

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 20 May 2009

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE 15th 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 GAVE EVIDENCE:

Councillor Angus Campbell (Comhairle nan Eilean Siar)
Lindsay Glasgow (City of Edinburgh Council)
Moira Niven (Association of Directors of Education in Scotland)
Bruce Robertson (Aberdeenshire Council)
Jim Wilson (Glasgow City Council)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 20 May 2009

[THE CONVENER *opened the meeting at 10:04*]

Schools (Consultation) (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the 15th meeting of the Education, Lifelong Learning and Culture Committee in 2009 and remind everyone that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

The first item on the agenda is the committee's continuing consideration at stage 1 of the Schools (Consultation) (Scotland) Bill. Today, we are having a round-table discussion with representatives of some of Scotland's local authorities and the Association of Directors of Education in Scotland. We are joined by Bruce Robertson, the director of education, learning and leisure for Aberdeenshire Council; Lindsay Glasgow, the asset planning manager for the City of Edinburgh Council; Councillor Angus Campbell, from Western Isles Council; Jim Wilson, the head of performance and asset management for Glasgow City Council; and—last, but by no means least—Moira Niven, the chair of the school estate sub-committee of the resources committee of ADES.

I intend to structure the session by opening discussion on a number of topics in turn. The headings for those topics were circulated before the meeting. The first topic for discussion is the consultation process for all schools and, within that, the educational benefits statement. I am interested to know what our witnesses think of the proposal to have an educational benefits statement and whether there is any need to include additional criteria in the proposal in the bill.

Bruce Robertson (Aberdeenshire Council): Thanks for the invitation to present evidence. The proposal to have an educational benefits statement is an excellent one. Such statements should be at the heart of any change in educational provision. It is etched in good practice and many local authorities produce them anyway. We are in the concluding stages of a consultation on changes to educational provision in Aberdeenshire, and we have followed the guidance in the bill. The parental body and the community at large very much appreciate that.

Aberdeenshire Council and the Convention of Scottish Local Authorities support the notion of having an educational benefits statement at the heart of any change in provision.

Lindsay Glasgow (City of Edinburgh Council): In Edinburgh we would expect to describe the educational benefits of any proposal. That is something that we already do for our consultations and we expect to continue to do so. We therefore support the inclusion in the bill of the requirement for such a statement.

Moira Niven (Association of Directors of Education in Scotland): I agree. ADES feels that appropriate education for the children must be at the heart of any change in educational provision and that it is incumbent on local authorities to make a robust case on that basis. It is about high-quality educational provision for all children.

Jim Wilson (Glasgow City Council): Glasgow City Council supports all the views that have been expressed. Such a statement was a core element of our recent consultation on a policy that was challenged robustly at public meetings and on which we felt that we had to prove the overarching case for every proposal.

Councillor Angus Campbell (Comhairle nan Eilean Siar): Western Isles Council would agree totally with that statement. We have undergone a similar process lately, whereby the educational benefit to a wide range of pupils has been at the heart of what we have done. If there are clear criteria, we have absolutely no problem with such a statement. It is at the heart of best practice and is what we should be doing anyway.

The Convener: So you believe that the educational benefits should be at the centre of any changes to education provision that a local authority makes. Equally, however, local authorities will want to get best value from the limited resources that they have. Do you think that the educational benefits statement will allow you to advance some of those arguments but get the balance right so that parents, the wider community and the local authority can have a genuine discussion about what is in the best interests of the community, rather than talking solely about whether a school is going to close?

Lindsay Glasgow: The educational benefits are not about just the schools that are directly affected. As a local authority, we have to consider the educational benefits across our authority area. We look at a much more strategic picture and ensure that what we propose will deliver benefits for everyone.

Bruce Robertson: It is clear, as my colleagues have indicated, that we must base funding on educational benefits, but those two things—educational benefits and best value, or

efficiency—are not mutually exclusive. The best proposals have both at heart.

In my experience, a community is far more interested in the educational and community benefits than in best value. The local authority must consider not only the complete education picture, but the picture across the council and in other services that support education.

Jim Wilson: I agree with the comments that have been made—we have to consider the issue in terms of providing an effective and efficient service for all children and young people. In relation to school buildings that are either underoccupied and/or in poor condition, we would put forward the case—as we have done recently—that bringing schools together would bring about educational benefits. Not only would the framework for learning be physically improved, but we could improve the supportive framework with a larger senior management team that would be able to provide greater pastoral support and support for teaching staff.

That consideration formed the core of our educational benefits assessment. There is a clear correlation: yes, we need to provide best value and an effective and efficient service, but that goes hand in hand with the educational benefits, and we have tried our best to demonstrate both.

Moira Niven: Best value is critical. There are limited resources within local government for each community, and limited resources for education within that package. I agree with Bruce Robertson's comment that the issue covers a wider area than just the education service. If there is an efficient structure for school provision, it is possible to deliver better quality across the board.

Sometimes those things are easier to see in hindsight. Prior to local government reorganisation, a couple of secondary schools in my own area, which were about a third occupied at the time, were closed. That was controversial at the time—I am sure it still is for some people—but if those schools had not been closed, there would have been huge pressure on the education service in relation to what it was able to deliver across the whole school set-up. The pressure of carrying two pretty empty secondary schools would have led to quite a different story, in both revenue and capital terms.

We must ensure that we have suitable facilities that support high-quality education provision, and a structure that enables the proper progression of the curriculum and an appropriate choice of subjects for children. To do that, it is necessary to marshal resources to provide the most efficient set-up.

Councillor Campbell: I agree that we have to look closely at what has happened. We have also

had school closures over the years, and I cannot think of one area that would choose to go back to the system that we had before. There is a natural reaction that a school closure takes something away from a community, but many communities have used it to improve their community life.

The wider educational aspect for the pupils is important, and that is what we have to get across to parents in the consultation. A certain number of parents will recognise that, and if we keep open a school that is in very poor condition and cannot offer the full range of educational provision, those parents will vote with their feet and choose to go where they can get that provision.

Those aspects must be taken into account in making those decisions. It is difficult, but we must get that message across. The more that we talk about that and consult on it, the more it becomes apparent.

The Convener: We will move on to the subject of relevant consultees.

Aileen Campbell (South of Scotland) (SNP): Good morning. Schedule 2 to the bill extends the list of consultees to include community councils, pupils, staff and Bòrd na Gàidhlig. What are your opinions on the extension of the list of consultees? How does the list in the bill differ from the consultees with whom you may have engaged in consultations on previous school closure programmes?

Lindsay Glasgow: In general, under the current legislation we try to engage with a wider audience as a matter of course—we have certainly tried to engage with community groups and local stakeholders outwith the school body who might be affected. We welcome the extension, as it mirrors the type of approach that we are already taking.

On consulting pupils, we feel that there is a role for age-and-stage considerations. We want to avoid causing distress to the younger pupils by engaging with them, because we acknowledge that such a consultation is a stressful procedure to go through. We want to ensure that we target the right age group when consulting pupils. As a local authority, the bill gives us the flexibility to identify the pupils with whom it would be appropriate to engage.

10:15

Bruce Robertson: The proposals are founded on good practice throughout Scotland and suggest that we should recognise that a change to educational provision has an impact not only in the narrow confines of the school but in the wider community, particularly in rural areas. We would very much welcome wider consultation. That is the

approach that we took at the public meeting I referred to earlier. There were representatives from age three or four to about 80-plus in the room

On the involvement of Bòrd na Gàidhlig, I support the involvement of relevant Gaelic organisations—and indeed other organisations, in a denominational situation—although not necessarily in every proposal. The wider the consultation, the better and more transparent it will be, which will help the end product.

Aileen Campbell: How does that differ in approach to previous consultations? Perhaps you could comment on Bòrd na Gàidhlig's involvement in particular.

Councillor Campbell: We have gone through a series of consultations over the past few years, and what is normally called consultation has ended up as a very adversarial process. I do not think that it was ever set up to get the result that we wanted. As a local authority, when we go into communities, we are put on a stage to answer what are usually aggressive questions. We have recently re-entered consultation on one of our secondary 1 and secondary 2 schools, and we have gone about it in a totally different way by having lots of stakeholder meetings with different groups, including community councils. That has resulted in a completely different atmosphere and conversation, and has allowed information to pass more freely. There is more trust in the process.

As for Bòrd na Gàidhlig, we would of course insist that it is part of the process as it is automatically part of a lot of what we do in the Western Isles.

Jim Wilson: Glasgow City Council is happy to extend the range of consultees. In our recent consultations, we held meetings not only with parents, carers, staff and children, but with the area committees and community planning partnerships. We involved elected members and church representatives. We are trying to extend consultation, and we are happy to consider taking that forward in future. We have no issues with the proposals.

Moirá Niven: I support the proposals on consultees, although you may need to consider some protocols to facilitate such consultation. A local authority might be approached by staff who felt that there could be a better structure for school provision—one that would be more in the interests of the children. However, those staff might feel quite exposed talking about that in a public forum. You have to offer different people different approaches. I remember individuals who wished to make comments but who felt a bit anxious about putting their name to those comments in a public forum because they were employees of the council. Opportunities to comment could be

facilitated through professional associations, such as the local negotiation committee for teachers. The way in which the authority engages the senior management in the school is important as well. It is important to get a rounded view across those groups; I also think that pupil councils could provide a structure that would allow children's comments to be heard.

Aileen Campbell: That was really useful.

Children in Scotland and Scotland's Commissioner for Children and Young People have called for effective consultation with pupils, with the use of appropriate materials and methods. How would you approach the stipulation in schedule 2 that the consultees include

"the pupils at any affected school (in so far as the education authority considers them to be of a suitable age and maturity)"?

Indeed—this question is perhaps more for Edinburgh and Glasgow—how would you approach that provision with regard to children who have English as a second language?

