

# **EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

Wednesday 10 June 2009

Session 3

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## EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

### 18<sup>th</sup> Meeting 2009, Session 3

#### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### DEPUTY CONVENER

\*Kenneth Gibson (Cunninghame North) (SNP)

#### COMMITTEE MEMBERS

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

#### COMMITTEE SUBSTITUTES

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

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Adam Ingram (Minister for Children and Early Years)  
Paul Wilson (Scottish Government Education Directorate)

#### CLERK TO THE COMMITTEE

Eugene Windsor

#### SENIOR ASSISTANT CLERK

Nick Hawthorne

#### ASSISTANT CLERK

Emma Berry

#### LOCATION

Committee Room 3



## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

Wednesday 10 June 2009

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

### Subordinate Legislation

#### Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 (Draft)

**The Convener (Karen Whitefield):** Good morning and welcome to the 18<sup>th</sup> meeting in 2009 of the Education, Lifelong Learning and Culture Committee. I remind everyone that mobile phones and BlackBerrys should be switched off for the duration of the meeting, as they interfere with the sound system.

The first item on the agenda is consideration of subordinate legislation: the draft Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009. I am pleased to welcome Adam Ingram, the Minister for Children and Early Years, to speak to us about the regulations. He is joined by Scottish Government officials Laurence Sullivan, senior principal legal officer, and Paul Wilson, policy officer.

Minister, I understand that you wish to make some opening remarks.

**The Minister for Children and Early Years (Adam Ingram):** Indeed. The regulations are part of a suite of subordinate legislation that will implement the Adoption and Children (Scotland) Act 2007. The committee has already discussed the other pieces of legislation; these regulations are the last substantive set.

The regulations prescribe the conditions for two separate functions of the adoption agency, and it is important that they remain clearly separate. The first function is the disclosure of information held by a local authority concerning a particular adoption case. That takes place post-adoption and applies strictly to the disclosure of information about an adoption to an adopted person or another specified person. The second function is the disclosure of certain medical information by a general practitioner to an adoption agency while that agency is preparing documents for an adoption. That applies strictly to information gathering prior to an adoption and would not

include disclosure of that information to anyone other than the adoption agency.

Part 2 of the regulations deals with the disclosure of information on an adoption case record by an adoption agency to an adopted person. It prescribes the only circumstances under which information on the child's adoption case record can be disclosed. Those circumstances are: disclosure to the adopted person over the age of 16, or 18 when in England and Wales; limited disclosure to the adopted person under the age of 16; disclosure to certain other persons acting on behalf of the adopted person; access to information for the purposes of carrying out the agency's functions; and access to information for the purposes of research and inquiries.

Part 2 largely restates the current provisions, although it introduces one substantive change to the current arrangements. Previously, only adopted people over the age of 16 had an automatic right to access information on their adoption, but the adoption policy review group identified that adoption agencies have been using their discretion to give limited access to information to adopted people under the age of 16. The group recommended that that limited access should be made clearer in legislation. The regulations will allow adoption agencies to provide limited information to an adopted person under 16 if that information does not identify the adopted person's natural parents.

Part 3 of the regulations relates to the disclosure of medical information by a medical practitioner to an adoption agency. The provisions that it contains are entirely new.

The adoption policy review group identified that, in practice, there were three situations in which local authorities and adoption agencies find it difficult to obtain medical information about a child's natural parents: when there is no consent because the natural parents were never asked for it; when there is no consent because the natural parents are absent and therefore cannot be asked for it; and when there is no consent because the natural parents refuse to give it. The APRG indicated that not being able to obtain such information hindered good planning for the child.

During its consideration of the Adoption and Children (Scotland) Bill, the committee agreed that there is

"justification for adopted children to be able to gain access to information relating to their birth parents' medical history where they may be relevant to health care decisions that require to be made."

In drafting the regulations, the Government consulted the British Medical Association, the Royal College of General Practitioners and the General Medical Council. We listened to their

concerns about potential overdisclosure of confidential information without consent, for example when a comprehensive medical report that may contain information that is not pertinent to the care of the child is requested by an adoption agency and consent is not given by the patient.

We have attempted to strike a balance between the concerns of adoption agencies that need medical information if they are to place a child for adoption successfully and the medical profession's justifiable concerns about patient confidentiality. That is why part 3 of the regulations is subject to the Adoption Agencies (Scotland) Regulations 2009 (SSI 2009/154), which the committee has already discussed. Under those regulations, an adoption agency must make every effort to gather the information with the consent of the natural parents.

