OFFICIAL REPORT
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Education, Children and Young People Committee

Wednesday 27 October 2021

Session 6

The Scottish Parliament
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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

6th Meeting 2021, 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:

Jamie Hepburn (Minister for Higher Education and Further Education, Youth Employment and Training)
John Swinney (Deputy First Minister and Cabinet Secretary for Covid)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

Committee Room 1

Scottish Parliament

Education, Children and Young People Committee

Wednesday 27 October 2021

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Stephen Kerr): Good morning, and welcome to the sixth meeting in 2021 of the Education, Children and Young People Committee. The first item on our agenda is a decision on taking business in private. Are members content to take agenda item 11 in private?

Members *indicated agreement.*

Subordinate Legislation

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc) Regulations 2021 [Draft]

09:30

The Convener: The second item on the agenda is evidence from the Deputy First Minister and Cabinet Secretary for Covid Recovery, John Swinney MSP, and his officials on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc) Regulations 2021. I welcome the Deputy First Minister to the committee. He is accompanied by Paul Beaton, who is the legislation and contributions unit head in the Scottish Government, and Barry McCaffrey, who is a lawyer in the Scottish Government's legal directorate. Good morning, all.

I invite Mr Swinney to speak to the draft instrument.

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney): Thank you very much, convener. I am grateful for the opportunity to discuss the affirmative instrument with the committee.

As some committee members will remember, the inclusion of the waiver in the redress scheme was the subject of extensive, detailed and, on occasions, difficult debate in committee and in the chamber last year. It was right that, before Parliament passed the bill, that critical element of the redress scheme was debated with such rigour. The act, as passed, requires there to be a waiver, which is sent to every applicant to the redress scheme when they are offered a payment. The question that the waiver regulations address is the form that the mandatory waiver should take.

We know that we need to provide transparency and consistency—indeed, those are touchstones of the scheme as a whole—and we believe that the best way to do that is to specify the form of the waiver, so that it is the same for all survivors, rather than risk individual negotiations taking place, which would add time but little, if any, benefit for survivors.

As was debated throughout the passage of the bill, the waiver is an essential part of securing fair and meaningful financial contributions from organisations. Section 46 of the act provides that an applicant who wants to accept an offer of a redress payment must sign and return a waiver. In doing so, they will be agreeing to abandon any civil proceedings that are relevant to their abuse in

care and to waive any right to bring such proceedings.

The importance of survivors being able to make informed choices about their applications was emphasised and accepted on all sides of the chamber. That is why both the regulations and the act itself clearly set out the steps that will be taken to ensure that survivors are given information about a redress offer and the effects of signing the waiver. That is further reinforced in section 9 of the act, which places a duty on the Scottish ministers to use their "best endeavours" to ensure that redress applicants can make "informed choices". That is done primarily through the provision of a "summary of options", which will ensure transparency about applicants' rights at each stage of the process.

Crucially, the regulations reinforce the rights of survivors that are enshrined in the act, including the right to access independent legal advice to ensure that their decision is fully informed. At every juncture of the application process, support will be made available to survivors and, from the outset, we will strongly encourage that legal advice be taken. The act ensures that such advice is funded by the Government so that cost is not a factor. Further detailed guidance that reinforces the message to obtain legal advice will be available to the applicant.

We have all been seeking to act in the best interests of survivors by doing what can be done now and in this generation to acknowledge the wrongs of the past and to right those that we can. Redress will inevitably be a difficult process for many survivors. Throughout the passage of the bill and, more recently, in making arrangements for the launch of the scheme, all sides have sought arrangements that are as transparent and as consistent as the varied circumstances of survivors allow.

This is one of a number of Scottish statutory instruments that are before the committee today, each of which sets out the necessary detail of how the scheme will work, in advance of its launch in December. I seek the committee's support for the instrument, to ensure that the waiver, as required by the act, is delivered in a way that meets the aims that we all share of achieving transparency and consistency for the survivors who apply. The waiver regulations achieve that, and in a way that will avoid additional cost or delays in finalising payments.

