EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

16th Meeting, 2009 (Session 3)

Wednesday 27 May 2009

The Committee will meet at 10.00 am in Committee Room 2.

1. **Schools (Consultation) (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Annette Bruton, HM Chief Inspector, and Douglas Cairns, HM Assistant Chief Inspector, Her Majesty's Inspectorate of Education;

   David Drever, President, and Ken Wimbor, Assistant Secretary, Educational Institute of Scotland.

2. **Subordinate legislation**: The Committee will consider the following negative instrument—

   The Period to Prepare an Adoption Allowances Scheme (Scotland) Order 2009 (SSI 2009/168).

3. **PE1213**: The Committee will consider a Petition by Annette Masson calling on the Scottish Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for Autistic Spectrum Disorder (ASD) to ensure that these fully meet the needs of children and to consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.

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The papers for this meeting are as follows—

**Agenda item 1**

Paper by the Clerk  
ELLC/S3/09/16/1

**Agenda item 2**

Paper by the Clerk  
ELLC/S3/09/16/2

**Agenda item 3**

Paper by the Clerk  
ELLC/S3/09/16/3
Introduction

1. This paper introduces the fourth oral evidence session as part of the Committee’s Stage 1 consideration of the Schools (Consultation) (Scotland) Bill.

2. The first oral evidence session was held at the Committee’s 13th meeting 2009, on Wednesday 6 May 2009. Further information on the evidence sessions is available in paper ELLC/S3/09/13/1.

Oral evidence

3. The third oral evidence session will take evidence from:
   - Annette Bruton, HM Chief Inspector, and Douglas Cairns, HM Assistant Chief Inspector, Her Majesty’s Inspectorate of Education (HMIE);
   - David Drever, President, and Ken Wimbor, Assistant Secretary, Educational Institute of Scotland (EIS).

4. Both HMIE and EIS provided written evidence to the Committee and this is attached at Annexe A.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee

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1 Scottish Parliament Education, Lifelong Learning and Culture Committee. Committee meeting papers. Available at: http://www.scottish.parliament.uk/s3/committees/ellc/meetings.htm
Background and current arrangements

1. The Scottish Government is currently responsible for responding to applications for the Scottish Ministers’ consent to school closure, reorganisation and various other proposals and normally refers relevant applications to HMIE for professional advice. Proposals are referred to the Scottish Ministers according to the terms of section 22 of the Education (Scotland) Act 1980 and a set of 1981 regulations, as amended. The following are the main grounds for referral:

   - a proposal to close or change the site or catchment area of a school with a roll which is at, or greater than, 80% of its capacity; and
   - a proposal to close or change the site of a school where the alternative school or site is five or more miles distant in the case of a primary school (or ten miles or more in the case of a secondary school).

2. HM Inspectors undertake investigations in order to give professional advice to ministers on any and all of the educational issues which arise in the context of the proposal and the case presented. HMIE work to ensure that they are independent, open and fair. The focus is gathering evidence to enable HM Inspectors to form a view of whether there are any issues which might suggest that the proposal would, or would not, provide an educational advantage for children. The report of the investigating HMI identifies any disadvantages and advantages arising from the proposal for pupils’ education and attainment. Aspects of schools which are important include: the state of the accommodation and the costs of rebuilding, the current and projected roll of the school, inclusion and provision for special educational needs, any denominational dimensions, and particularly the quality of education available both in the current school and the alternative.

3. Evidence for the investigation will be gathered from any reports of inspections of the establishment, related services and education functions of the council. The lead inspector determines the activities which are necessary to enable him or her to prepare a report. In almost all cases, the HM Inspector investigating will visit the school which is the focus of the proposal. In some cases, it is necessary to visit other schools associated with the proposal. On the visits some of all the following activities may be undertaken:

   - interview the headteacher and members of the senior management team to establish: the implications of the proposal going ahead or not proceeding; any relevant aspects of the consultation and any other extraneous factors which may not have been raised
• walk round the school to ascertain the quality of accommodation and facilities and any implications, for example, relative costs of rebuild/refurbishment, the Disability Discrimination Act and the suitability of accommodation for a 21st century curriculum

• from school documentation and discussion, determine any issues related to the current and projected roll and the nature and range of pupils' needs

• interview groups of staff, possibly including members of essential visiting services, to ascertain any relevant views

• obtain the views of parental representatives

• ascertain the views of pupil representatives

• where appropriate, determine any issues related to distances to travel and transport arrangements where the school or pupils are to be relocated

• consider the implications of the proposal for pupils with special educational needs, for example, a special unit

4. A report is prepared for the Scottish Government. When ministers have made their decision and the decision letter has been issued, HMIE publishes its advice on its website.

