



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Education, Children and Young People Committee

**Wednesday 9 March 2022**

**Session 6**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Wednesday 9 March 2022**

**CONTENTS**

	<b>Col.</b>
<b>INTERESTS</b> .....	1
<b>SUBORDINATE LEGISLATION</b> .....	2
Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022 [Draft].....	2
Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022 (SSI 2022/34).....	7
<b>CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) BILL: STAGE 1</b> .....	9

---

**EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE**  
**8<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Stephen Kerr (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Kaukab Stewart (Glasgow Kelvin) (SNP)

**COMMITTEE MEMBERS**

\*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

James Dornan (Glasgow Cathcart) (SNP)

\*Fergus Ewing (Inverness and Nairn) (SNP)

Ross Greer (West Scotland) (Green)

\*Michael Marra (North East Scotland) (Lab)

\*Oliver Mundell (Dumfriesshire) (Con)

\*Willie Rennie (North East Fife) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Graeme Dey (Angus South) (SNP) (Committee Substitute)

Clare Haughey (Minister for Children and Young People)

Nico McKenzie-Juetten (Scottish Government)

Eleanor Passmore (Scottish Government)

Craig Robertson (Scottish Government)

Shirley-Anne Somerville (Cabinet Secretary for Education and Skills)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Education, Children and Young People Committee

Wednesday 9 March 2022

*[The Convener opened the meeting at 09:00]*

#### Interests

**The Convener (Stephen Kerr):** Good morning, and welcome to the eighth meeting in 2022 of the Education, Children and Young People Committee.

We have received apologies from Ross Greer.

I welcome Graeme Dey, who is attending the committee for the first time as a committee substitute. Mr Dey, I invite you to declare any interests that are relevant to the remit of this committee.

**Graeme Dey (Angus South) (SNP) (Committee Substitute):** I have nothing to declare.

**The Convener:** Thank you.

## Subordinate Legislation

### Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022 [Draft]

**The Convener:** Item 2 is evidence from the Minister for Children and Young People on the draft Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022. I welcome the minister and her Scottish Government officials Eleanor Passmore, deputy director for early learning and childcare, and Carolyn O'Malley, solicitor with the Scottish Government legal services directorate.

I invite Ms Haughey to speak to the draft order.

**The Minister for Children and Young People (Clare Haughey):** Thank you convener. Good morning to you and the committee.

This amending order will increase the income thresholds for families with a two-year-old who is eligible for funded early learning and childcare—ELC—because they get a joint working tax credit and child tax credit or a universal credit award.

The relevant order currently specifies that a two-year-old is eligible for funded ELC if: their parent is in receipt of child tax credit and working tax credits, with an annual income that does not exceed £7,500; or their parent is in receipt of universal credit, with a monthly income that does not exceed £625 per month.

The amending order will increase the income threshold to £7,920 per year for households in receipt of both child tax credit and working tax credit. The universal credit income threshold will increase to £660 per month—the equivalent of £7,920 per year.

We are making the change to reflect changes at the United Kingdom level. The UK Government has increased the national living wage from £8.91 per hour to £9.50 per hour. That means that household income would exceed the current thresholds if they remained the same.

The purpose of the order is to protect eligibility for two-year-olds whom we would expect to be eligible for funded ELC as a result of their parents or carers being in receipt of the affected qualifying benefits. If we choose not to make changes to the income thresholds, we estimate that around 1,000 eligible two-year-olds would no longer be eligible, despite there being no significant difference in their families' household circumstances.

It is important to be clear that no two-year-old who is currently receiving funded ELC will be affected by the changes. Once a child has met the

eligibility criteria, they remain eligible despite any subsequent change in circumstances.

As the purpose of the amendment is to maintain eligibility, we do not anticipate a significant increase in the number of two-year-olds who become newly eligible for the provision, and we do not expect a significant impact on local authorities' ability to fund the provision within the current financial settlement.

There is no evidence that additional funding is required to support implementation of the amendment. However, the impact on uptake will be closely monitored by the Scottish Government and the Convention of Scottish Local Authorities through the appropriate mechanism—the ELC finance working group—and appropriate arrangements will be made if uptake is significantly above the level expected and local authority costs increase as a result.

As I mentioned on my previous visit to the committee to amend the thresholds, we will monitor future increases to the national living wage and we will uprate thresholds when required, to keep pace with changes. COSLA agrees that the approach is necessary to maintain a similar profile of eligible children.

I am happy to respond to any questions that the committee has.

**The Convener:** Thank you, minister. I invite questions or comments from members. I understand that the change is driven solely by the increase in the national living wage—is that right?

**Clare Haughey:** Yes, and the changes in child tax credit and working tax credit rates.

**The Convener:** Thank you. I see that Willie Rennie wants to comment.

**Willie Rennie (North East Fife) (LD):** We have explored the take-up issue before. I have no issue with the technical changes to the amounts, but I feel that the take-up for two-year-olds still seems to be lagging way behind where it should be. It was 11 per cent in 2019, 9 per cent in 2020 and 13 per cent in 2021. Although there has been an increase in take-up, which is good, the figure is still nowhere near the 40 per cent that is the estimated percentage of two-year-olds who would be entitled to the offer. I know that there were issues with regard to identifying the right young people and getting them into the system. Can you update us on any progress that has been made in that respect?

**Clare Haughey:** Yes, Mr Rennie. I know that we have looked at the issue before. You have rightly stated that, according to the latest figures, which are for September 2021, the uptake was 13 per cent, but I should point out that we are talking about the total population of two-year-olds. In

order to increase the accuracy of the data on the children who are eligible to access the offer to two-year-olds, we have been working closely with UK Government colleagues on improving data sharing and developing a legal data gateway and an agreed data flow between the Department for Work and Pensions, Her Majesty's Revenue and Customs and local authorities. The UK Government's consultation on the secondary legislation that will be required to put the gateway and data sharing in place closed last week—on Friday, I believe. We will be looking at the outcome of that consultation with UK Government officials and colleagues and requesting that they work quickly with us to get the data-sharing mechanism in place.

**Willie Rennie:** Will it be possible to get that up and running by September, when the uptake will be measured again?

**Clare Haughey:** That depends on the UK Government and when it is able to—or wishes to—proceed with legislation. However, we will certainly work closely with it on the matter. There has already been a huge amount of co-operation between Scottish and UK Government officials.

**Willie Rennie:** Are there any barriers in principle to the data sharing, or is it just a matter of working through the technicalities? Why is it taking so long?

**Clare Haughey:** We have been working closely with the UK Government. It is aware of the issues that we have with the data sharing and that we are keen to access that data so that we can promote the ELC offer for two-year-olds to some families who might not be aware that they are eligible.

**Willie Rennie:** That is fine.

**The Convener:** I think that Willie Rennie was asking whether there was any other barrier than the technical aspects.

**Clare Haughey:** That is the barrier with regard to the data sharing. As we wait for that data, we have also been working to ensure that parents and carers are aware of eligibility and, obviously, aware of the advantages of accessing quality ELC for eligible two-year-olds. In that respect, we have been working very closely with our local government colleagues, health colleagues on the health visiting pathway, family nurse practitioners and the third sector to promote the ELC funding offer to eligible two-year-olds.

**The Convener:** But you cannot underestimate the value of the data that you have referred to in enabling you to accomplish your objectives.

**Clare Haughey:** Absolutely.

**The Convener:** Are you satisfied with your working relationships with ministers and officials at the DWP?

**Clare Haughey:** We have certainly been working very co-operatively with them. We hope that, now that they have the feedback to their consultation, they will work at pace on the matter.

**The Convener:** So, you are satisfied. I call Michael Marra.

**Michael Marra (North East Scotland) (Lab):** I have no problem with the instrument as it stands, but I noted your comments on the relationship between uptake and local government funding pressures. In going through the process, do you monitor or assess the sector's financial health and the sustainability of the businesses in the area to ensure that access exists?

**Clare Haughey:** Are you talking specifically about access for eligible two-year-olds or more generally?

**Michael Marra:** More generally. After all—and in line with Willie Rennie's questions—if the nursery is not there, eligible two-year-olds will not be able to access the offer. Do you undertake any exercises to understand the health of the sector?

**Clare Haughey:** Yes. The Scottish Government carried out a financial health check last August. Eleanor Passmore might be able to give you a bit more detail about what was asked of the sector.

**Eleanor Passmore (Scottish Government):** That is correct. We carried out what was, in effect, a survey of the sector that looked specifically at financial sustainability issues. That survey was published last year and we have undertaken to carry it out annually. We are very alive to some of the issues that the sector faces; indeed, earlier this week, we launched the omicron sector impact fund to deal with specific impacts that have been very much live over this particular period of the pandemic.

**Michael Marra:** It is just that a couple of fairly large nurseries in my area have closed, which has created a lot of problems for people. I recognise that some of that is to do with behaviour changes in families, but such closures make the business models perhaps less sustainable than they previously were. It feels like a moment of fairly major change in how people are accessing childcare and nursery education, but you think that that has been taken on board in the work that has been done.

**Eleanor Passmore:** Yes, and the Care Inspectorate routinely publishes data on closures, too. I can come back to you with the exact figures, because I would need to check them, but I think that the figure of around 1.5 per cent that we are seeing is consistent with previous trends. We have

not seen a significant increase in closures during the pandemic, although the most recent data that we have is unfortunately from late 2020. As I have said, we are carrying out an annual health check in the interim to keep a very close eye on sustainability and the factors that are driving it.

