



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 1 December 2015

Session 4

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**Tuesday 1 December 2015**

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**EDUCATION AND CULTURE COMMITTEE**

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

**CONVENER**

\*Stewart Maxwell (West Scotland) (SNP)

**DEPUTY CONVENER**

\*Mark Griffin (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Chic Brodie (South Scotland) (SNP)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*John Pentland (Motherwell and Wishaw) (Lab)

\*Mary Scanlon (Highlands and Islands) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Councillor Shamin Akhtar (East Lothian Council)

Dr Alasdair Allan (Minister for Learning, Science and Scotland's Languages)

James Dornan (Glasgow Cathcart) (SNP) (Committee Substitute)

Councillor Jenny Laing (Aberdeen City Council)

Angus MacDonald (Falkirk East) (SNP)

Robert Nicol (Convention of Scottish Local Authorities)

Councillor Stephanie Primrose (Convention of Scottish Local Authorities and East Ayrshire Council)

Councillor Gary Robinson (Shetland Islands Council)

Liz Smith (Mid Scotland and Fife) (Con)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Education and Culture Committee

*Tuesday 1 December 2015*

*[The Convener opened the meeting at 09:02]*

### Education (Scotland) Bill: Stage 2

**The Convener (Stewart Maxwell):** Good morning and welcome to the 29th meeting in 2015 of the Education and Culture Committee. I remind all those present that electronic devices should be switched off at all times. Apologies have been received from Colin Beattie. I welcome James Dornan, who is here as his substitute.

For today's stage 2 consideration of the Education (Scotland) Bill, we intend to deal with all the amendments to sections 5 to 17 and the schedule. We will not go beyond that point today.

I welcome Alasdair Allan, the Minister for Learning, Science and Scotland's Languages, and his accompanying officials. Officials are not permitted to participate in the formal proceedings.

I will cover a number of issues before we start, if the minister does not mind. A number of non-committee members have lodged amendments. I expect them to join us throughout the course of the meeting. Angus MacDonald is here—welcome, Angus. I expect that Liz Smith will join us as soon as she is able to.

Everyone should have with them a copy of the bill as introduced, the first marshalled list of amendments and the first groupings of amendments, which sets out the amendments in the order in which they will be debated.

For each debate, I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. All other members with amendments in the group, including the minister, if relevant, will then be asked to speak to their amendments. Members who have not lodged any amendments in the group but who wish to speak should indicate that by catching my or the clerk's attention. If the minister has not already spoken on a group, I will invite him to contribute to the debate just before we move to the winding-up speech.

The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following the debate on each group, I will check whether the member who moved the first amendment in the

group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek approval to do so; if any member objects, the committee will immediately move to the vote on the amendment.

If any member does not want to move their amendment when it is called, they should say "Not moved." However, please note that any other MSP, not just committee members, may move that amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are entitled to vote. Voting is done by division by a show of hands. It is important that members keep their hands raised clearly until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

We move to day 1 consideration of the Education (Scotland) Bill at stage 2.

#### Section 5—Assessment requests

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendments 2 to 4, 27 and 35 to 40.

**The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan):** Madainn mhath, a chathraiche, agus tapadh leibh airson nam beachdan bhon chomataidh. Bha iad gu math cuideachail.

I welcome the opportunity to join the committee at stage 2 of the Education (Scotland) Bill and to discuss the various amendments that have been lodged.

It is relevant to say in looking at group 1 that, through the bill, we are creating a right for parents to request that Gaelic-medium primary education, or GMPE, if I may use that abbreviation, is provided in the area in which their children are resident. Our intention is to create that right for parents whose children are below school age and have not yet commenced primary school, as those children stand to benefit the most from the provision.

If I am honest—which I am—I am not sure that we got that quite right in the bill as introduced. As I previously indicated I would, I lodged the amendments in group 1 to ensure that we deliver our intended policy.

Amendments 1, 3, 4 and 27 ensure that it is children who are below school age and have not yet commenced primary school who will be the

focus of the assessment of the need to provide GMPE. I believe that the phrase “under school age”, as provided in the bill as introduced, is not sufficient to have that effect, as it is possible in certain cases for children who are under school age to have already commenced attendance at a primary school. A reference to being both “under school age” and not having

“commenced attendance at a primary school”

is therefore necessary to have the desired effect.

Amendment 2 is a technical amendment to improve the language in the bill. Amendments 35 to 40 are technical and definitional amendments that ensure that, when the bill refers to primary education or primary school, that does not include early learning and childcare. The power remains in section 12 to extend part 2 of the bill to cover early learning and childcare in the future.

I ask the committee to support all the amendments in the group.

I move amendment 1.

**Mary Scanlon (Highlands and Islands) (Con):**

First, the minister referred to the future. Will commencement of the provision in section 12 be delayed for some time?

Secondly, will the same procedure for primary school provision of Gaelic-medium education in respect of assessment on the basis of parental requests apply to early learning?

**The Convener:** As no other members wish to contribute, I call the minister to wind up.

**Dr Allan:** Obviously, the intention is for the bill to give ministers the power to achieve that end. I certainly acknowledge the importance of Gaelic-medium education in early education and childcare.

Our response to what was said at stage 1 and in the committee’s stage 1 report makes it clear that this may not be the right time to introduce another duty in a sector that is going through considerable change. However, I reassure the member that there is a clear recognition that we must do more in pre-school. It would be my hope that ministers would certainly use the power in the not-too-distant future.

**The Convener:** Thank you, minister.

**Mary Scanlon:** What about my second question?

**The Convener:** I am sorry, but the minister has finished winding up. We will move on—unless you want to add anything at this stage, minister.

**Dr Allan:** Mary Scanlon’s second point was about the process that will be used. Obviously, the process will have to be adapted to some extent to

cope with the demands of a pre-school situation. Certainly, the aim is the same throughout the bill—to marry up pre-school and primary school.

*Amendment 1 agreed to.*

*Amendment 2 moved—[Dr Alasdair Allan]—and agreed to.*

*Section 5, as amended, agreed to.*

### **Section 6—GMPE assessment areas**

*Amendments 3 and 4 moved—[Dr Alasdair Allan]—and agreed to.*

*Section 6, as amended, agreed to.*

### **Section 7—Initial assessments**

**The Convener:** Amendment 5, in the name of the minister, is grouped with amendments 140, 6, 141, 7 to 10, 142, 11, 12, 144 and 145. I draw members’ attention to the pre-emption information that is shown in the groupings.

**Dr Allan:** Amendments 6 to 12 in my name will make the initial assessment a more straightforward procedure and reduce the requirements on parents and local authorities. The amendments will also strengthen the duty on local authorities. For example, amendment 10 proposes the removal of section 7(6)(b), which, if not removed, would allow the local authority to decide for itself that demand for GMPE was at or was likely to increase to a reasonable level.

I am clear that the condition in section 7(6)(a), which relates to the simple threshold of five or more children in the same year group, should be the only condition that needs to be satisfied before a local authority is under a duty to proceed to a full assessment. A local authority should be under a duty to conduct a full assessment of a parental request if there are sufficient numbers to indicate that the GMPE class would be viable. The question of GMPE’s sustainability and the demand from parents of children in different year groups is important. However, that will no longer be an aspect of the initial assessment and will only be an aspect of the full assessment.

Amendment 9 will streamline the remaining conditions in section 7(6)(a), but will not alter its operation.

Amendment 5 clarifies that the information taken into account in the initial assessment about the demand from parents of children who are in different year groups from the child specified in the request must also relate to children who are resident in the GMPE assessment area. That emphasises the importance at the outset of the process of authorities having accurate information on the demand for GMPE in the assessment area.

I now turn to the amendments in the group that have been lodged by Mary Scanlon. Those amendments would not have a helpful impact on the assessment process. Amendments 140 to 142, 144 and 145 would add significant considerations to the initial assessment stage that feature in the full assessment process envisaged under the bill. They are not suitable for inclusion at the filtering stage of the initial assessment. With respect, it would be putting the cart before the horse to allow an authority to conclude that it could not reasonably secure the provision of GMPE at the initial assessment stage with reference to two factors in isolation. Those factors are relevant, but it is important that they are carefully considered against the other relevant factors that are listed in section 10(7) and in the context of the full and considered assessment process that is created by section 10.

09:15

Our aim in the bill has also been to make the initial assessment stage as light as possible, with minimal requirements on local authorities and parents at the requesting stage. My amendments in the group work to that end by making the initial assessment stage simpler and more straightforward, with fewer requirements on parents and local authorities. I am therefore not in favour of amendments that run contrary to that and which would allow a local authority to avoid its duties at the full assessment stage based on only two factors in isolation.

I ask that the committee support all my amendments in the group, and I respectfully ask Ms Scanlon to consider not moving amendments 140 to 142, 144 and 145.

I move amendment 5.

**Mary Scanlon:** As we all know, what really matters is not us sitting around this table but how our bills are implemented around Scotland. I understand that the Convention of Scottish Local Authorities has sent a briefing on these amendments to all my colleagues on the committee. I think that it is fair to say that the provision of Gaelic-medium education has to happen in partnership with local authorities, and it is therefore important that, in looking at the amendments, we examine the issues that local authorities raise.

I hope that the aim of amendment 140 is straightforward. It seeks to ensure that, before a council decides whether to proceed to a full assessment, it is able under the bill to weigh up existing information that is relevant to the delivery of Gaelic-medium education. The bill as introduced allows a council to consider only demand from parents as the sole measure of

whether a more detailed assessment is warranted. It is completely proper that parental demand be given proper attention and prominence in the bill, but amendment 140 asks that, where an education authority already has information about other factors that could determine the viability of Gaelic-medium education, that information is taken on board at the earliest possible stage. The aim is not to take anything away from a more detailed assessment but to help parents and education authorities by allowing a more transparent and balanced initial assessment of the viability of local Gaelic-medium education.

Amendment 141 seeks to ensure that education authorities are able to consider at the initial assessment stage existing information that they hold on the practical challenges of delivering Gaelic-medium education. It presents an education authority with the ability to balance parental demand with other existing information relevant to the delivery of Gaelic-medium education, and it does not change the importance of considering parental demand, if such demand is sufficient. If no other information is available, an education authority will still have to move to a full assessment or deliver Gaelic-medium education; the provision applies only if demand from parents is sufficient under the bill but the education authority is aware of existing information that makes it not reasonable to deliver Gaelic-medium education. In such a situation, the education authority will be able to take a balanced decision whether to proceed to a full assessment or, despite everything, deliver Gaelic-medium education.

Amendment 142 seeks to create the condition that an education authority can consider at the initial assessment stage other relevant information that has a bearing on whether GME could reasonably be delivered. Amendments 144 and 145 are technical changes that allow education authorities to consider existing relevant information about factors determining the viability of Gaelic-medium education, such as the availability of teachers and premises.

The amendments in my name do not interfere with the full assessment process that is set out in the bill; instead, they allow relevant existing information to be considered. This is all about setting out in a transparent way all the relevant factors to ensure that the best possible decision can be taken at the earliest stage. Moreover, although they are not about saving money, the amendments could ensure that an authority would not be required to carry out a full assessment—which, according to the financial memorandum, could cost £25,000—if it already held information that suggested that delivering Gaelic-medium education was not reasonable.

The amendments would also give education authorities the power to set the most appropriate threshold for considering parental demand. As the minister and I know from representing the Highlands and Islands, there are many schools with fewer than five pupils in that area. The amendments would give flexibility to consider a threshold of under five pupils as well as to raise the threshold.

I seek clarity on those issues.

**Liam McArthur (Orkney Islands) (LD):** As there are more than 100 amendments this morning, I start by thanking the minister for his purpose-and-effect briefing, which he sent earlier this week. It has been pretty invaluable for all members.

To pick up on points that Mary Scanlon has made, the substantive amendment, amendment 10, poses some difficulties for me. To an extent, it almost seems at odds with some of the other amendments that the minister has lodged in the group. Even at the initial stage, if a local authority has access to information that is relevant and has a bearing on the sustainability of provision, it would seem perverse to require it almost to discount or ignore that information. Therefore, I have a difficulty with amendment 10. As I said, it seems to be almost in conflict with the minister's other amendments, which will allow a local authority to factor in other considerations and take on board additional information, although that information might relate more to the later assessment.

I have a problem accepting amendment 10, as I do not think that it is a sensible or proportionate step in implementing what all of us have agreed is a worthwhile effort to put in place a transparent mechanism for assessing demand for Gaelic-medium primary education.

**The Convener:** Minister, it would be helpful if you could provide clarity on the interplay between the different considerations for a local authority, whether that be desirability, the fact that parents want Gaelic-medium primary education, or the other factors that Mary Scanlon has rightly raised as issues for a local authority to face. There is also the juxtaposition of the initial assessment and the full assessment. I would certainly benefit from a clearer understanding of those issues before we make a decision.

**Dr Allan:** The convener, Mr McArthur and Mrs Scanlon all touched on the same themes, so I will address their questions together.

To pick up on a point that Mrs Scanlon made, we obviously want to achieve the aims in partnership with local government.

It is important to draw a distinction between the two stages in the process. The first stage is very much about establishing the basic demand, or the existence of demand, in the community. At that early stage, it would be a mistake to factor in one or two specific issues—for instance, premises have been mentioned—important though they are, and then judge the claim that is being made in the community on the basis of those factors alone. Obviously, I do not dispute the importance of such issues, but it would be a mistake to judge at the very outset the whole claim that is being made in the community on the need for Gaelic-medium education on them alone and then not to examine them in context at the later full assessment stage.

Mrs Scanlon also made a point about the relevance of the limit of five pupils. The bill contains a ministerial power to vary that for local authorities where another number might be more relevant. I am thinking for instance of local authorities where there are particularly rural areas or other considerations. A degree of flexibility is allowed.

*Amendment 5 agreed to.*

**The Convener:** I call amendment 140, in the name of Mary Scanlon, which has already been debated with amendment 5.

**Mary Scanlon:** I will not move amendment 140, because we heard clearly the response to the issues. I might bring it back at stage 3, but I thank the minister for responding to the issues that I raised.

*Amendment 140 not moved.*

*Amendment 6 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 141 not moved.*

*Amendments 7 to 10 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 142 not moved.*

**The Convener:** Amendment 143, in the name of Mary Scanlon, is in a group on its own. I remind members that, if amendment 143 is agreed to, I will be unable to call amendments 11 and 12, which were debated in the previous group, due to pre-emption.

**Mary Scanlon:** Amendment 143 falls into the same category as my amendments in the previous group. It allows an education authority, in consultation with parents, children and other appropriate people, to set the most locally appropriate threshold for determining sufficient parental demand.

I heard what the minister said about the ministerial flexibility in this regard. The bill recognises that there could be grounds for varying



the threshold, which is set at five parents, between one education authority and another. That recognises that some education authorities might wish to consider Gaelic-medium education for a smaller number of local parents if that is considered appropriate. Equally, there could be instances where setting a higher number may better reflect local circumstances.

My amendment 143 gives the choice about the threshold to the education authority and parents rather than to the minister. That seems a reasonable measure given the bill's intention of strengthening parents' say over local Gaelic-medium education and increasing transparency in the local decision-making process. In contrast, there is, I respectfully suggest, little transparency about ministers making decisions remotely from communities. That is why the amendment puts the decision firmly in the hands of local authorities and local people.

I move amendment 143.

**Dr Allan:** Our aim is to promote the growth of Gaelic-medium education to make it easier for children and parents to have access to GMPE where there is reasonable demand. I am afraid that amendment 143 has the potential to make it significantly harder to secure GMPE and to put an obstacle in the way of parents who wish their children to have it.

Section 7(6)(a) of the bill provides that, where a parental request evidences demand for GMPE from the parents of five or more children in the same year group, that will trigger the need to proceed to a full assessment of the parental request. As was discussed earlier, that is the threshold that will require the local authority to decide that there is a potential need for Gaelic-medium education and then either to make such provision or to proceed to carry out a full assessment.

As has been said, the intention behind the regulation-making power at section 7(7) is to enable the Scottish ministers to set a different threshold, although, to pick up on Mary Scanlon's point, I note that it is unlikely that that power would be used without consultation with local authorities. Ministers may decide that the threshold applies universally or take account of local needs and circumstances, particularly in local authority areas where it is clearly viable to provide Gaelic-medium education to classes of fewer than five pupils in one year group.

It is right for ministers to exercise that power, with the option of universal application or local authority application for particular circumstances, rather than individual authorities setting their own thresholds for when they would come under a duty to proceed to a full assessment.

09:30

If an education authority wishes to provide Gaelic-medium education to classes of fewer than five children or to do so across different year groups, it retains its discretion to do that. I therefore suggest that the only purpose that an education authority might have in exercising a discretion to change the threshold themselves would be to increase the threshold to make it less likely that it would be obliged to proceed to a full assessment. That would undermine the legal certainty that is provided by the bill and the presumption in favour of providing Gaelic-medium education that it aims to establish.

The delegation to local authorities that is proposed by amendment 143 would also add significantly to the bureaucracy around the assessment process, thereby undermining the aim of the bill to establish a clear and straightforward process that is applied consistently. In particular, the initial assessment stage is intended to be simple and straightforward for authorities and parents. Amendment 143 would undermine that outcome, increase the burden on parents and create more work for local authorities. We would not therefore support any proposal that imposed a costly consultation exercise on local authorities at the initial assessment stage.