Changes in HMIE responsibilities outlined in the Bill

5. Most of these procedures for gathering information and giving advice would remain the same under the new legislation. Key changes however relate to the increased number of relevant proposals where inspectors would be asked to give a professional view and the earlier stage at which advice will be sought from HMIE. HMIE was fully consulted in the drafting of the new arrangements which are set out in the Bill.

6. The Bill requires, in the case of every consultation, that HMIE will consider the educational aspects of an authority’s proposal. HMIE will take account of the educational aspects of views expressed during the consultation period and will submit their views (to the authority) three weeks after they have received details of the written and oral representations made during the consultation period. The authority would be required to have regard to the HMIE report in preparing their consultation report (which must also include the HMIE report in full). This represents an earlier stage of reporting for HMIE in relevant proposals and will allow the views of HMIE to be seen by all and taken into account by the council, before reaching its decision on the proposals.
Financial Memorandum

7. HMIE was also consulted on the cost of involvement in the new arrangements set out in the Bill. We estimated that our involvement in the new consultation procedures will require approximately five days of an inspector’s time for each of the 60 annual consultations including drafting the report. Offsetting the costs of the current arrangement we have estimated that the handling of some additional 44 cases per year would be of the order of £73,000.

HMIE
08 April 2009
SUBMISSION FROM EDUCATIONAL INSTITUTE OF SCOTLAND (EIS)

Schools (Consultation) (Scotland) Bill

Introduction

1. The Educational Institute of Scotland welcomes this opportunity to provide the Education, Lifelong Learning and Culture Committee with written evidence to assist in its scrutiny of the above Bill.

2. The EIS previously responded to the initial consultation entitled “Safeguarding our Rural Schools and Improving School Consultation Procedures” in September 2008. In general terms the EIS was supportive of the proposals to change the legislative provisions governing consultation procedures, particularly as they relate to proposed school closures and the following quotation from the original consultation paper accurately reflects the attitude of the Institute to any school closure:

   “to seek to ensure that a closure decision is only taken as a last resort and not until all of the alternatives have been explored and the potential impact on the community fully considered”

3. In addition the following extract from the original consultation paper is also absolutely in line with the thinking of the EIS with regard to the consultation process which must precede any decision to close a school:

   “A system which is regarded as fairer will be one in which all the parties feel that their views have been taken seriously and given consideration and responded to. It will not be one in which the parents and the community effectively have a right of veto over the Council, nor one in which the Council can proceed to a decision without taking full account of the views of the parents and community. A fair system is one in which the consultation process is a genuine one, where the final Council decision takes account of the views expressed and the unique circumstances of each case. It will be one where closure proposals can be and are withdrawn, modified or proceeded with, in light of the views expressed during consultations.”

4. However, the EIS has opposed previous attempts to introduce a “presumption against closure” of any school or group of schools as the following extract from our response to the original “Rural Schools (Scotland) Bill” outlines:

   “Any decision to close any school is always a difficult one. There can be no avoidance of the fact, however, that a decision to keep open a non-viable school will have significant implications for the level of educational provision and the staffing standards in other schools across the local authority area. In all the circumstances, therefore, the Institute would not support “a
presumption against closure” and would advocate that all decisions which may result in the closure of a school should only be made on the basis of full consultation and a careful examination of the circumstances of each case.”

The EIS response to the Schools (Consultation) (Scotland) Bill

5. The EIS believes, strongly, that any decision to close a school should be a decision of last resort and that no decision should be taken in relation to the closure of any school (rural or otherwise) until and unless the following issues have been fully consulted upon and only thereafter should decisions be taken:

- the educational case
- travel distances and times
- future pupil/population projections
- rural sustainability and development
- urban communities and regeneration
- financial considerations
- other alternatives
- unique local factors.

6. It is the view of the EIS that the time is now right for a major revision, improvement and modernisation of the Education (Publication and Consultation etc) (Scotland) Regulations 1981 and the Institute would fully support the following proposals contained within the Bill.

