

# **ENTERPRISE AND LIFELONG LEARNING COMMITTEE**

Monday 12 June 2000  
*(Morning)*

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## **ENTERPRISE AND LIFELONG LEARNING COMMITTEE** **15<sup>th</sup> Meeting 2000, Session 1**

### **CONVENER**

\*Mr John Swinney (North Tayside) (SNP)

### **DEPUTY CONVENER**

\*Miss Annabel Goldie (West of Scotland) (Con)

### **COMMITTEE MEMBERS**

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

\*Nick Johnston (Mid Scotland and Fife) (Con)

\*Marilyn Livingstone (Kirkcaldy) (Lab)

George Lyon (Argyll and Bute) (LD)

Ms Margo MacDonald (Lothians) (SNP)

\*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

\*Dr Elaine Murray (Dumfries) (Lab)

\*Elaine Thomson (Aberdeen North) (Lab)

\*Allan Wilson (Cunninghame North) (Lab)

\*attended

### **THE FOLLOWING MEMBER ALSO ATTENDED:**

Nicol Stephen (Deputy Minister for Enterprise and Lifelong Learning)

### **CLERK TEAM LEADER**

Simon Watkins

### **SENIOR ASSISTANT CLERK**

David McLaren

### **LOCATION**

Committee Room 1



# Scottish Parliament

## Enterprise and Lifelong Learning Committee

Monday 12 June 2000

(Morning)

[THE CONVENER opened the meeting at 10:00]

### Education and Training (Scotland) Bill: Stage 2

**The Convener (Mr John Swinney):** Good morning. I call to order the 15<sup>th</sup> meeting this year of the Enterprise and Lifelong Learning Committee. The agenda, which was issued last week, contains one item: stage 2 consideration of the Education and Training (Scotland) Bill. I welcome the Deputy Minister for Enterprise and Lifelong Learning to the committee.

I will make several points before we start. Eight amendments were received before the deadline for the submission of amendments. Several of those were lodged by the Executive; they will be introduced by the minister during the meeting. I want to check that we are all armed with the same information. Members should have the groupings of amendments for stage 2; the marshalled list of amendments, which orders the amendments according to the sections to which they refer; and copies of three letters, dated 6 June, about the bill, which were sent to me by the minister. The letter that is most relevant to the meeting gives the revised illustrative regulations, which were issued by the minister on 6 June and which contain some amendments that are based on our stage 1 discussions.

The committee previously agreed that it would consider the sections of the bill in numerical order from 1 to 4 and then consider the long title of the bill. The purpose of the groupings sheet is to demonstrate how the amendments will be debated. We will debate them in the groupings that are set out. We will have one debate on amendments 1, 3, 4 and 5, but we will vote on them at different points in the meeting.

I will call the mover of the first amendment in each grouping to open the debate. I will then call others and, for amendments that are not in the minister's name, I will call the minister to speak before I invite the mover to close the debate. If amendments are pushed to a vote, we will have a division, which we can do by a show of hands or a roll-call, if that is requested by members. We will agree each section as we go along. Unless

members wish to raise any points before we begin, we will move to the first grouping of amendments.

#### Section 1—Education and training: grants

**The Convener:** I call amendment 1, which has been grouped with amendments 3, 4, and 5, in the name of Henry McLeish. I invite the minister to move amendment 1.

**The Deputy Minister for Enterprise and Lifelong Learning (Nicol Stephen):** I will deal with amendments 1 and 3 first, as their wording is almost identical, although they refer to different lines of section 1. As members will know, the Learning and Skills Bill has now passed its committee stage in Westminster. As additional clauses have been added to that bill, the relevant clause referring to individual learning accounts is now clause 100 and not clause 96, as had been shown previously. In addition, clause 100 now devolves to Scottish ministers the power to make regulations in relation to qualifying accounts, in line with the Scottish Parliament's earlier agreement to seek such powers. Accordingly, we wish to amend the two references in our bill to that clause of the Learning and Skills Bill to ensure that they refer to the latest version.

