do.

I am aware that some authorities have very good practice and a good record on additional support but that parents in those authorities do not know their rights or know how to access information. If that is the case in authorities with a

good reputation, I am worried about what happens in authorities that sometimes give the impression of avoiding their duties.

Aileen Campbell said that the provisions in amendments 10, 19 and 33 would create vast amounts of information that would drown parents in paperwork, but I do not see any evidence that that would happen. The minister made similar assertions; I regard them as assertions because he did not refer to any particular wording. If we leave aside amendment 19, can the minister refer me to the exact wording in amendments 10 and 33 that suggests that parents would drown in information?

I, too, hesitate to use the estimated costs as evidence of much. However, assuming that the costs are accurate—we are working on that basis and they have been used to rule out other desirable amendments—the provisions in amendments 10 and 33 would not be expensive. They are extremely modest and would make extremely reasonable demands on education authorities to provide information.

Will the minister point to the exact wording that backs up his assertion that the provisions in amendments 10 and 33 are overbureaucratic and would drown parents in paperwork? I prefer the two options that are presented in those amendments to the option of making information available in a public library in the hope that parents will pick it up.

12:00

The Convener: I invite the minister to wind up the debate on the group.

Adam Ingram: First, I will pick up on Ken Macintosh's final point. Amendment 10 inserts new paragraph (d) into section 26(1) of the 2004 act. It says:

"provide the persons mentioned in subsection (2A) with any information published under paragraph (a) or (c)."

That means everything.

Ken Macintosh: Can I ask for a point of clarification?

Adam Ingram: No, if I could carry on—

The Convener: Mr Macintosh, you do not have a right to come in again at this point, and the minister should remain uninterrupted.

Adam Ingram: I remind Mr Macintosh that that is a legal definition; it is not open to individual interpretation. That is why the officials have come up with the estimates of costings as they are. I would like members to take that on board if possible. My own ability to impart information seems to be somewhat deficient if I cannot get across some of these points, which I have made to committee members several times.

On amendment 10, Elizabeth Smith has been describing her ideal situation. She has referred to a practice in England whereby a statement of needs is actually presented to parents, in the form of a support document. However, that is not what amendment 10 says; it seeks to provide and publish all the information available. My view is that what Elizabeth Smith suggests is good practice, which I would like to be adopted throughout the country. We can do that by specifying it in the code of practice, on which the committee may have an input further down the line.

In amendment 29, I propose to focus on parents getting the quality and type of information that they require to exercise their rights. The amendment does that in an efficient and effective fashion.

Margaret Smith appears to be saying that it does not matter what the law says, because it is not happening. She wants to reinforce or gold-plate measures. I have stated several times this morning that I will issue directives to ensure that local authorities fulfil their statutory obligations regarding the provision of information. That will improve the current situation, in which the law is not being adhered to. There will be no escape from it. I shall report back to the committee on those issues.

Amendment 29 extends to local schools the obligations that local authorities are under to make information available to parents. Local schools are the very places where parents would ask for such information. There has been a deficiency there under the existing legislation. All the relevant information that a parent would need is covered in the existing legislation, in section 26 of the 2004 act. In amendment 29, I propose to ensure that that information is made available to parents in an appropriate, efficient and effective fashion.

Resources matter. Any resources that are being used in an excessive or disproportionate way, with vast quantities of information being sent out, could otherwise be used to meet the additional support needs of the children affected. Clearly, I have not been able to get across those points as well as I might have done in speaking to members. Hopefully, the points are made now.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 29 disagreed to.

Amendment 10 moved—[Elizabeth Smith].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 10 agreed to.

Amendment 19 not moved.

Amendment 33 moved—[Margaret Smith].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 33 agreed to.

The Convener: Amendment 11, in the name of Elizabeth Smith, is grouped with amendments 20 and 24.

Elizabeth Smith: The specific purpose of amendment 11 is to provide information about dispute resolution as well as advocacy, which is lacking in the 2004 act. The committee heard several times in evidence sessions that tribunals are often seen as adversarial and that many parents do not seem to know their dispute resolution rights. The dispute resolution process can often be stressful for parents with ASN children, and that has often led to parents or guardians not feeling comfortable with or able to accept the best advice. Obviously, that can be detrimental to the best interests of the child.

I move amendment 11.

Margaret Smith: I support amendment 11. It is important that parents have information about dispute resolution.