The Convener: Thank you, Deputy First Minister. Do members have any questions or comments on the draft regulations?

Oliver Mundell (Dumfriesshire) (Con): I was on the committee that considered the bill, and there is no doubt that the situation is extremely challenging and complex. Is there an update on the criteria for determining what is a "fair and meaningful" contribution to the waiver scheme?

John Swinney: We are still discussing the issue, but the information will be published when we launch the scheme. Obviously, the principles are material to the discussions that are going on with providers, and they are also the subject of discussion with survivors organisations. We are making good progress in that regard.

If I recall correctly, during the passage of the bill, some of the drafts were shared with the committee. They are the subject of further discussion and refinement that will enable us to secure contributions and, crucially, the confidence of survivors. Mr Mundell will recall that, in the evidence that we all considered in the previous session of Parliament, the point was strongly made that it is the desire of survivors that there is an acknowledgement of abuse by providers. That is crucial and is at the heart of the points that Mr Mundell has raised.

Oliver Mundell: Thank you. Would you be open to sharing the advanced drafts with the committee, to allow us to see where the discussions have got to? As you point out, the contributions are key to confidence in the scheme. It is difficult to find the right word to describe the arrangement, but one of the trade-offs in going down the redress route is that people should have confidence that the contributions are meaningful.

John Swinney: I am certainly happy to consider that point, and I can write to the committee about it afterwards. The only caveat is that we are going through some fairly sensitive negotiations about provider contributions, and I want to be careful not to do anything to disrupt that process. However, it might be possible for me to share the advanced drafts privately with the committee, which I am happy to consider.

Oliver Mundell: I have a question on a separate point, which I have raised previously. I would like to understand what would happen if a survivor initially signed the waiver and received a payment through the redress scheme but additional substantive evidence then came to light that would have changed the level of award through the scheme or given the individual the chance to go through the civil process. If they signed the waiver, would that be the end of it, or are there provisions that would allow the situation to be looked at again?

John Swinney: In those circumstances, once an individual signs the waiver, they fundamentally give up their right to pursue civil proceedings. That is why we have to ensure that survivors are equipped with all the necessary advice to make an informed decision, at that critical point, of whether

to go down the civil proceedings route or the redress route.

During the passage of the bill, I made it clear to Parliament that redress is not for everybody. It might provide a satisfactory route for some survivors, but it will not be correct for all survivors. Some survivors might be better advised—hence the necessity for advice—to pursue a civil proceedings route. However, if an individual signed the waiver and received a payment but evidence subsequently came to light that strengthened their position, they could come back to Redress Scotland for a further consideration of the new evidence, which might result in an enhanced redress payment. It would not open up the ability to go down the civil proceedings route, but it would open up the possibility of revisiting the original redress determination that had been made. That is provided for in statute.

Oliver Mundell: That is helpful. It will not fully satisfy everyone, but it is a step forward from where discussions were previously.

On the issue of seeking an enhanced payment, will those individuals who found themselves in that situation be entitled to the same advice and support as anyone else who accesses the scheme? Will they be able to seek some basic legal advice?

John Swinney: The direct answer to your question is yes, but the one part that I am chewing over in my mind concerns the legal advice that is available. It is not available to support civil proceedings. However, obviously, having signed a waiver, a survivor is then in the redress area, if I may call it that; therefore, they would have access to that legal advice. There is no need for me to insert a caveat there.

Oliver Mundell: Thank you.

The Convener: Thank you for the clarity of that explanation. Can you describe further the assistance that will be available to applicants? You mentioned everyone having clarity around their options. What support will be available to people to enable them to make an informed decision about signing the waiver?