Furthermore, the information that can be requested under the regulations is strictly limited to any history of genetically transmissible or other significant disease in the family history of the father or mother. We have not sought to give adopted children an automatic right to access their natural parent's medical information; adopted children will have no more right to access the medical information of their natural parents than other children do.

Disclosure will be made by a medical practitioner, and only relevant information that falls within the limitation of the regulations must be disclosed. The decision on what is relevant will be left to the medical practitioner who holds the information, but we will provide guidance to help put in context the release of information so that medical practitioners are made aware of what types of information aid the placement of children.

In summary, the regulations will allow vital information to be gathered that will help with the assessment and placement of children, and they will give people who have been adopted access to information about their adoption and their past.

**The Convener:** Thank you for that helpful summary of what the regulations will do. Could you give us a bit more information about the circumstances in which information may be disclosed for the purposes of research and inquiries? Perhaps you could give us an example of a situation in which such disclosure might be appropriate. What kind of research and inquiries were you referring to?

**Adam Ingram:** An inquiry could be made under the Social Work (Scotland) Act 1968 about an issue that had arisen—it might even be a child protection issue. Information might be sought on the child's background or the circumstances that led to their being taken into care. That is an example of an inquiry that might be relevant.

The Scottish Public Services Ombudsman might want to look at a particular case record, the Scottish Commission for the Regulation of Care might want to look at case records in the course of its inspections, and the courts themselves might seek information about a child.

**The Convener:** Thank you for that clarification.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** You correctly referred to GPs' concerns about patient confidentiality and said that you have reworked the proposed legislation to allay their fears. Are they entirely happy with the proposal?

**Adam Ingram:** Yes. When we initially prepared the regulations, we carried out a full consultation with the GMC, the RCGP and so on, and they are now happy with the regulations. We will also work with them on the guidance that I mentioned in my opening remarks.

**Ken Macintosh (Eastwood) (Lab):** The Executive note to the regulations says that, in the consultation,

"Responses were in broad agreement".

Given that the matter was quite controversial during the passage of the Children and Adoption (Scotland) Act 2007, did none of the respondents raise any issues that were not in agreement with the principles, for example on the control or disclosure of information on the identity of natural parents?

**Adam Ingram:** When we consulted thoroughly with the medical profession on the original regulations, points were raised about the post-adoption seeking and provision of medical information. Perhaps my colleague can tell us a little bit about those proposals, which were dropped in the end.

**Paul Wilson (Scottish Government Education Directorate):** In the pre-consultation with the medical profession, we proposed full post-adoption access to medical records. However, we dropped the proposal when the information commissioner and the GMC opposed the move. As the minister said in his opening remarks, an adopted child will now have no automatic right of access to information and, indeed, will have no more of a right than a child who lives with their natural parents. Although the adoption agencies disagreed with that decision and felt that the proposal should be kept, we listened to the medical practitioners—who, after all, hold the information—and agreed with their points about patient confidentiality.

On the identification of natural parents, the provisions on the disclosure of information on natural parents affect children under the age of 16. One or two adoption agencies disagreed with our approach, pointing out that at the moment

adoptive parents sometimes give children their family history, which, in conjunction with other information, identifies their natural parents. We felt that, in cases in which contact arrangements are not already in place, the identity of the natural parents is protected as, for example, a child under 16 cannot contact them. The new provision extends rights to children under 16, who now have access to more information. Previously, they did not have a legal right to such access.

**Ken Macintosh:** Thank you. I remember the issue being controversial when the Adoption and Children (Scotland) Act 2007 went through the Parliament. To be honest, there is less secrecy about the identity of parents in modern adoptions, but there are still a number of cases in which their identity is secret. The big issue was control of that information, in particular the adopted person being refused it.

I understand the process that you have been through. Are there any plans to keep the matter under review or to monitor implementation? Will the various monitoring and adoption sub-groups continue to exist and monitor the impact of the regulations?

10:15

**Adam Ingram:** We have a group that we consult on adoption and fostering, although we have no specific plans to review the legislation. If issues arose, we would be in a position to address them, presumably by introducing further regulations, but we do not anticipate any problems. As you know, the act was passed two years ago. We have put the regulations together carefully and were careful about consulting appropriately.

**The Convener:** That concludes our questions to you, minister.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the draft Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 (SSI 2009/draft) be approved.—[Adam Ingram.]