As we have heard, requirements to do with the publication of information are in place in the 2004 act and regulations. Amendment 20 would simply add to those requirements that there should be other specified bodies from which people can get information and that those bodies should be specified by ministers. Basically, the intent is to name national bodies that are specified by the Government from time to time as organisations that will give out information nationally. It is clear that we cannot at any given time put the names of such organisations into legislation or regulations. The amendment is a way of ensuring that where a national body gives information that is supported by the Government, that information is made available to people.

I think that there is a minor drafting error in the amendment, as there is already a paragraph (g); "(g)" should therefore read "(h)". A tidying-up measure should be able to deal with that. If not, I am sure that we can deal with it at stage 3.

The provenance of amendment 24 is the on-going concern that the data on children and young people with additional support needs remain weak. We need information so that we know what services we need to provide and plan for, and we need information about outputs. The for Scotland's disabled children campaign has said that no one knows how many children have ASN. People who are involved in that campaign are keen, as others are, to have more detailed and accurate information so that there can be effective planning, resourcing and delivery of services. Amendment 24 would require every education authority to publish an annual report by school and year group on the number of children and young people with ASN for whose school education they are responsible and the principal grounds on which they have been identified as having ASN. I understand that information is already collected in the pupil census on the total number of pupils with ASN in Scotland by local authority.

Figures are usually broken down by reasons for support, nature of support and main difficulty, although there is no table for main difficulty this

year. I am aware that seeking to have information made available at a lower level may be deemed disclosive—that is, it would allow a pupil to be identified in, for example, a small rural school.

Amendment 20 asks for data on pupils with ASN and the principal ground for their ASN to be collected by school and year group. There are some gaps in the information that is currently gathered. As far as I understand, the current statistics define a child with ASN as one with a CSP, a record of needs or an IEP. That is a measure of those with identified ASN for whom a plan has been put in place. It is not the same as identifying everyone who has ASN. Data on the main reason for support are not collected for pre-school pupils either.

COSLA questions the financial ruling, which I find strange, as much of the information is gathered already. It also questions the value of having to publish such detailed information by year group and school and argues that the by-council information that is already published in the pupil census is sufficient.

There is a clear need for consistent definitions of the principal factors so that reliable data can be gathered. I seek assurances from the minister that the Government is serious about trying to improve the quality and depth of the data that are available. In its response to the United Nations Committee on the Rights of the Child, the Government has committed itself to considering data needs on children and young people with disabilities. That would move data collection away from impairments and towards the identification of the supports that are in place and the gaps in support. It would also allow us to see whether any support needs are being missed.

Amendment 20 would create a statutory duty rather than relying on political will and voluntary co-operation. I look forward to hearing what the minister says on data gathering in relation to children and young people with additional support needs.

Christina McKelvie: Amendment 11 implements a commitment that the minister made in the stage 1 debate and will negate the need to introduce a Scottish statutory instrument at a later date. Therefore, I welcome it and think it appropriate to support it.

Amendment 20 is a lesser provision on the responsibilities of local authorities than the current legislation. The 2005 regulations already have information on support and advocacy as well as advice and information, unlike the provision in the 2004 act. Additionally, there is no balancing amendment to remove that provision from the legislation so, if amendment 20 were agreed to, there would be two similar provisions but the current provision, being the wider, would have precedence and amendment 20 would do nothing except impose a restricted list on local authorities. I could not possibly support it, because it would create a confused landscape.

Amendment 24 would require an education authority to develop and pay for a new data collection system, as well as cover production costs, to fulfil the statutory requirement that it would introduce rather than develop the data set that is already used by ScotXed, which produces the pupils in Scotland census. Although we have information that says that no costs would be attached to the amendment, the costs for the development of a new system are unquantifiable. We cannot consider that now because we have no understanding of what a new data collection system would cost.

The census that is already taken describes the education system by providing information on the numbers of schools and pupils, types and size of schools and classes that they learn in and some characteristics of pupils, including those with additional support needs, a CSP, an IEP and/or provision levels set by a record of needs. Amendment 24 would involve an unquantifiable cost and would create a new data collection system that we do not need. We should develop the current system.

12:15

Ken Macintosh: There is obvious merit in all the amendments in the group, particularly amendments 11 and 20, which, subject to the minister's remarks, I am minded to support.

