

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

Wednesday 16 September 2009

Session 3

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### EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

24<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)  
Hugh O'Donnell (Central Scotland) (LD)  
Cathy Peattie (Falkirk East) (Lab)  
Andrew Welsh (Angus) (SNP)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Val Cox (Scottish Government Children, Young People and Social Care Directorate)  
Adam Ingram (Minister for Children and Early Years)  
Kirsty McGrath (Scottish Government Legal Directorate)  
Shane Rankin (Scottish Government Primary and Community Care Directorate)

#### CLERK TO THE COMMITTEE

Eugene Windsor

#### SENIOR ASSISTANT CLERK

Nick Hawthorne

#### ASSISTANT CLERK

Emma Berry

#### LOCATION

Committee Room 5



## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

*Wednesday 16 September 2009*

[THE CONVENER *opened the meeting at 10:03*]

### Public Services Reform (Scotland) Bill: Stage 1

**The Convener (Karen Whitefield):** Welcome to the 24<sup>th</sup> meeting this year 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. I assure you that I have switched mine off this week. Claire Baker has been delayed on her way to the meeting, because there is a problem with her train, but she intends to join us as soon as she can.

Item 1 is the committee's continued consideration and scrutiny of the Public Services Reform (Scotland) Bill at stage 1. Members will be aware that this committee is a secondary committee. Today we will take evidence from the Minister for Children and Early Years on aspects relating to part 2 of the bill and on social work and joint inspection issues. I welcome the witnesses from the Scottish Government. We have with us the minister, Adam Ingram; Shane Rankin, deputy director, scrutiny bodies project team, health and care; Val Cox, deputy director, positive futures; Kirsty McGrath, an official in the legal directorate; and Colin Miller, head of the public bodies policy team. Thank you for your attendance. I understand that the minister wishes to make an opening statement.

**The Minister for Children and Early Years (Adam Ingram):** Thank you for inviting me to speak to you today. I want to follow up the evidence that you took from officials and stakeholders earlier this month and set out our vision for the impact of the changes that we are proposing in the bill. I would also like to respond to some of the specific points that have been made by the committee and by stakeholders.

I trust that the committee has now received the letter that Colin Miller sent last week answering your questions on the order-making powers in sections 10 and 13. If you have any further questions on that, my officials and I will do our best to answer them today.

The committee was concerned to know how the bill will change the current system of scrutiny of these services and why legislation to create a

single body is necessary. First, when the changes resulting from the bill are implemented, what service users should see is simply a quality service that meets their assessed needs. They should certainly not see any diminution in services. Behind the scenes, the processes that drive that quality should be more effective and streamlined. The new body should be able to focus its scrutiny specifically on the processes that are needed to ensure quality outcomes for service users.

Secondly, how care is being delivered to people is changing. We are moving to deliver more health and social care to people in the community and in their own homes, rather than in care homes or hospitals. The public now expect that style of care and expect it to be provided for as long as is required—right up to the end of life where that is necessary. Services must continually adapt to the changing needs and aspirations of individuals and their families. It is right that the scrutiny of the assessment of need for such services, the planning for services and their delivery should also change to keep pace with these developments.

Our view is that the changes in scrutiny that we want to see cannot be achieved by the bodies with their existing powers and functions. At present, the Scottish Commission for the Regulation of Care and the Social Work Inspection Agency are very different organisations, with different methodologies, standards and programmes of activity.

The care commission carries out around 10,000 individual inspections each year in a rolling programme, which sees it working across all local authorities at any time scrutinising services. Much of its programme of work is driven by minimum inspection frequencies that are set out in legislation. SWIA, on the other hand, scrutinises a local authority's delivery of services, then follows that up at a later date.

Those two programmes and methodologies do not fit together easily. The standards that each body uses in its scrutiny work differ. The bodies co-operate to share views on services when SWIA inspects a local authority, but that is not the same as being able to work as one body inspecting the planning of services through the commissioning right down to the delivery of those services. That will require the major changes that we are proposing.

Neither does the present system allow us to look at the outcomes for services users. We can look at whether the services that are delivered meet the care standards, but we cannot look at whether they meet the needs of the service user.

When the current bodies work together on an inspection, each can inspect only those parts that

it has powers to inspect. Inspectors then come together to discuss their findings and develop a common report. However, that leaves the possibility of gaps—of things not being picked up. At present, SWIA's powers to follow the public pound wherever it goes, including into care commission territory, cause overlap and duplication, which it is not possible for the bodies to eliminate completely at present, because of their current statutory duties.

By creating one body for social care and social work scrutiny, the bill will allow a new model for scrutiny to be developed that can look at the services that are received by an individual, how they are assessed and commissioned and how effective the whole system is at meeting an individual's needs.

The new body will be able to look more widely across a range of services. If an inspection by social care and social work improvement Scotland of care-at-home services that are delivered by different providers in a local authority area reveals significant problems and user dissatisfaction, SCSWIS—I will use the acronym now, although no doubt the name might change—will be able to examine the assessment and commissioning processes in that local authority to see whether some weakness at that level is contributing to the problems. At present, there is a gap in how social work and social care services are scrutinised. The bill's creation of SCSWIS will ensure that we bridge that gap.

