



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 23 June 2015

Session 4

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**Tuesday 23 June 2015**

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**EDUCATION AND CULTURE COMMITTEE**

**17<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Stewart Maxwell (West Scotland) (SNP)

**DEPUTY CONVENER**

\*Siobhan McMahon (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

- \*George Adam (Paisley) (SNP)
- \*Colin Beattie (Midlothian North and Musselburgh) (SNP)
- \*Chic Brodie (South Scotland) (SNP)
- \*Mark Griffin (Central Scotland) (Lab)
- \*Gordon MacDonald (Edinburgh Pentlands) (SNP)
- \*Liam McArthur (Orkney Islands) (LD)
- \*Mary Scanlon (Highlands and Islands) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Dr Alasdair Allan (Minister for Learning, Science and Scotland's Languages)  
Angela Constance (Cabinet Secretary for Education and Lifelong Learning)  
Councillor Michael Cook (Convention of Scottish Local Authorities)  
Laura Meikle (Scottish Government)  
Robert Nicol (Convention of Scottish Local Authorities)  
Bruce Robertson OBE (Association of Directors of Education in Scotland)  
John Stodter (Association of Directors of Education in Scotland)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Education and Culture Committee

*Tuesday 23 June 2015*

*[The Convener opened the meeting at 09:50]*

### Decision on Taking Business in Private

**The Convener (Stewart Maxwell):** Good morning and welcome to the 17th meeting in 2015 of the Education and Culture Committee. I remind everybody to make sure that all electronic devices are switched off at all times. The first item of business is to decide whether to take items 4, 5, 6, 7 and 8 in private. Is that agreed?

*Members indicated agreement.*

## Education (Scotland) Bill: Stage 1

09:51

**The Convener:** The next item of business is continued evidence taking on the Education (Scotland) Bill. We will take evidence from three panels of witnesses today. I welcome the first panel: Bruce Robertson OBE and John Stodter are both from the Association of Directors of Education in Scotland, and Councillor Michael Cook and Robert Nicol are both from the Convention of Scottish Local Authorities.

Before we move to questions, I point out that we have a very busy schedule this morning. Given that there are two of you representing each organisation, it will be appreciated if, when a question is asked, one COSLA or ADES representative, rather than both, answers the question. That will minimise the amount of time that is taken up by each question.

I move to questions now, and begin with George Adam.

**George Adam (Paisley) (SNP):** I will ask about attainment, in particular. I have been reading all the evidence, and the COSLA submission is quite negative towards the bill—in fact I would say that it is very negative, so my initial question is for COSLA. Is there an issue with attainment? Is everything that is happening within your organisations in local government perfect? Is not there a need to be able to push forward such ideals?

**Councillor Michael Cook (Convention of Scottish Local Authorities):** Clearly, the world is not perfect. The importance of attainment as a proposition is something that local authorities well understand. There was a day organised at the beginning of June when local authorities gathered together to consider precisely that issue, which is something that they have been engaged with for many years.

Consultation on the Education (Scotland) Bill started back in 2014. At that time it contained no proposition with regard to attainment, but—lo and behold—in January this year it was proposed that attainment be included. Unfortunately, that gave the sense that it was a rather hurried proposition: it was too hasty, it was not adequately consulted on and, as a result, it looks as though it was parachuted into the bill at the last moment. That is unfortunate.

A much more engaged and consultative approach with regard to how, collectively, we deal with the question of attainment across national and local government would have been much more appropriate. In relation to my local authority,

I am in no doubt where the real interest is. Like every local authority in the land, I want to see the attainment gap that is associated with deprivation closed. We are well apprised of that; it is something that we want to push forward. I recognise that the Scottish Government also wants to do that. Let us have a proper conversation about it, rather than doing something half-baked and half-hearted.

**George Adam:** You say that attainment has been an issue for many years, which is true. In my constituency, Ferguslie Park in Paisley is the biggest area of deprivation in Scotland, and has been since my father was born there in the 1940s. We all need to work together to try to get the situation resolved. The Scottish Government is committed to having it recognised that there is an issue with attainment and that we need to deliver on that. Everything that COSLA has put in its submission says, more or less, that you guys are dealing with it and you do not need anyone else to work with you. Should we not be pushing this forward, in respect of areas such as Ferguslie Park, which has been like that since 1940 and where attainment has been low?

**Councillor Cook:** My first response is that those deep-seated problems are about more than just education: a wide range of issues speak to the fact that there is a deprivation gap. We need a considered and holistic approach, but unfortunately, as I have said, the way the bill has been constructed and consulted on is not reflective of such an approach. It would have been more appropriate to have held a detailed consultation and to have properly considered attainment, because together—this is the fundamental proposition—the Scottish Government and local governments might have constructed something purposeful that would begin to deal with that issue. As I have said, this is not merely an education proposition; it is much broader and more fundamental than that, and it engages departments across local authorities as well as a range of Government departments.

**George Adam:** I agree with that, but coming from a local government background I am aware that no matter what the Government says—especially in recent times—COSLA just says no. This submission could be very similar to submissions by COSLA on other measures.

**Councillor Cook:** I am sorry, but I think that is a misreading of the position. I am not here to be partisan; our responsibility is to consider the propositions as they are put in front of us and to make a sober judgment about them. This is not us shooting from the hip and coming to you because it is the Scottish Government's proposition and therefore we do not like it. What takes place is the most profound consultation within local

government about what our collective response should be. I suspect that you will find that ADES colleagues who have professional expertise and generations of experience in education broadly agree with us about some of the problems with the proposition on attainment and the bill in general.

**George Adam:** That brings me to ADES which, on the whole, seems to be a wee bit more positive about the bill. Given what we have already discussed, is there anything that you could chip in, Bruce?

**Bruce Robertson OBE (Association of Directors of Education in Scotland):** I start with the fact that the attainment gap is the most challenging phenomenon in Scottish education and has been for generations, as you said. Statistics demonstrate that a child from Ferguslie Park will start school at a great disadvantage—possibly as much as 18 months behind their peers in other parts of Scotland. We need the system—Parliament, the Scottish Government, local government, professionals, and all supporters of education—to get behind this huge challenge and try to address it.

There is far too great a correlation between where a child lives and is brought up, and how well they do in education, and thereafter as they progress through life. That is why ADES is supportive of a system-led approach to address attainment and achievement in education, and this country must coalesce around that. I am looking for a genuine partnership to address the issue. Will legislation do that on its own? No, but we suggest that it is an important component. The legislation has some way to go, and well-crafted statutory guidance should outline for the education authorities, local councils and the national Government what their responsibilities are.

Key to this issue is what happens in the classroom, where we need the best teachers and we need high-quality teaching and learning. We also need the best leaders in Scottish schools. That is what will make the difference in raising attainment and breaking the link between where someone lives and how well they do. We need excellent teaching and outstanding leadership, and the Scottish education system and the expertise within it should prepare a national improvement framework that we can take forward over the next few years. ADES is supportive of any move to break the link between low attainment and where a person lives.

**George Adam:** You raise one interesting point that is constantly brought up in evidence. Good leadership in schools obviously makes all the difference, but evidence that we have received suggests that it is pretty patchy. How can we be sure that good leadership is the norm and that we

have community leaders working from schools everywhere?

10:00

**Bruce Robertson:** You are absolutely right—as in everything in life, there can be variations in leadership. We know that excellent leadership, where the leader is seen as being a leader in his or her community and not just within the narrow confines of the school, makes all the difference. As Councillor Cook outlined, that is not just an education issue, but one that we need Scottish society to embrace.

I expect that the seven authorities that have been selected to lead the way on the Scottish attainment challenge would have not only education plans but plans to help the development of young people generally. For example, a child who comes to school hungry in the morning is not likely to attain his or her best, so we would be looking for the development of breakfast clubs. A child who does not have support during the school holidays or after school is not likely to attain his or her best. We need positive interventions in young people's lives outwith school and school leaders must be able to embrace that.

There are a number of programmes to develop excellent leaders in our schools. The new Scottish College for Educational Leadership is thirled to that priority and has been involved in discussions with ADES on this. A number of different networks are operating. The quality of leadership is important and could be improved, but that will not happen overnight; it will take a number of years.

**Mary Scanlon (Highlands and Islands) (Con):** The first sentence in the bill is:

“An Act of the Scottish Parliament to impose duties in relation to reducing pupils' inequalities of outcome”.

Could you help me by pointing to the parts of the bill that reduce “pupils' inequalities of outcome”? Mr Cook, you look like you could.

**Councillor Cook:** I am not the sponsor of the bill. Clearly—

**Mary Scanlon:** I am looking for your advice because I am finding it difficult.

**Councillor Cook:** I am reflecting that back to you. I am not the sponsor of the bill. As I suggested in response to Mr Adam, if there had been a more considered approach to how we might respond collectively to the matter of attainment, then clearly the bill would have been constructed in a slightly different way.

The difficulty that you are hinting at is that the duty sits in isolation—it does not appear to relate to anything else. As we are intimating to you from

both the ADES and the COSLA perspectives, that is a clear limitation on what is envisaged.

As I said earlier, the duty has been added to the bill at a late stage. When the consultation started, the bill was conceived as dealing principally with Gaelic education. Clearly, it has been transformed over time and betrays limitations as a consequence. If you are saying to me that there are limits to the proposition as drafted, I would agree.

**Mary Scanlon:** I am not saying anything to you. I am seeking your help and guidance. Can I move on? We are where we are with the bill; its whole *raison d'être* is to look at pupils' inequalities and to reduce the attainment gap.

Perhaps I could ask the question in a different way. I am also on the Public Audit Committee and am aware that 27 out of 32 local authorities buy in private tests from England. Should we have a form of national testing? Sue Ellis said:

“We need a national bank of tests and surveys that schools can call on.”—[*Official Report, Education and Culture Committee*, 9 June, 2015; c 22.]

Professor Lindsay Paterson said in *The Times Educational Supplement Scotland* on 12 June that testing is

“not alien to the culture of Scottish teaching or Scottish teacher professionalism”.

The First Minister and Deputy First Minister have both acknowledged that we do not have enough information about children in primary schools where they are likely to fall behind and to need support.

I will ask the question in what I hope is a more positive way. Do we need a national performance framework and standardised national tests? Would that achieve what the bill sets out to do?

**Councillor Cook:** On 5 June, at the attainment day where local government representatives got together, we learned—I think that most of us knew it—that we are not data poor. We have a broad sweep of information.

**Mary Scanlon:** The information is not consistent.

**Councillor Cook:** I think that it has increased in consistency. The point that Mary Scanlon made is that many local authorities buy in a system from England, so they are already using that kind of approach. There is an increasing correlation between gathering that information and driving approaches that deal with attainment within local authorities. There is a deep understanding of what we need to do. That is in gestation.

However, we also need to recognise that the issues are slightly different in different contexts around the country. Deprivation is a pervasive

issue that exists in my local authority area—Scottish Borders Council’s area—as it does in West Dunbartonshire, Inverclyde and Glasgow, but it is composed differently within the school environment. That suggests, consequently, that different approaches need to be developed to respond to deprivation.

Again, the proposition that Mary Scanlon quoted from the bill speaks to the fact that we need an approach that is reflective of national parameters in trying to deliver something for the country as a whole, but which is also reflective of the local dimension. We need a proper and profound understanding of the context in which kids in individual local authorities operate so that we can build responses that suit their particular needs. Without a proper dialogue on that proposition, we will not get to that point, so we need to return to a position in which we have an effective compact between central and local government to respond to those issues.

**Mary Scanlon:** I appreciate that, but—

**The Convener:** Can you let ADES respond as well? Bruce Robertson is keen to come in on that point.

**Mary Scanlon:** I am quite happy to let Bruce Robertson come in. Perhaps he could address the point in the Audit Scotland report about there being no consistent data for primary 1 to secondary 3. That would be helpful.

**Bruce Robertson:** I will comment on that and I will augment Councillor Cook’s evidence. Our submission to the committee strongly suggests that a national improvement framework be developed. We support the use of standardised assessments—rather than the blunt instrument that is national testing—as part of a comprehensive framework.

We have a lot of data. It is important that we use data positively, but it would certainly be good to have a national improvement framework that has, as its basis, curriculum for excellence, which is very clear about levels of numeracy and literacy. Incidentally, when we talk about literacy it is important that we also talk about digital literacy as part of a child’s suite of gifts in relation to the skills that they develop in school. We are very much in favour of that. That national improvement framework should be developed by national agencies—the Scottish Government, Education Scotland, the local authorities and ADES, which has said a little about that in our 2020 vision.