It therefore follows that I do not support amendment 143 and I ask the committee to reject it.

**Mary Scanlon:** I am certainly not looking for additional bureaucracy and I do not want to put up any obstacles that would make the provision of Gaelic-medium education less likely.

However, as an economist, I think that it is always important to look at supply as well as demand. If we look only at demand, we have to listen to the local authorities' concerns because they will be in charge of implementing the provisions of the bill at the grass roots.

I have one request to make of the minister. Will he agree to have further discussions with COSLA about the amendment to make sure that there is common ground as we go forward, so that we can all be confident that the whole process will be implemented locally?

**The Convener:** I will allow the minister to intervene at this point, if he wishes to.

**Dr Allan:** While I do not wish to change my views about the amendment, I seek to assure the member that all matters to do with the bill will involve continuous consultation and conversations with Scotland's local authorities.

**Mary Scanlon:** That is fine. It will be helpful to look at the supply side and work in partnership with COSLA. I appreciate that it does not

represent every local authority but it is a powerful and significant voice that deserves to be heard.

*Amendment 143, by agreement, withdrawn.*

*Amendments 11 and 12 moved—[Dr Alasdair Allan]—and agreed to.*

*Section 7, as amended, agreed to.*

### **Section 8—Duties of education authorities**

*Amendments 144 and 145 not moved.*

**The Convener:** Amendment 13, in the name of the minister, is grouped with amendments 14 to 21.

**Dr Allan:** The purpose of the amendments in this group is twofold: to help to ensure that the process of assessing the need for Gaelic-medium primary education is clear and handled in an open, transparent and consistent manner; and to extend the time that is available to local authorities to make that assessment.

Amendments 13, 14 and 16 to 21 seek to extend the notification and publication duties on local authorities in sections 8(4) and 8(5). The amendments would place a duty on local authorities to make clear what action they decide to take following an initial assessment, and the reasons behind that decision. The duty would apply whether it is a decision to proceed to a full assessment, to take steps to provide Gaelic-medium primary education, or to take no action to provide GMPE. That is in addition to the existing duty to notify and publish the decisions that the authority takes under section 7(5) on whether there is a potential need for GMPE.

The aim behind the amendments is to make the initial assessment process even more transparent and to bring the education authority's decision and the reasons for it to the attention of persons with an interest. That is in line with the importance that is accorded by this Government to being open, transparent and inclusive. We believe that those principles should extend to key aspects of public policy. The amendments aim to add to an education authority's accountability for its decision, which will ensure that parents are fully informed about the reasoning behind an authority's decision and thus better equipped to consider whether it is appropriate to use the enforcement mechanisms.

Amendment 15 would extend the period of the initial assessment during which a council must establish whether there is evidence of sufficient demand for GMPE to trigger a full assessment. Initially we considered that four weeks would be sufficient for that, but, having taken soundings from local authorities and COSLA, we have revised that view and consider that six weeks will be a more suitable timescale, given that it is also necessary for a local authority to designate the

GMPE assessment area. It is a modest extension that still ensures efficient resolution of an assessment request within a set timeframe. It means that parents will be informed without delay and also gives authorities adequate time to complete the initial assessment thoroughly. On that point, I am happy to agree with COSLA.

I move amendment 13.

*Amendment 13 agreed to.*

*Amendments 14 to 21 moved—[Dr Alasdair Allan]—and agreed to.*

*Section 8, as amended, agreed to.*

### **Section 9—Requests that need not be considered**

**The Convener:** Amendment 22, in the name of the minister, is grouped with amendments 23 and 146.

**Dr Allan:** All the amendments in the group deal with circumstances under which an education authority would not be required to consider a parental request for GMPE. Amendment 22 is for clarity and consistency. It makes it clear that for the two-year exception to apply, the education authority must have already undertaken an initial assessment in the same GMPE assessment area that the active request relates to. That was always the intention; amendment 22 now puts it beyond doubt.

Amendment 23 also provides clarity and is designed to help reduce requirements on local authorities. It will ensure that whatever the outcome of an earlier initial assessment, the two-year exception should apply. On reflection, I considered that the requirement for the authority to have undertaken a full assessment in relation to the original request in order for the exception to apply might create some inconsistent results. The likelihood of an assessment request being made within two years of an earlier request, in relation to exactly the same GMPE assessment area, is low, because an authority is required by section 6 to tailor the designation of an assessment area to the demand in each request. Universal and consistent application of the exception would be more logical.

The bill also provides, at section 9(4), for the Scottish ministers to direct that the exception does not apply, where they consider that to be appropriate. That brings me to Mary Scanlon's amendment 146. The power of direction in section 9(4) enables ministers to require an authority to consider a parental request for GMPE even if it relates to exactly the same GMPE assessment area as that in relation to which an initial assessment had already taken place in the preceding two years. However, that power would be used only in unusual circumstances, where

ministers considered it appropriate to do so. Guidance will provide examples, but one might be where a new request in the GMPE assessment area within the two-year period indicated that demand from parents, and the number of children, had increased by such a significant amount that the exception should not apply.

I am aware that COSLA and some local authorities do not support section 9(4), but I believe that it provides an important safeguard and I am not in favour of removing it. Section 9(4) provides additional reassurance for parents that their request will be considered if there is a change of circumstance, and I hope that the committee will see the amendment in that light.

I move amendment 22.

**Mary Scanlon:** I am pleased to hear that amendments 22 and 23 have been lodged to bring more clarity and consistency to the bill. That is essential. Amendment 146 removes the power of ministers to intervene in a local decision on Gaelic-medium education. The whole point of the bill is to bring more transparency to decision making on Gaelic-medium education and, as I said before, there is little that is transparent about ministers taking decisions remote from Gaelic communities, and even less when the reason for doing so is left unclear by the legislation.

The bill allows ministers to direct an education authority to carry out an initial assessment, even if the authority has followed the letter of the law and considers that a new initial assessment is not appropriate. Section 9(4) of the bill does not even state what could be considered reasonable grounds for a minister to take such a decision. Amendment 146 is intended to build on the core purpose of the bill, which is to establish a better, more transparent process that allows parental demand for Gaelic-medium education to be balanced against the very real challenges of delivering the service, looking at supply as well as demand, but certainly not wishing to put any obstacles in the way. It is about being pragmatic and realistic. I have no doubt that it will lead to some difficult choices, but I feel that parents, communities and education authorities are best placed to make the right decision and that, as a result, there is no need for ministers to take that broad power of intervention. The amendment suggests that section 9(4) should therefore be removed.

**Liam McArthur:** I agreed with all of what the minister said about amendments 22 and 23. That is a sensible and pragmatic approach. In relation to section 9(4), I intuitively have some concerns about ministerial powers of direction relating to local authorities. The minister described an instance in which circumstances might change, and my concern would be that the bill could open

up a situation in which individual parents or groups of parents use a lever on an on-going basis to drive a wedge between the local authority and ministers, playing one off against the other. It is important to be clear about what the threshold is for a significant change of circumstances, so I have some misgivings about the way in which the provision rests in the bill, albeit that the minister has indicated that some clarity will be provided through guidance in due course.

09:45

**The Convener:** I will make a small comment before bringing the minister back in. I take the opposite view to Liam McArthur. I would have concerns if there were significant changes in certain local circumstances within the two-year period and ministers were not able to insist on a new assessment at that stage. If there was a significant change and we were stuck with a two-year bar, I would have concerns about that.

I imagine that this power would be used very rarely and I cannot imagine that we would end up with the kind of on-going or rolling situation that Liam McArthur has described. I therefore have sympathy with what the minister has said; I will wait and hear what he says about the issue, but I suspect that the ministerial power will be used rarely and only to deal with a significant change in local circumstances. That is certainly my understanding of the bill as it stands.

**Dr Allan:** Convener, I hope that the powers that the bill will grant ministers will capture most of the scenarios that you have expressed concern about. As for the concerns that others, particularly Mr McArthur, have expressed, I am happy to assure members that guidance will exemplify the kinds of scenarios in which ministers might intervene, but again I put it on record that we are talking about scenarios in which, for example, the number of children or demand in an assessment area changes dramatically. I certainly see these powers being used relatively rarely. I appreciate the member's concern about halting the march of ministerial direction, but I give an assurance that guidance will place some limits on that.

*Amendment 22 agreed to.*

*Amendment 23 moved—[Dr Alasdair Allan]—and agreed to.*

**The Convener:** Amendment 146, in the name of Mary Scanlon, has already been debated with amendment 22.

**Mary Scanlon:** I might consider the position further at stage 3, but at this point I will not move the amendment.

*Amendment 146 not moved.*

*Section 9, as amended, agreed to.*

### Section 10—Full assessments

**The Convener:** Amendment 24, in the name of the minister, is grouped with amendments 25 to 29, 130, 131 and 30 to 33.

**Dr Allan:** Under the bill, education authorities are being asked to assess parental requests for Gaelic-medium primary education. Although the assessment process will be open, transparent and consistent throughout the country, we received feedback at stage 1 that the bill did not go far enough to ensure a positive response to those requests. As a result, my amendments in this group significantly strengthen the duties on authorities during the full assessment, thereby creating a presumption in favour of providing Gaelic-medium primary education and an effective entitlement to such provision where demand exists and where it is not unreasonable to provide it.

These amendments were influenced by the comment in the committee's stage 1 report that one possible option for strengthening the bill would be the introduction of a presumption that Gaelic be provided if certain conditions are met. In that respect, amendment 30 is the key amendment and introduces into the bill a very strong presumption in favour of providing Gaelic-medium primary education.

An education authority will now have to decide to provide Gaelic-medium primary education unless, having regard to a defined list of matters, it considers it unreasonable to do so. That is a high standard for an education authority to satisfy if its decision is not to provide GMPE, and it creates an effective entitlement to GMPE where there is evidence of reasonable demand and no fundamental obstacle to its provision. I am therefore quite clear that the bill will satisfy the 2011 manifesto commitment to

"examine how we can introduce an entitlement to Gaelic medium education where reasonable demand exists."

Amendment 24 ties together the duty on an education authority to decide whether to secure the provision of GMPE with the now explicit presumption in favour of securing its provision. My other amendments in the group support that presumption by strengthening the other matters that authorities have to consider in making their assessment of a parental request.

With regard to making that assessment, the bill on introduction provided that an authority "must have regard to" a range of relevant factors, some of which are listed in the bill, and any others that "the authority considers relevant". Amendment 25 removes the option for the authority to have regard to its own subjective assessment of what is relevant and allows the authority to consider only each of the matters that are listed in section 10(7).

That is intended to be comprehensive, but section 10(8) provides a power to vary the list if required.

Amendments 28 and 29 focus on the teacher supply consideration. There is currently a measure of overlap between sections 10(7)(k) and 10(7)(l). Amendments 28 and 29 combine them and place the emphasis on what potential exists to assign or recruit GMPE teachers. The wording still includes the availability of GMPE resources but it makes it clear that the matter should be considered from the positive perspective of the potential to recruit. That strengthens the duty on education authorities.

For similar reasons, I support Angus MacDonald's amendments 130 and 131, which require local authorities to have regard to use of the Gaelic language in the local area from a positive perspective, by which I mean the potential to develop or increase the use of the Gaelic language or the carrying out of related activities in the authority's area. Incidentally, I hope that amendments 130 and 131 address the concern that Professor Wilson McLeod expressed to the committee about what he called

"the single most unacceptable provision of the bill".

I turn to amendment 26. Education Scotland, Bòrd na Gàidhlig and the national parent forum of Scotland have relevant expertise and an interest in these matters, and their input will be valuable to an authority when it makes a decision in response to a parental request. Amendment 26 clarifies that and adds that it is only those views that are provided within four weeks of views being sought that the education authority must have regard to in the full assessment. That includes any views that are provided by the national parent forum of Scotland.

Without amendment 26, such views would have to be considered if they were received at any point during the full assessment. It is right that there is consistency with the duty on the other two bodies to provide views within the four-week timeframe. The amendment makes the assessment process more robust and inclusive by ensuring that parents' views are considered early in the assessment.

I want to be clear that our policy intention for the bill has always been to ensure that, if reasonable demand exists for Gaelic-medium primary education and a full assessment identifies no fundamental obstacles to its provision, the authority should and will provide it. The amendments that I have discussed seek to ensure that that policy intention is openly, clearly and fully realised.

A prominent member of the Gaelic community wrote to me to highlight a concern that, under the bill, if the reasonable demand test is met and a

local authority produces a report having carried out a full assessment, no duty is placed on the authority to do anything at all. That will not be the case if the amendments are agreed to. We will have an effective entitlement where reasonable demand exists and a strong and clear presumption in favour of securing the provision of Gaelic-medium primary education. That should reassure all—me included—who seek to ensure that we support the availability of one of our indigenous languages to children at the earliest age, thereby contributing to the long-term wellbeing of Gaelic language and culture.

Amendment 33 ensures not only that the authority is held to a high standard in justifying any decision not to provide GMPE but that it must publish its reasons for such a decision—and indeed any decision to provide GMPE—with reference to each of the factors in section 10(7) and the new duty that is inserted by amendment 30.

Amendment 33 significantly improves the education authority's accountability for its decision following a full assessment. In a similar way to the amendments in the earlier group on the initial assessment of requests, that will ensure that parents are fully informed about the reasoning behind the authority's decision and thus are better equipped to consider whether it is appropriate to use existing enforcement mechanisms.

I move amendment 24 and ask the committee to support all the amendments in the group.

**Angus MacDonald (Falkirk East) (SNP):** Good morning. My amendments 130 and 131 help to strengthen the bill with regard to parents' rights to request GMPE by placing a duty on authorities to assess that request. If the Gaelic language is to survive and indeed flourish, authorities should also consider the potential in their area for developing and increasing its use. The provisions currently in section 10(7)(n) need to be clearer on the potential to develop or increase Gaelic use.

With the removal of section 10(7)(n) and the insertion of a new subsection that makes it absolutely clear that authorities should consider the question of the existing use of the Gaelic language and related activities in their area from the positive perspective of whether there is potential to develop or increase that use and the carrying out of related activities, I hope that I can count on cross-party support for both my amendments. I welcome the minister's indication of his support.

**Liam McArthur:** It will not surprise the minister to hear that I have some difficulty with the amendments in the group. As I said earlier, the bill's provision in setting out a clear and transparent process for dealing with assessments

initially and in more detail later on was a laudable and welcome proposal and step forward, and it makes a lot of sense to introduce a test of reasonableness.

I have absolutely no difficulty with the amendments in the group that relate to widening the consultation through that assessment process but, when we are into the territory of presumption, regardless of what the bill says, the language that will be heard by parents is effectively that there is entitlement. The minister may seek to reassure us that there are safeguards and that the reasonableness test would still need to be met, but nevertheless a situation will be created in which parents have an expectation that there is a presumption in favour of delivering Gaelic-medium primary education and therefore that it will almost automatically be delivered.

I am not entirely sure where that presumption sits in relation to the treatment of other subjects. I know that in Orkney, which is my area, a number of subjects, albeit at secondary school level, are not delivered for which there is quite clearly demand but not sufficient demand for the local authority to provide them.

It was revealing that the minister referred back to his party's manifesto—Mary Scanlon mentioned it on numerous occasions at stage 1—and the argument that there is now a promise delivered. I am not entirely sure that there is a promise delivered. That manifesto talked about an entitlement, and there did not seem to be a lot of caveats around that. Now that we are in the serious business of putting proposals into legislation, I have real concerns that, through most of the amendments in the group, we will create a level of false expectation and move away from a very sensible approach that the Government took at the outset to put in place a process for gauging demand and applying a reasonableness test. Therefore, I cannot support the amendments that underlie that policy intention.

**Mary Scanlon:** I have listened carefully to what the minister has said on the issue and seek some clarity at the very least.

The minister said that "if reasonable demand exists" and if there are "no fundamental obstacles"—I do not think that anyone would wish to put obstacles in place—there will be a duty on local authorities to provide Gaelic-medium education. However, the minister has given evidence and we are all aware that there is a drastic shortage of Gaelic teachers nationally.

Given that duty on local authorities to provide Gaelic-medium education and the so-called entitlement, what happens if they cannot get a teacher? They cannot get teachers for many subjects throughout the Highlands and Islands,

and Gaelic is certainly one of those subjects. There has been a shortage of Gaelic teachers for more than nine years, since the Government has been in power, and there is still a drastic shortage of them.

If demand exists and there is a duty on local authorities to provide teachers, I go back to the supply side again. If a local authority cannot get a teacher, where does that leave it? There will be a duty on it, but it will be unable to provide a teacher. I am sure that local authorities can always find premises—I noticed that the minister addressed that in speaking to an earlier amendment—but let us be honest and absolutely realistic: there is undoubtedly a huge shortage of Gaelic teachers, so what will happen if the local authority cannot get a teacher?

10:00

**Dr Allan:** I thank the members for their points. I will address Mr McArthur's points first.

I have to be clear that the committee wrote a report that called on me to come back with something stronger. I have come back with something stronger that I believe resembles much more closely what the committee asked me to do. I took quite a bit of criticism at my appearance at the committee for not producing entitlement, and I undertook to produce something that went a lot further down the road towards entitlement. I believe that I have done that.