Amendment 4 ensures that any section references in the bill to what will become the Learning and Skills Act 2000 can be updated through regulations. Clearly, the Westminster bill could continue to change and have clauses added to it. This is a simple technical amendment to ensure that, if the numbering sequence of the Learning and Skills Bill changes before it is enacted, the Executive will not have to introduce primary legislation to keep the references in the bill up to date and accurate. We understand that further clauses may yet be added to the Learning and Skills Bill, so action on the amendment may be required.

Amendment 5 is consequent to amendment 4, which allows for regulations for the renumbering in the bill of references to the Learning and Skills Bill. Amendment 5 makes it clear that the discretion of ministers in relation to other aspects of the bill does not extend to amended section 1(6). The regulations that are provided for in amendment 4 are for the sole purpose of renumbering. It would not be appropriate for such regulations to be liable to the provisions that are set out in section 3(2), and amendment 5 is a technical amendment to ensure that that is not the case.

I move amendment 1.

*Amendment 1 agreed to.*

**The Convener:** I now call the minister to move amendment 2.

**Nicol Stephen:** Section 1(1) enables Scottish

ministers to make regulations to pay grants, such as incentives or discounts, to individual learning account holders for eligible learning. As it stands, the bill sets out that, in this context, ILA holders can be defined either by being party to qualifying arrangements under the bill or by holding a qualifying account under section 100 of what will become the Learning and Skills Act 2000—as I said, the regulation-making powers under that section will be devolved to Scottish ministers. That means that people would be eligible if they joined the ILA membership scheme, under the qualifying arrangements, which is the model under which the full ILA system will be introduced this year, or if they opened a financial account that was linked to an ILA—a qualifying account—which may become an option in the future, although it is not intended to be one at the launch of the scheme.

The Executive is proposing amendment 2 to increase the flexibility of the provisions that I have outlined, instead of allowing for an either/or situation. We believe that it would be desirable to have the optional powers to specify in regulations that anyone holding an ILA-linked financial account must also be part of the membership scheme to access grants. Therefore ministers would have powers to make regulations affecting individuals who were involved through the qualifying arrangements and individuals who were involved through qualifying accounts under section 100.

We do not yet know how any future scheme might operate, but it seems sensible to allow for such an option. A benefit of the amendment is that it will enable the Executive to define the core component for holding an ILA as being via the membership scheme. In using such powers, we would ensure that we were still providing open and accessible routes into individual learning accounts for everyone. I invite members to support the amendment.

I move amendment 2.

*Amendment 2 agreed to.*

*Amendment 3 moved—[Nicol Stephen]—and agreed to.*

**The Convener:** I call Fergus Ewing to move amendment 6, in the grouping on allowances for travel and accommodation.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Amendment 6 would add an extra subsection to section 1, which would state:

“Regulations under this section shall include provision for allowances for travel and accommodation costs incurred by individuals in connection with their education and training.”

The amendment seeks to incorporate in the bill a principle that I hope we can all support, given that the committee raised it and heard it in

evidence. The principle is contained in paragraph 18 of our report on the Education and Training (Scotland) Bill, which says:

“Those who live in remote areas may incur additional travel costs in accessing training.”

I think that, no matter what party we support, we accept that no one should be discriminated against or be prevented from benefiting from individual learning accounts by virtue of the fact that they live in a remote location, far away from the nearest appropriate place of learning. In my constituency—which is, incidentally, five times the size of greater London, which struggles on with about 90 MPs—many people live great distances from the nearest place of learning and, in any case, there are few places of learning. People who live in places such as Inverie, Rum or Eigg would have to take a ferry to participate in learning, unless of course they can do so online, which may be possible in some cases. The cost of travel is surely an important facet of their ability to participate in learning. I am sure that members of all parties will recognise that. Dr Elaine Murray and George Lyon, too, represent rural constituencies. I believe that at stage 1 all members accepted the principle behind the amendment. The pertinent question today is whether that principle should be addressed in the bill or whether it should be dealt with later through subordinate legislation.

I have four arguments to show why the principle should be addressed on the face of the bill. First, bills should set out principles and statutory instruments should implement the details of those principles—if we believe that a principle is correct, that is what legislation is for.