I am particularly keen to see amendment 24, which Margaret Smith lodged, addressed. I think it was during the stage 1 debate that I highlighted the not just confusing, but conflicting, sources of information that are available. They do not match up. We have various figures on various conditions, none of which add up to a clear picture. That matters for any number of reasons. It is difficult to shape policy if we do not have a firm grasp of the area that we are addressing.

Perhaps more worrying, we are aware from evidence that the committee has heard that there can be a tendency for providers—local authorities and others—to shape their provision for children with additional support needs according to their facilities rather than the needs that they need to address. In other words, if an education authority has invested in a certain area, it tends to identify many children with needs in that area and cater for them in that direction. That is difficult to counter if parents have different views about their children's needs and how they should be addressed because we do not have the information to

compare like with like. It is important that we take firm steps to address that problem and to collate, collect and publish information that gives us a firm evidence base on which to proceed. Amendment 24 proposes a practical step in that direction; perhaps the minister will let the committee know his views.

Adam Ingram: I welcome amendment 11. As Christina McKelvie said, I gave a commitment at stage 1 to ensure that parents are made aware of their rights, particularly with regard to services for resolving disagreements. Elizabeth Smith has kindly saved me further considerations and I am happy to support amendment 11.

Amendment 20 proposes an extension to the list of matters on which authorities are required to publish information to include information about other persons or bodies, to be specified in an order made by the Scottish ministers, from whom advice and information about provision for additional support needs can be obtained by parents and young people.

I do not know whether Margaret Smith is aware that there is already a similar provision in the 2004 act. The Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 (SSI 2005/267) amended the 2004 act and extended the matters on which authorities are required to publish information. Therefore, under the 2004 act, authorities must publish information on

"any other persons which the authority think appropriate from which"

parents and young people

"can obtain advice, further information and support in relation to the provision for such needs, including such support and advocacy as is referred to in section 14"

of the 2004 act. The regulations also require education authorities to have published that information in electronic and printed form.

Amendment 20 does not take account of the changes to the 2004 act made by the regulations, which require authorities to publish information on any other person they think appropriate. The main difference between the existing provision and the amendment is that whereas under the existing provision the authority must publish information on persons it thinks appropriate, the amendment would require such persons to be specified by the Scottish ministers.

Allowing the authority to determine who it thinks appropriate allows greater flexibility than requiring the Scottish ministers to specify such persons by order. Appropriate persons will no doubt vary from authority to authority. The existing provision allows the authority, as opposed to the Scottish ministers, to decide which persons are best placed to provide advice, information and support to parents and young people in their area.

The existing provision is in fact wider than what is proposed in amendment 20. Whereas the amendment would require the authority to publish information on persons or bodies from whom parents and young persons might obtain advice and further information about provision for additional support needs, the existing provision refers to support and advocacy as well as advice and information.

Further, amendment 20 would not delete the existing provision, so two, similar, duties would co-exist, which would create confusion in the legislation. I accept that some authorities are failing in this statutory duty. I therefore intend to exercise the direction-making power under section 27(9) of the 2004 act to ensure that the requirements of that statutory duty are met. Therefore, I ask Margaret Smith to withdraw amendment 20.

Amendment 24 would place a duty on education authorities to publish an annual report detailing the number of children and young people for whose school education they are responsible who have additional support needs and the reasons that give rise to those needs. The amendment requires that the information should be set out by school and year group. Although the Scottish exchange of education data system—ScotXed—already collects national data on the number of pupils with a co-ordinated support plan, an individualised educational programme and/or provision levels set by a record of needs, data are not collected on those pupils who are receiving additional support who do not have a CSP, an IEP and/or a provision level set by a record of needs.

Amendment 24 would therefore require education authorities to develop new data collection systems and pay the production costs to meet what would be a statutory requirement. I am sure—I certainly hope—that the committee agrees that the proposal would involve an unnecessary and overly bureaucratic process and that it would make much more sense to develop the data set that is already used by ScotXed to produce the pupils in Scotland census.

Moreover, given the terms in which the new relationship between the Scottish Government and local government is set out in the concordat, it is clear that local government should not be asked to submit any other monitoring returns or plans without prior agreement. The concordat states:

"bureaucracy will be reduced in other ways including the extent of monitoring and reporting currently required of local government by the Scottish Government, including a reduction in monitoring and reporting not directly linked to ring fenced funding."

