

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 7 October 2009

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

27th 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:

Keith Brown (Minister for Schools and Skills)
David Roy (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 7 October 2009

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

Subordinate Legislation

Teaching Council (Scotland) Act 1965 Modification Order 2009 (draft)

The Convener (Karen Whitefield): Good morning. I open the 27th meeting of the Education, Lifelong Learning and Culture Committee in 2009 and give Kenny Gibson's apologies. He is unable to join the committee today.

Item 1 on the agenda is consideration of the draft Teaching Council (Scotland) Act 1965 Modification Order 2009. We will take evidence on this Scottish statutory instrument. It is my pleasure to welcome Scottish Government officials and the Minister for Schools and Skills, Keith Brown. It is the minister's first visit to the committee. I am sure that it will be the first of many, although it has taken us some time to get the minister here. I am not sure why that has been the case. Mr Brown is joined by David Roy, who is the policy officer in the teacher development team in the schools directorate and Neel Mojee, who is the principal legal officer in the children, education, enterprise and pensions division. I ask the minister to make opening comments.

The Minister for Schools and Skills (Keith Brown): Thank you for the welcome, convener.

As you say, this is my first time at the committee—I have been waiting for an invitation—and I look forward to discussing today's instrument and future issues with you.

The draft order will repeal sections of the Teaching Council (Scotland) Act 1965 that the Office of the Scottish Charity Regulator considers could prevent the General Teaching Council for Scotland from continuing to qualify to be registered as a charity. The order, if it is approved, will have no impact on the way in which the GTCS operates, as the powers that will be repealed have never been used.

The GTCS is a registered charity, with its constitution set out in the Teaching Council (Scotland) Act 1965. In 2006 OSCR issued a direction, which GTCS appealed, indicating that it considered that certain sections of the 1965 act breach charity law on the basis that the GTCS's

constitution expressly permits Scottish ministers to direct or otherwise control its activities. Section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005 prohibits the constitution of a charity to permit Scottish ministers to exercise such control.

The order therefore uses the power in section 102 of the Charities and Trustee Investment (Scotland) Act 2005 to repeal the sections of the 1965 act that OSCR has identified as being in breach of charity law. As the GTCS is becoming an independent body, the Scottish Government had originally intended to make the changes by using the order-making power in part 2 of the Public Services Reform (Scotland) Bill. The order therefore brings forward the changes. It is worth noting that there is precedence for using section 102 in this way. Parliament has already agreed to previous orders made under section 102; for example in 2008 an order removed the ministerial powers of control over the post-1992 universities, allowing them to retain charity status.

I believe that this is a positive solution to a problem that has been on-going for a number of years. Both the GTCS and OSCR are content that the issues relating to the GTCS's charity status are addressed in the order. The order allows for the continuation of charity status, while the problematic sections of the 1965 act will be repealed and an expensive appeals process thereby avoided.

The Convener: Thank you for those comments, minister. Do members have any questions?

Ken Macintosh (Eastwood) (Lab): I thank the minister for his comments. I do not imagine that there will be any opposition to the order—I can certainly tell the minister that we support ensuring that the charitable status of the GTCS is maintained. I noted your comments about the Government's desire to bring forward a measure to make the GTCS independent. When will that happen? I was surprised to see the order, because I knew that the Government was considering legislation. Will legislation be required to make the GTCS independent? If so, when will it be forthcoming?

Keith Brown: According to the current timetable, we will probably introduce proposals towards the end of next year—perhaps in October or November 2010—for the GTCS to become fully independent. We have just consulted all the interested parties in the GTCS and there seems to be unanimous support for the principle of independence, although there are different ideas about its constitution and membership. We hope to achieve the change by the end of next year.

Ken Macintosh: Right. I take it that it was felt that what the order proposes could not wait for another year.

Keith Brown: It was for the reasons that I mentioned—OSCR has said that it wants to bring the matter to a head, having previously said that it wanted to allow some time for something to be worked out. OSCR has no power not to take action on such matters and the order seems to be the best way to avoid an expensive appeals process and the possibility of the GTCS losing its charitable status in the meantime.

Ken Macintosh: For clarification—although it is slightly tangential—will primary legislation be required to make the GTCS independent?

David Roy (Scottish Government Schools Directorate): No. We intend to use the section 102 powers in the Public Service Reform (Scotland) Bill.

Ken Macintosh: If it is passed.

David Roy: Yes.

The Convener: As there are no further questions from members, we move to the second item on our agenda. I invite the minister to move motion S3M-4959.

Motion moved,

That the Education, Lifelong Learning and Culture Committee recommends that the draft Teaching Council (Scotland) Act 1965 Modification Order 2009 be approved.—[*Keith Brown.*]

The Convener: We have up to 90 minutes to debate the motion, although there might be no need since questions to the minister were pretty brief. The proposed order seems to be self-explanatory.

No member wishes to speak. Minister, do you have anything further to add?

Keith Brown: No. I thank the committee for its time.

The Convener: In that case, the question is that motion S3M-4959, in the name of the minister, be agreed to.

Motion agreed to.

The Convener: I thank the minister for his attendance at committee.

10:07

Meeting continued in private until 11:42.

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