Jim Wilson: On the recent consultation on the primary school proposals, the lead officers arranged to speak to the pupil council at each school and advise it on how it could respond to the consultation. It was not a consultation with the pupil council; instead, the pupils were simply given advice on how to seek the views of their peer group and respond to the consultation. They were given assurances that elected members would know the individual views of each of the groups at the school whose closure was proposed and at what we call the receiving school.

On your second question, because of the number of languages that are spoken in Glasgow and because of the distinct difference between translation and interpretation, each head of establishment was advised to contact the relevant person before the consultation to arrange the appropriate interpreters for the public meetings, the staff meetings and the meetings with children to ensure that we received a representative view from all the stakeholders.

Lindsay Glasgow: Glasgow City Council has recently been through this kind of exercise, so it has some experience in delivering such consultation.

In Edinburgh, however, we want to create a bespoke response to individual schools through consultation with the headteachers and to find the most appropriate forum in which the school can engage with the process. Certainly pupil councils would be a key part of that engagement, and we would discuss whether they would take the issue to a wider forum and meet in informal focus groups, for example. We would certainly not suggest anything like a formal public meeting,

although I point out that pupils have come along to those meetings and have posed very pertinent questions. However, as such meetings can be very intimidating, we try to have more informal engagement.

As for translation, we make translators available on request for our public meetings. For a public meeting last year, the eastern European section of the community had the information translated and was able to ask questions through a translator. Such support will be in place for pupils and we will work with individuals who are already known to the children to ensure that we not only engage with the children in all languages but give them the opportunity to engage.

Aileen Campbell: You say that translation is available at public meetings, but by then the consultation process has already started. How do you catch the parents and families that do not have English as their first language before you reach that stage?

Lindsay Glasgow: A panel on the cover of each consultation paper says in a variety of different languages that further information and the skills of a translator are available if so wished, and people request that from us. A translation service is embedded in our department and, at the meeting last year that I referred to, it worked with and acted as an intermediary for the parents.

Bruce Robertson: We should never underestimate the potential and ability of our young people, no matter how young they are, to engage in a dialogue in their language. I know that Kathleen Marshall has been concerned for some time now that young people have not been engaged in discussions about changes to provision that will directly affect them and their peers. In fact, for children at a very young age, the whole process is a really good opportunity to combine the educational dimension—after all, it is quite interesting—with experience of the democratic process through the pupil council. Very good principles and practice can only add to the value of the consultation process.

Kenneth Gibson (Cunninghame North) (SNP): I think that we will all agree with Mr Robertson's point about good practice and principles. Given the bill's title, the focus is obviously on consultation. What consultation was carried out in your own organisations? For example, in the local authorities, were the officials, the administration and the opposition consulted? What input did you seek from the whole council and ADES itself with regard to your submissions?

Maira Niven: I can think of a number of examples. In the catchment reviews that were carried out in my authority, there was very wide

consultation within the council involving transportation, planning—

Kenneth Gibson: I am sorry—I was talking about the consultation that was carried out on the submissions that you made on the bill.

Maira Niven: From an ADES perspective?

Kenneth Gibson: Yes.

Maira Niven: We took ownership of the issue by setting up a working group to look at the school estate and related issues, which had a fairly representative membership comprising smaller authorities, larger authorities and authorities with rural areas. We also had very valuable engagement with the senior civil servants who operated in this area. We discussed the key issues with them; fed back comments; and reported back to the ADES resources group, which has an even wider membership than that of the working group. Obviously, a number of authorities that were preparing their own responses also shared their comments with us. I think that we engaged widely and carried out a fairly extensive and representative consultation.

Councillor Campbell: As an independent council that is not based on the party system, we took a slightly different approach. Before such issues went formally before the education committee, the policy and resources committee and then the full council, they were discussed in seminars in which everyone was included. We also engaged with COSLA as we went along and then delegated the final outcome to the chief executive in consultation with our strategy group. However, up to the very last minute before the final response was put in, everyone was given the opportunity to make final alterations or share their thoughts. We had a very wide consultation that involved not only all the education department people and schools but the school councils. Indeed, I know that in my own area the school council put the consultation on its agenda for discussion.

Bruce Robertson: Aberdeenshire Council's education, learning and leisure committee discussed its response to the consultation at the end of March, with all political groupings having an input. When it was discussed at committee, there was certainly consensus on its direction and, as members will see, the response was signed off by the chairman and me as director.

Jim Wilson: As with all external consultation papers, the consultation paper and its closing date would have been put on connect, Glasgow City Council's intranet. We discussed the issue with ADES, COSLA, the political administration and the council's legal services and the response was finally signed off by the education directorate at a meeting held specifically to discuss it.

10:30

Kenneth Gibson: I am surprised, because my wife, my cousin and my mother are all councillors on Glasgow City Council but none of them was given any information whatever about the consultation on the bill by the local authority—none of their opinions was sought. The matter has certainly not been discussed by the council's education committee, although you have heard how widely it has been discussed in other local authorities. Why did Glasgow City Council not widen the discussion to all its elected members in order to ensure that the views that you presented would be representative of the local authority? We have not heard from the City of Edinburgh Council, but that is what we have heard from other local authorities and from ADES.

Jim Wilson: I am happy to take that point away and discuss with the corporate section how we put external consultations on our website, the transparency of that approach and how people can respond.

Kenneth Gibson: Surely such things should be circulated to elected members so that they can feed back on them and the issues can be discussed in the education committee. If that had happened, in your response to us you would be speaking on behalf of Glasgow City Council rather than some group within the council whose identity I am not sure about—it may be directors, officials or whatever. Was the consultation document circulated even to all the administration's councillors?

Jim Wilson: I understand that, when an external consultation goes on to the connect service, everyone is aware of it—that is a focal point where they can access it. However, I am happy to check that.

Kenneth Gibson: That was never the way that it worked when I was a councillor. I would have thought that the matter should have been discussed at committee, if only as a courtesy to members. That seems to happen in other local authorities. Given that we are talking about a consultation bill, I would have thought that you would have wanted to consult as widely as possible within your local authority rather than just putting something on the web that people may or may not see.

Jim Wilson: I will certainly take those points back.

Lindsay Glasgow: In Edinburgh, the principal work was done in the children and families department, which is not focused just on education but has a wider remit. A report was put to our heads of service management team and the whole children and families department was engaged via that route. There was then consultation with the

elected members of the administration and with COSLA. Thereafter, the report went to our education, children and families committee last week, given the timescales, the meeting dates and so on. Some issues were raised with regard to small points of principle in the bill—there was not a unanimous feeling on a couple of the subject areas—but in general the committee supported the bill. I am sure that we will get on to the aspects of the bill on which issues were raised.

Margaret Smith (Edinburgh West) (LD): Moira Niven has touched on the issue of consultation with staff. As Lindsay Glasgow will know, I have had experience of school closures—other members will have had experience of them, too—and I recognise that staff are often put in an invidious position. They may have their own opinions about what should happen regarding a school that the council proposes to close and they may come under pressure from parents not only to support the parents' opinion but, understandably, to help the parents access the best possible information about the school to assist them in putting together the arguments that they feel that, as a parental body, they will have to put forward against what the council is trying to do. That sometimes spills over at public meetings that staff members feel they have to attend but at which they feel they cannot speak.

Can you elaborate a little not just on how you think that the bill will improve that situation for staff, but on whether you recognise in your own councils the picture that I have just painted of the difficult position in which staff find themselves? Given all of that, and assuming that you recognise that picture, do you think that the bill will assist those staff in doing what they have to do both as council employees and, often, as the focal point—for example, if they are a headteacher—to whom parents look for the kind of information that they need to pull together if they are to put a coherent argument to the council?

Bruce Robertson: I certainly recognise the tensions that you outlined, which apply particularly to the headteachers of schools that are affected by any changes in provision. Whether closures or boundary changes are involved, the situation is difficult for them.

You ask whether the bill will help. I do not think that the bill alone will help, but the protocols under which councils will implement the bill will help. Staff find themselves in a difficult position, because their role is to support their communities and the children of those communities, but they are also council employees. As with any council staff member, it is important that we listen to the views of the staff concerned about any material changes to their conditions—to where they work.

The bill outlines good practice for consultation processes, which will help to ensure that staff throughout Scotland have the opportunity to express views. However, the local protocols that are put in place will underscore the bill and protect staff from the tensions that you—understandably—outlined.

Moira Niven: I agree. We discussed the subject on the way here, because we recognise Margaret Smith's point about the position that staff are in. How an authority engages with the senior management team in affected schools is important. People always engage emotionally with their place of work; it is not just a job—they care passionately about it. It is important to provide opportunities for the local authority senior management team to meet senior school staff and have a proper and robust discussion with them about how to proceed, so that those staff feel comfortable about making comments pro or agin a proposal. Otherwise, they can feel exposed.

We must have regard to how people behave in public and how they support and advise the parent council. There is a professional way to do that. In the end, we must ensure that everybody behaves professionally, because we do not want to make the situation worse for a community—we want it to be as good as it can be.

Lindsay Glasgow: From the Edinburgh perspective, I recognise the situation that has been described and the tremendously difficult position in which headteachers in particular are put when closures are proposed. The bill certainly brings more clarity to the process. It gives teaching staff—who are not normally involved in such matters in their day-to-day business, whereas the rest of us might be constantly involved—and all the affected parents clarity about what to expect in the process. In that respect, the bill could help with the process and with how staff engage with parental bodies and their employer, because it will allow people to understand the process in more detail.