However, the committee might be interested to learn that we are currently in discussions with education authorities—at their request—to develop proposals for the collation of more robust statistics, at a national level through ScotXed, on disabled pupils. Such statistics would assist education authorities to meet their requirements under the disability equality duty and allow them to continue to develop more detailed statistics at authority level to inform local planning processes.

I recognise that there may be ways to improve the additional support needs data that are collected through ScotXed. I would be more than happy for my officials to enter into discussion with voluntary organisations—or, indeed, any other interested stakeholders—to discuss the ways in which the current data collection system for all children with additional support needs could be improved. Of course, we would need to discuss any policy or technical changes with COSLA and local authorities. Accordingly, I ask Margaret Smith to withdraw amendment 24.

The Convener: I invite Elizabeth Smith to wind up the debate and to indicate whether she will press or withdraw amendment 11.

Elizabeth Smith: I have already made the case for amendment 11 clear—as has the response from around the table, for which I am grateful—so I will press amendment 11.

Amendment 11 agreed to.

The Convener: Amendment 20, in the name of Margaret Smith, has already been debated with amendment 11. Ms Smith, do you wish to move your amendment?

Margaret Smith: I do not wish to move it, but I might lodge a similar amendment at stage 3.

Amendment 20 not moved.

The Convener: Amendment 24, in the name of Margaret Smith, has also already been debated with amendment 11. Ms Smith, do you wish to move amendment 24?

Margaret Smith: Bearing in mind the comments from the minister, I seek to have discussions with him on this matter. I might lodge an amendment at stage 3, but I do not wish to move amendment 24.

Amendment 24 not moved.

The Convener: I cannot call amendments 25 and 34 because the Presiding Officer has ruled that they have significant cost and, under rule 9.12.6 of the standing orders, no proceedings can be taken on them because the bill does not have a financial resolution.

Section 6 agreed to.

After section 6

The Convener: Amendment 12, in the name of Elizabeth Smith, is in a group on its own.

Elizabeth Smith: The reason for amendment 12 is to address further an issue that was raised in the early stages of discussion of amendment 16, to ensure that, through the tribunal process, measures will be in place if a local authority fails to fulfil its duty properly in ensuring that transitions are in place for young people beyond the school leaving age who are identified as having additional support needs. I took advice and was satisfied that the amendment would have only fairly minimal costs.

I move amendment 12.

Aileen Campbell: Currently, authorities must approach other agencies that are concerned with children and young people when they are going to leave school. That has to be done at least six months before the young person leaves school, but it can be done earlier—it can happen for someone as young as 15. I agree that we must do all we can to ensure that transition works in the best interests of the child or young person but, given that mechanisms already exist in the 2004 act, I remain doubtful of the need for the amendment.

Adam Ingram: Amendment 12 seeks to extend the jurisdiction of the tribunal to allow it to consider references in relation to an authority's failure to comply with its duties in terms of post-school transitions.

I emphasise that, under the 2004 act, dispute mechanisms for such cases are already in place. If the parent of a child with additional support needs, or a young person with additional support needs, felt that transitional arrangements were necessary but the authority disagreed, the parent or young person could refer the case to dispute resolution. If the child or young person has a co-ordinated support plan, a case can be referred to the tribunal regarding the level of provision being delivered during the child's last year at school. I would be happy to strengthen the code of practice to make it absolutely clear that those rights of appeal apply to transitional arrangements and, in particular, to provisions that are in place for at least the final 12 months.

Some stakeholders have already commented on the complexity of the bill. Amendment 12 could overcomplicate things by introducing yet another route for dealing with the same matter, although I appreciate that HMIE's report on the implementation of the 2004 act identified post-school transitions as an area where provision could and should be improved. To address that, I have appointed an additional support for learning/more choices more chances national

transitions development officer from 1 April 2009. They will lead, manage and co-ordinate local and national partnership approaches to the effective implementation of the act, with a specific focus on transitions and preparation for adulthood.

12:30

The national development officer will work with local authorities, schools and wider partnerships that support young people's learning, including Skills Development Scotland, Careers Scotland and so on, and post-school psychological services. By relating and adding value to the wider activity of the 32 local authority additional support for learning implementation officers, the project will help to spread the good practice that was identified in the recent HMIE report on successful transitions from secondary school.