I will answer Ms Scanlon’s question. Yes—we would support a national improvement framework, but we would like it to be developed comprehensively so that we do not just have the blunt instrument of national testing. We would also prefer to have a Scottish suite of assessments as

opposed to the assessments from England that 27 authorities are currently buying in. That situation is something that we can improve on.

**Mary Scanlon:** ADES suggests in its submission that

“the new Bill should replace and supersede the National Priorities”.

Does that mean that the attainment gap should be the only statutory priority for education?

You also refer to the national performance improvement framework and say that it could be

“used to account for educational improvement, based on what actually works in schools”.

That sounds to me more like an instrument of good practice. I thought that attainment was about identifying the child who needs a bit of additional support at the earliest opportunity, preferably at the pre-school stage or at the earliest stage of primary, so I do not totally understand what you are talking about there.

The Audit Scotland report said that East Renfrewshire tests pupils four times in primary school and again before they sit their national 4s and 5s.

What is the national performance improvement framework that you referred to? Is it a document of good practice, or does it identify what each child needs in order to have an equal opportunity?

**Bruce Robertson:** On the first point, ADES thinks that the Standards in Scotland’s Schools etc Act 2000 needs to be reviewed. Aspects of the act relate directly to national priorities, which were the national priorities of the day. A reporting mechanism was also included, which needs some review by this body.

As far as the national performance improvement framework is concerned, it is important that a teacher has access to information about how well her children are progressing at each stage. The national performance improvement framework that we are looking for would have standardised assessments at key stages of a child’s development.

**Mary Scanlon:** Start right—okay.

**Bruce Robertson:** There is mixed practice across the country. Of the 27 authorities that were mentioned, one has standardised assessments at the end of each year of a child’s progress; others assess far less frequently than that. That is where we need to have the discussion—the system needs to get round the table and agree how best to do that. We need information about each individual learner, but we also need information about the cohort in a school and the cohort nationally. Intelligent use of that data will help us to improve Scottish education.



**Mary Scanlon:** Does COSLA agree with that?

**Councillor Cook:** Broadly speaking, we agree that there should be a national framework. There clearly needs to be thought about the development of that process.

**The Convener:** Liam McArthur has a quick supplementary question.

**Liam McArthur (Orkney Islands) (LD):** COSLA has been quite sceptical about the attainment aspect of the bill. That is nothing to the scepticism of Keir Bloomer, who suggested that the

“due regard to the desirability”

requirement within the bill could lead to

“competition among authorities to produce reports that make them look as good as possible.”—[*Official Report, Education and Culture Committee*, 9 June 2015; c 24.]

Does Councillor Cook agree?

Also, I have a question for ADES about the attainment fund. Mr Robertson, you backed up what was in your written evidence, which referred to

“the strong correlation that currently exists between social deprivation and poverty on the one hand; and poor educational attainment on the other, such that success too often depends on where children live”.

You will be aware of the concerns that, by focusing on the seven most deprived local authorities, we risk ignoring the 60-plus per cent of children who live in poverty outwith those seven areas and therefore how we address the need to close the attainment gap there. I would welcome any observations on that.

**The Convener:** That was not as quick a supplementary as I had hoped. I ask for the answers to be as quick as possible, so that we can move on.

**Councillor Cook:** Liam McArthur asked a loaded question. Suffice it to say that there is some repetition between the reporting duty in the 2000 act in relation to attainment and what is proposed now. The utility of the reporting proposition must be in some doubt, given the fact that we already have a responsibility to do that.

I will touch very quickly on the point that Liam McArthur raised for ADES. The attainment challenge fund, welcome though it is as a proposition, again reflects a failure to discuss and consult. It was announced as being targeted at seven local authorities without there being any consideration, or indeed consultation or discussion, of how we address the broad sweep of deprivation across the country.

As we have discussed to some extent, deprivation is a pervasive issue; even in apparently comparatively wealthy areas there are

issues of deprivation. We need to understand that and, through a process of dialogue, we hope that we will achieve that.

**Bruce Robertson:** The seven local authorities that have been identified for the first tranche of the attainment fund will obviously have considered in some detail the formulation of their plans. It is important that we remind ourselves that a child living poverty is a child living in poverty, no matter where that child is in Scotland. We are acutely aware of that and we have reflected that to the Scottish Government. I was a director in two large rural authorities and I am very aware of what rural deprivation is like, too.

10:15

That is why ADES is in discussion with local government and the Scottish Government on something that we call the universal offer. What is it that every school in Scotland can get from the attainment challenge and the funds that have, helpfully, been set aside to deal with what I described as the biggest single challenge in Scottish education? We can share a lot of learning and resources across the country. We can also develop, through our association, these inter-authority partnerships whereby good practice that is happening in one authority can be shared with others. I know that that was discussed at the recent COSLA event.

We are acutely aware of the seven local authorities that have been selected, but there are challenges elsewhere, and we are working with the Government and Education Scotland on the universal offer for all children who are living in difficult circumstances.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Since 2007, there has been a 44 per cent increase in primary 1 pupils entering Gaelic-medium education, and there are now 11,500 pupils receiving some form of Gaelic-medium education across Scotland. Clearly, therefore, there is a demand from parents for their children to be educated in Gaelic. Will the bill assist with that progress? Will that result in more authorities providing Gaelic-medium education?

**Councillor Cook:** The answer to that is probably not. Our reservations regarding the bill are primarily of a practical nature, but they also concern the fact that no new resources are associated with the bill. That is a potential issue. There is also a major supply issue, which has resulted in local authorities in the north-east seeking to recruit teachers from Canada. An expectation is being constructed that local authorities will be extremely hard pressed to satisfy.

On top of that, the bill has a degree of complexity about it. It is a pretty blunt instrument that sets a series of propositions about the local authorities' initial approach and subsequent assessment approaches. One has to recognise—I am sure that members absolutely do—the fact that the Western Isles is not the same as the Scottish Borders. The Scottish Borders has absolutely no cultural history of Gaelic. However, at this juncture it is proposed that the same approach be used, with, one has to say, potential ministerial intrusion—if ministers do not like the conclusion that local authorities have drawn, they can subvert it and come to a different position.

There are questions about resourcing and the practicalities of how the proposals will work, and there is an issue of proportionality. As I said, not all places are the same, but there is a very blunt and crude approach that assumes that they are. There should be a much stronger discretionary element in relation to how local authorities respond to the matter, recognising the issues that exist across the country.

**Gordon MacDonald:** Should it not be about responding to parents' demands?

**Councillor Cook:** Clearly, demand is an important part of this. However, one has to understand that there is a balance to be struck between the demand on one hand, and the appropriate direction of resources on the other hand. In the Scottish Borders, for example, if there are five requests for Gaelic-medium education, they could come from across a huge geographic area—one from Burnmouth, one from Cockburnspath, one from Newcastleton, one from Peebles and one from Lauder. That has significant resource implications. At the same time, the local authority must balance that with other priorities, such as the consideration of attainment, which we have previously discussed in relation to the bill. Parameters should be more flexible to enable local authorities to do that appropriately, depending on the circumstances.

As I said, the bill takes a crude approach that is not reflective of the points that I have set out. On top of that, there is an additional ministerial power that allows ministers simply to subvert local discretion.

**Bruce Robertson:** As someone who has had to respond to requests for Gaelic-medium education over the years, I am well aware of some of the sentiments that lie behind the bill. It is important to remind ourselves that there has been slow and steady growth over the past 20 years to arrive at the current statistics.

As Councillor Cook pointed out, there are significant challenges, the most significant of which concerns the supply of qualified Gaelic

teachers. The bill tries to ensure that, when parents make a request, they are treated in a similar way across the country, no matter which council receives that request. That seems reasonable to ADES. We would be happy to work with the Government and local government to arrive at good practice. Indeed, there is some very good practice across the country.

There is an opportunity through the bill—and, more likely, through the statutory guidance that will back it up—for local authorities to work more collaboratively on Gaelic-medium education. I am thinking in particular of those local authority areas that are in close proximity to or on the periphery of Glasgow and Edinburgh, where there are more likely to be larger numbers of requests. If we consider the measures in a collaborative manner and plan them on that basis, that will be a way forward.

The development of good practice and statutory guidance will be very helpful for local authorities. Although parents will be and should be treated in the same way across the country, that is not to say that their requests will always be successful. A variety of criteria need to be applied. That is why, in the ADES evidence on the bill, we are quite cautious about having a blunt instrument of requiring, say, five pupils, before an application is successful. What happens in a rural authority area can be very different from an urban area.

**Gordon MacDonald:** You touched on a number of the topics that I was going to ask about. In your written evidence, you said:

“There requires to be clarity and consistency of expectation of education authorities in relation to GME and Gaelic Education generally.”

Last week, with regard to section 10, we heard that there were

“too many handicaps that would make it difficult for parents to get the education that they want ... and which could be used as an excuse by local authorities not to deliver that form of education.”—[*Official Report, Education and Culture Committee*, 16 June 2015; c 5.]

How much of a problem do you think that that is?

**Bruce Robertson:** The biggest single problem is with the workforce. The committee has heard evidence to that effect already, and the statistics back it up. Having said that, the workforce is increasing, although the location of the workforce presents a challenge. Ironically, it is far easier to recruit a Gaelic-medium teacher in Glasgow than it is in some parts of the Highlands. You might think that it would be the other way round, but Mrs Scanlon is well aware of that from her experience in her constituency.

On the issue of good practice on how requests are received and assessed, there is some very good practice out there around another piece of

legislation that the Parliament has already crafted; I refer to the legislation dealing with changes to school provision, school closures, changes to school boundaries and so on. If there is consistency of practice, that is to the strength and benefit of local authorities, although that does not mean that every request that is received for Gaelic-medium provision can be positively acknowledged.

**Gordon MacDonald:** You touched on the subject of local authorities possibly sharing resources. Does the use of digital learning provide a realistic way forward?

**Bruce Robertson:** We have mentioned that. I am very much in favour of the development of digital learning, particularly for Gaelic secondary education, where there is a huge challenge around what curriculum is provided through the medium of Gaelic. The development of a digital solution for a Gaelic secondary curriculum is long overdue. ADES has been asking for that over a number of years now.

The provisions are for Gaelic-medium primary education. As we indicated in our submission, a parent would not normally want to consider only primary provision for their child—they are interested in three-to-18 provision. Therein lies the conundrum for Gaelic. There is a shortage of teachers who can teach specialised subjects through the medium of Gaelic—therefore, the digital solution.

**Gordon MacDonald:** Finally, what is the way forward? The evidence that we heard last week suggested that the extension of Gaelic education to early years and secondary education is essential to ensure a secure future for the Gaelic language. If we are going to take a piecemeal approach, where should the focus be? Should it be on nurseries or secondary schools, or should it be across the board?

**Bruce Robertson:** If we are looking at education in the round, I think that we should take a three-to-18 perspective. There is outstanding Gaelic early years provision across the country, and that has led to an increase in the numbers involved in primary schools, which is to be commended. It is important for local authorities to consider provision in the round and to plan collaboratively as often as they can. One local authority might not be able to sustain Gaelic-medium provision in one small area, but two or three local authorities could work together, share resources and get additional resources through the Gaelic specific grant. We have not mentioned that yet, but I would advise a review of the specific grant to target that issue.

**Councillor Cook:** It is desirable to plan collaboratively, and we would be sympathetic to

some consistency of practice. It is worth reminding ourselves that, although we might talk about consistency of practice, ministers will have the power to vary thresholds. If that were to be used in a positive way that reflected local dimensions, I would perhaps be less anxious about it, but I think that the local aspect of this issue has been lost. If an area such as mine were to take the view that there should not be Gaelic teaching, people would rightly be affronted. We are supportive of Gaelic teaching, but the bill does not necessarily reflect cultural realities in our area, and those need to be better understood. A local dimension to decision making is important, but the crude one-size-fits-all approach has rather lost that.

The revenue stream that has been mentioned is currently utilised by local authorities and there is no additional provision in the bill. If revenue is taken from the current resource, that is a diversion of resource and something needs to be found to make it up. There is a resource pressure, although the most fundamental pressure is clearly supply.

