EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

24th Meeting, 2009 (Session 3)

Wednesday 16 September 2009

The Committee will meet at 10.00 am in Committee Room 5.

1. **Public Services Reform (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Adam Ingram MSP, Minister for Children and Early Years, Shane Rankin, Deputy Director, Scrutiny Bodies Project Team - Health and Care, Adam Rennie, Deputy Director, Community Care, Val Cox, Deputy Director, Positive Futures, Kirsty McGrath, Head, Health and Community Care Division, Scottish Government Legal Directorate, and Colin Miller, Head, Public Bodies Division, Scottish Government.

2. **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.

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

   the Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290).

4. **Decision on taking business in private**: The Committee will decide whether its consideration of its approach to scrutiny of the draft budget 2010-11 at its next meeting should be taken in private.
The papers for this meeting are as follows—

**Agenda item 1**

Paper by the Clerk

**Agenda item 2**

Paper by the Clerk

**Agenda item 3**

Paper by the Clerk
Introduction

1. This paper introduces members to the Committee’s third evidence session in its consideration of the Public Services Reform (Scotland) Bill. The evidence will focus on the elements of the Bill related to social work, joint inspections and Part 2.

2. The first oral evidence session was held at the Committee’s 21st meeting on Tuesday 1 September 2009. Further information on the evidence sessions is available in paper ELLC/S3/09/21/1.

Oral evidence

3. The Committee will take evidence from Adam Ingram MSP, Minister for Children and Early Years.

4. The Minister will be accompanied by Shane Rankin, Deputy Director, Scrutiny Bodies Project Team – Health and Care; Adam Rennie, Deputy Director, Community Care; Val Cox, Deputy Director, Positive futures; Kirsty McGrath, Head, Solicitors Health and Community Care Division, Scottish Government Legal Directorate; and Colin Miller, Head, Public Bodies Division.

Written evidence

5. The written evidence is posted on the Committee’s web pages.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee

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1 Education, Lifelong Learning and Culture Committee web pages, meeting papers: http://www.scottish.parliament.uk/s3/committees/ellc/meetings.htm
2 Ibid, Public Services Reform (Scotland) Bill: http://www.scottish.parliament.uk/s3/committees/ellc/PSR%20Bill/PSRBillWrittenEvidence.htm
Introduction

1. This paper updates members on progress in relation to petition PE1213 and invites the Committee to agree its next steps.

Background

2. 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.”

3. Initial consideration of the petition by the Education, Lifelong Learning and Culture Committee was at its meeting on 21 January 2009. The Committee agreed to delay further consideration until it had completed its scrutiny of the Education (Additional Support for Learning) (Scotland) Bill.

4. The Education (Additional Support for Learning) (Scotland) Bill was passed by the Parliament on 20 May 2009 and the Committee re-considered the petition at its meeting on 27 May 2009. At that meeting, the Committee agreed to write to the Minister for Children and Early Years to ask for the Scottish Government’s views on the petition and how the Education (Additional Support for Learning) (Scotland) Act and the UK Government’s Equality Bill might impact on the issues involved.

5. Copies of the Committee’s letter to the Minister and his response are attached at Annexe A.

Recommendation

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

7. The Minister’s response to the Committee’s letter sets out in some detail the ways in which the Scottish Government has taken forward a number of measures to ensure that children and young people are assessed and diagnosed as early and as quickly as possible. The Minister also sets out the Scottish Government’s position in terms of education related appeals.

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1 Petition PE1213. Available at: [http://www.scottish.parliament.uk/business/petitions/docs/PE1213.htm](http://www.scottish.parliament.uk/business/petitions/docs/PE1213.htm)
procedures, the exclusion of pupils with additional support needs and plans for development in this area.