Amendment 12 proposes that the ability to refer to the tribunal an education authority's failure to comply with its transition duties should apply to all children and young people with additional support needs, but that could prove difficult to administer in light of the fact that some additional support needs are transitory.

In light of those comments, and given the undertaking that the code of practice will be strengthened significantly, I ask Elizabeth Smith to seek to withdraw amendment 12.

Elizabeth Smith: I hear what the minister says, but I believe that loopholes exist. We have heard concerns about that in evidence, particularly from HMIE. I therefore wish to press the amendment to a vote.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 12 agreed to.

Section 7 agreed to.

The Convener: We are nearing the end of our consideration of amendments, but there might be a bit of debate on the next two groups, so I suggest that we have a short comfort break. I ask members not to stray too far so that we can get started again as quickly as possible.

12:32

Meeting suspended.

12:37

On resuming—

After section 7

The Convener: We return to our stage 2 consideration of the Education (Additional Support for Learning) (Scotland) Bill. Amendment 27, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: I thought that we were in the home stretch and that the remaining, uncontroversial, amendments would go through on the nod, but what the convener said before the suspension has alarmed me.

Amendment 27 would introduce a section entitled "Power to monitor implementation of Tribunal decisions", although it should probably be called "Power to monitor implementation of Tribunal decisions and to refer matters to the minister", because that latter issue is the key part of the amendment. The amendment was suggested by ISEA, which, as members know, alerted us to the fact that, although the tribunal is important to, if not the pinnacle of, the ASL complaints system, there have been problems with decisions not being implemented timeously.

As we know, the system of redress is complex. One mechanism that could be used is the one that members will know as a section 70 referral to ministers. Parents, or any concerned individual, may make a referral directly to the education minister. That power or right exists in theory, but it is rarely, if ever, used in practice. Amendment 27 would give the president of the Additional Support Needs Tribunal for Scotland a specific power to make such referrals. That would be a modest extension of the tribunal's powers, but it would mean that its decisions would be taken more seriously.

I move amendment 27.

Christina McKelvie: Like Ken Macintosh, I had hoped that we were in the home stretch and that all the remaining amendments would go through on the nod, but I am afraid that I disagree with amendment 27. The amendment would change the role of the president, and thereby the tribunal, from that of an independent adjudicator to that of an active and partisan participant. If the president had a policing role, she or he would head into HMIE's territory, which would be a concern. The

president makes impartial and balanced decisions and is trusted by both sides but, under the amendment, she or he would take on a policing and prosecuting role. That would be damaging to the role of the ASN tribunals and, if it set a precedent, it could also be damaging to the roles of other tribunals.

At present, the tribunal's decision is binding and there is a deadline for implementing it. If an education authority fails to implement a tribunal's decision, a parent can refer a complaint to Scottish ministers—as Ken Macintosh said—under section 70 of the Education (Scotland) Act 1980, which deals with failure to comply with a decision. Alternatively, a parent can write to Scottish ministers directly, requesting them to issue a direction.

We could be verging into the territory of giving the president a policing role. In my opinion, the trust that already exists could be put in jeopardy if amendment 27 were agreed to. I will not support it.

Margaret Smith: I will support amendment 27. This important issue came up during our evidence taking. It is important that the tribunal is trusted by both sides, but it is equally important that the president should be able to trust both sides.

Amendment 27 would not give the president a wider remit; it would simply allow them to go back and consider decisions that the tribunal has already taken, to see whether what it has asked to be put into practice is actually being put into practice. That would allow the president—given that there is to be trust on all sides—to consider the reasons why something might not have happened when it should have happened. A decision has already been taken that a local authority should do something within a certain time. We are not talking about wider policing powers; we are talking about a tribunal being able to find out why what it has said should happen is not happening.

At the moment, many parents feel a real sense of powerlessness. On many occasions in committee meetings, we have discussed the inequality of arms in relation to the way in which tribunals work in practice for families. They do not have the same resources that all local authorities have.

Amendment 27 is short but it would have a massive impact. We have to redress the balance and ensure that tribunal decisions are followed through as timeously as possible. The tribunal will have taken all the evidence into account before reaching a decision on what should happen. Amendment 27 is not only perfectly acceptable but very important. I will be happy to support it.

The Convener: I invite the minister to contribute to the debate.