**Mary Scanlon:** Section 13 states:

“Every education authority must promote the potential provision”

of Gaelic-medium education and learning. Are you content with that?

**Councillor Cook:** I think that there is a question about what that precisely means. I am not here to answer for Scottish Borders Council, although I am aware that it has made a submission that reflects some of the comments that I have made. There is a kind of cultural sensitivity to some propositions in the bill because of our particular heritage. Broadly speaking, we would be supportive of Gaelic education, as is COSLA. Had there been better consideration of some of the propositions as they were developed, greater sensitivity and proportionality might have been achieved, but I think that those things have been overlooked somewhat.

**Liam McArthur:** May I move you on to support needs? The bill looks at expanding rights in that respect, but concerns have been raised. Inclusion Scotland stated:

“It seems illogical that an education authority that is being challenged about additional support needs should have a right to determine whether the person who is making that challenge has a right to make it. That does not seem to be natural justice.” —[*Official Report, Education and Culture Committee*, 9 June 2015; c 40.]

The concern is that the judgment on capacity and best interests is made by the local education authority. Is that a fair reflection of a potential conflict, and if so how might it be addressed in the bill?

10:30

**Councillor Cook:** I think that you have laid out that proposition fairly, but we have not come today with particular representations to make on that aspect of the bill. Our focus has been primarily on the issues of attainment, Gaelic education and the chief education officer.

**Bruce Robertson:** The part of the bill to which Liam McArthur refers reflects a very difficult situation that must be addressed on an individual, case-by-case basis. Scotland should be very proud of the additional support needs legislation that was developed through the Parliament, and the Education (Additional Support for Learning) Act 2004 was very significant.

The provisions for capacity and best interests tests are a very important element of the bill. Unfortunately, there are some young people who cannot advocate for themselves, which is why ADES is supportive of that element. How can we address the issue that Inclusion Scotland raised with the committee last week? I think that it is important that, through the legislation, we develop good working practice guidance and good statutory guidance that can help local authorities and those who look after the interests of individual young people to work through the issues.

Unfortunately, some children just might not have the capacity to self-represent, and we do not want to get into a situation where, for example, a young person finds himself or herself in conflict with their parents or carers because of capacity issues. It is a very difficult situation, but we will have checks and balances along the way, and good advice for those who are involved—I think that that goes part of the way to answering Liam McArthur's question.

**Liam McArthur:** I think that the Government has been reluctant to estimate the number of those who are likely to require support and utilise these provisions, so this aspect is not reflected in additional resource in the financial memorandum. Do you think that only limited numbers will be involved and that there will therefore be limited resource implications?

**John Stodter (Association of Directors of Education in Scotland):** Yes.

**Bruce Robertson:** Yes.

**Siobhan McMahon (Central Scotland) (Lab):** Councillor Cook, I am slightly disappointed by your answer to Liam McArthur's first question on that issue. Given that the conflict of interests to which Liam McArthur referred will have a detrimental effect—as we have heard in evidence, particularly from Inclusion Scotland—and might take us into some legal issues with regard to the United Nations Convention on the Rights of the Child, it is unfortunate that COSLA does not have a firm view

on what this will mean for children with additional support needs and is not concerned about a local authority finding itself in the position of determining whether someone has capacity. It is unfortunate that you have come with views on every other subject but not on this one.

**John Stodter:** Can I respond to that? Occasionally, ADES represents COSLA, and I think that on this issue—

**The Convener:** Sorry, but is ADES speaking for COSLA now?

**John Stodter:** Yes. We are occasionally asked to—

**The Convener:** I want to know that just for clarity, because you obviously represent ADES.

**John Stodter:** The question on conflict is a very technical one on a very technical issue, so you would not necessarily expect elected members to be briefed on the legal technicalities of capacity and best interest. There is a conflict between those issues, but the technical issue is at what stage we decide capacity. Further, if we have already decided capacity, do we then separately have to determine best interests? The discussion is about at what point in the process we decide and who is best placed to do it.

It is not the case that authorities would find it unusual to have to balance two competing priorities and two competing interests. In relation to additional support needs, authorities quite often separate out the different perspectives so that psychologists, for example, will often do the technical assessment and make a judgment on capacity or best interests. However, budget pressures might have an impact. In decisions on where to place a child, the very best interests of the child are considered, but that process has to operate within council budget parameters. It is quite a technical issue, but it comes down to how it is encapsulated in the procedure behind it.

Authorities often have to balance the best interests of the child with other legal requirements and pressures, for example in dealing with school exclusions, placing requests and other cases that relate to individual children. However, the overriding principle has to be the best interests of the child. It could be argued that there is a conflict of interest in the case of a complaint against a teacher or a school. However, it is the duty of local authorities to ensure that they meet their obligations towards the staff but put the interests of the child first. I am not trying to be political; I am just saying that such cases deal with a specialised, technical issue, which probably justifies our position on the need to have a chief education officer. [*Laughter.*]

**Councillor Cook:** That is where we differ.

**The Convener:** We will come to that. I am not sure that COSLA will allow you to speak for it on that particular issue, Mr Stodter.

**Councillor Cook:** I will push him off his chair.

**The Convener:** Moving swiftly on, we will have questions from Chic Brodie.

**Chic Brodie (South Scotland) (SNP):** Section 17 of the bill introduces the schedule modifying the provisions of the Education (Additional Support for Learning) (Scotland) Act 2004 on capacity, which we have just been talking about, and on the approach to the Additional Support Needs Tribunal for Scotland. Some concern was expressed in 2012 about the relationship between the Government and the ASNTS in the process. Does COSLA believe that the bill makes absolutely clear the respective roles of the Scottish Government and the ASNTS in relation to section 70 complaints?

**Robert Nicol (Convention of Scottish Local Authorities):** I can try to answer that, and ADES colleagues can pick up any gaps that I leave.

**Chic Brodie:** Sorry—good morning.

**Robert Nicol:** Good morning. We understand that reforms have been proposed to tidy up some anomalies that might exist whereby some decisions that would normally go to the ASNTS could in addition be taken through a section 70 procedure. Our understanding is that what is proposed is, in effect, a tidying-up to ensure that the ASNTS should be the only appropriate route for decisions on additional support needs requests, so that they can be handled in the best way possible to resolve the issue.

**Chic Brodie:** In your view, is the ASNTS's overall role clearly defined in that regard?

**Robert Nicol:** In our view, there is enough definition of what should go to the ASNTS, which is best placed to handle additional support needs requests.

**The Convener:** Is ADES okay with that view?

**Bruce Robertson:** Yes.

**John Stodter:** Yes.

**Chic Brodie:** Could local authorities do any more to ensure that people are better aware of their rights to complain under section 70?

**Robert Nicol:** I do not think that we would ever argue that we have reached a point where we can do no more. I do not have the numbers for section 70 complaints, but they are relatively low. There are ways in which the right to complain under section 70 can be promoted, but such a route should be seen as a last resort. Other complaint-handling processes within local authorities should

be used first, before a section 70 complaint requires to be made.

**Chic Brodie:** I have a question for Mr Robertson and Mr Stodter. We have had a discussion about children's capacity and best interests, and how their capacity is determined. Who determines the parents' capacity when there is a conflict?

**John Stodter:** Presumably the parent is the legal—

**Chic Brodie:** But that assumes that all parents have capacity. Who secures the interests of the child, who might have a better ability than their parents to determine their own needs? Who determines the parents' capacity?

**John Stodter:** If there was any doubt about the parents' capacity, presumably social work colleagues would have a view on that.

The reason for giving these rights to children is so that they can represent themselves. That raises the interesting possibility that a child could decide to represent themselves and advocate for something that is not in their best interests. That is why all the parties need an avenue—whether it is the individual child, the parent of that child or the authority that will have a legal obligation.

**Chic Brodie:** Are you aware of any assessment of a parent's capacity? That does not happen now, does it?

**John Stodter:** It might do, in terms of social work involvement.

**Bruce Robertson:** The children's hearings system can kick in, as well.

**Chic Brodie:** Thank you.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I will explore the role of the chief education officer a bit. The bill requires education authorities to appoint a chief education officer. It does not give the CEO any particular function, but the role is obviously to advise the authority on carrying out its functions under the relevant legislation. Qualifications are to be set by the Scottish ministers, but experience is to be determined by the local authority. Do we need a chief education officer?

**Councillor Cook:** COSLA's view is that we do not. We have two specific difficulties with the proposition as it stands. One is with its purpose. I highlighted earlier the consultation that took place on the various elements that construct the bill. The chief education officer proposition was a late entry; it was first broached with us on 13 January this year. Its utility is still not clear.

Comparisons have been made between chief social work officers and chief education officers.

Our understanding of the chief education officer's role as it is posited is that it is primarily to give advice. That is very different from the role of chief social workers, who have specific statutory responsibilities in relation to adoption, secure care and things of that nature. That is a specific role. The chief education officer role is a more generalist proposition. Where its utility sits is open to question.

A further problem with the role is that it is something that has been thought up that is now being consulted on for inclusion in the bill. It usurps local discretion in the construction of management structures that local authorities consider appropriate for the management of their responsibilities. In so doing, it usurps local democratic accountability.

I appreciate that the members sitting around this table are democratically elected—so am I, and so is every other member of my local authority. We have an absolute responsibility to look at and make judgments about the local authority's affairs, and we have to agree the governance model that we deploy to achieve that. The proposition basically usurps that responsibility without evident purpose.

**John Stodter:** I disagree with COSLA on this occasion.

**Councillor Cook:** He is wrong.

**John Stodter:** The fact that there is no requirement to have such a post is an anomaly that was created by Michael Forsyth in the run-up to local government reorganisation. The Education (Scotland) Act 1980 required authorities to have such a post, and that whole act is predicated on having an experienced and qualified person who can advise the education authority. That is the important point—that councils act as education authorities. The fact that they do not have a person who is appropriately qualified and experienced to advise them in that capacity seems strange.

At that time, the political context was different. Schools were being encouraged to opt out of local authority control and to self-govern. COSLA strongly opposed that, and it used the same argument at that stage—that that was political interference. The only thing that has changed since then is the political context.

In 1996, new councils were set out. They continued as if there were a requirement to have the post; they ignored the fact that there was not a requirement. For 10 years that held unilaterally in the 32 authorities across Scotland. In 2006, one council tried to operate without such a post, but that was a disastrous failure that required external intervention from Her Majesty's Inspectorate of Education, the Accounts Commission and a task

force including COSLA and the Government. Two years later, the council reverted to having the post.

10:45

It is worrying that, over the past three years, four councils have begun not to have the post—coincidentally, two of them have submitted evidence to the committee. Two councils are in favour of having the post although, strangely, one of them thinks that no qualifications or experience should be attached to it. A couple of councils are equivocal, and the councils that are negative say that they already do this anyway.

Over the years, the committee has considered a huge range of significant and complex issues for Scotland. It has asked for advice and guidance, which has often been provided by ADES—we always provide someone who is appropriately qualified and experienced. I could spend all morning listing those issues, which include things such as the teacher workforce, curriculum for excellence qualifications, education and finance, additional support needs and rural schools—I remember giving evidence to the committee, together with my colleagues, on those issues. I cannot imagine a Parliament or education authority operating without such advice from a qualified and experienced person.

The parallels with the chief social work officer are relevant and germane, and with one exception, all specifications for that post would also relate to the post of chief education officer. We are talking about establishing standards and values, ensuring that staff meet the standards set by regulatory bodies, supporting and advising managers, and using registered workers—obviously, teachers and other staff have various requirements. There are governance arrangements, the balance of risks, workforce planning, professional development and leadership for managers in the organisation.

Those things all apply to the post of chief education officer. The only specification that does not apply is a specific measure on adoption and guardianship but, as I indicated, a plethora of legal requirements in an education authority would be equivalent to, and greater than, that legal responsibility—those on attendance, exclusion, zoning issues, education at home, additional support needs, placing requests, school closures and so on. The list is long.

COSLA has stated that the measure will interfere with structures, but this is not about telling councils what structures they must have; it is simply a requirement to incorporate a post at a specific level in the structure. For example, in some cases a social work director runs children's services, and they do not have access to an

education officer to advise them. In some councils an education person runs children's services, and they have access to a chief social work officer to ensure that anything that they do complies with relevant legislation.

We think that there will be significant benefits to councils and the Scottish Government in having appropriately qualified and experienced people in the chief education officer post to ensure that political, policy and strategic decisions are fit for purpose. Given the evidence that the committee has heard about the bill, I am sure that it will recognise the need for qualified and experienced advice.