- The preparation of the Educational Benefits Statement (prior to the commencement of the formal consultation process) as part of the proposal paper.
- The provisions for the circulation of the proposal paper and the introduction of a formal consultation period which must include “at least 30 school days of any affected school.”
- The requirement to hold a public meeting and for the Education Authority be represented at which the relevant proposal(s) are to be discussed.
- The production of a formal consultation report, following the conclusion of the consultation period, and the requirement to circulate the consultation report to all interested parties and to introduce time for further consideration.
The expanded definition of “relevant consultees” contained within Schedule 3 of the Bill is very much in line with the Institute’s response to the original consultation exercise.

Some aspects of the Bill which require further consideration

7. There are three aspects of the Bill to which the EIS would wish to make specific reference and these are: the involvement of HMIE, the factors for rural school closure proposals and the proposed call in of closure proposals.

8. The EIS welcomes the further detail which has been included in the Bill regarding the involvement of HMIE, which was missing from the original consultation paper. However, the role of the HMIE, as defined in the Bill, could be described as having responsibility for writing the first draft of the consultation report. In short, HMIE will have access to all of the information which will be available to the education authority, in particular the written and oral representations. As the HMIE is an “executive agency of the Scottish Ministers” this may lead to, at least a perceived conflict of interest, if the closure proposal were to be subject to a subsequent call in notice by the “Scottish Ministers.” Is there, perhaps, an argument for restricting the role of HMIE to the provision of a report to the local authority solely on the “educational aspects” of the relevant proposal. In this regard it might be helpful if, on the face of the Bill, it was made clear that the HMIE Report could include all schools potentially affected by the relevant proposal.

9. The Bill requires the education authority to have special regard to the following factors in respect of a proposal to close a “rural school”:

- any viable alternative to the closure proposal.
- The likely effect on the local community (including the community’s sustainability) and the availability of the schools premises/facilities for use by that community.
- the likely effect caused by any different travelling arrangements on pupils, staff and other users of the schools facilities and any environmental impact.

10. While the EIS accepts that all of these factors are crucial when considering the closure of a rural school, it should not be forgotten that all three are immensely important to all of Scotland’s communities, particularly when there exists a threat to close the community’s school. On this basis we could not support restricting the consideration of these issues to rural schools only as any closure of a school in any part of Scotland will impact on the community in these three ways. In many parts of the country a local authority will have responsibility for both rural and non rural schools and it is invidious, to say the least, that from a statutory point of view the local authority may be required to treat the closure of two schools within its area in two different ways. In short, the three matters to which the authority
must have regard should apply to all proposed closures and not just to those within a rural area.

11. The proposal to introduce a “call in” system by Scottish Ministers represents an interesting compromise between the more de-regulatory approach suggested in the initial consultation and the existing, very strict, criteria which result in automatic referral to Ministers. The education community has little practical experience of the “call in” procedure, which has received considerable publicity recently in relation to planning cases. Nevertheless, it remains the case that all closure decisions, regardless of the extent and rigour of the consultation process, could be open to judicial review proceedings. In this context, therefore, the earlier comments about the role of HMIE in the consultation process should be restated. The role of the HMIE as “an executive agency of the Scottish Ministers” does beg the question about any further advice to be provided to Ministers, following a decision to call in a particular proposal. The Bill will perhaps have to clarify any further role for HMIE beyond the report to be provided to the education authority in line with Section 8 of the Bill.

Ken Wimbor
Assistant Secretary
24 April 2009
Introduction

1. This paper seeks to inform members’ consideration of the Period to Prepare an Adoption Allowances Scheme (Scotland) Order 2009 (SSI 2009/168)\(^1\).

2. The instrument is part of a number being laid by the Scottish Government to implement the Adoption and Children (Scotland) Act 2007. Four instruments were considered at the Committee’s meeting on 20 May 2009 and a SPICe briefing was published to inform members’ consideration. The SPICe briefing was circulated with the papers for the meeting on 20 May 2009.

3. Copies of the SSI, explanatory notes and Executive Note are provided to members in hard copy only.

4. The instrument is subject to the negative procedure and a procedural note on this is attached at Annexe A.

Period to Prepare an Adoption Allowances Scheme (Scotland) Order 2009 (SSI 2009/168)

5. The Adoption and Children (Scotland) Act 2007 requires a local authority to prepare an adoption allowances scheme within a time period specified by the Scottish Ministers.

6. This Order directs this time period as being three months from the date the Order comes into force. As the instrument will come into force from 28 September 2009, this means that local authorities must prepare an adoption allowances scheme by 28 December 2009.