**Liam McArthur:** I hear what the minister is saying and I accept that he came under pressure from some members of the committee on entitlement, but I point out the contrast between what was in the bill and what was in the manifesto.

From committee debates and chamber debates that we have had, the minister will be aware that my concern about entitlement is where it leaves things like the Scots language and the Orkney and Shetland dialects, which I know he is a great supporter of and has done a great deal to promote. The bill is at risk of relegating the importance of those and distracting attention and resources away from them in favour of Gaelic in areas in which there is no tradition of Gaelic speaking.

I put that on the record as a response to the minister's remarks.

**Dr Allan:** As the member has acknowledged, I am particularly interested in Scots and Orcadian and I support them. As I said in the chamber when we debated the issue, it is important to understand that, if there is no demand in the community for Gaelic-medium education, the request will not be made or entertained.

Speaking from the heart as someone who is interested in languages, I note that it is also important to understand and appreciate that the threat that is posed to the Orcadian dialect is not posed by Gaelic but by the universal use of the English language and the decline of Orcadian. There is no threat to Scots in its many rich forms from Gaelic. That does not mean that we should not militate in favour of more services in Scots, as we do. It would be unfortunate if we were to see things in the terms that Mr McArthur has suggested. I put on the record my support for Orcadian.

On Mr McArthur's wider points, I come back to the point that an argument was made in the committee and the Gaelic community for the need to strengthen the bill and introduce an element of entitlement. I believe that I have done that and I make no apologies for doing so.

Ms Scanlon made a number of points, not least about the supply of teachers. I have put it on the record at the committee and in other places that there continues to be a huge demand for Gaelic-medium education and the biggest challenge is finding Gaelic-medium teachers. It is important to say that we are not talking about subject teachers or about Gaelic as a subject; we are talking about Gaelic as the medium for education. I am not sure that the comparison that was made between Gaelic-medium teachers and the teachers of subjects adds up.

I accept what Ms Scanlon says about the need to recruit more teachers. The number of teachers being recruited for Gaelic-medium has been increasing and it is at its highest for a long time. I am convinced that the higher and the more secure the status of Gaelic-medium education is nationally, the more attractive that career will appear.

On the more general points that have been made, I believe that the balance has been struck correctly. Part 2 of the bill gives parents a statutory right to initiate a process, but there is a distinction between the right to make such a request and a direct statutory right to receive Gaelic-medium primary education. That explains why we have talked about presumption rather than entitlement in the text of the bill, but I strongly believe that what we now have is what we promised, which is entitlement. With that in mind, I ask the committee to support all the amendments in the group.

**Mary Scanlon:** I hear what you say about more Gaelic teachers going through the teacher training system, but I asked a direct question, which I think is important. The question was: given that there is a duty on local authorities, what will happen to a local authority that goes through the parental request process to provide Gaelic-medium primary education if no teacher is available? If a local

authority simply cannot find a teacher, where does that leave it?

**Dr Allan:** You will be aware that, in a number of places, the bill explicitly refers to “the potential to recruit” Gaelic-medium teachers as one of the factors that has to be taken into account. That is not dismissed or ignored. It is important that we are talking about the potential to recruit and not merely the exact number of teachers who might be resident in an assessment area at any given time. I reassure the member that the potential to recruit is still one of the factors that will have to be taken into account in the full assessment.

**The Convener:** The question is, that amendment 24 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Griffin, Mark (Central Scotland) (Lab)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 Pentland, John (Motherwell and Wishaw) (Lab)

#### Against

McArthur, Liam (Orkney Islands) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 24 agreed to.*

**The Convener:** Does any member object to a single question being put on amendments 25 to 29?

**Liam McArthur:** Yes.

**The Convener:** There is an objection, so I will put the questions individually.

*Amendment 25 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 25 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Griffin, Mark (Central Scotland) (Lab)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 Pentland, John (Motherwell and Wishaw) (Lab)

#### Against

McArthur, Liam (Orkney Islands) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 25 agreed to.*

*Amendments 26 to 29 moved—[Dr Alasdair Allan]—and agreed to.*

**The Convener:** Amendment 147, in the name of Mary Scanlon, is grouped with amendments 148 and 149.

**Mary Scanlon:** These amendments, which have been suggested by the Royal College of Speech and Language Therapists, aim to ensure that the need for speech and language therapy is not an obstacle to the opportunity to learn Gaelic.

An education authority, in making the initial assessment of the need for Gaelic-medium primary education following an assessment request, must have regard to a range of information. Amendment 147 provides that the information would include the availability of services

“to support the speech, language and communication development needs of children”,

including those provided by speech and language therapists.

Bilingualism can make a positive contribution to the development of children and young people, and the provisions in the bill that promote GMPE potentially offer children and young people opportunities for personal development and to gain knowledge and experience of Scotland’s cultural, artistic and Gaelic heritage.

Section 7 applies where an education authority receives a request under section 5(1) from a parent of a child who is under school age to assess the need for GMPE. Section 7(2) provides that an education authority must, on receipt of an assessment request, undertake an initial assessment of the need for GMPE with regard to the designated area and the year group of the child specified in the request. An education authority must, when making an initial assessment, take into account any information that it holds on a number of matters, including information relating to the demand for GMPE from parents of children resident in the assessment area who are in the same year group as the specified child.

Amendment 147 would ensure that the initial assessment would also take into account matters such as the availability of support services in the area, including those that are provided by speech and language therapists. The availability of such services is essential, given their important contribution to the development of children and young people. Speech and language therapy is the service that is most commonly needed to

support children in our schools, as it is needed by two to three children in every classroom.

It should be recognised that learning a second language may be particularly difficult for children with speech, language and communication development needs, which makes the support of speech and language therapists and the collaboration between them and teachers even more essential for those children. Education providers, along with parents, families, communities, health professionals and others, play a key role in the successful delivery of universal and, where necessary, targeted and specialist speech, language and communication services. The importance of such support being available in Gaelic-medium schools is highlighted by the fact that language therapy services are the most commonly needed.

Amendments 148 and 149 provide that an education authority would have to look at the speech, language and communication development needs of children in the area, as well as the services that would be required to support children who chose to learn Gaelic.

The Government's explanatory notes that accompany the bill confirm that section 12

"gives the Scottish Ministers the power, by regulations, to enable an education authority to treat a parental request made under section 5(1) as a request to assess the need for GME at the level of early learning and childcare."

The assessment process currently only applies to primary schools. The concern of the Royal College of Speech and Language Therapists relates to the resources that will be available to ensure sufficient levels of service to support the speech, language and communication development needs of children who receive Gaelic-medium education. The availability of those support services is essential for the development of Gaelic and to address children's speech, language and communication development needs. Amendments 148 and 149 would ensure that, in assessing the need for Gaelic-medium education, an education authority had regard to the availability in the area of support services to meet those needs.

I move amendment 147.

10:15

**Dr Allan:** In response to amendments 147 to 149, I say that I am in complete agreement with Mary Scanlon that there should be support to meet the speech, language and communication development needs of children who receive Gaelic-medium education—indeed, to meet all their additional support needs. I also welcome her remarks about bilingualism being good for a child's cognitive and educational development. I will pick up on a related point, which has been referred to a

couple of times. Let me be clear that many—although not all, by any means—of the five-year-old children we are talking about are bilingual. In that sense, they are neither learning Gaelic nor learning a second language. The picture is mixed among the primary 1 intake.

Providing adequate and effective resources for children who receive Gaelic-medium primary education, as set out in section 13(6), might cover many different things. It would not be helpful to list a particular service, as amendment 149 would require—or, indeed, to list any in the bill. The key point is that it would not be right to highlight in the bill a single issue, albeit one that is, as I have just agreed, important, in the way that the amendments propose.

My view, which is shared by Bòrd na Gàidhlig, is that the various services that should support children who receive Gaelic-medium education, including services that support children's speech, language and communication development needs, should be set out in the statutory guidance required under section 14.

Although worthy in motive, amendments 147 and 148 add another element to the matters that have to be considered by an authority before it can secure the provision of Gaelic-medium primary education. The amendments have the potential, unwittingly, to put an obstacle in the way of parents who are attempting to secure the provision of Gaelic-medium primary education for their children. That would be contrary to the presumption in favour of Gaelic-medium primary education that the bill will introduce.

In summary, I agree with the intention to support children's speech, language and communication development needs, but the most effective way to do that is through statutory guidance rather than in the bill. I would worry that including such provisions in the bill would simply place an obstacle in the way of parents who wish Gaelic-medium education for their children. Therefore, I cannot support amendments 147 to 149. However, I assure Ms Scanlon that those important matters will be dealt with in guidance. In that spirit, I ask Ms Scanlon whether she is willing to consider withdrawing amendment 147 and not moving amendments 148 and 149.

**Mary Scanlon:** I thank the minister for his comments; I certainly accept the assurances that he has given. We would be failing in our duty to children who have additional support needs if the issues were not aired at this time.

During the October recess, when I was over in Argyll and Bute, I met several parents who are facing a cut of 45 per cent in support for meeting their children's additional support needs. I hope that, with local consultation, that will not go



through, but there is a fear that it will, given the local government context. I add that information as additional background to the amendments.

I am pleased to hear that further information will be set out in guidance—I appreciate that that would be appropriate. The amendments set out to look for more clarity and explanation—they were probing amendments—and it was right to lodge them. We will discuss children's additional support needs more fully in the next group of amendments. With the assurances that I have been given today, I am content to withdraw amendment 147 and to not move amendments 148 and 149.

*Amendment 147, by agreement, withdrawn.*

*Amendment 130 moved—[Angus MacDonald].*

**The Convener:** The question is, that amendment 130 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)

#### Against

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)

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

*Amendment 130 agreed to.*

*Amendment 131 moved—[Angus MacDonald].*

**The Convener:** The question is, that amendment 131 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)

#### Against

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)

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

*Amendment 131 agreed to.*

**The Convener:** Does any member object to a single question being put on amendments 30 to 32?

**Liam McArthur:** Yes.

**The Convener:** There is an objection so I will put the questions individually.

*Amendment 30 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 30 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Pentland, John (Motherwell and Wishaw) (Lab)

#### Against

McArthur, Liam (Orkney Islands) (LD)  
Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 30 agreed to.*

*Amendments 31 and 32 agreed to.*

*Section 10, as amended, agreed to.*

### Section 11—Procedure following full assessment

*Amendment 33 moved—[Dr Alasdair Allan]—and agreed to.*

**The Convener:** Amendment 32, in the name of Rhoda Grant, is grouped with amendment 134. Rhoda Grant is not here, but I believe that Mark Griffin will move amendment 132 and speak to both amendments in the group.

**Mark Griffin (Central Scotland) (Lab):** The amendments have been lodged by Rhoda Grant, who is attending stage 2 proceedings at the Health and Sport Committee. I am happy to move the amendments in her name.

Amendment 132 is the substantive amendment; amendment 134 would make the regulations that are referred to in amendment 132 subject to the affirmative procedure.

Amendment 132 seeks to amend section 11 by giving people who receive a copy of the assessment a right of appeal in circumstances in which the local authority has assessed demand and shown that there is reasonable demand but does not provide Gaelic-medium education. As it stands, the bill allows for the assessment, but not

for any action that would follow it. If the local authority decides not to provide Gaelic-medium education, it must inform the persons listed in section 11(3). Those are the persons who would be allowed a right of appeal to ministers under amendment 132.

Most of the detail is left to regulation because the detail would need to be decided by the Government and local authorities. The amendments strengthen the bill and help those who can demonstrate a reasonable demand for Gaelic-medium education to see things through to provision by a local authority.

I move amendment 132.

**Dr Allan:** I thank Mark Griffin for explaining the intention behind amendments 132 and 134. However, I do not consider the amendments to be necessary, proportionate or desirable.

The amendments that I have moved today strengthen the full assessment process under the bill by including a strong presumption in favour of the provision of Gaelic-medium primary education and enhanced reporting duties. A more rigorous, transparent and prescriptive process will be put in place in relation to the decision whether to provide Gaelic-medium primary education. I therefore do not think that we need an appeal process in relation to those decisions beyond the processes that already exist in law.

If a parent believes that an authority has not complied with its duties in relation to the provision of Gaelic-medium education, including its duties in response to a request under the bill, section 70 of the Education (Scotland) Act 1980 already provides a means by which they can lodge a complaint about an alleged failure to fulfil or comply with a statutory duty. They can therefore complain directly to Scottish ministers. Section 19 of the bill will help them with that, as it makes provision for an improved and quicker process for considering section 70 complaints. Where, following an investigation, ministers are satisfied that there has been a failure, they may make an order to require the statutory duty to be carried out. Alternatively, judicial review is also available as an enforcement mechanism. Both mechanisms are made more accessible by the strengthened reporting duties at the initial and full assessment stages that I have proposed today.

An appeals process is also not desirable because it would undermine the fact that the existing process will, subject to the extension of the initial assessment process by two weeks, result in a decision within a maximum of 16 weeks. There are advantages to keeping to that timeframe and producing certainty for the parents about the outcome. An appeals process would add extensively to the timeframe, and I am not

convinced that it would be a good use of officials' time to produce extensive regulations covering an appeals process and structures that are unlikely to be used with any great frequency.

As a result of the rigorous, transparent and prescriptive assessment process that we have provided for in the bill and the statutory and non-statutory enforcement measures that are already in place, I am clear that a further appeals process is neither necessary nor helpful. I therefore cannot support amendments 132 and 134.

**Mark Griffin:** I take on board the points that the minister has raised about the procedure for a section 70 complaint and the option of judicial review. We will give further consideration to the amendments and look to see whether there can be any common ground between us and the minister. At this stage, I seek leave to withdraw amendment 132, and I will give further consideration to the issue before stage 3.

*Amendment 132, by agreement, withdrawn.*

*Section 11, as amended, agreed to.*

### **Section 12—Power to extend Part to early learning and childcare**

**The Convener:** Amendment 34, in the name of the minister, is in a group on its own.

**Dr Allan:** It is important, as has been agreed throughout the meeting, that Gaelic-medium primary education and Gaelic-medium early learning and childcare operate together as part of a child's learning experience. The bill provides that a parental request for Gaelic-medium primary education places a duty on local authorities to assess the request in relation only to primary education. As currently drafted, it does not extend to early learning and childcare. Mindful of the duties that the bill already places on local authorities and the potential resource implications at this time of extending those duties to early learning and childcare, I strongly believe that that is the right approach. However, there is evidence that very young children have significant capacity to learn languages and that early immersion in languages is key to their ability to learn them well, so section 12 gives ministers the power to extend the duty to assess the need for Gaelic-medium education to early learning and childcare in the future.

Sections 12(1) and 12(2) currently give Scottish ministers the power, by regulation, to "enable" an educational authority to treat a parental request made under section 5(1) as a request to assess the need for Gaelic-medium education at the level of early learning and childcare. Amendment 34 replaces the word "enable" with the word "require", to better reflect how the regulation-making power should be exercised. The amendment strengthens

the provision and ensures that, when the regulations are made, the requirement to assess a request in relation to early learning and childcare will apply in the same way as it does in relation to Gaelic-medium education in primary schools. In short, the amendment ensures an equitable approach to assessments, whether in relation to Gaelic-medium education in primary school or in relation to the early years, and I ask members to support it.

I move amendment 34.

*Amendment 34 agreed to.*

*Amendment 148 not moved.*

*Section 12, as amended, agreed to.*

### **Section 13—Duty to promote and support Gaelic medium education and learning**

*Amendment 149 not moved.*

*Section 13 agreed to.*

*Sections 14 and 15 agreed to.*

### **Section 16—Interpretation of Parts 1 and 2**

*Amendments 35 to 40 moved—[Dr Alasdair Allan]—and agreed to.*

*Section 16, as amended, agreed to.*

10:31

*Meeting suspended.*

10:37

*On resuming—*

### **Section 17—Modifications of Education (Additional Support for Learning) (Scotland) Act 2004**

**The Convener:** Amendment 150, in the name of Liam McArthur, is grouped with amendments 151, 152, 41 to 50, 50A, 153, 51 to 73, 154 to 156, 74 to 85, 157, 86 to 95, 97 and 99 to 103. I draw members' attention to the pre-emption information that is shown in the groupings document.

**Liam McArthur:** I start with a couple of apologies. The first is for the length of my remarks, which is a reflection of the complexity of the issues in the group as well as the number of amendments. Secondly, despite the number of amendments, I acknowledge that, should the general principles be agreed to, it will be necessary to make further amendments at stage 3 to follow the principles through the whole bill.

They are important principles and I believe that our decision on them will determine whether we are serious about properly embracing a child rights

perspective. The amendments in my name are backed by the Equality and Human Rights Commission, the Scottish Human Rights Commission, the Govan Law Centre, Together, Inclusion Scotland, Enable and the Children and Young People's Commissioner Scotland. I am grateful to those bodies for their support with drafting, for the briefing that they have circulated to colleagues on the committee and for allowing the committee an opportunity to debate these important issues.

In summary, amendments 150 to 156 seek to remove the capacity and best interest assessments and amend the Age of Legal Capacity (Scotland) Act 1991 to ensure that, where rights are extended to children under the bill, the 1991 act and its presumption of capacity at 12 will apply. The amendments will create consistency by removing the capacity and best interest assessments for references to the Additional Support Needs Tribunals for Scotland. However, amendment 157 recognises that, where there is a dispute about a child's capacity, there needs to be a way of resolving that and, as such, it creates a right of appeal to the tribunal.

