



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 8 December 2015

Session 4

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EDUCATION (SCOTLAND) BILL: STAGE 2	2
SUBORDINATE LEGISLATION.....	13
Adoption and Children (Scotland) Act 2007 (Amendment of the Children (Scotland) Act 1995) Order 2016 [Draft].....	13

EDUCATION AND CULTURE COMMITTEE

31st 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:

Angela Constance (Cabinet Secretary for Education and Lifelong Learning)
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 8 December 2015

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): I welcome everybody to the Education and Culture Committee's 31st meeting in 2015. I remind all those present that all electronic devices should be switched off at all times. We have a full committee this morning, and I welcome Liz Smith, who has joined us again for stage 2 of the Education (Scotland) Bill.

Under our first item, do we agree to take item 5 in private?

Members *indicated agreement.*

Education (Scotland) Bill: Stage 2

10:03

The Convener: Our second item is to complete our stage 2 consideration of the Education (Scotland) Bill. I welcome Angela Constance, Cabinet Secretary for Education and Lifelong Learning, and her accompanying officials. The committee met yesterday in Dunfermline, when we concluded our meeting by agreeing to section 19.

Section 20—Appointment of Chief Education Officer

The Convener: Amendment 172, in the name of Liam McArthur, is in a group on its own.

Liam McArthur (Orkney Islands) (LD): After the complexity of the amendments that I lodged last week, I am pleased to say that I find myself dealing with rather more simple fare. As with the earlier attempt to get the Government to back away from its ill-thought-out proposals for national standardised testing, my amendment 172 is aimed at removing a provision that seems to be unnecessary, disproportionate and misplaced. Parliament should seek to legislate only when it has to—when there is a demonstrable need and when other, less blunt and/or less draconian options have been explored and found wanting.

Sadly, the current approach of ministers is to reach for the legislative lever at the drop of a hat. A bad news headline or a demand from one well-organised or well-connected organisation or another is often all that it takes. I do not dispute the importance of councils having access to appropriate advice and expertise on education. That goes without saying, given their responsibility in that area—although, as we saw yesterday, ministers appear to have an insatiable appetite to second-guess more and more of what our councils do.

The Association of Directors of Education in Scotland made the case for making the appointment of a chief education officer a statutory requirement. However, that is a little akin to Santas voting for Christmas, and it was telling that no hard evidence was provided for why such a move is necessary.

The argument for reorganisation in local government and the merging of education into larger departments with wider responsibilities is interesting but not compelling. Any council, in order to carry out the functions for which it is responsible, will need to have access to the requisite advice and expertise—in the same way, I presume, as the Scottish Government does when it periodically reorganises its departments.

Ministers never tire of telling us how they have removed ring fencing from large areas of local government funding. Nevertheless, they seem determined to ring fence the organisational chart in councils throughout Scotland by stipulating who should have what roles and responsibilities. My amendment would remove another element of the bill for which there is little or no supporting evidence and would reassure us that we are not simply legislating for the sake of it.

I move amendment 172.

Mary Scanlon (Highlands and Islands) (Con):

It is important that we are given information about where the idea of a chief education officer came from. Perhaps we should be asking who it came from, whether it was suggested by more than one person and what sort of consultation was done.

I would like to hear from the cabinet secretary about the evidence base that exists. Is there a link between the appointment of a chief education officer and attainment? We are being asked to make a decision today, and the evidence base for the provision is very limited.

My next point brings us to the issue of local democracy. In the Highlands, 80 councillors are elected, and if I have learned one thing since May 1999, it is that we do not go and tell councillors how to do their job. Equally, they respect the job that we have to do.

Proposed new section 78 of the Education (Scotland) Act 1980 usurps and is disrespectful to local democracy. Highland Council is one of the councils in which there is a director—in that case, it is Bill Alexander—of both social care and learning. I will repeat one point that I made yesterday: I get plenty of complaints about Highland Council, which may be about wind turbines, planning or housing, but I have never, ever had a complaint that Bill Alexander is not doing his job right, despite the fact that he is the equivalent of a director of social work and a director of education. In fact, I fully respect the council's decision to appoint him to the job.

We need to be a bit more courteous, democratic and respectful to those who are elected locally. The chief education officer is another proposal that makes local government think, "Why are we constantly being dictated to?" Councils wonder why they cannot make decisions about the cabinet-type system for running local government that are appropriate for their areas rather than being told by Edinburgh what to do.

I would be grateful if I got the information for which I am asking.