**Colin Beattie:** Does the panel agree that a normally efficient council already contains all the expertise that we are talking about? Would it make sense to have one point of contact to tap into that expertise, rather than a number of areas?

**Councillor Cook:** Absolutely. You make the point well and, as far as we are concerned, that raises a question about the utility of the proposition. As has been intimated, it is not as if such professional advice does not exist in local authorities, because plainly it does. The proposition could come to pass, even though it is not yet properly fleshed out, but in reality someone with that expertise exists in practically every local authority in the land. There is perhaps one local authority that would need to change its approach and appoint someone to carry out the role. I suspect that most local authorities have someone who could be slotted into the role directly.

Given that, you might reasonably ask me why the provision is a problem. It is a problem because determining who gives the advice is a matter of discretion for me and the other 33 members of my local authority. It is up to us to make such determinations and it is not appropriate for the Scottish Government to overreach that and make a judgment about what the structure or relationships should be in our local authority. That is the issue.

I am grateful to John Stodter for acknowledging that our position has been consistent and goes back some years. However, from our perspective, the local authority has a much stronger view of its own responsibility and accountability in relation to the issues. We have been working on that.

It might seem that we are being slightly precious, but this is not just the view of the elected members—from my dialogues with chief executives, it is clear that they are also somewhat unhappy with what they see as interference. They see the structure of their management teams as something for which they are ultimately responsible, and the bill represents a subversion of that. It is clear that the advice already exists.

**Colin Beattie:** I chose my words carefully. It is clear that some councils are inconsistent in their approach, which is perhaps the reason for the proposition.

**Councillor Cook:** I am sorry, but where is the evidence for that?

**Colin Beattie:** We heard evidence on that.

**Robert Nicol:** We have heard of only one authority.

**Councillor Cook:** The evidence that I am giving is quite clear: professional advice of the sort that ADES provides is available in every local authority. There is one local authority that would need to make an appointment to respond to the proposition in the bill on chief education officers.

**Robert Nicol:** The local authority that currently does not have someone with the requisite qualifications has said that it has systems in place to allow its managers to work collegiately with all the headteachers so that they can determine educational advice for the authority. A system is in place, even though the manager in charge does not have an education qualification.

**John Stodter:** I was not arguing that COSLA has been consistent; rather, I was arguing that it has been inconsistent. COSLA strongly opposed the removal of the post in the Local Government etc (Scotland) Act 1994 and it is now using the same arguments to say that the post should not be reinstated.

Local councils have a number of statutory posts. Surely we are not arguing that it is important that they have someone responsible for finances—a finance officer—in a very small council with a very small budget, which might be less than the whole education budget, and yet they should not have a statutory officer for education. There is a symbolic value in having a person who is appropriately qualified at the right level to advise the education authority.

There have been recent developments, and we believe that four authorities now potentially do not have the appropriate post in their structures. That is not saying where in the structure that post should be, but they do not have someone who they can rely on as the port for such statutory legal advice. A council can get anyone to give advice, understand the law and know the business, but professional judgment is involved when it comes to some of the tricky issues that we talked about earlier in relation to capacity and the child's interests, and it is best if that advice comes from someone who is suitably qualified and experienced. It is also important that that advice comes from a single source, because no doubt different post holders in a council will have a range of views.

**The Convener:** I know that I said at the beginning that I did not want to hear two answers from the same organisation, but I allowed two answers from COSLA, so I will do the same for ADES.

**Bruce Robertson:** I will be brief. It is important that we remind ourselves that this is a £4 billion operation—that is the budget for state education across the 32 local authorities. We have thought it through very carefully, we understand what is happening out there and we genuinely think that the post will add value to the work of Parliament—statute requires Parliament to receive reports from education authorities—and of the Scottish Government and councils. The committee will have seen the lists of duties and roles that we submitted. It is to councils' advantage to have people in position to discharge those duties.

**The Convener:** Has Liam McArthur's question been answered?

**Liam McArthur:** No.

**The Convener:** Please be brief; I ask for brief answers, too.

**Liam McArthur:** I have been listening to what has been said. In all the evidence that we have heard from the bill team and everyone else, regardless of whether they support the bill, I have not heard anyone identify the problem that we are being asked to address. We appear to have a solution that is in desperate search of a problem. We legislate only when we absolutely need to. Despite the use of Michael Forsyth's name, which I recognise is political catnip for my colleagues, I cannot identify a problem that we are being asked to resolve through the bill.

**John Stodter:** Surely you do not want to legislate at the point when there is a problem.

**Liam McArthur:** No, but I will not reach for the legislative lever until it has been demonstrated to me that there is a problem that needs to be addressed or that there is a risk that something is about to go astray and we need to rectify that proactively. I have not heard evidence of either of those things.

**The Convener:** I assume that COSLA agrees with that.

**Councillor Cook:** Yes.

**John Stodter:** We believe that there is a risk in not having such a person advising local authorities. We could bring forward evidence, but it would not be appropriate to do so at this point. It is a recent phenomenon that some authorities do not have such a post. We expect that that could create difficulties in some of the decisions that authorities have to make.

**The Convener:** I will leave it there, because we are running late. I thank you all for coming along. There will be a brief suspension before the next panel of witnesses.

10:56

*Meeting suspended.*

10:59

*On resuming—*

**The Convener:** I welcome Angela Constance, the Cabinet Secretary for Education and Lifelong Learning, and her accompanying officials. The cabinet secretary will answer questions about all parts of the bill except the provisions on Gaelic and additional support needs, which will be addressed by the Minister for Learning, Science and Scotland's Languages, Alasdair Allan, who is on the next panel.

The cabinet secretary will make some opening remarks on the bill as a whole.

**The Cabinet Secretary for Education and Lifelong Learning (Angela Constance):** Good morning. There is much to be proud of in Scottish education, particularly the achievements of our children and young people. We have a record number of exam passes and a record proportion of young people going on to positive destinations after leaving school, and youth unemployment is the lowest that it has been for several years.

Of course, there is always much more to do in making improvements. We must do more to raise the platform for all children and to raise the attainment of those children and young people who are doing less well in school. We know that there is an attainment gap in Scotland between the children from the least disadvantaged backgrounds and those from the most disadvantaged backgrounds. That is what I and this Government are absolutely determined to tackle.

The Education (Scotland) Bill was already in development when I became the Cabinet Secretary for Education and Lifelong Learning. It contains a wide and diverse range of important measures as part of an overall improvement agenda. For me, the big omission was that the bill contained nothing on narrowing the attainment gap or reducing the inequalities in educational outcomes that we know exist. Therefore, I introduced in the bill duties on councils and on ministers to reduce the inequalities of outcome that we see as a result of socioeconomic disadvantage and to report on progress made.

I believe that the bill will have a positive impact and that it will make a difference. It makes a clear



and emphatic statement that Scotland will no longer accept that a child's background or circumstances matter more than their talent or efforts but, in isolation, it will not deliver all the improvements that we want to see. That is why its provisions are just one element of the package of measures that we have put in place to narrow the attainment gap. For example, there is the attainment challenge and the raising attainment for all programme.

The bill also addresses a number of areas in which the Government wants improvements to be made. The first is supporting and promoting Gaelic education. The Gaelic language is a key part of our heritage and cultural life, and it is right that we do more to secure a future for Gaelic. Dr Allan will speak more about that later. Secondly, we want to ensure that children have a stronger voice in their learning, especially those children with additional support needs. Again, Dr Allan will address that in his evidence. Thirdly, we want to ensure that we provide a measure of consistency in relation to standards and the quality of teaching staff, regardless of where they teach. Fourthly, the bill provides for the appointment of appropriately qualified chief education officers across Scotland. Finally, we want there to be a more robust process for complaints when complaints are made to ministers. We want to ensure that an appropriate process exists that will allow disagreements about a child's education to be resolved in a timely manner.

Thank you very much for giving me the opportunity to be here. I welcome the opportunity that I now have with the committee and with Parliament to scrutinise this wide-ranging bill. I am sure that we can have an open and honest debate about how the bill can help us to continue to improve education in Scotland.

**The Convener:** Thank you very much for your statement, cabinet secretary. George Adam will begin the questioning.

**George Adam:** Good morning, cabinet secretary. You will be aware of the submissions that we have received on the bill from COSLA and ADES. Some of COSLA's submission is quite negative—in fact, I could probably have cut and pasted it from previous submissions that COSLA has made on other issues.

As you mentioned, we need to address the issue of attainment. In its written submission, ADES said:

“Clearly, the legislation of itself will not ensure improvement but will provide a clear strategic focus”.

You made a similar comment in your opening remarks. To what extent can legislation reduce the attainment gap?

**Angela Constance:** Legislation is very important. As I said, we cannot view legislation in isolation—it must be part of the overall jigsaw. I alluded to the other areas in which action must be taken, namely around the Scottish attainment challenge and the attainment Scotland fund, and there are also initiatives such as the early years collaborative and the raising attainment for all programme.

Legislation is important in sending a strong signal that, locally and nationally, we are committed to improvement, that we recognise the importance of all our children reaching their full potential and that we do not accept that our children's background or circumstances are more important than their talents or efforts. It sends a strong signal about the Scotland that we seek.

Our proposals are also about strengthening the accountability of the Scottish ministers and of our local government partners, which is important. It is only fair and reasonable that we account for our actions to address the attainment gap. We should also map out the actions that we will take to close that gap. Our actions must be visible, and the debate must continue based on what works and what is effective.

As I said, legislation must be seen in the context of the wider package of improvements that we are undertaking.

**George Adam:** What are the nuts and bolts of the resources and actions that are needed to weaken the link between disadvantage and educational attainment? We have discussed the fact that the problem is deep seated. Indeed, it may affect generations across decades. What level of resource is required?

**Angela Constance:** The bill includes discrete provisions that will place clear duties on the Scottish ministers and local government to reduce inequalities of outcome and to report on progress, and there will obviously be a cost in producing the guidance that will underpin those duties. From memory, the financial memorandum says that the costs associated with the bill are in the region of £50,000.

There is a broader debate about how we use our resources to close the attainment gap. The overall level of resources is important but, as we have seen from last year's Audit Scotland report, so, too, is how those resources are deployed. Some of our resources must be applied universally, but it is clear from some of the evidence and commentary on the bill, including some of the evidence that the committee has had, that there is a need to target resources more effectively. It is evident how that has informed the Government's thinking in and around the Scottish attainment challenge.

There is also the debate about the decisions that we take on the resources that are to be used in the classroom. In addition, there is the issue of how resources should be used to tackle the broader issues outside the classroom, such as addressing poverty and supporting parents.

**Mary Scanlon:** I listened carefully to the cabinet secretary's opening statement. I am sure that she will agree that serious issues were raised in the Audit Scotland report. We are tight for time, so I will not repeat them.

The bill's first four sections are on attainment. The first sentence of the bill says that its purpose is

"to impose duties in relation to reducing pupils' inequalities of outcome".

Which part of the first four sections will achieve that reduction in inequalities of outcome?

**Angela Constance:** Audit Scotland's work in the context of the debate about how we apply our resources, which Mrs Scanlon often refers to, is very important.

As far as the bill is concerned, it is important that we place a clear legislative responsibility on ourselves, as well as on our partners in local government. That is about clarity of purpose. One of the things that we have learned from educational systems across the world is that clarity of purpose is very important; in fact, it is central. Some of the committee's evidence from ADES was about taking a strategic overview and having very clear strategic objectives.

Tackling inequality should be our number 1 objective. We need to be increasingly focused in our attentions on closing the attainment gap that arises as a result of socioeconomic disadvantage. Reporting on, making visible and accounting for what we do, why we do it and what we plan to do in the future is pragmatic. The bill will not in itself resolve the attainment gap, but it is a very important foundation, particularly in giving that clarity of purpose.

**Mary Scanlon:** You know perfectly well that you have my party's support on anything to address inequalities and issues around attainment.

I will move on to implementation. The bill can only be implemented successfully and can only achieve what we all want it to achieve with good will, partnership and respect for working with local government. Why was there no consultation on attainment prior to the bill being introduced? We heard that those provisions were added only in January.

Representatives of both ADES and COSLA spoke to the committee about issues of implementation; so did Sue Ellis, who said:

"We need a national bank of tests and surveys that schools can call on." [*Official Report, Education and Culture Committee*, 9 June 2015; c 22.]