*Motion agreed to.*

**The Convener:** I suspend the meeting to allow the minister and his officials to leave.

10:18

*Meeting suspended.*

10:19

*On resuming—*

## **Education (School Lunches) (Scotland) Regulations 2009 (SSI 2009/178)**

**The Convener:** The third item on our agenda is consideration of further subordinate legislation—five Scottish statutory instruments that are subject to negative procedure. I intend to debate each in turn, but hope that we will be able to put one question at the end.

Does any member have questions about SSI 2009/178?

**Ken Macintosh:** I have no difficulty with SSI 2009/178, which will implement our party's policy, but at point 10 of the Executive note on the regulations, under the heading "Financial effects", there is the bald statement:

"Resources to accommodate these additional numbers are included in the local government financial settlement."

The note does not say to how much those resources will amount. This is a controversial issue. Many local authorities are struggling, and there is a general lack of transparency about resources for education at local authority level. Will it be possible to write to the minister to get a figure for the resources?

**Kenneth Gibson (Cunninghame North) (SNP):**

We had this discussion earlier in the parliamentary session. It was clear from the evidence of witnesses from local authorities that the resources have been included in the settlement.

Because of the abolition of ring fencing, some local authorities have decided to spend the money on other things. That can happen across the board in local government, as everybody knows. The whole point of abolishing ring fencing was to allow education authorities and others to spend money as they want. However, as far as I am aware, some councils agreed, under the concordat, on this specific measure.

**Elizabeth Smith:** I agree with Mr Macintosh: we deserve costings. I think that 44,000 extra pupils are involved, so it would be helpful to have a figure for the expected cost.

**The Convener:** I was going to raise a similar point to the one that was raised by Mr Macintosh. Mr Gibson is right to say that the committee has considered this issue, and I think that we were unanimous in agreeing that it was correct to extend the right to free school lunches to children whose parents receive particular benefits. However, I recollect that the minister was not able to tell us how many children would benefit.

I am pleased that, in the Executive note that accompanies the regulations, the Government has said that 44,000 children will benefit. However, Mr Macintosh is right to point out that the note puts no figure on the cost of provision. I am not suggesting

for one minute that the money is not included in the concordat, and Mr Gibson may well be right to say that local authorities have chosen to spend the money on something else, but it is right that the Education, Lifelong Learning and Culture Committee should find out exactly how much the policy will cost and how much money has been included in the concordat. That is all we seek; it is not for us to argue about how local government chooses to spend the money. It might therefore be helpful if we were to write to the Cabinet Secretary for Education and Lifelong Learning to seek clarification.

**Christina McKelvie (Central Scotland) (SNP):**

We need to take cognisance of the fact that the committee took lots of evidence from lots of local authorities. Their calculations were wide of the mark in some cases, and there were stark differences between one local authority and another over the cost of school lunches. We need to take that into account in our calculations. We cannot just work out £1.25 times 44,000, because that is not how all councils have done the calculation.

**The Convener:** For that very reason, it might be helpful for the committee to find out the exact figure that the Scottish Government has put on the policy.

**Kenneth Gibson:** I am pretty sure that we saw those figures on an authority-by-authority basis towards the tail end of last year. I recall that some local authorities believed that the money that had been allocated by the Scottish Government was not enough; the committee would hear one figure from the Government and another from the local authority. However, some local authorities took the opposite view, and felt that the cost would be less than had been suggested by the Scottish Government: at least three local authorities said that. That was the disparity that Christina McKelvie has just raised. It is very unusual for local authorities to say that their costs would be less than central Government estimates because—obviously—local authorities always try to get every penny they can. We would probably be going round the houses again in seeking information with which we have already, at least in a number of cases, been provided.

**The Convener:** Before I let Elizabeth Smith respond to that point, let me say that I think that we are getting a little bit confused about our evidence-taking sessions. We had extensive debates about the cost of providing free school meals to all children in primaries 1 to 3. However, the regulations that are before us will not implement the Scottish Government's policy decision to extend—as it was quite within its rights to do—free school meals to all pupils in primaries 1 to 3, but will implement a policy commitment to

extend the provision of free school meals to children whose parents are in receipt of particular levels of working family tax credit. Although we took oral evidence from the minister, we have not taken evidence from local authorities on that. Committee members are simply saying that we would like some costings for the policy.

My clear recollection is that the minister was unable to tell us either how many children would benefit from what is a welcome policy initiative, or what the cost of the initiative would be. The committee is seeking to find that out. We need to be careful not to link two separate, although related, policy issues. I hope that Mr Gibson will take that on board.

**Elizabeth Smith:** The convener has made the point that I was going to make. The issues are different, so it is important that we get a different costing.