Secondly, if we incorporate the principle, it would be a specific embodiment of the fact that we are acknowledging the distinctive needs of Scotland—I know that, under the devolution settlement, that is what we want to do. Surely the distinctive needs of Scotland must recognise that most of Scotland is rural, albeit that only a minority of people live in rural Scotland.

10:15

Thirdly, Parliament has only a limited ability to influence matters at secondary legislation stage. That would be especially so if the super-affirmative procedure were not adopted, which, as I understand from the Executive's letter, is a matter for the Procedures Committee. That indicates that we may have only a very limited opportunity to consider this important matter in secondary legislation because, under the existing procedure, there is only limited opportunity to debate statutory instruments, never mind to amend them.

Fourthly, if the issue is left to subordinate legislation, that raises the question of the budget

line from which extra costs would be met. For example, would the travel costs be met from the enterprise budget or from the local authority budgets? If we assume that the extra costs are to come from the enterprise budget, it is clear that those enterprise companies located in predominantly rural areas are likely to have a far greater need for resources than those in Glasgow or Edinburgh, for example. Therefore, it seems logical that enterprise companies should have made sufficient allowance for the extra travel costs at an early stage. I hope that the minister will agree that it is sensible to include the principle in the bill in order for that to happen.

The amendment is right in principle. It acknowledges the distinctive needs of my constituents and those of many other members of all parties. It acknowledges that there is limited opportunity to review matters at a later stage, through secondary legislation. Finally, it acknowledges the need to make appropriate provision for the extra costs, from whatever budget those costs are to be met. I hope that the Executive and the committee will support my amendment.

I move amendment 6.

**The Convener:** Before I invite the minister to respond, I will open the debate to comments from other members.

**Dr Elaine Murray (Dumfries) (Lab):** Obviously, training travel costs are of concern to those of us who represent rural areas, although people in urban areas may also have costs, such as those associated with child care. I would be interested in the minister's views on the amendment, particularly whether he thinks that the matter is best dealt with through the individual learning accounts or whether there might be another mechanism to allow people to apply for help with such costs, perhaps through the local enterprise company.

**Miss Annabel Goldie (West of Scotland) (Con):** I would be grateful if Mr Ewing could clarify the practical effect of the amendment. I fully understand why he has lodged the amendment and his particular concern for remote and rural areas. However, the amendment does not seem to discriminate; it might lay a mandatory obligation on the Executive to provide funding for any recipient of an ILA who thinks that they have travel or accommodation costs that should be entertained. I would like to establish whether my understanding of that is correct.

**The Convener:** We are currently in a more formal mode of debate. Please finish your comments, Miss Goldie. Fergus Ewing will have an opportunity to make some closing remarks on the amendment.

**Miss Goldie:** That was my principal concern. I am anxious to ensure that the essence of ILAs should not be impeded; there is a possibility that the practical application of the scheme might be impaired in meeting such costs.

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** I, too, have some concerns. It is not just people in rural areas who might experience some sort of barrier in relation to child care or transport. I am not sure whether that can be addressed by the amendment. There is an argument that the whole point of the bill is to encourage partnership and sharing of responsibility across the board. I would hope that employers could address some of these issues. We have expressed concern about the participation of employers and whether we would be offsetting some costs to their training budgets. Given that the employee is undertaking education in their own time, the employer might consider helping out with transport or child care costs. I would like to encourage that.

We need to be wary of the slightly old-fashioned presumption that people should go to colleges. A learning centre in a rural area would surely offer greater participation for a wider group of people than would giving lots of money to individuals for bus fares and so on.

**Allan Wilson (Cunninghame North) (Lab):** I share the concerns of Annabel and Duncan, although in different measure. Fergus Ewing referred to colleagues' constituencies—those of Elaine Murray and George Lyon. However, in Cunninghame North, there are couple of island communities, Arran and Cumbrae, which would experience such problems. I do not think that we would resolve the problems of access and so on through additional allowances. In Arran, we have sought to bring education to the island rather than to bring islanders to traditional points of further education delivery. That approach is working well and therein lies the solution.