Lindsay Paterson has said that testing is

"not alien to the culture of Scottish teaching or Scottish teacher professionalism".

If we are to implement the bill successfully to achieve the outcomes that we all want to achieve and to give every child in Scotland that equal opportunity, does that mean having a form of national assessment, along the lines of what East Renfrewshire Council does, at different stages of primary education? I want to focus on primary education, as the First Minister and Deputy First Minister both said that that is where the absence of data is. Do we need some form of assessments or tests to enable us to implement the bill successfully so that we can achieve what we all want to achieve?

**Angela Constance:** I will deal first with the issue that Mrs Scanlon raises about consultation. It is true that there has been no formal consultation on the part of the bill to which she refers. As I hope I explained in my opening remarks, when I took up the position of Cabinet Secretary for Education and Lifelong Learning at the end of November 2014, this wide-ranging and quite eclectic bill was already in progress. I make no apologies for inserting what I believe to be some important provisions on attainment, given the focus that attainment and tackling inequality have within the programme for government. I am conscious of the fact that there was no formal consultation. Therefore, it is important that, from the introduction of the bill to stage 2, the Government continues to liaise with stakeholders.

I would not have been happy coming to the committee with a bill that did not include specific powers on attainment. Given the priority that is shared across the Parliament and across the political parties, and given the priority that the programme for government attaches to raising attainment and tackling inequality in our education system, the committee would rightly have been critical and demanding of the Government if I had come to it with a wide-ranging education bill that had no specific sections on tackling inequality in education.

As I say, however, I am conscious that we will have to work hard to continue the dialogue with stakeholders. We have had various discussions and dialogue with bodies such as COSLA, ADES and the national parent forum of Scotland, and we will continue to have those discussions to ensure that we get the best bill possible.

On the other important issues that Mary Scanlon raises, in essence, I think that she is touching on the work that we are doing on the national

improvement framework. The national improvement framework should not be confused with the existing national performance framework, which is about the Government's overall performance in the country. We are talking about a national improvement framework in relation to education. Most local authorities do some sort of standardised assessment, but we really need a line of sight from what is happening in a classroom to what is happening in a school to what is happening in a local authority to what is happening at national level. Various local authorities have different forms of standardised assessment. We now need to have an agreement on standardised assessment so that we can get that line of sight from what is happening at local level to what is happening at national level. The work that the Government is pursuing on the national improvement framework is progressing apace. Of course, we look forward to coming back to the committee to apprise members of the detail of that work in due course.

11:15

**Mary Scanlon:** ADES talks about the national performance improvement framework and the cabinet secretary talks about a national improvement framework. I think that we could be forgiven for dropping the word "performance", given how relevant it is. Of the 32 local authorities, 27 buy in private sector tests from England. We cannot even compare one local authority with another. That issue has been raised in a report by the Auditor General.

Keir Bloomer said:

"the bill is pious thinking masquerading as law making."—[*Official Report, Education and Culture Committee*, 9 June 2015; c 20.]

I would like to think that he is wrong. I am looking for the nub of the bill that will make a difference. In section 1, which is entitled

"Pupils experiencing inequalities of outcome",

subsection (2) states that ministers

"must ... have due regard to the desirability of exercising the powers".

I say respectfully that I am struggling to find the little golden nugget that will make a difference here. When it comes to addressing inequalities of outcome, ministers will have to

"have due regard to the desirability".

**Angela Constance:** Mrs Scanlon raises a number of important issues. I will try to go through them as timeously as possible.

Comparisons between local authorities are indeed difficult, because different local authorities use different forms of standardised assessment. I

therefore do not consider it "pious" for the Government to be working towards a national improvement framework so that we get that clear line of sight that tells us how well we are doing and allows us to track and monitor the progress of individual children as well as what is happening in a classroom, a school and a local authority, and provides a really good and clear national picture. I consider that to be purposeful and pragmatic.

On the wording of having "due regard", the drafting of the bill reflects the policy intention that we are in the business of raising attainment for all children. We want to raise the platform for all children, but increasingly we need to focus on the children who are doing less well and who are being held back as a result of socioeconomic disadvantage. We need to target our efforts and resources to ensure that those children get the best possible start to life and that their performance increases at a faster rate than the overall improvement. Therefore, we are not trying to do just one thing in isolation.

That said, if there are ways in which we can strengthen the wording of the bill without there being any unintended consequences, we are, of course, open to considering evidence and advice from the committee, and we would certainly take that back to the legal draftsmen and women.

**The Convener:** Mark Griffin and Liam McArthur have quick supplementary questions.

**Mark Griffin (Central Scotland) (Lab):** Section 1(3) of the bill asks local authorities to

"reduce inequalities of outcome ... experienced by pupils which result from socio-economic disadvantage",

and section 1(3)(b) gives ministers regulating powers to set out "other pupils". In those regulations, will reference be made to inequalities in educational outcomes that are experienced by pupils who have sensory impairments?

**Angela Constance:** A range of issues contribute to educational inequalities. There will, of course, be a full consultation on regulations.

Our very clear starting point was socioeconomic disadvantage because it makes sense to do that; if we tackle socioeconomic disadvantage, we will thereby also tackle other forms of educational disadvantage. That does not mean that we will not, in the fullness of time, need to consider including, through regulations, other forms of educational inequality and disadvantage. As we introduce regulations, there may need to be some finessing, so I do not want to rule anything in or out at the moment.

**Liam McArthur:** This will not be entirely brief, after the previous session.

The cabinet secretary talked about an “eclectic” and “wide-ranging” bill. I think that we would all accept that it is eclectic and wide-ranging—as is possibly inevitable as we get to the end of a session. You make no apology for having inserted the provisions on attainment rather late in the day.

My problem is that a number of elements appear to have arrived fairly late in the day. We have heard from COSLA concerns about attainment and we heard last week from Inclusion Scotland concerns about some of the additional support needs provisions. There are concerns about the late addition of the chief education officer appointment, and the Scottish Council of Independent Schools is concerned that the General Teaching Council for Scotland requirements for independent schools have been inserted without much consultation. We also have a letter that we will deal with later about the insertion of the standard for headship in the bill. Some of those things command a degree of support and some of them were problematic, but there appears to be a route to a workable solution.

However, all that has created the impression that the bill has been cobbled together in going along. Parliament prides itself on its pre-legislative scrutiny and consultation in the absence of a revising chamber, but the committee has been put in an uncomfortable position in that it is dealing with a bill that has not been properly consulted on. We are doing work in our stage 1 consideration that really should have been done by the Government prior to the introduction of the bill. Is that fair?

**Angela Constance:** No, it is not entirely fair. I accept that there are aspects of the bill on which there has been no formal consultation, but on the chief education officer, GTCS registration and implementation of the standard for headship, there is a process of making regulations in which there will be full consultation and debate.

We are dealing with the consequences of quite a wide-ranging bill. There are provisions that relate to Gaelic education, additional support needs and section 70 complaints, so some of what has happened is inevitable, but there will be ample opportunity for proper scrutiny of and consultation on subsequent regulations.

**Liam McArthur:** We might need to disagree. If things are left to secondary legislation and consultation on it, that bypasses the processes that Parliament has in place to kick the tyres before things are spat out at the other end.

In relation to attainment, you talked about—I jotted this down—“clarity of purpose”, a “clear duty” on local government and “clear legislative responsibility” for “partners in local government”. However, the concern is that the duty is framed in

terms of having “regard to” its “desirability”. Keir Bloomer put it rather well when he said:

“What we will get is competition among authorities to produce reports that make them look as good as possible.”—[*Official Report, Education and Culture Committee*, 9 June 2015; c 24.]

We will probably get that, rather than any change in practice or procedure on the ground. Do you accept that that is a potential risk?

**Angela Constance:** We have to ensure that everything that we do in and around reporting is purposeful, and we always need to recognise that the issue is what people do in response to reports and evidence. I think that it is pragmatic and reasonable to expect the Scottish Government and local authorities—I am not asking local authorities to do anything that I think the Scottish ministers should not do—to be visible and accountable for what they do in evaluating what works and what does not, and what the remaining challenges are. I do not think that any of that is bureaucratic or unreasonable.

The provisions that I have asked to be inserted since I became Cabinet Secretary for Education and Lifelong Learning are purposeful and discrete, and will place on the Government and our partners in local government a duty in terms of regular reporting, because we need that visibility, accountability and leadership in what we are doing and will do. The debate will be based on evidence and what works. I do not see anything unreasonable or wildly bureaucratic in that.

**Liam McArthur:** With respect, cabinet secretary, the bill refers to having “regard to the desirability” of doing that. It almost sounds as though that is what you want to do, but you have held back from putting a firmer duty in the bill—perhaps for very laudable reasons. However, we are now betwixt and between because the bill does not require local government or, indeed, central Government to do anything other than have a reporting mechanism based on “desirability” as opposed to something that is likely to change purpose and action on the ground. That seems to be a very reasonable point, which has been made by Keir Bloomer and others.

**Angela Constance:** If we report on the progress that is made or is not made in any area, there is then democratic scrutiny and expectation, with an increased onus on the Scottish ministers, parliamentarians and local authorities to act on the information in the report. I accept that legislation in isolation is not the be-all and end-all and that the issue is what we do with regard to our duties and our response to any findings. As I said earlier, if there is a better form of wording for something in the bill, we will certainly consider that.

As a Government, we have made it clear that we do not want to hold back the highest-performing children until other children catch up. The view of the Government, and mine as education secretary, is that what is paramount is continuous improvement and ensuring that the children and young people who are doing less well are enabled to improve their performance at a quicker rate—that is what we mean by “closing the gap”. We will not hold some young people back until others catch up; we want continuously to improve the platform and to close the gap by ensuring that children from more disadvantaged backgrounds improve faster.

We have many statutory obligations as well as our obligation to close the gap; but if there is a way to strengthen the wording in the bill to ensure clarity of purpose, we are open to doing that because even the Government would concede that we have no monopoly on wisdom.

**Liam McArthur:** We have known about the problem for decades and we have a fair amount of data on how it manifests itself. I am struggling to understand what the bill will do to move us forward without either additional resources to back that up or without going some way further than it appears to want to go at the moment in relation to the obligation that it applies to local councils—not that I am advocating that that is what should be done.

11:30

However, as Keir Bloomer said, the bill seems to be “masquerading” as something that it clearly is not. It simply requires local authorities to have a reporting structure. They will then be free to continue doing what they are doing and to leave it in the “too difficult” box, if that is what they are minded to do.

**Angela Constance:** Legislation is important because it gives a strong signal about the Scotland that we seek. It gives clarity of purpose; it increases the visibility of what we are collectively and individually doing; and it increases our accountability for what we are doing. I do not see anything “pious”, as Keir Bloomer said, or unworkable in relation to that. While listening to Mr McArthur’s question I wondered whether he was going to make further suggestions for amendments to strengthen the work; we are open to and welcome ideas and other aspects of the debate but—

**Liam McArthur:** We will leave that for stage 2. I still need some convincing that what we are being asked to legislate on will make a practical difference.

**Angela Constance:** Would you prefer not to have duties on the Scottish ministers and on local government?

**Liam McArthur:** No. I would rather have duties that have a meaningful effect than have a duty that allows us to say, “Look—we’ve put this into legislation; haven’t we done well?”

Parliament is fairly guilty of not doing post-legislative scrutiny on whether legislation is having the effect that we expected. My concern is that what we are proposing will not necessarily have any marked effect on the behaviour of individual local authorities. It will simply create a reporting requirement that will divert resource into preparing a report, which may be made to look very good even if what has happened on the ground is no different from what was done last year, 10 years ago or whenever.

**Angela Constance:** There is a role for guidance to ensure that there are some comparisons in the reports. There is no point in people producing 32 varieties of report that cannot be compared to create that national picture. The guidance to ensure that we have very purposeful reporting and that we are not just getting on some bureaucratic wheel is very important.

In addition to the duty to tackle inequality, there is an action: the Scottish ministers and local authorities will have to report every two years. There may be a debate to be had on whether the reporting cycle should be shorter or longer; the Government is interested in hearing the arguments on that. However, the fact that we are requiring ourselves and local authorities to report on progress is an action. Of course, there will be further actions to follow up on the progress reports. The Government and local authorities will have to report every two years. They will be held to account for what they have done in those two years and for what they intend to do in the next two years.