**Kenneth Gibson:** Given that both policies are being implemented, surely the overall cost to the Scottish Government in rolling out the policy is more significant than one specific part of it. I would have thought that the overall impact on education authorities would be more significant.

**Elizabeth Smith:** If I may say so, I do not think that that is quite accurate. We took evidence specifically on the extension of free school meals to all children in primaries 1 to 3. That policy intention was delivered by a vote of the Parliament. The regulations that are before us are about extending free school meals to deserving cases beyond that. As the convener has said, that is a principle of agreement among the committee, but there must be a cost to that extension. As far as I am concerned, we simply want clarification of that cost.

**Kenneth Gibson:** I had not realised that some children might not deserve free school meals, but there you go—

**The Convener:** Mr Gibson, you did not indicate that you wished to respond.

I do not want the committee to debate the issue at length. The feeling among committee members is that we should seek additional information, which I think the Government will be more than willing to provide. I do not think that the Government has any wish to deny information to the committee. We are just seeking some clarification, while welcoming the policy initiative. I hope that you will concede that and agree that the committee should write to the Government in those terms.

**Kenneth Gibson:** It is not a question of conceding. I just do not think that it is necessary—because we discussed the matter late last year—to seek further information. If doing so is the will of



the committee, that is fair enough; I will not continue to argue the point.

**The Convener:** In that case, the committee will write to the cabinet secretary to ask for the cost of the extension of free school meals to 44,000 children, many of whom will not be in primaries 1 to 3.

#### **St Mary's Music School (Aided Places) (Scotland) Regulations 2009 (SSI 2009/181)**

#### **Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182)**

#### **Education (Fees and Awards for EC Nationals and UK Returners) (Scotland) Regulations 2009 (SSI 2009/188)**

10:30

**The Convener:** Members have no questions on SSIs 2009/181, 2009/182 and 2009/188 regulations, so we will move on.

#### **Education (Interest on Student Loans) (Scotland) Regulations 2009 (SSI 2009/189)**

**Ken Macintosh:** I am concerned about the comment under the heading "Financial Implications" in the Executive note to SSI 2209/189. It says:

"These regulations have a negligible effect on the Scottish Government"

and so on. I do not know whether we have time, convener—perhaps you can clarify this—to write to the Government about that. I would welcome a bit more information on the regulations, even if a letter comes back only after the regulations are implemented. The ability of Scottish ministers to determine whether student loans bear interest or otherwise has been a matter of some discussion, though not necessarily controversy. I was therefore intrigued that the regulations had been passed. I believe that in implementing, for example, the abolition of the graduate endowment, questions were asked about ministers' ability to make a decision on whether interest should be charged on settlements. However, that situation did not require regulations, although a considerable amount of money was involved. I would welcome further information on who will be affected by the regulations and why regulations are needed in this case rather than simply a ministerial decision, as I think was the case in the past.

**The Convener:** Unfortunately, we do not have any scope to extend our consideration of the regulations. There has been no motion to annul, so the regulations must be considered today. I am

keen to learn whether other committee members would be content to attempt to get clarification from the Cabinet Secretary for Education and Lifelong Learning on the points that Mr Macintosh raised, although that would not alter how anybody would decide to vote on the regulations.

**Margaret Smith (Edinburgh West) (LD):** Just to back up what Ken Macintosh said, there are some questions about the regulations, although we are not necessarily against them. It would be useful to get answers, so I support what Mr Macintosh said.

**The Convener:** Is the committee content that, while not in any way altering our consideration of the amendments in the regulations, we should write in the terms that have been suggested to the cabinet secretary?

**Members indicated agreement.**

**The Convener:** As I said, there have been no motions to annul any of the SSIs that are before us and the Subordinate Legislation Committee determined that it did not need to report any of the instruments to Parliament. If members have no further comments, I will put the question. Are we agreed that that the committee has no recommendations to make on SSIs 2009/178, 2009/181, 2009/182, 2009/188 and 2009/189?

**Members indicated agreement.**

## “1<sup>st</sup> Report 2009 (Session 3): Review of SPCB Supported Bodies Committee”

10:34

**The Convener:** Agenda item 4 is the report on the review of the Scottish Parliamentary Corporate Body supported bodies. Members will recall that the committee submitted a response to the Review of SPCB Supported Bodies Committee's consultation. That committee has now reported, and its report contains a specific recommendation that the Education and Lifelong Learning Committee consider whether there are any overlaps between the work that is undertaken by the Commissioner for Children and Young People in Scotland and the work that is undertaken by children's organisations.