I will give an example—the committee was seeking concrete examples last time round. Consider an older person who is resident in a care home. The care commission checks the care home's delivery of services to the older person against the national care standards. SWIA checks the range of social work functions that led to the older person going into the care home in the first place. Currently, SWIA and the care commission co-operate with each other as and when necessary, and such co-operation is helpful, but there are still completely separate scrutiny systems for the two sets of functions that the older person depends on for their safety, wellbeing and quality of life.

The care commission can check the quality of the service that the care home provides to the older person, and it can ascertain whether the services meet their needs, but the care commission cannot check whether the older person should be in the care home in the first place, or whether they would be better off at home with the right help. Those key questions are for SWIA. SWIA can check all the social work actions that decided that the care home was the best place for that older person, but it cannot check the quality of service that the care home delivers—that

key question is for the care commission. SCSWIS bridges the scrutiny gap, because it can answer both those key questions for that older person.

SCSWIS will be able to check the social work route that led the older person to the care home, whether the care home is the right place for the older person, and whether the care home provides a good service to the older person that improves their quality of life. Only one body, SCSWIS, can do all the checks that ensure that our older person gets the right service and that the service meets their needs.

SCSWIS will continue the work of the care commission and SWIA in involving service users in the design and inspection of services. In future, service users who have experience of the spectrum of care and social services—and their joined-upness or lack of it—will now be able to bring their particular experiences into the scrutiny process, helping to ensure that the scrutiny is as joined up as the services themselves should be, and that service users get the experiences and outcomes that they need from those services.

The committee asked for reassurance on the extension of provisions relating to joint inspections. The provisions in the bill will enable joint inspections not just of children's services but of services for older people, for adults with learning disabilities and for people who misuse substances. Those are all areas where service users need to receive services from a number of agencies and where the delivery of those services needs to be joined up.

The joint inspection powers in the bill resolve the legal difficulties that scrutiny and improvement bodies have encountered when carrying out multi-agency inspections of services for vulnerable and other adults, and they will help to drive collaborative working by scrutiny and improvement bodies. That, in turn, will help to drive joint working and integrated service provision by service delivery bodies, and that push towards more joint working reflects the findings of numerous inquiries into critical service failures. Poor communication between agencies has been a major contributory factor to both tragic fatalities and the horrific abuse of vulnerable adults.

10:15

We will be lodging amendments to part 6 of the bill at stage 2 so that, in the future, all bodies, including the scrutiny bodies, will be required to put in place new complaints procedures, as agreed with the Scottish Public Services Ombudsman. That will make it easier for users to understand who to complain to about a service and how to complain. More complaints should be

resolved by the body against which the complaint is made—and resolved more quickly.

SCSWIS will still be able to respond to complaints about registered care services where the care commission does that at present, acknowledging the vulnerability of those who use those services and their frequent reluctance to complain to the provider.

I stress that the aim of the changes is not, primarily, to save money, although we would not expect the new body to cost more to operate than the current bodies. There should be benefits for service providers, too. Those who provide good services will spend less time preparing for inspection and being inspected. Self-assessment and improvement activities will be positive activities, which can contribute to the overall performance management of the services, and they should be viewed positively by staff.

We expect the whole simplification programme to lead to a reduction of costs in the public sector. The implication of that is that there might be a reduction in the overall number of posts in the new body. However, we are committing ourselves to managing that in a sensitive manner. In particular, no compulsory redundancies are required as a result of the changes.

I hope that those comments have been helpful to the committee. We will be happy to answer questions.

**The Convener:** Thank you for that statement. You have tried very hard to reflect the evidence that the committee has heard over recent weeks and to address some of the issues that have arisen. I am sure that the committee will wish to follow up some of those points with you this morning.

I will start with issues to do with integration. I welcome your statements about the need for the new body to ensure a high-quality service. I do not think that the Government would wish to engage in change that would in any way result in a service that is not of a high quality.

The committee has heard evidence on the matter from a number of people, in particular Jackie Roberts of the care commission. She said that there will be a need to guard against all the functions of the existing bodies simply being brought together under one logo in the new body without there being genuine integration of the roles. You have spoken this morning about the fact that the organisations concerned have different methodologies and ways of working, which will make that integration quite difficult to achieve. What steps will be taken to ensure that there is a genuine integration of the work that is done by the agencies that are going to be brought together?

**Adam Ingram:** I described the key objective in my opening remarks. As you rightly say, it is a matter of bringing SWIA and the care commission together and integrating their methodologies and their standards and performance of scrutiny. The focus for that lies in improving outcomes for the service user. For that to happen, we need a whole-systems approach, from the planning of services through to their commissioning and delivery. How that is done will be the main item on the agenda for the professionals and managers of the new organisation. No doubt that will not be determined overnight; it will take some time to achieve. Clearly, there will be a significant rationalisation of senior management in the new body. Hopefully, with focus and with the key objective that has been set out, they can make significant progress quickly.