John Swinney: There are a number of aspects to that issue. First, the design of the redress scheme is determined to be survivor focused, so the individual must be at the centre of the process and at the centre of the receipt of advice. Accordingly, from the moment that they contact the redress scheme, I would want them to be engaging with a scheme that is treating them with fairness, dignity and compassion, as statute requires, at every encounter that they have with the scheme. That will enable the survivor to build their confidence that there is a scheme that is working with them to deliver a satisfactory outcome, whatever that outcome happens to be. That is a contextual point that I think is really important. I think that we have acquired a significant amount of experience through the advance payment scheme, with close to 700 cases now having been determined under that scheme and in that context.

The second point is that individuals will be provided with person-centred support and advice from trained and experienced staff to help them in the making of the application. That involves gathering evidence and helping them to gather that evidence, because, in some cases, we might be going back over many years and be dealing with records that might not be as pristine as we would like them to be. Basically, there will be assistance to get an individual ready to make an application under the scheme. There will then be a separate channel of independent legal advice, which will assist the individual in coming to their own conclusion about whether, on the basis of the evidence that has been gathered and the position that they find themselves in, the redress scheme is the right course of action to take or whether there is a case for considering civil proceedings. Once an application is made, it will go to Redress Scotland for independent determination and then, once the determination is made, support will be provided to the individual to address any issues that arise subsequently.

It is a person-centred approach that complements some of the other services that are available through, for example, Future Pathways, which provides much more generic support to individuals who have been the victims of historical abuse, to assist them in trying to overcome some of the damage that has been done to their lives.

The Convener: From the evidence that has been given to the committee just for this meeting, it is clear that people have been really damaged. Will the independent legal advice be handled in such a way as to meet the needs of the individual who is getting that advice?

09:45

John Swinney: The advice has to be absolutely focused on the needs of the individual, but, like the rest of the advice, it has to be delivered in the context of ensuring that people who have suffered enormously are dealt with in an atmosphere of fairness, dignity and compassion, as the law requires.

The Convener: Thank you for that.

Ross Greer (West Scotland) (Green): I want to pick up on Oliver Mundell's line of questioning about circumstances that might affect the status of a waiver. During the bill process, we amended the provisions to give the Scottish ministers the power

to remove an organisation from the contributors list, most obviously if the organisation does not make the contribution that is due. What would happen in the event that an applicant had already signed a waiver in respect of an organisation that was subsequently removed from the list because it had not made a fair and meaningful contribution? Would there be an opportunity to annul waivers in those circumstances, or would they still stand because they had been signed before the decision was made to remove the organisation from the list?

John Swinney: Once the waiver is signed, it cannot be unsigned, which is why it is crucial that an individual embarks on the waiver route only if they are confident that it is the right one for them to take. In those circumstances, the waiver would stand. However, if an individual has, in good faith, taken advice and signed the waiver but a provider has not contributed, the survivor should in no way suffer any further loss as a consequence. In those circumstances, any payment that was to be made to the survivor would still be made.

Ross Greer: I presume that, if an organisation had been removed from the list because it had not contributed, the payment that was made to the survivor would come from Scottish Government funds.

John Swinney: Yes, it would. The Government acts as a guarantor of payments under the scheme, and it will also make a substantial financial contribution to the scheme—as was envisaged. It would be a matter of public record and communication if a contributor were to be removed from the list because of a failure to comply with the obligations. I cannot recall the obligations in relation to parliamentary notification, but, if a contributor were to be removed from the list, the Parliament would have to be advised of that step.

Ross Greer: On a slightly separate but related note, you will recall that I lodged an amendment to the bill at stage 3 to require the Government to report on the operation of the waiver after the first 18 months of the functioning of the scheme. What arrangements will be in place from December to ensure that that review is taking place from day 1 and that no important information is missed? If the review finds deficiencies in relation to the waiver, will it be possible to address those retrospectively? If, in 18 months to two years from now, the Parliament agreed that there was a need to amend the scheme in relation to the waiver, could that amendment be applied retrospectively to those waivers that were signed during the initial period of the scheme's operation?