George Adam (Paisley) (SNP): I come at the issue from the specific position of having been a local government member. I can see why the role

of chief education officer is needed. I have seen how departments have been merged, and it is important that we take that on board.

The integration of health and social care took away quite a bit of councils' budgets, so many councils have automatically merged departments and ended up with a homogeneous children's department. The director who is in charge of such a department may come from a social work background or an education background.

The important point is that each council still has to have a chief education officer, because someone in the council needs to have an education background. Having worked in a local authority, I can see how things happen and how debate happens. It is always good to have someone specific, as is the case with social work: there is already a chief in that area within councils, which is extremely important, too.

From that perspective, the chief education officer role follows on from other guaranteed officers that already exist. As someone who was a councillor, I think that the role is a good thing for local government. It is a positive step and a way forward for education in local government.

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance):

It came as no surprise that Liam McArthur lodged amendment 172, given his contributions to the committee's scrutiny of the bill at stage 1 and to the stage 1 debate. Equally, it will come as no surprise to committee members that I reject the amendment entirely.

The Government has made it absolutely clear that education is our key priority. We are committed to raising attainment for all and to reducing inequalities of outcome. I welcomed the committee's support in its stage 1 report for the establishment of the chief education officer role and its recognition of the importance and complexity of councils' education functions.

In 2013-14, councils spent £4.8 billion on education, which is nearly 44 per cent of their total net expenditure. It has to be right that the voice of education is guaranteed to be heard in discussions about the use of such significant amounts of money. Communities in every local authority area deserve the assurance that their education services are being run by those with high-quality education expertise.

I note that Mr McArthur and other members suggest that there is no problem to solve, but many director of education posts have already been removed as councils have reorganised and moved towards shared services. That in itself is not necessarily difficult, if councils continue to have education expertise at a senior management level, and it is true that we are not yet facing a

widespread problem. The vast majority of councils will be able to identify someone in their existing structures who meets the statutory requirements of the post, but surely it is preferable to act now to safeguard the future presence of appropriately qualified and experienced educationists in local authority senior management teams than to wait for some more significant problem to arrive in the future.

The Government is not looking to micromanage councils. The bill's provisions are not about forcing local authorities to have a chief education officer who is in overall charge of the education service, and nor will they prevent councils from moving to a model of shared service delivery within or across councils should they wish to do so. They simply ensure that, both now and in the future, there is someone with an education background at a senior level in councils. As some members have mentioned, there are parallels with chief social work officers, chief planning officers and chief finance officers.

I say to Mary Scanlon that the Government has certainly had representations from the Association of Directors of Education in Scotland and that no one can seriously argue that having fewer educationists involved in education services is a good thing.

I finish by clarifying for Mr McArthur and others what the role of the chief education officer will be. The bill makes it clear that the role is advisory, but it is important to understand the nature of that advice. The chief education officer will not offer well-intentioned suggestions for the authority to take or leave as it wishes. The advice that is provided will ensure that the authority has the necessary knowledge and understanding to deliver its statutory functions effectively and with the best interests of children and young people at heart.

There will be a full consultation on draft regulations. The working group, which has met twice, has agreed an outline of the guidance and begun to discuss the qualifications that are necessary for the chief education officer role.

The role is unarguably crucial. I do not support amendment 172 and I ask Liam McArthur to withdraw it.

10:15

Liam McArthur: I thank Mary Scanlon, George Adam and the cabinet secretary for their contributions to the discussion. Mary Scanlon set out fairly reasonable questions on the genesis of section 20 of the bill, the consultation that has taken place, the evidence on which the provision is based and, crucially, the issue of local democracy.

I noted that the cabinet secretary said that amendment 172 was no surprise and that section 20 was born of the Government's commitment to making education its number 1 priority. However, there is no evidence that proposed new section 78 of the Education (Scotland) Act 1980 is required to deliver on that priority or to close the attainment gap. The provision seems to be the creation of a straw man. It appears to be discourteous, disrespectful and slightly disingenuous about the priority that local authorities attach to the delivery of education. There has been restructuring in councils, but councils still treat access to education expertise with the utmost seriousness.

We heard that the role of the chief education officer would be advisory but somehow more than advisory. The role was far from clear in the stage 1 evidence. The cabinet secretary has reiterated that the role is advisory but more than advisory, which begs the question of what precisely is envisaged.

George Adam told us about his background in local government, which I certainly bow to. I would be interested to know the views on proposed new section 78 of the elected members and officials in the council of which George Adam is no longer a member. I rather suspect that he would have taken a different view were he still a councillor.