**The Convener:** One issue that might arise is that, in the process of creating the new organisation that will bring the two bodies together, the focus will be on administration rather than on what people do. What steps does the Government envisage being taken to ensure that, particularly in the early days, the emphasis is on the quality of the service that is delivered? We all have experiences of organisational change in which the focus of activity has been on the change rather than on the delivery of services. I am sure that the new organisation's overall goal will always be to strive constantly to ensure quality, but there is a concern that there might—I emphasise "might"—be a loss of focus, particularly in the first few years. How does the minister envisage that focus will be maintained within the new organisation?

**Adam Ingram:** All the people who are currently engaged in scrutiny activity will still be engaged in that self-same scrutiny. For existing programmes and cycles of inspection, I do not anticipate any disruption at all. Clearly, the creation of new programmes or cycles of inspection will be where the new focus will be brought to bear. The senior managers and professionals within these organisations no doubt face a challenging exercise in setting out on a new regime, but they will have a couple of years or so to prepare for that changeover. I expect that we will be in a position to hit the ground running, as it were. I cannot give a 110 per cent guarantee that everything will work out swimmingly—I imagine that there will be many headaches and much midnight oil being burned—but I have every confidence in the quality of the people who work in the scrutiny system. I am sure that they will rise to the challenge.

**The Convener:** A key issue will be to have a single set of standards—which we currently do not have—for inspection services. Does the Government intend that we will have a single set of standards?

**Adam Ingram:** Clearly, the standards to which the care commission works are different from those to which SWIA operates. The new body will be asked to focus in particular on outcome measures and to put in place standards that will drive matters forward. Obviously, one of the new body's tasks will be to set standards and outcome measures for the delivery of local authority activities such as the commissioning of services. I also anticipate that the new body will be able to provide guidance to local authorities on how to meet the standards and on best practice. We already have a lot of information to hand on that front.

What we are trying to do, I suppose, is to even up the playing field between the care commission's—I was going to say rigid—set of standards and SWIA's more qualitative approach. We are not trying to make the care commission's or SWIA's standards apply to the new organisation. We need to come up with a set of standards that makes sense in the new regime and must try to bring people together on that front.

**The Convener:** That is an important point. It was put to the committee by Annie Gunner Logan that there is a need for consistency in the standards of the new organisation. It makes sense to bring the organisations together, but if there is no consistency—especially on inspection services and the standards that are expected of them—it will be difficult for the organisations to know exactly what quality of services they are expected to deliver. Equally, it will be difficult for the service user to understand what they can expect from those services.

**Adam Ingram:** I agree with that. In the 10 years for which the care commission has been in existence, there has been some movement towards a grading structure. It could be argued that that is a move away from its original remit towards the quality standard outcome measures that we are looking for. Nevertheless, there is still work to be done to get the consistency that you describe.

**The Convener:** Do you expect the new body to be responsible for all complaints? At the moment, it is expected to deal only with complaints relating to care. Some people have argued in the committee that it would make sense for SCSWIS to have responsibility for all complaints. Does the Government have a view on that?

**Adam Ingram:** Yes, we do. We will introduce provisions for complaints handling at stage 2, which will mean new powers for the Scottish Public Services Ombudsman. It is envisaged that the SPSO will become more of a complaints system designer than exclusively a complaints handler. The intention is that more and more complaints will be resolved effectively at the first

point of contact, by service providers, meaning that less recourse to the SPSO will be needed.

The report of the fit-for-purpose complaints system action group, which was established in response to Crerar, recommends that, as a general rule, a complaints handling function should not be embedded within bodies that have an inspection and regulation role. An exception could be made to protect particularly vulnerable service users—for example, those in care homes—when fear of victimisation might otherwise dissuade people from making complaints directly to the service provider. That is why the care commission has its current powers in that regard.

That is the approach that we are taking to complaints handling.

**Christina McKelvie (Central Scotland) (SNP):** I will turn to the code of practice for employers and employees. On 1 September, Geraldine Docherty talked about enforcement of the code of practice on employers. The Scottish Social Services Council can take action against employees if it upholds a complaint about bad practice, but not against employers. Gillian Russell, a Government official, said on 1 September that the Government was seeking to amend section 53 of the Regulation of Care (Scotland) Act 2001 to make that an obligation. Can you give us a wee bit more insight into that and expand on how we would achieve it?

10:30

**Adam Ingram:** Employers are currently obliged to take the code into account, but we want to strengthen that position. The chairperson of the SSSC wrote to me recently about that and related issues, so we have given an undertaking to make the relevant amendments to section 53 of the Regulation of Care (Scotland) Act 2001. I hope that we can make significant progress in that direction.

**Christina McKelvie:** Would the amendments place a duty on the employer?

**Adam Ingram:** We have still to finalise the amendments—they will come before the committee for consideration in due course.

**Kirsty McGrath (Scottish Government Legal Directorate):** We are currently working with parliamentary draftsmen to produce an amendment for stage 2 that will achieve what the Scottish Social Services Council seeks in that regard.