Ken Macintosh (Eastwood) (Lab): Several consultees say that the bill could promote Gaelic-medium education. They suggest that when a majority of parents support Gaelic-medium education, the local authority should respond. Adding such a provision to the bill would be a major change, but the suggestion has some support. I would welcome the views of all the authorities, not only Comhairle nan Eilean Siar. That is terrible pronunciation—my father would be ashamed of me. I would particularly welcome comments from the City of Edinburgh Council and Glasgow City Council. Glasgow has shown the way with Gaelic-medium education, but there is a pressing need in Edinburgh. Is the bill an appropriate mechanism for that?

Jim Wilson: In Glasgow, we are addressing the requirement for Gaelic-medium education without the bill. We do not think that any amendment to the bill would impinge on that. We are making progress along a different route.

Lindsay Glasgow: There is pressure to increase the number of Gaelic-medium places in Edinburgh, but that issue does not necessarily sit within the bill. In planning for new places, we might be talking about an extension to an existing facility, and the bill does not apply to that scenario at all. The bill is not the vehicle for the type of discussion that Mr Macintosh mentions.

Ken Macintosh: The issue is about the principle of parental consultation.

Lindsay Glasgow: Certainly, due process will have to be gone through in planning for places for Gaelic education. However, that does not fit with the tenor of the bill—it is a separate issue.

Bruce Robertson: When I was director of education with Highland Council from 1998 to 2007, I presided over a rapid expansion of Gaelic-medium education. I had the privilege of having many a blether with Mr Macintosh's late father, who, if I may say so, was a fantastic ambassador for education and Gaeldom. Other legislative processes that are already in place are more appropriate for the promotion of Gaelic education—the bill has never been about that. We have the Gaelic Language (Scotland) Act 2005 and the Gaelic education legislation that surrounds it. Legislation is in place that allows what Ken Macintosh suggests to take place. I am aware that representatives of Gaelic bodies have made submissions to the committee, which is understandable, but I suggest strongly that legislation is in place that looks after their interests.

Councillor Campbell: In Comhairle nan Eilean Siar, the provision of Gaelic-medium education or Gaelic education is at the centre of all that we try to do. We cannot ignore the fact that the question that is at the core of much of the consultation we have carried out on our school estate is, "How will my children access Gaelic?" As part of that process, we had a specific consultation exercise in December last year to consider whether there should be Gaelic-medium units or specific Gaelic schools. Whereas two thirds of people wanted their children to be educated in Gaelic or to have access to Gaelic-medium education, very few of them were prepared to travel more than 10 miles to a Gaelic-only school. In an area with the geography of the Western Isles, we have to consider whether Gaelic-medium units are a more suitable approach.

Although we have not discussed the issue that Ken Macintosh raises in our response on the bill,

purely because of our experiences in the past year, I am inclined to say that there is a place in the bill for consideration of the way in which Gaelic is delivered in the system.

The Convener: We move to section 6, which relates to notice and consultation periods.

Christina McKelvie (Central Scotland) (SNP): Section 6 will require education authorities to give the relevant consultees notice of a proposal. That should include a summary of the proposal and details of where to obtain a copy of the proposal paper and how to make representations. The bill proposes to extend the consultation period to at least six weeks. What do you think about that timescale? Is it appropriate? Is six weeks too long, too short or just right? What has good practice been in the past as far as timescales are concerned?

10:45

Moira Niven: I agree with the bill's proposals on timescales. Authorities often exceeded the timescale that was set under the previous regulations. Sometimes it depends on how large and complex the issue that is subject to the consultation is. Recently, I was under pressure to curtail the period in a consultation that I was undertaking; people in the community said to me, "But you know what we want, Moira. Can we not do this a bit more quickly? Do we have to go to formal consultation?" The design of a new school can be held up, for example. We might move something as fast as we can, within the regulations, at the request of the community.

The proposals in the bill are reasonable. Any decision to change or close a school or to make material changes to catchments are important issues for communities, and it is appropriate that we fully engage.

There are some elements of common practice. I have a lot of experience with consultation documents and meetings, which are often informal parent council meetings that present a further opportunity to go over some of the issues of interest. Site visits might be done. It is important that we go as far as we can to ensure full engagement and that people get the opportunity to feed in their views. I am supportive of the proposals.

Lindsay Glasgow: In Edinburgh, we support the six-week period. We have previously run consultations over four-week periods, and some parents have told us that that feels too short. We have extended recent consultation periods, but we would not want to go too far beyond six weeks as the process might drag out. Comments tend to come in around the deadline, which people focus

on. If the process were to be extended, I suspect that people would still do things at the last minute.

Christina McKelvie: They would just wait for longer.

Lindsay Glasgow: Yes. The choice of six weeks is appropriate to ensure that the consultation moves on effectively and at a good pace so that a decision can be reached for the parties, which are in limbo throughout the process. The recognition that it should extend over the school term is welcome—we would do that as a matter of course, anyway.

Bruce Robertson: I agree with my colleagues.

There are preliminaries before the consultation period, as well as good practice beyond it. In effect, that means that whereas the vast majority of changes to provision would take effect from the end of one school session in time for the beginning of the next, the majority of consultations on major changes to provision take place in the first half of the school year, so that everything is stacked up. That process is good, because it helps parents and pupils with where they are going in the subsequent school year.

Christina McKelvie: That is a very good point.

Councillor Campbell: We regard the six-week period as reasonable. We must recognise that the consultation process starts well before the formal consultation. Much of the outcome depends on the work that is done during that period and on the way in which the consultation is held. Having a six-week period is reasonable. It gives people a cut-off point.

In a consultation that we have been involved in lately, involving three schools, the parent councils called for the period to be set, and they asked for the answer to be known at a certain place and time. A certain period definitely needs to be set, and I think that six weeks is reasonable.

Jim Wilson: The six-week period worked very well for us. There is a fine balance to be struck. With a 28-day period, the criticism was that by the time people had waited for 14 days while meetings were arranged, they did not have a great deal of time in which to formulate their responses. If we went beyond six weeks, however, people would be desperate to reach a conclusion.

Christina McKelvie: Scotland's Commissioner for Children and Young People and a few other organisations have highlighted the issue of the delivery method and getting information out. We all use pupil post—it works for me, as I check my son's schoolbag every night—but there is a question around whether that works. The children's commissioner flagged that up as a potential issue, because children might read some

of the proposals and become distressed. The bill team has taken that point on board.

Is there any good practice in delivering information in a relevant, expedient form, which allows parents to get information as quickly as possible? Are there things that you have tried and which have worked—or things that have not worked, but from which you have learned a lesson?

Jim Wilson: We wrote to advise every parent and carer that we were entering a period of consultation, and to let them know that they would receive the document shortly. Speaking from experience, I do not always get everything that is sent home from school. We advised people to expect the document and how to chase it up if it did not arrive.

You asked about lessons learned. We must ensure that all our establishments keep contact details absolutely up to date so that all letters that are sent home reach home; by that, I mean the inclusion of flat numbers in tower block addresses, taking care about using full first names, and getting abbreviations right. The system has worked well. We received the very small criticism that a small number of people did not receive the information because the address was not absolutely accurate.

Bruce Robertson: Involving pre-school provision, child care centres and so on is good practice, because such places can be forgotten. Recently, we conducted a far-reaching consultation on the school holiday pattern. That is another area of our work that attracts a lot of interest.

There is a very high use of the internet in our part of Scotland, and increasingly we receive responses to consultations electronically. Local authorities need to be ready to work in that environment. Councils need to be able to use various bits and pieces of software to analyse things fairly quickly. That is an example of good practice.

Lindsay Glasgow: Parents expect electronic methods of communication to be used as a matter of course. Information should be made available in that way, and parents should be able to comment back directly.

Generally, we use pupil post but we also write to individuals who do not necessarily have a connection with pupils who attend the affected schools but who might live in the catchment area and who might subsequently be affected by changes. There is also the issue of getting addresses spot on, although even with the Royal Mail, things occasionally do not reach the right location.

Councillor Campbell: More of our people do not use the internet, so we mostly write out to people. We need to capture everyone. We use the home-from-school method for follow-ups and to tell people about specific meetings that are taking place, but we also communicate with community councils. In our relatively small communities, it is not that difficult to get the information out.

In many areas, the school is a focal point for other things and the other users of the school are brought into the discussion, too. There is not a particular problem for us, because of the size of our communities—and word spreads particularly fast in Gaelic.

Christina McKelvie: At our meeting on 6 May, the bill team indicated that it would consider putting in place guidance on how proposals should be delivered, with details about such matters as notice and statutory response times. Is guidance the best place to include such details in order to give local authorities a clear idea about where and how they should get proposals out to consultees?

Moirá Niven: It might be appropriate to put such information in guidance. Examples of good practice could be included. Of course, the guidance would need to be kept up to date.

Authorities also use tools such as group call, with which messages can be issued by text. If authorities do not put out information only once and use school newsletters to advise on an issue that is coming up, parents have more opportunities to pick up on the information. In my experience, as soon as there are whispers about a school closure everyone in the community knows about it—perhaps that is just true of the community in which I work.

Bruce Robertson: With all due regard to the people who have the skill to craft legislation, I must say that I always find the guidance to be the important bit when it comes to implementation. Good practice has been established in Scotland, whereby when legislation is enacted ADES, our professional body, works closely with COSLA and Scottish Government officials, through meetings, seminars and so on, to ensure that the policy is delivered in the way that Parliament intended it to be delivered.

Christina McKelvie: Interpretation and understanding are important.

Lindsay Glasgow: I concur with the view that guidance is the appropriate place for the information that you described. Guidance would be helpful.

Aileen Campbell: Community councils flagged up concern about the proposed timescale for consultation, which does not fit in with their cycle of meetings. In the scheme of things, parents and

pupils, rather than community councils, are probably the first port of call. How will you want to interact with community councils, so that they are aware of proposals and have adequate time to get involved in a consultation?

