



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Education, Children and Young People Committee

Wednesday 7 January 2026

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 7 January 2026

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

1st Meeting 2026, Session 6

CONVENER

*Douglas Ross (Highlands and Islands) (Con)

DEPUTY CONVENER

*Jackie Dunbar (Aberdeen Donside) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Miles Briggs (Lothian) (Con)
*Ross Greer (West Scotland) (Green)
*Bill Kidd (Glasgow Anniesland) (SNP)
*John Mason (Glasgow Shettleston) (Ind)
*Paul McLennan (East Lothian) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Judith Brown (Scottish Government)
Louisa Brown (Scottish Government)
Natalie Don-Innes (Minister for Children, Young People and The Promise)
Jenny Gilruth (Cabinet Secretary for Education and Skills)
Claire Montgomery (Scottish Government)
Jaxon Parish (Scottish Government)
Rachael Wilson (Scottish Government)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 7 January 2026

[The Convener opened the meeting at 09:30]

Subordinate Legislation

Education (Scotland) Act 2025 (Consequential Provisions) Regulations 2026 [Draft]

Official Statistics (Scotland) Amendment Order 2026 [Draft]

The Convener (Douglas Ross): Good morning, and welcome to the first meeting in 2026 of the Education, Children and Young People Committee.

The first item on our agenda is consideration of subordinate legislation that is subject to the affirmative procedure. The committee will take evidence from the Cabinet Secretary for Education and Skills and her Scottish Government officials on two draft instruments, and the cabinet secretary will then move the motions to approve the instruments.

I welcome Jenny Gilruth, the Cabinet Secretary for Education and Skills, and her officials Jaxon Parish, who works on Qualifications Scotland policy in the education reform directorate, and Judith Brown, who is a solicitor in the legal directorate.

I invite the cabinet secretary to make an opening statement on the instruments.

The Cabinet Secretary for Education and Skills (Jenny Gilruth): Happy new year to you, convener, and to committee members.

Thank you for inviting me to discuss the draft Official Statistics (Scotland) Amendment Order 2026 and the draft Education (Scotland) Act 2025 (Consequential Provisions) Regulations 2026. The two instruments are being considered together as they are both, in effect, required as a consequence of implementing the Education (Scotland) Act 2025. The instruments, alongside a wider package of secondary legislation, will ensure that Qualifications Scotland and the chief inspector for education in Scotland can take on the relevant functions, duties and responsibilities of the Scottish Qualifications Authority and of His Majesty's Inspectorate of Education.

The Official Statistics (Scotland) Amendment Order 2026, if approved, will make changes to the Official Statistics (Scotland) Order 2008. The 2008 order provides that

"Wholly Scottish devolved statistics produced ... by the persons listed in the Schedule are specified as official statistics for the purposes of ... the Statistics and Registration Service Act 2007."

Listed persons are bound by the code of practice for official statistics and how they are published. Put simply, in the schedule to the 2008 order, the instrument will replace the SQA with Qualifications Scotland as a producer of official statistics.

The Education (Scotland) Act 2025 (Consequential Provisions) Regulations 2026, if approved, will update the Budget (Scotland) Act 2025, as well as provisions in legislation that were inserted by the recent Scottish Languages Act 2025. For the budget act updates, the instrument will add references to Qualifications Scotland and to the office of His Majesty's chief inspector of education in Scotland as regards the education and skills portfolio. The Scottish statutory instrument will ensure that they can be funded by the Scottish ministers during this budget year. For the provisions made in the Scottish Languages Act 2025, the SSI will replace all references to the SQA and to HM inspector of schools with references to Qualifications Scotland and to the chief inspector, ensuring that the recently agreed provisions in the Scottish Languages Act 2025 will work, or continue working, as originally intended.

I commend the order to the committee and am happy to answer any questions.

Willie Rennie (North East Fife) (LD): The cabinet secretary will recall that, during the bill process, we discussed changes to quality assurance, as well as the accreditation function and the fact that separate reviews of both were under way. Will you update us on how those reviews are progressing?

Jenny Gilruth: In relation to accreditation, as far as I am aware, that is being taken forward by Qualifications Scotland. I met Shirley Rogers recently, towards the end of last year, and will meet her again next week along with Nick Page, the new chief executive. I would be more than happy to write to the committee with more detail in relation to accreditation following my meeting with Shirley Rogers and Nick Page, because we discussed that issue at length with the committee during stage 2 amendments and in the chamber during stage 3.

Willie Rennie: What about the quality assurance aspects?

Jenny Gilruth: I understand that those are also being taken forward. Jaxon Parish might want to

speak about the work that officials have been supporting.

Jaxon Parish (Scottish Government): There has been work to develop what the national quality assurance review will cover; that is being done with colleagues at Qualifications Scotland. As per the legislation, we are looking to appoint an independent adviser to undertake that review; that must be done within three months of the provision coming into force, which will happen in the next month or so.