I also share Annabel's concern that the amendment does not seek to distinguish between people in remote locations and those who live in urban centres but who would still incur travel expenses and, in certain circumstances, accommodation expenses. Dare I say that the circumstances in urban locations may sometimes merit greater assistance than would always be the case for those in rural locations? There is a contradiction there.

Like Duncan McNeil, I do not believe that this is simply an issue for the Government and the Executive to resolve. We want individual learning accounts to boost the opportunity for people to partake of lifelong learning. That is not the responsibility of the Government only, but of the individuals, their employers and others.

**Nick Johnston (Mid Scotland and Fife) (Con):**

I welcome the amendment and the fact that Mr Ewing is introducing the principle into the bill. It is germane that we address travel and accommodation allowances. It would be a good thing if ministers were forced to pay attention to such allowances in the context of the bill. That does not in any way force ministers to commit any travel and accommodation costs; it simply allows them to make provision for such costs.

In our previous discussions about the legislation, we were concerned about the fact that it says very little until we get to the meat of the regulations. We still have only draft regulations, although that is understandable, given that the Learning and Skills Bill is still somewhat fluid. Although I share some of the concerns of Annabel and Allan, I would like the matter to be included in the bill so that we could discuss it further in the light of the regulations.

**Marilyn Livingstone (Kirkcaldy) (Lab):** Allan Wilson has suggested one of the solutions, which is to take training into the community; that is the way forward. However, for some people, travel and child care costs will still be an issue. At one of our previous meetings, we stated that we would like to consider this matter in the round, to determine the effect that it would have on different types of training schemes. Some people will undertake training through a method other than ILAs, so someone should consider the issue across the board. The face of the bill is perhaps not the best place for that consideration. I would like to hear the minister's comments on that.

**Nicol Stephen:** Perhaps I can deal with some of the technical points first. As Nick Johnston said, if the amendment were approved, it would become one of the only issues of detail to appear on the face of the bill. Other issues, which some might judge to be more important—or at least more central to the bill—than those addressed by the amendment are currently dealt with in regulations. It might seem inconsistent to pick out one issue by putting it on the face of the bill.

The amendment gives no discretion to ministers, because it uses “shall”. It provides:

“Regulations under the section shall include provision for allowances”.

The minister would be bound to make such provision. On the legal wording, I should point out that the amendment refers to “individuals”, whereas to be in line with the regulations “qualifying persons” would be more appropriate. Furthermore, it refers to education and training. That would need to be restricted to education and training for which grant can be paid under the bill. Those are technical reasons why Fergus Ewing's amendment is inappropriate and should not be incorporated into the bill at this stage.

On a more supportive note, I am aware of the concerns expressed by Fergus Ewing and other members about the additional expenses that individuals seeking to access ILAs might incur, particularly those in rural areas and those who are socially excluded. We are very clear that we want no one to be disadvantaged in accessing ILAs and we especially want to encourage people who are socially disadvantaged or who have not previously had access to formal training.

The amendment intends to make assistance available to all ILA holders. As I have said before, travel and subsistence support is relevant to all areas of learning and a great deal is already being done through access funds and bursary support, for example. There is a strong case for standardising our approach to travel, accommodation and child care costs across all forms of post-16 learning. I hope that we can make progress towards that, but it will not be achieved through this bill alone.

I took on board the concerns of the committee and, as a result, a pilot was established in Lochaber to test different approaches to the funding of travel and child care through individual learning accounts. That pilot is being operated through legislation that relates to Scottish Enterprise and Highlands and Islands Enterprise. If it is successful and it is taken forward, there are powers in the current proposed regulations that would enable ministers to extend the scheme beyond the launch of individual learning accounts. I draw members' attention to the relevant draft regulation. Regulation 6 relates to the amount of grant and paragraph 6(2) reads:

“Grants paid by the Scottish Ministers may be used to offset the direct costs of education or training, including course registration, assessment fees, qualification and examination fees, the provision of professional advice and guidance”

and then the key words,

“or other such costs as may be determined by the Scottish Ministers”.