I acknowledge that not all children will want to take a lead. Some will prefer their parents to take forward an issue on their behalf, and it is only right that we recognise that. Therefore, amendments 154 and 155 seek to reflect that, where a child would otherwise have capacity, they should be the one to expressly authorise their parents to act on their behalf. There is a delicate balance to be struck between the rights of children and those of parents in this respect. As such, my amendments do not seek to change the rights of parents but seek rather to clarify the child's role in determining what should happen.

The schedule to the bill extends a range of rights to children with additional support needs, including the rights to ask a local authority to determine whether they have additional support needs, to require a co-ordinated support plan and to request an assessment. The intention is to ensure that children aged 12 to 15 can exercise those rights independently, which will put them on the same footing as their 16 and 17-year-old counterparts. I fully accept that extension in the bill, but I am concerned about the way in which it is being done. It risks giving children the impression that they can exercise their rights independently yet, in reality, they will be beholden to adults to assess that they are capable of doing so.

The bill introduces two assessments and requires children to successfully negotiate both before they can even begin to exercise their rights. The first relates to capacity and is designed to establish whether the child has sufficient

understanding to exercise a particular right, including comprehending the possible implications of doing so. That assessment will be carried out by the local education authority or the tribunal, depending on the rights that the child is trying to exercise. The second assessment relates to best interests. The Government argues that it is aimed at guarding against the child being damaged by the experience of pursuing their rights. I believe that that approach is well intentioned but misguided. I am disappointed that the Government previously sought to brush off that point as a misunderstanding by the coalition of bodies that I referred to, because I do not believe that it is. If anything, it is an inevitable consequence of the lack of prior consultation that the Government carried out before the bill was introduced to Parliament, which is an issue that came up quite a bit during stage 1.

The minister and his officials have argued that exercising a right can be stressful and difficult for a child. That is certainly true, yet instead of looking at how that process could be made more child friendly, they have instead chosen to take an approach whereby only those who are judged by adults to be most resilient are ever likely to be able to exercise their rights. That is strange, given that proposed new section 31A of the Education (Additional Support for Learning) (Scotland) Act 2004 creates a support service that is designed specifically to assist a child in exercising their rights, which is an issue that I will come back to in a subsequent group of amendments.

In this group, the minister has a number of amendments, the first of which is amendment 61, that seek to convert the best interest assessment into one of whether there is an adverse effect on wellbeing. The minister will argue that that provides additional protection for children, but I disagree. Actually, it broadens the circumstances in which a child potentially may not be allowed to exercise their rights by asking those who carry out the assessment to consider a wide range of potential impacts on the child under the SHANARRI—safe, healthy, achieving, nurtured, active, respected, responsible and included—principles.

Before I conclude, I will illustrate one of the anomalies that the bill risks creating through its more paternalistic approach. The Age of Legal Capacity (Scotland) Act 1991 allows for a presumption of capacity at 12 in relation to civil matters. Therefore, a child is presumed at that age to have the necessary understanding to allow them to make an informed decision about the issues that affect them. The 1991 act provides a child who is pursuing a disability discrimination claim to the Additional Support Needs Tribunals with a presumption of capacity at 12. Where the child has capacity, there is no requirement for

them to undertake any further assessment before taking their case to the tribunal. However, the same child, in exercising one of the rights that are extended under the bill, would have to complete the capacity and best interest—or adverse effect on wellbeing—assessments before being allowed to pursue that with the same tribunal. If either of those assessments is not completed successfully, the child will be prevented from exercising their rights themselves.

I fully support the extension of the rights to 12 to 15-year-olds, but I want children to feel that exercising their rights is a positive experience, to feel supported and to be confident that they can exercise their rights without adults putting barriers in the way. I want to start from the presumption that children will be able to exercise their rights at 12 rather than requiring them to prove that they can. The removal of capacity and best interest assessments will not weaken the bill; it will strengthen it.

I again apologise for the length of time that I have had to take in presenting the case for the amendments. I look forward to hearing what the minister and colleagues have to say, and I have pleasure in moving the amendment.

I move amendment 150.

**The Convener:** As I said to the committee before the meeting started, I will be reasonably flexible on this group, given its size and complexity.

I call the minister to speak to amendment 41 and other amendments in the group.

**Dr Allan:** Like Liam McArthur, I ask for your forbearance. Given the number of amendments involved, I may speak for some time. I thank Liam McArthur for his sensitive and well-considered presentation on the complex and difficult issues that we are discussing this morning. I acknowledge that those issues have been raised by stakeholders throughout stage 1 and I understand why the amendments have been lodged. However, having heard Mr McArthur's arguments in favour of his amendments, I must disagree with him. In doing so, I will comment on a couple of the issues that he has raised.

10:45

The first of those is the issue of consultation and why the Scottish Government did not consult on the definition of capacity prior to the introduction of the bill. The consultation on the additional support for learning part of the bill was between December 2013 and March 2014 and was to establish whether rights should be extended and, if so, to what degree. As an outcome of that consultation, officials began to work on the proposals for the

provisions in the bill. They considered each right in turn and established what would be required for each.

It became apparent at that point that the issue of capacity would be central. Recognising that there was insufficient time for a full consultation, officials began to discuss the issues with a range of stakeholders, including those who would deliver the provisions, including the Association of Directors of Education in Scotland, COSLA, parents organisations, children's organisations, the children's commissioner and many others. Although I understand Mr McArthur's point, I would not like to give the impression that no discussions took place with stakeholders.

The second issue is the Government's amendment 61 to replace

"is in the best interests"

with

"would adversely affect the wellbeing".

I would strongly argue that that represents a narrowing of definitions rather than a broadening of definitions. There is a link to definitions of wellbeing in other legislation.

More broadly, the Government is committed to enhancing, promoting and respecting children's rights wherever we can; indeed, I believe that no Government has been more active in that respect. Accordingly, I believe that children who have or may have additional support needs should have the right to act on their own behalf to influence the support that is provided to them by education authorities to meet their individual needs. In trying to give effect to that intention, we must do so within the law currently in operation and in a way that allows the greatest number of children to exercise their rights, while providing a safeguard to protect the small number for whom it might not be appropriate.

The effect of Mr McArthur's amendments would be that children under 16 will have legal capacity under the 2004 act to exercise rights where they have a general understanding of what it would mean to do so. Children aged 12 or over will be presumed to have that understanding and therefore to have the capacity to exercise rights. However, for a small number of children, that might not be the case. In short, these rights would not be nor can be absolute. I say that because I strongly believe that, where a child wishes to act on their own behalf, an education authority and the Additional Support Needs Tribunals should pause and consider how that child might cope with the processes associated with that right and whether their wellbeing might be adversely affected.

I do not believe that that is being done in a paternalistic way. I think that it is being done to

prevent the scenario from occurring, for example, of an eight-year-old child, where they were considered to have general understanding, seeking to have their additional support needs identified on their own and without support. That child would then go through the process of assessment, including receiving any diagnosis of their needs and coming to terms with that diagnosis, entirely on their own. I am afraid that that could happen if Mr McArthur's amendments were passed.

A further example would be that a child who was either considered to have capacity or, if over 12 years old, presumed to have capacity could make a reference to the tribunals and be required to prepare their case and, if they wished, to represent themselves at the tribunal hearing without any support. In such circumstances, it is entirely appropriate that a check is made to ensure that the child can cope with all that using a right might entail. To remove that safeguard, which Mr McArthur's amendments would do—despite what I believe are their good intentions—would mean that any doubts or concerns about whether the child could cope with the processes associated with using their rights would emerge only once the child was undertaking that process. At that point, their wellbeing might already be adversely affected, potentially giving rise to a further need for additional support. As I said, I am sure that that is not Mr McArthur's intention with amendments 150 to 157, but I feel that it would be a potentially damaging consequence.

We must also recognise and take account of the fact that parents have particular duties and rights in relation to securing their child's education that also have to be held as part of the balance in relation to the child's rights. We cannot consider the rights of children in isolation completely, and we have not done so as part of the rights extensions in the bill. I believe that Mr McArthur's amendments would remove any opportunity for parents to safeguard both their child's educational provision and their wellbeing. A number of those amendments would mean that a parent would no longer be able to ask an education authority to establish whether their child had additional support needs or required a co-ordinated support plan, unless they had authority from their child to do so or the child lacked capacity to do so themselves.

That provision would very significantly shift the focus of the rights to make requests in relation to children away from parents and on to the children themselves. I suggest that that would be a seismic shift, and I firmly believe that parents would not wish their rights to be restricted in such a manner—nor, indeed, would many children.

Amendments 150 to 157 would also have the unfortunate effect of removing from parents the

right to make references to the Additional Support Needs Tribunals for Scotland in relation to their child, except in very limited circumstances. I do not believe that parents would find it acceptable that their rights were reduced to quite that extent. The tribunals are the last resort for resolving disputes within the additional support for learning framework and are the backstop that parents have when they have concerns that they have been unable to resolve through other means, such as mediation. To have their use of the right to make a reference authorised by their child first seems inappropriate, given the matters that would be considered by a tribunal.

As I have already said, we need to bear in mind that parents also have rights and responsibilities in relation to their children's education. I believe that amendments 150 to 157 would fundamentally change the nature of those rights and responsibilities. I therefore ask Liam McArthur to reconsider amendment 150 and the other amendments in his name in the group.

I now turn to the Government amendments in the group. Members will be aware that I indicated in my response to the stage 1 report that I intended to lodge a number of amendments to address concerns that were raised during stage 1 about the ASL provisions. I will now outline some detail regarding those amendments. A number of them are technical amendments that directly address concerns raised by the committee and stakeholders at stage 1 in relation to young people. The bill as introduced requires education authorities and the Additional Support Needs Tribunals to assess a young person's capacity and best interests before they can exercise rights or do something under the 2004 act. That was to ensure a consistent approach to considering the capacity and best interests of both children, who are aged under 16, and young people, who are aged 16 to 18, wishing to use their rights or to do something under the 2004 act.

However, having listened to the views of stakeholders, I recognise that introducing those safeguards is not appropriate for young people. The amendments in my name will therefore remove young people from the capacity and best interest test. As there will no longer be such a test for young people, there will be no requirement for the appeal of those decisions to the tribunals; consequently, those provisions will also be removed. Thirty-eight of the amendments in the group are in consequence of those changes and will remove the term "young person" from various sections of the schedule.

Because those amendments will remove the capacity and best interest assessments for young people, it was necessary for me to lodge amendments to redefine what lacking capacity

means for children and young people. The amendments will remove references to specific disabilities and additional support needs that were included as reasons why a child or young person might lack capacity. Stakeholders indicated at stage 1 that they felt that those aspects of the definition of lacking capacity in the bill as drafted were unnecessary and that the subsections within the definition might in fact be prejudicial.

Amendment 50, in particular, introduces a new definition of lacking capacity in relation to young people, which relies on sufficient understanding only. There are a further 11 amendments that are consequential on amendment 50 and which amend the wording of the schedule to reflect it. Those 12 amendments directly address the concerns that were raised by stakeholders and the committee at stage 1 and simplify the definitions in the bill.

I believe that, through statutory and non-statutory guidance, which we are committed to producing, we will be able to guide those who are making decisions about a child's capacity appropriately on the matters that can and should be taken into account. If the amendments are accepted, the bill will contain separate definitions of capacity for children and of lacking capacity for young persons. The more generalised definition of lacking capacity for young persons is appropriate, given that we have put forward commitments at stage 2 to remove the requirement on authorities and the tribunals to assess a young person's capacity to do something under the act. Therefore, I do not believe that Liz Smith's amendment 50A is appropriate, given that, as I have said, authorities will no longer have to assess the capacity of young people.

There has been significant engagement with a wide range of stakeholders on the assessment and terminology that should be used. I have considered it appropriate to take a lead from the Children and Young People (Scotland) Act 2014, which defines a child's wellbeing. That is likely to meet the concerns of most stakeholders. My amendments reflect that change, removing the references to an assessment of best interest and replacing them with references to a consideration of whether doing something would adversely affect a child's wellbeing. Education authorities and the tribunals would therefore be required to consider whether a child who wishes to do something under the 2004 act, as amended by the bill, has capacity to do that thing and whether doing that thing would adversely affect their wellbeing.

Assessing capacity and considering the impact on the child's wellbeing reflect the fact that the responsibilities that are placed on children if they seek to exercise their rights can be demanding,

and that we should be sure that a child can cope with the processes before they take any action.

We have lodged amendment 73, which provides that, when making the considerations regarding wellbeing, the authority and the tribunal will consider whether, when doing that thing, the child will be safe, healthy, achieving, nurtured, active, respected, responsible and included. Those concerns are referred to as the SHANARRI indicators in the 2014 act, and guidance on how authorities should consider them will be included in a statutory code of practice that is to be published by ministers. However, as previously stated, it is also our intention to produce non-statutory guidance on the assessments of capacity and the consideration of the impact on wellbeing.

A further matter that was raised by the committee in the stage 1 report concerns the terminology relating to a young person. A young person is currently defined in the 2004 act as a person who is over school age but who has not attained the age of 18—in effect, 16 and 17-year-olds. A further amendment, amendment 97, adjusts that definition to include anyone who is aged 16 and over and remains at school. As a result, we will ensure that education authorities continue to have duties in relation to a young person who is receiving educational support, while they remain at school. It is not our intention that young people should not receive support for their education simply because they turn 18 while they are at school, and this amendment addresses that matter fully.

A further technical amendment that is contained in this group puts beyond doubt the intention that a further placing request reference cannot be made to the tribunals in relation to any school—whether the same school or a different school—within any 12-month period for the same pupil. The amendment also gives the president of the tribunals the discretion to accept a second reference within that 12-month period, where the original reference has been withdrawn prior to a hearing taking place. The amendment clarifies the original policy intention and helps to achieve any potential misinterpretation of the 2004 act, and I believe that it will therefore simplify that act.

Amendment 103 also provides ministers with the power to make rules in relation to the tribunals. That will enable rules to be made in relation to the practice and procedure, application of decision-making powers and review of decisions of a convener sitting alone.

To summarise, I do not support the amendments in the name of Mr McArthur and Ms Smith. As I said earlier, I do not believe that they are necessary, and some might have unforeseen consequences. However, I support all the amendments in my name, and invite committee

members to do so also. They will extend still further our shared commitment to enhance children's rights in a way that is appropriate and responsible.

11:00

**Liz Smith (Mid Scotland and Fife) (Con):** It is incumbent on everyone to recognise that this is an exceedingly complex area of legislation, not least because of the diverse assessments of those who have additional support needs and the growth in the number of those children in the context that is relevant to the amendments. In recent years, the number of professionals who are involved has grown considerably, and increased responsibilities have been put on local authorities and other stakeholders. The comments that Mr McArthur and the minister made reflect how complex the area has become.

Notwithstanding that, section 17 of the bill lacks clarity when it comes to interpretation of the bill—specifically in relation to the definition of the word “capacity”. That point was made in the committee's stage 1 report, and it has also been made by many groups for children and young people. I accept what Mr McArthur said about the time that has been allowed to pursue that definition. The minister said that plenty of time had been devoted to the issue; in reflecting on concerns that have been submitted to the committee following its report, I am not sure that that is entirely correct.

I well understand that we have to comply completely with rulings in relation to the European convention on human rights. The existing legislation in Scotland prevents some listing of specific capacities—plural—lest that list should be discriminatory in any way when it comes to the offer of assistance to those who have ASN. However, the word “capacity” itself is creating difficulty with interpreting some provisions in the bill. For example, in the minister's amendment 50, the definition of the words “something” and “it” is unclear. I ask the Scottish Government to consider whether that amendment will deliver what several groups of stakeholders asked for and what the minister just described to the committee.

I raise the issue because of my teaching experience with children with ASN. Their capacity to understand something might be entirely different on one day from that on another day. That is particularly true for older young people. If we add the complexities that have resulted from the move away from the definition of welfare to that of wellbeing, there is greater scope for vagueness and for misinterpreting the legislation. I would be grateful if the minister addressed those comments in summing up.

**The Convener:** I am sorry to interrupt, but the minister will not be summing up. He was not the first speaker on the group so, if he wishes to respond, he will have to intervene on Liz Smith.

**Dr Allan:** I am tempted to ask Liz Smith whether she would like me to intervene, but I am not sure that that is part of the process.

**Liz Smith:** I would be grateful for the minister's comments.

**Dr Allan:** I will pick up on a couple of the points that were made. I appreciate and agree with what Liz Smith said about the complexity of this area of law and practice. I do not want to make it more complex, and I am sure that she does not want that. My fear is that her amendment 50A to my amendment 50 would add substantially to the definitions in the bill and complicate things further.

The member mentioned some of the fairly abstract language that is in the bill. Probably, on a first reading of the bill, all of us wondered why it is in such abstract terms—for example, it refers to doing things. The reason is that the bill refers back all the time to the Education (Additional Support for Learning) (Scotland) Act 2004. We could include a very long list of possible activities, rights or responses under the 2004 act; it would include things such as receiving information and making decisions. That would make for an unwieldy bill, unless we found some kind of shorthand. I hope that that answers the point that Liz Smith made and explains why the bill has some slightly abstract language that talks about doing things. It refers back to the things in the 2004 act.