Willie Rennie: I will make the obvious point that a compromise was reached during the bill process, when we thought that a pragmatic and reasonable way to progress would be to have a review so that everything could be considered in the round. There was quite a lot of confusion about exactly what counted as accreditation and where the quality assurance functions would come in. Many of us took the strong view that, ultimately, everything should be accredited and should be in a separate body, and I hope that that will all be considered as part of the review. I have put that marker down to repeat the point from before.

Jenny Gilruth: Yes, that is very much the intention. We discussed that matter of accreditation with the committee, along with the fact that a number of qualifications—not least national qualifications that are often delivered in schools—are not accredited at present. I reassure Willie Rennie that that issue is being taken forward by Qualifications Scotland. However, I will raise those matters again with Shirley Rogers and Nick Page when I meet them in the coming days, and I commit to writing to the committee with further details following that meeting, to provide reassurance on those points. They were heard very clearly by me at the time and were a key component of the bill as it was passed.

The Convener: Since we are speaking about the SQA and your on-going discussions with it, where are you now, months and years on from the 2024 higher history exam results? Does that issue still concern you? In a sit-down interview with *The Herald*, the new chief executive, Nick Page, said that he still had concerns about those results. What is your position, as cabinet secretary, in relation to that cohort of students, their teachers and their parents and carers, who have concerns about those results?

Jenny Gilruth: Concerns were raised at the time in relation to the 2024 higher history qualification. I am mindful of the fact that we are now into 2026. There was consideration of the issue and an investigation was carried out by the SQA that was then peer reviewed independently by Qualifications Wales. The advice that I was provided with at the time was that no further action

could be taken and that the detail of the issue had been fully considered.

I am cognisant of the views of the new chief executive, which were published in *The Herald* last summer. I have discussed the issue with Mr Page, and we will continue to engage with the SQA to that end. However, to my mind, no further evidence on the issue has been put forward.

We discussed the issue at length, convener, and I think that you have led quite a lot of the interest in that, politically, which I recognise and have a level of respect for.

If there are other higher history teachers who have concerns, I put on the record that they should get in touch with Qualifications Scotland directly. I know that, on the back of the review that was carried out, Qualifications Scotland has undertaken a number of implementation events in relation to marking, setting the national standard and providing support to markers.

Again, I want to provide reassurance that I acknowledge that there needs to be constant dialogue with the profession. To my mind, one of the lessons that we should learn from qualifications reform is that we have to listen to the teaching profession better. It was always my experience, as a teacher and as an SQA marker, that there was a bit of a disconnect between the profession and the role of the SQA. That has to change in relation to Qualifications Scotland, and that work is being undertaken.

I recognise the committee's interest in the point that you have raised, and I will continue to engage with Qualifications Scotland's chief executive and chair on the substantive issues to ensure that there is a consistent approach and that we provide reassurance to children and young people and to parents and carers in relation to the national standards.

The Convener: You mentioned that you spoke to Mr Page after his interview. Was that to criticise him for speaking in that way, was it to ask for more information or was it to agree with him?

Jenny Gilruth: I think that we had a routine engagement to catch up on a number of different areas, including the points that Mr Rennie raised this morning in relation to accreditation. I do not recall the discussion taking place in the kind of forum that you suggest. It would not be usual for me to seek a meeting with the chief executive on the back of a press interview. We have regular catch-ups. We had a regular catch-up on those issues, and we discussed them in the round.

The Convener: I have raised the issue before, and I asked a question on it in the chamber. However, we have more opportunity for discussion in the committee when you bring forward pieces of

subordinate legislation. The issue in 2024 was, in my view, very significant, but then we had the scenario last year in which there were not just slight gains in higher history but results that went above where they were the year before. What did you think when you saw that?

When I spoke to Shirley Rogers and the new chief executive, just after he was appointed but before the results came out, they thought that we might get somewhere that was a halfway house between that low level in 2024 and the level in previous years. However, what happened was that students got results that were above what they had been before. There was a huge increase. That must have been concerning to you.

Jenny Gilruth: It is always difficult to make generalisations about cohorts. If you teach cohorts of young people, you see attainment fluctuate from year to year. The exam results depend on the class, the individual pupils and, ultimately, their performance on the day. It is difficult to have that read-across and to predict how a cohort will perform.

It is fair to say that, in this year's exam results, we saw a dramatic improvement in attainment in history and across the board. That is to be welcomed. If there were issues in relation to the subject qualification itself, the SQA would have considered that in relation to the pass mark. I would be more than happy to come back to the committee on that, but, from my memory—I do not have the detail in front of me today, because it is not directly relevant to the SSIs that we are discussing—I do not think that changes were made in relation to the overall pass mark last year. I will clarify that point with my officials after the committee meeting, but, to my mind, that would suggest that there were no issues.

Of course, I always meet the SQA in advance of the qualifications results day, and we spend a lot of time going through the results and looking at individual subjects. In 2025, we spent a bit of time going through the higher history course qualification results, for exactly the reasons that you mention, convener, and no concerns were raised by the SQA at that time in relation to the approaches that were taken.