John Swinney: The answer to your first question is an emphatic yes. From day 1, there will be arrangements to ensure that the detailed experience of the scheme can be considered as part of the 18-month review. I give you an absolute assurance that that will be the case. In my view, all the preparatory work that we are undertaking now must be the subject of scrutiny, and I stand ready to engage in any aspects of those questions with the committee or with the Parliament as a whole.

The second part of your question goes into speculation and what ifs. If the committee will forgive me, I will not go there but will concentrate my efforts on making sure that we do not find ourselves in that situation. Obviously, the Parliament will have to consider the terms of the 18-month review and determine whether any further action is required.

Ross Greer: Thank you. That is entirely reasonable. It is no secret that I was sceptical about the waiver provision in the bill the first time round, but I am content with the regulations that are in front of us today.

Willie Rennie (North East Fife) (LD): I will return to the issue of the fair and meaningful contribution and, in particular, to the role of insurers in that. There was concern before about the impact on a charitable organisation's finances if it made a contribution but its insurer did not support it. Do we have a clearer understanding of the attitude of the insurance industry to that?

John Swinney: Mr Rennie is absolutely correct that there is an interplay between the financial sustainability of providers and the application of fair and meaningful contributions, and we amended the bill during its passage in order to recognise the fundamental vulnerability that Mr Rennie raises. Organisations could be rendered financially unsustainable as a consequence of the scheme, because of payments that are required in the 2020s for events that could have taken place in the 1970s. That issue has been reconciled by the terms of the bill and the application of the "fair and meaningful" principles. However, in some circumstances, the role of insurers will lie behind that. There is no generic stance for insurance companies; it depends on the arrangements and dialogue between providers and insurance companies. The Government's dialogue is with providers, so it is for providers to make judgments based on dialogue with their insurers about the nature of their financial relationship. However, part of our judgment on what we consider fair and meaningful contributions will be based on that dialogue with providers about their financial sustainability.

Willie Rennie: I suspect that it is subject to negotiations, so you will probably not want to answer but, in the interests of giving confidence to providers or charitable organisations, if an insurance company was not contributing to payments and that threatened the viability of an

otherwise good organisation, would your system be able to flex to reflect the fact that the insurer was not paying?

John Swinney: The best way to explain that is to reinforce what I said in Parliament during the passage of the bill; I do not want organisations that are making substantial contributions to the delivery of good purposes in our society today to be rendered unsustainable because of past failures, and that is material to the discussions that we undertake. However, equally, we believe that providers—and, by their actions, their insurance companies—need to engage substantively in the discussions that my officials are taking forward to secure fair and meaningful contributions.

Fergus Ewing (Inverness and Nairn) (SNP): Good morning to the Deputy First Minister and his officials. Obviously, all of us in Parliament and throughout the country wish for survivors of this appalling abuse to receive redress payments, although we know that the payments will in no way compensate for the ghastliness of what they have been through.

I want to ask the Deputy First Minister about the standard of proof that is required in the process, given that the task is an inherently difficult one. As I understand it, part of the reason for the legislation was that the requirements for taking a case through the civil courts, where it is necessary to prove the case on the balance of probabilities and with corroborated evidence, were too high a threshold, and that underlay Parliament's decision, which we all support, to provide another route—namely, the redress payments scheme.

Section 18 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 says that the abuse

"must have occurred before 1 December 2004."

That means that any applicant will be making an application in respect of events—horrific though they were—that occurred more than 17 years ago. How will the Deputy First Minister balance the imperative of ensuring that the purpose of the act is achieved by those who have suffered from abuse receiving appropriate levels of payment under the law that Parliament has agreed to with the real risk that applications of a fraudulent nature could be made? Can he give the committee, either now or subsequently, information on what measures will be put in place by the Scottish Government and by those who, under part 4 of the act, have responsibility for determination of applications for preventing fraud, and therefore ensuring that public money and money from others goes to the intended purpose and not to any who might seek to abuse the scheme?