Bruce Robertson: Aberdeenshire Council involves community councils as part of the consultation process. There are large variations in how often community councils meet. If a community council thinks that it is appropriate and important to contribute to a consultation, it should be willing to convene a meeting during the six-week period—that is not unreasonable. It is important that community councils should have an opportunity to contribute their views. There is a two-way process in that regard.

Lindsay Glasgow: I agree. Six weeks should be adequate to enable community councils to reflect on proposals. Of course, proposals will have been made public before the start of the six-week period. A long engagement process starts when the council papers are made public, which can happen well in advance of the consultation process. Parties are generally well aware that a matter is under discussion long before the consultation process starts.

The Convener: Section 7 will require local authorities to hold a public meeting if they propose to close a school. That will be a statutory requirement for the first time, but I think that most local authorities would probably hold such a meeting anyway.

At last week's meeting, the witness from the Association of Scottish Community Councils said that public meetings should be held early in the process, rather than at the end of the process, so that people can have an opportunity clearly to formulate their thoughts on the consequences of a proposal. That view was shared by other panel members. What do the local authorities think? Is it appropriate to ensure that a public meeting is held as early as possible?

Jim Wilson: Yes, we strive to do that. One of the concerns about public meetings at which people seek information or advice to help inform their response to proposals is that, despite everybody trying their best, people might not get the information until the last minute. We have tried to hold meetings as quickly as possible after the 14-day time lapse. Because of the sensitivities around both the closing and the receiving schools in the current proposals and the fact that the issues are clearly different for each school, we held separate meetings for each school. However, there is certainly a case for holding the meetings earlier to allow people as much time as possible to reflect on the information and on the meeting before submitting their response.

11:00

The Convener: Should the guidance on that aspect of the bill provide clear examples of what is required and recommend that meetings be held earlier in the process?

Moir Niven: Yes, but there is a balance to be struck, because we must first communicate the fact that a meeting will take place. We have two weeks in which to do that, and to ensure that all parts of the community have been reached and that people can schedule their attendance. If a number of schools are involved, it is important to hold more than one public meeting. Extending the consultation period will help because, after the initial two-week period, there will be a month of consultation. That seems reasonable to me, but it should be covered in the guidance. How the public meeting is undertaken is also important—for example, it is helpful to have a written record so that people can pick over it and recognise that that was the meeting they attended.

The Convener: The committee has heard evidence about the role of Her Majesty's Inspectorate of Education regarding the public meetings. We will come to HMIE's wider role in the process a little later.

The bill includes a requirement for HMIE to be advised when the public meeting will be held, but there is no requirement for it to attend those meetings. The bill team explained that that was because HMIE would want the meeting to be cancelled if it was unable to attend for whatever reason. Witnesses who have an interest in the area have told the committee that they believe it would be helpful and preferable for HMIE to attend meetings; HMIE would not participate, but would have observer status. As we all know, the *Official Report* of what was said in a committee meeting or a meeting of the Parliament can seem very different from how something was said and from the feel of the meeting. The same could be said of a public meeting on a school closure. Do you have a view on whether HMIE should be required to attend such meetings, rather than just be given the option to attend?

Bruce Robertson: In my experience, a wide variety of individuals and organisations attend the public meetings, so I am relaxed about whether HMIE should be there. The important point is that if a requirement for HMIE to attend the public meeting is included in the bill, it must be made clear what its role at the meeting would be and what the expectation of HMIE would be, beyond the meeting, as a consequence. I would be concerned if the bill included a requirement on HMIE to attend a meeting and report on its nature, because that aspect is not always in the control of the person who chairs or organises the meeting—such meetings can be difficult. However, if HMIE

were to attend a meeting only to see that due process was being followed, that would be fine. My concern would be whether there would be consistency of approach by HMIE in that regard. HMIE could be required to attend public meetings, but the bill would have to make it clear what was expected from its attendance.

Councillor Campbell: We agree with those sentiments. That is the view that we would take.

The Convener: We move on to the issue of corrections.

Claire Baker (Mid Scotland and Fife) (Lab): During stage 1, we have been looking at the process that has been suggested for correcting any inaccuracies in the proposal paper. There has been some debate about who is the judge of the inaccuracies and whether that causes any additional problems. How do you feel about the proposed process? Are there enough checks and balances?

Lindsay Glasgow: I can speak from experience, because in our consultation last year there was considerable debate about inaccuracies in the proposal paper regarding the condition of the building that was proposed to close. As part of the consultation, we issued an erratum paper to all affected parties, which provided an updated condition report on the school. Parents were able to see that we had presented the up-to-date position and to amend their responses accordingly.

There was debate over whether that would have affected the original proposal. We did not think that the condition of the building was a material consideration. We were principally looking at the demographics and the geography of the area; the condition of the building was a secondary consideration.

We want to ensure that the authority would be able to explain why it did not think that the condition of a building, for example, was a material consideration in coming to its decision. The final consultation report offers the opportunity to debate the effect of the information that had to be corrected and the implications for the proposal. The bill offers the opportunity to ensure that all up-to-date information is available and that the authority can respond where information is shown to be inaccurate. I support what is in the bill.

Claire Baker: Questions were asked about the condition of the school and the original proposals that the council made. How did the process work? Who raised concerns about inaccurate information about the condition of the school and how easy was it to reach a decision about whether the information was accurate?

Lindsay Glasgow: Parents raised questions about the condition of the building. We were able to look back through our information on maintenance of the building to identify what had been spent on the building and what had not been put in place. The issue was that an out-of-date condition report had been used. We ensured that surveyors updated the information on the building. There was a factual inaccuracy, so it was fairly easy for us to say that we accepted that the information was out of date and that we had ensured that it had been updated.

Kenneth Gibson: Aberdeenshire Council made the important point that there is a need to distinguish between opinion and fact. That is the real nub of the issue. Parents who are involved in these decisions—I can think of an example in North Ayrshire in my constituency from 18 months ago and one in Glasgow—often feel that the information about catchment, school classification, pupil numbers and whether a nursery is attached to the school is inaccurate. In some cases, there seem to be significant inaccuracies. It upsets parents when blatantly inaccurate information is put forward as part of a consultation.

Claire Baker has raised an important point. Regardless of one's view on whether a school should close, the local authority has to do its homework to ensure that all the information in the consultation is 100 per cent accurate, or the process will fall apart. I think that Mr Robertson wants to comment on that, but I ask Mr Wilson to comment as well because there has been concern about the matter in Glasgow.

Bruce Robertson: Some of the examples that you cited are material errors. In my experience of the matter, which is now considerable, I cannot recall a public meeting at which someone has not questioned the facts. Questions were raised as recently as a couple of weeks ago. It is important that authorities research their proposals well.

As Lindsay Glasgow said, the bill affords the council an opportunity to correct the proposal paper. However, some of the information that is involved is highly technical. In one case, we had to drill down into the secondary grant mechanisms for the financial distributions to local authorities. In such cases, we get into highly technical detail, which is different from material considerations such as whether the school has a nursery. In general, but particularly in section 5, the bill requires us to do our homework and set out all the information before we go into the formal consultation mechanism. It therefore represents good practice.

Jim Wilson: I was surprised to hear the comments about the roll. Two errata were identified in Glasgow, but they were errata in the truest form in that they were typographical errors.

In one place, there was a C instead of a B, and in the other case there was the opposite. There was no roll inaccuracy or any other inaccuracy in the consultation. The process that we undertook was as follows. The solicitor to the council advised us that the errors were not material to the consultation. We amended the web versions of the consultation and the matter was raised at the public meetings that took place after we were made aware of the errors. The final response that was provided to the council before the decision was made contained the two errata that were contained in the 21 reports.

Claire Baker: I do not want to create problems that do not exist, but when we asked the bill team about the timescale for people to challenge inaccuracies, it said that, when an inaccuracy is accepted, the clock will start again on that part of the process. Bruce Robertson said that technical challenges are sometimes made, but he also said that councils should be more careful and put forward robust evidence. Is that enough to protect against possible queries and extensions to the process? Does the bill strike the right balance?

Bruce Robertson: I think it does. My colleague Mr Wilson from Glasgow gave a good example of an error that was not material but simply typographical. If there are material inaccuracies in information about school rolls, current provision in schools or things like that, the council would want to rerun the consultation to ensure that there is transparency and that its proposals are well founded. They would not be well founded if there were material inaccuracies, because there could be appeals further down the line that would take up an awful lot of time and resource. Also, the input from the community would be wasted. That is why I think the balance is about right.

Claire Baker: There is some flexibility in the information that the council includes in the proposal paper and the educational benefits statement. Would it be worth considering whether the correction stage should also be an additions stage at which parents and communities could raise issues that they believe are not covered in the proposal paper, or should it be only for corrections? Is there another point in the process at which parents can bring transport costs or other issues into the mix?

Moirra Niven: A real consultation is an iterative process. People will raise issues and ask for information through the consultation: it is for the council to make that information as widely available as possible. That is a better way of dealing with the issue.

11:15

It is appropriate for section 55 to be included in the bill; I agree with Bruce Robertson that it is helpful. Demographics and projections of pupil rolls are a grey area because we may be dealing with opinions rather than facts, and people may disagree with the information that has been provided. In such cases, it is important that the authority set out clearly the methodology that it has applied in order to generate projections. Whether people accept them is a matter of judgment, and councillors will take that into account when coming to a decision. Councils should share information widely, through the consultation. Parent councils are a useful means of providing additional information that has been requested. However, the starting point is to include as much information as possible in consultation documents.

Kenneth Gibson: Moira Niven has made an extremely valid point. We must consider not just the facts as they are, but what moving to a new school would mean for children. Patricia Ferguson MSP has pointed out that some of the Glasgow schools to which pupils in her constituency will have to move following closures of schools will have fewer facilities—including gym halls—than the schools that will be closed. It is not just about getting the facts right: we must ensure that valid issues are not omitted from consultations. Such things had not been pointed out until Ms Ferguson looked into the matter with parents. If a consultation is to have the confidence of everyone involved—even if people do not agree with what is proposed—all issues must be put into the public domain.