**Michael Marra:** It would be useful to have that data.

**The Convener:** Do members have any more questions?

**Willie Rennie:** Yes, convener, since we are broadening things out a bit. I will try not to take up too much time.

We have had meetings with representatives of the private sector, who are deeply alarmed by what is almost an exodus of staff from private to council nurseries and the threat to the sector's viability. The health check that you have mentioned is really important, but I am still not sure that the Government understands how severe the situation is for those businesses. It is important to ask about that not just because of the capacity that private nurseries offer but because of the flexibility that they provide, which council nurseries sometimes cannot. It might be useful if you were to write to us with the steps that you are taking to address that exodus of staff, which is related to the funding that the private sector has received. I am aware, though, that we are probably straying from the central purpose of the instrument.

**The Convener:** Do you want to comment on that, minister?

**Clare Haughey:** I am certainly aware of the private, voluntary and independent early years sector's concerns about staffing and the movement of staff between different settings. The issue has been raised with me and my officials in our meetings with the sector and we are alive to it. We have taken steps to support the sector and I am more than happy to write to the committee to outline those steps in more detail.

**The Convener:** That would be very useful. I am sure that we will have you back on another occasion to talk more widely about those areas of interest.

We move to agenda item 3 and I invite the minister to move motion S6M-02961.

*Motion moved,*

That the Education, Children and Young People Committee recommends that the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022 be approved.—[*Clare Haughey*]

*Motion agreed to.*

**The Convener:** The committee must now produce its report on the draft instrument. Are

members content to delegate responsibility to the deputy convener and me to agree that report on behalf of the committee?

09:17

*Meeting suspended.*

**Members** *indicated agreement.*

**The Convener:** I thank the minister and her officials for their attendance and suspend the meeting to allow them to leave.

09:14

*Meeting suspended.*

09:15

*On resuming—*

**Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022 (SSI 2022/34)**

**The Convener:** Our next item of business is further consideration of subordinate legislation. Do members have any comments on the regulations?

**Fergus Ewing (Inverness and Nairn) (SNP):** I seek clarification from the minister about a point that was raised with us by the Scottish Private Nurseries Association, which represents private nurseries and those that operate in the voluntary and third sectors—that is, nurseries run by charities.

The SPNA seeks clarification on whether the benefits of the provision—the waiver of disclosure fees and of liability to pay certain fees—applies to nurseries that are in private or third sector ownership, as well as to local authority nurseries. If the principle is that the disclosure fee should not be payable, I assume that that would apply across the board.

We received the letter from the SPNA only in the past day or so, or we could have raised the matter with the minister before. It would be helpful if clarification could be provided on that point.

**The Convener:** The Scottish Private Nurseries Association got in touch with us and raised the questions that Fergus Ewing is seeking answers on. As the instrument is subject to the negative procedure, we do not have a minister before the committee. We have not had time to get a satisfactory answer to the questions, which raise entirely legitimate concerns on the part of the sector.

I propose that we write to the minister and seek clarification of those matters. We can then decide, before the appropriate deadline, how to proceed. Is the committee content with that approach?

**Members** *indicated agreement.*



09:18

*On resuming—*

## **Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 1**

**The Convener:** Our next item of business is an evidence session on the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1.

I welcome Shirley-Anne Somerville, Cabinet Secretary for Education and Skills, and her officials from the Scottish Government, of whom we have quite a gathering today. I welcome to the committee room Sam Anson, deputy director, Covid education strategy and recovery, and Craig Robertson, interim deputy director, advanced learning and science directorate, Covid response. Joining us online are Andy Drought, deputy director for workforce and infrastructure in the learning directorate; Clare Morley, school funding, infrastructure and organisation unit head; Jerry O'Connell, school organisation team leader; Greig Walker, Coronavirus (Recovery and Reform) Bill team leader; and Nico McKenzie-Juetten, a lawyer in the Scottish Government legal directorate—I apologise if I have mispronounced your name, Nico. I welcome all our witnesses and thank them for their time.

I invite the cabinet secretary to make a short opening statement. We will then move to questions.

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** Good morning, convener. It is a pleasure to be here to discuss part 2 of the Coronavirus (Recovery and Reform) (Scotland) Bill.

We are tentatively in the recovery phase and thankful that the impact of Covid on our education system is diminishing and that the strategic framework provides a basis for many restrictions or limits to be removed. However, for the past two years, Covid has affected almost every aspect of our education system and significantly affected the experience of every pupil and student. We have been committed to protecting their interests, to protecting their health and that of the people around them and to ensuring that their learning continued and was supported as effectively as possible.

The powers that we are discussing today will provide an effective basis to ensure the continuity of education in the future. Whether we face a continued threat from coronavirus or a future public health emergency, our purpose is to ensure that we have the appropriate legal framework and powers in place to be able to react swiftly and decisively to protect children and young people.

Introducing the proposals now will ensure that they have the extensive and important parliamentary scrutiny that emergency legislation simply cannot receive. The bill can be deployed only if the strict test in it is met: that, in view of advice from the chief medical officer, the proposed action is necessary and proportionate to protect public health, and that all regulations made under it must be reviewed at least every 21 days. The bill carefully balances the powers to act quickly, if needed in the event of a future public health threat, with those important safeguards.

We have built on our experience of the powers in the United Kingdom Coronavirus Act 2020 during the pandemic and listened to the feedback from the consultation and from stakeholders. The proposals are broadly modelled on the existing powers under the UK act, but with some important differences.

First, the powers would be exercised through regulations, as opposed to ministerial direction. That introduces parliamentary scrutiny and oversight for the first time. Secondly, the main provisions focus on educational continuity. In spite of a public health emergency, continued education provision in whatever form is possible would be our priority and we do not propose a stand-alone closure power as there was in the UK act. Thirdly, we are adding a statutory guidance-making power. That will add to the set of available levers and allow us to provide advice to the system on a statutory basis without the need to use regulations.

The important safeguards that were in place under the UK act remain. That is to say, the powers can be exercised only when ministers are satisfied that they are necessary and proportionate and after regard has been given to the advice of the chief medical officer. Also, the powers can apply only for a specified period and would be subject to regular review.

I turn to the second set of measures in the bill. The Schools (Consultation) (Scotland) Act 2010 prescribes how changes to the school estate must be consulted on, including through a public meeting. The amendments in the bill establish a process so that, during a future public health emergency, local authorities would be able to apply for a direction from ministers to hold a 2010 act public meeting wholly by virtual means and to be relieved of the requirement to make hard copies of consultation documents in council offices.

That is a new proposal on which we consulted last year. It is not derived from temporary coronavirus legislation. The proposal will allow school consultations to proceed during, for example, a public health emergency, thereby avoiding delays to major school infrastructure

projects without the risk of contributing to the spread of infection. However, it is important that those steps be taken only when necessary. Again, the test is that a direction may be given only when ministers are satisfied that it is necessary and proportionate to protect public health.

I welcome the opportunity to discuss that and the other proposals in the bill.

**The Convener:** Thank you very much, cabinet secretary.

Last week, we had a morning of compelling evidence from a variety of different witnesses, including—most compellingly of all, I felt—the office of the Children and Young People’s Commissioner Scotland.

In its written submission, the commissioner’s office expressed concerns—which were affirmed by Megan Farr, who appeared in person before the committee last week—that the proposals in the bill do not conform with article 15 of the European convention on human rights and with article 4 of the International Covenant on Civil and Political Rights. In relation to human rights at times of emergency, it was recognised that states can use powers but that those powers are “not unlimited”. The submission says:

“Any emergency powers must be lawful, necessary, proportionate and time limited. They must be limited to the extent strictly required by the situation.”

That is not the case with the bill. Last week, it was alluded to that, if the bill became law, a case could be taken to court on the legislation, which could be found to be unlawful.

My question is very simple: is the Scottish Government listening to any of that evidence, including the evidence from the Children and Young People’s Commissioner Scotland, and will it take any of it on board?

**Shirley-Anne Somerville:** Of course, we take very seriously the discussions with stakeholders, what was in the consultation and, importantly, what is said in evidence to the committee. I have listened carefully and paid close attention to what has been said, particularly on the issues that you raise.

I will make a couple of points on human rights, because it is an exceptionally important issue. It is integral that the Government fulfils its obligations on human rights. I believe that some of the arguments that have been made proceed on the premise that the United Kingdom has somehow suspended, or derogated from, some of its obligations under the ECHR. That premise is inaccurate. There has been no derogation from the ECHR in the context of the coronavirus. It is important that I make that clear.

We will ensure, as we always do with bills that go through Parliament, that we are content with the bill. The Presiding Officer has made a statement to say that, in her view, the bill’s provisions would be within the legislative competence of the Scottish Parliament. That, of course, covers the requirements on human rights.

Any regulations that were made under the legislation, once enacted and its provisions commenced, would have to be compatible with the ECHR. The Scottish Government would have to consider the potential impact of any measures that were included in regulations on the range of convention rights. Any interference with a right under the ECHR would have to be justified in accordance with the Scottish ministers’ human rights obligations. We consider those obligations very carefully.

We will, of course, continue to listen to stakeholders that have concerns about such issues. However, from what I have seen at this time, I am not concerned that there is an issue with the bill and its ability to pass successfully through Parliament and become an act.