**Christina McKelvie:** One of the provisions in the code of practice concerns training, minimum qualifications and a continuous professional development framework. There are provisions in



both the employer and the employee codes of practice for the employee to engage and for the employer to provide. I have always believed—and we know—that a motivated, confident and competent work force is important in ensuring that social services work well and in giving staff the confidence to make the tough decisions that have to be made. One issue that has arisen in that regard is the need for registration and the fees that apply. In the committee's meeting with stakeholders on 1 September, a question was asked about one public body paying the registration fees of another public body. Is there any focus on streamlining that or on considering a change in funding to make the process much more straightforward?

**Adam Ingram:** I cannot give you a direct answer to that; perhaps Val Cox will discuss it.

**Val Cox (Scottish Government Children, Young People and Social Care Directorate):** Just for clarification, are you referring to concerns about payment of fees for registration of care services with the care commission?

**Christina McKelvie:** Yes.

**Val Cox:** We are aware of the concerns that have been expressed about that by the voluntary and private sector providers in particular. Officials and the Government have examined the issue closely. The reality is that some £13 million of the care commission's funding is currently generated by fees. It would be very problematic in the current economic climate to shift away from that.

I know that there is a view that there is, in effect, a roundabout of public sector money that flows from Government to the local authorities and on to the partner providers with which the local authorities commission services. It is highly doubtful, however, that any real savings could be achieved if we moved away from that position to one in which, for example, the moneys were paid direct to the local authority. We are, for a number of practical reasons, not in a position to move away from the current arrangements.

I am aware that in the past, experts such as Lord Sutherland have taken the view that it is right that the private and voluntary sector fund the costs of their registration for provision of care services. It is clear that the local authorities, which have a statutory duty to provide those services as providers of last resort, are in a slightly different position. There is inevitably a difference because of the different obligations that apply across the different sectors that currently provide the services.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** In your opening remarks, you mentioned that the bill proposes splitting SWIA's inspection and advisory roles. SWIA's director told the

committee that there is an important issue around the availability of evidence that backs up policy decision making. Can you assure us that the changes will not in any way cause difficulties with having good-quality evidence for policy making?

**Adam Ingram:** It is important that we have written into the bill that the chief social work adviser will, of right, be a member of the board of the new body and will have access not just to the range of information that SWIA's current chief social work inspector has, but to the whole body of evidence that will be available to the new body. It can be argued—given their access to additional information and their being at the heart of the new body on the board—that the new chief social work adviser will be in a stronger position, which is important. A strong functional link between the chief social work adviser and the new body is needed. That is written into the bill and is recognised as being important.

**Elizabeth Smith:** That gives confidence at the senior strategic level. Obviously, being part of the board will bring considerable influence. Are you confident that the new structure will work effectively further down the scale, where people will prepare the required policy-making evidence?

**Adam Ingram:** I am confident of that, but I am not averse to considering the matter in more detail. If there are suggestions for strengthening the structure, we could consider them at stage 2.

**Elizabeth Smith:** A key issue in recent inquiries has been gaps in the quality of evidence that is used in policy decision making. It is essential to ensure that there are no such problems as a result of splitting the two roles. The two roles are essential to the improvement of service quality.

**Adam Ingram:** As I said, I am confident that that point has been fully grasped. As Elizabeth Smith rightly says, we need to ensure that the evidence forms the basis of our future policy direction. We all have an interest in ensuring that that happens.

**Aileen Campbell (South of Scotland) (SNP):** The bill proposes continuing the current powers to share information in medical records in joint inspections. In its written evidence, the British Medical Association stated that it has concerns about that with regard to patients' right to confidentiality. It is concerned about issues relating to sharing information without consent. What are your views on sharing health information in inspections? How can the code of practice and arrangements for sharing information address those concerns? In evidence on 1 September, officials said that such concerns could be addressed in the code of practice. What are your views on that? How will they be addressed in the code of practice?

**Adam Ingram:** The evidence from joint inspections of children's services is particularly telling. No problems have emerged with the conduct of joint inspections of children's services. Mr Macintosh and I were members of the Education Committee in the previous session when the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 was passed. The issue was a bone of contention at that time, but it was solved by putting together a code of practice that was agreed with health professionals in particular. Health professionals have raised the same issues this time around.

I foresee either that the current code of practice for children's services will be appropriately amended for joint inspections of adult services or that there will be a fresh look at the code itself. Whatever happens, we need to get people round the table to agree the code of practice that will be used for joint inspections of adult services. I am sure we all agree that, for joint inspections to be effective, we need access to health records, but how to ensure confidentiality while ensuring that the appropriate information can be accessed is obviously a matter for discussion and agreement among the various professional bodies. I am confident that such agreement can be reached.

**Aileen Campbell:** Will alternatives that have been suggested by the BMA, such as seeking patient consent and using anonymised information, be taken into account in developing the code of practice?