The fact is that second guessing at every turn what councillors do, rather than giving them the respect and the licence to act in the way that they see fit, given their statutory requirements and their democratic accountability to those who elect them and those who they are there to serve, is a dangerous path to go down. I press amendment 172.

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

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

Amendment 172 disagreed to.

Section 20 agreed to.

Sections 21 and 22 agreed to.

After section 22

The Convener: Amendment 133, in the name of the cabinet secretary, is grouped with amendments 135 to 139.

Angela Constance: It is important to state that the policy behind amendment 133 is not new. Ensuring that headteachers are qualified before being appointed has been a long-term goal of Government since 2005 and, since then, local authorities have been expected to appoint qualified headteachers. "Teaching Scotland's Future", the establishment of the Scottish College for Educational Leadership and the new qualification have laid the ground for that change.

The Government is acutely aware of the importance of headteachers to the success of our education system, which is why the First Minister announced in February that holding a qualification would become mandatory for all new headteachers from 2018-19, and why school leadership is one of the six drivers for improvement that are set out in the national improvement framework. The time is right to underpin those expectations with a legal requirement for all prospective headteachers in any school to have been awarded the standard for headship before they can be appointed.

I have considered the evidence that was presented to the committee in advance of stage 2. I understand the concerns about recruitment and will continue to work with ADES to better understand why the number of candidates for some headteacher posts is low. However, I believe that a clear, high-quality and supportive route to headship will make the post more attractive and will help to address recruitment issues.

I am also committed to revisiting the funding model for the qualification after the spending review and will look to establish a sustainable approach that employers, teachers and providers of learning are able to support.

I acknowledge the points raised by independent and grant-aided schools and reassure those schools that we will work closely with them to ensure that the regulations and associated qualifications take account of their circumstances.

Fundamentally, I believe that every child in Scotland has the right to expect to be educated in a school with a headteacher with the appropriate knowledge and skills to help them to succeed and to allow the school to flourish. It is right that we legislate for that ambition so that we can all be clear in those expectations.

Practical considerations have been raised in evidence. We will continue to work with partners, including the General Teaching Council for

Scotland and the Scottish Council of Independent Schools, to find ways to address those.

One issue that we will consider urgently is how to ensure that teachers coming from outside Scotland who can demonstrate that they have equivalent education, qualifications and experience do not have to undertake additional study to work here. Moreover, members will note that any future regulations to address such practical matters will be subject to full consultation and the affirmative procedure in Parliament to ensure appropriate scrutiny and to enable members to satisfy themselves of the detail of this important subject.

Amendment 139 simply amends the long title of the bill to reflect the inclusion of the new powers relating to the education and training standards of headteachers. Amendments 135 to 138 make some minor drafting amendments to ensure that the long title reads properly with the additional text in amendment 139.

I move amendment 133 and ask members to support all the amendments in the group.

Liam McArthur: I have a couple of questions. On making the requirement mandatory, the cabinet secretary rather candidly acknowledged the concerns that have been raised with us about current problems in recruiting headships. I know that that is a problem in many rural areas, but I do not suppose that it is by any means limited to such areas. Anything that makes it more difficult to recruit is therefore a source of concern, and the cabinet secretary has offered to work with ADES and others to establish the reasons behind that recruitment difficulty.

I cannot help but contrast that approach with the one taken by one of the cabinet secretary's ministers in respect of the British Sign Language (Scotland) Bill. When we raised concerns about the relatively low standards required of BSL teachers, we were told by officials—not the minister, to be fair—that they were not inclined to do anything about it for the time being because it would contribute to the recruitment problems.

I notice that new section 98DA of the 1980 act refers specifically to headteachers in the independent sector. The cabinet secretary will be aware of the concern that was raised with us by John Edward of SCIS that there had been no consultation with SCIS about the standard for headship and its application to independent schools. Following on from that, there was concern that what had been worked up did not appear to have much, if any, relevance to the skills sets and requirements that the boards of independent schools prioritise in the recruitment of headteachers to that sector. I would be interested to know whether those issues have been picked

up in the framing of the amendment. I suspect that the on-going consultation that the cabinet secretary referred to might have more to do with it, but I would be grateful for comments on both those points.

Chic Brodie (South Scotland) (SNP): I make an appeal, although I do not know whether this can be enshrined in the bill's terminology. We are talking about the appointment of headteachers and the standards of education and training that a person who comes under the section that we are talking about must demonstrate. One element that is not easy to find, though, is leadership. There is a big difference between management and leadership. Schools that have demonstrated success and movement in inner London and York—and no doubt elsewhere—have chosen people who have demonstrable leadership qualities. I will leave it there.