John Swinney: In his questions, Mr Ewing has raised a number of substantial issues. From his involvement in consideration of many of these matters in his former capacity as a minister, he will recognise the complexity and the challenge of many of the points that are involved.

My first point is that, in relation to any case, the standard of proof is a material consideration in a survivor's judgment as to whether to pursue the redress route or the civil route. Should legal advice suggest that there is a sufficiency of evidence to sustain a civil case, an individual should, of course, be able to pursue that approach, and there are examples in which individuals have successfully taken that route. As Mr Ewing will know from his long experience, there is no civil route available to pre-1964 survivors, so the redress route is the only route that is available to them.

The standard of proof is a very material consideration in individuals' judgment as to whether they should take the redress route or the civil approach. The standard of proof that will be required in the redress scheme will be lower than that required in a civil case. The best efforts of the redress scheme will be deployed to support individuals with the gathering of evidence to enable them to take forward their applications. Relevant material could be available in records, there could be corroboration and there could be other evidence that could be brought to bear in that respect.

As a society, our understanding of such questions and of the likelihood of such events having taken place is substantively enhanced by the case study findings that are being published periodically by the child abuse inquiry that is led by Lady Smith. Lady Smith is undertaking the task that ministers asked her to undertake—that is, to look at the experiences of survivors, to consider evidence and to provide authoritative findings in the given circumstances. There is incredible power in the findings that Lady Smith has already published from the inquiry including the six case studies. There is incredible power in a very senior member of the Scottish judiciary concluding that she believes that a certain sequence of events happened, as she does in a number of reports. That gives an authority and a context that will help to provide the evidential base from which individuals can pursue the applications that they will put forward. Strenuous efforts will be made to support individuals to gather the evidence and it will have contextual reinforcement from the findings of Lady Smith's inquiry, but it will not require to be at the standard of proof that would be required in civil proceedings.

10:00

Mr Ewing also asked a legitimate question about ensuring that the scheme is being properly applied

and that cases justify the payments that are being made. We will have protections in place and will validate the identities of individuals and the likelihood of circumstances where we can, to assist in strengthening the case and, as a flip side to the issue, to protect the public purse and ensure that the payments that are being made to the individuals concerned are wholly valid. Obviously, should any concerns arise that a payment has been made inappropriately, steps will be available to the redress scheme to seek the normal remedies for that.

Fergus Ewing: I thank the Deputy First Minister for that detailed answer in relation to the standard of proof, which of necessity has to be lower than in the civil courts, and the steps to be taken to protect the public purse. I am grateful for the assurances that have been provided. It is an inherently sensitive, delicate and difficult task.

The Convener: No other member wishes to raise any questions. Does the Deputy First Minister wish to say anything further on the regulations that has not previously been raised?

John Swinney: No, I am happy with the points that have been aired. I am grateful to members.

The Convener: In that case, under item 3, I invite the Deputy First Minister to move motion S6M-01080.

Motion moved,

That the Education, Children and Young People Committee recommends that the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021 be approved.—[*John Swinney*]

Motion agreed to.

The Convener: The committee must now produce its report on the draft regulations. Are members content to delegate responsibility to the deputy convener and me to agree that report on behalf of the committee?

Members *indicated agreement.*

Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021 [Draft]

10:04

The Convener: The fourth item on the agenda is evidence from the Deputy First Minister and his officials on the draft Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021. The Deputy First Minister is again supported by Paul Beaton, who is the head of the legislation and contributions unit in the Scottish Government, and Barry McCaffrey, who is a lawyer in the Scottish Government legal directorate. I invite Mr Swinney to speak to the draft regulations.

John Swinney: Thank you, again, convener.

Section 23 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 enables regulations to be made regarding certain circumstances in which a potential applicant would not be eligible to apply to the redress scheme. It was envisaged that that power would be exercised where exclusions were considered necessary and consistent with the underlying purpose of the scheme.