That would include the discretion to make payments to cover travel and accommodation costs.

10:30

I mentioned the pilot in Lochaber. In response to the further concerns expressed at stage 1 and in other discussions I have had since then, I have decided to expand the testing further. A similar discretionary fund is now to be established on a trial basis in another rural area, the Scottish Borders. It is appropriate that there should be one pilot in the Highlands and Islands Enterprise area and one pilot in the Scottish Enterprise area.

This is a departure from the model of individual learning accounts that was originally announced,



under which it was made clear that funding was to be purely for education and training. It is also a departure from the model that I believe will be adopted in other parts of the United Kingdom. However, in the Scottish context that is a positive thing. It is important that we find out more about the barriers to learning and try to encourage access to learning through the use of discretionary funds.

We will monitor closely the results of the two pilots and consider how they impact on overall individual learning account policy on travel difficulties. The outcome of the pilots will be taken into account when we review the regulations at the end of their first year of operation.

I hope that that demonstrates that we are responding to the concerns of individual committee members and of the committee as a whole. For the reasons that I have set out, and with the firm reassurances that I have given, I invite the committee to reject amendment 6.

**Fergus Ewing:** Is it in order for me to raise a query with the minister about his response?

**The Convener:** Yes. I am happy to allow some dialogue.

**Fergus Ewing:** It may be helpful.

I am grateful to the minister for the generally sympathetic tone of his response when setting out the substantive objections to the amendment. However, it was not quite clear to me whether the response went further than sympathy and extended to a commitment that those who would otherwise be denied access to ILAs will receive appropriate provision for transport and subsistence, if necessary. Can the minister give a clear commitment that that provision will be made? If so, when and by what means will it be made?

**The Convener:** If other members have points to make arising out of the minister's response, I will take those after the minister has answered Fergus Ewing's question. I will then give Fergus Ewing the opportunity to close on the amendment.

**Nicol Stephen:** I can make a commitment only to the two pilot schemes in Lochaber and the Borders. The pilot schemes will be reviewed and the results will be considered by ministers after the regulations have been in place for a year. Under the pilots, funding will be available for travel and accommodation costs. Those costs will be met from within Scotland's overall budget for ILAs. However, at this stage I cannot give a guarantee that a scheme will be rolled out throughout the whole of Scotland.

**Allan Wilson:** The choice of Lochaber and the Borders as the pilot areas seems to suggest that the Executive thinks that travel represents an obstacle to learning only in rural and more remote

areas. It is my experience that people in semi-rural areas are often reluctant to travel very short distances for learning. In urban areas, too, the cost of travel can be prohibitive.

Does the Executive intend, through the pilots or more generally, to consider this problem in the round, rather than simply to concentrate on the obvious problems in remote and rural locations? In such places, the solution may be to bring learning to the individuals concerned rather than to bring people to institutions.

**Nicol Stephen:** Our concern was to identify areas where need and the size of barriers were likely to be greatest. It was our view that Lochaber and the Scottish Borders were among those areas. We could have considered urban and semi-rural areas for the pilots—there are parts of the Borders that could be categorised as semi-rural. However, we felt that if we chose a predominantly urban area for one of the pilots it was likely to be an area of lesser need. That would make it difficult to learn the lessons that we need to learn to tackle the combination of peripherality and deprivation that we find in the remoter parts of Scotland. I do not want to suggest that we will not try to learn wider lessons about travel and accommodation; we will try to learn as much as we can from the pilots. However, we felt that it would be more manageable and that the lessons that we would learn would be more appropriate if we focused on two rural areas.

**The Convener:** As no other members wish to raise issues with the minister, I ask Fergus Ewing to close on amendment 6.

**Fergus Ewing:** I am grateful to the minister for the general tone of his response. It is apparent to us all that the Executive acknowledges this problem. However, it is a problem that will need to be resolved during the passage of the bill, rather than later. I say that for the following reason. As I understand it, the commitment is to deliver 100,000 learning accounts. According to the policy memorandum, the target date for doing that is 2002. If it is to be achieved, 50,000 accounts will be expected to be in place by the end of the first year, when the efficacy of the scheme will be reviewed. If we accept that the principle we are debating is correct, surely it should apply from the beginning, rather than be introduced later. If it does not, a number of people will be excluded during the scheme's first year.