The Convener: We move on to sections 8, 9 and 10 of the bill. After covering those sections, we will have a short comfort break.

Elizabeth Smith (Mid Scotland and Fife) (Con): As you know, section 8 will change the role of HMIE. I am aware that there are conflicting opinions about that. There are two areas of conflict. First, some people are not sure what HMIE's role will be—there is a lack of clarity. Secondly, some councils are concerned that HMIE will become too involved, if the bill is passed. I invite you to comment on both issues.

Bruce Robertson: HMIE is well placed to consider educational benefits—that is its daily bread, and it performs that task effectively. However, I wonder how well placed HMIE is to discharge the duties that are outlined in sections 8 and 9. I suggest that to do so it will need enhanced capacity. A particular set of skills and experiences—which some of us around the table have acquired over the years—are needed in situations such as those that we are debating.

We must also consider how well placed HMIE is to give independent advice. Some colleagues have concerns about that. If HMIE's role were principally to give advice founded on educational benefits, I would be comfortable with that, provided that it had the experience and capacity to do so. If, on the other hand, it were asked to take a view on the community dimension and to become involved in the undoubtedly more subjective aspects of consultations, I would have some concerns.

Elizabeth Smith: I am interested to hear other witnesses' opinions, but I have a direct question for Mr Robertson. Does HMIE currently have sufficient resources and skills to undertake that level of inquiry on educational benefit?

Bruce Robertson: No. It would need additional capacity to do that if the requirement is—as it will be—Scotland-wide.

Elizabeth Smith: Do you mean in terms of numbers?

Bruce Robertson: I mean in terms both of numbers and experience.

Elizabeth Smith: That is quite an issue.

Bruce Robertson: Yes.

Elizabeth Smith: Are there any other comments on HMIE?

Moir Niven: I agree with Bruce Robertson. HMIE is highly respected among stakeholders, and there is considerable confidence in it in relation to the education function, which is where it can add greatest value to the process.

Relatively recently, I experienced HMIE examining what we were doing, and it was a good process. It is important that the process is consistent throughout Scotland, so we need to ensure that HMIE is a large body and that it has appropriate rules of engagement, protocols and training to do its work. It has the greatest value to add on educational benefits. If we made its role wider, that would raise more questions and create additional pressure. The wider community issues are more local issues that local authority officers and elected members need to address. In the end, decisions will be made at that level.

Elizabeth Smith: Do you agree with Mr Robertson that HMIE will require additional resources to fulfil its role under the bill?

Moir Niven: I do not know what the other pressures in HMIE are, so it is for it to comment on the need for additional resources. I am aware that it was time consuming for the individual who came and reviewed what we were doing, but that person must have prioritised that within their overall workload. The wider we make its role, the greater will be the burden. That could be a real concern,

because we need HMIE to focus on quality assurance in Scottish schools, which is a critical function.

Elizabeth Smith: That is a key point. There would be an additional burden, obviously, in that HMIE would be involved for a greater length of time. It is a numbers game, but if there is a qualitative issue about the skills that it brings to the role, that is different. If local authorities do not have confidence that it is able to undertake the required role, that has important implications in respect of section 8.

Councillor Campbell: We value and respect HMIE's independent role in educational comment and want that to continue. However, it is fair to say that, over the past couple of years, we have had particular issues with it. We responded to a lot of criticism from HMIE and Audit Scotland for having S1/S2 schools in our education system, given the declining school rolls and the condition of our school estate. HMIE was long aware of the direction of our rationalisation in doing away with such S1/S2 provision, so it came as a shock when it said that the educational advantage of our proposals was not apparent. That was a complete change of tack. We go through a process that takes a lot of time, commitment and resources of all sorts, so an HMIE review at an earlier point might prevent much of that from taking place if it is going to knock a proposal on the head.

We had another issue. We considered the curriculum for excellence as one of the drivers of our school estate provision. For us, S1/S2 schools were not a way to deliver the curriculum for excellence fairly across the whole of our school estate. Reflecting on HMIE's response to that, we are not convinced that it can look ahead as we can; it seems to deal only with what is on the ground in front of it at that moment. That might not be a fair criticism, but that is how we read the responses that we got from HMIE. As well as taking an independent view, HMIE should be more in tune with what local authorities are proposing, so that we know, earlier than the end of the process, if it thinks that we are on the wrong track.

The Convener: It struck me that Glasgow City Council's view on the issue is very different from those of the other local authorities that submitted evidence to the committee. It fundamentally questioned whether HMIE should be involved in the process at all. In the light of your written evidence, Mr Wilson, do you want to say anything on that?

Jim Wilson: Yes, thank you. At the start, our big concern was about the clarity of the role and whether HMIE had the capacity to undertake it. We were certainly not questioning HMIE's ability, and we are delighted to have the organisation in our schools, but we were concerned that that role

would take HMIE away from its fundamental role of quality improvement and assurance in our establishments.

As time has passed, it appears that HMIE's role would be restricted to the educational benefits aspect. Glasgow City Council has no concerns about a contribution in that area, but we are concerned that there could be a conflict between HMIE's being a consultee and an advisor, or being involved in other areas of the proposal that do not relate solely to educational benefits. As the work has developed and we have consulted colleagues, we are becoming much more comfortable with the proposal.

Aileen Campbell: On what the convener said, you seem to have taken a much stronger position in your written evidence. For example, point 6 in your submission states:

"The detailed information requested for HMIE and the inclusion of comment from HMIE in the proposals to council members goes beyond their capacity, function and area of expertise."

Why did you feel the need to put that in your submission? It seems to contradict a wee bit what you have just said about welcoming HMIE's role in the process.

Jim Wilson: As the process has continued, the clarity around HMIE's role has been formalised. At the outset, we were not entirely clear what HMIE's role would be. We see a clear benefit in HMIE visiting schools and helping us to progress quality improvement and assurance. At the start, when we were looking at the proposals for HMIE attendance at meetings, there was no clarity about its role at meetings, or about the extent of its role in relation to the report.

As the situation has progressed, and we have held discussions with the Association of Directors of Education in Scotland, the Convention of Scottish Local Authorities and other colleagues, it has become apparent that HMIE's role will focus on educational benefits statements, so our concerns are dissipating. Our concern at the start was about the scope of the role, and whether HMIE had the capacity to undertake its work to the extent that might be required in such a huge task, without having to redirect staff from other roles that we find to be crucial and beneficial to Glasgow City Council.

In our submission, we were flagging up our early concern, but as time has progressed and consultation and discussions with our partners continue, we have become much more comfortable with the proposals.

Aileen Campbell: So, between submitting your written evidence and coming to the meeting today, you have changed your opinions about HMIE?

Jim Wilson: It was not my personal opinion. As the bill has progressed and we have received more information about the role—via colleagues and various professional working groups throughout Scotland—we have become far more comfortable with what is proposed.

Aileen Campbell: Is point 6 in your submission directly related to point 5, which states that you have received 8,000 responses to your current consultation on school mergers?

Jim Wilson: We just wondered how HMIE would cope with that level of response. We had a team of 60 officers from across the council to address the responses—a lot of which were electronic, as was mentioned earlier. We found that collating and analysing that information and producing the reports was a very time-consuming process.

The people who were involved in that work included educationists from our education improvement service, quality improvement officers, technical specialists in relation to school buildings, transport specialists in relation to safer routes to school and crossing patrols, and catering specialists. There is breadth of expertise. When HMIE involvement was first proposed, we were not clear about its input. We have no concern if its role is restricted to educational benefits statements, but we are still concerned about its capacity for dealing with the workload, and about the additional resources it may require without having to take people away from what we perceive to be its core functions of quality improvement and assurance in schools.

The Convener: Do you have more questions?

Elizabeth Smith: No, thank you. That has answered my question.

The Convener: I suggest that we have a short comfort break. The committee will reconvene at 11:35.

11:30

Meeting suspended.

11:39

On resuming—

The Convener: We move on to the bill's sections on special provision for rural schools.

Kenneth Gibson: The bill will require authorities that are considering a proposal to close a rural school to give special regard to three factors:

"(a) any viable alternative to the closure proposal,

(b) the likely effect on the local community in consequence of the proposal (if implemented),

(c) the likely effect caused by any different travelling arrangements that may be required in consequence of the proposal (if implemented)."

Should rural and urban schools be given different consideration? In their submissions, Aberdeenshire Council and Glasgow City Council said that the same factors should apply to urban and rural schools.

Bruce Robertson: Aberdeenshire Council is a large rural authority—my professional experience is all from such areas. The three factors in section 12 are important and capture most of the issues. There are differences between rural and urban areas in terms of the impact of a school's closure on its community. Consideration of viable alternatives, the impact on the community and travel arrangements are key, as is the educational benefit statement. There are generic issues, which cut across rural communities and urban environments, but the impact on a rural community, especially if it is remote, is important.

We said in our submission that we are disappointed that the bill does not define rurality—such definitions have been included in precursors to the bill—and the definitions in section 14 are vague, to say the least. That view was expressed by all political groupings in Aberdeenshire Council when the issue was discussed in the council's education, learning and leisure committee, which takes us back to Mr Gibson's earlier question.

Jim Wilson: We were sensitive to the fact that the issue does not directly affect Glasgow. The overarching principle behind our comments was our desire for parity of esteem for children, wherever they are in the country. We did not comment on the definition of "rural school" and the numbers in that context, because we thought that other people were better placed to do so. Our comments reflect our desire not to create a divide between children from different areas.

