

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 3 June 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

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

CONTENTS

Wednesday 3 June 2009

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	2449
SCHOOLS (CONSULTATION) (SCOTLAND) BILL: STAGE 1.....	2450
ANNUAL REPORT	2485
SUBORDINATE LEGISLATION	2486
Individual Learning Account (Scotland) Amendment Regulations 2009 (SSI 2009/176).....	2486

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

17th Meeting 2009, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Murdo Fraser (Mid Scotland and Fife) (Con)

THE FOLLOWING GAVE EVIDENCE:

Lynn Henni (Scottish Government Schools Directorate)
Fiona Hyslop (Cabinet Secretary for Education and Lifelong Learning)
Colin Reeves (Scottish Government Schools Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 4

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 3 June 2009

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

Decision on Taking Business in Private

The Convener (Karen Whitefield): I open the 17th meeting in 2009 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

I welcome Murdo Fraser. I assume that he has joined the committee for our consideration of the Schools (Consultation) (Scotland) Bill.

Agenda item 1 is to decide whether the committee's consideration of a draft stage 1 report on the Schools (Consultation) (Scotland) Bill should be taken in private at future meetings. Do members agree to take that approach?

Members *indicated agreement.*

Schools (Consultation) (Scotland) Bill: Stage 1

10:01

The Convener: Agenda item 2 is the committee's continued consideration of the Schools (Consultation) (Scotland) Bill. This is our final evidence-taking session in our stage 1 scrutiny of the bill.

I am pleased to welcome the Cabinet Secretary for Education and Lifelong Learning, Fiona Hyslop; Colin Reeves, who is deputy director of the schools division of the Scottish Government; and Lynn Henni, who is the Schools (Consultation) (Scotland) Bill and educational options team leader in the schools division.

I understand that the cabinet secretary wants to make a short statement.

The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop): Thank you for giving me the opportunity to talk to the committee about the Schools (Consultation) (Scotland) Bill.

The bill team set out the basic principles of the bill when it gave evidence, so I will focus on the Government's thinking behind some specific issues, such as the emphasis on rural schools and the proposed call-in procedure.

The Government came to power with a clear commitment to create a legislative presumption against the closure of rural schools. The bill will achieve that through three provisions. First, it will establish a consultation process for all school closure proposals and other proposals that affect schools that is coherent, easy to understand, fair, workable, open and transparent, and which, above all, commands the trust and confidence of the public. Secondly, it will introduce, in effect, a presumption against the closure of rural schools by ensuring that a decision to consult on a closure proposal will not be made until the local authority has explored all possible alternatives and assessed the likely implications of closure. Thirdly, it will replace the current system for referring certain local authority decisions for ministerial consent with a new call-in system.

All our communities in Scotland—rural and urban—are important. However, rural communities are often much more fragile than urban communities. In general, they are more isolated and have fewer publicly funded resources. The loss of a school in a rural community can mean the loss of the only shared community building and can thereby have a much greater impact than the loss of an urban school. That is why the bill aims to make a decision to close a rural school a decision of last resort, to be taken only after all

viable alternatives have been fully considered, the impact of the proposed closure on the community has been fully assessed, and the impact of any changes to travel patterns has been taken into account. We are effectively creating a presumption against closure by setting out those factors in the bill.

On the proposed new call-in power, there is strong consensus on the need to replace the current automatic referrals system, which is based on the somewhat arbitrary grounds of distance or occupancy. However, our consultation last year revealed widely polarised views on what the replacement system should look like. As members have heard, the responses ranged from the suggestion to refer all cases to ministers to the suggestion that there should be no ministerial involvement; there were other suggestions in between. My concern was to achieve a process that allowed local decisions to be made by locally accountable and locally elected people, with a consistent safeguard for the most contentious decisions—that is, decisions on closures. I concluded that a call-in process for closure decisions, to be used only when there is evidence of serious flaws in a consultation that has been carried out, would provide a balanced check. That will leave most decisions in the hands of councils, but will provide reassurance that ministers can act if a council has not conducted a proper consultation. In its evidence to the committee, one council said:

“The call-in of closure proposals ... firmly places the onus on each authority to ensure the rigour of the procedures set out in the Bill.”

I have listened to the concerns that have been expressed to the committee about the grounds for call-in and I am aware that some consider the current wording to be too open. However, creating a set of grounds that is too tight could risk excluding specific procedural problems.

I am interested to hear the committee's views and to know whether members have specific suggestions that will be in the committee's report. That is all that I will say by way of introduction, as I am sure that we will cover much of the detail in questions and answers.

The Convener: I am sure that you have reviewed the evidence that the committee has heard on the bill. You will be aware that considerable support has been shown for your proposal that a local authority prepare an educational benefits statement before making any change to school provision such as a closure or merger. However, the committee has heard conflicting views on what the proposal paper should contain. Some people have said that the paper should cover transport issues and that a key part of it should cover the condition of school

buildings; others have said that a cost benefit analysis needs to be considered. What does the Government expect the educational benefits statement to contain?

Fiona Hyslop: It is important to recognise that the educational benefits statement will be part of the overall proposal paper. Transport issues, school estate issues and the reasons why a local authority wants to close a school will be set out in the wider proposal paper.

By including the educational benefits statement, we make the clear commitment that any decision must have an obvious educational case that is set out. The statement will reflect several issues, including achievement, attainment and the school's performance in a variety of areas. In reports from Her Majesty's Inspectorate of Education on schools, the curriculum for excellence is central. Reports will cover a school's achievements in the four capacities of the curriculum for excellence.

I understand that one witness expressed concern about the social aspects of schools. It would be wrong for an educational benefits statement to focus narrowly on attainment, for example, because it is clear that children's educational experience is not simply about academic attainment. Any educational benefits statement should cover a school's ability to deliver on the four capacities and its experience in doing that.

The statement will cover not just the school whose closure is proposed, but the receiving school. The reports that ministers currently receive about the educational aspects of proposed closures that are referred to them consider the educational experience not just at the school whose closure is proposed but at the receiving school. Such reports give an overall perspective.

During consultations on school proposals, arguments emerge not just about the educational benefit for the pupils who attend the school whose closure is proposed, but about the wider impact throughout a local authority area. I know from experience that that sometimes comes out later in the process and tends not to be set out. The proposal paper will be a big step forward, as it will be up front about the proposal. If a council wants to base an argument on the educational benefit for the wider council area, that can also be set out in the proposal paper and in the educational benefits statement.

The Convener: Sandy Longmuir said in his evidence to the committee that rural schools whose closure has been proposed have almost inevitably had excellent HMIE reports and generally very high educational attainment, yet their closure has been proposed anyway. The

point is that the educational benefits statement must cover not only educational attainment, but wider aspects of children's potential development and how important a school is to its community. A school might be the only community facility for some distance, particularly if it is in a remote rural area.

Is statutory guidance needed to ensure that local authorities are clear about which of the capacities they are required to cover in preparing an educational benefits statement?

Fiona Hyslop: I will be careful in referring to Sandy Longmuir, as I understand that he is sitting directly behind me.

The Convener: That is very wise, cabinet secretary.

Fiona Hyslop: We should try to avoid an automatic checklist, as the educational benefits statement must reflect the needs and the circumstances of the individual area. Having heard the views of the witnesses, I think that the idea of providing guidance on the educational benefits statement, rather than being too prescriptive in the bill, makes perfect sense. The committee will consider whether we need such guidance, but I am sympathetic to the proposal.

With regard to the idea that the needs of different areas and the experience of different schools must be reflected, there is truth in the argument that small rural schools produce academic achievements, in terms of how school performance has been assessed historically. That is one of their strengths, but one hears about their disadvantages, too: for example, the lower number of pupils might mean that there is less social mixing, or there might be difficulties with activities such as five-a-side football if there are only six pupils in the school.

However, those aspects are overcome by the benefits. The strengths of our rural schools provision in Scotland ensure that those schools deliver outcomes that are better for children, which is why we want to preserve and promote them. That is not the case with every rural school—there are many instances in which rural schools do not perform—but overall, they perform extremely well for our children.

Guidance on the educational benefits statement would be helpful. You referred to the question of which of the capacities the local authority might want to promote; I strongly recommend and expect that every one of the four capacities, which are of equal value, will be considered in the statement. The curriculum for excellence and the capacities that it contains are about what we want to achieve as outcomes for our children, and all four capacities should be covered in the

statement. We are happy to examine the issue of guidance.