I hope that the Executive will give further thought to introducing an amendment that deals with some of the technical objections to amendment 6 that have been raised by members today. I believe that some of the points that have been made have merit—to a greater or lesser extent. The principal technical objection was raised by Annabel Goldie. She may have a point. She seems to have read

the amendment as if it stipulates that “ministers shall make allowances”; in fact, it states that “regulations . . . shall include provision for allowances”.

I accept that that point could be made clear and that any ambiguity could be removed. It would be appropriate for an amendment to be lodged at stage 3 to deal with that point and with one or two technical issues that were raised by the minister. I assume that that is competent.

In the light of remarks made by my colleagues and by the minister, I do not plan to press amendment 6 to a vote. However, I hope that the minister will accept that, if the principle is right, it should apply from the beginning. It is not satisfactory—indeed, it is dangerous—for us to exclude this principle from the regulations as they apply from the outset. That would be a very bad move and run contrary to the recommendation the committee made in its stage 1 report.

I ask to withdraw the amendment.

*Amendment 6, by agreement, withdrawn.*

*Amendment 4 moved—[Nicol Stephen]—and agreed to.*

*Section 1, as amended, agreed to.*

## **Section 2—Qualifying arrangements**

**Fergus Ewing:** Amendment 7 would make it plain that, as well as persons who are employed, people who are self-employed are eligible to benefit from individual learning accounts. The reason for the amendment is that the illustrative regulations that we had at stage 1 did not make that plain. During stage 1, the minister was good enough—in response, I believe, to an invitation from me—to indicate that the self-employed would be included in the scheme. I was pleased to note that regulation 2(3) of the amended illustrative regulations indicates that the self-employed as well as the employed qualify. Provided that the minister can give us a clear assurance that the regulations that are eventually brought into force will contain the same commitment, there will be no need for me to move this amendment.

**The Convener:** Do other members have comments on amendment 7?

**Mr McNeil:** The illustrative regulations contain a reference to the self-employed and the change is indicated in a letter from the Minister for Enterprise and Lifelong Learning to you, convener. What is Fergus Ewing saying?

**The Convener:** I think he wants to hear from the minister before he decides not to move his amendment.

**Mr McNeil:** So he wants to hear the deputy minister confirm what the minister has said.

**The Convener:** That is his right, if he so wishes.

**Nicol Stephen:** I can give Fergus Ewing the assurance he seeks. The wording that he was anxious to see, which clarifies that the self-employed are eligible for individual learning accounts, has now been incorporated into the draft regulations. They are still draft regulations, but I can reassure Fergus Ewing that there is no intention that that wording will be removed. The intention is that it should remain and form part of the final regulations.

We would prefer to avoid having on the face of the bill wording of the sort that appears in the amendment simply because if, at a later stage, we do what some members of the committee have suggested, and start to target individual groups for individual learning accounts or for priority treatment, such wording could restrict us.

The flexibility that is given to ministers by regulation-making powers would allow us—once we have kick-started individual learning accounts and started to change the culture and the attitude towards lifelong learning—if appropriate, more closely to target individual learning accounts, or aspects of them, on non-traditional learners and the socially excluded. That is another, separate reason for avoiding having this wording on the face of the bill.

10:45

**Fergus Ewing:** We have received a qualified assurance that it would be churlish of me not to accept. Therefore, I shall not move my amendment.

*Amendment 7 not moved.*

*Section 2 agreed to.*

## **Section 3—Regulations**

**The Convener:** Amendment 8 is in the name of Annabel Goldie.

**Miss Goldie:** Amendment 8 in no way seeks to interfere in what the bill seeks to deliver; it is more concerned with the mode of delivery. In consideration of the bill in its early stages, it became apparent that it did not add up to a lot in terms of understanding what the components of this scheme were going to be. Without the regulations, it cannot be known whether the bill is delivering mince and tatties or, to continue the culinary metaphor, pan-fried duck.