Members will have seen the paper on the issue, which goes into some detail on ways to proceed on the recommendation. One option that is open to the committee is to ask the children's commissioner for his view when he gives evidence on 23 June, and then to remit to the Scottish Government the question to the children's organisations, given the Government's responsibility for funding those organisations and the committee's lack of remit in that area.

I point out, however, that the Scottish Government probably also lacks a remit in that area, as most such organisations receive very little funding from the Scottish Government, so it is entirely up to them on what they choose to spend their money. I would have thought there would inevitably be some overlap in what they do: if the children's commissioner and organisations that seek to represent children's issues truly understand the issues that are important to Scotland's children, they may well be campaigning along similar lines, which is not such a bad thing.

I am keen to hear members' views.

**Margaret Smith:** I am pleased with the Review of SPCB Supported Bodies Committee's decision on the role of the Commissioner for Children and Young People in Scotland. I think that it has made the right decision on that. I am a little bit more unclear about its recommendation that we investigate overlaps between the work of the commissioner and the work of voluntary sector organisations. Like the convener, I think it would be very odd if there were no overlaps that they might want to investigate and comment on in print—the issues that matter to children and young people. Also, the Scottish Parliament has no remit to hold charitable organisations in the voluntary sector to account—they have their own set-ups.

We can certainly ask some questions of the new commissioner at our meeting later in the month, but I do not think we have a remit to question the children's organisations. I, too, doubt whether the Scottish Government will be able to take the issue further. It would probably be better to let stand the decision of the review committee that there would not be much benefit for children and young people in a merging of the children's commissioner with the Scottish Human Rights Commission. I would be happy to let that decision stand and for us to investigate with the commissioner his role when he comes before the committee later this month. I do not think that there would be a great deal to be gained from our trying to—I do not believe that our remit allows us to—exercise control over what independent, voluntary and charitable organisations do in respect of children and young people or any other area.

**Ken Macintosh:** I agree with Margaret Smith. Most of us will be able to agree with the recommendations of the Review of SPCB Supported Bodies Committee, except for the one that seems to suggest that we conduct an inquiry. I would be very worried about holding an inquiry into such an issue, both because of our existing workload and because I do not believe in the necessity for such an inquiry. Nevertheless, I would not wish to take anything away from the recommendations of that committee. Could we satisfy recommendation 21 by asking the new commissioner for his views and by writing to the Executive for clarification of its position? Alternatively, we might lodge a committee amendment when we debate the report in the chamber.

**The Convener:** There is an opportunity for us to lodge an amendment. When a parliamentary committee considers a matter that is in the remit of another committee, it would normally discuss intended recommendations with that committee. That has not happened—if it had, I would have raised the matter.

There are some logistical issues for this committee, not least regarding our commitments and workload, which we have determined for ourselves. We must also decide whether an inquiry is entirely necessary. If the committee is so minded, we could suspend this morning's meeting briefly to give the clerks an opportunity to draft an amendment—which the committee could consider—to the motion to be debated in the chamber. We could make clear our support for the findings of the review committee's report, but point out that the recommendation on an inquiry is not entirely appropriate or necessary.

**Kenneth Gibson:** Paragraph 18 of our paper says that

“any meaningful examination of voluntary sector organisations would probably require a full scale inquiry.”

It then goes on to mention the committee’s commitments. If we were to conduct an inquiry, it would have to be very limited, simply because this is not the main committee to conduct such an inquiry, which would best be carried out by the Local Government and Communities Committee. If that committee carried out an inquiry, we might wish to involve ourselves in some of the evidence taking, but in a very limited way. I certainly do not think that we should even consider being the major committee for such an inquiry—at any point.

**The Convener:** Do members wish to consider lodging an amendment in the committee’s name, or would you prefer simply to note the Review of SPCB Supported Bodies Committee’s recommendations? [*Interruption.*] I have just been told that the motion has not been lodged yet, so we are not in a position to amend it.

**Ken Macintosh:** To be honest, I would be quite happy to leave the matter to your discretion. The views of the committee are fairly clear. I would not wish to amend the motion if it is not necessary. If we could debate and agree whatever is recommended by the RSSB Committee without amending its motion, that would be preferable. Perhaps we could draw that committee’s attention to our discussion, and it might come up with a suitable motion that does not require amendment.

**The Convener:** That is an eminently sensible suggestion. We will have some dialogue with the RSSB Committee, and hope its motion will be something that we can all support. I am sure that that will be the case.

10:43

*Meeting continued in private until 11:43.*



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