Aileen Campbell (South of Scotland) (SNP): I will move on to schedule 2, on the extension of the list of people and organisations that are to be consulted when a closure is proposed. In the evidence that we have heard, most witnesses have welcomed that proposal, saying that it builds on the good practice that is already carried out.

Do you foresee that the extension of the list of consultees will add any time to the organisational process or make it onerous for councils?

Fiona Hyslop: No, I do not, and it should not. We are extending the consultation timescale so that it will be manageable, but will also allow everybody the opportunity to be consulted. I feel strongly that consultation periods should not include school holidays. Some consultations have suddenly appeared just before the Christmas, Easter or summer holidays, which causes difficulty, but it is acknowledged that that is not good practice. There is no reason why the extension should cause any difficulties with time, and the fact that the timescale is set out in the bill is important.

Aileen Campbell: The submissions that we have received from Children in Scotland and Scotland's Commissioner for Children and Young People call for good and effective consultation with pupils. How will that pan out? Will there be special arrangements for consulting pupils to ensure that they are fully engaged with the process?

Fiona Hyslop: If we want our children to be responsible citizens, they have to understand the decisions that are made about them and for them by adults, and they should have an opportunity to have their say. The bill is different because it allows for pupils' views to be considered for the first time. However, that has to be done in a responsible way. For parental campaign groups or the local authority to seek to use the views of pupils in any way will be one of the tests that must be respected.

This is all part of how we as a country view children and their ability to express their views. Pupil councils are fairly widespread throughout our schools, and they provide an opportunity for views to be heard.

10:15

The idea that children are unaffected by school closures has to be challenged head on. They will undoubtedly feel the anxiety of their parents or the teachers at their school. They are not somehow absent from the discussions that take place. Sometimes the anxiety can be transferred to them if the situation is fraught. We are trying to take the

heartache and concern out of the process and ensure that everything is up front, above board and transparent for the pupils, too. Perhaps the children's commissioner will be able to advise us about best practice in that regard. Adults have to respect children's rights to have a say, but that should be done in a responsible way that ensures that nothing untoward happens. Allowing children to have a say is a positive step forward, but adults have to respect children in the way that they use the information.

The Convener: I remind everyone to switch off mobile phones and BlackBerrys, rather than just switching them to silent mode, because there is some interference in the sound system.

I turn to section 7, which is on public meetings. Does the Government intend to publish guidance on best practice around how local authorities should conduct public meetings, so that they are quite clear about how much notice of meetings they should give people, for example, and ensure that meetings are not held during the school holidays?

Fiona Hyslop: Common sense comes into that. I would be interested to see any evidence of anyone even thinking of having a public consultation on a proposal during the school holidays. I do not think that we should be overly prescriptive in the bill about when public meetings should happen. If guidance is needed, that is fair enough, but best practice should be quite easily digestible. The idea that local authorities have to be told how to run a public meeting and consult properly is perhaps a step too far. However, I would be interested in any evidence that the committee has had on that and in members' views. If the committee sees that as a major issue or concern, it could raise it in its report.

In our consultation, public meetings were not mentioned as an issue that caused a great deal of difficulty. They can be fraught, as many of us know, but there has been the opportunity for everyone to be involved.

Often at public meetings a lot of the time is spent on clarifying or questioning points of fact in the original proposal. The whole rationale of the bill is to front-end everything—to have the proposal paper and so on available up front—and to provide people with the opportunity to correct content and factual inaccuracies, which sometimes come up in consultations. I expect the discussion in public meetings to be more thoughtful and more about educational benefits than about conflict over points of fact. The fact that there will be an opportunity to correct factual inaccuracies in the proposal paper should take out some of the content of the public meetings. Parental campaign groups might be desperate to support their school and not have it closed, so

there will still be that atmosphere and the arguments will still be had. However, we hope that the proposal paper will clear away some of the misunderstandings on all sides about the rationale for the school closure. The case will have been set out before people get to the public meeting stage. Some people are concerned that it is only when you get to the public meeting that you start to hear the local authority's rationale. Having the proposal paper up front should help the local authority, too. It should change the content of the public meeting. However, I will listen to the committee's recommendations on that.

The Convener: I was not suggesting for a minute that the details of how to hold a public meeting should be in the bill. However, I wonder whether some guidance on best practice might be of assistance. One of the things that the committee has heard from witnesses is that they would prefer public meetings to be held early in the process and that they would consider that to be good practice.

As you said, the public meeting often provides parents or people in the wider community with their first opportunity to listen to all the arguments. I accept that the proposal paper will be distributed and we hope that people will read and understand it. However, I am sure that, like me, you have been at many public meetings and know that even the best attempts to engage with people do not always work. It is only once people get to the meeting that they begin to think through some of the consequences of what is proposed. It is important that we encourage the sharing of best practice. I am sure that lots of local authorities will want to engage in that way and already use good practice in the area, but perhaps some guidance might be of assistance.

Fiona Hyslop: Your point is well made.

The Convener: My next question is about the role of HMIE and its attendance at public meetings. As I am sure you are well aware, section 7 guarantees that HMIE will be advised of a public meeting, but does not require it to attend. We have heard from many witnesses that they would like to see HMIE at the meeting and we heard from HMIE last week that its intention is to attend as many of the consultation meetings as it possibly can, particularly when it anticipates that the proposal is more controversial. Proposals might be non-controversial and the wider community might be happy with what is proposed, but in more controversial cases, HMIE intends to be at the meeting.

I am slightly concerned and feel anxious about that flexibility because I imagine that people sometimes make a wrong assumption that everybody is happy and then, as the public meeting goes on, they discover that people are not

at all happy with the proposal. If HMIE is not required to be there, people might be unduly concerned about why their public meeting has been conducted differently from others because HMIE was not there to observe. Have you considered that situation and are you minded to consider requiring HMIE to attend public meetings as an observer?

Fiona Hyslop: You make a reasonable point, but the issue is what ends up in the bill. As much as HMIE's wish to attend as many public meetings as it can is helpful, the issue is whether we stipulate in the bill that it must attend each and every one. Equally, you might consider that if we stipulated in the bill that HMIE was required to attend each and every meeting, which is the only alternative that I can think of, there is a danger that a public meeting might not be able to go ahead if the HMIE inspector who was due to attend did not turn up for whatever reason—say because their car broke down or they had domestic or family problems. The expectation is that HMIE would attend, as it has said, but it might be a step too far to say that it is required to go to each and every meeting.

You just referred to cases in which there is agreement to close a school because of better educational provision and better buildings elsewhere or because the local community is up for two schools to be closed so that people can move into a new one. It might not be a good use of public money to send an HMIE inspector to a meeting when no one contests the proposal.

There has to be some flexibility around attendance, but you are absolutely right that there should be a presumption that HMIE will attend unless there are reasons for it not to. I am cautious about stipulating its attendance in the bill because there could be unintended consequences, should its representative be unable to attend a meeting. An example from Mr Gibson's constituency might be a meeting about a school issue in Arran that could not go ahead because the ferry was not running and the HMIE inspector could not get over to the island. It would be problematic if a public meeting could not go ahead because the HMIE inspector was not there.

I will reflect on the points that witnesses and members have raised and I will consider the committee's report. The gist of what you say is right, but the issue is the impact on the bill. I would rather have a system of advance notice and an expectation that HMIE will be represented at public meetings, because a requirement for that could have unintended consequences.

The Convener: The issue is about confidence that everybody will be treated equally and fairly by the system. We need a clear understanding of what people can expect. I acknowledge your point

about not wasting taxpayers' money unduly by forcing HMIE representatives to attend a meeting when there is no need for them to be there. I also acknowledge that mother nature might step in and a ferry might not run, or a car might break down. Equally, from my experience of public meetings on difficult decisions, I know that sometimes people can get a different feel from a meeting by actually being there, rather than just reading about it on a sheet of paper. HMIE should be represented at fraught public meetings, as it has a key part in the process, although I understand that the HMIE representative would not participate in the meeting, but would be there as an observer. We perhaps need to ensure that the guidance is robust enough so that, in controversial cases when there is a dispute, or the likelihood of one, people know what to expect at public meetings and know who will be there and in what capacity, and who will not be there.

Fiona Hyslop: We will reflect on that.

Claire Baker (Mid Scotland and Fife) (Lab): I have questions about section 5, which is on corrections. In the evidence that we have heard, people have strongly supported the proposals, but a few local authorities raised concerns about distinguishing between facts and opinion. Does the Scottish Government have plans to support local authorities in making that judgment? How might parents be supported in trying to challenge information? I appreciate that the consultation report will include information on any unresolved disputes and that that will be public, so there will be checks, but what support will the Scottish Government provide to local authorities and parents?