7. The Education, Lifelong Learning and Culture Committee is the designated lead committee and should report to the Parliament by 1 June 2009.

8. The Subordinate Legislation Committee (SLC) considered the instrument at its meeting on 19 May 2009 and in its report draws the attention of the Parliament to this instrument on two drafting points. First, the SLC refers to good practice that a preamble to an instrument should only refer to provisions of the parent act that are relevant. It highlights that the preamble to this Order refers to section 71(1) as a whole, rather than section 71(1)a under which these powers are conferred. Second, Article 2 of the Order refers to “these Regulations” which is technically incorrect. In its correspondence to the SLC,

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the Government acknowledged this error and confirmed that this would be rectified through the “correction slip” process. Copies of the relevant sections of the SLC’s report will be provided at the meeting.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural Note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’) and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’

2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.

6. To date, no motion to annul these instruments have been lodged with the chamber clerks.
Education, Lifelong Learning and Culture Committee

16th Meeting, 2009 (Session 3), Wednesday, 27 May 2009

Petition PE1213

Background

1. Petition PE1213 was lodged on 20 November 2008. The text of the petition is:

   “Petition by Annette Masson calling on the Scottish Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for Autistic Spectrum Disorder (ASD) to ensure that these fully meet the needs of children and to consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.”

2. A SPICe briefing on the petition was published on 14 November 2008 and is available at this link—

   http://www.scottish.parliament.uk/business/research/petitionBriefings/pb-08/PB08-1213.pdf

Consideration by the Public Petitions Committee

3. The petition was first considered by the Public Petitions Committee (PPC) on 2 December 2008. The PPC agreed to refer the petition to the Education, Lifelong Learning and Culture Committee, given its recent consideration of the Education (Additional Support for Learning) (Scotland) Bill.

Consideration by the Education, Lifelong Learning and Culture Committee to date

4. The Education, Lifelong Learning and Culture Committee first considered the petition at its meeting on 21 January 2009. The Committee agreed to return to the petition once it had completed its scrutiny of the Education (Additional Support for Learning) (Scotland) Bill.

5. The Education (Additional Support for Learning) (Scotland) Bill was passed by Parliament on Wednesday 20 May 2009.

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1 Petition PE1213. Available at:
http://www.scottish.parliament.uk/business/petitions/docs/PE1213.htm

2 Public Petitions Committee. Official Report, 2 December 2008. Available at:
http://www.scottish.parliament.uk/s3/committees/petitions/or-08/pu08-1802.htm#Col1290
UK Government’s Equality Bill

6. The UK Government’s Equality Bill⁴ was introduced in the House of Commons on 24 April 2009. One part of the Bill proposes a transfer of hearings on Disability Discrimination Act (DDA) cases in school education from the Sheriff Court to the Additional Support Needs Tribunals for Scotland.

7. The Scottish Government has lodged a Legislative Consent Memorandum (LCM) for the Bill, as it confers certain powers on Scottish Ministers. The LCM indicates that the intention is that ‘all disability discrimination cases on the provision of education and associated services in all Scottish school as well as cases around admissions and exclusions’ will be heard by the Additional Support Needs Tribunals for Scotland (ASNTS)⁴.

8. The issue of extending jurisdiction of the ASNTS in this way was first raised by the Disability Rights Commission (DRC) in 2005. The DRC wanted the ASNTS to follow the same jurisdiction as in the equivalent Tribunals in England and Wales. The Scottish Government consulted key stakeholders from June to August 2007 on this specific proposal.

9. The LCM has been referred to the Equal Opportunities Committee (EOC) for scrutiny and will be considered by that Committee in due course. The EOC has agreed to write to the President of the ASNTS to seek her views on the relevant parts of the UK Government’s Equality Bill.

Recommendation

10. The Committee is invited to agree how it wishes to proceed with PE1213.

11. The Committee may wish to consider writing to the Minister for Children and Young People to ask for his views on the petition and how the Education (Additional Support for Learning) (Scotland) Bill and the UK Government’s Equality Bill may impact on the issues involved.

12. It is also recommended that a copy of this letter is sent to the Equal Opportunities Committee to inform its scrutiny of the LCM on the UK Government’s Equality Bill.

Nick Hawthorne
Senior Assistant Clerk
Education, Lifelong Learning and Culture Committee

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