8. Given that the Committee has now concluded its agreed work on this petition, it is recommended that the Committee now closes the petition. It is further recommended that the Committee notes the Minister’s commitment to keep the Committee updated on any future developments on this issue.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
LETTER FROM CONVENER TO THE MINISTER, DATED 1 JUNE 2009

As you may be aware, petition PE1213 was referred to the Education, Lifelong Learning and Culture Committee on 2 December 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."

At its meeting on 21 January 2009, the Committee agreed to postpone consideration of the petition until the Parliament had completed consideration of the Education (Additional Support for Learning) (Scotland) Bill.

As the Bill has now, of course, been passed, the Committee again considered the petition at its meeting on 27 May 2009. The Committee agreed to write to the Scottish Government for its views on the petition and whether the Scottish Government has any plans to review the methods by which ASD is assessed. The Committee would also be grateful for information about how the Education (Additional Support for Learning) (Scotland) Bill and the UK Government’s Equality Bill may impact on this issue.
LETTER FROM THE MINISTER TO THE CONVENER, DATED 24 JUNE 2009

Thank you for your letter dated 2 June 2009 regarding the Scottish Government's view on the above petition by Annette Masson.

In your letter you ask whether the Scottish Government has any plans to review the methods by which Autism Spectrum Disorders (ASD) is assessed. It may be helpful if I firstly explain that both this Government and the previous administration have taken forward a number of measures to ensure that children and young people are assessed and diagnosed as early and as quickly as possible.

For example, the national ASD reference group worked for four years to implement the Public Health Institute of Scotland (PHIS) ASD Needs Assessment Report (http://www.scotland.gov.uk/Resource/Doc/1095/0076895.pdf), which was published in 2001. The Report identified the need for quicker assessment and diagnosis as well as better understanding of the condition amongst professionals, and made a number of recommendations that aim to assist local agencies to deliver co-ordinated, multi-agency services that meet the diverse needs of people with ASD and their families.

The group also focused on developing the consistency of diagnosis across Scotland by training professionals in the use of agreed diagnostic tools which has had the added benefit of reducing some waiting times. It also issued a quality standard for ASD diagnostic services which offers people with ASD and family carers a clear indication of what can be expected from a diagnostic service and provides a checklist for multi-disciplinary teams providing a service.

In July 2007, the Scottish Intercollegiate Guidelines Network also published extensive guidelines on assessment, diagnosis and clinical interventions for children and young people with ASD (http://www.siqn.ac.uk/guidelines/fulltext/98/index.html) which will provide the evidence base to help doctors better diagnose and manage the condition. Professionals involved in the diagnostic process, such as GPs, child development teams and clinical and educational psychologists can share information and issues relating to diagnosis through the Scottish Autism Services Network and promote good practice. This work is designed to improve services and support for people on the autism spectrum and is dependent on local partnerships taking this work forward.

There is therefore, a comprehensive framework in existence in Scotland, designed to enable assessment, diagnosis and clinical intervention. However, if an assessment is not initiated via the healthcare profession, the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act), provides that education authorities are required to identify additional support needs and comply with any assessment requests from parents/carers or a young person (if aged over 16), such as one for autism spectrum disorder. As I am sure you
are aware, it places duties on appropriate agencies (which includes any NHS board) to help the education authority in the exercise of any of its functions under the 2004 Act, if requested to do so, unless the request is incompatible with the agency's own statutory or other duties or unduly prejudices the agency's discharge of its own functions.

Under the 2004 Act, education authorities are also required to make an adequate and efficient provision for children with additional support needs and tailor provision according to the individual circumstances of each pupil. Importantly, the 2004 Act requires that support be put in place regardless of whether a diagnosis is in place. Authorities must also take into account the results of any assessment or examination if asked to do so by a parent/carer when considering the additional support needs of the child or young person and the adequacy of the additional support provided. The 2004 Act and the associated supporting children's learning code of practice promotes better multi-agency working, with the code also including advice on appropriate staff and multi-agency training.

The Education (Additional Support for Learning) (Scotland) Bill (the Bill), which was passed on 20 May 2009 and is expected to commence in 2010, will help to further strengthen the rights of parents and young people with additional support needs as it will enable them to request a specific assessment, such as an educational, psychological or medical assessment at any time.