In keeping with that, we indicated throughout the passage of the act, including within the policy memorandum and our response to the stage 1 report, that regulations may be made in relation to short-term respite placements. The draft regulations before the committee are such regulations. Specifically, they provide that an application for redress may not be made

"by or in respect of a person to the extent that it relates to abuse that occurred when that person was resident in a relevant care setting"

to provide "short-term respite or holiday care" where that care was arranged by

"a parent or guardian and another person."

The abuse of children in all circumstances and settings is wrong and harmful. However, the purpose of the scheme has been to respond to survivors who, when they were placed in care, lost the oversight and protection of their parents and families. As a result, they were often isolated and had limited or no contact with their families. By contrast, respite or holiday care was intended to be and always was short term, and the parental rights and responsibilities were not affected. That has been reflected on by some survivors whose parents had their rights removed, who have referred to themselves as "children of the state", the state being charged with their care and protection when they were stripped of access to their families. Children who were resident on a short-term respite or holiday basis were not in that position.

I seek the committee's support for the draft regulations to ensure that the scheme can be launched as soon as possible. Having the regulations in place will also allow us to set out clearly the exceptions to eligibility in advance of the scheme opening, which will allow for transparency and ensure that survivors are well informed.

Oliver Mundell: I listened carefully to what you said, Deputy First Minister. Because of the passage of time, it will not be immediately obvious how some short-term placements came about. Through my constituency work, I am aware of

families that are really struggling, and it is often social workers, healthcare workers or other Government-funded professionals who step in and suggest that they should think about respite to avoid going down a different route and as a way of giving the family a chance to reset.

I wonder about the detail of some of the cases. I cannot imagine that accessing short-term placements was necessarily presented as a choice to all parents. What would happen in such circumstances? How would you weigh that up?

John Swinney: Mr Mundell raises a legitimate point. The definition in the draft regulations of the cases in question is very narrow. We are trying to distinguish circumstances in which the state's actions fundamentally altered contact with the family and the family's involvement. There is a significant difference between respite provision and some form of order that removes a child from a family setting. I do not think that the regulations would be relevant in circumstances in which a separate order had required a child's removal.

At this stage and in the current context—this is absolutely consistent with what we have signed up to in terms of the independent care review in the context of the promise—the state wants to avoid as far as possible the separation of children from their families. Perhaps if we had learned in previous eras some of the lessons that we are now learning from the care review, we would have avoided many of the issues that we are having to confront in the redress scheme.

The regulations are focused on the concept of short-term respite and holiday care where the relationship with the family is not fundamentally altered by the actions of the state. I hope that that provides a distinction that reassures Mr Mundell.

Oliver Mundell: I recognise the policy reasons for the Government going down that route, but I still think that there will be a number of cases where orders are not progressed because families had taken advantage of short-term placements. Sometimes those were repeat placements, and individuals could have been subject to multiple, repeated incidents. It is a wee bit complicated in places, but I am happy to accept the explanation that has been given.

However, my real question is why you went down the exclusionary route and did not opt for a model that would allow each individual case to be considered. It is legitimate to be clear about the limits of the scheme and what the expectations are, but my point is about creating a space for people with exceptional circumstances, such as multiple short-term placements with the same abuser over a number of years. Such placements were probably encouraged by the state. Why would there not be provision for those people to have their individual circumstances looked at? Why did you go down the route of exclusion?

John Swinney: In a sense, Mr Mundell provides the answer to his own question. We feel it necessary to clearly establish the principles and purpose of the scheme. In essence, they are to address abuse that has taken place in care settings where the state had oversight of the care of the child—that is, the care of the child was not in the family context.

The issue of short-term respite and holiday care is in marginal territory. The example that Mr Mundell cites, of an individual who was placed repeatedly in a short-term respite environment, is a further development of that marginal territory. In those circumstances, Redress Scotland would be able to consider whether there was a characteristic of that exceptional nature that merited consideration. However, I feel that it is necessary for us to establish at the outset of the scheme clear expectations of its parameters, to enable clarity to be available to people from the start of the scheme.