My concern is over the general principle. If the Scottish Parliament is to pass good legislation, it is important that it should be as transparent as possible. I felt that it was undesirable, at an early stage, to embark on a procedure whereby a perfectly good bill—the objectives of which this committee entirely endorses—would become slightly suspect because it did not make a great deal of sense *ex facie* and left a lot unknown. That

procedure would be supplemented only by the regulations, which would be subject to a procedure of negative enactment. There would be no opportunity for proper scrutiny of those regulations, even though they would provide the meat of the scheme.

Without wanting to interfere with what the bill or the regulations are trying to achieve, I am anxious that the Parliament should have the opportunity for scrutiny. It may be that the Parliament will give them its unqualified blessing. However, that would be a healthier situation than allowing the drafting of legislation, the detail of which is unknown and unacknowledged, and which there has been little opportunity to debate. That is why I have lodged this amendment.

I move amendment 8.

**Dr Murray:** I would like some clarification. Not having a legal background, I may not understand the niceties of the issue. However, I imagine that, for a negative statutory procedure such as that which is implied in the bill, the statutory instrument would still be presented to this committee for its scrutiny, and that it would be in order for any member to lodge an amendment asking that the statutory instrument be disagreed to.

**The Convener:** Under the provisions of the bill, the statutory instrument would come to this committee first.

**Allan Wilson:** I have a not dissimilar point to make. We have had statutory instruments brought before us, which have been prospectively annulled. As I understand the process, although I may be wrong, statutory instruments are implemented by virtue of the fact that they are not subsequently annulled.

This amendment seeks to reverse that process—which may or may not be a creditable thing to do—but the Education and Training (Scotland) Bill is probably not the battleground for that argument over parliamentary procedures. As this is an enabling bill that seeks to introduce individual learning accounts by September, to the benefit of the people whom we represent, Annabel Goldie would be better advised to take the argument to a more appropriate arena. That is, however, subject to what the minister has to say.

**Fergus Ewing:** I support the amendment, which seems eminently sensible and is intended to be helpful. Although it is true to say, as Allan Wilson said, that statutory instruments come before this committee, the crucial point is that we have no means of amending them within the current procedures. If there were major objections, a statutory instrument could be withdrawn and brought back again. It seems more sensible to do what has been suggested, which is to require the production of a draft copy of the regulations to the

Parliament.

That argument is especially compelling because of the skeletal nature of this bill. The minister has argued that it is inappropriate to have a wealth of detail on extremely important principles, including the one that I raised earlier about barriers to access. All barriers to access, including those arising from the need for child care, must be dealt with at some point to ensure that the disadvantaged and disfranchised are not cut out of this important individual learning account scheme.

The approach that this committee has taken in scrutinising previous drafts—for example, we examined the student loans provisions with the minister—show that we are trying to be helpful, on a non-party basis, by envisaging practical problems and objections that would hamper the effectiveness of schemes such as the ILA scheme. Given that the Executive has not supported the super-affirmative procedure that the Subordinate Legislation Committee, of which I am a member, has recommended, it appears even more important that this amendment be accepted. Without it, there would be no means for the Parliament to have a proper and meaningful debate.

The pace of legislation production in the Parliament is already accelerating, and I am concerned that there might not be enough time to debate the substantial and important provisions that will come forward in the subordinate legislation if we follow the existing procedures.

**Nicol Stephen:** I emphasise the fact that the Executive appreciates the committee's flexibility and support in enabling this bill to be progressed according to the timetable that we have set out.

I have no doubt that, in the future, some of the rules that we are working to in this new Parliament will change. The way in which bills are handled may change and some of the normal practices, which have been adopted from Westminster, will come to be regarded as anachronistic or archaic. Examples of that are coming to light in our discussion this morning, such as the fact that it can be difficult to re-enter the process to ask supplementary questions and participate in the sort of detailed discussion that many members would like, without relying on the discretion of the convener. Over time, a lot of the procedures will change, which will be appreciated by everyone. This is an enabling piece of legislation, and there is very little detail on the face of the bill. I realise that that has created some concern, which I hope has been allayed by my setting out of the draft regulations and by my giving what reassurances I have been able to give this morning.