**The Convener:** You have a majority in Parliament, so I understand why you are confident that the bill will pass.

**Willie Rennie:** We are talking about the children’s commissioner, who is appointed by Parliament. The commissioner’s office is an incredibly serious institution that considers such matters, and it would not have said what it said last week if it did not have any justification for doing so.

To be frank, the Scottish Government has got this wrong very recently, with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, so what confidence does the Government have that it has got this bill right? Surely we cannot afford for this bill to be bogged down in the courts in the same way as the other bill has been. What can you tell us to convince us that the Government is right and the children’s commissioner is wrong?

**Shirley-Anne Somerville:** I encourage all those who have concerns with this aspect—or, indeed, any other aspect—of the bill to continue their discussions with ministers and officials in order to see whether we can alleviate some of their concerns. I hope that we can do so in relation to some of the points that the commissioner has raised. I absolutely take on board the seriousness of the commissioner’s office’s concerns and the importance of the commissioner’s views on such matters.

As I said, it is not simply the view of the Scottish Government that the bill is compatible; the

statement that was provided by the Presiding Officer—

**Willie Rennie:** The Presiding Officer has got it wrong before, too. That is the whole point. The system got it wrong. How do you know that you have got it right this time?

09:30

**Shirley-Anne Somerville:** For the reasons that I have read out—because I believe that some evidence that was given was based on a misunderstanding that there had been a derogation from aspects of the ECHR. We will of course continue to discuss that with the children's commissioner.

As I said in a previous answer, we very much believe that the issue has been looked at seriously. The bill has safeguards around how the powers can be used. It has safeguards to ensure that we have regard to public health advice from the chief medical officer, and that any measures are necessary, proportionate and time specific.

I am confident that we have this right, but we will continue to work with stakeholders who have concerns to see what can be done to alleviate those concerns as the bill passes through Parliament. I absolutely appreciate that the committee is concerned about what the commissioner's office said. I give the reassurance that we are very confident in where we are at, but we will continue the conversations with stakeholders.

**Willie Rennie:** The commissioner's office set out a much more pragmatic approach. It did not oppose preparing for future pandemics, but it set out a model of preparing the draft legislation for emergency purposes now and implementing it when an emergency arose. That would mean that we did not have to short-cut the parliamentary processes. Why have you not considered that route, which seems a sensible way to proceed?

**Shirley-Anne Somerville:** When we look carefully at how the bill is progressing, we see the optimum way to produce legislation—in a non-emergency setting. The non-emergency timetable for the bill has involved a 12-week public consultation and the evidence that Parliament is taking. On the current timetable, we would expect this to commence—

**Willie Rennie:** I am sorry, but the commissioner's office is not making such an argument. It is arguing that we should use this time to work up emergency powers at a reasonable pace for implementation in an emergency rather than put them in place now, when there is no emergency. The commissioner's office argues that we should take our time now to

get this right because, as we will discuss later, there are serious questions about the prescriptive model that you are adopting.

Why are we not taking our time to produce something now for implementation later? I know that there is more time now to consider the bill than there would be in an emergency—I am not arguing about that, and that is not what the commissioner's office is talking about. It says that we should prepare draft emergency legislation now so that it can be implemented when an emergency arises.

**Shirley-Anne Somerville:** I say with the greatest respect that we are taking our time. How long the bill takes to go through Parliament is up to Parliament—

**Willie Rennie:** You have a majority, so you will get the bill through.

**Shirley-Anne Somerville:** If we have learned anything during Covid, it is that we, as a Parliament, work better on public health measures when we are united, if we can be.

**Willie Rennie:** We do.

**Shirley-Anne Somerville:** My answers are based on the fact that we will very much seek consensus, given the importance of public health measures. We will take our time to get this through Parliament. We are determined that the bill will be fit for purpose—it needs to be fit for circumstances that we cannot foresee.

We can look at discussions that have been had. Professor Aileen McHarg has talked about the

“difference between having access to emergency powers and using those powers ... There is a better opportunity now to design an effective control framework than there would be if powers”

were

“to be acquired urgently ... in the context of another health emergency.”

We could discuss a draft bill at this point, but, if we were in the grip of a public health emergency, we could still be rushing a bill through Parliament. If we have learned anything from the early days of the pandemic, it is that we need to be as prepared as possible for when we will need such legislation. The suggestion is that we should have a draft bill that we could then present to Parliament, but that would not allow the Government to take the swift action that was necessary. The next stage, following the enactment of such a bill, would be the making of regulations. By then, we could be quite far into a public health emergency.

I ask colleagues who were here in the previous parliamentary session to remember how difficult it was to get emergency legislation through on that timetable and then to move on to the regulations

that followed from it. Doing that necessarily takes time, and time is something that you do not have in a public health emergency.

**Willie Rennie:** I have a final question. I commend the Government for the fairness and reasonableness of its approach through the pandemic. There is no doubt that there was consensus. You brought us in and we engaged.

There is absolutely no guarantee that that will continue. You are now asking this Parliament to give you permanent powers for an emergency on the basis that you are nice and reasonable people. However, this Parliament cannot guarantee that that will be the case for evermore, so you are asking Parliament to take a big step in giving you those powers for evermore on the basis that you are fair and reasonable people. You are that now, but that might not be the case in the future. That is why I think that there is a real danger that you are asking us to do more than we should be doing.

**Shirley-Anne Somerville:** The bill allows the power to make regulations, which would then go through Parliament. In how the bill is framed at this point, we are ensuring that, instead of directional powers being taken, the powers to make regulations would go through Parliament. That would ensure the ability to have far greater scrutiny over ministerial decisions than we have been able to have under the directional powers that we had previously under the coronavirus legislation.

I think that we have all learned, as we have gone through the pandemic, the importance of quick decision making but also that parliamentary scrutiny must absolutely be included in that process. That is why the safeguards in the bill that require parliamentary approval for regulations are very important.

**The Convener:** Did you grab the point that Willie Rennie was making? It is admirable that we are talking about this kind of stuff right now, but it is not necessary for it to be in the legislation. It can all be ready on a shelf, and we can pull it down off that shelf.

We are not talking about the situation that occurred in March 2020; we are talking about a different situation. We are talking about using the benefit of the experiences that we have all lived through to make law that is appropriate in the moment of a crisis. However, you are putting the measures that currently exist into permanency, which surely is not sensible, given the criteria of the human rights discussion that we are having.

**Shirley-Anne Somerville:** With the bill, we are taking our time, through non-emergency legislation, to have—quite rightly—the level of parliamentary scrutiny that such an important bill, with such wide-ranging powers, should have. The

bill allows, within the education setting, the powers to make regulations—

**The Convener:** Why could we not have this discussion and put something on a shelf that we could later pull off the shelf when it was needed and allow Parliament at that moment to pass it? Parliament worked well during the pandemic. Those of us who were not in Parliament then were looking in, and we saw Parliament working well—collegially and on a basis of collaboration. It worked. If we could now have the advantage of having something on the shelf that we could pull off the shelf when needed, why would the Government object to that? That seems sensible, and it would be in line with the recommendations of the Children and Young People's Commissioner.

**Shirley-Anne Somerville:** I am glad that, from outside Parliament, it seemed to be working well. Perhaps Graeme Dey, who was the Minister for Parliamentary Business at the time, can at some point allude to the genuine difficulties of working through a public health emergency when we could not all sit in one room and pass legislation.

Unfortunately, the legislation that we need when we are in an emergency is needed in a very short time, which does not allow for proper parliamentary scrutiny. When you face a public health emergency, every single day counts. It takes days for legislation to go through Parliament, and we then go through the process—

**The Convener:** I hear all of that, but I think that you are—

**Shirley-Anne Somerville:** —of it taking days to get regulations through Parliament, and by then—

**The Convener:** Thank you. I turn to Michael Marra.

**Michael Marra:** Cabinet secretary, you mentioned that you will endeavour to seek consensus and that you will take your time—that is one of the things that you said. One of the committee's witnesses last week found it quite difficult to understand why you would not wait to take on board the conclusions of a public inquiry that has been established to determine what powers there should be and why we are talking about a sequence in which we are legislating and then thinking about the situation. Can you answer that question for them?

**Shirley-Anne Somerville:** I fully appreciate the point that came up on that subject, as well as the point about the wait for the public inquiry. In response to that, again, we want to learn lessons from the coronavirus, and one of the criticisms of the Scottish and UK Governments was that we were not ready for the public health emergency when it came.

With the greatest respect for those who think that we should wait for the inquiry, I do not know when the next public health emergency will arise or whether we will have another wave of coronavirus that will impact deeply on education. It would be remiss of, and inappropriate for, any Government to wait and hope that nothing happened until the public inquiry finished. I completely understand the view that we should take more time and wait for the public inquiry, but we do not know the timeframe for that, and we will still have to go through the work after it concludes. I would summarise the situation by saying that we do not have the luxury of that gap. We cannot just cross our fingers and hope that nothing happens in the meantime that requires us to have the powers that are in this bill or—if Parliament feels that the bill is not right—whatever bill we have at the end of the process.

**Michael Marra:** However, do you accept that the legislation is modelled on the powers that were put in place for the pandemic that we are still in?

**Shirley-Anne Somerville:** There is a continuation of some of the powers that were in place for the coronavirus, but there are some important changes. As I said in my opening statement, we do not have that closure power, and we are looking to keep provisions for continuity of education. The other important change that is being made is a change from direction to regulation. The legislation is certainly different, but it is modelled on what we had previously.