**Liz Smith:** I thank the minister for that. Perhaps we could talk about the issue before stage 3.

**The Convener:** Do any other members want to contribute? Rather unusually, I will include the minister as a member at this point. Do you wish to comment before I move to the winding-up, minister?

**Dr Allan:** I have made my comments.

**The Convener:** I call Liam McArthur to wind up and to indicate whether he wishes to press or withdraw amendment 150.

**Liam McArthur:** I thank Liz Smith for her comments. In a feat of masterful understatement, she referred to the complexity of the issues that the amendments in the group deal with. The issues are certainly complex. I also thank the minister for his comments on my amendments and for remarks that made me look like the master of pith.

The minister kicked off by referring to consultation. At stage 1, it was fairly evident that the concerns that were being expressed to the committee were exceptionally serious, to the point

of raising the question whether the provisions were human rights compliant. I understand that there will always be on-going discussions with interested stakeholders, but we were told that, in a sense, the concerns that were raised with the committee were the product of misunderstanding. That is palpably not the case and that needs to be reflected on.

I very much welcome amendment 51 and the amendments to remove "young person". The rationale behind that is impeccably sound.

Amendment 61, which would move the bill's wording from "is in the best interests" to "would adversely affect the wellbeing", causes me concern. Instead of focusing on best interests, Scottish Government amendment 73 and others set out that the assessment should be based on the SHANARRI indicators. Therefore, an assessment will need to check whether there could be any negative impact on the child in relation to them being safe, healthy, achieving, nurtured, active, respected, responsible and included. It is not difficult to see that the potential for barriers to be put in the place of children exercising their rights will be considerably greater than they were under the best interests provision.

Difficulties will be presented for any child in exercising their rights but, through the bill, we should be ensuring that the approach is more child friendly, with the requisite support in place early so that children can take up those rights, rather than putting in place barriers to stop them doing so. As I have said previously, I very much welcome the provision for establishing a support service. A primary role of that service should be to provide the support that is required to enable children to exercise their rights not just at the time but possibly in an anticipatory fashion. Perhaps the minister can comment on that and the other points.

**Dr Allan:** I make it clear that the misunderstanding that I referred to was about whether ministers will provide the support service. Local authorities will provide that service. That was where the claim, if you like, or the comment was made about a misunderstanding.

**Liam McArthur:** That is helpful. Another concern that the minister raised—understandably—is about interference with parental rights. As I said, my amendments would not diminish, reduce or dilute parents' rights; rather, they would make the rights of children more explicit. The minister fairly pointed out that many children will not necessarily want to exercise their right, but that is theirs so to do, and I would expect parents to be able to take up issues on their behalf. Liz Smith reflected that, over time and as children get older, the expectation of the rights that they will take on and the decisions that they



will feel confident in making will change. That is always a sensitive balance, but it is reflected in the 1991 act, and I do not see why we would want to depart from it.

**Dr Allan:** We both agree that there is a balancing act to be achieved between parental rights and children's rights. The point that I made about some of Liam McArthur's amendments was that, by introducing the word "authorised", they would introduce the idea that children would in certain circumstances have to authorise their parents' involvement in the process. I just feel that, much as it is not Liam McArthur's intention, it would be an unhelpful route to go down to start talking about children having to authorise their parents' involvement in the process.

**Liam McArthur:** There might be some debate to be had about the language of the amendments, and I would be more than happy to engage in that process between now and stage 3. However, if we start from the presumption that we want a bill that honestly and demonstrably reflects the child rights perspective, we need to find some way of not simply assuming that the child is in accordance with what is happening around them simply because their parents have exercised their rights on their behalf.

I can see why the minister might have difficulty with the use of the word "authorised" but, as things stand, the danger is that the bill appears to take more of a paternalistic approach. The child will expect that their rights can be exercised independently but, if we follow through on the amendments to the provision on capacity and to change from the reference to best interests to a reference to adversely affecting wellbeing, the child's rights will in a number of instances be exercised only at the behest of adults acting or making decisions on their behalf. That does not seem to be in accordance with the approach that was taken in the 1991 act, which all my amendments would safeguard in the bill.

Having aired the issues, I am happy to consider what might be done between now and stage 3 to better reflect the position. As I said, I very much welcome a large number of the minister's amendments in the group and I think that they are a step in the right direction. However, I am concerned that, from a child rights perspective, the bill moves away from the 1991 act, and I will want to revisit that.

At this stage, I will seek to withdraw amendment 150.

*Amendment 150, by agreement, withdrawn.*

*Section 17 agreed to.*

### **Schedule—Modifications of the Education (Additional Support for Learning) (Scotland) Act 2004**

*Amendment 151 not moved.*

**The Convener:** I remind members that, if amendment 152 is agreed to, I cannot call amendments 41 to 49.

*Amendment 152 not moved.*

*Amendments 41 to 49 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 50 moved—[Dr Alasdair Allan].*

*Amendment 50A not moved.*

*Amendment 50 agreed to.*

**The Convener:** I remind members that, if amendment 153 is agreed to, I cannot call amendments 51 to 72.

*Amendment 153 not moved.*

**The Convener:** Does any member object to a single question being put on amendments 51 to 72?

**Liam McArthur:** Yes—although you can put a single question on amendments 51 to 60, if you want.

*Amendments 51 to 60 moved—[Dr Alasdair Allan]—and agreed to.*

11:15

*Amendment 61 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 61 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Scanlon, Mary (Highlands and Islands) (Con)

**Against**

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 61 agreed to.*

*Amendments 62 to 65 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 66 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 66 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Scanlon, Mary (Highlands and Islands) (Con)

**Against**

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 66 agreed to.*

*Amendments 67 to 69 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 70 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 70 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Scanlon, Mary (Highlands and Islands) (Con)

**Against**

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 70 agreed to.*

*Amendment 71 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 71 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Scanlon, Mary (Highlands and Islands) (Con)

**Against**

Griffin, Mark (Central Scotland) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Pentland, John (Motherwell and Wishaw) (Lab)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 71 agreed to.*

*Amendments 72 and 73 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendments 154 to 156 not moved.*

*Amendments 74 to 85 moved—[Dr Alasdair Allan]—and agreed to.*

**The Convener:** I remind members that, if amendment 157 is agreed to, I cannot call amendments 86 to 93.

*Amendment 157 not moved.*

**The Convener:** Does any member object to a single question being put on amendments 86 to 94?

**Liam McArthur:** No—I have made my point.

*Amendments 86 to 94 moved—[Dr Alasdair Allan]—and agreed to.*

*Amendment 95 moved—[Dr Alasdair Allan].*

**The Convener:** The question is, that amendment 95 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** Is Liam McArthur objecting?

**Liam McArthur:** The amendment is on its own, so no.

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

**For**

Adam, George (Paisley) (SNP)  
Brodie, Chic (South Scotland) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
Pentland, John (Motherwell and Wishaw) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)

**Against**

McArthur, Liam (Orkney Islands) (LD)

**The Convener:** The result of the division is: For 8, Against 1, Abstentions 0.

*Amendment 95 agreed to.*

**The Convener:** Amendment 96, in the name of the minister, is in a group on its own.

**Dr Allan:** Currently, section 27A of the 2004 act sets out in detail the data to be collected by the Scottish ministers on additional support for learning, including the number of children with additional support needs, the factors that give rise

to those needs, the types of support that children and young children receive and the cost of providing that support. It is intended that, in future, ministers will still be required to collect that information, but it is considered that giving ministers a regulation-making power, as set out in amendment 96, to specify the information that must be collected rather than specifying that in the bill gives flexibility on the data to be collected in the future.

My intention is that the initial regulations that are made under that power will replicate the current requirements for ministers under the 2004 act, so that there will be no loss in the information that is collected or published. It will also mean that in future we will be able to adjust what information is collected to take account of developing thinking. For example, the advisory group for additional support for learning has discussed data collection and the possibility of moving to a more outcomes-focused approach in future. A regulation-making power will enable those changes to be introduced without the need for primary legislation.

The regulation-making power would require consultation prior to any new regulations being made. That presents an opportunity for us to consult formally on what data we should collect and publish, and enables the engagement of a wide group of stakeholders with an interest in the area. I ask members to support amendment 96.

I move amendment 96.

*Amendment 96 agreed to.*

*Amendment 97 moved—[Dr Alasdair Allan]—and agreed to.*

**The Convener:** Amendment 158, in the name of Liam McArthur, is in a group on its own.

**Liam McArthur:** I am conscious that I have probably used up my speaking quota for stage 2 in this session, but I will return to something that I touched on in relation to an earlier grouping.

In making the case for the removal of the capacity and best interest assessment, I wholly accept that exercising the rights that are set out in the bill could be a stressful and difficult process for any child. However, rather than simply insisting that adults sit in judgment over who is resilient enough to exercise those rights, should we not look to improve the process and make it more child friendly and accessible to those whom we seek to empower? For example, proposed new section 31A of the 2004 act creates a support service that is specifically designed to assist the child in exercising their rights. I presume that such a service would be able to anticipate or pick up on any difficulties that an individual child might experience and put in support to help to mitigate them.

I recognise that there is no compulsion for children to use the support service, nor should there be any, but I believe that it has a crucial role to play in ensuring that 12 to 15-year-olds are ready and able to use the rights that we are extending to them through the bill. That is why amendment 158 puts the onus on the Scottish ministers to ensure that every child who requires support knows exactly how to contact the support service and what support it can offer them.

I firmly believe, as do members of the coalition that I mentioned at the start of my earlier remarks, that the support service, coupled with a proactive campaign to ensure that children know of its existence, will remove the requirement for any best-interests assessment.

I look forward to hearing what the minister and members have to say. I move amendment 158.

**Dr Allan:** I note the points that Mr McArthur has raised. I recognise the importance that he rightly places on the children's support services that the bill introduces, which are key to the delivery of children's rights and needs.

During the development of the bill, the creation of a single support service for parents and children was considered, but we need to ensure that there is no opportunity for a conflict of interest to arise, particularly in circumstances where there may be a source of challenge or disagreement within the family about a matter related to additional support needs. I am therefore strongly of the view that separate services are required and not the single service that amendment 158 would create.

For parents, we intend to continue with the arrangements that we already have in place through the enquire and let's talk ASN services. To ensure that a comprehensive support service is also available to children, we have included in the bill proposed new section 31A of the 2004 act.

I am confident that we can deliver the proposed support services in an effective and timeous manner without having to make regulations. I do not believe that it is necessary to specify what are essentially operational matters in secondary legislation. However, I am more than happy to hear from Mr McArthur and other members of the committee before stage 3 about any ideas that they have on this or other areas of the bill.

I do not intend to consider and decide on the conditions of the service behind closed doors. Instead, I intend to develop the specifications for the service in partnership with key stakeholders through the advisory group for additional support for learning. That will allow us to ensure that we have the right services being delivered at the right time and in the right way.

Given that support for parents is already available and a joint service would introduce the possibility of conflicts of interest, I ask the committee to reject amendment 158.

**Liam McArthur:** I thank the minister for his helpful remarks. I certainly recognise the need to avoid conflicts of interest. I alluded to that in relation to an earlier group. However, there will be instances in which a range of different bodies and partners are involved in providing the services that are required to support children in exercising their rights. Whether that needs to be set out in primary legislation and whether it needs further clarification can usefully be the subjects of further debate between me and the minister between now and stage 3, and I am happy to engage with him. On that basis, I seek to withdraw amendment 158.

*Amendment 158, by agreement, withdrawn.*

**The Convener:** Amendment 98, in the name of the minister, is in a group on its own.

**Dr Allan:** The bill introduces rights to allow children aged 12 or over to act on their own behalf on matters relating to their need for additional support in their learning. However, we expect that, in most circumstances, parents will continue to act on their child's behalf, and that might particularly be the case where matters come before the tribunal.

We are committed to enhancing and enabling children's rights and we want children to have a voice and to be able to influence the support that they are provided with. It is important that the child's views are heard as part of the resolution of disagreements. That is why we are taking steps under the bill to require education authorities to seek children's views in relation to mediation, and it is why we lodged amendment 98, which requires tribunals to seek children's views in relation to references that their parents make to the tribunal, where their views might otherwise not be heard as part of the process.

Where children are making a reference to the tribunal in their own right, their views would be heard as part of that process, so further provision is not necessary. I ask that members support amendment 98 in my name.

I move amendment 98.

**The Convener:** Amendment 98 is welcome, as it will make it clear that the tribunal must consult children in such cases and I support that.

*Amendment 98 agreed to.*

*Amendments 99 to 103 moved—[Dr Alasdair Allan]—and agreed to.*

*Schedule, as amended, agreed to.*

**The Convener:** That ends consideration of amendments for today. We will continue our stage 2 scrutiny on Monday when we meet in Dunfermline as part of our Parliament day. We will begin by considering all the amendments that have been lodged to part 1 of the bill, on inequalities of outcome, and as many of the remaining amendments as possible. If need be—I say to committee members that it is very likely—we will have a further day of stage 2 consideration in the Parliament next Tuesday. The deadline for lodging amendments to all the remaining parts of the bill is noon tomorrow, Wednesday 2 December.

11:31

*Meeting suspended.*

11:36

*On resuming—*

## Draft Budget Scrutiny 2016-17 (Education)

**The Convener:** Under our next item, we will take evidence on the Scottish Government's draft budget for 2016-17, focusing on education spending.

I welcome to the committee Councillor Jenny Laing from Aberdeen City Council; Councillor Shamin Akhtar from East Lothian Council; Councillor Stephanie Primrose from East Ayrshire Council; Councillor Gary Robinson from Shetland Islands Council; and Robert Nicol from the Convention of Scottish Local Authorities. Good morning to you all.

We will go straight to questions; I hope that you have not been waiting around for too long during our stage 2 consideration. I thank you for being here this morning. Chic Brodie will begin.

**Chic Brodie (South Scotland) (SNP):** I start by asking Councillor Laing about the impact of pupil teacher ratios on outcomes, and the implications of that. In your submission, you state:

"the pupil teacher ratio places ever increasing strain on other council front line services".

However, from my assessment of your submission, it seems that the council has had an underspend of approximately £20 million in the past three years. My question is not about what caused that underspend, but about why it is there. Where is the evidence that pupil teacher ratios are having a serious impact on improving outcomes?

**Councillor Jenny Laing (Aberdeen City Council):** The difficulty that we face in Aberdeen and in the north of Scotland as a whole is the recruitment of teachers, and being bound by pupil teacher ratios causes us difficulties as we go forward.

We recently held a summit in Aberdeen, which the Cabinet Secretary for Education and Lifelong Learning attended to hear about the difficulties that we encounter in recruitment and retention of teachers as a result of the high cost of living in Aberdeen and Aberdeenshire in particular.

The difficulties that we have experienced have meant that we have had to spend significant amounts of money on recruitment, advertising and golden hellos. We are now having to provide accommodation to encourage teachers to come to the city of Aberdeen, and that money comes out of our education budget.

We want to ensure that our young people in Aberdeen receive the best possible education that

we can provide, but we have difficulties, particularly in STEM—science, technology, engineering and mathematics—subjects in our secondary schools, because of competition from the oil sector. People who have qualifications in the STEM field want to work in that sector.

All of that gives rise to challenges for us, but there is also the fact that our budgets are tied to pupil teacher ratios, and the threat this year that those budgets will be clawed back if we do not meet teacher numbers has put us and, I am sure, other authorities under pressure.

Our problem with recruiting not just teachers but labour across the whole of the local authority has led to underspends in our staffing budget. However, we have been prudent in years gone by. In 2008-09, Aberdeen had to make £127 million of cuts and, because we did not want to get into that situation again, from that point onwards we adopted a five-year priority-based budgeting approach. Our prudence is reflected in some of the information in our submission, particularly on how we manage our capital spend and are reducing the council's debt.

**Chic Brodie:** Thank you for that fairly comprehensive answer, but notwithstanding the points that you have made about your sizeable underspend, I still find the position strange.

I have a more general question. In discussions that we had in workshops with education officers and headteachers, it was suggested that the imposition of the pupil teacher ratio inhibits flexibility of management. Do you agree with that comment? What impact is it having on the attainment of schools?

**Councillor Stephanie Primrose (Convention of Scottish Local Authorities and East Ayrshire Council):** COSLA is 100 per cent behind the Government's initiatives to raise attainment and ensure that our young people have the best possible outcomes. We are very much engaged in these processes in our own local authorities; indeed, I do not think that anyone around the table will disagree with the view that our children are our most important priority.

There is a long-standing issue with the pupil teacher ratio, and we feel that we need more budget flexibility. I am very aware from my teaching background that there is more than just a teacher in a classroom, and if our budget is constricted to the point that we can use only a small percentage of it, our pupils are going to suffer. I know that, when I was a teacher, I had a number of classroom assistants whom I could not have done without, but if we cannot free up some of that budget, we are not going to be able to employ as many classroom assistants, we are

going to have issues with our classroom supplies and so on.

We would like some relaxation around teacher numbers, but we do not expect any huge haemorrhage of teachers. No council is suddenly going to go out and fire half of its teaching staff—that is not the point. However, we want the flexibility to put our teachers where we need them in our authorities, and I think that such an approach would help us to continue with our programme of raising attainment for all.