Adam Ingram: As committee members have said, amendment 27 would provide that, following a tribunal decision that required an education authority to do anything, the president of the tribunal would have the unilateral power to require the authority to provide her with information about the authority's implementation of the tribunal decision. The amendment would also provide the president with the power to refer the matter to Scottish ministers when she was satisfied that the authority was not complying with the tribunal decision.

The president would be able to carry out all those powers without a statutory requirement to seek and take account of the parent's or young person's views. Although I am sure that the president would choose to exercise her powers responsibly, the pertinent point here is that, legally, she would not be required to. Not only would that be absolute nonsense, but amendment 27 would be seen as changing fundamentally the role of the president, and I have no doubt that it would result in the independence of the role being questioned. Furthermore, local authorities might feel that their past performance in the implementation of tribunal decisions could prejudice future tribunal cases. That is a perception that we should take every step to avoid.

12:45

At present, the tribunal's decision is binding, and there will be a deadline for carrying it out. If an authority fails to implement the decision of a tribunal, a parent can refer a complaint to Scottish ministers under section 70 of the Education (Scotland) Act 1980, which deals with failure to comply with education legislation. Alternatively, a parent can write to Scottish ministers requesting that ministers issue a direction under section 27 of the 2004 act directing the authority to carry out the decision of the tribunal

I realise that Mr Macintosh, like me, feels that section 70 cases take some time to deal with. Complaints about the exercise by an authority of their functions under education legislation must be properly investigated, and that process takes time. However, cases that are put forward about non-compliance with a decision of the tribunal would be relatively less onerous to deal with, as the facts in those cases are likely to be established by the act of non-compliance—either the authority has complied with the tribunal's decision or it has not. It can take some time to unravel the complexity of other section 70 cases that are referred to ministers.

I think that it would also be useful for me to highlight the fact that the tribunal already notifies parents and young people in writing of their right to

complain to Scottish ministers if the authority does not comply with the decision. However, that information is provided in an annex that accompanies the tribunal's decision letter, and I intend to ask the tribunal to make that information more up-front by including it in the decision letter.

I should also stress that any direction that is issued by Scottish ministers can be challenged by judicial review. If the tribunal was provided with the power to monitor its decisions and it investigated and established that an authority had failed to implement a decision, on receipt of any section 70 complaint or request under section 27 of the 2004 act from the tribunal, Scottish ministers would still be required to conduct their own investigation before issuing a direction under section 27 or an order under section 70.

Amendment 27 is, therefore, unnecessary and, if included in the bill, would only add an unnecessary layer of bureaucracy and delay to the process, as a parent can already refer a case directly to Scottish ministers in such instances. Further, it could, ultimately, undermine the role of the tribunal as decision maker.

Accordingly, I ask Ken Macintosh to withdraw amendment 27.

Ken Macintosh: I find the arguments that the minister presented to be entirely unconvincing. I am surprised to say that, but I do not know why. I normally follow the minister's line of thought and can understand the principles behind his views but, in this case, he used a lot of grand and hyperbolic language to little effect. He talked about the unilateral power to ask the local authorities for information and the unilateral power to refer the matter to ministers—in other words, the president of the tribunal could write to a local authority, and ministers could be asked to intervene. He also talked about the proposal in amendment 27 fundamentally undermining the tribunal's role. That is very strange. I do not understand that line of thought.

Christina McKelvie talked about the amendment giving the tribunal a policing or prosecuting role. That is not really true. The tribunal is an adjudicating body and its decisions are binding. We are talking purely about a mechanism by which the tribunal could refer decisions to the minister, rather than asking parents to do so. Amendment 27 would introduce no new powers—I referred to section 70 orders because the powers already exist. All that the amendment would do is allow the president to refer matters to the minister. It is the minister, if anyone, who would have the policing or prosecuting role, and he already has those powers. In fact, the minister undermined his own case in that regard. When he talked about the arguments around complexity, he suggested that a section 70 complaint would be complex but that cases that were put forward about non-compliance with a decision of the tribunal would simply be matters of compliance. That is exactly what they would be. The question is simple: should someone go down the section 70 route, which is open to most people, or should they go down the route that I am suggesting?

Earlier, I said that we had heard evidence that nobody uses section 70 orders because that mechanism does not really work. However, we could put in place a simple mechanism whereby the tribunal could write to the local authority to ask whether it had abided by the decision and, if it had not, the matter could be referred to the minister.