**Michael Marra:** Therefore, in essence, the legislation contains the powers to do the same things but in a slightly different form. One of the principal criticisms, and one of the reasons that the UK—England, Wales, Northern Ireland and Scotland—has one of the worst records globally for its response to the pandemic, is that we based our response on plans for the previous pandemics. That is always a problem. Other countries have made similar mistakes, but ours have been particularly acute. At the start of the pandemic, we were thinking that we were in a flu situation, but we were not; it is a different form of virus. We put in place and used the plans and ideas that we had waiting, but we were wrong in that regard. You understand the critique and concern.

I understand that there is a balance to strike with regard to preparation and putting in place enabling legislation, powers or something from the shelf, as the convener suggested. However, if we do not really learn the lessons and analyse the situation that we are in, is that not the worst of all worlds?

**Shirley-Anne Somerville:** As the pandemic has gone on, the Government has continued to learn lessons about whether the powers that we have had have been effective and whether there are

any limitations to or difficulties with those powers in dealing with the coronavirus pandemic. Had we gone through two years of the coronavirus and not felt that the proposals that we were bringing forward would deal with the coronavirus, we would not be putting them forward. Indeed, over the past two years, stakeholders would have made it very clear if they felt that the powers that we had were not helping us to deal with the coronavirus.

However, we must try to ensure that this bill is able to deal with not just another wave of the coronavirus, but other public health emergencies as they might arise. In this bill, we are trying to make sure not only that we are ready for the coronavirus, but that the powers would work for other public health measures. In drafting the education parts of the bill, we have looked very carefully at how the powers have worked in practice and, importantly, how stakeholders have felt that the powers have worked in practice, as we have used or not used them during the past two years.

**Michael Marra:** We should consider the weight of the evidence. Last week, the Government presented an analysis of the responses to the consultation, in which it asked us to disregard 96 per cent of the responses because they were opposed to the bill. The remaining 4 per cent of responses came from those who had given evidence at committee, and none of them—nobody—thought that the legislation was a good idea.

09:45

You talk about building consensus. It seems that you have managed to build a consensus of opposition to what you are putting in place. Those who make up the 4 per cent are people who provide Government services, and they have issued caveats and made reasonable and reasoned objections. There is no support for the bill—nobody thinks that it is the right thing to do.

If you were endeavouring to seek consensus, you have achieved it, but it is a consensus of opposition. Have you got it wrong in the way that you are proceeding?

**Shirley-Anne Somerville:** No—there are individuals and organisations that support the way forward that we are taking with the bill, including the fact that we should have a bill of this type and move forward with the measures that we have proposed.

I fully appreciate the individual concerns of various sectors, and I am sure that we will come on to discuss some of those. At that point, I will be happy to go into why—with the greatest respect for the stakeholders, with whom I work closely—I have a different opinion from theirs.

The Government is trying to prepare for worst-case scenarios, and some stakeholders—not all of them, but you have asked me a general question, so I will give you a general answer, with the caveat that this does not apply to every person who gave evidence or responded to the consultation—based their evidence on best-case scenarios. In a best-case scenario, we might find agreement within sectors about how these things could move forward and that sectors are willing to work as quickly as the Government feels that public health guidance would require.

However, I am afraid that we cannot make legislation on the basis that everything will be fine and that we will get it through in time and lives will not be lost. That is the challenge. I cannot work on the presumption that everything will work just as it did during the coronavirus. I need to work to the worst-case scenario, and unfortunately that means that some of the powers that people may feel uncomfortable with the Government having will be necessary at that time.

**Michael Marra:** If I can, convener, I will close with a short question.

**The Convener:** Very short, please.

**Michael Marra:** Last week, I asked Paul Little of Colleges Scotland and Alastair Sim of Universities Scotland what specific problem they felt that the Government was trying to solve with the legislation. Neither of them could answer that question—in fact, one of them said that they were

“at a ... loss to understand”—[*Official Report, Education, Children and Young People Committee, 2 March 2022; c 7.*]

the purpose of what was being proposed in the legislation.

That response came from members of the Government’s education recovery group—people who are intimately involved in this work. Do you not have a job to do in partnership working to convince key stakeholders that the legislation is necessary, and that it will help people rather than harm them?

**Shirley-Anne Somerville:** I absolutely value the great partnership working that we had with the college and university sector during the pandemic. We did not find it necessary, during the pandemic—even at its height—to use the existing emergency powers to require universities, for example, to take action, and I think that that reflected our successful partnership. I very much hope that we would repeat that set of circumstances in the next pandemic or public health emergency.

However, I pose one question to the committee. If one institution decided that it felt differently from the public health advice that was coming out and

that it would take a different tack from what its own sector wanted—the institutions are all independent—and we did not have any powers to ensure that we could make regulations in that regard, what would the Government do at that point?

Partnership working is great. I will always work with every sector and every institution to ensure that we work in partnership, and we will do that with the bill. However, if we got to a point at which an institution took a different tack from the public health advice that was coming out, how would we react? Institutions may be independent, but they are not independent of their communities, and they are staffed by people we need to protect. With the greatest respect for those who have appeared before the committee and said that they did not see the point in the legislation, that is the worst-case scenario for which I need to plan.

We did not get anywhere near that during this pandemic, but, if the committee can say, hand on heart, looking way into the future, that there will be no instance in which that will happen—fine; we do not need these measures. However, I do not have the benefit of looking into the future and knowing that that will never happen. Therefore, I think that the Government must have the ability to take action if we need to.

**Michael Marra:** That opens up a whole pile of questions, but I have had my time.

**The Convener:** Can you put your hand on your heart, cabinet secretary, and tell us that we will never have a Government that will misuse the legislation?

**Shirley-Anne Somerville:** That is an important point, and it is why we have the safeguards in place to ensure that they are not directional powers but regulations—regulations that will be reviewed and that will receive parliamentary scrutiny. It is important to have safeguards within those measures, but I think that it is right that the Government and the Parliament are able to pass those measures to allow us to get ready for the worst-case scenarios that may happen.

**The Convener:** Well, this is what Megan Farr said last week:

“Political situations in countries can change, and it is a risk to have sitting on the books legislation that interferes with human rights to such an extent and that could be inappropriately used at a future date by a future Government.”—[*Official Report, Education, Children and Young People Committee, 2 March 2022; c 30.*]

You cannot tell me that that is not going to happen, in the same way as you are telling us that we cannot answer your question.

I will bring in Fergus Ewing.

**Fergus Ewing:** I had not planned to come in, but I feel that it is important to do so because colleagues have expressed the view that there is a consensus against providing the powers that the bill would confer. Although I respect that, I strongly dispute it and think that we need to redress that view.

Is it not the case, cabinet secretary, that if you fail to get the emergency powers that you are seeking to get in the bill and there is a further pandemic, we might find that we do not possess the powers that are required to protect public health and, conceivably, save lives? That would be the biggest failure of all.

I put that point in all seriousness, cognisant of the fact that this pandemic has thrown up huge challenges. There is no guarantee at all that further pandemics will throw up the same challenges. Therefore, ministers and Governments must create the widest possible range of powers in order to be sure that, in a future pandemic, we will have the necessary powers to act to save human life. Is that not a reasonable point and one that underlies the whole rationale for the bill?

**Shirley-Anne Somerville:** I agree with Mr Ewing on that point. As I said in my answers to previous questions, we take very seriously our obligations on human rights and on public health. As Mr Ewing rightly points out, we have obligations to take quick action, where necessary, if the public health advice suggests that that is an appropriate and proportionate thing to do.

It is also important to point to the responses to the public consultation. There was support for this move, for example, among local authorities and the public health sector. The idea that there is a consensus against this move is incorrect. Key organisations that supported the proposals to make the provisions permanent include COSLA, Public Health Scotland, the Health and Social Care Alliance Scotland, and the Scottish Childminding Association.

I absolutely appreciate that there are strong views that the bill is not necessary at this point or that we should be doing things in a different way, but there are people who support the measures that we are taking and the way in which we are taking them.

Mr Ewing rightly points out that one of the absolute obligations of Government is to protect the lives of citizens, and that is exactly what we are doing with the bill as we try to take it through Parliament.

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** Like Fergus Ewing, I want to highlight the point about saving lives. Although that is something that we need to put front and centre, it was not mentioned that much at last

week's committee meeting. Certainly, the first priority for any Government is to protect its citizens, and the bottom line is that the buck stops with it. After all, the very first human right is the right to life, and we need to be alive to exercise all the other rights that come underneath that.

Just as the actions of a future Scottish Government cannot be predicted, so we are in exactly the same situation with partners. We cannot guarantee that organisations such as those whose representatives we were speaking to last week will act very responsibly in future circumstances.

It was good that the Children and Young People's Commissioner Scotland said that he believed that all the actions that had been taken so far during the coronavirus had been necessary, proportionate, lawful and time limited and that we had met all those things. Mr Rennie and others talk about the Government being in the majority in the Parliament and pushing the bill through, but is it not true that we all have an equal interest here? As we do not know what Scottish Government will be in charge in the future, all of us, from every party, have an equal interest in ensuring that safeguards are in place and that we have a balanced right to offer adequate protections in the future.

I was wondering whether the possibility of a sunset clause was discussed. Was consideration given to refreshing or reviewing the proposed legislation at the start of each parliamentary session?