**Adam Ingram:** I am sure that such suggestions will feature heavily in discussions. I do not know whether anyone else can provide more insight.

**Shane Rankin (Scottish Government Primary and Community Care Directorate):** Such approaches might limit the information-sharing power and therefore inspectorates' capacity to get what they need from the process. Some element might form part of the code of practice or might be considered in the code's development.

I remind the committee that, at last week's meeting, Alexis Jay suggested that access to information and joint inspection powers have been central in making multi-agency inspections work. As a result, we need to be very careful that we do not dilute the code of practice or limit access to information to the point at which we simply cannot access the information that is central. We need to be careful that we do not make it impossible to get at the required information.

**Claire Baker (Mid Scotland and Fife) (Lab):** I apologise for being late and for missing the minister's opening remarks. As a result, I am not sure whether the issue that I am about to raise has already been touched on.

Her Majesty's Inspectorate of Education suggested that as the new organisation would start its work in the third year of the new round of child protection inspections, transition arrangements would have to be robust in order to deal with difficulties. SWIA also expressed concern that a significant number of its staff might not transfer to the new agency and that we need to ensure that expertise is not lost to the new organisation. Is the minister confident that measures can be introduced to address such matters?

**Adam Ingram:** On the first question, I have already responded to the convener on continuity of inspections. As the people who currently work in HMIE, SWIA or the care commission will also be involved in the new body, any inspection programmes that are in train will be concluded.

I am aware of concerns that have been expressed about retention of expertise, and people are clearly concerned about moving out of the civil service. Although we have to be sensitive to those issues, we will encourage people to settle down in the new body and to consider the new professional and other opportunities that will open up. That said, we will try to make the transition as easy as possible and even allow people to move back into the civil service, if they so choose. Obviously we will have to talk to the staff and the unions about this.

10:45

**Claire Baker:** What is the timescale for your approach to that issue? Are you considering approaching it quite early? The concern is that, if some staff decide to remain in the civil service and not to move to the new organisation, we might need new staff to replace them. If we do, we need to know where will they come from and whether they will have had the right training. Quite a lot of planning will be needed to handle that, which might take up a lot of time, even though we are looking at a two-year timescale.

**Adam Ingram:** Obviously, we are encouraging all staff to think about how they are going to operate in the new organisation. The concern that was expressed to me was less about the professionals who will make up the front-line staff and more to do with the administration side of the organisation. I do not foresee a significant problem with regard to the professionals who are currently operating in the system. I have described the sort of process that we will go through to try to ensure that people are reassured and that their rights, or whatever, are not being adversely impacted, while showing people the big opportunities that are opening up with the advent of the new body. Clearly, we have to be sensitive to issues that

might arise. Talks are on-going with the trade unions, as I said.

**Shane Rankin:** We have been working closely for several months with the 11 trade unions that are involved with the two bodies. There have been direct discussions between the civil service human resources director and the staff and trade unions within SWIA and HMIE to try to address their concerns and to work out whether mechanisms can be put in place to allow staff who do not want to leave the civil service to remain within it.

We want to develop by early in 2010 a clear sense of how the new bodies will operate, so that we can show the staff where the opportunities are, where the interesting work is and where their contribution can have the best effect. That work is going on in a collaborative way with the trade unions and with the management and staff in the organisations.

**Kenneth Gibson (Cunninghame North) (SNP):** Table 15 in the financial memorandum outlines a number of costs and savings that are expected as a result of the process, including savings of around £400,000 in relation to senior staff costs and £1.6 million to £1.8 million in relation to streamlining of services. What actions will be taken to deliver that streamlining?

**Adam Ingram:** There will be a rationalisation of senior management, as Kenneth Gibson pointed out. I would expect a loss of senior management posts, given that we are dealing with three organisations that each have senior management posts. There will also be a rationalisation of back-office functions, such as information technology departments, financial support and so on, which will create a lot of savings.

I suggest that our current estimate of the savings is quite modest. I hope that we might be able to increase that over time, but the new body will have to work through the initial part of that before it is up and running.

**Kenneth Gibson:** Will those efficiencies mostly be delivered through natural wastage, or will there be compulsory redundancies?

**Adam Ingram:** We have given an absolute commitment that there will be no compulsory redundancies. We hope that the matter will be managed through the process that you suggest—natural wastage—and the like.

**Kenneth Gibson:** Do you believe that there will be no impact on the front line?

**Adam Ingram:** That is correct. As other members said, we need to ensure that there is continuity of service provision and the scrutiny function. We will do everything that will be necessary to ensure that normal working is maintained.

**Kenneth Gibson:** I take it that all of the £5.56 million cost will fall in the period 2010-14, as will the initial estimated savings of £6.2 million. After that period, will there be on-going savings relative to how much is spent at present? What do you estimate those savings to be?

**Adam Ingram:** We anticipate on-going savings from the rationalisation process. I ask Mr Rankin to detail those.

**Shane Rankin:** The £2 million that was mentioned in earlier that is expected to continue.

**Adam Ingram:** So you are looking to make continuing savings of about £1.6 million to £1.8 million a year after 2014, relative to the current position. Thank you.