We have seen an improvement in attainment, which is to be welcomed. I accept the points that you have made today, but all that I would say is that no information from the SQA has been shared on that issue. However, if higher history teachers or markers have any concerns, I am always happy to hear from them, and I would encourage them to engage directly with Qualifications Scotland.

The Convener: Page 4 of the Scottish Government policy note notes that Scottish ministers have stated that the regulations are

“compatible with the UNCRC requirements”.

In that case, why are your department and your Government still bringing forward legislation that is not compatible with the United Nations Convention on the Rights of the Child?

Jenny Gilruth: Forgive me, convener, but which legislation would that be?

The Convener: I am thinking of the Children (Care, Care Experience and Services Planning) (Scotland) Bill, which Natalie Don-Innes brought forward. I know that you recused yourself from discussion of the Promise, but you will be aware of discussions that have been held on the issue in Cabinet. One of the big issues that came out of our consideration of that piece of legislation was that stakeholder after stakeholder was concerned about the fact that the way in which the bill had been drafted by the education department—similarly to what other departments in the Scottish Government have done—meant that elements of it were not compatible with the UNCRC. Given that it is important for you to state that SSIs such as those before us are compatible, why is new legislation that your department and your Government are bringing forward not compatible?

Jenny Gilruth: You alluded to Cabinet conversations, convener, and I have to again put on the record, as you have already noted, the fact that I am recused from discussions concerning the Promise because my wife sits on the Promise oversight board. I am not privy to those conversations and I do not sit at the Cabinet table for discussions that pertain to the Promise.

My general comment—I will defer to Judith Brown on this—is that ministers have to ensure that all legislation that we introduce is compliant with the UNCRC. I can give you only a general view on that, because I cannot give specifics on the Promise bill for the reasons that I have set out. Judith Brown might want to say more in terms of the UNCRC and our engagement in relation to that piece of legislation.

Judith Brown (Scottish Government): It is correct to say that all legislation requires to be compatible with the UNCRC. I am not sure that there is anything more that I can say in relation to the Promise bill specifically.

The Convener: I am not asking about the Promise bill—indeed, the relevant minister will appear before our committee shortly.

Ms Brown, are solicitors in the Scottish Government aware that almost every witness we spoke to on that specific bill reiterated concerns that they had expressed about bills from other departments of the Scottish Government, which were that legislation is being introduced that might have to be changed at stage 2 because, when it is

presented by the Government, it is not compliant with UNCRC? I note that we have before us a quite simple and straightforward SSI that ministers tell us in their policy note is compatible with the UNCRC.

Judith Brown: For all SSIs, we are required to produce an impact assessment in relation to the UNCRC and to be satisfied that they are compliant. That is what has been done for these two SSIs. I am afraid that I am not sighted on the Promise bill.

The Convener: I will move the discussion away from the Promise bill, because I understand the complexities that the cabinet secretary is, quite rightly, faced with in that regard. However, we heard the same concerns in relation to—I think—the Housing (Scotland) Bill and other pieces of legislation. Surely solicitors in the Scottish Government, cabinet secretaries and ministers must be hearing the same evidence that this committee and other committees are hearing, which is that bills are being introduced that—as witnesses tell us—are not compatible with the UNCRC. Is every witness from those different spheres wrong and the Government right? Is the Government taking on board those concerns? If so, what is it doing about them?

Jenny Gilruth: The Government always listens to concerns that are raised by stakeholders. The general point is that ministers are not able to take forward bills that are not compliant with the UNCRC in general terms. I am sure that, in relation to the specifics of the Promise bill, the minister will be listening to and engaging with stakeholders. I know that she will appear before the committee following my evidence session today, so you might want to pursue those matters with her directly, given my recusal from discussion of that bill overall.

The Convener: Will officials come back to us on that? You will have seen that we mentioned the issue in our stage 1 report on the Education (Scotland) Bill. It has been highlighted in other committees. We are coming to a period when a lot of legislation will come through the Parliament. If we, as Opposition MSPs, have to keep amending legislation, it would surely be better if it could be changed before it is even introduced. Could we get a commitment that the Government will look at the legal aspects of the concerns around UNCRC compatibility?

09:45

I stress the point that the issue is about not just one bill that is being discussed at this committee; witnesses have said that they made similar points about other bills in other committees earlier in the process. Given your policy note, I felt that I had an

opportunity to raise the issue today, and I will also do so with the minister. As I said, will officials come back to us on that?

Jenny Gilruth: We can take the general point away. A couple of issues have come up today that I will write to the committee about. If we can loop the point into our response, I am more than happy to reassure you about our approach.

Willie Rennie: On a different subject, one of the criticisms of the old SQA was that it was slow to update national qualifications. Ken Muir referred to it as sometimes intransigent and said that it did not engage with the teaching community. What assurance have you had from the Qualifications Scotland leadership that it will be swifter at developing and updating new qualifications, particularly to ensure that it is aligned with the curriculum for excellence?

Jenny Gilruth: I agree with Professor Muir's observations. Some of the engagement with the profession was pretty challenging, which led to the challenges that were experienced during the pandemic. The backdrop is that those challenges did not happen in a silo. We should be mindful of the issues with engagement with the qualifications body that many teachers experienced before the pandemic.