**Councillor Gary Robinson (Shetland Islands Council):** Speaking as leader of Shetland Islands Council, I think that we are at one extreme of this. Our pupil teacher ratio is 10 to 1, which is far in excess of the 13.5 to 1 demanded by the Scottish Government. At the other end of the scale, I know that at one point Edinburgh sat with a ratio of 15 to 1. Given my situation, I might argue that 15 to 1 is not unreasonable; after all, a large city with large schools could probably justify such a ratio and still have manageable class sizes.

The difficulty, particularly this year with the double bind of absolute numbers and the ratio, is that we have ended up having to employ three teachers whom we essentially did not need—with our 10 to 1 ratio, I think that you will appreciate that. The fact that we have been forced to take on more teachers than we actually need is counterproductive when the colleagues to my left are in some instances struggling to recruit teachers.

We are still some way away from meeting the 13.5 to 1 ratio. The 13.5 to 1 ratio was a one-size-fits-all measure that quite clearly did not suit everyone's situation. Given the number of small schools that we have, we would have found it very difficult to get anywhere close to 13.5 to 1. However, I certainly do not welcome the fact that we have been more or less pegged at a ratio of 10 to 1, because that does not suit our circumstances any more. It also hides the issue that Councillor Laing mentioned about the mix of teachers. Certainly, in the islands, we are really struggling to recruit into the STEM subjects. My council met its targets this year on absolute numbers and the ratio—we have had confirmation from the Scottish Government on that—but if we dig into that we find that there are areas, particularly in the STEM subjects, where we are not well provided with teachers and we really struggle to recruit.

As others have said, what we are really looking for is more flexibility to be able to deliver across the subjects and have the right number of teachers for our particular situations.

11:45

**Chic Brodie:** On that point, I would like to broaden it—

**The Convener:** Sorry, but Councillor Akhtar is waiting to come in.

**Councillor Shamin Akhtar (East Lothian Council):** I just wanted to reflect on the lack of flexibility. We have examples of schools in which, if an extra 60 pupils attended tomorrow, we would not need a single new teacher. That maybe demonstrates the difficulties that we face on a practical local level.

The biggest improvements in attainment and achievement in schools happen when there is a focus on improving learning and teaching in the classroom. That has been missed here. We need to focus more on getting the best learning and teaching in the classroom than on just the numbers.

**Chic Brodie:** I beg your pardon—I should not have interrupted earlier.

Are the witnesses saying that the extent to which the Scottish Government is setting targets is harming the attainment that could be achieved if it were left up to you to come up with the numbers that you require to achieve the expected outcomes? I think that you just made that point, Councillor Robinson, but carry on.

**Councillor Robinson:** There are two aspects to that. On the one hand, we require a number of teachers to come through the system who are qualified, especially in the STEM subjects. To a large extent, the Scottish Government perhaps has more control over that than we have at local level, and it is able to put in incentives and ensure that there is a supply of suitably qualified teachers. So one aspect is the Scottish Government.

The other aspect—sorry, but I have lost the thread of what I was saying. Could you ask the question again for me, please?

**Chic Brodie:** Let me put it as bluntly as I can. Without Government interference, would you be able to set the correct level of teacher pupil ratios? I think that you have partly answered that, with the caveat about the STEM subjects.

**Councillor Robinson:** Yes.

**Chic Brodie:** Is that the current situation?

**Councillor Robinson:** Given more flexibility at local level, we certainly can deliver. My education authority has been one of the most consistently well-delivering education services in Scotland over many years.

**Councillor Primrose:** We obviously need to discuss teacher numbers in some detail, but we have wider issues with our workforce agenda.

Gary Robinson talked about STEM subjects but, across Scotland, home economics teachers are as rare as hens' teeth. Also, some universities have not managed to fill all their probationer places. So we have workforce issues, and that is before we even mention supply. Teacher numbers have to sit alongside the numbers in the entire education workforce. We maybe need to look more closely at that.

**Councillor Akhtar:** If the Government takes responsibility for the teacher workforce, it cannot on the other hand say that it is going to penalise councils that do not meet the target.

**Robert Nicol (Convention of Scottish Local Authorities):** We should look at staffing not just in schools but in wider children's services. We are increasingly concerned about the pressure to maintain budgets for teachers. The magnifying effect of that has an impact on other budgets and starts to erode the ability to tackle real issues to do with vulnerability. That is another concern.

**Councillor Laing:** I share the concerns about workforce planning. It is clear from the difficulties that we face in Aberdeen that we need to take a long, hard look at how we plan. We have projections of our primary roll increasing by 30 per cent in the next five or six years. It is obvious that we need to ensure that we are training teachers now for the future and that we are training in the subjects that will need more teachers and those in which we have shortages currently.

**The Convener:** When the representatives of the teaching unions were here last week, they reiterated their view that maintaining sufficient teacher numbers was essential to tackling the attainment gap. They clearly linked teacher numbers, ratios, class sizes and increasing attainment. That is a different message from the one that you are giving us. Why is that?

**Councillor Primrose:** I absolutely respect the unions' right to say those things. However, they are in a slightly different position from us. The Educational Institute of Scotland, the National Association of Schoolmasters Union of Women Teachers and the Scottish Secondary Teachers Association look after teachers. However, local authorities have to look after everyone who is involved in education, not just teachers. As I said earlier, a school is not just children and teachers. A huge number of other people work in schools. It would be wonderful if we could preserve the numbers of teachers, janitorial staff and everyone else who works in education but, realistically, given the budget restraints that are coming, that is not going to happen.

The EIS are in a better position than us, in a way, as it only has to look after teachers. However, we have a duty—not just as

educationists but as locally elected members, which is ultimately what we are—to take a much broader view of the whole of education, and of children's services, which Robert Nicol mentioned.

**Liam McArthur:** That ties in neatly with what I was going to ask about. Councillor Primrose, you are reflecting what we heard in informal evidence from councils across the country about the impact that the requirement to maintain the pupil teacher ratio is having not only on wider children's services but on the number of classroom assistants, janitorial staff, catering staff and other support staff in schools, and that in the current circumstances the only prospect is that it will have a greater impact still.

You are talking about some of the lower-paid roles in the school environment, which means that you might be working against the grain of efforts to close the attainment gap, because you will be making unemployed people who previously held down jobs in schools.

We have never received statistics around this issue. Is there a picture of what is happening in local authority areas across the country in terms of the implications for jobs in other roles in schools?

**Councillor Primrose:** My local authority is experiencing strains with regard to classroom assistants. We had a three-year budget and I know that, in order to maintain teacher numbers, we have had to cut our school transport provision. That service is fundamental in closing the attainment gap, because how will you do that if you cannot get your vulnerable children to school? We have not taken our school transport provision back to the absolute basics yet; we have managed to have a subsidised transport system. However, further budget restraints are coming. Obviously, the Scottish Government is yet to announce the spending review, but we will probably have to reconsider that provision, which means that even though we have the staff to teach the pupils, we might not be able to get those pupils in. That is an issue.

We are also going to struggle to keep teaching assistants, and we need them—I cannot stress that enough. When I was last teaching, I had a foundation class and I would not have been happy without my classroom assistants. They were not a helpful extra—they were not people who did my photocopying or helped a wee person now and again; they were absolutely critical to young people's education and helped them with their reading and writing. Without those classroom assistants, the outcomes for those young people would not have been the same, regardless of how hard I tried. Young people in that class had very specific needs, such as dyslexia, and there was a lot of autism. I needed a classroom assistant to

give me a hand. You cannot underestimate the importance of classroom assistants.

**Councillor Akhtar:** East Lothian Council had to go down the route of voluntary early retirement, which has resulted in our having 100 fewer members of staff across the council. That was to ensure that we protected education. We must not lose sight of the wider picture. If we want to address issues of attainment and achievement, we must ensure that children are living in safe, clean homes, that there are the proper support services for their family, that they are free of antisocial behaviour and that they have the opportunity to go out and play and visit libraries and so on.

All those things outwith the education budget are important and they are getting hit hardest. We must look at where we make cuts elsewhere in the council. That is 100 staff—with their skills and expertise—that we no longer have.

**Councillor Robinson:** I do not have the statistics for education on its own, but I know that our council's grant has reduced by around 19 per cent since 2010. We have protected education through that period, but that has come at a cost. My authority now employs around 600 fewer full-time equivalent staff than it did at the end of 2010. Like I said, I do not have statistics on how that breaks down in the education service, but I am certain that it means fewer clerical assistants and classroom assistants in schools and a smaller reduction, by comparison, in additional support for learning. It is having an impact, although it is not impacting on teachers.

To return to the convener's earlier point, none of us here wants to see fewer teachers in Scotland. The important thing is to have enough teachers in the right places.

**Councillor Laing:** We would agree with that. I mentioned our issues with recruitment. The problem is that we are looking at a national figure for teacher numbers, whereas we need to look at the issue far more locally.

I mentioned the swingeing cuts in Aberdeen that we saw from the previous administration. There were big cuts to pupil support assistant provision and to administration in schools, and the impact of that was significant. Since we came in in 2012, we have tried very hard to ensure that education is at the top of our priority list. We have brought back those in PSA, admin and various other roles.

Our difficulty is that we are looking at 3 to 4 per cent cuts to our budgets, so we will have to consider those areas. Given the shortage of teachers in schools, we have our management—our deputy heads and headteachers—in teaching positions for significant parts of their working days. If management is not taking up the role that it should, that has an impact right across the school,

particularly with the greater amount of work that is coming to headteachers on things such as the named person. We need to be mindful of that.

**Liam McArthur:** The workforce planning issue was touched on earlier; specific shortages were identified in science, technology, engineering and mathematics, and in home economics, which seem to be reflected pretty much nationwide. Does that suggest that we have overprovision in a number of subjects and underprovision in others, which masks the problems that you identify? Alternatively, is provision in most areas fine? Is the shortfall in those subjects being filled by a bit of supply teaching and a bit of teachers teaching across different subjects? How is the issue manifesting itself in the classroom?

**Councillor Primrose:** There will be local manifestations. In my education authority, as I said, we do not have enough teachers of STEM subjects—the science subjects in particular. That is not to say that we have too many English or maths teachers, or anything like that. I do not want significant reductions in our English and maths departments, but we could do with an increase in our STEM subject teachers. We must also talk about supply teaching issues. In our schools, if a member of staff is off, we struggle—practically for any subject—to get supply teachers in.

The answer depends on whether we look at things on a day-to-day basis or in a wider context. We would not want to say that we have far too many teachers of this and far too few teachers of that. It depends very much on the locality.

**Councillor Robinson:** It is a very similar situation with Shetland Islands Council. In recent times, we have had to share staff between schools a lot more. We have tried to do that on a whole-day basis, rather than on the basis of half days and suchlike, because it requires teachers to spend a lot of their time travelling. We have put in place arrangements whereby we are managing to cover most, if not all, of the subjects by moving teachers around our secondary schools. That impacts a bit on continuity for pupils, but at the moment it is the only way we can manage the issue. There appear to be shortages in STEM and home economics, as Councillor Primrose mentioned.

12:00

**Liam McArthur:** If councils adhere to the provisions in the agreement, they will be able to access the additional £10 million, but if they do not, they face the prospect of losing their proportion of the £41 million that has been allocated.

Given the problems that you have identified as regards the impact on your ability to respond



flexibly on teaching and learning in the classroom, is it remotely realistic to think that the loss of a proportion of that £41 million and inability to access a proportion of the £10 million is pain worth taking in order to give you the flexibility that means that you do not have to lay off staff who are crucial to teaching and learning, or is the pain so significant that it is just a question of having to suck it up and do the best that you can do?

**Councillor Primrose:** Some local authorities—not East Ayrshire Council, I hasten to add—would be in a better position to take that hit. They would have to make that decision.

I think that the census will be released on 9 December. We are trying very hard to recruit. It seems to be disproportionate that if we cannot fill five posts, we will receive a commensurate fine. Local authorities are trying their hardest, but it is simply not possible to get teachers in some parts of the country, so it seems to be a bit disproportionate to fine local authorities that are doing their absolute best. Some are, for example, offering golden hellos. Why penalise local authorities that are trying to do their best?

**Liam McArthur:** Is there no reasonableness test, whereby if an authority has taken all reasonable measures, it will not be penalised?

**Councillor Primrose:** No. It is arbitrary.

**Councillor Laing:** There should be a reasonableness test, because we have done everything that we can do to try to recruit. I mentioned in my opening remarks all the different measures that we have tried. We are not alone, which is why six other local authorities came to the education summit to make representations to the cabinet secretary; we wanted to demonstrate what we had done to recruit and retain teachers. We should not be disadvantaged because there is a national problem in recruitment and retention of teachers. I am strongly of the view that we need to look at that. The Scottish Government must take that into account when it considers clawback of any money: it must accept that we have taken steps to address the issue.

I was interested by Councillor Robinson's remarks about sharing teachers. In Aberdeen, we have had to introduce what we call a city campus, whereby our children move round the city so that we can provide them with the range and choice of subjects that anyone would expect young people to be given. That has costs attached to it, and it means that our young people are having to travel, as a result of which time is lost. I argue that that time should be spent in education, but we have to be flexible and adapt to the circumstances that we are in, and I feel that that is the best that we can produce at the moment. I definitely do not think

that we should be penalised, because I feel that we have done absolutely everything we can.

**Councillor Robinson:** I will speak from the other end of the scale. Liam McArthur might be aware that, last year, my council—Shetland Islands Council—was the last one to sign up to the deal. I was extremely reluctant to do so at the time, and I have come to regret it, because the penalty for our missing the target was less than the cost of the three teachers whom we have had to employ to maintain our 10:1 ratio. That is the opposite end of the scale from what Councillor Laing is speaking about.

**James Dornan (Glasgow Cathcart) (SNP):** Councillor Laing has mentioned clawback a number of times, but the money in question was specifically for the pupil to teacher ratio. If an authority does not achieve the correct pupil to teacher ratio, surely it is not entitled to the money that was specifically for that. Therefore, it is not really clawback, is it? It is simply the case that it did not manage to meet the requirements for receiving that money in the first place.

**Councillor Laing:** You have to accept that if whether we achieve the ratios is beyond our control it is not fair to suggest that what you say is the case.

**James Dornan:** But the money is for that purpose; it is not for your general pot. It is provided specifically so that you will, it is hoped, be able to get your pupil to teacher ratio right. If you do not achieve that ratio, why would you get that share of the money? I do not understand that. The money is not being clawed back—you did not manage to achieve what you were meant to achieve in order to receive it in the first place.

**Councillor Laing:** Yes—but we would like to achieve it.

**James Dornan:** And then we would like to give you the money.

**Councillor Laing:** If we do not achieve the ratio, it is because we cannot do so.

**James Dornan:** I am sorry, but there seems to be a lot of talk about not wanting to lose teachers, but I am also hearing that because you are having to hire teachers you are having to get rid of classroom assistants, and that you are having to do this or that. That does not suggest to me that you see teachers as playing a primary role in education. That comes as a great shock to me, because I thought that teachers played the main role in education.

**Councillor Primrose:** As a teacher, I can take that on board. Teachers are crucial in a classroom, but they do not stand and teach in a vacuum. If you walk in the front door of a school, you find secretarial staff and other staff working in

the background. A professional good-quality teacher in front of a class is what everybody wants, but that teacher has to be supported.

We are not detracting from the importance of teachers. I am just saying that we cannot view the teacher in isolation.

**James Dornan:** Your argument, however, was that because you had to get teachers in, you were losing out on classroom assistants.

**Councillor Primrose:** Yes—they have a different role.

**James Dornan:** I accept that classroom assistants are important and play a crucial role. However, you seem to be suggesting to some extent that classroom assistants are more important than teachers.

**Councillor Primrose:** No, I am not suggesting that at all—not in any way, shape or form. I am saying that they are equally valuable. Classroom assistants are not more important, but they are important.

**James Dornan:** Yes, you have already said that. It seems to be a strange balancing act—that is all.

**Councillor Primrose:** You have to look at a number of issues. As I have said already, we cannot look at education in a vacuum. I am not speaking from a union point of view here, but there are workforce issues, too. Classroom assistants are needed to do some of the background work. I am talking about tasks that are as basic as photocopying worksheets. Teachers and classroom assistants are not mutually exclusive: they are very much mutually inclusive, and both have a great deal to bring to a classroom.

**Mary Scanlon:** There are technicians, as well.

**Councillor Primrose:** There are technicians, of course—

**The Convener:** Let us not start cross-conversations in committee. Robert Nicol is waiting to come in.

**Robert Nicol:** On the first question about the money, if councils commit to the targets they must employ teachers before they can get assurance that they will get the money. Most councils would have to ensure that they have a double lock on the target.

A council will have already spent the money to employ the teachers, but if one condition is not met and—as the Government has said to us—if they miss the target by one element, whether that is due to sickness, inability to recruit or whatever, they lose their share of the money. Councils do not get the money up front. Even if they have done their utmost to achieve the target, and they fail

through no fault of their own, they could be faced with losing a share of the money. That is why we think that the target is deeply unfair.

**The Convener:** I would like you to clarify this point, because it is important. I struggled to understand your argument earlier. My understanding was that you got the money for meeting the agreement to which you signed up.