**Ken Macintosh (Eastwood) (Lab):** One of the greatest concerns that has been voiced is about the powers that are taken in part 2 of the bill to change public sector bodies. The fact that they are such wide-ranging powers has alarmed many people across the public sector. Why do you feel that there is a pressing need to take such extensive powers?

**Adam Ingram:** Scotland's Commissioner for Children and Young People suggested that he was not entirely happy that his organisation appears on the list of public sector bodies to which you refer. It is for Parliament to make a judgment on the matter. I understand that, if the Parliament believes that such bodies should not be on the list, Mr Swinney will seriously reconsider the position at stage 2. They are on the list because they are public bodies; essentially, all public bodies are on the list, as are the Scottish ministers. It is an inclusive list, but there is considerable scope to adjust that.

**Ken Macintosh:** I welcome that comment. However, before I move on to the children's commissioner, I go back to the reason why the powers are included in the bill. Regardless of who is on the list, why do you feel it necessary to take sweeping powers to modify the functions of the public bodies or even to abolish them? Those are radical, drastic changes. Can you give me some examples of changes that need to be made to public bodies and explain why you feel the need to take powers to make those changes?

**Adam Ingram:** I do not envisage any immediate, radical changes, but you will recall that we had to use primary legislation in the previous session to bring forward our proposals for joint and multi-agency inspections of children's services. It would have been much easier if Peter Peacock had been able to make that happen by order—no doubt he would have been delighted with that. It is that kind of thing that we would be looking to achieve through the assumption of those powers.

I point out that the powers are subject to parliamentary scrutiny. Mr Macintosh will remember the phrase “super-affirmative procedure” from our days on the Subordinate Legislation Committee. The super-affirmative process is the kind of process that ministers would need to follow when introducing such statutory instruments to the Parliament, so there would be full scrutiny of any initiative that we proposed.

**Ken Macintosh:** Obviously, I am familiar with the super-affirmative procedure and other subordinate legislation procedures, but the trouble is that they are order-making procedures that can be ignored. They may provide the full range of parliamentary scrutiny for an executive order, but that is all that would be scrutinised. Ultimately, the Parliament does not have the power to amend them. There is a huge shift in balance from a change that requires primary legislation and a change that does not and can instead be made through an executive order.

If I may say so, I am entirely unassured by the comment that Peter Peacock would have been delighted if he had had order-making powers to instigate change. No offence to Peter Peacock, but bodies are set up in statute and need statute to change them because they are of importance to public wellbeing. If the list of changes that you wish to make to those public sector bodies are, according to the explanatory notes, low-profile improvements, why is there a need for such radical change? What is proposed is a fundamental change to a huge number of public sector bodies that seems to be entirely out of proportion. If only modest reforms are needed, why do we need such radical legislation?

**Adam Ingram:** It is precisely because any such low-order changes would currently require primary legislation, which would be disproportionate in relation to the particular problems that we are trying to solve. Clearly, if there were major issues for which the use of primary legislation would be deemed more appropriate, such as the abolition of a particular organisation, we would go down that particular line. However, when we are dealing with adjustments such as allowing multi-agency and joint inspections, it is appropriate that ministers can make such adjustments through the subordinate legislation process.

**Ken Macintosh:** There is a problem. You said that, if ministers deem it more appropriate, you will use primary legislation to make radical changes. However, the trouble is that that will happen only “if ministers deem it”. The convenience of ministers is not what the Parliament is about, nor was it why the bodies concerned were set up in the way that they were. The bill would remove a lot of protection from some of those bodies.

You gave the example of the joint inspection process, minister, but it included the sharing of medical records and medical confidentiality. That is an extremely important and sensitive issue that requires full parliamentary scrutiny. I will be honest with you: I would not describe it as the whim of ministers, but I do not think that such an issue should be at the decision of ministers.

I appreciate that we need to strike a balance, but I do not feel any pressing need for lots of changes: if they are low-profile and modest changes they can wait because they are not that important, and if they are radical they require parliamentary change. However, if there is a pressing need for the proposed changes and if they are so important, why did you not consult on the measures? As far as I can see, this is the only part of the bill that you did not even consult on. Why not go out and ask people what they think? The people who have picked up the issue—for example, the Association of Scotland’s Colleges, the Royal Society of Edinburgh and Children 1<sup>st</sup>—have all objected in strong terms.

11:00

**Adam Ingram:** I reiterate that the whole process is a parliamentary process. Nothing can be done without full consultation, parliamentary scrutiny and Parliament’s approval by affirmative resolution. The order-making powers in section 10 are subject to stringent statutory safeguards.

Any proposals must be proportionate to the policy objective; they cannot remove any necessary protections in existing legislation. Any modified functions must be broadly consistent with the general objectives or purpose of the body in operation. I really do not recognise the draconian nature of the powers at which you hint, Mr Macintosh.