Oliver Mundell: I will leave it there, convener. I appreciate the further detail.

The Convener: Thank you. I believe that Fergus Ewing wanted to speak.

Fergus Ewing: Thank you, convener, but I did not indicate that I wish to ask a question at this point.

10:15

The Convener: Deputy First Minister, is there anything that you would like to say on the instrument that has not previously been raised?

John Swinney: No, convener. That is all from me.

The Convener: In that case, we move to our next agenda item, and I ask the Deputy First Minister to move motion S6M-01400.

Motion moved,

That the Education, Children and Young People Committee recommends that the Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021 be approved.—[*John Swinney*]

Motion agreed to.

The Convener: As with the previous draft instrument, the committee must now produce a report in respect of our consideration of the instrument. Is the committee content to delegate responsibility to me and the deputy convener to agree the report on behalf of the committee?

Members *indicated agreement.*

The Convener: I thank the Deputy First Minister and his officials for their attendance today. We will have a two-minute suspension to allow them to leave.

10:16

Meeting suspended.

10:18

On resuming—

Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) Regulations 2021 (SSI 2021/312)

The Convener: The sixth item of business is consideration of another piece of subordinate legislation. These regulations are being considered under the negative procedure. Do members have any comments on the instrument?

As there are no comments, is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021 (SSI 2021/313)

The Convener: The seventh item on our agenda is consideration of another piece of subordinate legislation that is being considered under the negative procedure. Do members have any comments on the instrument?

Oliver Mundell: It is important to note, as a point of fact, that there are survivors who continue to have concerns in this area. I do not propose that the committee make any further comment in that regard, but it is important to put that on the record.

The Convener: There have been specific representations to the committee in relation to the cost of appearance work, which is when a solicitor appears before the panel in person. There is a concern that the cap that is currently in place on legal costs would not cover that additional expense and, therefore, would not cover the quality of legal work as defined by the Law Society of Scotland. That is subject to further and on-going discussions.

Having said all that, is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No 2) Regulations 2021 (SSI 2021/333)

The Convener: The eighth item on the agenda is the final piece of subordinate legislation that we are considering today. The regulations are being considered under the negative procedure.

As members have no comments on the instrument, is the committee agreed that it does not wish to make any recommendations in relation to it?

Members *indicated agreement.*

The Convener: There will now be a brief suspension to allow the witnesses for the next agenda item to take their seats.

10:21

Meeting suspended.

10:22

On resuming—

Advanced Research and Invention Agency Bill

The Convener: Under the ninth item on our agenda, the committee will take evidence from the Minister for Higher Education and Further Education, Youth Employment and Training, Jamie Hepburn, and his officials on the legislative consent memorandum on the Advanced Research and Invention Agency Bill. I welcome the minister to the committee. He is accompanied by Roddy MacDonald, who is the head of the higher education and science division, and Magdalene Boyd, who is a solicitor, both with the Scottish Government. Mr MacDonald and Ms Boyd are joining us virtually. Good morning to you all.

Minister, would you like to make a brief opening statement?

The Minister for Higher Education and Further Education, Youth Employment and Training (Jamie Hepburn): Convener, it might be a while since you took up the role but, as this is my first time at the committee since you did so, I congratulate you on assuming the convenership of the committee. I look forward to working with the committee and you in that role.

Thank you for the opportunity to speak to you about the Scottish Government's perspective on the Advanced Research and Invention Agency Bill. As I stated in my letter to the committee, the Scottish Government is supportive of the overall policy intent of the ARIA bill—namely, to create a new agency with independence from Government influence and with minimal bureaucracy in order to give it maximum freedom to achieve its aim of supporting visionary high-risk and high-pay-off research and development. However, the Scottish Government has had some fundamental issues with the bill that creates ARIA. The UK Government failed to consult fully on the bill before its introduction in the House of Commons. Since being given sight of the bill and the related policy statement, the Scottish Government's ask has been consistent. We seek involvement in the agency through the chief scientific adviser for Scotland and removal of the reservation that is currently in the bill.