The wider point is about the work on the curriculum improvement cycle, which is being led by the teaching profession in relation to Education Scotland. We must not divorce that from the overall approach to qualifications. In the summer recess, I attended a helpful session in Glasgow with a number of teachers who have been engaged in leading that work and leading qualifications reform.

To answer Mr Rennie's point, the curriculum improvement cycle is the approach that we will take as a Government to ensure that our qualifications system keeps up to date. In recent years, the system has not been at the cutting edge when it comes to ensuring that our qualifications are updated and that we respond to societal changes accordingly. The curriculum improvement cycle is the way in which we will update and change our qualifications. I made that commitment in the chamber a number of years ago, and it came directly from a recommendation that we had received from the Organisation for Economic Co-operation and Development on the exact point that Mr Rennie has raised. The curriculum improvement cycle work is being led by the teaching profession, and it will inform the qualifications update that Education Scotland is leading.

I also note that we have appointed a secondary headteacher in the schools unit at Qualifications Scotland. To my mind, that approach will improve

engagement with the teaching profession. We now have in place a bespoke approach to engagement with schools that is being led by a secondary headteacher. That is really important because it sends a clear message to the teaching profession, particularly the secondary teaching profession, that we know that engagement in the past was not as it should have been and that engagement and how it is led will improve. The committee might want to engage directly with the schools unit on that engagement and on how it is currently working with the profession in practice.

Willie Rennie: Thank you.

The Convener: There are no further questions from members, so I invite the cabinet secretary to move motion S6M-19851.

Motion moved,

That the Education, Children and Young People Committee recommends that the Education (Scotland) Act 2025 (Consequential Provisions) Regulations 2026 [draft] be approved.—[*Jenny Gilruth*]

Motion agreed to.

The Convener: The committee must now produce its report on the draft instrument. Is the committee content to delegate to me as convener the responsibility to agree the report on behalf of the committee?

Members indicated agreement.

The Convener: Again, there are no further questions from members, so I invite the cabinet secretary to move motion S6M-19852.

Motion moved,

That the Education, Children and Young People Committee recommends that the Official Statistics (Scotland) Amendment Order 2026 [draft] be approved.—[*Jenny Gilruth*]

Motion agreed to.

The Convener: The committee must now produce its report on the draft instrument. Is the committee content to delegate to me as convener the responsibility to agree the report on behalf of the committee?

Members indicated agreement.

The Convener: Cabinet secretary, I thank you and your officials for your attendance this morning. Before we move to our next item, I will briefly suspend the meeting to allow for a change of witnesses.

09:49

Meeting suspended.

09:52

On resuming—

Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 [Draft]

The Convener: Welcome back. Our next agenda item is consideration of the draft Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026, which is subordinate legislation that is subject to the affirmative procedure. The committee will now take evidence on the instrument from the Minister for Children, Young People and The Promise and her officials. The minister will also move the motion to approve the instrument.

I welcome Natalie Don-Innes, Minister for Children, Young People and The Promise, and, from the Scottish Government, Louisa Brown, team leader, kinship care and fostering; Rachael Wilson, team leader, children's residential care unit; and Claire Montgomery, solicitor, legal directorate.

Minister, I ask you to speak to the draft instrument in your name.

The Minister for Children, Young People and The Promise (Natalie Don-Innes): Good morning. Happy new year to everyone. I hope that you had a nice break.

I am very pleased to introduce draft regulations that ensure legal recognition of orders and arrangements for children who are on temporary cross-border placements in care homes and foster care in Scotland. I put on record that the draft regulations are not intended to be a substitute for suitable placements of children being available in their home nations. I am also clear that cross-border placements should occur only in exceptional circumstances when it is in the best interests of a child.

Our intention is to ensure that, when such placements are necessary, they are appropriately considered and assessed and subject to a clear regulatory framework. We have heard that, for many placements in residential care homes in Scotland, local services often know very little about the placed child or their circumstances. Indeed, they sometimes only find out about a placement during a crisis. New notification requirements aim to ensure that that does not happen in the future.

We have heard that children are sometimes placed in settings or services that are not fully equipped to meet their needs. The draft regulations aim to address those concerns by

requiring policing authorities to assess the suitability in advance.

Additional conditions are to be met for cross-border placements into residential care homes, including regular visits and placement reviews. Those conditions aim to address concerns that we have heard: that those who are involved in the child's care in Scotland are frequently not included in existing review processes and that visits might be infrequent. For children who are placed into residential care homes and are subject to deprivation of liberty orders, the order must be reviewed at least every three months to ensure necessity and proportionality.

Again, for cross-border fostering placements, the draft regulations will require placement suitability to be considered in advance and for those with an interest in the child's care to be notified of the placement. They aim to build on existing practice by requiring that a fostering agreement is in place before the placement starts, in order to cover issues such as arrangements for visits and reviews.

