Education Committee

5th Meeting, 2006

Wednesday 1 March 2006

The Committee will meet at 10.00 am in Committee Room 1

1. **Item in private:** The Committee will consider whether to take item 4 in private.

2. **Petition PE853:** The Committee will consider PE853 by Ken Venters, on behalf of the Carronhill action team.

3. **Annual Reports 2004-05:** The Committee will note the annual reports of executive agencies and non departmental public bodies whose function is relevant to its remit—

   - HM Inspectorate of Education
   - Bòrd na Gàidhlig
   - Learning and Teaching Scotland
   - Scottish Children’s Reporter Administration
   - General Teaching Council
   - Scottish Qualifications Authority
   - Scotland’s Commissioner for Children and Young People

4. **Pre-legislative work: Adoption Bill (in private):** The Committee will consider possible preliminary work to inform future consideration of the Adoption Bill.

Eugene Windsor
Clerk to the Committee
Room T3.40, Committee Office
Ext. 0131 348 5204
The following papers are enclosed for the meeting:

Agenda item 2
Clerk’s note on PE853

Agenda item 3
Clerk’s note on NDPB and executive agency reports

Agenda item 4
Clerk’s paper on pre-legislative work (private paper)
Introduction

1. Petition PE 853 was referred to the Education Committee on 7 December 2005 (the relevant extract from the Official Report of the Public Petitions Committee meeting is attached at Annex 1).

2. The petition calls on the Scottish Parliament to urge the Scottish Executive to introduce legislation requiring all proposals which relate to the closure or alteration of facilities and services for children with special needs to be referred to it and, in the case of such proposals, requiring detailed consultation with parents of affected children and to implement a moratorium preventing the closure of special needs schools until such legislation is in place.

3. The Scottish Executive has responded to the Public Petitions Committee (see attached letter from David Stewart at Annex 2) outlining the Scottish Executive’s position with regards to the closure of services and facilities for children with special needs. The response notes that local authorities have responsibility for determining the provision of education services at a local level.

Proposal

4. It is proposed that the Committee writes to the petitioner asking him for his response to the Scottish Executive’s reply to the Public Petitions Committee. The petitioner’s response will be considered at a future Committee meeting.

5. Furthermore, and given local authorities’ responsibility for the provision of all education services, it is proposed that the Committee integrates consideration of this petition into its annual review of school closure policy. Members will recall that the Committee reviews the implementation of the Scottish Executive’s guidance (last issued in September 2004) on school closures on an annual basis (next scheduled for September 2006) and it is proposed that the Committee specifically discusses facilities and services for children with special needs as part of that process.

Action

6. The Committee is invited to AGREE the proposed approach.
The Convener: Petition PE853, by Ken Venters, on behalf of the Carronhill action team, calls on the Scottish Parliament to urge the Scottish Executive to introduce legislation that would require all proposals that relate to the closure or alteration of facilities and services for children who have special needs to be referred to it and which would, in the case of such proposals, require detailed consultation of parents of affected children and the implementation of a moratorium that would prevent the closure of special needs schools until such legislation is in place.

Col 2151

At its meeting on 22 June 2005, the committee agreed to write to the Minister for Education and Young People and to Aberdeenshire Council. Responses have been received and circulated to members.

Mr David Davidson (North East Scotland) (Con): It would be helpful if I knew what the minister had said in his letter. Might I prevail upon you for a copy of the letter?

The Convener: It is on our website. I do not know whether we can get a copy to you at the moment.

Mr Davidson: I am quite happy to continue. I have supported the parents of children at the special needs school that is mentioned in the petition and others across Aberdeenshire. There is an issue with regard to the council's previous approach to special needs schools. The enveloping state of the council's thought was that it knew best and that all children would more or less fit into whatever provision it cared to offer. However, that is not the case. Some of the children, particularly those at the school that is the subject of the petition, have tremendous special needs, most of which simply cannot be dealt with in the mainstream system.

A few days ago, I attended a meeting of the local area committee that covers the Carronhill area. Local councillors have unanimously supported the position of the parents and have sought to go to the full council, through its various committees, to recommend that the school be replaced on the same site with a building that is fit for purpose. The existing building has some failings, but the unit is good and the staff are unbelievably excellent. They support other base schools and attached units across the shire. Everyone acknowledges that the facility is superb but that, in time, a new building will have to be built so that capacity can be increased—there is a rising trend of need in the area.

I congratulate the petitioners on the work that they have done—as members know, they have collected thousands of names. The issue must be taken back to the minister because, if councils are suffering from budget difficulties or whatever, they are not always best placed to make decisions on special needs education and support. Certainly, the children who have gone on to lead fulfilling lives after having attended the school have said that they benefited from the system and from the fact that they were not in mainstream education. Some children will enter the mainstream but it is important that we preserve units such as Carronhill Special School.