As you know, reservation is a significant step that the Scottish Government will recommend to the Scottish Parliament in only the most compelling circumstances. I believe that the Parliament would expect nothing less. The key reason that the UK Government has given for including a reservation in the bill has been that it is to create distance between ARIA and the Government. The Scottish Government has always recognised the need for that and, as I have set out, supports that. However, reservation has always seemed to be a heavy-handed and unequal approach to creating distance from the Government.

The committee will have seen the LCM in the name of the Cabinet Secretary for Education and Skills, which laid that out as our position. I had intended to attend this meeting to reiterate our position. However, I am very glad to announce that the UK Government has finally recognised that reserving ARIA is an unnecessary step.

Two days ago, I agreed in principle with my UK counterpart, George Freeman, a memorandum of understanding and an amendment to remove the reservation from the ARIA bill. The memorandum of understanding will lay out very clearly the principle that ARIA will operate independently of ministerial direction from any Government. It will also contain arrangements for consultation of the chief scientific advisor for Scotland on ARIA as an alternative to board membership, which the Scottish Government has been willing to compromise on to come to a resolution.

George Freeman wrote to me yesterday afternoon, following our conversation, to agree such an approach, and I responded to him this morning. In the light of that, I anticipate that, subject to Cabinet agreement, the Scottish Government will seek to lodge a supplementary LCM recommending consent to the ARIA bill as soon as the UK Government has tabled an amendment in the House of Lords to remove the reservation from the bill. We will sign the memorandum of understanding as soon as possible once it is confirmed that the other devolved Administrations are also content.

I trust that the committee will agree that that is a very positive development.

The Convener: Indeed. I thank you for your statement. Both you and minister Freeman are to be congratulated and thanked for the way in which you have resolved the Scottish Government's concerns.

Having said that, I wonder whether colleagues have any further questions to ask of the minister, given the very comprehensive, although short, statement that he made to the committee.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Given that the minister is here, it would be a shame not to ask one or two questions, to make full use of his time.

I note from the meeting papers that the Scottish Government's concerns included the UK secretary's power to appoint the chair and first chief executive officer for ARIA and the possibility of other appointments by the UK Government at

future dates that would change the dynamic within ARIA. What is the current situation with that? Have concerns been fully resolved around ensuring that there is no political interference in the independence of the organisation?

Jamie Hepburn: I thank my friend Bob Doris for making best use of my time, as he always seeks to do.

Those were concerns that we had. They were on the basis of the broad thrust of the concerns that we laid out in relation to the potential unequal balance that could exist between the two Administrations. As things had been laid out, there was always the potential for a change of approach from the UK Government. The UK Government has certainly been consistent in talking about the independence of ARIA; I take that at face value and do not doubt the good faith with which that has been laid out. However, as things stood, there was the potential for that to change with different Administrations.

Although ARIA will be a creature of statute and could be subject to alteration in due course, we will now have in place a memorandum of understanding that lays out the clear independence of operation of the organisation—not just from the Scottish Government and the other devolved Administrations, which seemed to be the concern of the UK Government, but from the UK Government. The memorandum of understanding takes account of those particular concerns.

Bob Doris: I thank the minister for that response. Those are helpful reassurances. I have no further questions.

The Convener: As nobody else wants to make good use of the minister's time with the committee today and we are all content, it remains for me to thank the minister for his very brief initial appearance before the committee. I thank him and his officials for their time.

The public part of today's meeting is now at an end. I ask members attending remotely to reconvene in five minutes on Microsoft Teams in order to allow for a comfort break. We will then consider our final two agenda items in private.

10:29

Meeting continued in private until 11:19.

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