Moira Niven: No authority wants unnecessarily to close a school. Before an authority brings forward closure proposals, it should carefully consider the impact of the closure. Schools have a special position in Scottish society, whether they are in rural or urban settings, but it is right to acknowledge the particular context of rural schools. It is therefore appropriate to include the factors that are set out in section 12, although many of them would be considered in an urban setting, too.

Notwithstanding the need to take account of the factors in section 12, provision for children of the highest-quality education is crucial. If anything has disappointed me a wee bit about the bill, it is that there is not enough focus on that. We need to ensure that all children in Scotland get the best education opportunities and the best-quality educational experience, wherever they are. I am

talking about not just reading and writing, which are crucial, but wider education that offers the opportunity for appropriate social interaction and all the learning that comes from that. I acknowledge the importance of rural schools in Scottish society.

11:45

Kenneth Gibson: Paragraph 5 of Councillor Campbell's council's submission states:

"The comhairle, most of whose schools would qualify as 'rural schools' notes with some concern the proposal within the Bill to apply different factors for rural school closure proposals, in effect, moving away from an assessment of educational benefits, to the effect on the local community ... the comhairle, in common with other local authorities, would always examine these factors".

You say that the comhairle would be concerned if the impact on the community were given priority over education because that would mean that pupils would

"In practice ... be retained in an educationally detrimental situation, because of factors not relevant to their education."

The submission says that local authorities "always examine" community factors. In my experience, that is not the case, although your local authority might do that. What evidence suggests that when schools are retained, pupils are kept

"in an educationally detrimental situation, because of factors not relevant to their education"?

Councillor Campbell: The biggest challenge for Western Isles Council is keeping communities alive in rural areas. That is at the top of our priority list. However, we are equally sure that when we consider education matters, the assessment of educational benefit comes first. The concern that we express in our submission is that we would not like doing something for a community to take precedence over what is good for children's education provision. That is not how we would like the bill to be interpreted. We are very aware of the part that schools play in communities but, as I said, we can point to communities that have stayed alive when school arrangements have moved on to provide better education for children. Former schools have become integral to lively and vibrant communities.

We are concerned because it is assumed that we are not considering community factors—we are—and we are concerned that the bill should state clearly that education provision comes first. I can give examples of that happening in the Western Isles. We have kept open schools with two or three pupils but, in the past two or three years, parents of pupils at two of those schools—one in Harris and one on Barra—have said, "We are not getting the best education for our children; we are moving them," so those schools have

closed. We have tried to make the point that we would not like to be told to keep such schools open when doing so would clearly not be in children's best education interests or accord with parents' wishes.

Kenneth Gibson: We received a late submission from the Scottish National Party group in the comhairle, which is concerned that Councillor Campbell's submission says that a school's being

"poorly maintained ... could count as a criterion for closure", but that it might, because

"responsibility for maintenance rests with the Local Authority ... be unreasonable to include this as a consideration."

If that criterion were included, a council could choose not to maintain a building for several years, which would allow it to say that the school would need to be closed because the building had not been maintained. One argument that was made for closing some schools—not in rural areas, but in Glasgow—was about the alleged condition of buildings. What do you and other panel members feel about that approach?

Councillor Campbell: I say—with respect—that I disagree with that comment on how we deal with our schools. We can prove clearly that the level of input to our rural schools in particular is very high. It would be cheaper to send pupils to Gordonstoun than it is to send them to some of our rural schools. We have spent £30,000 per pupil just to keep some schools going, so it is a bit unfair to suggest that we would deliberately not maintain a school.

We have struggled hard to keep our schools up to an acceptable standard. The most recent condition report that we commissioned on our school estate showed that we need to spend £80 million just to bring all buildings up to an acceptable standard. Western Isles Council's revenue budget is just over £100 million a year, so achieving that would be impossible.

Education provision is where we come from: it is what has always led the debate and our decision making. We are clear about that.

Kenneth Gibson: Can I just ask—

The Convener: Mr Robertson wants to speak.

Kenneth Gibson: I am sorry; I have a question for Mr Robertson, which I will ask now, so he can answer both questions at the same time. Paragraph 7 of Mr Robertson's submission says:

"In the case of rural schools we support ... The recognition of the wider impact on rural communities of changes to local educational provision."

The following paragraph says that

"locally elected representatives are best placed to make decisions on local educational provision."

Who is considered to be a local elected representative? That question is the nub of the issue. In my constituency, the closure of a school in Arran was proposed but the decision was clearly going to be made by North Ayrshire Council in Irvine, and there was concern that people in that urban setting did not understand the rural dimension. I ask the question of you because you represent a mixed area.

Bruce Robertson: I will answer that specific question and then make a general point.

Like the ADES, we feel strongly that local representatives in a local authority are best placed to make such decisions. In Aberdeenshire, we have a decentralised system in which local members—that is, ward members—have an opportunity to give input. An example of that is a rural school closure that is being considered tomorrow by our education committee. It has gone through an extensive consultation process that has involved area committee input.

Given that powers for education provision have been delegated to local authorities, we would—as a point of principle—want to ensure that the responsibility of local elected representatives is not lost.

Kenneth Gibson: Do you think that, for strategic reasons, the local authority as a whole should have the overall say? I assume that you do not want decisions to be devolved too far down the chain, because of the need to look at the bigger picture. Is that correct?

Bruce Robertson: That is exactly right. That is why, even though our system takes account of area committees' views on closures, the final decision is taken by the council.

In some communities there are no other options. I have experience of such situations: I was the director of education in Highland Council, which has island schools. In the small isles and the Western Isles, there are extremely small schools. Section 12 of the bill talks about a "viable alternative", but there are no viable alternatives in such places.

On the other hand, in the case that is being considered by our education committee tomorrow, there is a "viable alternative"—a brand-new school—four miles away. We need to ensure that local authorities have flexibility. That is why the educational benefits statement is critical. There are some aspects of the curriculum for excellence and previous curriculum guidance for schools and local authorities that are difficult, if not impossible,

to deliver in a small school with five, six, or even fewer children.

It is really important that committee members understand that there are places on remote islands and in remote parts of the mainland where there are no viable alternatives. There will be, however, in other circumstances. We need to explore them to ensure first-class education opportunities for young people.

Kenneth Gibson: Many people have said that small schools are detrimental to children's attainment levels, but no one has been able to produce evidence to back that up. Aileen Campbell attended a school that had only 16 children. I am sure that other people went to smaller schools. I am keen to get to the nub of that issue.

Mr Campbell talked about it costing £30,000 per pupil to keep a small school open, but that is a financial argument, not an education argument. Where is the evidence to show that pupils who come out of those schools do not do well in life?

Last week, we found out that quite a high proportion of MSPs went to small schools. Of course, four of them ended up in the Liberal Democrats, which is clearly a worrying issue that we have to address.

Bruce Robertson: I will avoid any references to where MSPs were educated.

It is important to understand that there is a variety of evidence on pupil attainment. A person's level of attainment will not be better or worse according to whether they attend a small school or a big school. However, there is far more to education than attainment, so when a school gets down to five or six pupils, it is difficult to give the youngsters a rounded set of experiences. For example, how can they take part in team sports or many of the aspects in the curriculum for excellence around literacy, numeracy, health and wellbeing and so on? The teachers' job becomes extremely difficult in those circumstances, as well.

If a school gets down to single figures, often that means that all the children come from two or three families, which means that they are not getting a wide experience of other peers because they are growing up in a sheltered environment in which they mix only with their brothers and sisters. That can make life difficult for them when they arrive in a secondary school that is full of children who have broad experience of peers.

On viable alternatives and the situation of the communities, we need to focus in on educational benefits, which involve more than just attainment.

Margaret Smith: Mr Robertson talked about the fact that the three criteria are supposed to be attached only to rural schools, which is a point that

I have raised at previous meetings. Although I absolutely accept that their application to rural schools is appropriate, I also argue that it would be appropriate to apply them to urban schools, particularly urban schools in areas of deprivation or on the urban-rural fringe.

In my constituency, if the school at Ratho Station closed, the pupils would have to go some way down a rural road to Ratho, which would lead to all sorts of transport issues. That school is on the edge of a capital city. Do you agree that the question is one of degree, and that it would probably be far better to apply the three criteria in all cases? Effectively, rural schools would make their own case—probably quite a strong one—with regard to the three criteria, but urban and semi-rural schools would also be able to make strong cases based on travel issues and the impact on communities, particularly deprived communities. They might be able to make less strong cases with regard to the viable alternatives criterion, but in certain deprived communities there is not a high level of car ownership, so there might be some issues. Rather than say, "These three criteria can be used only for rural schools," do you accept that, while rural schools would naturally rise to the top in such considerations, there is an argument for parity around what should be considered before any school is closed?

Moir Niven: Rural schools have a particular context. I have to be careful, as someone in my family teaches in the school that you mentioned and lives in the local area—I know the road that you are talking about—but I think that that context is quite different from the one that Bruce Robertson has just outlined.

Rural Scotland is special, and is precious to everyone who is sitting around this table. The fact that there are no viable alternatives in certain places means that we have to try to mitigate some of the disadvantages that are faced by pupils in some extremely small schools. In some of the areas that you are taking about, there are viable alternatives that it is reasonable to consider.

I would like to pick up on some of Bruce Robertson's points. A few years after going through a formal consultation process, I met one of the parents who were involved. Her child had been at a school with 14 children, and she said to me, "Given that the other school was only two or three miles away and had only 50 or 60 children on its roll, I regret that I did not send my child there, because the next school that they went to had 700 children in it, which was quite a shock." She also told me that, because the area was fairly rural, when her children were at home they did not have access to other local children to play with, so the school gave them an important social learning experience—they learned about dealing with

others and activities. It was interesting to hear that perspective from a parent who at first was against the closure of a small school, but who later thought that she had been wrong.

12:00

Bruce Robertson: The key issues for rural communities are outlined in sections 12(4)(a) and 12(4)(b), which refer to

“the sustainability of the community”

and

“the availability of the ... premises”.