Although most cross-border placements into Scotland are temporary arrangements, there are some limited circumstances in which it could be appropriate for a child to be brought into the Scottish system. For example, if a child's family relocates to Scotland, the relevant Scottish local authority may agree to take over their care. Those types of permanent transfer have been possible since 2013, and the regulations will preserve them while bringing all the rules on cross-border placements into one place.

I am happy to take any questions that members may have.

Willie Rennie: I thank the minister for that update. Will she tell us the current number of cross-border placements from England? Has the number gone up and down? If so, what are the reasons for that?

Natalie Don-Innes: I believe that there are four deprivation of liberty order placements—I will pass over to officials for the official numbers.

Rachael Wilson (Scottish Government): I will read out our latest data. As of 30 November 2025, there were approximately 100 children placed cross-border into residential care in Scotland. A breakdown by the legal basis for the placement shows that there are 63 children on full care orders, eight on interim care orders, 26 on voluntary arrangements and three on deprivation of liberty order placements. I will pass over to Louisa Brown for fostering numbers.

Louisa Brown (Scottish Government): We have less data on that, but there are approximately 30 fostering placements from

England and Northern Ireland. We do not currently have data from Wales.

Willie Rennie: Are those numbers up or down?

Rachael Wilson: In 2022, prior to the 2022 deprivation of liberty order regulations coming into force, there were approximately 17 deprivation of liberty orders. That number is now down to three, so it has reduced significantly. We have only recently been gathering evidence for the other types of orders, so we could not say for sure what the trends for those are.

Willie Rennie: Why has it gone from 17 to three? Do we know why?

Natalie Don-Innes: Work is being undertaken in England to ensure the capacity of their own sector. For example, I met the relevant minister yesterday to discuss cross-border placements, among other things. He told me about several initiatives that are being carried out in England. One of those is the regional care partnerships—sorry, I might need to come back to the committee with the official term for that—which is a new initiative to try to ensure capacity in England. As Mr Rennie will remember from when I have been in committee to talk about placements into secure care, the number of those placements has reduced over time. That is a result of a lot of the cross-border work that is going on.

Willie Rennie: One of the previous concerns was that two children in the same care home—one from Scotland and one from England—would have different rights. We were anxious about that. I know that there have been other measures to try to limit the impact of that situation. Was there any indication from the United Kingdom Government minister that they will change the rights for children in England to be similar to those in Scotland? Was there any discussion to make sure that there is not a disparity in those rights?

Natalie Don-Innes: There was no discussion on that. As I say, there were many things on the agenda for my discussion with the minister yesterday. Cross-border placements was only one of them, so we did not get into that level of detail. There are several things that we will follow up on with each other, so I would be more than happy to put that point to ministers in the UK Government, if Mr Rennie would wish for me to do so.

Willie Rennie: Staying on the issue of potentially having two different standards for different children in the same environment, have any problems emerged from children having different rights? Has there been any evidence of the issues that were highlighted in the committee?

Natalie Don-Innes: Could you be more specific, Mr Rennie?

10:00

Willie Rennie: Were there any complaints from their advocates about the fact that the children who have come from England do not get the same rights as those from Scotland? Are we aware of any issues around that?

Natalie Don-Innes: No such issue been brought to my attention. I am not sure whether officials could elaborate on that.

The Convener: To go back a bit, Ms Brown, do we not have figures for Wales because there are no transfers from Wales, or is it because that information is not shared?

Louisa Brown: We have asked and Wales has not been able to give us any figures. We assume that there are none at the moment.

The Convener: Wales is not saying that there are zero, but that it cannot provide figures.

Louisa Brown: Yes.

The Convener: You are making the assumption that there are none.

Louisa Brown: Yes. There are only three from Northern Ireland and the rest—the majority—are from England. We are not aware of any from Wales. We have asked, but it has not provided any figures.

The Convener: Have we had any issues getting figures previously?

Louisa Brown: This is the first time that we have collected the data, so we do not have any historical data to compare it with.

The Convener: So, it is not an issue with the Welsh Government not sharing or anything like that.

Louisa Brown: No.

The Convener: Okay. I call Paul O'Kane.

Paul O'Kane (West Scotland) (Lab): I was not a member of the committee when evidence was taken on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. However, my understanding, from reading some of the exchanges and evidence that was given, is that part of the rationale for reducing cross-border placements was—this was, I think, from the Scottish Government and the Children and Young People's Commissioner Scotland—to try to force the English system to become better by reducing the amount of placements that came to Scotland and therefore compelling the previous UK Government to do better.

From your exchange with Mr Rennie, I understand that the numbers have decreased. From what you have said, minister, you appear to be having a positive and fruitful dialogue with the

new UK Government about what it is doing to improve the system. If the numbers have gone down and there is now an improvement, if you like, in the system in England—which is very welcome, of course—does the rationale for reducing cross-border placements still stand?

Natalie Don-Innes: I appreciate that you were not on the committee at that time, Mr O'Kane, but I have been clear on the matter several times previously. There will always likely be a need for cross-border placements, but that is only when it is in the best interests of the child. There will always be exceptional circumstances where it might be better for a child to be placed in Scotland.