Of course local government has a statutory responsibility to deliver education. and I contend that the purpose of the reporting duties in particular is to enhance visibility and accountability and to ensure that we act on what the evidence tells us.

**Chic Brodie:** Good morning. I apologise for not being here when you arrived, cabinet secretary. I would like to address the schedule that will be introduced by section 17 of the bill, with regard to the increased complaint availability to children of proven capacity. Clearly the complaints that they raise could go beyond that and we could face section 70 complaints. In regard to section 70, do you believe that the bill needs further clarification on the respective roles of the Scottish ministers and the Additional Support Needs Tribunals for Scotland in dealing with a possible increase in complaints?

**Angela Constance:** We intend that there will be no duplication and no confusion in respect of section 70 complaints that are raised with the Scottish ministers. That could be done by an individual, by a committee or by a trade union in response to a report, if they believe that a statutory responsibility has not been fulfilled.

We also need clarity about the function of an additional support needs tribunal. It is not right that people can first complain under section 70 and then go to an additional support needs tribunal. Complaints and concerns about additional support for learning should be dealt with by a tribunal, and we have legislation on that. Section 4 of the bill is clear and contains specific restrictions, and states clearly what issues should be dealt with by an additional support needs tribunal. We consulted on proposals to repeal section 70 in December 2013, but it was considered important that ministers continue to have a role. We do not want any duplication of or confusion about the role of ministers under section 70, and the ASNTS.

**Chic Brodie:** That relates back to your predecessor and complaints three years ago about the confusion that existed.

Moving on, there is a stated period in which complaints should be answered, but the Scottish Public Services Ombudsman stated:

"If I were a child or a parent with a complaint, I would be confused about where I should go. That cannot be right. Either we have to have clearer signposting about where to go for what or we have to have a simplified system."—*[Official Report, Education and Culture Committee, 9 June 2015; c 48.]*

We have mentioned having a clearer process for section 70 complaints and for complaints to the ASNTS. The emphasis seems to be on the right of parents to make their views known, but how can we ensure that children who have ASN know where to go to make a complaint, and that we will respond to that complaint within the prescribed 112 days?

**Angela Constance:** I will leave the rights of children to Dr Allan because I am sure the convener does not want any duplication of the evidence. Mr Brodie is correct to say that we must always strive for better signposting. I contend that the bill is clear about what would be a section 70 issue or complaint and what would be an additional support needs issue, but we must ensure that children and their families know which is which. We have a code of practice for children's learning, and various materials are produced by the ASNTS. The national information and advice service works through Enquire and let's talk ASN, and there is always scope at national and local levels to ensure better signposting. I am certainly aware of that issue because a lot of my surgery work as a constituency MSP involves signposting

the parents of children who need additional support for learning to the right process. We must consider how we can ensure that parents routinely receive that information earlier.

Timescales are important. Although there are not many section 70 complaints—there are only a few each year—our analysis of the situation between 2009 and 2012, which showed that there were 20 section 70 complaints in that period, also showed that the majority of them took more than six months to investigate. The Government believes that that is not good enough, so the bill will introduce the upper limit of 112 working days for investigation.

**Chic Brodie:** I have one last question, which I asked the previous panel. Although the provision to enable children aged over 12 who have proven capacity to raise complaints is welcome, that may cause conflict with parents. Who determines the parents' capacity? The preponderance seems to be in favour of the parents, yet the main user is the child. There is nothing that I can see in the bill that determines how that situation would be resolved.

**Angela Constance:** That is an important and interesting point, but it is a matter for Dr Allan's evidence, later.

**Colin Beattie:** Cabinet secretary, we have had several discussions about the role of the chief education officer. During the previous panel, we had quite a lively discussion with COSLA, which is against the proposal. In written evidence, the lack of formal consultation in advance of the bill's publication has been cited; it has been stated that the staffing of local authorities should be a matter for local authorities and not the Scottish Government; and concerns have been raised about who should perform the CEO role and what qualifications they should have.

The Educational Institute of Scotland has said that the CEO should be GTCS registered, whereas East Lothian Council has said that it is not essential that the CEO has an educational background, which is perhaps a little extreme. There are clearly a number of concerns about the role, and I would appreciate your views on it.

**Angela Constance:** You have touched on several important issues. As committee members know, I am a former social worker and am well acquainted with the responsibilities of the chief social work officer. I will be completely up front with the committee: I was appalled and shocked to discover that the chief education officer role had been removed from statute over 20 years ago.

The role of the chief social work officer is not directly comparable with the proposed role of the chief education officer—the chief social work officer has some specific statutory responsibilities

over and above the responsibility of advising the local authority. Nevertheless, there are a number of comparable roles in statute—there is the head of paid service, which is, in effect, the council's chief executive officer; there also needs to be a financial officer.

Over and above my shock that a chief education officer is not required by statute, there are three reasons why I believe that a local authority should have a chief education officer. First, the landscape of education departments, education services and local government as a whole has changed significantly over the past 20 years in the way that services are delivered and integrated.

Much of that change has been positive but, as we heard in written evidence from the Royal Society of Edinburgh, there have been examples of not just a director but a head of an education service not having an education background. I want to guard against that becoming the norm. I want to ensure that the senior management team of an education service contains someone with an education background, who has the appropriate qualifications and experience. A lot of money is spent on education and the voice of education should be heard when those decisions are being made.

11:45

The regulations that describe the qualifications that a chief education officer needs to have will be consulted on; there will be full consultation in 2016 for that bit of the bill, which will be implemented in 2017. I do not want to pre-empt that consultation. However, I am minded, along with the teaching trade unions, that there should be someone who has experience of teaching and working with children—someone who knows what it is like at the chalkface—within the senior management team of any education service.

**Colin Beattie:** Some of the comments that have been made indicate that the CEO will be an additional post. Could the role be carried out by a current member of staff?

**Angela Constance:** In the vast majority of cases it will not be an additional post, because there will be someone within the senior management team of the local authority education service who has the appropriate level of experience and qualifications, according to the regulations that the Parliament will collectively shape.

Given that, according to the Royal Society of Edinburgh, we have some examples of someone being in charge of an education service without having the appropriate experience and qualifications, and given that the landscape in local government children and education services

has changed and will continue to do so, I want to ensure that we always have an appropriately qualified educationist within that senior education management team. I hope that that will be welcomed and will provide reassurance to parents, amongst others.

**Colin Beattie:** The bill states that the chief education officer will advise the local authority. Do you envisage any role other than an advisory role? The word “advise” sounds quite passive—would the post holder have a more proactive role in ensuring that their advice has actually been carried out?

**Angela Constance:** The role would be advisory, but it would also relate to how local authorities discharge their legal duties, functions and responsibilities, whether that is in relation to additional support needs legislation, school improvement inspections or raising attainment. Given our focus across the Parliament on closing the equity gap and raising attainment for all children, it is right that we have an appropriately qualified and experienced person in the management team.

Other parts of the CEO's duties and responsibilities are about overseeing the interaction with children's services in general, how we engage with parents and how councils respond to the best research and evidence. The role is wider than just an advisory role; ultimately, it is about how an authority discharges its various roles and responsibilities and how those are implemented to the best effect for our children.

**Colin Beattie:** Do you envisage the possibility of the post operating across more than one local authority boundary? In other words, would it be feasible for the post to cover two or three local authorities?

**Angela Constance:** The purpose of that part of the bill is not to restrict local authorities in making decisions and choices on shared services as they see fit. The bill is about ensuring that, however the education service is configured, there is someone in the senior management team who knows what it is like on the chalkface.

**The Convener:** Following on from one of the questions that Colin Beattie just asked, the bill states:

“an education authority must appoint an officer to advise the authority”.

You have laid out your view on that. The written evidence that we received from ADES gives nine examples of the roles that it envisages a chief education officer would undertake. The first is:

“to advise the education authority on matters relating to its statutory responsibilities”.

That is fine. It seems to fit in with what the bill says about the CEO role being advisory. The other eight all start with “to ensure that”. That does not sound like an advisory role; it sounds as though the chief education officer would have a responsibility and an authority to ensure that something is done rather than to advise the council that something should be done. Will you clarify that? Will the role be as it is currently set out in the bill, or will it be closer to what ADES has set out in its evidence?

**Angela Constance:** That will have to be fleshed out in the regulations. It is not just about advising, as I intimated in my response to Mr Beattie; it is about ensuring that action is taken and advice is followed through. I stress that this is not about the accountability of one person; it is about increasing the accountability of the entire education system.

**Liam McArthur:** This is an interesting line of questioning. Cabinet secretary, you said earlier that you did not want to second-guess the way in which local authorities discharge their duties. However, to some extent—and having not identified a problem—we appear to be wading in with legislative levers to solve a problem that does not exist, and telling local authorities how we expect them to discharge their duties and structure their organisations.

**Angela Constance:** I am not telling local authorities how they should structure their organisations or deliver their services. At the end of the day, is it unreasonable to expect there to be someone within a senior management team in an education service who is appropriately qualified and experienced? If you want to apply common sense, I think that most people would expect there to be someone within that team who has first-hand experience of education and who is by definition an educationist. We know that many people make up the breadth and strength of any management team, but surely to goodness someone who is by definition an expert in education also has to have a seat at the table.

**Liam McArthur:** Do you expect the same of the Scottish Government? In policy development within your own organisation, would there have to be someone with a background in education—or in whatever is the relevant area of policy making?

**Angela Constance:** I will restrict my remarks to education, if you do not mind. In the civil service and Education Scotland there are a variety of people from a variety of backgrounds, but of course there are people who are educationists, particularly in Education Scotland. There has to be that mix.

**Liam McArthur:** But you can be trusted to take and secure that advice on the basis of what your requirements are, without the need to have a chief

education officer within the Scottish Government with a particular background and experience that are set down in statute. You can be relied upon to secure that sort of advice and support of your own free will.

**Angela Constance:** If you have suggestions, we will always look at them fairly and squarely.

**Liam McArthur:** I am just saying that the terms of the partnership relationship between yourselves and local authorities seem to be rather different—

**Angela Constance:** The difference is that, as things stand, local authorities have the legal responsibility and the operational responsibility to deliver education. I have been entirely candid and up front with the committee. As a former social worker, I am well apprised of the role and responsibilities of the chief social work officer. I was shocked that we no longer have provision to ensure that each and every local authority has a chief education officer. I think that that is pragmatic and sensible.

**Liam McArthur:** It came as a shock to you because, presumably, you had not identified a problem that had arisen from the fact that there was not a requirement in statute and that local authorities had in fact been discharging their duties of educational provision without the requirement for a chief education officer to be written into statute.

**Angela Constance:** I am being candid and telling you that, when I became education secretary and was apprised of the situation, I was shocked.

**Liam McArthur:** You have been an MSP since 2007—

**Angela Constance:** There are a range of issues—

**The Convener:** I think that we have done that one. I want to move on. Time is tight and I do not want a spat between members and the cabinet secretary.

**Mary Scanlon:** The next issue is the registration of teachers in independent schools. The policy memorandum says:

“There is a clear relationship between poor teacher quality and weakness in the provision of education.”

Why was no consultation undertaken on registration in advance of the bill’s publication? What is the driver for the legal requirement that all teachers have to be GTCS registered?

**Angela Constance:** There was specific consultation with the independent sector. It was not widespread consultation, but the Government has been in discussions with the seven grant-aided special schools, the GTCS and the Scottish



Council for Independent Schools. Registration is an issue that the sector has been working on with the Government for 15 years.

There is a wealth of evidence from organisations such as the Organisation for Economic Co-operation and Development that talks about teachers having the most direct influence on student performance and on improving learning outcomes. The consensus in the literature is that teacher quality is the most important school variable that influences student achievements. That information comes from the programme for international student assessment—PISA—in 2012.

When considering our education system as a whole, it is desirable that teachers are registered. One of the strengths of the Scottish education system, certainly in the state sector, is that there is a graduate teaching workforce—our teachers have a teaching qualification and they are registered. Teaching is a learning profession, so teachers are subject to continuing professional development and the professional update process.

**Mary Scanlon:** My question was about poor teacher quality, but I will move on.

My next question is about the requirement for headteachers to hold a qualification for headship, which the cabinet secretary has notified the committee about today. That will again be a Scottish qualification. Last week, the committee heard from several witnesses that highly qualified and experienced teachers who come up to Scotland from England have had to wait nine months or more to get through the GTCS registration process.