**Shirley-Anne Somerville:** You have made a very important point about the right to life. We have had a number of discussions about that with the committee, and I am sure that wider discussions on the bill will cover human rights aspects, too. As Fergus Ewing also pointed out, the right to life was the obligation that sat extremely heavily—and rightly so—on Government at the start of the coronavirus pandemic. Indeed, that will be particularly the case at the start of any public health emergency.

As I said to Willie Rennie earlier, the Government does not want to push the bill through Parliament, because we want to seek consensus on the legislation and ensure that it is fit for purpose for whatever public health emergency arises in future. We appreciate that a very heavy responsibility to get this legislation right sits on Government and Parliament, so we are keen to work with others to see whether changes could be made to alleviate some concerns.

It is certainly important to recognise that there are those who might not like particular parts of the bill. I suppose that I would point to Universities Scotland, which has concerns around some of the

granularity of certain aspects of higher education. In its written evidence, it recognises the case for having emergency powers in the event of another severe new public health crisis; there is a recognition that the Government of the day requires powers to deal with that. It is important that I continue to work with stakeholders, including Universities Scotland, to see what can be done to reassure it and others about the powers that we are taking on at this time.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** This has been a really interesting line of questioning. There is obviously a debate over whether the powers should be permanent but used only in extremis, when there are major public health emergencies.

Separate to that, when I asked the representatives from Universities Scotland and Colleges Scotland last week about the issues with regard to the current suite of powers for dealing with the coronavirus pandemic, Alastair Sim from Universities Scotland said that the bill mirrors the powers in the Coronavirus (Scotland) Act 2020 in many respects. I asked Mr Sim what criticisms he had made at the time when those 2020 powers were being considered—powers that I accept never had to be used, because of the great partnership working. He did not really say anything about that, but he did say:

“If the Government had reached for those emergency powers, it might have found them quite problematic to use”.—[*Official Report, Education, Children and Young People Committee*, 2 March 2022; c 13.]

Were you aware of any concerns from Universities Scotland at that time? Other than the current statement from Alastair Sim on Universities Scotland’s position, are you aware of any issues that Universities Scotland has had since then about the current suite of powers?

10:00

**Shirley-Anne Somerville:** I will bring in my colleague Craig Robertson to answer that question. Of the officials here, he is the one who works closely with higher education.

First, though, let me say that, since I came into post, we have had an exceptionally close relationship with universities. It has been absolutely necessary for the Government to consider how the guidance impacts on universities, and we have listened carefully to them about how guidance can be developed in a consensual way with universities, trade unions and students. We have endeavoured to do that all the way through; indeed, it is always the way in which we want to work. Obviously, there have been, as you would expect, differences of opinion at various points in those discussions, but we have had a

good working relationship and I would like that to continue.

You are right to point out that much of what is proposed mirrors the powers in the Coronavirus (Scotland) Act 2020. With the convener’s permission, I will bring in Craig Robertson to provide a little more detail.

**Craig Robertson (Scottish Government):** As far as I am aware, Universities Scotland did not raise any concerns during the passage of the Coronavirus (Scotland) Bill, which became the Coronavirus (Scotland) Act 2020. As the cabinet secretary has said, we have not had to use any of the powers in the act in the two years of the pandemic.

We have continued to have a really good relationship with Universities Scotland, Colleges Scotland and individual universities and colleges, and with the community learning and development sector. We have been keen to ensure that, in order to reflect the reality on the ground, we adapt the guidance that we draw up on the basis of the input that we get from experts on the Covid-19 advisory sub-group on universities and colleges.

There is nothing to suggest that we would not want to work in a similar way in any future situation. However, what we cannot necessarily guarantee is that we would have time to do that at the pace that we would like to be able to do it, and in such a situation it would be particularly helpful to have the powers as a backstop.

**Bob Doris:** Thank you. I should say that Mr Sim pointed out that he had only four sitting days in which to respond on the specifics of the emergency powers. The point was more about the issues that have been raised since the 2020 act was passed.

When I asked Mr Little from Colleges Scotland about the issue, he did not raise concerns about specifics but he said:

“We raised concerns about the throughput of officials who had to produce the legislation.”

I think that his point was about officials’ workload. He then said that there was a

“real danger of getting a weekly or even daily diktat”.—[*Official Report, Education, Children and Young People Committee*, 2 March 2022; c 15.]

I was surprised by that comment—I did not think that such a position was reasonable. Of course, it is not my position to take, but, on reflection, I think that I can put Paul Little’s comment to you, cabinet secretary, so that you can reply to it. What reassurance can you offer that, in taking the powers, the Government has no intention of making a weekly or daily diktat?



**Shirley-Anne Somerville:** I think that, with the experience of coronavirus, the right way to do things has been demonstrated. Regulations should not stay in place for one day longer than they should do, and guidance should not be stricter for one day longer than is needed, but, obviously, we do not want things to change for the sake of it. I cannot for the life of me see why, in the middle of a public health pandemic, a Government would make changes if those changes were not based on advice from the chief medical officer.

We should look to the safeguards in the bill, which states clearly that there needs to be advice from the CMO to allow Government to make regulations that are proportionate to what is happening. The safeguards are in the bill when it comes to why we would make regulations; it is all about the seriousness of a public health emergency.

Changes involving the removal of regulations would, of course, be made to ensure that we could get back to as normal a situation as everybody would want us to be in. The bill sets out that changes would be made to speed things up or make things tighter; it also explains why regulations would be taken away.

**Bob Doris:** My final question is about the distinction that you have drawn between the power of direction and the power to make regulations. I am guessing that regulations would be made from time to time, based on the CMO's advice and the state of the public health emergency, whereas directions could, in theory, be given daily or weekly. Could you say a little more about how, if the regulation-making powers had to be used, they would be used proportionately, to reassure the college and university sector that the goalposts would not be moved on a daily basis, which might have been its underlying concern?

**Shirley-Anne Somerville:** You are quite right to point out the importance of this being about regulations rather than direction and the process that must be gone through to ensure that regulations are brought in through the parliamentary system. As well as ministers having to have regard to the advice of the CMO on protecting public health, we must be satisfied that any regulations that we bring in are necessary and proportionate for the continued provision of education. Parliamentary approval is required before any regulations are made or, where necessary—when regulations are made for reasons of urgency—within 28 days of the date on which they are made. In addition, any regulations will apply only for a specified period and will be subject to review every 21 days.

I hope that that signals to the committee the fact that safeguards are in place. Although the

Government will be able to work quickly in a public health emergency, we will certainly not make change for change's sake, given the safeguarding mechanisms that the bill rightly contains to prevent us from making unnecessary changes.

**Bob Doris:** Thank you. That was very helpful.

**Graeme Dey:** Thank you for reminding me of a previous life. We should reflect on those days. They were dark and difficult days, but the Parliament was at its best, as Willie Rennie will remember.

However, as we moved through the pandemic, Parliament became frustrated about its level of oversight. By way of response, we established the COVID-19 Committee. Is it not the case that the point about the approach that you are taking here is that it must be a package? The protections are being built in right at the outset, and Parliament knows exactly what its role will be. It will have every opportunity to have the input and scrutiny that were perhaps lacking during the early stages of the pandemic. Is it not the case that we are looking at a package and that, regardless of the concerns that are expressed by individuals, over the piece, the bill provides for the kind of input that Parliament began to cry out for at the height of the pandemic?

**Shirley-Anne Somerville:** That is an important point, which points to a lesson that was learned in relation to how the bill would be framed, compared with the way in which the emergency legislation—which was considered at great speed, necessarily, and to the best of Parliament's ability—was framed. As the pandemic moved on, Parliament became concerned about the fact that safeguards were not in place, simply because of the speed with which the Coronavirus (Scotland) Bill went through Parliament and became an act. We have given serious consideration to that, which is why the safeguards are in place in the bill.

As you pointed out, it is right that we look at the whole package, which includes not only individual aspects that could be included in the regulations, but the steps that would have to be taken before we got to the point of having regulations with those specifics in them. It is important to bear in mind the overall package.

**Graeme Dey:** I want to move the discussion on to the lessons that have been learned about how we can do this better in light of the experience of the past two years. Last week, the committee took evidence on the powers of local authorities to close schools on public health grounds. It was told that they do not have such powers.

Has the Government considered, or would it consider, including in the bill a local decision-making power of that nature? Have you thought about amending, replacing or repealing the

Schools General (Scotland) Regulations 1975 to clarify duties around the closure or keeping open of schools? You talked about engagement with stakeholders. Can you touch on the extent to which you have engaged with local authorities on the issue? That seems a bit anomalous if what we were told last week is correct, which is that the local authorities cannot close schools on public health grounds. They can close them if they cannot physically staff a school, but they do not have that power during an emergency. Would you be prepared to look at that?

**Shirley-Anne Somerville:** We are keen to hear more about the concerns of colleagues from the Educational Institute of Scotland. My door is always open to them to have those discussions.

Education authorities have wide-ranging powers in relation to schools, and it is the education authority that makes any decision to close one of its schools for public health reasons or for any other reason. For example, education authorities closed their schools on 20 March 2020, which is before the Coronavirus (Scotland) Act 2020 came into force. They relied on their own powers to do that in response to public health advice. Ministers did not give a direction under the UK act until mid-May 2020.