Mary Scanlon: I just want to be reasonable and thank the Government for addressing the particular shortage of teachers in Moray. There are particular circumstances there, given that we have the Royal Air Force base at Lossiemouth and the Royal Engineers at Kinloss. In recent times, Moray was short of 26 teachers. In fact, some children had to be sent home from school last February because a bug was going round, teachers were unwell and there were no teachers to teach them. At the same time, 12 teachers who had qualified in the English system and were spouses of personnel at RAF Lossiemouth and the Royal Engineers at Kinloss were not allowed to teach here. I do not mind putting on the record my belief that the GTCS was pretty intransigent about that situation and could have been a bit more helpful and respectful to those qualified and experienced teachers.

I am pleased to say that, after quite a bit of campaigning and some of those teachers coming before this committee, the GTCS has finally moved on the issue. Scotland should be an open and welcoming place for teachers, regardless of where they come from. They might not have experience of our curriculum for excellence, but any good and professional teacher can pick that up very well. In the context of the particular circumstances in Moray, the proposed provision for exemptions and exceptions is welcome.

Liz Smith (Mid Scotland and Fife) (Con): I reiterate for the record that I am a member of the GTCS and a governor of two independent schools.

I thank the cabinet secretary for her considerable and very welcome engagement with the problems since they were flagged up at stage 1. I intimate also that I think that nothing is more important than having headteachers in any school in any sector who are absolutely first class and properly trained. Alongside the issues that Mary

Scanlon has just raised, that is one of the reasons why the GTCS changes are very welcome indeed.

The principle is laudable, but I think that we have to be slightly careful about how we develop any new qualification. I am grateful to the cabinet secretary for acknowledging that she will continue engagement on that. I do not think that there is a significant pool of evidence to suggest that there are severe problems with heads per se; there are problems in finding and recruiting heads, but there is no significant evidence that there is a considerable problem.

We must be very careful that we do not diminish the pool of people with specialist skills, particularly for schools that deal specifically with children with specialist needs. I am grateful to the cabinet secretary for amendment 133 in particular, which I think goes a long way towards addressing the concerns of those schools and of the independent sector. Independent schools were not the focus of the into headship qualification, which I think is probably why they were not consulted on it.

The cabinet secretary is right to be cautious about the implications for the independent sector and its autonomous governing bodies. I understand that SCIS has made it very plain to the cabinet secretary and, indeed, the First Minister that its legal advice suggests that as the proposals in the bill stood, without the cabinet secretary's amendments, they would have been open to legal challenge. I am very grateful to the cabinet secretary for taking that on board. Our education sectors are increasingly diverse, and we must recognise that. Anything that puts them in a straitjacket would cause serious damage—I just want to put that on the record.

The Convener: Thank you. I call the cabinet secretary to wind up.

10:30

Angela Constance: I will be brief, convener. I thank Mrs Scanlon for recognising the work that was completed to find practical solutions to the situation in Moray, which shows what is possible and that we can maintain standards but have sensible flexibility. I put on the record my thanks to the GTCS for its role in that.

I hope that I have demonstrated to the committee that I am committed to continuing to work with local authorities, independent schools, the General Teaching Council for Scotland and universities to ensure that we get the detail of providing the qualification absolutely right.

On Mr McArthur's points about recruitment, vacancies for headteacher posts are sitting at around 3 per cent but we realise that around a third of those vacancies are in a handful of local

authorities, primarily in the north-east of Scotland, and that the issue is more acute in some parts than in others. I will continue to discuss it with ADES and other organisations, such as the Association of Heads and Deputes in Scotland.

We must acknowledge that, personally and professionally, being a headteacher is a demanding role. Leadership is an important quality; it is central to the job of a headteacher. I consider the qualification to be more of a help than a hindrance, but I give the committee an absolute assurance that we will continue to work with all concerned to ensure that the detail is absolutely right.

Amendment 133 agreed to.

Sections 23 and 24 agreed to.

Section 25—Regulations

The Convener: Amendment 127, in the name of Alasdair Allan, is grouped with amendment 128.

Angela Constance: These amendments were lodged in Dr Allan's name because they relate principally to Gaelic-medium education. We are dealing with them today because they make amendments to part 4 of the bill.