A related, although separate, issue is that of the procedures being followed. The procedures here relate to the handling of the regulations that are to

be issued by ministers. There are two points to be made. First, the negative procedure is generally felt to be appropriate in most circumstances, unless the regulations are felt to be both substantial and controversial. I have no doubt that the draft regulations that we have presented to you are substantial, but I hope that they are not controversial. Therefore, the negative procedure is proposed. It is worth pointing out that, even if the affirmative procedure was used, this committee would not be able to amend the regulations—it would still vote either to accept or reject them.

Secondly, and most important, there is a fear of delay in passing this legislation. That is why it has been so helpful of the committee to agree to the timetable and procedures. If we were to opt for the affirmative procedure, the timetable for the implementation of individual learning accounts would slip, and they would be introduced in Scotland after they had been introduced in the rest of the United Kingdom. It would be unfortunate if we fell behind England, Wales and Northern Ireland. The advantage of the negative procedure is that it allows the regulations to be introduced during the recess. Only if a member of the committee objected to their acceptance would the issue have to be discussed further.

Assuming that the issues around the regulations have been identified, and that the draft regulations will not be significantly different from those that you have in front of you, there should be no opposition to the regulations and we should be able to proceed simultaneously with the rest of the United Kingdom. That would be a significant advantage. Having said that, if the regulations were to contain something unexpected, substantial and controversial, I accept that the issue might have to be revisited. However, if the Executive proceeds with regulations that have largely the same content and shape as those that have been circulated to members of the committee, there should be considerable cross-party consensus. We want to move forward speedily and introduce individual learning accounts when they are introduced in the rest of the UK, in September.

11:00

**Miss Goldie:** I am grateful to members of the committee for their contributions, which have been extremely helpful. I am also grateful to you, minister, for doing your best to reassure the committee that there is no nefarious or covert agenda—although we never suspected that there was. It is an issue of parliamentary principle and statutory propriety. It is ironic that the minister is hoist with his own petard, because he has been frank about the regulations and the committee has had a chance to examine them. As we have had the chance to examine them, I hope that we have made some sensible suggestions about the

regulations, but that underlines the principle of what I am talking about, minister. By your actions you have gone a great way towards reassuring the committee but, as far as I am concerned, we are still stuck on this hook of principle.

I am grateful to Nicol Stephen and accept his reassurances, but in the circumstances I will persist with my amendment. There is an issue here and it is important that we place on record that this issue has been debated in this committee and that the Procedures Committee has regard to that.

**The Convener:** The question is, that amendment 8 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)  
Miss Annabel Goldie (West of Scotland) (Con)  
Nick Johnston (Mid Scotland and Fife) (Con)  
Mr John Swinney (North Tayside) (SNP)

**AGAINST**

Marilyn Livingstone (Kirkcaldy) (Lab)  
Mr Duncan McNeil (Greenock and Inverclyde) (Lab)  
Dr Elaine Murray (Dumfries) (Lab)  
Elaine Thomson (Aberdeen North) (Lab)  
Allan Wilson (Cunninghame North) (Lab)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 8 disagreed to.*

*Amendment 5 moved—[Nicol Stephen]—and agreed to.*

*Section 3, as amended, agreed to.*

*Section 4 agreed to.*

*Long title agreed to.*

**The Convener:** That completes the consideration of the bill at stage 2. The stage 3 debate in Parliament is provisionally scheduled for the morning of 29 June. If that is the case, the closing date for amendments will be Tuesday 27 June at 5.30.

**Nick Johnston:** This is a point of elucidation. When Mr Ewing did not move amendment 7, surely it should have been put to the committee to get its approval that it be withdrawn?

**The Convener:** Mr Ewing had not moved his amendment. There is a careful distinction between the earlier occasion, when he moved amendment 6 and sought the leave of the committee to withdraw it, and the later occasion, when he did not move amendment 7 and it was debated unmoved.

I thank the minister and his team for their contribution this morning. I also thank committee members.

*Meeting closed at 11:03.*

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