I see that you are shaking your head, Mr Nicol, but my understanding is that you have, in effect, to maintain teacher numbers, and that is why you get the money. If you do not meet the target, you do not get the money. If you do not meet the target, why would you get the money?

**Robert Nicol:** Our point is that to achieve the target we have to spend money that we are not necessarily sure we will get. No money is transferred to local government until the target is met, so no authority here—

**James Dornan:** There is no clawback.

**The Convener:** I am sorry. I ask members to be quiet and to let Robert Nicol answer the question.

**Robert Nicol:** The money has not been transferred to local government yet. It will be transferred only if councils achieve their individual targets.

**The Convener:** That is right.

**Robert Nicol:** To use the example of Aberdeen City Council, if it fails to meet its target for whatever reason, whether it is the result of being one teacher down because of sickness, or of inability to recruit, it risks losing the money that it has, in effect, already spent on trying to meet the target. It is not getting the money back from Government.

**The Convener:** I am sorry—let me be clear about this. You are describing the hiring of teachers as a loss, because it means that you fail to meet the target. Are you saying that hiring those teachers is a loss for the children in the classroom?

**Robert Nicol:** No. To meet the target, we have to invest money that we are not necessarily sure that we are going to get—

**The Convener:** I understand that, but what I do not understand is the loss that results from hiring teachers to teach our children in classrooms.

**Robert Nicol:** I did not say that. You are twisting my words.

**The Convener:** This is what I am trying to understand. Surely if a local authority hires teachers, that is a good thing.

**Robert Nicol:** Yes it is—but that is not what I am arguing.

**The Convener:** Even if the number does not quite meet the target that you have signed up to, it is not a bad thing.

**Robert Nicol:** That is my point. If the authority just misses the target, it still risks being penalised by Government: it does not get the money.

**The Convener:** I want to stay with this important point before we move on. If I hire a builder to build a garage and he builds only 70 per cent of it, I am not going to pay him 100 per cent of the money, am I?

**Robert Nicol:** The point is that councils will not get any money. That is what the Government has said.

**The Convener:** Exactly.

**Robert Nicol:** So councils do not get any of their share of the £41 million—or, I should say, the £51 million.

**The Convener:** That is because you have not met the target that you signed up to.

**Robert Nicol:** That can potentially be because the target is missed by one teacher in a situation that is very much outwith their control—the ability to recruit. Anything could happen that would mean that, on that one day in September, the council will miss the target, and there is no reasonableness test or any other way for it to do anything about the risk of losing its money.

**The Convener:** With all due respect, local authorities have, as I understand it, missed the target for the past three years running.

**Robert Nicol:** We argue that the situation is different.

**The Convener:** At what point does the Government say, “We have to enforce the contract”?

**Robert Nicol:** When we entered negotiations with the Scottish Government, COSLA’s view was that we wanted a national agreement, but not a national agreement that we felt we could not deliver. That is why the Scottish Government moved to having 32 local agreements. We will see what happens next week when the statistics are published, but you must remember that we are 170 teachers down from last year, which is 0.35 per cent of the teacher workforce, and there was a change in the ratio of less than 0.1. Those are the margins that we are talking about, and the fact is that there is no evidence to suggest that that sort of change has any impact on attainment. That is why we think that the situation constrains flexibility for councils.

**The Convener:** I will let James Dornan ask one more question before John Pentland.

**James Dornan:** I accept that you are much more knowledgeable about this than I am. I come from the city of Glasgow, which has got rid of a number of teachers over the past few years. I was looking at the attainment figures again today, and they suggest to me that more, not fewer, teachers are required.

I think that this has been clarified already, but can we just clarify again that there should be no talk of “clawback”? You have said that the money does not arrive until you have achieved the target: money that you have never received cannot be clawed back.

**Councillor Laing:** I am happy to acknowledge that I might have clouded the issue by using the term “clawback”, but as has been highlighted, if we do not meet the target we do not receive the money that we were expecting and which has led us to employ extra teachers.

**The Convener:** That is helpful. Thank you.

**John Pentland (Motherwell and Wishaw) (Lab):** I think that we have probably exhausted the issue, but I will ask the question again to allow you to expand a wee bit.

You have said that recruitment is a difficulty for quite a lot of local authorities, and that the situation might be exacerbated by the expected increase in pupil numbers and by teacher retirement. Obviously that is going to be a problem, so how would you like to see things rectified or supported over the next 10 years?

**Councillor Robinson:** I am aware that over the past two to three years the Government has started to put more money into teacher training and provision of more places: that must be sustained. The numbers are probably still too small to ensure a good supply coming through and to cover all the subjects that need to be covered.

We have made a start, but I point out that after the population boom in the late 1970s and early 1980s we took on a lot of teachers, a lot of whom are going to be retiring right about now. We have a problem in that we expect to be losing teachers. I do not know whether the pipeline of new teachers will be timely enough—I expect that we will find out soon. The nationwide shortage of teachers, particularly in STEM subjects, and not just in Scotland but across the UK, is going to hit us; in fact, it is already having an impact.

12:15

**Councillor Laing:** From Aberdeen City Council’s perspective, we would like more teacher training opportunities in our area, because we feel that our difficulties are about the high cost of living in Aberdeen and Aberdeenshire. If we were training people more locally, they would set up a

home and have a social network so we would be more likely to be able to recruit them.

We are pleased that the distance learning initial teacher education—DLITE—scheme has been brought in. We have offered it to members of our organisation who have appropriate qualifications. However, we started off with 18 places last year and are down to 10 this year, unfortunately. We need to look at that because, particularly given the downturn in the oil and gas sector, there may be opportunities to recruit. Most of our physics teachers have engineering backgrounds, so there may be retraining opportunities.

We must also look at the higher education situation. I know that some higher education institutions are considering cutting back on staff because of their budgets and I believe that, in terms of teacher training, the education department is one of the ones that the University of Aberdeen is looking to cut back on. Given the projections of increasing pupil rolls, we need to take a serious look at the situation now, because if we do not have lecturers, we will not be training more teachers to put in our schools.

**Councillor Primrose:** I would echo the point about workforce planning. Again, to go on to my favourite thing, it is not just about teachers; for example, we will have a shortage of educational psychologists. Two universities used to offer places, but now only one does and the course will not be funded. There are workforce issues. As has been said, we probably need to get more people through initial training. However, I have a issues with a couple of things to do with initial training, which I will leave for another time.

**John Pentland:** Because of recruitment shortages, a lot of local authorities have offered financial incentives. Bearing it in mind that over the next 10 years there could be difficulty in getting sufficient teachers nationally, could we end with an incentives war in which areas where the parents are better off would be more able than deprived areas to get teachers?

**Councillor Primrose:** That is certainly an issue. I know that my authority, East Ayrshire Council, would not offer incentives. We have shortages in Gaelic teaching, for example, but we would not offer an incentive to a Gaelic teacher because we think that that would create a different tier among our teachers. We treat all our teachers the same and would not want Gaelic, home economics, biology or whatever to be treated as special cases, so we would not offer an incentive. However, I am not sure whether that might put us in a difficult situation further down the line.

**Councillor Laing:** I think that Aberdeen City Council was the first local authority to offer an incentive payment, which allowed us, I have to

say, to recruit some extra teachers. We obviously thought long and hard about the decision for the very reason that Councillor Primrose mentioned—a differential being created between our current teaching staff and new recruits. We had such problems in classrooms that our current staff were, in fact, supportive of the move because they could see that it would bring in extra teachers. It has led to other authorities adopting the same process and offering higher rates, so John Pentland is right that offering an incentive payment leads, in effect, to a bidding war so we need to look for other solutions.

The other thing that I did not mention previously is that we asked, at the summit, for flexibility around General Teaching Council for Scotland registration. As others have, Aberdeen City Council has gone abroad to recruit—we have recruited in Canada and Ireland. Make no mistake about it—we want properly trained teachers who have expertise in the classroom, but there are issues about registration. Moray Council, which was one of the authorities that came to the summit, raised an issue about teachers who have come through the English system, and who currently live at RAF Lossiemouth with their partners, being unable to teach in our schools because they cannot get GTC registration. We need to look at ways in which we can be flexible about that.

**John Pentland:** Teachers' pay and conditions are set nationally and are protected from other local government cuts. Do you think that that is right?

**Councillor Primrose:** I am kind of stumped by that question. I was part of the negotiations on teachers' salaries until I came into my current job in June, and it is a difficult question. We want to ensure that all our local authorities are managing to recruit, and having one local authority offering more money than another local authority would mean that local authorities that are having difficulty in recruiting at the moment have even more of a difficulty. We therefore need to be careful. It might be easier to look at the issue under pay and conditions but—without saying no absolutely—we would be wary of any changes at the moment.

**Robert Nicol:** It is worth saying that it was policy for negotiating in all the bargaining groups that there should be fair treatment of all the different local government staff to ensure that, where pay rises were agreed, they would be applied right across the local government workforce. That is something that leaders were quite clear on, in an attempt to be fair to all local government staff.

**Councillor Akhtar:** If agreements are being negotiated, we need to have the appropriate funding to pay for them. When I go to parent

councils, it comes as a shock to parents when I tell them that, when there are pay increases, we have to find the resources elsewhere.

East Lothian Council is a small council with a £218 million budget, 43 per cent of which is allocated to education. If we have allocated 43 per cent and we have to find a 1 per cent pay rise right across the board for all staff—because we must treat all staff equally—where will that come from? It will come at the expense of other parts of the council.

We will be seeing unprecedented levels of pressure placed on councils. There is financial pressure in the region of £400 million, which is about 3.5 per cent of the entire local government budget, so we cannot shy away from the issue. Councils do a hard job and work efficiently. They manage but they do so at a cost, and we are at a stage now where it is not sustainable. Having a budget for education that is 43 per cent means that we have to look at other parts of the council, and for us and for many other councils that is not a sustainable position to be in.

**The Convener:** You have said at least twice in that answer that East Lothian Council spends 43 per cent of its council budget on education.

**Councillor Akhtar:** That is correct.

**The Convener:** The committee did a survey of all councils in Scotland and the return from your council showed that you spent 38 per cent of your budget in the current year on education. Why did you send a return that said that you spent 38 per cent if you are sitting here today saying that the figure is 43 per cent?

**Councillor Akhtar:** I am more than happy to share the information that I have. Having looked through the ballpark figures, that is the figure that I have. We have spent a considerable amount of money on education.

**The Convener:** This is important. As part of our work on discussing education budgets across the councils, we did a survey asking each local authority what its budget was. Nobody—not one single council in Scotland—spends 43 per cent of its budget on education, according to the returns that we got from each individual local authority. Your local authority said that you were spending 38 per cent in the current year—2015-16. You cannot really expect us to accept what you say as you sit here today saying that it is 43 per cent, which is 5 per cent higher than the return that you gave us and higher than any other council in Scotland.

**Councillor Akhtar:** I am happy to look at the information that I have. I looked at our administration budget and that was the figure that I came up with.

**The Convener:** Can I ask you, then, to go back to your local authority and find out who sent us the return—I am sure that we could give you that information—and provide us with a clearer answer about why you have said that the figure is 43 per cent and your local authority has returned a figure of 38 per cent?

**Councillor Akhtar:** I am happy to do that.

**Councillor Robinson:** I am keen on benchmarking and I like to see it across authorities, but when I was looking at education I found it extremely difficult to benchmark across, because of all the other things that councils have to do.

If we take the 38 per cent figure as an example, whether that is high or low depends on what other services that council has to provide. Looking from a Shetland Islands Council perspective, I note that there are not many councils across Scotland that have to provide ferry services—and some of our school transport is provided by aircraft. It is difficult to look at the percentage across Scotland and have any inkling as to whether we are comparing like with like. I have found that extremely difficult.

**The Convener:** My intention is not to compare one council against another; it is to say that the return from one council is completely different from the answer that we have had today. It is not about that council in relation to others—I am just saying that 5 per cent is a big difference between the two answers received. That is the question that I have, and I am sure that we will receive in writing an explanation as to why that has happened.

**Liam McArthur:** I will just pick up on that. In the figures that you were referring to earlier, the figures for Shetland are just under 29 per cent but the request is for the schools revenue budget. There is quite demonstrably a difference between an education budget and a schools revenue budget. I do not know whether it is there that the problem lies for Councillor Akhtar in relation to her response, but I wonder whether each local authority has necessarily adopted a similar approach in responding to the committee with their figures. There are quite wide variations, as has been suggested.

**The Convener:** I am sure that Councillor Akhtar will give us an answer in writing, which I hope will clear up the discrepancy. Did John Pentland have a quick supplementary question?

**John Pentland:** I was going to ask Stephanie Primrose what her spend was, because I notice from the paper that she was unable to give a figure. I wonder whether she is able to give an updated figure.

**Councillor Primrose:** I do not have an update on that. I apologise—I should have checked. I

have two minds at the moment; one goes into COSLA mode and one stays in East Ayrshire, and I am afraid that my mind is on COSLA today. I will get that figure to you as a matter of some urgency.

**The Convener:** We did not receive a response from your council.

**Councillor Primrose:** Right. There will be trouble when I get home.

**George Adam (Paisley) (SNP):** Good morning. I would like to follow on from Councillor Akhtar's idea when she talked about councils being efficient and working on efficiency. I used to be a councillor and—as I said last week when the union representatives were here—as a dark-haired fresh-faced councillor I was told of the wonderful idea of sharing integrated services across local authorities. You can take one look at me now and see that that is no longer how I look and know that it was a while ago that that was spoken about.

We are now living in challenging times, but the question is whether that sharing is happening anywhere in the country in an education scenario. If it is, where is it happening and how successful has it been?

**Councillor Primrose:** Certainly, to go into East Ayrshire mode, we do not have shared services within education. We have them in some other areas, such as our roads alliance and tourism strategy, and I think that we have that with our out-of-hours service as well, but we do not have it within education at the moment.

I would exercise a degree of caution over trying to save money with a shared service. I think that the money that might be saved would not be commensurate with the changes that would have to be made—I am not sure that we would save enough to make it worth while.

**George Adam:** Was that not the argument that we always ended up coming to at one stage? As a councillor, I saw report after report that came back saying that such a process had not made any savings. It had taken six or seven months to get to a given stage but it not made any savings.

The EIS suggested that a lot of back-office savings could be made and could be worked with across boundaries as well. Just to open the discussion up a bit, is there not an argument that in the education scenario we could work cross-boundary more between local authorities, to make sure that things such as additional support get into areas where and when they are needed?

**Councillor Primrose:** We need to be open to those suggestions. Going back to my own authority, we have Gaelic-medium education provision that is about to go into a new school. We have put a lot of money into that and we have made the offer to other authorities that if they want

to send children to our GME provision we will be more than happy to take them.

We also do some work in the south of the authority whereby we have primary school children in East Ayrshire who go over the border into South Ayrshire for secondary school. There are things being done on a day-to-day basis that are perhaps not as far-reaching as is being suggested.

**Robert Nicol:** The important point to emphasise is not a willingness to look at shared services but how helpful they are at dealing with the financial pressures that local authorities face. As Councillor Akhtar has already mentioned, we believe that, even before we get to the current spending review, there are about £400 million of pressures. Those range right across local government, on pensions, pay and so on.

We do not believe that shared services are a panacea for tackling those problems. They are certainly a potential route for some councils. We know that, for instance, the old Tayside authorities share language teachers and things like that, so stuff is happening. However, as a way of eliminating the pressures that are out there, there is not the ability to use that route any more. I think that most councils will have looked at their back-office services and at the savings that they can try to make already. The large-scale savings are probably just not there any more from shared services.

12:30

**Councillor Robinson:** Local government has been driving efficiencies and savings for five years now, and I think that we are getting to the point where we are almost scraping the bottom of the barrel. Having said that, local government bodies have been extremely good at finding and driving efficiencies within their own organisations.

If I am allowed, I will be a wee bit controversial. Speaking as the leader of an island authority, I know that we find it extremely difficult to do that sort of cross-border co-operation. We do what we can—at the moment, we are sharing the finance function and a section 95 officer with Aberdeen City Council. We looked at the roads collaboration project as well, and I have an outstanding offer to Stephen McCabe of Inverclyde Council to have a loan of a road roller, but I am still waiting, not surprisingly.

If we really want to drive savings at a local level, it needs to be acknowledged that local government has been extremely good at making savings and perhaps more should be given to local government in order to drive that agenda further. This is the controversial part. Certainly in the islands we have believed for some time now that, given that our borders are coterminous with

our health boards, health could surely come under local government and we could drive efficiency in the health service in a similar fashion to how we have driven efficiency in our own services. I will leave it at that.

**The Convener:** You are quite right, Councillor Robinson—that is rather controversial. *[Laughter.]*

**Councillor Robinson:** I am straying from education—I understand.

**George Adam:** I was going to exempt Councillor Robinson from a lot of my question, because I take on board that it is geographically quite difficult for his council to share services.

Councillor Primrose, you are now the COSLA spokesperson for children and young people. With the integration of health and social care, half the social work budget ended up with health and social care. A lot of councils are going down the shared services route, but have any of the councils—or has COSLA—looked at the idea of grouping authorities together to work together on education on a regional basis? Has anyone looked at such an approach as a potential way of delivering services?

**Councillor Primrose:** No. We could take it back and do some work on it, but we have not done that to date.

**Robert Nicol:** For a start, COSLA is driven by the wishes of its members—that is an important point to make. We champion local democracy and the connectability between communities and local elected members, and we take a local solutions point of view.