Our colleagues from the Western Isles have had input on that. Tomorrow, Aberdeenshire Council will consider a proposal to close a school but leave the building open for community use. That often happens in rural areas. Local authorities recognise that the significance to communities of some facilities goes beyond the significance of the school. To return to the question, that is why Aberdeenshire Council suggests that we need to establish criteria on what is a rural school. The bill does not currently establish those.

Aileen Campbell: I am interested in what is the adequate number of pupils for a small school. We have not heard evidence that convinces me that socialisation does not happen in smaller schools. As I mentioned in last week’s meeting, my primary school had 16 pupils when I started and 33 when I left. If all the rural schools in the area had been merged, the secondary school’s orchestra would not have had a woodwind section, because the rural schools provided that. Those schools had a huge positive knock-on effect on the secondary school. I am interested in what arbitrary figure is the ideal. At what point is it considered that a school is too small and must be merged with other schools? I have not heard any convincing or scientific evidence that one approach is better than the other.

Moir Niven: I can think of a relatively recent example in which, a mile along the road from one school, there was an annexe with a very small number of children. I cannot remember exactly how many children, but it was four or five. We considered the issue carefully and felt that, given the principles in the curriculum for excellence, the educational experience and that the building was a mile along the road, the main school was a more appropriate setting for those children. We felt strongly that the children would have much better opportunities for interaction and group work. Active learning was an important issue, as the children in the school were in the early years—they went to nursery and then, for primary 1 to 3, they went to the school down the road, which was left over from a previous set-up. We felt that it was much more appropriate for those children to be in

the main body of the school. We debated the educational aspects thoroughly. The parents understood our arguments about the experience that the children would have.

That might not be an option with a terribly small school of four or five children on an island, but in an urban context there was no case for sustaining an educational experience for the children that was not as good as it could be. One problem with small numbers is that the level of adult interaction with the children is too high, as there tends to be a teacher and a support assistant. We want children to do activities on their own in small and changing groups and to encourage active learning, but that is extremely difficult with small numbers. The slightly larger setting provides much better opportunities for more varied activities. The children in that school did not go to a very big class anyway, but it was much better quality. The parents listened carefully when we made those arguments.

Councillor Campbell: One piece of evidence that we cannot ignore is what parents tell us. We spent a lot of money connecting the island of Eriskay to South Uist, which meant that the Eriskay school closed. All the parents chose to put their children into the new school at Lionacleit rather than the nearest school at Daliburgh, because they recognised that there was better educational provision and a better experience for their children there. The danger is that if you cannot provide that in rural communities, not only will the children move but the whole family will move. It is much better to use and improve an existing resource four miles up the road to provide a better educational experience for more pupils. I argue that that safeguards the rural situation.

You are looking for evidence, but it is very hard to prove what is better. We have one school with seven pupils across the seven years of primary school. There is only one pupil in each year, but they are being taught by one teacher. It is very difficult to say that those children are getting not only enough time for all their subjects but enough interaction with their peers—there is no interaction with their peers.

It is a difficult subject for rural authorities to deal with. There is a tipping point, which has a lot to do with what parents want to do and what they recognise is best for their children.

Aileen Campbell: So there is a tipping point, as opposed to a number or a figure. You consider evidence from parents, such as that they do not think that the educational benefits will be suitable. None of that is set in stone.

Moir Niven: You have to look at the context of the school in question and what the options are. We have to consider, in discussion with parents,

what we as professionals think will deliver the best and widest educational experiences for the children. You cannot roll out a formula for that. The bill is strong in that it provides for wider engagement and debate about what is best for the children.

The Convener: I will give Mr Robertson the final word on this, after which we will move on to the next set of questions.

Bruce Robertson: I have been asked about figures at numerous meetings about school closures or changes to provision and my answer is always that there should never be an arbitrary figure. As Moira Niven said, the bill allows for different circumstances to be taken into account. It is true that once schools get into single figures it is difficult for the children and the teachers to maintain the educational opportunities that they would get elsewhere, but if the school is on an island, there might be no viable alternative.

I agree with Moira Niven that sections 12 to 14 of the bill are fairly well balanced. They would be strengthened if they contained a definition of what is a rural school.

The Convener: We will move on to call-ins by the Scottish ministers.

Ken Macintosh: The bill proposes a new procedure to call in certain decisions, which will replace the previous procedure of automatic referral on certain grounds. The Government has suggested that the procedure outlined in the bill is a compromise between the positions of those who do not wish any decisions to be called in and those who wish all decisions to be called in. Are you happy with that?

There is a lack of a time limit on the ministerial decision. There are timeframes throughout the process, but there is no time limit on the minister's decision once the local authority decision has been called in. Is that an issue, or is it not really a problem, given that ministers expect to call in only six or so decisions a year?

I think that the City of Edinburgh Council, and perhaps other councils, made the point that councils have only one day to refer the matter to ministers when they make an announcement. Is that sufficient time?

Lindsay Glasgow: We accept that the proposed procedure is a compromise. We in Edinburgh were generally caught by the 80 per cent rule, which we thought was very arbitrary, so we welcome its removal. We accept that in order to exercise due diligence, there has to be recourse to scrutiny at national level.

We debated the procedure at our education committee and concerns were expressed about how it would be rolled out. It is recognised that the

spirit of the bill is to allow local decision making and that, if authorities follow the correct procedures, there should be no need for call-in. However, there is nervousness about how the process will operate and whether there will be more call-ins than expected. I stress that that is the main issue for us.

On the lack of a time limit for ministers' decisions, in some cases it has taken a considerable time to get a decision once a closure has been referred to ministers, which has left not only the local authority but all the affected parties in limbo. Greater certainty on timescales and more rapid decisions following call-in would be beneficial to all parties.

On referring closure decisions to the Scottish ministers within one day, that timescale can be tight, for example when key members of staff are off. The worry is that the whole process could be challenged because of a failure to meet the one-day timescale. We ask for a greater amount of time to ensure an adequate response.

Bruce Robertson: Page 3 of the Aberdeenshire submission answers two of the questions that have been asked. We think that the definitions for call-in are vague, and that the bill and, indeed, the role of ministers would be clearer and more consistent if the reasons for call-in were firmed up and made clearer.

Ken Macintosh: I have forgotten what your submission said about the call-in definitions.

Bruce Robertson: We said that they lacked "substance of clarity".

Ken Macintosh: Can you suggest any criteria?

Bruce Robertson: The conditions for call-in should be clear so that successive ministers and Administrations will be consistent in their delivery. The bill's wording lacks substance and clarity on when a decision would be called in. We must be clear about that to achieve consistency.

The timescales in the bill could lead to dysfunctional education provision for young people and leave a cloud hanging over a school. The timescales need to be made clear in the legislation. Also, we suggest that councils should have five working days in which to notify ministers of a closure as opposed to one day, for the same reasons as given by my colleague from Edinburgh, Lindsay Glasgow.

Moira Niven: I agree with all those points. Five working days for notification is much more reasonable operationally. In addition, it is important that there is consistency in determining which closure decisions go to ministers.

The bill is all about best practice and consistency on the part of local authorities, which I

support. However, it is important that each community feels that its issues are being dealt with in a consistent manner no matter what Government or minister is in office, so there must be clear criteria to ensure that that is the case. It is right that failure to take a material issue into account should be one of the grounds for a call-in. Is the call-in procedure a compromise? Yes, but it is a good one, and ADES certainly supports it.

Ken Macintosh: The bill refers to “a material consideration” as a reason for call-in. Could that criterion be tightened? If so, should it be done in the bill or in guidance, or should we wait for experience to help us in that regard?

Moir Niven: It is an issue for the bill rather than for guidance, is it not? Guidance usually applies to the local authority rather than to the minister. The definition of what a material issue is should be in the bill, because that would help to ensure consistency.

12:15

Councillor Campbell: We say in our submission that we welcome a change to call-in procedure. We recognise that that is necessary, but we call for clarity about what the call-in criteria will be and for consistency across the piece in how they are applied. Would call-in involve pointing out that a local authority had not gone through the right procedures? That would be fair and clear, and everyone would know that if things were not done correctly, the decision would be called in. However, we would like the bill to be more explicit about what local authorities could be called in for. What substantive issues could we fall foul of that would end up with the decision being called in?

The Convener: We move on to transitional arrangements.

Margaret Smith: The City of Edinburgh Council raised concerns about the transitional arrangements in the bill, which may require on-going consultations to be suspended when the bill commences. The council argues that some authorities may have to begin the consultation process again, which I am sure no one wants to do—painful as it is.

At the meeting on 6 May, the bill team said that the intention had been to minimise disruption and that various approaches had been considered. It suggested that councils could be aware of what was happening and of the likely timetable, and that commencement would probably not be until April 2010. The team also suggested that when councils were undertaking consultations in the run-up to that period, they should be mindful of the new processes in the bill and act accordingly. Does Edinburgh have any further comments?

What are your views on the transitional arrangements?

Lindsay Glasgow: It would help authorities to understand the implications of the bill if they had clarity on when the bill is likely to be enacted. As far as we can, we propose to pursue any new consultations under the terms of the bill, although at the moment the HMIE process is not covered by section 22A of the Education (Scotland) Act 1980. We will be able to undertake certain parts of the process only once the bill is enacted. You might have conducted all your consultation and be just about to get to a council decision, when you find yourself in limbo for about two months because you have to meet the additional HMIE requirements and publish the final consultation report.

Further, you might plan to take a decision by April 2010 but, despite your best planning for conducting the consultation exercise, be unable to do so because of the iterative consultation process. With the best will in the world, an issue might still arise. There is an effect on interested parties when they are left in limbo for an additional length of time. We talked earlier about parents being keen for us, once we have been through the process, to get to a final decision as soon as we can, so that they have certainty about what is going to happen. I am still slightly concerned that we could almost reach a decision then have a two-month limbo period.