**Ken Macintosh:** I am sorry, but I find this slightly ironic given that, when the minister and I were both on the Subordinate Legislation Committee in the previous session of Parliament, he argued for reform of the subordinate legislation process and said that the then Executive should come under greater scrutiny by the Parliament. It is therefore interesting to hear his suggestion about the way forward for Executive control.

The minister said that changes would have to be consulted on. The point about subordinate legislation is that it should be but does not have to be consulted on—such specifications can be ignored. I do not want to bring this up again, but the children’s hearings instrument that we discussed just last week was not consulted on. There is a balance to be struck between primary and secondary legislation. The protections that

supposedly exist for secondary legislation are not as strong as for primary legislation.

The children's commissioner is a good example. As I recall, the minister voted to establish the commissioner. When we passed the Commissioner for Children and Young People (Scotland) Bill, why did the minister not argue to include a provision to allow the Government of the day, at some future point, to change how the commissioner operated if it felt that that was in the best interests of the country, for efficiency reasons? I am pretty sure that most members would have rejected such a measure.

**Adam Ingram:** The children's commissioner is in the bill because it is a public body and all public bodies are included in the list. However, you have made a strong argument as to why the children's commissioner's office should not be subject to this legislation. I therefore expect that an amendment to that effect would be seriously considered by Mr Swinney.

I want to reassure members about the order-making powers. Before we can bring forward proposals, they must be consulted on widely. Ministers are required to lay an explanatory document before the Parliament to give reasons for the proposals and explain how the statutory preconditions are met and how the provisions would improve the exercise of public functions. As Mr Macintosh is well aware, the Parliament is not exactly slow to tell us when we are getting things wrong or to point out our responsibilities. I am confident that the Parliament would ensure that the order-making powers were approved in appropriate circumstances.

**Ken Macintosh:** I, too, have confidence in the Parliament, and I accept entirely that, no matter which party is in power, the Executive of the day still has to command the support of Parliament. However, it is all about balance, and the point about these powers is that they tip the balance in the direction of the Executive's decision making as opposed to parliamentary accountability and scrutiny—otherwise, why are you introducing them? They are about the convenience and, as Mr Baillie called it, the expediency of ministers. These are difficult issues to weigh up, but I note the minister's argument.

I have questions on another area if that is okay, convener.

**The Convener:** Carry on. You are the last questioner.

**Ken Macintosh:** I have a specific question that half picks up on a point that was made earlier about the need for a level playing field and consistency. The minister may be aware of concerns that have been raised about the local government commissioning process for care services, particularly the weight that contract

compliance is felt to have been given in the new tendering process. Community Care Providers Scotland has suggested that, if the minister were to use the bill to place a duty on local authorities to take SCSWIS reports into account, that might redress the balance. Is he minded to do that?

**Adam Ingram:** Not directly, although I recognise that there is an issue with local authorities' need to ensure contract compliance and the level of inspection activity. I would not necessarily go down the line of the solution that Community Care Providers Scotland proposed, but we need to think about the issue and I would like to be able to square that circle. We should return to that and discuss it.

**Shane Rankin:** We have been exploring the issue with Community Care Providers Scotland and trying to find a way to achieve what is intended by the proposition. The lawyers are exploring that to determine whether we can achieve what the Government and Community Care Providers Scotland think is required. It is likely that an amendment will be lodged at stage 2.

**Ken Macintosh:** That is good to hear.

The minister will be aware that, although we are introducing one inspection process for all, wardens in retirement complexes—who are employed by the private sector—will not be inspected and are not accountable to the care commission, any housing bodies or any other body. It is one gap that has developed.

The market is expanding, and there is a great demand for retirement homes. Is the minister minded to extend SCSWIS's role to cover the services that wardens in retirement complexes provide? Although it is a limited range of services, the wardens have a close relationship with a group of independent but nevertheless vulnerable older people. There are many examples in which that relationship has been exploited. Many people feel that there has been, at least, bullying in the relationship over the years. Is the minister minded to consider that?

**Adam Ingram:** Given that you have raised the matter with me, Mr Macintosh, I certainly shall consider it. It will be on my to-do list.

**Ken Macintosh:** I am happy to find more information if that is helpful.

**Adam Ingram:** Yes, that would be helpful.

**The Convener:** That concludes questions to you today, minister. I thank you for attending the committee.

The meeting will be suspended for a short comfort break.

11:09

*Meeting suspended.*

11:17

*On resuming—*

## Petition

### Autism Spectrum Disorder (PE1213)

**The Convener:** Item 2 is the committee's continued consideration of petition PE1213. The petition has been brought back on our agenda following a response from the minister to the committee's letter and following the conclusion of our consideration of the Education (Additional Support for Learning) (Scotland) Bill. In advance of today's meeting, members will have received a paper from the clerks recommending that the petition now be closed—they try that all the time, but whether they are allowed to do that is another matter. Do members have any comments?

**Ken Macintosh:** If I may say so, the minister's response provides a very full and helpful reminder of the changes that we have passed through the original ASL bill and the recent ASL reform bill. However, I want to make two points about the response.