We need a clear signal from the committee—which could be passed on to the Education Committee—to encourage the minister to ensure

Col 2152

that the parents’ needs are listened to. If necessary, the Education Committee could visit the school, as other MSPs have.

The pro forma that was returned to the committee states that the petition has been discussed with Fiona Hyslop and David McLetchie. In fact, the petitioners have done far more than that: they have discussed the matter with a range of MSPs from all parties, and I have not come across one MSP who does not support their position.

The Convener: Mike Rumbles has also joined us. Mike, do you have any comments on the petition?

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I apologise for not being here earlier. I was at a committee briefing on the forthcoming registration of members’ interests bill.
The petitioners asked me to tell the committee that they are— I am not sure how to put this—a bit disappointed that they were unable to address the committee personally when the petition was originally lodged. They would also have liked to speak to the committee today.

I take issue with what David Davidson has said about the local council: the council did not take the position that it knew best, but consulted widely. As David Davidson said, the area committee of the council is 100 per cent behind the petitioners, which is good news for the petitioners.

The letter from the minister's office states that

"it is not the Executive's policy to require education authorities to close their special schools."

It also states that

"the 2004 Pupil Census shows that overall there are 32 more publicly funded special schools and units in Scotland now than there were in 1996."

That is a positive response. On Carronhill and Stonehaven—which is in my constituency—and the wider issue of special schools, the petitioners are right; however, the issues are being addressed both by the local authorities and by the Executive.

The petitioners would have liked the opportunity to address the committee, as part of the process. I do not question the ruling that was made, which was that the petition was similar to other petitions; however, the petitioners feel that it was not.

The Convener: We discussed the matter when the petition first came before us. We have built up a wealth of experience on a lot of issues. Earlier, we considered a petition on maternity services; it was the fourth petition that we have received on maternity services and those petitions have not been identical. We do not consider the specifics of individual cases, but the generality and the process.

Col 2153

The closure of a special needs school is the same issue as the closure of a rural school or any other school. The guidelines may be specific to special educational needs, but the process by which a decision is arrived at is exactly the same. The committee did not need to hear from the petitioners in respect of their individual concerns, because the general issue that they were addressing was dealt with by the committee in its handling of other petitions. We have built up a wealth of experience in that.

Although I hear what Mike Rumbles is saying, I disagree. I am sorry that the petitioners felt that they were snubbed or in some way not listened to because they were not required—that is the word that we use—to give additional information. However, I felt that we did not require additional information from them. We understand the issue, as we have dealt with similar issues, and we have received a response from the Executive that explains the process and the Executive's thinking. Members have enough information to enable us to make a decision on what we should do with the petition, and we do not require the additional information that the petitioners felt that they had to give us.

Ms White: It has been an amicable meeting up to this point, convener; however, I raised that matter with you and the clerk because I thought differently from you on the subject. I do not want to go over old ground—the procedure has been pointed out, and that is fine. I think that we should refer the petition to the Education Committee, which is looking into the issue at the moment. It would be good to refer the petition to that committee to let it examine the detail of it. Everyone whose child needs to attend that special needs school has a right to be heard by the Education Committee, so we should pass the petition to that committee.

11:45

John Scott: Have the petitioners had the opportunity to comment on the responses that we have had?

The Convener: They have not as yet, but it is usual for us to ask them to do so. We can certainly ask them for their response to the Executive's response. Do you want us to hold back referring the petition to the Education Committee until we get the petitioners' response? I am more than happy to do so.
John Scott: We should make it plain that it is probably our intention to send the petition to that committee in due course, but it would be fair to give the petitioners the opportunity to comment now because they feel upset that they did not get the opportunity to make a presentation.

The Convener: Do you want to decide now to send the petition to the Education Committee or should we wait until we have received the petitioners’ response?

Ms White: It might be January or February before the petition even reaches the Education Committee, which is considering school closures at the moment. I am not on the Education Committee, but perhaps someone else can help me in that respect.

The Convener: The alternative is to send the petition to the Education Committee now and ask it to contact the petitioners.

Ms White: That is a better idea.

The Convener: That would bring the petitioners directly into the debate with the Education Committee.

Mike Rumbles: I am not trying to challenge any ruling, but it is rather odd that although the petitioners are in the public gallery now—

The Convener: We are not going down that road. We have discussed the matter before and we do not ask members of the public to come to the table just because they are here; no committee of the Parliament would do that, let alone the Public Petitions Committee.

Jackie Baillie: I am conscious of the issue about speed. Why do we not just refer the petition to the Education Committee? Then, either through their MSPs or after what they have heard today, I am sure that the petitioners will respond directly to the Education Committee without an invitation to do so.

Ms White: I would like the invitation to be issued anyway, because people are at liberty to write to their MSP regardless of what a committee says.

The Convener: So members want to send the petition to the Education Committee and ask it to contact the petitioners specifically about it.

Ms White: I would prefer that.

John Scott: That would allow the Education Committee to consider the petitioners' response.

The Convener: Okay. Are we agreed?