I discussed the issue at the committee previously. In relation to some of the numbers—especially in relation to secure care—it was very clear that there were failings in the system in England and that other reasons for cross-border placements existed, beyond what was best for the child. It is always important to try to reduce those cross-border placements when they are not in the best interests of the child, but also to understand that there might always be a need for them.

Paul O'Kane: I agree that the placement must be appropriate for the best interests of a child; what this legislation does is create several processes to go through that. If it is in the best interests of the child and there is an urgency to the placement, do you recognise the risk to children and young people who are living in England or Northern Ireland if they cannot quickly access the placement that is required in Scotland?

Natalie Don-Innes: There will always be the need for, for example, emergency placements, which has been taken into account. For example, there is a recognition in the regulations around visits and the requirement for visits to take place that, sometimes, there might not be time for that visit to take place in advance of the placement needing to be put in place. That visit would obviously then have to take place at a later date, and there is a time limit around that. An enabling factor is in place to ensure that, when it arises, the need for those emergency, short-term decisions has been taken into account.

Paul O'Kane: What further consultation or discussion have you had with those in the secure care sector around the concerns that they raised about the impact that limiting cross-border placements would have on the services that they run in Scotland?

Natalie Don-Innes: I have not discussed that issue recently, but Mr O'Kane will be aware of the amount of work that is under way around secure care. Officials have regular conversations on the issue.

I have been clear previously that my priority must be safeguarding children and young people, whether they are in secure care or residential placements. Although I understand the concerns of secure care centres in relation to funding and cross-border placements, I must go with what is best for children and young people.

On the other side, work is on-going around reimagining secure care and how we future proof it. We need to take on those two aspects at the same time, and, where concerns may arise around the cross-border situation, we are looking to provide support in other ways.

John Mason (Glasgow Shettleston) (Ind): To follow on from previous questions, I have one or two points arising from the policy note. Willie Rennie asked about the differences in how a child from Scotland and a child from England would be looked after or treated. I was struck by the second page of the policy note, which states:

"The Scottish Government also understands that children are sometimes placed without education provision having been agreed, leading to children being without education for prolonged periods."

That sounds very concerning to me. Is that the type of issue that we are talking about? For a Scottish child, that would not happen, because the local authority would know that they needed education, but it could happen for a child from elsewhere. Is that the issue?

Natalie Don-Innes: That is exactly the issue. I was made aware of a child who was placed in Scotland without suitable education provision being arranged in advance. The local authority was not informed of that placement and became aware only when it was approached for an education place, which, at that time, it was not possible to provide.

The draft regulations will put in place safeguards to ensure that that does not happen, because there will be time for adequate planning. As Mr Mason points out, it is unacceptable for children to be without education for a length of time, and to be treated differently from others, so I believe that that is one of the positive aspects of the regulations.

John Mason: So, that means that, in the future, every child, wherever they are from, will be entitled to exactly the same education provision.

Natalie Don-Innes: They would have been entitled to that anyway; the point is that the placing authority would not have known about it, so it would not be able to plan in advance and consider the child's needs. That is where the regulations come into play.

John Mason: Okay. So, the child will be more likely to get the provision that they should be getting.

You and others have already mentioned the question of whether it is in the child's best interests to be placed in Scotland. Can you expand on what that means? If a child is from, say, Devon, I could understand that they might want to be in Cornwall, to be a bit further away from their local environment, but Scotland—even Glasgow or Edinburgh—would be quite remote from their area.

Natalie Don-Innes: I cannot comment on individual cases. However, a child might have family or friends in Scotland, or they might need to be away from a certain area or certain people. I cannot account for all the different reasons why a child might be placed—

John Mason: Is one of the reasons simply that the authorities cannot find a place in England so they dump the child in Scotland?

Natalie Don-Innes: You would have to refer that question to our English counterparts. I cannot speak for them—it would not be for me to say. However, I would hope that that would not be the case, based on everything that I have discussed with the committee previously.

John Mason: I accept that the situation is improving, which is positive.

With regard to the visits that take place—including pre-placement visits, although you explained that a pre-placement visit may not be possible—who carries them out? Are they always carried out by the placing authority? Could Devon County Council, say, ask Falkirk Council to do a visit on its behalf?

Natalie Don-Innes: Yes. It would be the placing authority's responsibility, but, through the planning and discussions that would take place in advance, such an arrangement could be worked out. There would be conversations around what would be best suited to the individual child's circumstances. Perhaps Louisa Brown can help with that.

Louisa Brown: The minister is correct: it is the placing authority's responsibility. However, in practice, if a child is to be placed outside the authority's area, even within Scotland, the authority can delegate the task of doing that to another agency or local authority. Nevertheless, the responsibility lies with the placing authority.

John Mason: The policy note mentions that placements might be in "remote parts of Scotland", but for someone who is in the Isle of Wight or somewhere like that, Glasgow is remote, is it not? Anywhere in Scotland could be remote from that point of view.

The six-weekly visit seems to be a minimum. The policy note refers to situations

“Where a six weekly visit is not possible”,

and elsewhere it says that six-weekly visits should be made

“insofar as reasonably practicable”.