I am asking whether, for teachers who come from England, registration and the new Scottish qualification for headship—which teachers from England will be unlikely to have—fulfil the European requirements for the free movement of people. I understand that a qualification that was obtained in England or Scotland would allow someone to teach in France or Germany. Why is it so difficult for a teacher to come from England to Scotland? Why is there such a delay? Schools such as Gordonstoun, which takes pupils from all over the world and is a large employer in the Moray constituency, would seem to be able to appoint only a headteacher who had a Scottish qualification.

**Angela Constance:** As we introduce the mandatory headteacher qualification, the GTCS can and will ensure that there are equivalency processes—it will look for equivalent qualifications. If we introduce specific qualifications for headteachers in Scotland, headteachers who come from elsewhere will not necessarily have

those qualifications, so some sort of equivalency will be needed; the GTCS will take that forward.

Mary Scanlon touched on teacher shortages in some subjects in some parts of the country. A range of actions are under way to address that. The improvement of the GTCS registration process is just one aspect of the overall work to address the issues that Mary Scanlon raised. It is important to recognise that last year the GTCS registered more than 500 teachers, nearly half of whom were from England. If there are ways to ensure better processes that do not dilute standards—Ken Muir gave evidence to the committee on that last week—we are always open to improving processes.

12:00

**Mary Scanlon:** I am pleased to hear that equivalency will apply to headships so that if, say, someone has an equivalent qualification in England, they will be able to apply for a post in Scotland. Why does the same equivalency not apply to experienced teachers who are qualified to teach in England and come to Scotland—again, there was an example of that from Moray—perhaps just for a short time? Why do we not have the same equivalency for transferring teachers here, given the shortages?

**Angela Constance:** The GTCS spoke in detail about that at your previous committee meeting.

**Mary Scanlon:** The process takes a long time.

**Angela Constance:** It does not always take a long time, but some teachers who are employed south of the border do not have a teaching qualification. In the evidence that the committee heard last week, there was the suggestion that MSPs would be suitable people to teach modern studies. I strongly beg to differ about that. People who are immensely talented musicians can of course have an input in schools, but that does not mean that they are well prepared to take a young person through higher music, and I do not know many MSPs who would be well qualified to take a young person through higher modern studies.

That we expect teachers to have not only a degree but a teaching qualification is a strength of our system. That is not unreasonable—far from it. We must look closely at whether teachers who come from elsewhere have a teaching qualification and, if they do, what that qualification is. There are ways in which people can top up their qualifications, and the GTCS has done a lot of work with the University of Northampton and the University of Buckingham on that. In addition, aptitude tests are used when it is difficult to get equivalency of qualifications.

**Mary Scanlon:** Not all teachers in further education are GTCS registered. Does that mean that there is poor teacher quality there? No university lecturer is GTCS registered, so are there issues in higher education as well?

**Angela Constance:** We are talking about our children and their education. A strength of how we teach children in Scotland is that we have a graduate workforce with teachers who are qualified to teach. The teaching bit is not the easy bit by any stretch of the imagination, and if Mary Scanlon has proposals for registration of further education and university lecturers, we will wait until we have seen them, but we are talking about children.

**Mary Scanlon:** I am talking about children, too. The Wood commission looked at children aged 14 and over who might go into further education, and FE lecturers going into schools.

I was an FE lecturer for two decades before I came in here. I was never GTCS registered. I do not think that anyone complained about my teaching abilities or qualities.

Liam McArthur talked about looking for a problem. We have a solution, but I am looking to see what the problem is. I am just trying to be consistent.

**Angela Constance:** Having a graduate workforce of teachers with teaching qualifications who are registered does not remove all problems, but I contend that it minimises them.

On the young workforce agenda, there is absolutely the scope for better collaboration between schools and colleges. As happens in my constituency, young people can receive part of their education in college if they are doing a vocational course. That is right and proper.

On teachers who are teaching the curriculum and supporting young people through national qualifications, I will stick to my guns, thanks very much. We expect our teachers to have a teaching qualification and to be registered. That should apply throughout the education system.

**Gordon MacDonald:** I want to clear up an issue from last week's evidence, when we heard that the vast majority of teachers are GTCS registered, which includes more than 90 per cent of teachers in the independent sector. Are you satisfied that the working group that the Scottish Council of Independent Schools and the GTCS have set up will be able to address all the concerns that the sector raised about the small number of teachers who are not GTCS registered?

**Angela Constance:** My recollection of the statistics is that, of the more than 4,000 teachers in the independent sector, 645 are not registered. Our information is that 265 of them would be likely

to meet registration requirements. There is an issue about music teachers—115 of them are instrumental instructors and, as it said in its evidence to the committee, the GTCS is looking at whether registration is appropriate.

There is also an issue over the remaining 265 people, who have a range of qualifications. They are not all degree qualified and they do not all have teaching qualifications. There is a range of options for them. We work hard with the sector to reach pragmatic conclusions.

**Gordon MacDonald:** What about the specialist schools, such as the Steiner schools or the International School of Aberdeen, where the Scottish curriculum might not be taught?

**Angela Constance:** For smaller schools such as those, we can see that registration would be more of a challenge. We want to find solutions that are helpful but do not dilute standards.

I think that only two teachers across the seven grant-aided specialist schools are not registered.

**Gordon MacDonald:** That is good.

**The Convener:** That ends questions to the cabinet secretary and her officials. I thank you all very much for giving your time to come to the committee.

I suspend the meeting briefly to allow a changeover of witnesses.

12:08

*Meeting suspended.*

12:11

*On resuming—*

**The Convener:** I welcome to the committee Alasdair Allan, Minister for Learning, Science and Scotland's Languages and his accompanying officials. As I said earlier, Dr Allan is here to answer questions on the Gaelic and additional support needs parts of the bill. I will move straight to questions.

**Gordon MacDonald:** We heard evidence from COSLA that it thought that there would be difficulties because there is a lack of available Gaelic language teachers and a lack of new Scottish Government funding for the process. In addition, last week Magaidh Wentworth said:

"we need the process because local authorities are not supportive".—[*Official Report, Education and Culture Committee*, 16 June 2015; c 6.]

It was also suggested that the list of factors in section 10 might be used as an excuse not to do anything.

Will the bill actually achieve anything? Will it encourage more local authorities to provide Gaelic-medium primary education, or is it just about expanding the current provision?

**Dr Alasdair Allan (Minister for Learning, Science and Scotland's Languages):** That was a list of very good questions, and I will do my best to work my way through them.

On the final point about whether it is about developing Gaelic-medium education or just making it bigger, I would say that the two things are interconnected. The number of children going through Gaelic-medium primary has been increasing in recent years, and that is part of a deliberate effort.

Members will know my strong views about maintaining the existence of the Gaelic language. The limiting factor is something that the committee will have identified, which is the number of available teachers. Likewise, that is something that the Scottish Government and Bòrd na Gàidhlig are working on and we have increased the numbers coming through this year quite significantly. It does not sound like a big number, but this year there are 28 teachers coming out of the teacher training course.

On the points about how strong and workable the bill is in relation to Gaelic-medium education, I think that there is a balance to be struck. We have been talking about a right to primary Gaelic-medium education for quite a long time in Scotland. I remember the concept of reasonable demand and the need for a right to GME being talked about for a long time. I have been involved in the Government coming up with a bill that is reasonably balanced in the sense that it provides people with a process and with something approaching the entitlement that we have all been talking about—an entitlement to something that exists, rather than an entitlement to something that does not.

Having said all that, I am very willing to listen to those who say that they want the Government to go further. I am willing to listen to what they have to say about the concept of entitlement and how it might be strengthened in the bill. It is a balancing act, but I am more than willing to talk about that and to hear people's views on it.

12:15

**Gordon MacDonald:** You have spoken about that balancing act and about the demand being a reasonable one. However, given the concerns from Magaidh Wentworth that I read out to you, should there be more of a legal right in the bill for Gaelic-medium education, or is that not your view?

**Dr Allan:** In this part of the bill, the focus is on having the right to a process—the right to having the demand for Gaelic-medium education within a community assessed. If I recall correctly, the question that Ms Wentworth and others were raising was: what happens, and what is the entitlement, at the end of that process?

There has been much discussion of the issue online and within the Gaelic world. As I have indicated, I am willing to listen and respond to that discussion as much as I can. If there are ways forward where we can work together on it, I am happy to try to do so.

That is not an open-ended commitment. As I say, there is little point creating an entitlement to things that do not exist. I think that, working together, we may be able to find a way to strengthen parts of the bill. You mentioned section 10, which deals in part with that issue and in part—although I may be corrected—with the kinds of reasons that local authorities can produce for counting against the case that parents put forward for the provision of Gaelic-medium education. I am sure that I will be able to work with the Gaelic community on that matter.

**Gordon MacDonald:** During our previous evidence session, ADES highlighted that the educational focus is on three-to-18 learning. Given that there are nearly 4,000 secondary pupils in either Gaelic-medium education or Gaelic-learning classes, is the Government considering extending the bill to include secondary education?

**Dr Allan:** There is no doubt that, for Gaelic-medium education to be a success in the future, we have to consider where secondary fits in. However, there is a very important distinction to be drawn between people who are learning Gaelic and people who are learning in Gaelic. The bill deals with children who are learning in Gaelic. At the moment, that is predominantly a feature of primary education, and that is why the bill primarily deals with that area. It contains power to deal with pre-school education in the future, potentially, but the focus is very much on primary, as that is where the focus of Gaelic-medium education has been to date.

I would like more schools to be developing more courses available through the medium of Gaelic at secondary level. However, that depends on our having secondary teachers who are able and qualified to teach through the medium of Gaelic, and I would not like to give the committee any false impression of how many of them there are.

**Gordon MacDonald:** Previous Gaelic bills have arrested the decline in the language. Do you think that the Education (Scotland) Bill will help to restore the number of Gaelic speakers back to the 2001 level?

**Dr Allan:** That is the target that the Government has set itself. It sounds very modest to try to get back to the number of Gaelic speakers that there were in 2001, until you consider that every single census in the past 100 to 150 years—bar one or two flukes in the 1890s and 1970s, from memory—has shown a decline.

Based on the last census, the overall decline in the number of Gaelic speakers has been almost arrested. Now, we have to get back to the number of Gaelic speakers that there were in 2001. Why do I say that? Because, unless we can do that, the trajectory is not that of a healthy, thriving language. We need to get back to those figures.

A lot has been done on that front. Bòrd na Gàidhlig has been specifically tasked with work to meet the target, and the increase in the numbers of people coming through Gaelic-medium education is part of that. The Education (Scotland) Bill is part of that. Also part of that is the role of Gaelic in the community—we must not get the impression that Gaelic is something that happens in school and nowhere else.

**Mark Griffin:** Most people recognise that what we have here is a balance between an outright right to Gaelic-medium primary education and a recognition of the demand that exists. You have said that you are open to strengthening the bill. Would you be open to accepting an amendment in section 11 to allow parents to appeal when a local authority has decided not to provide Gaelic-medium education?

**Dr Allan:** My initial reaction is that an appeals structure would be a fairly disproportionate and complex thing to introduce into the bill. Others have pointed to the question of what happens at the end of the assessment process. If there is room for us to strengthen the bill, that will centre on questions about what happens at the end of the assessment process and the reasons that local authorities can give for not creating a Gaelic-medium unit. I think that those would be more proportionate ways in which to strengthen the bill, but if members have specific proposals I am more than happy to listen to them.

**Mary Scanlon:** The Scottish National Party manifestos in 2007 and 2011 stated that there would be an entitlement to Gaelic-medium education. Given that 11 out of 23 sections of the bill focus on Gaelic, there is plenty of room for it in the bill. Why did an entitlement to Gaelic-medium education become an entitlement to parental requests being processed in a consistent manner?

You keep saying—you also said this in Angus MacDonald's members' business debate—that, if members want to come and talk to you, you will listen and the bill will be strengthened. Given the history of the issue, and given what you say about

being willing to strengthen the bill, will you honour your manifesto commitments from 2007 and 2011?

**Dr Allan:** To create any kind of entitlement, wherever it sits on the spectrum of entitlement, some process has to be introduced through the bill to measure demand—the need that exists in communities—and the extent to which a local authority is willing and able to engage with that. I do not think that there is any need for me to apologise for the fact that the bill has to introduce that process.