Fiona Hyslop: Disputes cause much difficulty in the consideration of proposals. They tend to be about issues such as the school roll or the condition of the school and how much money is needed to repair it. In some cases, councils have provided incorrect information, although, by and large, the information is correct and people agree with it. Governments of any shape and form sometimes use old information. Elected officials of all political persuasions at all levels of government do their best to ensure that information is as accurate as possible. However, when the information is not accurate, that, rather than the wider issue, becomes the bone of contention. It is therefore important that we have ways of resolving such issues early in the process. It must be possible for that to be done without a mea culpa about-turn disaster for any side, whether that is the parents, the council or others. We need to acknowledge that factual inaccuracies sometimes occur and put in place an easy way of ensuring that concerns about them are recognised and dealt with.

That puts an onus on councils, but it also makes it easier for them to put up their hands and say that they did not get the information correct, without the issue becoming a barrier to decisions. At the end of the day, elected local authorities are the responsible education authorities and they must make judgments. We want any judgments to be evidence based and to be consulted on properly, but the councils still have to make judgments and that cannot be an entirely objective process. However, we want as much of the process as possible to be done on that basis, which is why we are putting in place the measures that are set out in the bill. At the end of the day, local authorities will still have to make judgments.

On supporting parents, the Scottish rural schools network has helped parents to understand the issues that they might want to consider and the questions that they might want to raise. The proposal paper will provide factual information that will be accessible by parents in the first place, so they will not have to submit freedom of information requests to try to get information that should be publicly available.

10:30

That will help with the transparency of the process, and the content of the proposal paper should be particularly helpful to parents. Again, we need to have a common understanding up front about the merits of the proposal. I suppose that that is similar to what happens in court, when people agree to the facts up front rather than disputing them and the court can then move on to deal with the wider issues.

It is difficult to futurethink what the process will be in a new context, but I think that there will be far more information in the proposal paper in the first place, and there will be a subsequent opportunity to correct it. I return to the convener's point about how the public meeting is conducted. Less of the meeting should be spent on disputing facts about the projected number of pupils, the condition of school buildings and so on, because that information should have been made public up front in the proposal paper.

Claire Baker: When we took evidence from the bill team, it explained that if a complaint about an alleged inaccuracy is upheld, the clock will be stopped on the process until it is corrected. I hope that I have remembered that correctly.

Lynn Henni (Scottish Government Schools Directorate): To clarify, we said that that is one option, but what happens will depend on the seriousness of the inaccuracy. If it is a minor error, an erratum slip might be issued, but if it is a serious inaccuracy, the paper might be withdrawn and the clock will be restarted.

Claire Baker: That is helpful. I was going to ask whether the clock will be stopped only for material inaccuracies or for all inaccuracies. If there is a minor error such as a typo, that will be corrected and the process will continue.

Lynn Henni: Yes.

Fiona Hyslop: I have seen consultations where the name of the school has been transposed with another one, for example.

Elizabeth Smith (Mid Scotland and Fife) (Con): You will know that the committee has had some interesting discussions in recent weeks about how involved HMIE will be in the process and its exact remit. Will you explain how HMIE's role will differ under section 8 and clarify the Government's thinking behind that new role?

Fiona Hyslop: Any HMIE report on an individual school or a local authority's education services can be used in the current process. When cases are referred to me, as the minister, I receive a report from HMIE about the educational aspects of the proposed closure. I can judge only whether processes have been followed correctly under the current guidance.

At present, HMIE is involved in one-off reports, rather than general reports, only when they come to me. Officials can correct me if I am wrong. The difference under the proposed system is that HMIE will be involved in every proposal at the beginning and it will help to provide information about the educational aspects. I return to Claire Baker's point, because parents will have access to that information, which will be published.

I gather from the committee's previous evidence-taking sessions that the issue is whether there will be an attempt to second-guess that and to refer the matter to me. You should remember that the bill is intended to reduce the number of cases that are referred. I repeat that cases can be referred only on process grounds and not on the basis of the second-guessing of decisions. When a case is referred, I will not require HMIE to produce another report. I will have access to and use the original report on the case. I will still want the opportunity to contact HMIE to clarify points if there are issues, but I will not embark on the process that exists currently in such last-resort cases.

HMIE will have a more up-front, local role rather than always advising and providing new information at the time of call-in. Instead, I will use its original report.

Elizabeth Smith: That is helpful.

A dilemma has emerged from the evidence that we have taken. We talk about the educational benefit of a decision, and most of our witnesses have agreed that HMIE has an important role to

play in that, but there is concern that the educational benefit is difficult to measure separately from the wider social and economic implications. The Educational Institute of Scotland and several council leaders are not at all happy that HMIE might be seen to be transgressing into that territory. Do you share that concern?

Fiona Hyslop: Again, we should look at the outcomes that we have for children, which are articulated in the curriculum for excellence experiences and outcomes in the four capacities. We recognise that HMIE, as an expert educational body, has an independent role in giving us those views.

Schools sometimes have to think more intelligently and creatively about how they provide physical exercise. That is often the case in rural schools, where the physical activity experience that is provided is more limited because the gym is tiny or the facilities are not effective. Physical exercise does not always have to take place in a school hall or a gym to count as effective physical education. It is clear that there is an educational aspect to that, but there is also a financial aspect. If a council suggested closing a school and the neighbouring school and offered to build a fantastic new, state-of-the-art school that would help with the development of all the capacities, there would be a strong educational argument for that, but I would expect HMIE to comment not only on the educational benefits of the proposal but on the material and financial aspects of the building.

Elizabeth Smith: Do you agree with the concerns that some council leaders expressed? On 20 May, for example, Bruce Robertson said that he did not feel that HMIE had sufficient resources and skills to undertake that level of inquiry on educational benefit. When I asked him whether he was answering from a quantitative or a qualitative perspective, he said:

"I mean in terms both of numbers and experience."—
[*Official Report, Education, Lifelong Learning and Culture Committee*, 20 May 2009; c 2395.]

Is it a concern that you are pushing HMIE to undertake a task that it has not previously undertaken?

Fiona Hyslop: HMIE was involved in the development of the bill and in the preparation and drafting of section 8, "Involvement of HMIE". If it had had concerns about capacity issues, it would not have agreed to the proposals and would have flagged up those concerns. Unless Bruce Robertson is about to close all the schools in Aberdeenshire, the capacity issue can be dealt with. [*Laughter.*] Oh dear—I hear nervous laughter from the back of the room.

Ultimately, we are talking about accountability. People want HMIE to be more involved and more

accessible. The information that it gathers as part of its consideration should be for the benefit not just of ministers but of councils and parents. HMIE's involvement will benefit people's understanding of what constitutes educational benefit. There is not a capacity issue. HMIE has said quite clearly that it does not think that there is a capacity issue as far as the numbers are concerned. If Bruce Robertson was challenging HMIE's experience of the evaluation of schools, that is a whole different ball game.

Elizabeth Smith: Given that, as you said in your answer to the first question, you have identified a new and slightly different role for HMIE, I think that he was suggesting that that represented a move away from an assessment of the quality of a school, which is HMIE's traditional role, towards an examination of some of the wider educational implications. There is a slight concern that HMIE will find itself busier than it has been in the past and that, in addition to its present demanding job, it will have to go into an area of assessment that is new territory for the organisation. I think that that is what Bruce Robertson's concern was, and it was echoed by Moira Niven and Angus Campbell, who said that what the bill proposes is a bit different from what we have had before. Is HMIE really the right body to do such work?

Fiona Hyslop: Moira Niven, in particular, also made some highly supportive comments about the new role of HMIE. If we said that no public body should ever take on a new role, the status quo would never change. I think that HMIE has the capacity to move forward. The work that it already does for other organisations and agencies for other purposes is probably underestimated. Colin Reeves might be able to say more about that. When Audit Scotland prepares its reports on different areas, it asks HMIE for its views on certain issues to help to inform its considerations, which obviously extend beyond educational aspects to financial matters such as best value. There is not much appreciation of HMIE's existing involvement in other areas of scrutiny and accountability. Although in a sense there will be a new role for HMIE in relation to individual schools in the circumstances that we are talking about, HMIE already provides information and advice in other circumstances. When Audit Scotland reviews matters that relate to education, it does not do so in isolation but draws on HMIE's experience.