Margaret Smith: You mentioned the involvement of HMIE, which is a new process that the bill will introduce. We know that amendments can be made right up until the final day of stage 3, and that stage 3 is unlikely to be until November. You are proceeding on the basis of what is in the bill now, but there is no guarantee that that is what will be in the bill once it has been through the full parliamentary process. It would be useful if you provided specific examples of where the difficulties might come from. We could ask the bill team to address your specific points in relation to transition and to examine whether the minister can do anything to assist councils that have difficulties. However, the vast majority of councils should be able to work through any difficulties within the current timeframe, with assistance from the minister and, potentially, HMIE, on a transitional basis.

Lindsay Glasgow: If the bill, when enacted, applied to consultations that had not yet commenced, the appropriate processes could be put in place. However, would it be valid to apply the terms of the bill retrospectively, to consultations that have already concluded?

Bruce Robertson: I will offer some advice. The two critical dates for parents in such situations are 30 April, because of school admissions legislation,

and the start of the new school year, which differs from one local authority to another but is usually in mid-August. If Parliament were minded to be helpful to local authorities, on behalf of parents, it would keep those two dates in mind when determining the transitional arrangements. That would be welcome.

The Convener: We move on to the final subjects for discussion—the consultation, the policy memorandum and the financial memorandum.

Claire Baker: My first question relates to the financial memorandum. The Government estimates the cost of the bill to be £134,000 per annum. Several consultation responses, especially that of Aberdeenshire Council, expressed concern that there might be more call-ins than expected; today Lindsay Glasgow suggested that that might be an issue. Aberdeenshire Council also raised the issue of potential savings to be accrued from closing schools. I invite the witnesses to comment on the memorandum.

Bruce Robertson: I suspect that those who craft the financial memoranda for Scottish parliamentary legislation focus narrowly on how much it costs for a local authority to conduct a consultation exercise. Jim Wilson gave the committee an insight into what conducting a large consultation exercise involves. There is no case law on the bill, so we will have to wait and see, but I think that the colleagues who crafted the financial memorandum have underestimated the costs.

Aberdeenshire Council's education budget is about £250 million, so I will not go to the wall on the issue. However, some statements in the financial memorandum are rather disingenuous. For example, the memorandum states:

"Expenditure does not rise; it merely does not fall."

What does that mean? We need to examine the costs of rural schools and the savings that can be accrued.

We also need to consider Mr Gibson's point about the responsibility that councils, as corporate bodies, have to their wider public. The financial memorandum does not address the reality of the situation accurately. No local authority of which I am aware would want to close a school or schools on financial grounds alone; based on my professional experience, I would never advise a local authority to do that. On the other hand, we need to be transparent and to recognise that sometimes there is potential for savings, along with educational benefits, to accrue. That is the point that Aberdeenshire Council wanted to make.

Jim Wilson: In the recent consultation, we tried to highlight the issue that Bruce Robertson has raised. There are many factors to be considered.

The educational case is the overarching issue. However, given the need for councils to ensure efficiency and effectiveness of delivery of services, under the Education (Scotland) Act 1980, we should seek to identify any potential revenue savings and offset those against any additional transport and staffing costs that we anticipate. There is a strong logic to including that information in consultation papers.

Claire Baker: Finally, I have a brief question on the consultation and the policy memorandum. Most comments that we received were favourable, but Moray Council said that its public consultation meetings were poorly attended. Do you think that consultation has been sufficient and that there has been enough involvement by stakeholders in the process? Did the local authorities that you represent hold public meetings? If so, how well were they attended?

Bruce Robertson: Attendance at public meetings varies enormously. I have been at meetings in large halls where there is standing room only as well as meetings that are poorly attended, but exactly the same communication strategy was used in both cases.

Moira Niven: Are you referring to the consultation on the bill?

Claire Baker: Yes.

Moira Niven: I made an error on that point earlier. I did not attend any of the meetings. ADES believes that there has been good discussion and debate between authorities on the issue and that we have been given good support by the Scottish Government officials involved. Debate has been of good quality and has been conducted over a reasonable period, to allow engagement; we had a couple of sessions with Scottish Government officials. That engagement has been helpful and is reflected in the report. Views on school closures tend to be polarised, but mention was made of one of the compromises that have been agreed. I have been impressed by the process, which will result in something better. It is right that we should examine and modernise what we do in this area, to bring consistency and quality to the exercise. It was good to work with COSLA, which facilitated much discussion that I found beneficial. I know that many authorities found both that discussion and the formal meetings that were arranged helpful.

The Convener: That concludes our questions to you today. Thank you for your attendance. I suspend the meeting briefly to allow the witnesses to leave.

12:27

Meeting suspended.

12:29

On resuming—

Subordinate Legislation

Adoption Support Services and Allowances (Scotland) Regulations 2009 (SSI 2009/152)

Adoption Agencies (Scotland) Regulations 2009 (SSI 2009/154)

Adoption and Children (Scotland) Act 2007 (Supervision Requirement Reports in Applications for Permanence Orders) Regulations 2009 (SSI 2009/169)

Applications to the Court of Session to Annul Convention Adoptions or Overseas Adoptions (Scotland) Regulations 2009 (SSI 2009/170)

The Convener: The second item on the agenda today is consideration of four negative Scottish statutory instruments, all relating to the implementation of the Adoption and Children (Scotland) Act 2007. These are the first in a series of SSIs relating to the act that will come before the committee over the coming months. Members will recall that we have received correspondence from the minister outlining all the SSIs that the committee can expect and giving some background information. Members have also been given a copy of a briefing from the Scottish Parliament information centre.

I invite members to comment on any of the regulations.

12:30

Ken Macintosh: I am concerned about the Adoption Support Services and Allowances (Scotland) Regulations 2009. It is suggested that the regulations will have no financial impact on local authorities, and I was slightly concerned to read that. When the 2007 act went through, there was a belief that it would considerably expand services to people who could not previously access them. Those services should already exist, but they do not.

It is potentially disingenuous to think that there will be no impact. If services are restated and recalibrated, and if there is an unmet need, the point must be to provide services to people who have not previously been accessing them. Clearly, there will be a demand on local authorities' resources. I am worried that there has been no recognition of that.

I am not quite sure how to address the issue, but perhaps we should contact local authorities, draw the matter to their attention and ask for their views. Perhaps we should contact some of the adoption and fostering agencies and ask for their views, too. That might be easier than writing to all 32 authorities. We could find out whether fostering and adoption agencies think that the situation has been reflected accurately.

The Convener: The difficulty with that proposal is that the committee has only until next week to report on the regulations. Time just does not allow us to do as you propose if we are to comply with parliamentary procedures.

Margaret Smith: Can we put the regulations on next week's agenda and decide on them then? In the interim, we could ask the minister to respond to that point.

The Convener: Unfortunately not, because we have to report to the Parliament by 25 May. There were no motions to annul, which would have allowed us to do as has been suggested. I am afraid that the timescale is pretty tight.

Ken Macintosh: I will suggest an alternative. I am not against the regulations, which I think have to go ahead. Our papers say:

"Paragraph 7 of the Executive Note states that the instrument should have no financial effect as the regulations largely restate the existing provisions."

I am not sure that that is the case. They might restate them, but the regulations are built on the expectation that demand will expand.

I do not think that we should hold up the regulations but, in parallel to our dealing with them, we should write about the matter. A series of instruments will be going through, right up until September. We should take this opportunity to write to local authorities, if we have time, and to key organisations such as the British Association for Adoption and Fostering—BAAF—and other fostering and adoption agencies, which could give us their experienced opinions on the matter.

The Convener: I have a suggestion. Before we do that or decide whether that might be appropriate, it might be best simply to write to the Cabinet Secretary for Education and Lifelong Learning and ask her for her views on the matter. Depending on her response, we can determine whether or not we feel it appropriate to write to local authorities and adoption and fostering agencies.

That might address your concerns, Mr Macintosh, while not holding things up. I do not think that there is any will in the committee to hold up our consideration of the statutory instruments before us. Furthermore, writing to the cabinet secretary would not necessarily incur a huge

workload that might prove to be unnecessary. Can we agree that I, as convener, write on behalf of the committee to the cabinet secretary in relation to the points that Mr Macintosh has raised?

Members *indicated agreement.*

The Convener: As I said, no motions to annul any of the four instruments have been received. The committee might be interested to know that the Subordinate Legislation Committee determined that it did not need to report SSIs 2009/169 or 2009/170 to us or to the Parliament.

However, the Subordinate Legislation Committee has reported that it sought clarification from the Scottish Government on regulation 11 of SSI 2009/152 and was satisfied with the clarification that it received.

SSI 2009/154 has also been reported to us, due to a number of drafting and scheduling issues. The Subordinate Legislation Committee was satisfied with the Government's response on the drafting issue but, with regard to the scheduling issue, the Subordinate Legislation Committee reports the instrument to the committee and the Parliament on the ground that

"due account should be had to scheduling issues ... to avoid reference to provisions contained in a still to be made instrument ... as a matter of good drafting practice."

Given that the Subordinate Legislation Committee has pointed the issue out, and that we will receive a number of SSIs in relation to the 2007 act, I suggest that we point out to the Government that it is important that any SSIs that come before the committee are factually correct and do not refer to some other SSI that may be made at some point in the future. Otherwise, it is an impossible job for the committee to judge whether or not the contents of instruments are accurate or appropriate. Do members agree with that suggestion?

Members *indicated agreement.*

The Convener: If members have no further comments, are we agreed that the committee has no recommendations to make on SSIs 2009/152, 2009/154, 2009/169 and 2009/170?

Members *indicated agreement.*

Meeting closed at 12:38.

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