Clearly, if a union, local authority or COSLA is concerned and wants further work to be done on clarification, I am more than happy to hear from them. I listened very carefully to what happened yesterday, and we will continue to work with EIS. The fact that the authorities could close the schools so early on in the pandemic shows that they could take a decision if it was required.

Of course, when local authorities take that advice, they are working exceptionally closely with public health authorities. I understand that the committee heard from Diane Stockton of Public Health Scotland, who talked about the local outbreak management process, how it was handled, and the integral relationship between local authorities and local public health officials during that process. I hope that that has given you a bit of a picture of what happened at the start of the pandemic and how decisions were taken.

**Graeme Dey:** Can I pick up on that point? It is right that the local authority would engage with the local public health authority on those issues. A bit of clarity is perhaps needed around roles and responsibilities, because the committee was specifically told that, when efforts were being made to close schools before Christmas 2020 to protect staff and pupils—and rightly so—local authorities were telling the EIS that they could not close schools early before Christmas because of the way that the powers are set out. It sounds to me that there is a bit of confusion there that needs to be clarified.

**Shirley-Anne Somerville:** That is why I am keen for the Government to listen to the concerns raised by the EIS and to the experiences that local authorities want to relate to us about that time before Christmas 2020, or any other time when they felt that their powers were lacking, because that would clearly be a concern. As I said, we want to get that right and make sure that there is no doubt about where the powers lie for that. The important powers around education lie with local authorities. The bill will give the Government particular powers only in a public health emergency, and without those powers being in place and a public health emergency happening, the powers for education remain with local authorities.

10:15

**Fergus Ewing:** Following on from our discussion about the general issue of the nature and extent of the emergency powers and the rationale for them, I want to raise with the cabinet secretary the matters that are covered in paragraphs 55 to 65 of the policy memorandum and proposed new sections 86B(1) and 86C(1) of the 2008 act, as inserted by section 1 of the bill.

As I understand it, there needs to be, and there will be placed on the Scottish Government, in relation to the use of emergency powers, a new higher test or barrier called the proportionality test, which must be considered before any restrictions may be imposed by regulations. It goes beyond

“a significant risk to public health”,

which is the condition to be met by health boards. In other words, a protective barrier will be introduced by the bill specifically to address some of the concerns that you and Opposition members have expressed.

Before the powers in the bill can be exercised, a whole range of things will need to be taken into account, and the Government will need to demonstrate that they have been taken into account—namely, the severity of the disease; the transmissibility of infection; the size of the exposed population; the susceptibility of the exposed population to infection; the availability of diagnostic tests, treatments and vaccinations; and the impact on critical services.

Does the cabinet secretary wish to expand on that? Am I right in postulating that that is an additional safeguard that is designed to provide citizens in Scotland with the assurance that the Government will act only if it is necessary and proportionate in the circumstances?

**Shirley-Anne Somerville:** Convener, you will probably be glad to hear that I do not feel the need to expand much on what Mr Ewing has said. He is

quite right to point to those specific details. Proportionality is key to how the Government would and, indeed, could move forward with any regulation. It makes sense for that provision to be included, because one of the lessons that we have learned is about the importance of continuity in education and ensuring that, wherever possible, we keep our schools, universities and colleges open, with as close to normal environments as possible.

The checks and balances provided by proportionality are key to our moving forward successfully during a public health emergency. I refer to my earlier answers on the right to life and protecting people's health, but we must also think about the other harms that can be done if a Government introduces measures that are disproportionate to the level of public health concerns. Mr Ewing is quite right to point out that that is a key aspect of the bill.

**Kaukab Stewart (Glasgow Kelvin) (SNP):** I have a couple of questions on the issues that have come up so far. I will then move on to my main questions, which are about student accommodation.

The committee has heard from students whose experience during the past couple of years has been variable across the country and across local authority areas. How far would the powers help to ensure that there was consistency if there was another pandemic and they had to be invoked?

**Shirley-Anne Somerville:** One of the key areas that the bill covers is the importance of continuity of education rather than a blanket closure approach. That points to the impact that the pandemic had on children, young people and students across the country. They will all have experienced it differently, depending on their individual circumstances, but, in many cases, their experiences have been exceptionally difficult. We have spoken about that when I have been before the committee previously.

The Government needs to rise to the important challenge of ensuring that we have the powers to enable us to deal with public health emergencies and ensure continuity of education. That has a real primacy in our thinking, because we must do everything that we can to protect students as far as we possibly can.

I would caveat that by saying that students' experience might be variable because of different requirements in different parts of the country. Indeed, that is what we saw with the coronavirus. Different parts of the education system might require different types of regulation, so we are not taking a blanket approach in which the same thing happens from early years all the way up to the universities. Within that, we are endeavouring to

protect students as much as possible and to put that absolutely front and centre in our work.

**Kaukab Stewart:** I should say that I was not here during the previous parliamentary session, so you will forgive me if my questions seem obvious.

We are in the scrutiny period for the bill. What assurances can you give me that, whatever form the legislation might take once and if it is passed and if the powers were then to be used, the Parliament would still be able to scrutinise it? Will regulations be revised every 21 days? I would be concerned on behalf of the public and, indeed, anyone else about the Parliament being able to talk about this and, I suppose, follow the journey if an emergency situation were to arise.

**Shirley-Anne Somerville:** Absolutely. If the bill is passed, any regulations that we made would apply for a specified period. Regardless of that, they would also be subject to review every 21 days for as long as they were in force. Again, that is one of the important safeguarding measures in the bill. I do not think that any Government wants to keep anything on the statute book longer than is necessary. I appreciate that there are differences of opinion about the speed at which things were considered during the coronavirus, and the ability of Parliament to have a say on the matter during a review period is an important safeguard in that respect.

**Kaukab Stewart:** Moving on to an area of interest for me, I have been speaking to students from the eight institutions and the many student accommodation premises in my Glasgow Kelvin constituency. I have to say that the experience of students was very variable over the period in question; in fact, it was quite difficult to hear some of their experiences of lockdown. I note that the bill talks about

"reasonable steps to restrict or prohibit access to the establishment for a specified period".

What is the intention behind the power to put a duty on the manager of such an establishment to restrict access to accommodation?

**Shirley-Anne Somerville:** That provision is in the bill to show that we have learned lessons from the start of the pandemic. I will ask Craig Robertson to comment, because he was in post at that time—I was in another portfolio.

At that time, there was a requirement to assist students in a way that universities, the sector in general and, indeed, we were not quite ready for, and we must ensure that we are much more able to provide that assistance. Of course, there might be times when we require to prevent people from accessing student accommodation, but we take very seriously the fact that we are talking about people's homes, that they might not have

alternative accommodation, and so on. None of the regulations and changes would be made without ensuring that safeguards for students were absolutely integral to our thinking on the matter. We therefore need to think about how we protect students. Some of that will focus on what happens in halls, while some of it might involve ensuring that halls are used in the correct way at the correct time.

However, I will bring in Craig Robertson, who, as I have said, has experience of what happened at the start of the pandemic. It is important that we learn lessons about how the powers in question might be used.

**Craig Robertson:** On the justification for the powers in the bill, we are looking at a scenario in which there is a designated outbreak in a hall of residence and we want to prevent students who do not have the virus from going into that setting and putting themselves at risk. We might want to have the power to restrict access on that basis. We saw such a situation at various points in the past two years, primarily at the start of the previous academic year, when there were significant outbreaks in some student accommodation settings. It is about learning the lessons from that and how we deal with the issue in future.

It is also important to flag that the bill will contain the power to ensure that support is provided in that setting. It is right to say that there was some patchiness in the support that was provided to students who found themselves locked down in university accommodation or accommodation provided by the private sector. The bill is about trying to get equivalence of treatment for students who find themselves in that situation, so that they know what they are likely to get.

**Kaukab Stewart:** It is reassuring to hear that. Some of the stories that I heard from students were about support. Many students were away from home for the first time and were in lockdown with strangers, so they did not have those connections and support mechanisms. Also, food was an issue. There was patchiness in the availability and quality of food, and there were also issues with the dietary requirements of students with certain religious affiliations.

Last week, we heard evidence about boarding schools, which will also come under the measures. I am sure that there will have been some consideration of that, but can you shine some light on the consideration that was given to putting those two different types of accommodation together? Obviously, they are slightly different scenarios.

**Shirley-Anne Somerville:** We absolutely need to take account of the different scenarios that will

arise. Boarding schools and school residences are unique environments. Throughout the pandemic, we worked closely with the Scottish Council of Independent Schools and individual schools to reflect their special circumstances in the measures, particularly for boarding schools.

It is important that we are cognisant of the fact that we are dealing with young people who are away from home and that, in essence, those places are their homes during term time. It is about providing the foundation for the correct support and ensuring that we do not make any unnecessary calls on that sector. We want to ensure that young people can still have their education and be supported, but that that happens in a safe way that recognises that, for example, many pupils might come from different parts of the United Kingdom or from across the world.

Obviously, there is a specific requirement to ensure that what is put in place for boarding schools and school residences takes that type of environment into account. However, I suppose that it comes down to the same types of issues about provision of support and the protection of the wider public. The guidance on how we might do that will be very different for university halls compared to boarding schools. However, the continuity that runs through the measures in the bill is to do with support and the protection of public health.

**Kaukab Stewart:** That is good. I am reassured that we will take account of the different scenarios and will be able to respond accordingly, having learned lessons from previous events.