Elizabeth Smith: Groups such as the EIS are concerned that HMIE's extended role in providing information will potentially create a conflict of interest, given that HMIE is a Government-sponsored body. Are you saying that such fears are unfounded?

Fiona Hyslop: I absolutely am. HMIE's independence is a strength of our education system. HMIE should not be afraid to criticise ministers, the Government, local authorities or anyone else, if it has a concern about education in Scotland. HMIE is Government sponsored, but its ability to be critical must be part of its function. Members of this Government and the previous one will attest to the number of HMIE reports that are critical of Government, as they should be. I have no hesitation in saying that there will be no conflict of interest in that regard.

Elizabeth Smith: The educational benefit is paramount, but other matters must be considered, such as social and economic issues and viability, particularly in the most remote rural communities. In such communities, is it possible to strike a good balance between all factors and not to put, for example, economic benefit ahead of educational benefit?

Fiona Hyslop: Will you give an example of what you mean?

Elizabeth Smith: Let us suppose that consideration is being given to the future of a very small school in Wester Ross or the islands. It would not be easy for children to go elsewhere, and there is deep concern to ensure that not just children but the whole community has a locus. Will educational benefit still be top of the list of considerations, or will other factors dominate?

Fiona Hyslop: In my experience of visiting schools as a minister, there tends to be far stronger community involvement in rural schools, particularly when they are remote. The culture and ethos are different and the relationship with the community is different. We would like all schools in Scotland to have such a culture, in which parents and the community get involved in children's education and children are offered experiences that they might not get from teachers.

Local authorities tend not to propose the closure of remote rural schools—Colin Reeves might comment, because he has been involved in such matters far longer than I have been. There tends to be more angst about semi-rural schools in small villages that are near conurbations. I know of areas of contention in that regard.

Proposals should reflect the value that the community places on the school. When we launched the bill, at Dalwhinnie primary school, I was struck by how many of the pupils' parents work on local estates. Gamekeepers told us that if there was no school, local employers would have difficulty recruiting. It is clear that the continued existence of schools in a number of areas is closely tied up with recruitment and economic benefit.

There has been criticism of the bill's focus on rural schools, but the reason for our approach is that we value sustainable rural communities. In fragile rural communities not just educational and social provision but the financial sustainability of the whole community can be at stake. There have been too many examples of the effect on communities when a school closes, people move away and jobs go. The Government wants viable communities. Your example cut to the chase and demonstrated the need for the bill.

Elizabeth Smith: I agree with you entirely. I just think that it is difficult to separate educational benefits from some of the others because they are all linked to the sustainability of the community as a unit.

Fiona Hyslop: If the financial situation trumped educational benefit, we would be attacked for that as well. We are involved in education and that should take primacy in considering any education policy.

10:45

Christina McKelvie (Central Scotland) (SNP): Let me turn your attention to the consultation report on the education authority's proposal, which is covered in sections 9 to 11. The original proposal was for a 28-day period but, when the bill team gave evidence on 6 May, they said that the proposal for three weeks arose from discussions with stakeholders. The Association of Directors of Education in Scotland and the Scottish rural schools network felt that the three-week period allowed for further representations.

Fiona Hyslop: There are a number of time periods within the process. Which three-week period are you referring to?

Christina McKelvie: It is the one following the end of the consultation period when the report has been put together.

Fiona Hyslop: Do you mean the one between the end of the consultation and the council's decision?

Christina McKelvie: Yes. That is when HMIE's report would come into play as well. Some people say that it is a period for further representations but others say that it should be only for getting the report together and coming to the final decision, not for further representations. Is there a need for the bill or guidance to be more explicit about what that three-week period is for?

Fiona Hyslop: It would be used by the council to put together the consultation report, which has to be published, and then there would be a period for decision. I assume that parents could make representations to their local councillors—and anybody else—right up until the decision was

made. Not only education officers but members of the council's education committee would be involved in the process. However, a council has many other councillors who may not be directly involved in the process but who are democratically accountable. The new single transferable vote system means that there are more of them. That must be of some benefit in that, unless all three of the councillors in a multimember ward were on the council's education committee, it prevents the situation that frustrates some parents whose local councillor sits on that committee and therefore cannot prejudge its decision. One advantage of proportional representation in local government is that it allows parents a bit more choice and access to a councillor who is not tied up in the education committee and therefore can hear democratic representations.

Christina McKelvie: Should best practice on that be written into guidance?

Fiona Hyslop: It can and should be, but there is a balance to be struck. Some local authorities carry out consultations very well and effectively, but we know from experience in the previous session's Education Committee that others do not. The idea of the bill is to raise the bar for everybody, but I do not want to assume that all local authorities need everything spelled out in guidance or they will not do it. That would be to do them a disservice.

We have to strike a balance on the matter; I do not want us to teach our grannies to suck eggs. As long as we put safeguards in throughout the system and ensure that as much information as possible is up front, we should have less difficulty in applying common sense and best practice thereafter. If any difficulties arise, there is always a way of resolving them. We do not need to have centralised guidance and bills for every single thing that we do. Local authorities are perfectly capable of running consultations themselves.

Christina McKelvie: One local authority suggested that there should be a clear cut-off. What are your thoughts on that?

Fiona Hyslop: Do you mean a clear cut-off for engagement?

Christina McKelvie: Yes.

Fiona Hyslop: If a local authority is writing a report, it cannot take evidence right up until the end. It is clear when in the process the authority can start drafting the report. If all incorrect information or any other issue has been flushed out right at the beginning of the process, there should be no need for anything new to come out at the end of it. I will re-examine the evidence that you received on that to determine whether we can clarify the matter. It might come out in the committee's report or our response to it.

Aileen Campbell: Following on from Christina McKelvie's point, I note that HMIE said last week that the implication of having the period for further representations is that the inspectorate will have to "end-load" its report—although it has to submit it at some point. The need to be copied into the further representations that are made has to be considered. Are there any tensions there, with HMIE potentially missing out on getting some of the further representations because it must submit its report at some point?

Fiona Hyslop: Councils have to make their decisions, and the consultation report has to be published. The information that comes through during the process is important. There is the original proposal paper that is produced under the process, which will be good and comprehensive; there is the opportunity to make any corrections; there is the public meeting; representation can be made about cases; and the HMIE report is written following the public meeting and after all the other evidence has been heard. Then, there is the new development—the publication of a consultation report. That means quite a bit of accountability. Local authorities will have to indicate what they have drawn from the consultation, saying what they agree and disagree with. That is the bit that is missing now, and that is where many parents' frustration lies—when cases are made, they are not responded to. People might not like the response, but at least they will get a response, in the form of the consultation report.

People might still have concerns about some things in the consultation report, once it is published. There is a period of three weeks in which to make representations, and at least the published documentation is available before the council's decision, which follows after those three weeks. Councils have cycles of meetings, with a clear pattern and programme, and time is needed to allow a council the opportunity to make its decision. That also allows a period for the democratic lobbying that will undoubtedly take place if there is an issue of contention, but there has to be a cut-off at the point where what is published is available in evidence. However, far more information will be available up front, in the proposal paper and, for the first time, in the consultation report. The period for further consideration should not necessarily mean getting bogged down in factual debates about information, which will have been addressed earlier on.

Kenneth Gibson (Cunninghame North) (SNP): At the very beginning of the evidence session, you said that the bill would effectively create a presumption against the closure of rural schools. Sections 12 to 14 of the bill discuss "special regard" being had to "any viable alternative" to closure,

“the likely effect on the local community”

and the effect of different travel arrangements on pupils going to an alternative school. You made some important points about sustainability, the need to recruit and so on, particularly in the most fragile areas of rural Scotland.

The response in evidence has been mixed with regard to that approach. ADES agrees with you, saying that it is right that the bill considers factors around rural schools. However, the EIS stated that it was “invidious” to differentiate between rural and urban schools. Last week, David Drever of the EIS said:

“We advocate an approach that involves considering cases on a school-by-school basis ... we do not believe that there should be a separation between how rural schools are treated and how urban and non-rural schools are treated.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 27 May 2009; c 2440.]

You have touched on the issue of fragile schools on islands such as Eriskay, Bressay and Gigha, but is there any comparative evidence on the relative impact of school closures on rural areas, as opposed to deprived communities, for example?