I understand the point that the member makes, and I have already referred to what happens at the end of the process—the question of the degree to which there is an entitlement to see a local authority go a step further following the assessment of need. As is said in Gaelic, we might all be on the same oar, if I can use that analogy. To some degree, we are all pointing in the same direction, and there may be opportunities in the bill, at some point, to go further along the line of entitlement to which the member alludes.

**Mary Scanlon:** But the process is just about the administrative means of processing a parental request. For example, we took evidence from Scottish Borders Council this morning. It could be that that council could find a request to provide Gaelic-medium education not reasonable or that the council could not afford it. It is just an administrative process—correct me if I am wrong. Are you saying that the process will lead to an increase in the demand for Gaelic education and that, in a year or when we come back in September, the process will be 50 per cent of the way to the entitlement?

We know the demand for Gaelic—we have information from the census and Gordon MacDonald has given the figures for the increase in the demand for and supply of Gaelic education in recent years. We know that the demand exists. I am trying to understand why an entitlement to Gaelic-medium education has become an entitlement to a process.

**Dr Allan:** With respect, although I agree with what the member says about the national demand for Gaelic-medium education, people who are looking for Gaelic-medium education in their communities have suggested to me that one of the obstacles to that is the fact that there is no easy way of showing the local demand for it. There is no formal means whereby a local authority has to see, acknowledge and put on the public record the demand that exists locally. Most people who are campaigning for Gaelic-medium education would see such a requirement as strengthening their hand within the community and with the local authority.

I appreciate the motives behind the member's point and I understand her commitment to the issue. As I have said a few times now, there is room for us to look at what happens at the end of that process to see whether it can be strengthened further.

**Mary Scanlon:** Why did you promise the entitlement? You have a majority Government, so you could bring forward that entitlement, but instead it has become an administrative process, so why promise it?

**Dr Allan:** As I have told the committee, there is not much disputing the fact that I would like a fairly dramatic increase in the scale of Gaelic-medium education in Scotland. Indeed, that has to happen for the language to survive and flourish in the future. However, we have to ensure that what we do in legislation actually leads somewhere. There has to be more than a slogan; there has to be a right to something that is going to happen and that we have the means and, crucially, the teachers to provide.

Lots of things are happening on the front of providing more teachers and keeping up with demand. I am pleased that much of the evidence that the committee has received has been looking for the bill to go a bit further. The demand is there for Gaelic-medium education to increase, but the evidence from COSLA suggests that the bill goes too far. There is a question of proportionality. I want to listen and consider whether there is room to strengthen the bill.

**Liam McArthur:** I am no expert oarsman but, if everybody is on the same oar, do we not just end up going round in circles?

You suggest that you are open to ideas about how we might go further. I have put on record before that I am supportive of your work to support the development and promotion of the Scots language. In areas such as Orkney and Shetland, where there is not really a tradition of Gaelic speaking, there might be traditions of other language teaching. We heard a similar concern from the Borders this morning. I am looking for an assurance that you are not minded to put in place a bill that could have the consequences of diverting resource away from work to support the development and promotion of the Scots language and dialect in order to promote Gaelic in areas where there has not really been a tradition of speaking Gaelic.

**Dr Allan:** The bill is not about forcing local authorities to provide Gaelic. If there is no demand for Gaelic-medium education in a local community, nobody will make use of the bill. However, the bill provides a mechanism for communities in which there is a demand for Gaelic-medium education to take that forward.

On resources, I agree with the member that there is a need to ensure that the Scots language—which as the member knows I have been very involved in supporting—is promoted. The appointment of Scots language co-ordinators in schools, including an Orcadian and a Shetlander, indicates the desire to explain and promote that linguistic tradition in Scotland as well.

**Siobhan McMahon:** I have questions on additional support needs. Written submissions from organisations have welcomed the principle of extending children's rights to additional support for learning and the introduction of support services. However, there have been a number of criticisms. In particular, it has been said that the definition of capacity should be aligned with that in existing legislation, so that a child of 12 or over is presumed to have capacity and a child under 12 could potentially have capacity. We also heard in evidence a few weeks ago that the definition of capacity in the bill might not be compatible with the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Why has the standard principle on capacity not been applied in this instance?

**Dr Allan:** As you say, the issue of capacity is important and it is by no means simple in the bill. For instance, if we had gone down the route of presuming capacity—as you say, that was one way forward—that could have had a range of potential unintended consequences.

There are wider issues about the use of rights. The purpose of the bill is to increase young people's rights. This is no simple piece of legislation; it refers back to the 2004 act, which includes 18 potential scenarios for the use of those rights—I will not list them unless members want me to. We must ensure that we do not put children in a difficult situation. Rights on school placement requests have not been extended, and that could lead to children and young people being moved not just from their family but from their community and even their country. This issue is by no means simple, and it refers back to legislation that is by no means simple. Simpler solutions could have been found—Siobhan McMahon pointed one out—but I am not convinced that that would have been in the best interests of young people.

12.30

**Siobhan McMahon:** Why would that be?

**Dr Allan:** As I have indicated, we are discussing things such as requests for assessment of additional support needs. That involves making a formal request for an assessment, taking part in that process, agreeing what information can be shared to support transition planning, requesting a

co-ordinated support plan or a review of that plan, and applying to independent adjudication when referring someone to the Additional Support Needs Tribunal. You suggest that presumed consent could have been used in all those scenarios, but if that line had been taken, I think there would be unintended consequences in several of those areas. Laura Meikle will be able to speak a bit more about some of those scenarios.

**Laura Meikle (Scottish Government):** Absolutely. When we were developing proposals to amend the 2004 act we started from a slightly different position. We considered what a child had to do to access their rights, and we worked forward from that. We mapped the processes that the child would have to go through, and noted what support would be required. From the start it became apparent that capacity and best interests would be a significant part of that issue, and there was concern about the extension. We took a slightly different approach from the one suggested by Iain Smith, which was to include safeguards to enable parents and others to check that the child was able to exercise their rights in their best interests. As Dr Allan has said, there are at least 18 different rights and therefore 18 different assessments of capacity, depending on the process that the child will go through. That makes it a complex issue, and the presumption of capacity in relation to those rights might not be appropriate. We are trying to avoid giving a child rights if using those rights would put them under pressure and mean that they were unable to cope with the process that they were going through.

Dr Allan's example of assessment is a good one. A child would have to go through that process, but then they would receive their diagnosis themselves. Would they be able to cope with that and would they understand what it meant for them? On balance, we felt that, if we included that presumption, we would potentially cause harm to children, which we did not want. We therefore took a different approach, which involved an assessment of capacity and then an assessment of best interests.

**Siobhan McMahon:** I will come back in a moment to the best interests test and the point suggested by Iain Smith. Do you see the issue of capacity as being against the UN conventions, or will it be compatible?

**Dr Allan:** No, I do not accept the suggestion that it is incompatible. One of the reasons why I am confident of that is that the entitlement is for all children to have their needs assessed. Obviously, only those young people who are assessed as having additional support needs will then go on to use some of those rights, but I am confident—not least because of the fact that the right to have their

needs assessed exists for all young people—that it is equitable for all young people.

**Siobhan McMahon:** You may be aware of the Govan Law Centre's criticisms of the best interests test and those of Iain Smith and the interpretation of the quotation that you gave us. I remember the exchange that we had when we heard evidence from those bodies. They said—these are their words, not mine—that you may have misunderstood the best interests. The Govan Law Centre said:

"If a child has legal capacity to exercise rights, then it is for them to determine whether it is in their best interests to do so. That is part of what it means to have rights—deciding whether and how best to use them."

What is your view on that? The Govan Law Centre says that we are clearly not meeting the test of best interests, and we have heard evidence suggesting that Government officials might not be interpreting that in the best way.

**Laura Meikle:** In principle, I understand the argument that, if you give a child a right, they should then be able to exercise that right, or not, and that is the end of the matter. In the case of the group of children and young people that we are talking about, we recognise that there is a broad spectrum of differing additional support needs. Knowing that there are processes that we would require them to undertake in order to access those rights, we introduced the best interests element. I recognise that it is a departure, but I firmly believe that it allows access to an appeal for parents, to ensure that rights are being used in the best interests of their child.

At the time, I gave the example of a situation in which a child might, for very good reasons and in their own right, want to remove part of the provision that is there to meet their assessed needs, and I think that that still stands. The best interests elements comes from the process of working through what would be required to allow them to use their rights. I recognise that others view that as a barrier to those rights. We view it as a safeguard to ensure that we are not putting children into difficult situations. I absolutely recognise that there are two different perspectives on the same issue.

**Dr Allan:** To pick up on that point, the existence of a right to appeal acts as an important backstop, but another important feature is the fact that, through guidance, local authorities that are assessing capacity cannot do so in a vacuum. They have to do so within rules that are laid down. As I said, I believe that the existence of a right to an appeal acts as an important way of bolstering rights in that area.

**Siobhan McMahon:** You have said how complicated the issue and the tests that are

applied are, and I completely understand that. Are local authorities the best placed organisations to deal with issues of best interests and capacity, given that the young people who might be exercising those rights are doing so against a local authority? I have asked COSLA for an opinion, but it does not seem to have one on this issue, which is quite bizarre.

**Dr Allan:** COSLA usually has a well-informed opinion. Perhaps it is relevant to say that because, in this instance, local authorities are in a position to be well informed, not just about children's rights but about the services that children would be making use of. It could be the case that, in some instances, it is possible to have a dialogue with a young person who has a relationship with somebody who works for the council as well. Notwithstanding everything that I have said about the objective parameters within which local authorities will have to work when doing those assessments, I think that they are best placed, and have the relationships in place, to carry out those assessments.

**Chic Brodie:** We are talking about the assessments of children's needs and where they fall in the spectrum of demonstrating that they have got capacity, and we have extended that. Of course, we wish to avoid conflicts of interest with parents but, as I asked in the previous evidence session and last week, who assesses a parent's capacity to address issues? If a child exercises their right to raise an issue and has the capacity to do so, but their parents do not necessarily think that they should, who in that situation will assess the parents?

**Dr Allan:** You point to an important area that highlights why we need this piece of legislation. There are parents who, through no fault of their own, are not in a position to stand up for their children's interests. As things stand under the 2004 act, there is no requirement for assessment of parental capacity, which means that no body has been identified to do that. Instead, the act requires that parents or carers act on their child's behalf but, as I have said, part of the reasoning behind the introduction of this legislation is that there are circumstances in which parents do not do so. The bill—or, rather, this part of the bill—is intended to fill some of those gaps.

**Chic Brodie:** But it is a problem.

**Dr Allan:** It is under the current legislation. With the convener's permission, I will call on Laura Meikle to say some more about that.

**Laura Meikle:** There are circumstances in which parents might not have the capacity to act on their children's behalf. In response to your question about who would make such an assessment, I think that those matters would be

considered in relation to other issues around, say, children's hearings and social work services. As a result, it would not necessarily fall to the education authority to make such a consideration as part of the additional support for learning framework.

I am not sure whether that was helpful.

**Chic Brodie:** It was, but such an approach will not fill the black hole that might arise. At the end of the day, we—and, I am sure, the bill—want to protect the rights of children and to help with their needs and where they might want to go.

**Dr Allan:** The fact that the bill seeks to extend rights to an older group of children—or, I should say, young people—with capacity is, I believe, a far-reaching attempt to address some of the concerns and problems that you have rightly pointed out.

**The Convener:** I thank the minister and his officials for their attendance, but I must ask them to stay in place for a moment while we deal—fairly quickly, I hope—with the next item of business.

## Subordinate Legislation

**University of the West of Scotland  
(Amendment of the University of Paisley  
(Scotland) Order of Council 1993) Order of  
Council 2015 (SSI 2015/209)**

**Education (Student Support)  
(Miscellaneous Amendments) (Scotland)  
Regulations 2015 (SSI 2015/212)**

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Fees for Scheme  
Membership and Disclosure Requests)  
Amendment Regulations 2015 (SSI  
2015/223)**

12:42

**The Convener:** Agenda item 3 is consideration of three pieces of subordinate legislation. If members have no comments on the instruments, does the committee agree to make no recommendation to the Parliament on them?

**Members** *indicated agreement.*

**The Convener:** As the committee has agreed to hold the next items on our agenda in private, I close the meeting to the public.

12:43

*Meeting continued in private until 13:31.*



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