The petition has two parts. First, it refers to the "diagnosis and appeals procedures", which the minister's response partially covers—I might come back to that. Secondly, it urges the Government to consider

"whether all the support that is necessary within the education system is in place to support children diagnosed with ASD",

but the minister's response does not refer to that at all. As I have mentioned on previous occasions—including just recently when we discussed our work programme—my worry is that current budgetary pressures are resulting in schools cutting ASL. With schools losing classroom support, special needs auxiliaries and classroom assistants, many children who decided to enter a mainstream school because they would receive such support are now finding difficulties. They are struggling because support is not available.

I am conscious that the committee has spent a lot of time on the issue, but I do not think that the minister's response addresses it and I find it difficult to access the information. For example, it is difficult to get a grasp of how much of the financial support that we have directed through budgets is available in the classroom. It is difficult to know how much of the additional money—including the £10 million for ASL in the Scottish National Party's manifesto and, I think, in the original budget—has gone through to teachers and classroom assistants. At the very least, I would like to hear the minister's thoughts on the support that is available in the classroom, as

opposed to the legal processes and the rights that children have been given.

The second issue is more immediate. Since the minister's letter—or perhaps while he was writing it—the process of amending the equivalent legislation in England and Wales has begun and an appeals process for children with special needs is being introduced. Such children will be able to appeal directly to the special educational needs and disability tribunal in England and Wales. We did not think about such a provision when we considered the recent ASL bill, but the minister might wish to give some consideration to that matter.

On both those points, we should at the very least write back to the minister. We should keep the petition open until we have an answer.

**Margaret Smith (Edinburgh West) (LD):** On Ken Macintosh's first point, my thoughts are basically the same. I agree that the minister's response is very good on the different aspects of what has been done, but he does not give much detail on the actual levels of support and on what is happening across the country. I might feel slightly different about the issue if local government funding was heading into a boom period, but I suspect that we are heading into a time when council funding will be significantly stretched. It would be good for us to have at least a greater understanding of what the support levels are currently. We could also get the minister's thoughts on what safeguards might be put in place to ensure that councils protect such services, given that we are hearing from around the country that councils do not always do so. I feel that that aspect is not given as much weight as the other issues in the minister's response. I consider the minister's letter to be a good response because it provides a lot of good information, but we should take up the point about the levels of support that are currently available and that might be available when councils and the Government confront the difficulties that they are about to face.

**Elizabeth Smith:** I think that a slight issue behind the petition is how schools deal with additional support for learning as opposed to some of the behavioural difficulties that might result from the need for such support. I understand that that is one reason why the petition was lodged in the first place. There is a concern about the procedures by which such matters are dealt with. I understand that, in some councils, decisions about the educational provision are taken by different people from the ones who take decisions about exclusion or discipline policy. I would welcome a chance to ask the minister about that. This is a very complex and difficult area, but I think that that issue probably lies behind the petition. From what I understand, this is quite a complex case.

**The Convener:** I thought that the minister provided a detailed response, which was welcome. It was obvious that he had reflected on much that is in the petition. Like other members, I am not sure that we should close the petition at this stage, not least because the committee will conduct an inquiry into the funding of education and children's services through local authorities. We might want to keep the petition open until we have completed that work, because there might be issues that we will follow up as part of the inquiry.

There are wider issues to do with autism. The Autism Bill is going through Westminster. England, Wales and Northern Ireland have autism strategies, but we do not have such a strategy in Scotland. I am not saying that we definitely need a strategy, but we need to explore the reasons for the slightly different approach in Scotland and consider whether there is scope for improvement. Given that there is a little flexibility in our timetable, do members think that it would be worth having a brief one-off meeting to take evidence on general issues to do with autism, at the end of which we would get the minister in to answer questions? That would tie in with the petition.

**Christina McKelvie:** We all come across constituency cases that cause concern. It would be a good idea to explore some of the issues. We should invite representatives from a couple of local authorities to the evidence-taking meeting, so that we can ask how front-line services are being delivered. I represent a region, so I have the benefit of being able to interact with several local authorities and to identify differences in service delivery—there is a bit of a patchwork. It would be good to pin down some of the issues at local authority level.

**The Convener:** It is vital that we hear from local authorities, because they are at the front line and they must make tough decisions that impact on the people whom we represent. We should hear from all stakeholders. If we are so minded, the clerks can come back to us on that. We can advise the petitioner of the committee's deliberations today.

## Subordinate Legislation

### Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290)

11:27

**The Convener:** Members will recall that, at our meeting on 1 September, the committee took evidence on the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210) and agreed to make no recommendation.

No motion to annul the Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290) has been lodged. If members have no comments on the amendment regulations, do we agree to make no recommendation to the Parliament?

**Members indicated agreement.**

### Decision on Taking Business in Private

11:29

**The Convener:** Does the committee agree to take a discussion on our approach to the budget process in private at our next meeting?

**Members indicated agreement.**

**The Convener:** Thank you. I remind members that our next meeting will take place on Wednesday 23 September at 10 am.

*Meeting closed at 11:29.*





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