Fiona Hyslop: There were a number of points in there. The proposal gives effect to a presumption against the closure of rural schools, and it sets out what councils must consider. It makes a decision to close a rural school one of last resort. Questions have been asked about the legislative presumption against the closure of rural schools, and we have considered the point carefully. If there were simply a provision with a presumption against the closure of rural schools, we would probably end up in the courts all the time on the interpretation of what that meant and what the presumption was. Setting out what must be gone through to deliver that presumption in practice is far better.

From the comments of Kenneth Gibson and Liz Smith, it is clear that the different experience of rural communities—especially the financial and community aspects of that—must be recognised. However, the bill improves the situation for all schools, whether urban or rural, by improving the whole consultation process. In areas of urban deprivation, where a school may be the only public building in the community, it is possible for the issue to be addressed in the reports that are produced; parents may also raise it during the process.

I will not apologise for the differentiation that has been made. We want to improve the process for everyone, but not every case should be handled in the same way when it comes to the factors to which authorities must have regard. In transportation, the issue is not whether children will have to travel 1 mile or 2 miles—in many

cases, they will have to travel 5 miles, 10 miles or further. Interestingly, under some previous school closure proposals, the cost to councils of transporting youngsters elsewhere on a daily basis was equivalent to a significant part of the saving that was envisaged from closing the school. Rural communities are affected by particular transport issues that are not the same as the safety issues that affect urban schools.

The transport issues that arose in relation to urban school closure proposals that have been referred to me tended to relate to safety. Those issues are already highlighted in HMIE reports—certainly in the limited number of reports that I see. Everyone thinks that HMIE reflects only on crude educational attainment, but sometimes its reports refer to safety issues. It is as basic as ensuring that the distance that children must walk to get to school is as the council says. Such issues will continue to be raised, and it will still be possible to make a strong case.

I do not think that I have answered all of your questions.

Kenneth Gibson: I asked whether there was any comparative evidence on the relative impact of urban and rural school closures. Over the past few weeks, many people have given opinions, but those have not necessarily been backed up with empirical evidence. I agree with much that you say, but there is clearly overlap. The impact of closing a school in a deprived urban area could be higher than that of school closures in some rural areas. Not all rural school closures are catastrophic for the communities concerned. Having to travel 2 miles as a result of an urban school closure can be difficult for children if there is no adequate transport route or if there is heavy traffic in the morning. Surely the EIS makes a good point when it says that proposals should be considered on a school-by-school basis and that the criteria that the bill applies specifically to rural communities should relate to all communities.

Fiona Hyslop: I do not have the evidence to hand, but there have been a number of reports on the sustainability of rural communities. We have evidence from a number of areas of the closure of rural schools resulting in economic problems for the communities concerned. We will seek to provide some of that to the committee, so that it can be considered as part of the process. To say that no one can have something unless everyone can have it is not the best way of approaching legislation, if we can improve the situation for everyone. We can recognise that Scotland is a country with a large rural dimension to policy making or we can take a one-size-fits-all approach. One potential problem that we face—not just in education but in other areas—is the outlook that being fair to everyone and treating

everyone equally is more important than being responsive to the needs of different communities. That is a difficult judgment for politicians of any Government or party.

We decided on balance that we should ensure that particular regard is given to rural areas. Initially, we looked at measures only for rural schools. However, precisely because we have considered and reflected on the sort of point that you made, we introduced a bill that improves the situation for everybody. It just so happens that particular regard is taken of rural schools. The purpose of the bill is to improve things for everybody.

11:00

Kenneth Gibson: In my constituency, there are 38 primary schools. Some of those are on islands and others are on the rural mainland, and some of them are in deprived communities and others are in prosperous communities. Where is the dividing line drawn? Which are covered by the three considerations and which are not?

I envisage the situation where one school is covered by the proposals but another school that is only 2 or 3 miles up the road is not. I am trying to tease out the issue to see how we can ensure that we do not throw the baby out with the bathwater. We need to ensure that the bill improves conditions for everybody. What happens if a school feels that it is not getting the same level of consideration that other schools are getting?

Fiona Hyslop: That exists already under the current legislation. Representations have been made on the arbitrary nature of the current legislation and guidance. For example, the only closure proposals that are referred to me at present are those where the alternative schools are 5 or 10 miles away. That can be considered to be arbitrary—indeed, even more arbitrary than what is proposed. In fact, the system that we are proposing will provide more equity in the system.

Concern has been expressed about our definition of a rural school. We propose using the Scottish Government urban rural classification. Early in the process, I set out in answer to parliamentary questions the classification, which is accessible rural, remote rural and very remote rural. We are being explicit about the definition. The classification is in place and schools are defined in that way at the moment. Indeed, some schools that are in close connection to cities are considered as rural schools.

Kenneth Gibson: In recent weeks, a number of witnesses, particularly from local authorities, have claimed anecdotally that small and rural schools do not perform as well as other schools. However, no one was able to provide any hard evidence that

attending a rural school causes difficulties for the children involved, in terms of either overall academic attainment or socialisation. You touched on that subject earlier. Is there any evidence that children who attend small rural schools do any worse in that regard than children who attend urban schools do?

Fiona Hyslop: There is no evidence that children who attend rural schools perform relatively poorly compared with those who attend urban schools. As I said in my previous answers, if anything the situation is the reverse. There are grounds for considering what we think of as important in the educational experience of children in respect of class size. We will not move on to discuss that subject—I think that we have done 10 hours on it already—but the point is made.

I have heard the education officials who argue that children at rural schools do not receive as good an education as those in urban schools also say that children at double-stream schools have a better educational experience than those at single-stream schools. That is totally contestable, but it is an example of the thinking that goes into the consideration of issues such as class size. We should also reflect on that. It is perhaps a bit controversial to say that, but there you go.

The Convener: I am sure that we will return to the issue of class size at some point, but not today.

Fiona Hyslop: I was appealing to you to think only about the issue of single and double stream.

The Convener: But not class size—or not today.

Margaret Smith (Edinburgh West) (LD): I will not return to class sizes, but I want to pursue the point that Kenneth Gibson raised. As the cabinet secretary knows, my constituency includes semi-rural schools and urban deprived schools.

We all accept what you say about the fragility of rural communities and the importance of rural schools. None of us would want anything to diminish the presumption that you want to create in relation to rural schools. However, do you accept that extending the three criteria would not diminish the case that rural schools would be able to make but that there are other sets of circumstances—whether they involve urban deprived communities or semi-rural communities on the fringes of cities and towns—in which viable alternatives, transport and community impact should all be taken into account? More often than not, rural schools will be able to make a case very much on the basis of those three criteria, but there will be certain circumstances in which other schools will be able to make that case as well.

Fiona Hyslop: Even now, it is unusual for a proposal from a local authority not to address wider community issues. My problem with it is when it becomes public at a public meeting and way down the line; that is the point that Christina McKelvie was making. We will certainly be able to upfront a lot of that information.

I acknowledge that some of the most difficult arguments tend to concern what we would call accessible rural. The experience of Midlothian led me to see that we need to improve the proposal. It is not far from Edinburgh, and many of the jobs were not necessarily in the villages that were affected—people travelled to work in places such as Edinburgh, Dalkeith and Penicuik. However, although there was a community and social dimension in relation to the schools, the economic impact would not have been as serious as it would have been in the remote, rural and island communities that we have discussed.

There is also the issue of transport, and of having to travel further because of nursery or employment. We should reflect on climate change issues. We have developed a school system in which we have accessible primaries in each community. I hate to say, “Children can walk to school”—Ken Macintosh has experience of walking buses—but the point of having schools in local communities relates to car ownership. We have a situation in which people have cars, and we perhaps want them to use those cars less.

Transport issues would be a key consideration—in fact, they are already considered in the areas that you mentioned. In technical terms, under the urban-rural classification, semi-rural is remote rural. I checked and in Edinburgh, for example, Ratho would be considered accessible rural—knowing the community as you do, you know that that is for good reason.

Margaret Smith: Although there is a certain reassurance in what you have said, it shows the importance of those three criteria, no matter which school we are considering. Transport is an important issue, no matter which school is under consideration. I am very confident that rural schools would use those three criteria to make a strong case. However, my point is that in certain circumstances, other schools would be able to make a case based on those three criteria, and that if the criteria were set out, councils would know categorically that they would have to consider those three important issues. Leaving it to a council to decide whether to consider those issues introduces the arbitrariness that you have commented on in the existing system. We want to get that out of the existing system so that people feel that they are getting a fair crack at this.