That seems quite a lot like a get-out. If a child is with an unknown family in an unknown town, six weeks is quite a long period in terms of finding out how they are getting on. Can you give us any reassurance on that? Would phone calls normally be made as well? If a six-weekly visit is not “practicable”, the child could be in a bad situation for quite a while.

Natalie Don-Innes: The timeframe of six-weekly visits is in place, but there may be legitimate reasons why it might not be possible to adhere to that. That is not to allow authorities to say, “Oh, we just didn’t have time to do that.” It could be down to, for example, a social worker being off ill that week or something else having come about to prevent that visit. However, the regulations require that, if the visit cannot go ahead, it must be arranged as soon as possible after the six-week mark.

The Convener: Minister, you mentioned in response to Mr Mason that you had become aware of the case of a child who did not have access to education. For how long was that individual denied education? Did you become aware of that case because it had to be escalated to you for ministerial involvement, or was there just an update that that was happening?

Natalie Don-Innes: There was an update. With regard to the timeframe for that child going without education, I would have to pass that to my officials.

Rachael Wilson: That came up during our stakeholder engagement. We were consulting on the development of the draft regulations and we heard about that case. I would have to check, but I do not think that the matter was formally raised with us; it just came up in conversation with stakeholders.

The Convener: Do you recall whether the period of time was days, weeks or months?

Rachael Wilson: I do not recall the exact length of time—I can double-check that. In my mind, it was at least a week or longer, but I can come back and clarify that.

The Convener: Presumably, if that was highlighted as a case study, you cannot guarantee that it has not happened more than once. Do you have any historical data? Having heard about that case, have you gone back for further examples?

Do you know how widespread, or not, that experience is?

Rachael Wilson: No; we just have anecdotal evidence. Before we found out about that case, we had heard from other local authorities that it was not uncommon for a child to be placed in Scotland without education having been arranged for them. More often than not, the local authority would find an education place for the child at the last minute, but, in that particular case, the school in which it was expected that the child would be placed had no places left, so the child was unable to get education. It could be happening more regularly than we are aware of.

Miles Briggs (Lothian) (Con): I will carry on with John Mason’s line of questioning. We know that young people are expressing concern that they are unable to access health services, and often education services. We also know that children who are receiving treatment in Scotland—for example, in our cancer centres—often have their education disrupted and there is no continuity. That issue has not been completely resolved.

With regard to the notification, I am interested in what you expect that the two distinct organisations—the national health service and the local education authority—will do in order to fund and

“provide or secure the provision.”

A notification is one thing, whereas a duty to fund that provision—as expressed in, for example, a chief executive’s letter—is very different. A notification will not necessarily close the gap completely between the expectation that those services will be delivered and their delivery.

Natalie Don-Innes: The draft regulations specify the information that is to be contained in the notification and the people who must receive it, including key partners such as those in health and education departments, residential or fostering contacts, the chief social work officer and the Care Inspectorate.

When notification takes place, because it has not previously happened, I would expect conversations to happen around what will be required for that child. The purpose of bringing forward the draft regulations is entirely to enable us to understand the needs of children who are placed in Scotland and how we can best support them.

Although I appreciate that there is no duty there, the fact that all those partners are involved in the child’s care and support services should bring about confidence in relation to how that child will be supported.

Miles Briggs: I think that the minister will understand my concern as an Edinburgh MSP, given that some children here are waiting for two years to access mental health services—the city has some of the longest waits in Scotland.

Is the minister suggesting that, if a placement is made in Edinburgh, young people who are placed within the health board area would be prioritised? Alternatively, would they just join the end of the queue, with that being seen as mental health services having been delivered? I am not quite sure that a notification does much more than simply say that the young person who has been placed somewhere has been in mental health services in a different part of the United Kingdom. What expectation do ministers have in relation to that?

10:15

Natalie Don-Innes: That would have to be considered before it was agreed where the child was going to be placed, because we would have to consider whether those services were available for that child. If there was going to be a barrier to that child accessing certain services, that placement would probably not be in the best interests of that child. The consideration of where that child should be placed should happen before the notification.

The Convener: I raised this issue with the cabinet secretary on her SSIs. Your policy note clearly states that this SSI is compatible with the UNCRC. However, you will remember the significant discussions that we had on the Children (Care, Care Experience and Services Planning) (Scotland) Bill—the Promise bill—which you introduced.

Where is the Government, and where are you as a minister, on the compatibility with the UNCRC of legislation that is coming forward? I am talking not only about the Promise bill but about other bills that witnesses raised concerns about in relation to the issue.

Natalie Don-Innes: Sorry, convener, is that strictly in relation to the Promise bill, or over and above it?

The Convener: You can tell us about the Promise bill, because I will certainly be raising the matter when we have our stage 1 debate very soon.

Witnesses told us, as the committee scrutinising the legislation, that they had made similar points on the housing bill to other committees. I am still wondering why the Government must tell us that a relatively straightforward SSI is compatible with the UNCRC while concerns exist about the compatibility of new legislation that the

Government is introducing, such as the Promise bill.