I honestly do not understand why the minister should object so forcefully to what is a very modest power to refer to him matters over which he already has powers of adjudication.

I intend, therefore, to press amendment 27.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 27 agreed to.

The Convener: Amendment 28, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: The background to amendment 28 is an on-going dispute between East Renfrewshire Council and Glasgow City Council. However, I emphasise that I am not simply using legislation to tackle a local concern—far from it. The amendment seeks to restate a principle that is already in legislation but which has, perhaps, been eroded over time.

It is important, in order to avoid disagreement or dispute, to state in the bill that the home authority is responsible for meeting the cost of additional support needs for children who are educated in mainstream schools in a different host authority's area. That has long been established practice, and is stated explicitly in section 23 of the Education (Scotland) Act 1980—I have taken the wording of that section for my amendment 28. However, a

number of legislative reforms appear to have cast some doubt on the matter and I believe that the principle needs to be reaffirmed in the bill. As well as the reference in section 23 of the 1980 act, the old record of needs legislation also enshrined in statute the principle of the home authority repaying costs to the host authority. However, we know that, when that statutory reference was repealed, on the day that the 2004 act came into force in 2005, one local authority stopped making contributions to another.

At the time, the matter was referred to ministers, and a decision was taken in one authority's favour. When that decision was ignored, the matter was taken to court. All the adjudication went in favour of that one authority, but the problem has continued for many years. I should report to the committee that a payment has been made in connection with some of the outstanding cases, but concern remains about how much money—which could have been spent on support for children with additional learning needs—has been spent during the process.

The problem is that the bill might move the goal posts. It provides for mediation costs to be met by the host authority, which is fine, because mediation involves only the host authority and the parent. However, that provision could be read as reinforcing the principle that the host authority should normally pay. In other words, although the reference to the host authority's responsibility with regard to mediation is included because, in general, the home authority should be paying the costs, I believe—from experience—that people will find it possible to read the words the other way, and say that the bill is moving away from the idea that a home authority should meet the costs and towards the idea that a host authority should meet the costs. People might say that, if that is what is happening with regard to mediation, we should understand that there has been a shift in responsibility. The matter must be clarified, and that should be done in statute.

The issue affects only children with additional support needs who are being educated in mainstream schools. However, to give an idea of the scale of the problem, there are 2,000 children on placing requests in East Renfrewshire's schools, out of a total of 16,000, which means that the cost could be large.

The principle is important, but it is also important that there is no blank cheque. Therefore, amendment 28 includes the word "reasonable" to ensure that a host authority does not gold plate services for which it is not financially accountable.

I move amendment 28.

Kenneth Gibson: Ken Macintosh said that amendment 28 restates a principle that has been eroded over time, but I think that the opposite is the case. Amendment 28 is simply unnecessary. I will refer to the case that Mr Macintosh discussed.

Section 23(2) of the Education (Scotland) Act 1980 deals with recovery of costs between authorities when one authority has provided education and additional support to a child who belongs to another authority area. Under that provision, Scottish ministers are entitled to determine quantification. Once Scottish ministers have issued notice of quantification, any refusal to pay on the part of the authority concerned is a breach of a statutory obligation.

Such a scenario arose in the case of East Renfrewshire District Council v Glasgow City Council, to which Mr Macintosh referred. Lord Penrose upheld the Scottish ministers' determination of quantification of East Renfrewshire's claim and found that that local authority was entitled to payment of the amount that had been determined by Scottish ministers. In making his ruling, Lord Penrose held that the plain language of the 1980 act

"entitles the pursuers to recover from the defenders appropriate sums reflecting the cost of additional support services provided by them to children belonging to the defenders' area notwithstanding that the children were placed in response to parental choice."

I believe that that ruling reinforced the relevant provision in the 1980 act.

The 2004 act places responsibility for the provision of additional support on the authority that is responsible for the school education of relevant children. The scope of the powers of an education authority to provide services for the benefit of children who do not belong to its area continues to be a matter that is regulated by the 1980 act, as are the financial implications of the supply of such services. There is no suggestion that the 1980 act should be amended to replace the existing regime for the recovery of costs, which has operated effectively for almost 30 years. Difficulties have arisen only recently because of one education authority's interpretation of the act. The matter appears to have been resolved satisfactorily and clarified by the recent Court of Session ruling.