The promotion of inter-agency working is also an important feature of Scottish Government's The Autism Toolbox (the toolbox), an autism resource for Scottish schools and education authorities (http://www.scotland.gov.uk/Publications/2009/03/30104653/0). The toolbox, which was published in April this year, was a direct response to the Her Majesty's Inspectorate of Education report Education for pupils with Autism Spectrum Disorders and the National Autistic Society Scotland's make school make sense report. It is a training and information resource which draws on a range of experience, literature and research to support authorities, teachers and other staff to develop innovative, individualised and creative approaches in teaching and supporting pupils with ASD. It has been distributed to every local authority pre-school provider, primary school, secondary school and education authority in Scotland.

We know that the earlier appropriate support is put in place, the more successful the educational outcome. This is of particular importance for children with autism. That is why we have recently published The Early Years Framework in partnership with COSLA, which can be accessed at http://www.scotland.gov.uk/Topics/People/Young-People/Early-yearsframework. This framework is about moving from intervening when the crisis happens towards prevention and providing the right level of support before problems materialise. Additionally, our wider policies such as Curriculum for Excellence and Getting it Right for Every Child, further encourage all relevant service to work together and ensure that staff are
appropriately trained to deliver these key developments to best meet the needs of children with ASD, and their families.

I hope that you will agree with me that a lot has been done surrounding assessment and diagnosis and it is evident that the Scottish Government is fully committed to improving provision and services for children with ASD. I understand that the catalyst for the petition stems from Ms Masson's son's exclusions from school. Therefore, it may be helpful if I say a few things about the current position in terms of education related appeals procedures, the exclusion of pupils with additional support needs and our plans for development in this area.

The 2004 Act introduced a framework which allows parents and young people with additional support needs, including ASD, to resolve disagreements with an education authority when they occur. As you are aware, the Bill, as passed, further reinforces the rights of children and young people with additional support needs (and their parents/carers) by making various adjustments to the 2004 Act. These include:

- following the refusal of an out of area placing request, a parent or young person will be able to appeal the decision to refuse the request to the Additional Support Needs Tribunals for Scotland (ASNTS);
- following a successful out of area placing request, parents or a young person will be able to access mediation and/or dispute resolution from the host authority regarding that authority's functions under the 2004 Act;
- Scottish Ministers to secure the provision of an advocacy service to be available on request and free of charge to support parents and young people in ASNTS proceedings;
- it provides the education authority will be required to make arrangements for the provision of independent mediation services which cannot include in-house mediation services;
- where a parent or young person makes an application for dispute resolution the Scottish Ministers may, by regulations, provide that application must be made, to the Ministers.

In relation to repeated exclusions and exclusion related to a pupil's disability, current guidelines are outlined in Circular 8/03 Exclusion from School, which can be accessed at http://www.scotland.gov.uk/Publications/2003/11/18496/28823. We are currently developing new guidance on exclusion, Included, Engaged and Involved part 2 (part 1 covered attendance and absence), which we will issue for consultation this year. This will update the current guidance in light of the 2004 Act. It will also address repeated exclusions in order to consider what outcomes are being achieved through repeated exclusions that could be addressed through systems of assessment, planning and provision for pupils with additional support needs.
Finally, in your letter you ask how the UK Single Equality Bill will impact the issues raised in the petition. Currently, all disability discrimination cases in school education in Scotland are heard by the Education Appeals Committee (EAC) and the Sheriff Court on appeal. Through the UK Single Equality Bill, we propose to extend the scope of the Additional Support Needs Tribunals for Scotland (ASNTS) to hear appeals about disability discrimination cases in schools. The intention is that all disability discrimination cases on the provision of education and associated services in all Scottish schools, as well as cases around admissions and exclusions, will be heard by the ASNTS.