We are not against shared services but they have to be appropriate and they have to be what councils want. There is not a single solution or something that can be imposed on authorities. Even if that happened, the extent of the savings that might be delivered would certainly not be sufficient to meet the pressures that are currently being faced by councils—and there will potentially be even more pressures when we get round to knowing the figures from the spending review.

**George Adam:** I am not trying to impose anything on you, Robert. I am just asking whether there is a train of thought that we could look at other ways of working. I am not talking about changing the boundaries of local government—let us not go there. I am just trying to look at other ways of delivering education services.

**Councillor Robinson:** On that point, the islands authorities have been involved in two summits in recent months. The first one was in Orkney, when we brought together the three islands councils. The focus of the summit was about how we could do more and better within our

own councils and how we could share information on best practice.

The geographical handicap is in some ways insurmountable for us, although we are looking more at what can be done using distance learning techniques, even within secondary schools. That is something that all the islands councils are looking at. That might be one way that we can help to alleviate some of the teacher shortages that we have in some areas.

We also had a second summit at which more councils were present, including Aberdeen City Council. We are looking, certainly at the regional level, at how we can work better and deliver better. We are making tentative steps towards what you are speaking about.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I will ask about the relationship between spending priorities and reaching attainment levels. All local authorities have an aim to close the attainment gap and raise attainment generally. I take on board Councillor Robinson's comment that we cannot compare authorities, because they have different responsibilities, but the seven cities should provide roughly the same levels of services to communities. Glasgow uses 25 per cent of its budget on schools and Stirling uses 42 per cent. Glasgow is an area that has very low attainment. How much leeway do you have to decide what the priority should be when it comes to education and school budgets? The difference between 25 per cent in Glasgow and 42 per cent in Stirling is quite big.

**Councillor Primrose:** Our strategic priorities include education, of course. We set that strategic priority in our budget, but—I hate to hark back to this—our budget is constrained by the teacher numbers issue. We always have to keep that in the background. Yes, we would like to spend more money on education—of course we would—but in these times, with the constraints that we have, it is not always possible to spend as much as we would want.

Of course, we also have to take other things into consideration. Shamin Akhtar said that education cannot be seen in isolation. Spending money on improving houses and libraries and things like that all feed into attainment, and they are all part of the wider budget. It is difficult to say exactly how much we would want to spend, given that education is under an umbrella with everything else.

**Gordon MacDonald:** You said that your budget decisions are restricted by the teacher numbers issue. If we want to increase attainment, what spending decisions should be taken? What is the most effective way in the council budget of increasing attainment and why?

**Councillor Primrose:** It would be difficult to pinpoint one thing. I have nine secondary schools and, I think, 43 primary schools, and it would be different in each one. For example, with one of the secondary schools in the south of the authority, where there is a huge amount of deprivation and poverty, I would like to see family care workers.

In a perfect world I would like to have money to put into emotional health and wellbeing counsellors. Teachers are not well equipped to deal with emotional health and wellbeing issues. I have done my teacher training and I am a teacher, and I have come across to the policy side of things. Some of the things that I have come across are horrific.

With the getting it right for every child agenda—this is why we are here—we have to have different services. Ideally I would like family care workers, and we need to do a whole lot more on emotional health and wellbeing. If I could drill into that, that is where I would go locally.

**Gordon MacDonald:** Local authority budgets are under pressure. There was a suggestion last year—and it has been commented on this year—that some councils are looking at reducing the working week to 4.5 days. That already happens in Edinburgh and has done for a number of years. Is that a way of saving money in a budget to be reinvested? What impact would that have on attainment levels?

**Councillor Primrose:** I want somebody else to answer that. We have not gone to a 4.5 day week.

**Robert Nicol:** A lot of councils have looked at that, either for across the council or in particular schools. The important point is that any savings made through that are one-off savings. One you have made them, you cannot make them again, and they are relatively small.

I am not aware of any evidence that suggests that shortening the school week harms attainment. Scottish pupils spend more time in the classroom when compared to comparator countries. I would not want to say that simply shortening the school week would have a detrimental effect; it is what goes on in the school and the other services that wrap around the child that matter. The savings that come from asymmetric weeks are relatively small and one-off, and they certainly do not come close to covering the pressures that we are seeing.

**John Pentland:** One of the links to improving attainment is small class sizes. You have said that the teacher numbers agreement handcuffs you to an extent. If you could choose between legislating for class sizes and the teacher numbers agreement, which would you choose?

**Councillor Primrose:** You have some good questions today. There is no evidence that small class sizes contribute to the raising attainment agenda; it is about the quality of the teacher who is standing in front of the class. There is a view that small class sizes are better but there is no official research into that so they would not necessarily contribute to raising attainment.

Some classes are better if they are small for health and safety reasons. Technical classes or practical classes are limited to 20, I think, but that is quite different because there needs to be the space for equipment and such things. The evidence about class sizes is anecdotal, so I would certainly not be in any hurry to legislate for smaller class sizes.

Given the choice, I would abstain.

**Councillor Robinson:** I could see such legislation causing difficulty for us and other island and rural authorities. We have one big centre of population that has one high school that contains something like two thirds of all our secondary pupils. The rest of our secondary pupils are spread across another high school plus four junior high schools. All that means that we need many more teachers to bring the class sizes down at the centre and balance out the more remote and rural areas where the pupil numbers are smaller. That rebalancing would require an immediate resource.

**Liam McArthur:** I want to follow up on Gordon MacDonald's earlier point. We talk almost seamlessly about raising attainment and closing the attainment gap. All through the debate about closing the attainment gap and whether we do it completely or move in that direction, I have been struck by the fact that there is a bit of a conflict between raising attainment and closing the gap. In making the decisions that local authorities have to take about where they are investing—whether it be in teacher to pupil ratios, additional support for teachers or broader support services—are you confident that you are prioritising resources in addressing the attainment gap, or are you under the pressure of backing both horses? If the latter, we are probably seeing both of them disappearing off on parallel lines for the foreseeable future.

**Councillor Laing:** The difficulty that we have is that we do not have the flexibility. Councillor Primrose talked about different areas of deprivation and different issues that we might have, and all that is highlighted in Aberdeen. We have areas of great affluence and pockets of deprivation.

We need to start targeting in the early years. I am not just talking about nursery provision but much earlier than that. One of the schools in one of our most deprived areas has the greatest added value figures of any school in the city every year,



but its attainment level is nowhere near that of some of the other schools because its pupils are starting at such a low level. We need to make sure that we are targeting the resources at an early stage to things such as midwives and health visitor visits to help families to progress with their children.

We need to do more around the early years agenda and the early years collaborative, but the difficulty is that if we target the money at those areas we do not see the results right away. That is where the pressure comes for local government. That approach requires us to be bold, but it also requires national Government to be reflective of that and give us the flexibility to use our budgets in that way.

12:45

**Liam McArthur:** From what you are saying, there seems to be no structural issue or requirement being placed upon you by national Government that is inhibiting you from targeting those resources. In a sense, you are saying to ministers, “Hold your nerve”, because this investment is going to play out and the changes in question emerge only over a medium to longer term, possibly even over a generation. However, there is nothing structural that is preventing you from making those decisions on priorities and targeting resources at those most in need.

**Councillor Laing:** The difficulty is that, at a time when our budgets are getting tighter and tighter, we still have to use those budgets to meet our statutory duties. That is where we need the flexibility on teacher numbers that I mentioned earlier. If we had a bit of flexibility at local level, we might well be able to invest in other areas that we think would reap greater benefit.

**Mary Scanlon:** First of all, I say to Stephanie Primrose that I looked up the Audit Scotland figures and I am pleased to say—before you go back to East Ayrshire with your rolling pin—that they are absolutely bang on the Scottish average for cost per pupil. When you look at the urban, mixed and rural figures, the differences are actually very minimal compared with the differences in the budget as explained by Gary Robinson. Before coming to Gary, however, I should point out that the only outlier is Shetland, which still spends £1,800 more per pupil per year than Orkney.

Thankfully, I am retiring in four months, but if I was looking forward to next year’s election and a load of parents were to come to me as a politician and say, “We don’t want our school to be closed”, I might as well cut my own throat if I supported the council in closing a school. The issue of school closures, whether for educational or financial

reasons, is a very difficult one. I also note that, given the teacher numbers agreement, closing schools does not always lead to a reduction in staff costs.

Do the current legislative requirements on school closures prevent local authorities from running their school estate in the most financially efficient way? We will come back to the issue of quality and other reasons in a minute, but is the legislation preventing you from managing your school estate in the way that you would wish to not just in financial terms but with regard to the quality of education?

**Councillor Primrose:** I have—or, I should say, my executive director has—closed a school, and you are absolutely right to say that school closure is a very emotive and incredibly difficult subject. Our authority is very fortunate in that we have not tried to close a rural school, which is, I think, where the issues arise.

We need to have a chat about rural schools. I have a rural school in my authority that is a 10-minute drive from a 24-hour Asda; having lived in Shetland, I know what a rural school is, and it would be beneficial if we could actually redraft how it is defined. I genuinely think that a school that is two minutes outside a major conurbation is not a rural one and, in that context, the legislation in question would hamper us.

As I have said, my own local authority has not tried to close a rural school. We have merged and closed schools, and those decisions have not been called in.

**Mary Scanlon:** So there is a difficulty with what is regarded as a rural school. In your view, it makes such schools more protected.

**Councillor Primrose:** Yes, although as I have said we have not had a difficulty with that. I understand the need to ensure that young people do not have to travel too far, but I think that, realistically, the definition could do with being freed up a bit if we are talking about only a mile or two.

**Councillor Robinson:** The short answer to Mary Scanlon’s question is yes. In the lifetime of the current council, my authority has closed three schools, including Scotland’s smallest secondary school—the two-pupil school in Skerries. I do not think for a minute that the school consultation process is something that a council enters into lightly, but the legislation is such that the effort is redoubled and the process has become hugely onerous in respect of time and resources.

I cannot speak for other authorities, but we have never had a closure proposal in relation to which Education Scotland has not said that there were educational benefits in going ahead.

To be quite honest, I do not think that we can separate the educational benefits from the financial benefits. There seems to be a perception that decisions must be taken purely on the basis of educational benefit, with the financial benefits being secondary; in my experience both things run together, and ultimately any saving that is made is probably reinvested in the education system. We need to remember that a lot of the money follows the pupil, wherever they are being educated.

The process is onerous, and I think that it stifles local authorities' ability to manage their school estate.

**The Convener:** Does Councillor Akhtar or Councillor Laing want to comment?

**Councillor Akhtar:** We have not closed any schools in East Lothian.

**Mary Scanlon:** I am very familiar with the Moray consultation, which cost the authority a lot of money. The focus was on the quality of education, and I think that some proposed mergers and closures were more acceptable than others, but after a huge amount of consultation and expense the whole thing has been abandoned.

When we go round the Highlands, people say, "We can't attract young families unless we have a school here." I am thinking in particular of the island of Whalsay. Communities have very particular, indeed unique, identities, as we are hearing in the context of the situation in the north of Skye at the moment. Many communities have their own local culture.

What should be taken into account? The witnesses talked about the shortage of teachers in home economics and STEM subjects, so if we close some schools in rural areas there will be economies of scale. For example, there would be economies of scale if everyone was taught in Lerwick. Perhaps that would be better, educationally speaking, but is it worth what we would give up in terms of attracting young families into remote and island communities and conserving the local culture and heritage?

How on earth do local authorities weigh all those factors up? I find these things difficult, as a politician, and I seek a bit of clarity on how the witnesses go about the process. I would not like schools to be closed on the basis of a shortage of teachers only to find that in five years' time there are plenty of home economics and STEM subject teachers. How should things be done?

**Councillor Primrose:** It is very difficult, because we have to try to future proof our schools. We have to be realistic. Local authorities cannot afford to run as many schools as they have been

running. In my authority we have far too many buildings.

I am open to being corrected on this, but I think that, under new legislation, with any proposal to merge schools an educational statement, which must at least be neutral, must be provided before an authority can do anything.

I can talk only about my experience. We have not closed rural schools—I think that that is the issue that people want to pick up on—so I cannot comment on what Mary Scanlon said. The executive director has closed a couple of schools, but they were not rural schools.

**Councillor Robinson:** It would be hard to talk about this subject without mentioning the Western Isles, which I think now have 24 schools, including three secondary schools. In Shetland, despite what has happened recently, 31 schools are still open, of which six are secondary schools—and that is where a huge amount of expense and difficulty lies. I talked about the teachers in Shetland—they are largely in Yell and Unst and in Whalsay, which Mrs Scanlon mentioned, and the mainland.

The legislation is resulting in a very strange mixture at the moment, in which some authorities have many more schools. To put it into perspective, the Western Isles is twice the land mass of Shetland yet has fewer schools. Orkney is another good example, in that it has more inhabited islands than Shetland but fewer schools.

How willing an individual council is to close schools—and, certainly in the Western Isles case, oppose the Government over it—has a lot of bearing on what we end up with. There is no question about it, though: we want to see the money being spent on education. The Education (Scotland) Act 1980 asks us to provide education but does not stipulate the number of schools or teachers. That is where we are coming from: we are saying that we need more flexibility to drive attainment.

Sorry, I have strayed from the question again.

**Mark Griffin:** According to the survey returns from local authorities, from 2012-13 to 2015-16 the vast majority of councils spent an increased percentage of their total budget on education. Broadly speaking, we could say that local authorities have protected education spending in the face of some pretty severe budget cuts. What is the realistic prospect that local authorities will continue to be able to protect education as we go forward and see further cuts?

**Councillor Akhtar:** The figures that I quoted earlier were for pre-school education and childcare, additional support for learning, primary, secondary and school support services. As a

councillor, budget time is really difficult when a large percentage of the budget is in education. We want to protect that, but it is at the cost of other parts of the council.

I have given you examples of what we have done to make savings in other parts of the council, but the position is not sustainable position. The Scottish Parliament information centre report indicated how much local authorities' budget had been cut by. At the same time, as my colleague Stephanie Primrose said, attainment and achievement are a priority for all of us. In East Lothian, we got the best exam results this year. We want to keep at that level and keep supporting our schools, but in the current financial environment it is difficult to look at where else we can make the savings. We have already tried to cut backroom services in the council as much as we can.

**Councillor Robinson:** I refer to my earlier comments on the 19 per cent real reduction in grant to my council since 2010. In spite of that, we took a decision in 2012 to protect the education budget to ensure that it received a bigger percentage, albeit of a smaller pot. We have managed to do that up until now. We have stuck to our plan and kept the spend in education as far as we can. I am happy to say that we now spend a bigger percentage than we used to, although there is still a reduction in that.

Local government is now facing a further reduction of perhaps a 10 per cent—I do not have the exact detail yet—real reduction in our spending power over the next three years. As Councillor Akhtar said, in those circumstances it will be extremely difficult to keep going. About 80 or 90 per cent of most councils' education spend is on staff and fixed costs, so there is very little leeway for us to do any more. Given the scale of reductions that we are facing, if education is not to suffer, there needs to be some movement around teacher numbers and the school estate.

**Councillor Laing:** I echo what the previous two councillors have said. As I mentioned earlier, when we came in in 2012 we made education a priority. I am proud that we have maintained that spending—in fact, we have increased it. With the ever increasing pressures on the council budget, it will be difficult for us to maintain that going forward. We are considering our budget at the moment but, when we do not know what the settlement will be, it is difficult to make the difficult choices.

13:00

In Aberdeen City Council, we have experience of massive cuts across the board and the impact that those cuts can have in our schools and other

council services. That is why we have considered innovative ways to raise revenue. We have entered into an agreement to develop a site, from which we hope to get a £2 million to £2.5 million return each year, which we will plough back into services. That has caused controversy in Aberdeen but we are prepared to consider such measures when necessary. However, we also need to flag up the fact that there are challenges ahead. The situation is likely to hit front-line services, and education will not be exempt.

**Mark Griffin:** From the top-line figures for the spend as a percentage of the overall budget, it appears that education is protected, but I will dig deeper into that. How much of the increase in the spend as a percentage of the overall budget has been driven by the teacher number and teacher salary targets and requirements from national Government? How much of that has been a local political priority? Even though overall budget share for education has increased across almost all councils, does that mask big cuts to areas of the service other than teacher numbers and teacher salaries?

**Robert Nicol:** Any global figure probably masks some local detail of how an authority responded. I suspect that you would not find a council in the land that would not want to make education a political priority. However, a number of things have added to the overall figures, including teacher numbers, pay, new statutory duties that have been introduced over the piece and other policies that have been agreed.

A range of stuff will be within those figures, but the pressure on other services across local government when we protect education is becoming unsustainable. When we face demand pressures in health and social care and other services, we begin to have the ingredients for a situation in which it will be increasingly difficult to maintain education budgets at the level at which they have been maintained in the past.

There is a lot in the maintenance of education budgets—a lot of new stuff and a lot of local and national commitments—and it will be increasingly difficult to maintain them in the future.

**The Convener:** I thank not only the witnesses but the members for surviving through a rather long meeting of the committee. In particular, I thank the witnesses for attending and for their forbearance. We are grateful to them for taking the time to take part in our examination of the budget process.

*Meeting closed at 13:03.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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