Members indicated agreement
RESPONSE TO PETITION PE853

Thank you for your letter of 5 July, requesting comments from Peter Peacock, Minister for Education and Young People, on the issues raised in the above petition and during the Committee’s discussion. The Minister has asked me to reply to your letter.

The Petition calls on the Scottish Parliament to urge the Scottish Executive to introduce legislation requiring all proposals which relate to the closure or alteration of facilities and services for children with special needs to be referred to it and, in the case of such proposals, requiring detailed consultation with parents of affected children and to implement a moratorium preventing closure of special needs schools until such legislation is in place.

Mr Peacock has made clear in Parliament on a number of occasions, most recently on 23 June 2005 in reply to Parliamentary Question 07222, that it is not the Executive’s policy to require education authorities to close their special schools. As was mentioned in the Committee’s discussion of the petition, the duty to provide mainstream education in section 15 of the Standards in Scotland’s Schools Act 2000 (the 2000 Act) acknowledges that the needs of some children may be best met through specialist provision. The Executive recognises the need for a range of mainstream and specialist provision to be available to meet the needs of all pupils. In this regard, the Committee may wish to note that the 2004 Pupil Census shows that overall there are 32 more publicly funded special schools and units in Scotland now than there were in 1996. This does not demonstrate a trend in specialist provision which would justify a moratorium on closures.

A related issue is that of presumption against closure of certain categories of school. The Committee will be aware of the Minister’s decision not to introduce such a presumption in respect of any category of school, which was explained in my letter of 14 March 2005 to Dr James Johnston and in the Minister’s letter of 25 August 2004 to Michael McMahon.

The Scottish Executive issued guidance to local authorities in September 2004 entitled *Additional Guidance on Local Authority Proposals for the School Estate*, a copy of which is enclosed for the Committee’s information. Electronic copies of the guidance are available on the Scottish Executive website at [www.scotland.gov.uk/schoolestate](http://www.scotland.gov.uk/schoolestate).
The guidance is relevant to schools in all sectors, including special schools. It makes clear that local authorities have stewardship of education services at the local level, and that this carries with it many responsibilities, including responding to the changing landscape against which education must be provided. Authorities must keep their school provision under review in the light of a range of factors, including changing demographic patterns; changes in the way in which education is delivered; and the condition and suitability of the school buildings under their management.

There are circumstances in which education authorities cannot implement decisions on certain school changes, including closure proposals, except with the consent of the Scottish Ministers. However, Parliament has tightly restricted the circumstances in which such consent is required. As was mentioned during the Committee’s discussions, one of the requirements for referral to Ministers is in cases of proposed closure where the school’s roll exceeds 80% of its capacity. The referral requirements apply to special schools as they apply to mainstream primary and secondary schools.

The Petition refers to the question of detailed consultation with parents of affected children. There are already extensive statutory consultation requirements for a range of proposals involving changes in school provision. The detailed requirements and the circumstances in which consultation is required are set out in the Education (Publication and Consultation Etc) (Scotland) Regulations 1981. In the case of a proposal to close a school, including a special school, the statutory requirement on education authorities is to consult:

- the parent of every pupil in attendance at any school affected by the proposal;
- the parent of every child, being a child of whose existence the authority are aware who would be expected to be in attendance at the school within two years from the date of the proposal;
- the School Board responsible for any school affected by the proposal;
- any person authorised for the purpose by the church or denominational body (if any) in whose interest any school affected by the proposal is conducted.

The guidance recognises that the final decision may be one which is unpalatable in a particular community or quarter, but that authorities have to reach decisions which take account of and balance all the complex and sometimes conflicting factors relating to the particular proposal, in the context of fulfilling all their statutory duties and other responsibilities.

The Scottish Executive does not believe that there is a case for any change in the existing legislative provisions such as to require referral to it of all local authority proposals which relate to the closure or alteration of facilities and services in schools for children with special needs. The guidance explained above is considered adequate to enable authorities to exercise their statutory duties effectively.

I hope that this information is helpful.

DAVID STEWART
Introduction

1. In September 2004, the Education Committee agreed to note formally the annual reports of the executive agencies and non-departmental public bodies which are laid before the Parliament and which fall within the remit of the Committee.

**HM Inspectorate of Education**
Laid: 24 June 2005

**Bòrd na Gàidhlig**
Laid on 26 September 2005

**Learning and Teaching Scotland**
Laid: 5 October 2005

**Scottish Children’s Reporter Administration**
Laid 9 November 2005

**General Teaching Council (Scotland)**
Laid: 15 November 2005

**Scottish Qualifications Authority**
Laid: 24 November 2005

**Scotland’s Commissioner for Children and Young People**
Laid: 17 January 2006

**Action**

2. The Committee is invited to **NOTE** the annual reports for the year 2004-05 of the executive agencies and non-departmental public bodies that fall within its remit.
Eugene Windsor
Clerk
Education Committee