Further, the Equality Bill will consolidate and harmonise a range of equality legislation. This will result in the same or similar rights and protection across all equality communities, reducing or eliminating the differences that currently exist. This includes a change to the definition of disability and it should make it easier for some people to prove that they are disabled. It should be noted that the Bill is currently in its early stages of its Parliamentary journey and it is not yet clear how it might further the affect the points raised in Ms Masson's petition. However, if I become aware of anything that may impact on the consideration of the petition, I will write to you again.

Although lengthy, I hope you find this response helpful and please do not hesitate to get in touch if there is anything else I can assist you with.
Introduction

1. This paper seeks to inform members’ consideration of the Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290).

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

Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290)

Background

3. These Amendment Regulations were laid on 14 August 2009 and the lead committee must report by 5 October 2009. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

4. This instrument is made in exercise of powers conferred in the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995.

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

Policy objectives

6. The Committee considered the Looked After Children (Scotland) Regulations 2009 at its meeting on 1 September 2009, when it took evidence from Adam Ingram MSP, Minister for Children and Early Years. The Committee also considered a SPICe briefing on the regulations.

7. During the evidence session, the Minister stated that a number of issues about the regulations had been raised by the British Association of Adoption and Fostering and the Fostering Network. As a consequence, the Scottish Government has laid amendments to the regulations and the Minister wrote to the Committee to set out the position. The Minister’s letter is attached at Annexe B. The regulations and the amendment regulations both come into force on 28 September 2009.

8. The Executive Note states that the instrument makes corrections and minor amendments to the Looked After Children (Scotland) Regulations 2009. The Executive Note details the changes made by the amendment regulations.

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Issues the Committee may wish to consider

9. The Subordinate Legislation Committee considered the instrument at its meeting on 1 September 2009 and determined that it did not need to draw it to the attention of the Parliament.

Action

10. The Committee is invited to consider whether it has anything to report to the Parliament.

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.
LETTER FROM THE MINISTER FOR CHILDREN AND YOUNG PEOPLE TO THE CONVENER, DATED 11 AUGUST 2009

As you will be aware the Looked After Children (Scotland) Regulations 2009 (the Looked after Children Regulations) were laid before the Scottish Parliament on 3 June 2009 and the Education, Lifelong Learning and Culture Committee are due to discuss the Regulations in September when Parliament returns following recess.

The decision was made to lay the Looked After Children Regulations following amendments received from stakeholders during the second consultation. However, during discussions with stakeholders, involved in writing the guidance, it has come to light that some amendments to the functions that a Local Authority can delegate to a Registered Fostering Service were required. Rather than withdraw this important piece of legislation from the Parliamentary process to make these changes directly, I decided that a further set of regulations amending the Looked After Children Regulations should be laid in Parliament. These will be laid hen Parliament returns from recess in September and will also be set to come into force on 28 September so they apply at the same time.

The amendments proposed signify the power to delegate will broadly mirror the existing position. This power will sit alongside the powers to delegate the creation and running of a fostering panel, payment of fostering and kinship care allowance, and the power to place a child in an emergency.

However, Local Authorities will not be given the power to delegate the collection of information of a looked after child, the assessment of permanence plans for the child, or the creation of a child's plan to a Registered Fostering Service.

The Local Authority will also have sole responsibility for informing Scottish Ministers and each person with parental rights and responsibilities for a looked after child in the event of that child's death; making recommendations to a children's hearing about the placement of a looked after child; and the establishment, retention and review of a child's case record. These changes will require 2 consequential amendments to regulations 45(1) and 46(1).

I have also taken this opportunity to amend Schedule 3, specifically, paragraph 1 will now include reference to civil partnerships where reference to marriage or marital status is made; Paragraphs 2, 11, 13 and 14 will include a reference to kinship care after foster care and; paragraph 9 will replace the reference 'relative' with 'kinship'. We have also made an amendment to paragraph 7 of Schedule 4 so that it now also refers to Schedule 6.