**Willie Rennie:** Colleges and universities are not against preparations and measures. I think that there has been a misunderstanding about that. They are just arguing about how it is done. Last week, they said that they favoured a framework approach rather than the prescriptive approach in the bill. I have a couple of questions that I think make that point.

Dundee and Angus College runs animal care and zoology courses. Does the Government understand how to run those courses? Of course it does not. City of Glasgow College had 245 students at sea during the pandemic. Does the Government understand how to run nautical courses? Of course it does not. Nonetheless, the powers that you are proposing to take on are quite wide ranging.

10:30

Section 8(5)(a) enables ministers to “confer additional functions”. Section 8(5)(i) enables ministers to require universities and colleges to take

“actions in general terms, or ... particular actions, that ... Ministers consider appropriate”.

Those powers are very wide ranging. Why are you leaving open the possibility that you would take over functions to run those institutions directly when, to be frank, you do not have a clue how to run them?

**Shirley-Anne Somerville:** I do not think that there is any misconception about the fact that Universities Scotland thinks that there should be emergency powers—I quoted its written evidence earlier. It is about the how, and the importance of that.

I appreciate that Universities Scotland is coming from a different starting point, and that it would prefer a framework approach that would leave matters to the universities. However, I stated earlier the reasons why I do not feel that that would be appropriate. Government needs the ability to react if we are at a point where an institution is taking a very different approach from what the public health advice to Government suggests that we should do.

In saying all that, I note that we have worked closely, as I mentioned earlier—

**Willie Rennie:** Can I stop you there? Why does a framework not get you to the same point in a different way? Nobody has been able to explain to me why a general framework is not the most appropriate way to proceed. You could take action against an institution that was not complying with the framework. Why do you have to be so prescriptive in areas that you do not know anything about?

**Shirley-Anne Somerville:** I think that a framework approach would lead to gaps in our ability to make decisions. With regard to getting into the granularity of some aspects, I am happy to carry on our conversations with Universities Scotland to see whether we can come to more agreement on the matter than we currently have, as we clearly do not have agreement right now. Nonetheless, it is very important that we have the ability to take quick decisions and to enforce them. As we do that, we would, of course, work with institutions to ensure that nothing inappropriate was being done. To give one example, animal welfare measures would have to be taken into account if we were to move forward with regulations.

However, it would be difficult if we were to get into a particular position. I will give the committee an example. If we, as a Government, received public health advice that suggested that a term or semester should start later, and an institution said, “No—we think everyone should come back now, and we should have in-person learning”, we would

need the ability to say, “No, I am sorry—the public health advice is that that is inappropriate.”

A framework would not get us through that. We can have a framework to enable us to talk about the issues and to try to work in partnership. However, when push comes to shove, if an institution said, “No, we think in-person learning is the way forward” and tried to move forward with that at a far greater pace than Government would be at all comfortable with, given the public health advice, I do not think, with the greatest respect to Universities Scotland, that what it is proposing at this point would allow any Government to deal with that situation.

I have made it clear that I am more than happy to carry on discussions with Universities Scotland about the granular detail of some of the issues that it is concerned about, to see whether we can alleviate some of those concerns. However, it must also recognise where I am coming from. I do not think that we have had an answer from the university sector on what we would do if an institution just said no.

**Willie Rennie:** Section 8(5)(b) gives you the power to close colleges and universities, despite the fact that they never closed during the pandemic, because it is dangerous to close them. Animals would be at risk and laboratories would probably blow up, so those institutions are never closed. Nevertheless, you have taken on the possibility that you would have the power to close them, and that would be incredibly dangerous. Does that not prove the point that the micromanagement approach to these issues, with Government dictating what the institutions are doing, proves the point that we need to have a framework, rather than a prescriptive, approach?

**Shirley-Anne Somerville:** We need the ability to say that, for example, one campus in an institution might have to close with the exceptions that can be made for—again I give the most obvious example—animal welfare, but there are other possible areas. We might come to a different point in the pandemic at which we need to say that an institution should remain on online learning, except if someone has to go in for practical assessment, and we would discuss with the universities when people are required to be on campus.

We would always take the partnership approach that we have always taken to those things, but we still need that full stop that allows the Government to take decisions if an institution is taking a different approach on aspects of public health.

In saying that, and as I have said on numerous occasions, if aspects of the granular detail are causing concerns, I am more than happy to work with Universities Scotland on them.

**Willie Rennie:** How do the proposed powers impact on the Charities and Trustee Investment (Scotland) Act 2005?

**Shirley-Anne Somerville:** We do not believe that it will have any impact on that act.

**Willie Rennie:** You do not think that it will be contrary to the 2005 act to issue instructions and directions to the trustees.

**Shirley-Anne Somerville:** No. We would get into that area only because of public health measures regulations. We are absolutely clear and confident that the bill does not affect the charitable status of universities.

**Willie Rennie:** I have one final question. Does the fact that you never used these powers throughout the pandemic, and they were never required to be used, not just prove the point that the colleges and universities are making, which is that the powers within the original emergency act were too prescriptive and it would never have been possible to use them for that very reason? If they were never used before in that format, why on earth are we replicating what we never used before because it was too prescriptive? Why not take the framework approach, which is far more sensible and, in fact, the way that you worked the last time?

**Shirley-Anne Somerville:** I appreciate that the Conservative members of the committee might agree with the approach taken to the coronavirus by the UK Government, but, if a senior management team of an institution took more of a Boris Johnson approach to dealing with coronavirus rather than listening to public health guidance, such as we have up here, we would need the powers to deal with that. Otherwise, large institutions with thousands of staff and thousands of students, that are integral part of our communities, will be able to take a very different approach to dealing with coronavirus than the Government does, and I do not think that that would be particularly welcome in our university towns and cities across the country.

**The Convener:** Boris Johnson is an interesting example to call on. That is a highly contentious thing to say, frankly.

**Willie Rennie:** Convener, could I ask a few questions about the issue of prisons, which was raised at last week's evidence session?

**The Convener:** Of course.

**Willie Rennie:** The children's commissioner talked about the number of children who were in prison in Polmont and the fact that the proportion of children who were on remand increased throughout the pandemic from about 40 per cent to about 80 per cent, and no children were released early using the coronavirus powers. Have

you looked into that issue, as the minister with a major interest in that area? What action will be taken to address those points?

**Shirley-Anne Somerville:** We are cognisant of the evidence that has been given, and I will be more than happy to provide further details to the committee. Clearly, the situation will have to be looked at, given what the commissioner said and because of the concerns that have been raised. I am not at a point at which I can respond to that now but the Government will be keen to look into the concerns that have been raised.

**The Convener:** Michael Marra has a quick supplementary question. I hope that it is not about Boris Johnson.

**Michael Marra:** No—it is on the cabinet's secretary's last point. The committee was moved significantly by that evidence and the need for urgent action. We heard about one individual who was in prison as a result of not appearing as a witness, and we know about the lengths of the delays. Every day that that individual spends in prison affects their future life chances. Can you provide assurances that there is a sense of urgency from Government ministers and that they are doing something about the issue, rather than just reviewing the situation?

**Shirley-Anne Somerville:** I totally appreciate where you are coming from. The evidence that has been given and the work that has been done to show the real impacts in the wider justice sphere, particularly on children and young people, has been crucial. I give a commitment and a reassurance that the concerns about how children and young people are dealt with in the justice system are important at any point, but they are more important than ever during a pandemic.

**The Convener:** After all, the Children and Young People's Commissioner Scotland says that your Government is responsible for

“conditions for children in prison”

being

“in breach not only of the UNCRC, but also the prohibition on torture, inhuman and degrading treatment or punishment in terms of Article 3 of the European Convention on Human Rights”.

I would have thought that that would be quite a call to action from the commissioner. Do you agree?

**Shirley-Anne Somerville:** Clearly, we listen very carefully to the commissioner's opinion on any issue. As I said to Mr Marra, the implications of aspects relating to children and young people in the justice system are clearly concerning. Although we pay attention to everything that the commissioner says, urgent discussion is required on how we deal with children and young people in the justice system.

**The Convener:** I think that all those words mean that it is a call to action.

**Graeme Dey:** Compared with the very serious matters that we have been discussing, the aspect of the bill that I want to ask about might seem quite trivial, but I would like some clarification on it. Throughout the meeting, the cabinet secretary has said that ministers would be dependent on public health advice, which would drive the actions that were taken. Section 6 of the bill states that ministers would need to

“have regard to ... advice from the Chief Medical Officer ... or from another person designated for the purposes of this section by the Scottish Ministers, about protecting public health.”

Is that simply a cover-all provision in case the CMO is not available—the advice might be from the deputy CMO—or the job title changes? What is the reason for that provision? At face value, it seems a bit odd.

**Shirley-Anne Somerville:** It is about attempting to future proof the legislation, which is always quite difficult. Of the officials who are on the screen, Nico McKenzie-Juetten might be the best person to reassure you about some of the niceties. If he is not, he will direct me to someone else.

**Nico McKenzie-Juetten (Scottish Government):** Future proofing is one aspect. The other aspect relates to the scenarios that Graeme Dey mentioned. If the CMO was not available to give the advice for some reason, the deputy CMO could be designated or another appropriate senior clinical adviser could give the appropriate advice at that point.