Mr Macintosh talked about the recovery of "reasonable" costs, but amendment 28 does not specify what reasonable costs are or who should decide whether any such costs are reasonable. I believe that amendment 28 should be withdrawn.

Adam Ingram: I agree totally with Mr Gibson's interpretation of amendment 28. As well as being unnecessary, it could create some legal uncertainty. There is no question that the principles that are outlined in section 23 of the 1980 act have been eroded over the past 30 years. That is underlined by Mr Macintosh's

acknowledgement of the fact that a pay-out has been made in the case that he mentioned.

The powers of an education authority to provide services for the benefit of children who do not belong to its area are dealt with in the 1980 act, as are the financial implications of the supply of such services. There is no suggestion that the 1980 act should be amended to replace the existing regime for the recovery of costs. Amending the 2004 act to include in it a provision that is substantially the same as a provision that is already contained in the 1980 act could cast doubt on the meaning and application of section 23 of the 1980 act. If anything, it could encourage a rash of court cases. Mr Macintosh might shake his head, but that is precisely the risk he runs by pressing amendment 28. I repeat that the law in that area is already clear and has worked for 30-odd years. Accordingly, I ask Mr Macintosh to seek to withdraw amendment 28.

The Convener: I invite Mr Macintosh to wind up the debate and to indicate whether he wishes to press or withdraw amendment 28.

Ken Macintosh: It seems to me that everyone accepts the principle. The basic argument that I am trying to reinforce through the amendment is that the home authority should contribute reasonably to the provision of ASL in the host authority. There is no doubt about that—it is merely a question of whether the bill needs to amend the 2004 act.

13:00

Both Mr Gibson and the minister referred to the fact that the legislation has operated effectively for 30 years. I am pointing out that it operated effectively until the 2004 act was implemented in 2005. On the day of that act's implementation, the first real problem emerged, because the 2004 act removed the record of needs legislation and the statutory obligation that existed under that. In other words, we created a problem by passing the 2004 act. Was that problem unforeseen? We debated the issue at the time, but we took it on trust that things would be okay. The legislation has not operated effectively for 30 years—it operated until we passed the 2004 act, which undermined it. I am trying to amend the 2004 act to reintroduce the statutory obligation that it removed when we repealed the record of needs legislation.

I am not the one who will create rashes of court cases—quite the reverse. The decision by Lord Penrose to which Mr Gibson correctly referred reinforced the 1980 act, but the cases that were taken to the court affected only children who were already on placing requests under the existing legislation—in other words, cases that predated the 2004 act. All the cases that were taken and to which Lord Penrose referred were old cases—the children concerned were already on placing requests in East Renfrewshire and had received support from Glasgow City Council until October 2005, when it stopped paying. There are many other cases that have not gone to court; Glasgow City Council has not paid in those cases, which are not resolved and are to be resolved under the 2004 act.

We want the problem to be resolved, but there are outstanding difficulties. We do not have an established protocol and it is important for us to reinforce the principle. It is also important to ensure that parents and, where possible, legal costs are kept out of such matters.

There is no doubt around the table that home authorities should make contributions to host authorities, so I see no problem in our placing in the bill almost the exact wording that appears in the 1980 act. The minister's suggestion that that would cause some doubt about interpretation is a spurious argument—it does not, as I am using the exact wording of the 1980 act. If we restate that principle in the bill, there will be no doubt that home authorities have a duty to make contributions. It will still be up to home authorities to do that—they will still have to pay over the cheque, so a lot of control will remain in their hands.

If we find that the system is being abused, home authorities will be able to report cases to the minister for adjudication; yet again, the minister will be able to intervene, although I hope that that does not happen. There is no evidence to suggest that it will because, in the end, host authorities are merely asking for contributions. If those contributions are forthcoming, there will be no difficulty. However, the principle is important. Amendment 28 would keep parents out of the matter, keep costs to a minimum and establish clarity that is lacking at the moment. I will press amendment 28.

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Campbell, Aileen (South of Scotland) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
Smith, Elizabeth (Mid Scotland and Fife) (Con)

The Convener: There are equal numbers of members for and against amendment 28, so I am

required to use my casting vote. I vote in support of the amendment.

Amendment 28 agreed to.

Sections 8, 9 and 10 agreed to.

Amendment 9 moved—[Adam Ingram]—and agreed to.

Long title, as amended, agreed to.

Meeting closed at 13:05.

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