Fiona Hyslop: I think that that is unnecessary and that it would diminish the responsibility on

councils, and the rigour with which they must consider the “have regard” before they even put together a proposal. You are arguing that those issues should be argued as part of proposals and consultations. The “have regard” reflects what happens not only during the process, but prior even to the proposal paper. That is the critical difference. That is how we ensure that councils consider those issues even before they come to a proposal paper.

Everybody can still raise issues during the consultation. If issues are raised about a proposal to close a semi-rural school, the council is required to respond to those issues in the consultation report. Therefore, the consultation report already provides a safeguard. That picks up Kenneth Gibson’s point about the need for each school to be considered on its merits, as the EIS argued for. That is exactly what will happen with the responses in the consultation report.

Perhaps I ought to clarify my reference to walking buses. In a previous incarnation, I was a member of the Education Committee when it considered such matters, of which I know Ken Macintosh has some experience.

Ken Macintosh (Eastwood) (Lab): The cabinet secretary alluded in her opening remarks to concerns that witnesses have expressed about the new powers of call-in. Clearly, there is some anxiety over the lack of clarity about what criteria will apply in deciding whether a proposal should be called in. Do you intend to publish guidance to specify those criteria more precisely? Can you give us an example of what would be considered a “material consideration”?

Fiona Hyslop: The decision on call-in will rest on whether the processes under the bill have been carried out. That position is not too dissimilar from that of my current powers to issue guidance—guidance was issued initially by Peter Peacock in 2004 and was reissued by me after we came into government—in that we will not be able to second-guess decisions. I do not expect to second-guess the merits of a decision; I will be able to take a view or have an opinion only on whether the processes have been followed effectively. Clearly, the bill will result in there being far more specified processes than ever before and, from the evidence that the committee has received, everyone recognises that as a good thing. That position will not necessarily change.

On whether further guidance needs to be issued, I think that the bill sets out quite clearly what proposals can be called in by ministers. Section 17 includes four provisions about what will be required; I think that those provisions are fairly specific. Bear it in mind that, if a proposal that has been called in is refused consent because processes have not been followed, it will always

be open to the council—as is the case currently—to take the matter to judicial review. Therefore, the basis on which a proposal is called in and the decision that is made on such a proposal must be robust. We think that the provisions are fairly well set out in the bill. We anticipate that there will be fewer call-ins, although in the early stages there might be some testing as to what proposals can be called in. However, we think that the provisions in the bill are very tight.

Sorry, what was your other question on that?

Ken Macintosh: I agree that the grounds are laid out in the bill, but some witnesses have expressed anxiety that they are not clear enough. They focused on the term “material consideration”, which certainly seems open to interpretation. It sounds as if you do not intend to publish guidance, so can you give us an example—this is what I asked earlier—of what might constitute a “material consideration”?

Fiona Hyslop: That might be that the local authority has clearly not followed the process of considering the criteria for rural schools where they apply, or that it has not followed the other processes that are set out. For example, the authority might have failed to produce a proposal paper or its consultation report might not have responded to issues that were raised. We will be able to look only at the process.

Ken Macintosh: That is fine. It is clear that the intention—I had understood that the power of call-in would parallel that of the planning system—is that proposals can be called in if the process is not followed. That is spelled out in section 17(2)(a). However, in addition to that provision about a local authority’s failure to follow the process, section 17(2)(b) makes specific reference to a failure

“to take proper account of a material consideration”.

Therefore, as well as those issues of process, the bill seems to include this extra catch-all provision that allows proposals to be called in where the local authority has not taken account of a material consideration. What, may I ask, is a “material consideration”?

11:15

Colin Reeves (Scottish Government Schools Directorate): I can remember one case that was referred to ministers—I will not specify which case—in which the alternative school that was being suggested was some distance away and required the pupils to be driven up over a relatively high pass. One of the considerations was the number of occasions during the winter when bad weather would prevent pupils from travelling to the alternative school. If that issue had been raised during the consultation processes and the

authority had ignored, as it were, what the consultees had considered was a material factor—the number of times when the pass between the school to be closed and the alternative would be shut, so that the children could not get to school—that might be an example of failing to take proper account of a material consideration.

Fiona Hyslop: The decision on call-in is primarily about process, but it will also be about a material consideration in the content of the proposal paper and whether, for example, the initial proposal paper was adequate and covered issues such as snow and high passes, because in those circumstances the distance between the two schools might be short. That is a good example.

The decision would be open to judicial review, so we would have to look at the matter case by case. We must be careful that we do not speculate on hypothetical scenarios and that we do not draft the provision too broadly, because we do not want all cases to be referred to ministers. A balance must be struck. We consulted stakeholders, including the Scottish rural schools network and councils, and asked whether the proposed approach would be an appropriate compromise between the extremes of an external quango appeal body, for which some people have argued, and which exists in England, or every proposal coming to ministers. The buck has to stop somewhere in the process and ministers must still have some role.

We do not want to second-guess the judgments and interfere with the democratic accountability of local authorities in making such decisions, and I think that we have come up with a proposal that meets everybody’s needs. You are right that a definition must be in the bill, but the problem in defining what would be included is that you would either broaden the number of referrals or specify a tick-box list of what would be called in.

A material consideration is factual content that clearly and obviously should have been made available at the start of the process. We need to check whether the current legislation covers material content; I think that it must do, given Colin Reeves’s reference to material consideration. In my experience as a minister, most of the referrals that have come to me because some difficulty has arisen have been about not the material content, but the process.

Ken Macintosh: Will the minister expand on HMIE’s specific role in the event of a call-in? Elizabeth Smith referred to the matter previously.

Fiona Hyslop: In practice, HMIE would probably have less of a role than it currently has, because the work on the individual school would have been done at the start of the process. HMIE would have a role only if I had queries about the content of the

original report and sought clarification; I do not think that it would have a role in the call-in process. I gather that that is one of the areas of concern for witnesses from whom the committee has heard.

Ken Macintosh: My understanding is that at the moment, in the event of a referral, you would—I think in all cases, but perhaps only in almost all cases—ask HMIE to look at the matter and to give you its opinion. Would you do the same in the call-in process that is outlined in the bill?

Fiona Hyslop: I do not think that I would need to, because of the original report.

Ken Macintosh: If you asked HMIE for its opinion in the event of a call-in, would it apply the same specific criteria that are laid out in section 8 or would you ask it to look at the proposal with a different set of criteria in mind?

Fiona Hyslop: I would expect it to consider the matter on the same basis as is set out in the bill. The committee has identified an important issue, and it is vital that I have the opportunity to provide clarification and offer reassurance that there would not be a two-tier approach to the role of HMIE. Some of your witnesses have expressed concern on that point.

Ken Macintosh: I could be wrong about this, but I think that one difference would be that at the early stage, the HMIE report would not end in a conclusion; rather, there would be a report on educational benefits, which would leave those who were considering the report to make a decision. I would have thought that, in the event of a call-in, the advice to ministers would lead to a conclusion—in other words, it would be said at the end of the process, “We advise you to turn this down” or “We advise you to accept this.” Is that the case?

Fiona Hyslop: Again, I might ask Colin Reeves to reflect on that. In the current system and the reports that I receive, information is provided and educational benefits are evaluated. I do not think that I receive anything that advises me to overturn or agree to a decision. From correspondence that I have received from MSPs, they seem to think that that happens under the current system, but it does not.

Ken Macintosh: I seek reassurance. I think that best practice at the moment is that you publish your advice afterwards. Will you undertake to continue to do so?

Fiona Hyslop: Yes. That is important. When a controversial decision has been taken and it is clear that there were problems when the council embarked on the consultation process, the wisest thing to do is to consider the judgments and letters that have been published in order to learn from

them and improve best practice. Several members have raised that issue.

Ken Macintosh: There are two timescale issues. Councils have a duty to notify ministers of a decision within a day of making it. On the other hand, there is no time limit on ministerial decisions on call-ins. Are those approaches appropriate? Councils have expressed concern that a day may not be enough time to notify ministers of a decision and that they may inadvertently fall foul of the provision.

Fiona Hyslop: They have three weeks to make a decision. There is the period from the end of the consultation while the consultation report—

Ken Macintosh: Section 15(2)(a) states that the education authority must

“notify the Scottish Ministers of that decision no later than the end of the next working day after making it”.

When it gave evidence to the committee, the City of Edinburgh Council said that it was a little concerned about that.

Fiona Hyslop: It is simply a matter of sending an e-mail. That is what that means.