Natalie Don-Innes: Mr Ross will remember that, in short, two aspects of the Promise bill are not compatible with the UNCRC: the fostering register and another aspect. I am happy to go into more detail around the matter, as I did in a previous committee meeting, during the stage 1 debate.

Mr Ross is aware of the children's rights scheme, which I laid before Parliament last month, and our engagement with the UK Government to explore the removal of legislative restrictions that limit our ability to enhance human rights. If, by November 2026, the Scottish Government considers that, in respect of that engagement with the UK Government, progress in finding a more straightforward and effective route to extending protection for children's rights has not been sufficient, we will commission a review of the provision of UK acts in devolved areas to identify where we need to act.

Although I appreciate that non-compliant legislation has been introduced—I gave the reasons for that in relation to the two aspects in the Promise bill—I can say that wider work is under way across Government to ensure that our legislation is compliant.

The Convener: With respect, you gave almost exactly the same answer at that previous committee meeting. You also gave an assurance that you would go away and seek further advice. You are saying, in effect, that nothing is changing at the moment—that the Government will continue to introduce legislation that is not compliant. You are speaking about things that will happen months and years from now, but we have more than a dozen pieces of legislation to get through before the end of this session of Parliament in a matter of months.

Stakeholders are telling us that we need to make amendments at stage 2 to the Promise bill and, potentially, other Scottish Government bills. Is there any change in the thinking, either from solicitors, the legal directorate, ministers or cabinet secretaries, about introducing bills in a form that causes stakeholders to criticise them and tell the committees that scrutinise those pieces of legislation that they are not compatible with the UNCRC?

Natalie Don-Innes: I cannot speak for other ministers or about pieces of legislation other than the one that I have introduced. As I have said, it is regrettable that two aspects of the Promise bill are not compliant with the UNCRC. I have given the reasons for that, which relate to complexity and time. However, as Mr Ross has stated, I am seeking further advice in relation to the concerns

that have been raised in the conversations that I have had around the Promise bill in its entirety.

I am more than happy to provide more information around that at the stage 1 debate next week. Claire Montgomery might be happy to follow up on Mr Ross's points around the UNCRC more generally.

Claire Montgomery (Scottish Government): I know that the issue has been one of real concern to the committee and, as the minister set out, it is something to which the Scottish Government has given close consideration.

I stress that the provisions of bills that the Scottish Government is introducing are compatible with the UNCRC—it is simply that the compatibility duty in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 does not attach to certain functions, such as those that are in UK enactments.

The minister set out the Government's position in the draft proposal for the children's rights scheme, which was published in November. We are exploring whether there is a simple way to resolve the issue that resulted from the UNCRC Supreme Court case, so that we do not have to re-enact great swathes of the Scottish statute book.

The concerns around the coherence and accessibility of the statute book have been raised previously. We appreciate the concerns that the committee and stakeholders have around the matter and it is something to which we are giving serious consideration. However, as you will appreciate, I cannot confirm, deny or divulge any legal advice.

The Convener: I am not asking you to. I am not putting words into the mouths of our witnesses, but I think that there is a frustration. It has happened not just once—say, with the Housing (Scotland) Bill, which was used as an example—but time after time. It feels as though there are warm words but never any action to resolve the issues. We as a committee mentioned the matter in our stage 1 report and we have asked questions about it, because people outside this building are, in effect, criticising the Government for introducing legislation in that way.

I am still not reassured—I hope that I can be next week—that we will get a resolution to the issue in our final months of this session of Parliament, given that the Government has known about it for quite some time and has had a warning on it in relation to previous legislation but continues to introduce legislation in that way, as with the Promise bill. Do you understand that point of view, minister?

Natalie Don-Innes: I understand your concerns. I again refer to my most recent engagement

around the Promise bill, through which those concerns have been brought to me as well. I have tried to provide as much reassurance as possible in relation to the many provisions that are included in the bill and have addressed the overarching need for it and its aims of protecting children and young people.

I understand your concerns in relation to the issue and the wider feeling across Government in relation to the introduction of legislation. I have given you the Government's response. We are leading work on the matter and we are committed to realising the full aspects of the UNCRC. I will update the committee further in relation to the specific points that were raised in your report with regard to the UNCRC and the Promise bill.

The Convener: Thank you. I now invite the minister to move motion S6M-19990.

Motion moved,

That the Education, Children and Young People Committee recommends that the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 [draft] be approved.—[*Natalie Don-Innes*]

The Convener: The minister has nothing further to add and no other member wishes to come in.

Motion agreed to.

The Convener: The committee has approved the draft regulations, so it must now produce its report on the draft instrument. Is the committee content to delegate responsibility to me as convener to agree the report on behalf of the committee?

Members indicated agreement.

The Convener: That concludes the consideration of this instrument. I thank the minister and her officials for their time this morning. The committee will now move into private session to consider our final agenda items.

10:23

Meeting continued in private until 10:39.

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Edinburgh
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The deadline for corrections to this edition is:

Monday 9 February 2026

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

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