**Graeme Dey:** Thank you.

**The Convener:** Fergus Ewing has a quick supplementary question.

**Fergus Ewing:** Last week, I questioned Alastair Sim and Paul Little on their objections relating to the Government’s powers under section 8(5)(b) to (k) being too granular. The argument that I put to them was that, if there is a future pandemic, the Government needs to be able to act swiftly, and that delays even of a day or so could be critical in relation to stemming the flow and spread of a future virus, so there might not be time for consultation and for universities and colleges to go through their decision-making processes.

Does the cabinet secretary have any comments on that? Does she feel that colleges and universities have given any clear examples of what they are concerned about? I have no wish to misrepresent them, but the only example that was given in evidence was that by Mr Sim about podiatrists. I was a bit perplexed as to why podiatrists had made an unexpected debut in the issues relating to education.

10:45

**Shirley-Anne Somerville:** I agree with Mr Ewing that days are critical. Earlier, I mentioned the requirement to be able to make decisions at speed. Days really count when we are talking about the impact of a virus on public health—we have seen that serious impact very clearly during the coronavirus pandemic.

I appreciate that Universities Scotland has concerns about the granularity of the powers. I will not comment on the example that Mr Sim decided to give to the committee. I attempt to work in partnership with universities and, if they have concerns about those aspects, the Government is happy to discuss them with Universities Scotland. I appreciate that there are concerns about that, but Universities Scotland needs to see where the Government is coming from in relation to why we feel that we need the powers. On that basis, I hope that we can reach a better understanding with Universities Scotland than we have at the moment.

**Fergus Ewing:** I welcome that.

I have one further brief supplementary question. In relation to how universities and colleges would proceed with their decision-making powers if they had a say over how emergency powers were to be constructed, Mr Sim said:

“student and staff representatives would ... be an important part of any structure ... put in place to address a further emergency.”—[*Official Report, Education, Children and Young People Committee*, 2 March 2022; c 25.]

If that were the case, is it not pretty obvious that all the consultation that Mr Sim said would take place in relation to decisions that universities and colleges would like to make about the content of our emergency powers would take time? Consultation takes time. To consult students and staff representatives would be, as Mr Sim said, essential—a sine qua non of the exercise of their role. However, doing all that would mean that taking decisions would take several weeks or much longer. Of course, the virus could spread and people’s lives could be put at risk during that time. Have not the distinguished academics hoisted themselves with their own petard by the evidence that they gave last week?

**Shirley-Anne Somerville:** They were quite right to point out the importance of consultation. Clearly, the Government would want to carry out as much consultation as possible before we made regulations, and I completely appreciate that universities would want to consult if powers lay directly with them. However, the point about the speed of decision making is key. We live in an imperfect world during a pandemic, and we must endeavour to ensure that the speed at which we

can make decisions allows us to deal with that pandemic.

Our work with universities continues, particularly as we move out of the current stage of the pandemic. Their ability to work at a more local level with staff representatives and students on how to deal with the current phase and future phases of the pandemic is to be commended. However, as I said, we are not in a perfect world at the point of decision making. That was particularly the case in the early days of the pandemic.

**The Convener:** I call Oliver Mundell, to be followed by Stephanie Callaghan, who will conclude our session.

**Oliver Mundell (Dumfriesshire) (Con):** I think that most people in education and those who are watching at home will think that this is a total waste of time. I think that they will look at this and think that you are totally out of touch, cabinet secretary.

Most people who are involved in education—whether they are a parent or a teacher or they work in the sector day to day—realise that the problems during the pandemic had nothing to do with what was on the statute book; rather, they were all caused by ministerial incompetence, or by bad decisions that had been made prior to the pandemic. What makes you think that the bill would solve those problems? What would it do to address what we are seeing now, which is a third year of failure, with the Scottish Qualifications Authority again screwing over young people? What would it have done to prevent ministers from cutting 3,500 teachers and leaving schools in a really difficult position? What will it do to ensure that young people get the devices that they have been promised so that they can work remotely? I think that the answer is nothing. Is that right?

**Shirley-Anne Somerville:** It is good to see that Mr Mundell is rising to the occasion once again on the issue. I am not going to rise to the political points that Mr Mundell makes. We have the opportunity to come together in the committee and as a Parliament to pass a serious piece of legislation that allows us to deal with future public health emergencies. That is the position that we are currently in.

I completely appreciate that Mr Mundell will be critical of the Government on all the aspects that he has raised, that he does not think that the Government has gone far enough, and that he thinks that we have gone too far on many other occasions. We have in front of us today a bill—

**Oliver Mundell:** One that is unnecessary and unlawful, as we have heard.

**Shirley-Anne Somerville:** The bill allows us to deal with a public health emergency. I have dealt

with the issue of whether it is necessary and whether it is within our human rights obligations. With the greatest respect, we are really getting down into the detail of the bill. Mr Mundell and I must continue to disagree on various education policy issues, but we have the opportunity to ensure that, as a Parliament, we all rise to the occasion and pass a bill that will allow us to pass legislation that any of us could be in government to put into practice. There is an obligation on all of us to ensure that the bill is the best that it can be.

**Oliver Mundell:** I say politely that the obligation on us as parliamentarians is not to put legislation on the statute book that is potentially unlawful, that enables ministerial overreach and that takes up a huge amount of parliamentary time and resource. Instead of preparing for future emergencies when we do not know what they might be, we could solve many issues in education today. Why should I, as a parliamentarian, put more power into the hands of ministers when they have been so incompetent not only during the pandemic but over the past 10 years? Is the job not better done by Parliament? We proved that we could do that at the height of the pandemic.

**Shirley-Anne Somerville:** I have already talked about the lawfulness of the bill, the Presiding Officer's statement and the discussions that we have had to date about our human rights obligations. I am really sorry if Mr Mundell thinks that we are wasting Parliament's time by talking about how to deal with a further public health emergency. However, that is for him, not me, to reflect on. One of the biggest obligations that the Government and the Parliament have is to protect our people, and that is what the Government is attempting to do with the bill. If Mr Mundell does not think that Parliament should do that, he is more than welcome to speak about that in Parliament. However, if that is the Scottish Conservatives' point, that is deeply disappointing. We all have an obligation to work out how we, as a country, can best deal with a public health emergency. If Mr Mundell thinks that that is a waste of parliamentary time, that is up to him.

**Oliver Mundell:** I will leave it there. Sadly, the Scottish Government is more interested in hoarding powers than in using them to help young people. We see that again with the bill.

**The Convener:** I say to the cabinet secretary that she was the one who launched into Boris Johnson a few minutes ago. Perhaps we all need to rise to the occasion. That is a comment that can be made of all of us.

**Shirley-Anne Somerville:** I was just trying to bring things to life a little with an example of how we can have differences.



**The Convener:** It was a very bad example, and I am afraid that it was very poor judgment on your part to say that.

**Bob Doris:** Perhaps we can decide that in private when we discuss the evidence rather than your own personal views, convener.

**The Convener:** I turn to Stephanie Callaghan.

**Oliver Mundell:** [*Inaudible.*—in private.

**The Convener:** I am not aware that I, as the convener, am not permitted to express my own views. If someone objects to that, they can talk to me later.

**Bob Doris:** I hope that we will discuss that later, convener.

**The Convener:** I turn to Stephanie Callaghan for the final question.

**Stephanie Callaghan:** I have a couple of questions. How does the Scottish Government's proposed approach compare with what is happening elsewhere in the UK and in other countries?

**Shirley-Anne Somerville:** As has been demonstrated during the coronavirus pandemic, the different Parliaments have reacted in different ways. I know that the English and Welsh approaches are different from the direction that Scotland is taking. There is a difference of opinion, and that has happened at different stages of the pandemic. One of the lessons learned is that sometimes we will learn different lessons from the pandemic.

**Stephanie Callaghan:** I have a wee question that came from the Children and Young People's Commissioner Scotland and a member of the Scottish Youth Parliament about involving young people. How can we ensure that involvement is not just having an individual young person sitting at the table who gets to put their voice across a couple of times, but means really involving young people and enabling them to influence the decisions that are being made? How does that play into the legislation?

I am also interested in representation for young people with additional support needs who might not find it as easy to express their views. We have looked at the childcare hubs that were set up, which were not about education but were for looking after the children of key workers. Those hubs later incorporated some young people with additional support needs, too. How do we ensure that we are looking out for those young people and prioritising and protecting their needs?

**Shirley-Anne Somerville:** On the points about additional support needs, one of the important aspects of the bill is ensuring educational continuity, rather than having blanket closures.

One of the reasons for that is our recognition that young people will be impacted differently, although they are all impacted. The caveat around those with additional support needs is a prime example of the importance of recognising that.

Involving young people in decision making in an integral way is key. We are keen to do that within educational policy as a whole. We are also cognisant that we must do that correctly. I pay tribute to the individuals who have taken part in the coronavirus education recovery group and the national qualifications 2021-22 group. It is very challenging for one young person to come into a committee surrounded by education professionals—that is a challenging environment. We need to bear in mind that, although young people should be at the table in such discussions, that needs to be supported and facilitated in a way that makes a genuine difference.

In those formal structures, we must ensure that, as we begin to develop policy, young people are in there right from the start of the process. We are working with young people on that to ensure that they feel that we are doing that in the most effective way, rather than the Government coming up with the way to do that.

**The Convener:** That brings us to the end of the public part of today's meeting. I thank the cabinet secretary and her officials for giving us their time today.

10:58

*Meeting continued in private until 12:05.*



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

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---