Section 7(7) gives ministers the power to alter by regulations the number of children specified in the bill as constituting the threshold that will determine whether there is a potential need for Gaelic-medium primary education and, therefore, whether a local authority will come under a duty to proceed to a full assessment. Section 12(1) gives ministers the power to extend by regulations the application of part 2 of the bill to assessments of the need for Gaelic-medium education at the early learning and childcare level.

On introduction of the bill, regulations under sections 7(7) and 12(1) were subject to the negative procedure but, in its report in June, the Delegated Powers and Law Reform Committee recommended that those powers should be subject to the affirmative procedure. We reflected on that recommendation and agreed to lodge amendments to that effect. Amendments 127 and 128 make that change. In addition, amendment 127 leaves out the reference to the power under section 1(3)(b) of the bill, in consequence of amendment 105, which leaves out section 1 of the bill, and amendment 104, which, instead, inserts the duty regarding inequalities of outcome into the Standards in Scotland's Schools etc Act 2000.

I move amendment 127 and ask the committee to support both amendments in the group.

Amendment 127 agreed to.

Amendment 134 not moved.

Amendment 128 moved—[Angela Constance]—and agreed to.

Section 25, as amended, agreed to.

Sections 26 to 28 agreed to.

Long title

The Convener: Does any member object to a single question being put on amendments 129, 135 to 139, 173 and 174?

Liam McArthur: I object, convener.

The Convener: In that case, I will put the questions individually.

Liam McArthur: Could you not take amendments 129 and 135 to 139 together?

The Convener: I will go through them individually.

Amendments 129 and 135 to 139 moved—[Angela Constance]—and agreed to.

Amendment 173 moved—[Angela Constance].

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (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 173 agreed to.

Amendment 174 moved—[Angela Constance]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. I will suspend briefly before the next item.

10:36

Meeting suspended.

10:38

On resuming—

Subordinate Legislation

Adoption and Children (Scotland) Act 2007 (Amendment of the Children (Scotland) Act 1995) Order 2016 [Draft]

The Convener: Agenda item 3 is an evidence-taking session on a piece of subordinate legislation. I welcome back Angela Constance, the Cabinet Secretary for Education and Lifelong Learning, and her supporting officials. After our evidence taking, we will debate under agenda item 4 the motion in the name of the cabinet secretary. I point out that officials are not permitted to contribute to that formal debate.

I invite the cabinet secretary to make some opening remarks.

Angela Constance: Thank you, convener.

I ask the committee to recommend to Parliament that this order be approved, as it is necessary to clarify the Scottish Government's position that people who have had their parental responsibilities and rights removed other than by way of adoption or human fertilisation legislation are nevertheless still permitted to apply to the court for a contact order that would allow them to maintain personal relations and contact with a child with whom they are not living.

The Children (Scotland) Act 1995 outlines the requirements necessary to apply for orders that relate to parental responsibilities or rights. When it was enacted, the act did not permit people whose parental responsibilities or rights had been removed by virtue of an adoption order or through human fertilisation legislation to apply for parental responsibilities or rights. Other people who had lost parental responsibilities or rights were entitled to apply for an order in relation to those responsibilities or rights, including a contact order.

However, the Adoption and Children (Scotland) Act 2007 amended the Children (Scotland) Act 1995 to allow persons who had lost parental responsibilities or rights under an adoption order to apply for a contact order with the court's permission. Unfortunately, the wording of the amendment might have inadvertently affected the existing right of people who had their parental responsibilities and rights removed by some other means—for example, by the court—to apply for a contact order. That was not the policy intention of section 107 of the 2007 act.

The order before the committee amends section 11(3)(ab) of the 1995 act by repealing the words

“(other than a contact order)”

to make it clear that people without parental responsibilities or rights who could apply for a

contact order prior to the 2007 act can still do so. It means that any person who has lost their parental responsibilities or rights in relation to a child can apply for a contact order, unless they have lost those rights under human fertilisation legislation.

Again, I ask the committee to recommend to Parliament that the order be approved.

The Convener: If members have no questions for the cabinet secretary, I move to agenda item 4, which is the formal debate on the order.

I invite the cabinet secretary to move motion S4M-14949.

Motion moved,

That the Education and Culture Committee recommends that the Adoption and Children (Scotland) Act 2007 (Amendment of the Children (Scotland) Act 1995) Order 2016 [draft] be approved.—[*Angela Constance.*]

Motion agreed to.

The Convener: As the committee has previously agreed to take the next two items in private, I close the meeting to the public.

10:42

Meeting continued in private until 13:05.

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