Ken Macintosh: I am not saying that that is impossible; I am simply saying—

Fiona Hyslop: It is not about a letter. Any decision will be made in public in the council. In the case of the City of Edinburgh Council, for example, a decision will be in the *Evening News* either the next day or on the day that it is made. The provision deals with the communication process; it is simply about sending a message. If that is an issue, we can certainly consider it. Obviously, there can be follow-up if further information is required. It should be remembered that all the information—the initial proposal and the consultation report—will be available. The council will already have done all the work.

Issues might have arisen as a result of councils reflecting on the current process. Obviously, if there is a referral in that process, councils must put together and send lots of information. However, all the information that a council will need to send will already have been published. The only thing that must be added is the decision by the relevant council committee. I see where the councils are coming from, and we will think about the matter, but the provision simply deals with the time for notifying a decision, which will be public anyway.

Ken Macintosh: There is a specific timescale for that, but there is no timescale for ministerial decisions.

Fiona Hyslop: No. Officials can tell us about the current system, in which they have to pull together the relevant information. If there is a referral, the

council must send all the information to them in the first place. Local authorities decide whether there needs to be a referral under the current law. Obviously, we then have to commission an HMIE report, which is a time-sensitive issue for us, and officials have to go through everything. Papers must be gathered and so on. Under the new system, the councils will have done all the work, including all the paperwork, that has to go forward in notifying us of a decision in the first place. The council will send the proposal paper and the consultation report to us. That work will have been done. A time-and-motion study would show that the call-in timescale will be shorter under the new system than it currently is.

When I receive the reports, I respond as quickly as I possibly can because I know how sensitive these issues are. However, by and large, when I receive the papers for each school—which can be fairly thick, with all the representation, et cetera—I make a point of going through every one of them. The clarity and transparency in the process is in the fact that I will be looking at the same information that everybody else has and that it is up front and documented in a way that, previously, it was not. There is an equity about the system.

I do not know whether we have reflected on the timescale in the bill. I do not want to say that it will be done by X because if one case is not completed by X that would be a problem. However, the timescale will be much shorter than under—

Ken Macintosh: I appreciate that the move is being made for various reasons. The contrast is with the specific and quite constrained timescales that are set out in the bill. There are a number of very short periods, and questions have been raised about whether the periods are long enough. It is interesting that there are a lot of specific and short timescales, but that the last one is totally open ended. There is an interesting contrast between what is expected of the Executive and what is expected of councils or others who are involved.

Fiona Hyslop: We have not done it before, so we do not know how long it will take—that is the issue. When a council makes a decision, a lot of the work will have been produced in the original proposal paper and the consultation report.

The timescale extends the period up to the council's decision to about 12 to 15 weeks from the start to the end. Consumer Focus Scotland wants the period to be longer; other people want it to be shorter. The process must be manageable, as we do not want it to hang over schools for any length of time. I think that you have heard concerns that, when ministers get the papers, they will sit on them and the process will take a long time. That certainly has not been our practice and

would not be under the bill. The issue is how long our assessment will take, but it will be an assessment of process issues—it will not be second-guessing. We will not have to wait for documentation either from HMIE or from others to make that assessment, so the period will be shorter than currently is the case. We would not want to prolong the process, as it is already reasonably long.

Lynn Henni: We are talking about only a handful of cases that are likely to be called in. If they are called in, it will be because there have been allegations of serious deficiencies in the system.

Ken Macintosh: Did you say 100 or a handful?

Lynn Henni: A handful. *[Laughter.]*

Fiona Hyslop: I think that I will hedge my bets.

Lynn Henni: As the cabinet secretary said earlier, quoting one of the councils, it is very much in local authorities' hands to avoid the situation, so we anticipate only a small number of such cases. When a proposal is called in, that will be done because there has been an allegation of serious deficiencies, which will need to be investigated thoroughly. The parents and other people who are affected by the delays would probably still rather have the matter investigated thoroughly and not have some ticking clock over ministers when there has been an allegation of a serious problem that needs to be addressed.

Fiona Hyslop: That is the parents' point of view. I think that councils would want as quick a resolution of the matter as possible after they have made their judgment. The issue is how to balance the different interests, but there should be an expectation that there will be a rapid response when that is at all possible.

Ken Macintosh: Thanks very much, minister. I have two other questions, but they are not about call-in.

The Convener: We will maybe come back to them at the end. I hope that they will be brief.

Margaret Smith: I have a question on finance. We have heard about the new role for HMIE. The extra costs for HMIE are estimated at £73,000 and the overall cost of the bill is estimated at £134,000. We have heard differing opinions on whether that figure is robust. Are you happy that the figures are robust? I would not like the bill to fall for the lack of a financial resolution. The Convention of Scottish Local Authorities and other organisations have worked on the figures and say that they are happy with them, but councils such as Aberdeenshire Council have queried them—they have queried the HMIE figure in particular, given that HMIE will take on a new expanded role. Can you reassure us that they are reasonable figures?

Fiona Hyslop: I understand that only one such response has been received, from Aberdeenshire Council, which you were referring to. It questioned the assumptions and estimates. The Parliament's chamber office has concurred with our view that because the costs will be £134,000, no financial resolution is required for the bill.

11:30

Since our very first consideration of costs, we have worked with ADES, COSLA and HMIE. I think I referred to section 8 and the role of HMIE: as part of our preparation for the bill we have worked out, with HMIE, what its costs would be. Our proposals on costs can therefore certainly be supported.

Margaret Smith: We both know the situation with City of Edinburgh Council, which has raised concerns about the impact on councils that are currently undergoing consultations. What is your advice to councils that are undergoing consultations on school closures, or that are about to embark on them, bearing in mind the likely timescale for the bill?

Fiona Hyslop: I recently had a meeting with the City of Edinburgh Council. Any consultations should follow examples of best practice. A number of local authorities have said that the sensible thing to do is to follow the best practice that is already in the bill.

Paragraph 3 of schedule 3 of the bill is entitled

"Transitional, transitory and saving provision".

We wanted the bill to be specific so that everyone who would go through the process would know exactly where they stand. The schedule is quite technical and we have put a lot of thought into it. We have wondered whether we can minimise the process, because we do not want the bill to get in the way during people's considerations, and we do not want different parties to be able to use the bill to cause problems.

If the bill is passed, councils will immediately be able to start consulting under the new rules. However, consultations that were in progress under the old rules will also be able to continue. Any consultations under the old system would have to be concluded, by a council decision, before commencement of the bill, which would be expected to be four or five months after the bill was passed. Several months would therefore be available to allow processes to be completed, and there would be plenty of advance warning about the bill's intentions.

Decisions that are made prior to commencement will be treated under the previous rules. Therefore, if referable, they would come to ministers. Consultations that are started after the passing of

the bill, and which will be carried out under the new system, will be subject to the new rules. Therefore, a closure decision would be open to call-in.

There will be key dates during the passage of the bill. Stage 3 will be when the bill is passed, but there will also be the commencement date, so there could be a limbo period in between. We acknowledge that that is in nobody's interests, neither parents nor schools. In order to ensure clarity and exactness, we have included provisions in the bill on how things will work. Any council—City of Edinburgh Council or any other—will be able to get advice.

We cannot presume that the committee will support the bill at stage 1 or that Parliament will support it at stage 3, but we can certainly let councils see the proposals up front. That is why we have put the provisions for transition in paragraph 3 of schedule 3. People will not have to wait until further down the line to see the provisions. They are quite technical, and we are more than happy to speak to any local authority that has any concerns about embarking on any measures.

Margaret Smith: But the overarching consideration is best practice.

Fiona Hyslop: Yes. Some local authorities do not have experience of these issues, but others do. If the effort is put in, people can have confidence in decisions—and that will be better for local authorities than their having to face the heartache and grief of concerned people. The rationale behind the bill is that extreme positions can be taken, so we have to be satisfied that there is a proper process.

The Convener: I believe that Mr Fraser has some questions on money.

Murdo Fraser (Mid Scotland and Fife) (Con): I want to ask a couple of questions about the financial background to school closures, which will become increasingly relevant due to the likely severe pressure on council budgets in coming years. In the past, councils have often argued for school closures on financial grounds more than on educational grounds.

The committee heard conflicting evidence on the question of the cost of having schools running severely under capacity. The Scottish Parent Teacher Council argued that there is a substantial cost to having schools operate below capacity, which causes a disbenefit to pupils in other schools, because it costs money that could be spent elsewhere. However, Professor Neil Kay's evidence robustly contradicted that. He argued that having schools running below capacity had a low cost. What is the Scottish Government's position?

Fiona Hyslop: We recognise that there is debate. Those of us who have been involved in this for a long time are aware of the various views that people have taken. Some years ago, there was an assumption that any school closure would deliver an automatic saving and that there were no costs to school closures, but that is not the case; there are costs to school closures, not least in respect of transport. The SRSN and others have carried out good work that has helped the Government and councils to understand the pure economics of the situation, which is why it is interesting to consider the arguments of Neil Kay, who is an economist.

Salaries make up most of any schools budget. Do redundancies make up part of the savings when a school is closed? Can you think of a time when a council has closed a school and made a member of staff redundant? I am not aware that that has ever happened, but if you know of such a case, please bring it to my attention.

The savings that are sought, therefore, come not from staff savings but from capital factors relating to school buildings, which would be offset against transport costs and so on. Obviously, we are in difficult times with the recession and so on, which has implications for capital receipts from the sale of school premises and for housing on the sites of the schools.

We must recognise that there is a debate and that valid arguments have been made on both sides. However, with regard to the bill, the finances that we are bringing forward are about additional costs. Potential savings are matters for individual councils. This bill provides no further restrictions or additional burdens. However, any local authority has to balance its estate and consider issues on those terms. Part of the issue involves the quality of the buildings and whether a rationalisation of the estate will provide the council with income.

We are currently working with COSLA on a schools estate strategy. Murdo Fraser referred to best value and capacity, which Audit Scotland has addressed, to an extent. It recommended that we should produce a schools estate strategy that takes us beyond the short term.

Murdo Fraser: You mentioned that there has, on occasion, been in councils a lack of understanding of the impact that a school's closure would have on the council's budget. I, too, have seen examples of that. That lack is partly because of the fairly complex mechanism by which the Scottish Government provides grant to councils, which takes into account the size of schools in rural areas.

What stage has the Government reached in its consideration of the broad area of education

budgets with regard to the rurality of the population and the number of rural schools? You mentioned talks with COSLA. Are they part of on-going discussions that the Cabinet Secretary for Finance and Sustainable Growth is having with councils about how the mechanism might be reviewed and matters might be addressed?

Fiona Hyslop: On the first part of your question, an element of the current spend is for the rural dimension of local authorities' provision, just as there are elements for deprivation and so on. Rurality and deprivation will be considered together in some communities, but only rurality will be considered in others. That situation sometimes gets underestimated or is not accounted for in the cost-benefit analysis under the current system of spend.

I do not want to stray into the area of responsibility of my Cabinet colleague Mr Swinney, but the benefits of a review of grant-aided expenditure will be critical. The committee has probably heard evidence from Aberdeenshire Council and Aberdeen City Council on their concerns about whether they get a fair deal under the current system. I understand that the joint review group is considering not just grant-aided expenditure but the whole system and that it will make recommendations by the end of October 2009. Any changes will be implemented for the local government finance settlement. Again, for clarification, that area is the responsibility of the Local Government and Communities Committee and my Cabinet colleague Mr Swinney.

Part of the understanding of that and of certain representations that I have made is that funding for the rural dimension in education be considered as part of the GAE review. We have unearthed some understanding or, rather, misunderstanding—dare I mention Roy Bridge?

Murdo Fraser: That was one of the examples that I was thinking of.

Fiona Hyslop: I believe that situation benefited everyone's understanding of the system and I do not want that information, knowledge and experience to be lost in considering the new system. I have certainly made representations that such experience should be considered.

Ken Macintosh: The good news is that Murdo Fraser asked one of the questions that I was going to ask. It was noticeable that a very large number of respondents to the consultation commented that the bill might provide an appropriate vehicle for designating schools as Gaelic-medium schools, where a majority of parents have expressed their support for such a measure in consultation. What is the minister's view on that?

Fiona Hyslop: As Ken Macintosh will be aware, I have a long-standing commitment to Gaelic-

medium education and provision. The bill is about consultations on school closures and other matters. I am aware of the oral evidence and written submissions that the committee has had relating to Bòrd na Gàidhlig in particular. I was somewhat disappointed that Bòrd na Gàidhlig did not right at the start take part in the Government's consultation. The bill makes provision for the first time for Bòrd na Gàidhlig to be automatically part of consultation. However, points have been raised on consultations on Gaelic-medium education on which I would certainly want to reflect. I would be interested in committee members' views on that.

It would have been easier to have considered such issues as part of the original consultation, but there is obviously an opportunity now to consider some such matters. I suppose the question is whether we want to broaden the bill to cover other areas. Are there other policy means by which we could give effect to what I think is a common desire to ensure that we promote Gaelic? Again, we must remember some of the financial issues involved and assess whether there is a cost—an additional burden—for a council in designating a school as a Gaelic-medium school.

Ken Macintosh: I have a final question. I agree that there are questions to be asked. However, will you confirm that you still have a commitment to guarantee in law the right of parents to access Gaelic-medium education for their children where regional support exists for that? What bill will do that and when will we see it? There is only a year and a half left of the parliamentary session.

Fiona Hyslop: Ken Macintosh will remember that the responsibility and the budget for Gaelic-medium education currently lie with the Minister for Culture, External Affairs and the Constitution. I have already had discussions with him on such issues. I am keen that we make progress, particularly on Gaelic-medium education. Given that the bill is about consultations in relation to schools, our giving rights to one educational area might result in invitations to broaden the bill's perspective to include a load of other areas, which is where we must be careful about the purposes for which we use the bill. Good and useful points have been made on Gaelic-medium education in the context of the bill, but Ken Macintosh is right that the more fundamental point is that Gaelic-medium education can be promoted not just by education provision but, as we know from the experience of the Gaelic Language (Scotland) Act 2005, by provisions within Gaelic policy and, if need be, by legislation.

The Convener: That concludes our questions. I thank you and your officials for attending.

Fiona Hyslop: Thank you very much. If the clerks are aware of anything that I need to follow up with, please let me know.

The Convener: Thank you. The meeting will be suspended for a brief comfort break. It is my intention that the meeting will recommence just after 11.50.

11:45

Meeting suspended.

11:50

On resuming—

Annual Report

The Convener: Agenda item 3 is consideration of our draft annual report. The draft report, which was circulated to committee members before the meeting, covers 9 May 2008 to 8 May 2009. Do members have comments?

Christina McKelvie: I will make just a wee point about the content. It is good to have the section on equalities, which shows that we have met recommendations and what was expected of us. I had not realised the breadth of evidence that we had taken from organisations until I saw it in the report. I commend the clerks on ensuring that we meet our responsibility.

Kenneth Gibson: I, too, have a minor point to make. Paragraph 15 refers to

“visitors including delegations from the Victorian State Parliament ... and the Northern Ireland Assembly.”

It is important to mention the delegation from Belgium, with whom we had an involved discussion that took more than an hour. We had more involvement with that delegation than with any others, so we should add a reference to it.

The Convener: I am sure that that paragraph can be amended.

Following a decision of the Conveners Group, the committee is required to highlight its work on equalities. That requirement arose because the Equal Opportunities Committee was concerned that equal opportunities were not being mainstreamed in committees' work. Do we agree the report?

Members indicated agreement.

Subordinate Legislation

Individual Learning Account (Scotland) Amendment Regulations 2009 (SSI 2009/176)

11:52

The Convener: The fourth and final agenda item is consideration of a Scottish statutory instrument that is subject to negative procedure and which will revise the income threshold for eligibility for an individual learning account from £18,000—at which it was set in 2007—to £22,000. No motion to annul has been lodged and the Subordinate Legislation Committee determined that it did not need to draw the regulations to Parliament's attention. Do members have comments?

Ken Macintosh: Can we ask someone—I am not sure whether it should be the Cabinet Secretary for Education and Lifelong Learning or the Scottish Parliament information centre—for further information on the financial effects of the amendment regulations? The executive note says that the cost will be met from the available ILA budget, which I know is underspent. However, the expected uptake and cost are unclear. No figures are given for the number of individuals who will be eligible to apply for an ILA as a result of the increased threshold and who could not apply previously. I would welcome further information on the number who will now qualify, the expected uptake and the associated costs.

The Convener: Is the committee content to write to the cabinet secretary to seek that information?

Members indicated agreement.

The Convener: We will write to the cabinet secretary.

As members have no further comments, does the committee agree that it has no recommendation to make on SSI 2009/176?

Members indicated agreement.

Meeting closed at 11:54.

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

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

The deadline for corrections to this edition is:

Friday 12 June 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

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

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

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

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

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

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

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

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

Scottish Parliament

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

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers