

The Highland Council

Education, Children and Adult Services Committee 20 January 2015

Agenda Item	17.
Report No	ECAS 13/16

Education (Scotland) Bill

Report by the Director of Care and Learning

Summary

This Report brings members up to date with progress on the various elements of the Education (Scotland) Bill, currently going through the Scottish Parliament.

1. Introduction

1.1 On 23 March 2015 the Scottish Government introduced the Education (Scotland) Bill to the Scottish Parliament. This Bill was to create an Act of the Scottish Parliament to impose duties in relation to reducing pupils' inequalities of outcome; to modify the Education (Additional Support for Learning) (Scotland) Act 2004 and section 70 of the Education (Scotland) Act 1980; to make provision about Gaelic medium education, about the provision of school meals, for appointing Chief Education Officers and in relation to registration of independent schools and teachers in grant-aided schools; to extend the duty to provide early learning and childcare to certain children; and for connected purposes.

1.2 In brief, the legislation is intended to:

- place a statutory duty on councils to narrow the 'attainment' gap and require councils and Scottish Ministers to report on progress;
- enhance children's rights by extending the rights of children aged 12+ with capacity under the Additional Support for Learning Act 2004;
- promote Gaelic education by placing a duty on councils both to assess the need for Gaelic medium primary education following a parental request and to actively promote and support Gaelic learning and teaching in schools;
- ensure that all teachers in Scottish schools are appropriately trained and qualified by requiring all teaching staff within independent and grant aided schools to be registered with the General Teaching Council Scotland;
- improve the process, under section 70 of the 1980 Education Act, for dealing with complaints about councils and schools failing in their education duties; and
- ensure senior managers within councils have the necessary qualifications and experience by providing for the creation of a Chief Education Officer post.

1.3 The Scottish Government's public information about the intentions of the Bill is included at **Appendix 1**.

1.4 Specific consultation has been carried out on 3 elements of the Bill (children's

rights under additional support for learning legislation, complaints made to the Scottish Ministers under section 70, and the proposed provisions for GME). Targeted consultation has also been held about the proposed requirement for teachers in independent and grant-aided schools to register with the General Teaching Council for Scotland. Limited consultation has taken place on the proposed equity provisions and those dealing with the appointment of Chief Education Officers.

- 1.5 The Parliament's Education and Culture Committee has overseen scrutiny of the Bill; and The Highland Council has submitted both written and oral evidence to the Committee in respect of the Gaelic Medium Education provisions.

2. Current Status

- 2.1 As of December 2015, the Bill had completed Stage 2 of its passage through the Scottish Parliament. Some of the original provisions of the Bill have therefore been altered; and the Bill, as amended, was published on 9 December 2015 at: [http://www.scottish.parliament.uk/S4_Bills/Education%20\(Scotland\)%20Bill/SPBill64AS042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Education%20(Scotland)%20Bill/SPBill64AS042015.pdf)
- 2.2 The Bill, following amendment during Stage 2, now comprises the following sections:

PART 1 - SCHOOL EDUCATION

Pupils experiencing inequalities of outcome
National Improvement Framework
Plans and reports
Guidance
Duties in relation to promotion of health
Parental involvement

PART 2 - GAELIC MEDIUM EDUCATION

Assessments: primary education
Assessment requests
Gaelic Medium Primary Education (GMPE) assessment areas
Initial assessments
Duties of education authorities
Requests that need not be considered
Full assessments
Procedure following full assessment
Early learning and childcare
Power to extend Part to early learning and childcare
Promotion, support and guidance
Duty to promote and support Gaelic medium education and learning
Guidance
Definitions of "Gaelic education" and "Gaelic medium education" in other Acts
Meaning of "Gaelic education" and "Gaelic medium education"
Interpretation of Part 2
Interpretation of Part 2 ii Education (Scotland) Bill

PART 3 – MISCELLANEOUS

Additional support for learning
Children unable to attend early learning and childcare

Learning hours
Provision of school meals
Clothing grants
Enforcement of statutory duties
Appointment of Chief Education Officer
Registration of independent schools
Employment of teachers in grant-aided schools
Head teachers: education and training standards
Provision of early learning and childcare: children with guardians;

PART 4 – GENERAL

Meaning of “the 1980 Act”

Regulations

Ancillary provision

Commencement

2.3 A Parliamentary Debate at Stage 3 of the Bill is scheduled to take place on 28 January 2016.

3. Key Issues

3.1 The Bill will place a new duty on education authorities to provide school education in a way that is designed to reduce the inequalities of educational outcome which result from socio-economic disadvantage in order to improve the attainment of more disadvantaged children and young people.

3.2 A similar duty will be placed on the Scottish Ministers to apply to the exercise of their powers generally in relation to school education. The Bill proposes that both education authorities and the Scottish Ministers prepare and publish reports, every two years, on their plans and progress in carrying out these duties.

3.3 It is proposed that a duty is placed on education authorities, in exercising this new duty, to work in partnership with schools, pupils, parents and other relevant partners. When carrying out their new duties, education authorities are to have regard to any guidance produced by the Scottish Ministers on these matters.

3.4 There are new provisions for children with additional support needs, adding to the provision in existing legislation. Currently, a child can bring a disability discrimination claim to an Additional Support Needs Tribunal but cannot appeal against a decision taken by an education authority (as their parents can) – so there is potential inequity built into the legal framework. It is proposed that the majority of rights under Additional Support Needs legislation be extended to children aged 12 and over who have capacity.

3.5 The Bill also proposes a children's support service, providing advice, information, advocacy support and legal advice and representation. The service would support children to provide their views.

3.6 The other main section of the Bill that may affect families of children with additional support needs is a change to Section 70 complaints. At the moment, any interested person can make a Section 70 complaint (this refers to Section 70 of the Education (Scotland) Act 1980) to Scottish Ministers that a local authority has failed to carry out a legal duty. The suggested changes to the process mean that Scottish Ministers cannot make an order under Section 70 if the complaint could be

dealt with by the Additional Support Needs Tribunal and can make regulations to add a timescale to the complaints process.

- 3.7 The Bill proposes that the role of Chief Education Officer is appointed in all local authorities, akin to the current role of Chief Social Work Officer. It is intended that this would ensure that local authorities have access to high quality educational expertise within their management structures.
- 3.8 Three more far reaching provisions of the Bill relate to the delivery of Gaelic Medium Education:
- A process to enable a parent to request Gaelic Medium Primary Education to be provided by their Local Authority;
 - A duty on Local Authorities to promote and support Gaelic education; and
 - A duty on Bòrd na Gàidhlig to produce statutory Guidance on Gaelic education.
- 3.9 Bòrd na Gàidhlig has established a Core Group to develop the Statutory Guidance. The Core Group has representation from the Association of Directors of Education in Scotland, Bòrd na Gàidhlig, CoSLA, Education Scotland, MRG (Management Review Group - the consortium of Local Authorities for Gaelic Education) and The Scottish Government. The Council's Gaelic Development Manager, as Chair of the MRG, is a Member of the Core Group.
- 3.10 As part of the Statutory Guidance preparation process it was agreed that MRG would design a 'toolkit' which could be used by those involved in the process of requesting Gaelic Medium Primary Education; and those assessing these requests, specifically Education Authorities and Parents. Representatives from the Highland Council, Glasgow City Council, and The Scottish Government have drafted a guide, which will be issued shortly, and which will be part of the process of formulating Statutory Guidance on Gaelic Education.
- 3.11 The Guidance covers the Gaelic education journey and spectrum for young people aged 3-18 - including Gaelic Medium Education (GME) and Gaelic Learner Education (GLE). It has three principal functions; providing:
- an introduction to, and definitions of, Gaelic education;
 - further explanation of the Gaelic education provisions in the Education (Scotland) Bill; and
 - information on key elements of Gaelic education.
- 3.12 The Guidance is principally for Education Authorities and builds on the practice and delivery that has been developed and built up over the last three decades, in Education Authorities that have provided Gaelic Medium Primary Education. From this, the Guidance aims to establish a consistent approach and a clear explanation and expectation of what Gaelic Medium Education is; and how it should be delivered across Scotland.
- 3.13 In addition, the Guidance is for parents. It provides detail and explanation on how Parents can submit a request to an Education Authority, for Gaelic Medium Primary Education. It also provides Parents with an explanation of what they can expect if they submit a request for Gaelic Medium Primary Education for their children.
- 3.14 The Core Group has undertaken a series of engagement events with Stakeholders as part of an informal consultation process. Two events took place in Highland, in

Inverness and Portree. There is also a Bòrd na Gàidhlig webpage available for those interested in providing suggestions for inclusion in the Guidance. This can be found at: <http://www.gaidhlig.org.uk/bord/en/>.

- 3.15 The proposals regarding early learning and childcare address the unintentional exclusion of a small group of children (with guardians) from these services.
- 3.16 A large number of amendments were agreed at the 2nd stage consideration of the Bill at the Education and Culture Committee. These included the provision for 25 hours a week 'learning hours' at all ages in Primary School. The Highland Council is continuing to seek dialogue with the Scottish Government on the details of this provision, and the Chair of Education, Children and Adult Services has requested a meeting with the Cabinet Secretary. Enactment is not likely before August 2017.
- 3.17 The Scottish Government has also amended the Bill to include the requirement for headteachers to hold the Standard for Headship qualification. This will not be required for existing Head Teachers, but will become a prerequisite for teachers who consider applying for the role.

4. Implications

4.1 Resources

- 4.1.1 It is important that, as the Bill passes through the parliamentary process, consultation on the cost of new burdens on Local Government, including those arising from any amendments, are fully assessed and that there is a commitment from Government to fund these. A Financial Memorandum will be provided in January 2016, taking account of the amendments at Stage 2 of the Bill.
- 4.1.2 It is already estimated that the additional teaching hours required in Primary Schools could cost Highland Council up to £2m.
- 4.1.3 There are concerns that the Bill will raise further challenges for the recruitment of teachers, specifically Gaelic and Primary Teachers, increasing pressures on many of Highland's small and rural schools.

4.2 Equalities

- 4.2.1 The proposals in the Bill should continue to promote equity of attainment for disadvantaged children and support the steps being taken towards narrowing the attainment gap by imposing duties on education authorities and the Scottish Ministers, together with a duty to report on progress.
- 4.2.2 The extension of rights to children with Additional Support Needs will reduce inequalities for this protected group.
- 4.2.3 The Scottish Government has carried out an Equality Impact Assessment on the Bill and it is available at: www.gov.scot/Publications/2015/03/1855

4.3 Legal and Gaelic

- 4.3.1 As stated above.

4.4 **Climate Change/Carbon Clever and Rural**

4.4.1 There are no specific implications.

5. Recommendation

5.1 Members are invited to note this report.

Designation: Director of Care and Learning

Date: 11 January 2016

Author: Jim Steven, Head of Education

Scottish Government Information Briefing - The Education (Scotland) Bill 2015

Introduction

On the 23rd March 2015 the Scottish Government introduced an Education Bill to the Scottish Parliament. The purpose of the Education Bill is to create new education law and to change current education law. The purpose of this leaflet is to give information to parents on the Education (Scotland) Bill. This leaflet will go through how a Bill works and what is in the Bill.

The Bill and its accompanying documents are available on the Scottish Parliament website.

The Education Bill has 4 parts: Inequalities of outcome, Gaelic medium education, Miscellaneous modifications of enactments and General.

How does the Bill process work?

The Bill is submitted by the Scottish Government to the Scottish Parliament for consideration. The Bill is allocated to one of the Committees of the Scottish Parliament. There are a number of Committees and they are organised by theme - it is likely that the Bill will be considered by the Education and Culture Committee.

You can obtain information on the formal stages of the Bill from the Scottish Parliament website. The link below details a flowchart on how the 3 formal stages of the Bill process works in practice:

[http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/Annex E - Stages in the passage of a Public Bill \(Revised\).pdf](http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/Annex E - Stages in the passage of a Public Bill (Revised).pdf)

Questions and answers are provided on the following parts of the Bill:

Narrowing the educational attainment gap

Gaelic medium education

Children's rights under Additional Support for Learning

Section 70 complaints

Chief Education Officer in education authorities

Registration of practicing teachers with General Teaching Council for Scotland

Technical amendments in the Education (Scotland) Bill 2015

Narrowing the educational attainment gap

What is this all about?

The Education (Scotland) Bill 2015 includes suggested changes to the law which aim to narrow the attainment gap faced by those children from low income households. Narrowing that gap is key to delivering the Scottish Government's commitment to building a fairer Scotland and tackling inequality.

Why are these changes necessary?

Attainment amongst Scotland's pupils is good and improving. We have record exam results. Fewer young people are leaving school with no qualifications. School leaver destinations are the best on record with 90% of pupils who left school in 2012/13 going on to further or higher education, training or employment.

But, we know that school leavers from the most disadvantaged 20% of Scotland's communities only do half as well as those from the most affluent 20% of areas. This is called the attainment gap. We believe it is unacceptable that too many children in Scotland have their life chances determined by their postcode rather than their talent.

How will the Bill achieve this?

The Bill introduces new laws for Scottish Ministers and Councils to plan and deliver education services in a way which is designed to narrow the attainment gap. It requires Councils to consult parents, children, schools and other partners when taking decisions about how to do this. Finally, the Bill requires that Scottish Ministers and Councils publish reports every two years setting out the steps they have taken, the steps they intend to take and the impact of those steps in narrowing the gap. Scottish Ministers will submit their report to Parliament. Councils will be accountable to their local communities and Scottish Ministers for their reports.

How will we know if the changes are making a difference?

The new legislation will help us to ensure that the attainment gap remains a priority for those delivering our education services. It will require the publication of reports setting out progress. Those reports will form part of a new National Improvement Framework, which will measure progress and deliver improvements throughout our education system.

The Scottish Government intends to produce detailed guidance to support Councils in meeting their new responsibilities.

Gaelic medium education

What is this all about?

The Scottish Government wants to strengthen Gaelic in Scotland and thinks that an important way to do that is increasing the numbers of those using the language. Gaelic medium education (GME) is one way that this can be done. GME can be described as bilingual education, where the language of the classroom will usually be Gaelic. The Scottish Government believes that it is important to build on current GME but also to promote this education.

What are the provisions for Gaelic?

The Bill gives parents of pre-school aged children the right to request Gaelic medium primary education.

Education authorities will assess the need for Gaelic medium primary education (GMPE) following a parental request;

In addition, education authorities will promote and support GME and Gaelic learner education (GLE);

And Bòrd na Gàidhlig (the body responsible for the development of Gaelic in Scotland) will prepare guidance on how GME should work in Scotland.

What are the next steps following the parental request?

Initial assessment

The Parental request will result in the Council carrying out an initial assessment exercise with the aim of identifying whether there is potential need for GMPE in the area.

The Bill will give parents of children under 5 the right to request Gaelic medium primary education for their child.

Full assessment

If, having followed the initial assessment, a Council decides that there is potentially a need for GMPE in their area they must then carry out a full assessment of the need for GMPE in that area. The Bill sets out the things that Councils must consider as part of a Full Assessment.

What does Promotion and Support mean?

The Bill also proposes a duty on education authorities to, as far as reasonably practicable, actively promote and support GME and GLE.

What is proposed through guidance for Gaelic education?

The Bill provisions will place a duty on Bòrd na Gàidhlig to produce guidance on how Gaelic education should work in Scotland.

Children's rights under Additional Support for Learning

What is this all about?

Part of the Bill is about giving children rights under the Additional Support for Learning Act. The Additional Support for Learning Act is the law which is about supporting children with their learning. Under this law parents and carers and young people, aged 16-18 and still in school, have certain rights. The Bill suggests that children who are 12 and over, who are able to, and who want to, should also have these rights.

What are the rights we are talking about? Are children getting the same rights as their parents?

The rights that parents and young people have at the moment are set out on page 8. They include rights about having additional support needs identified and assessed, access to information and access to services that will help resolve concerns.

It is suggested that children will have all of the rights set out at page 7 except for the right to make a placing request and the right to use mediation services. Instead of using mediation services themselves children should have their views considered as part of the process.

Children who are 12 and over, who are able to, and who want to, can use rights for themselves -what does that mean?

Children will have to have 'capacity' to use their rights, capacity will, in the main, be determined by the education authority. Children generally have capacity at 12 years old. This means that they are mature enough and able to understand at 12. For children and young people with additional support needs this is really important as some children may not have capacity at 12.

The Bill sets out what it means to have capacity. The child must be mature enough and be able to understand how to carry out their right, how to make, communicate, understand and remember a decision that they want to make (they must be able to understand what that decision means for them) and the advice and information that they are given so that they can express their view.

A child will not be 'made' to use their rights if they do not want to. Their parent can continue to use it on their behalf.

What does that mean for parents using rights?

The rights that parents' currently have under the Additional Support for Learning Act won't change. What will change is that children who are able to and who want to will be able use their rights on their own behalf.

How will children be helped to use their rights?

In most cases, parents will help a child who has chosen to use their rights. Children will also be given information about their rights if they are going to use them and will be able to access a children's support service, which will be managed by one overall organisation. This service will include:

- advice and information,
- advocacy support,
- legal advice and representation, and

- a children's views service.

This service is to help a child to use their rights (if they want to) and help them through the process. If needed, it will help them to understand the outcome of the decision or request or the information that they have as a result of using their right.

The children's views service is to help get the child's view when this hasn't been possible through other routes. The views of the child will be given to whoever is carrying out the process related to the right they are using, for example the child's views can be given to support a request.

What happens if parents and children disagree?

If a child is going to use their right the education authority has to assess the child's capacity and whether using their right is in their best interests. The child's parents will be notified of this assessment and the outcome of the assessment. If the parent feels that the child is doing something which is not in the child's best interests or that the child doesn't have the capacity to do, then the parent can ask for a review of the education authority's decision. This review will be carried out by a Convener of the Additional Support Needs Tribunals for Scotland. It is intended to be a fast review so that a decision can be made quickly to confirm that the child can use their rights or to prevent them from using their rights inappropriately.

What support is there available to parents and young people?

There is a range of support currently available for parents and young people. Enquire is the national advice and information service for additional support for learning in Scotland. Enquire have a website (www.enquire.org.uk) which includes publications and information on a wide range of issues. Enquire also have a helpline which anyone can call for advice and information on their specific concern or problem. The helpline number is 0845 123 2303.

[Let's talk ASN](#) is the advocacy service which provides advocacy and representation for parents and young people about things that they might be considering making a reference to the Additional Support Needs Tribunals about.

Parents, and young people have the right under the Additional Support for Learning Act to:

- ask the education authority to establish whether a child or young person has additional support needs
- request a specific type of assessment or examination (or both) at any time, including when the education authority proposes to formally identify whether a child or young person has additional support needs, or requires a co-ordinated support plan(a "CSP")
- receive information or advice about a child or young person's additional support needs
- ask the education authority responsible for their or their child's education to find out whether they or their child requires a co-ordinated support plan, and to review an existing plan
- request a specific type of assessment and/or examination to find out whether they or their child require a co-ordinated support plan
- be asked for their views and have them taken into account and noted in the child or young person's co-ordinated support plan
- receive a copy of their or their child's co-ordinated support plan
- have their case heard by an Additional Support Needs Tribunal if they are involved in a dispute relating to a co-ordinated support plan.
- make a placing request to a special school if they or their child has additional support needs*
- appeal against the education authority's decision to refuse their placing request. The appeal would either go to an education appeal committee or to an Additional Support Needs Tribunal depending on the situation
- use free independent mediation services*
- have a supporter or advocate present at any discussions
- request independent adjudication

- apply to the Additional Support Needs Tribunal (called 'making a reference') for decisions about a CSP and certain other issues. In particular, a parent or young person may make a reference about the decisions of an education authority:
 - to prepare or not prepare a CSP
 - to continue or discontinue a CSP
 - regarding the timescales for the CSP
 - not to comply with a request to establish whether a child or young person needs a CSP
 - to refuse a placing request where a CSP exists, or is required but has not yet been prepared, or if an appeal against a refusal of a placing request has not yet been considered
 - have a supporter or advocate present at a Tribunal hearing.

*it is suggested that these rights are not extended to children in the Bill.

Section 70 complaints

What is this about?

Currently, under section 70 of the Education (Scotland) Act 1980, any interested party can make a complaint to Scottish Ministers that a responsible body, such as a Council, has failed to carry out a legal duty. Scottish Ministers want to improve the current process for how section 70 complaints are handled.

What is a section 70 complaint?

Section 70 applies only to statutory duties that must be carried out under an Act of Parliament. It does not apply to common law duties, such as a duty of care, that have come from previous court-case decisions. It is not about questioning the decisions of responsible bodies. For example, Scottish Ministers cannot overturn a Council's decision just because they disagree with it.

What does it do?

The Scottish Ministers have a power to make an order under section 70 to require a duty to be carried out. To find out if there has been a failure to carry out a duty, the responsible body and the person making the complaint will be asked for evidence. If it seems there has been a failure, Education Scotland will investigate the case and act as advisers to the Scottish Ministers. After this investigation, if the Scottish Ministers think the responsible body has not carried out a duty, they may make an order requiring it to do so under section 70.

What will the proposed amendments do?

The proposed amendments will do two things:

- 1) Prevent the Scottish Ministers from making an order under section 70 where the complaint can be considered by the Additional Support Needs Tribunals for Scotland.
- 2) Provide the Scottish Ministers with a power to make regulations (also referred to as secondary legislation) about the procedure to be followed in section 70 complaints. This will be used to add timescales to the complaints process for everyone involved in making a complaint.

Section 70 of the 1980 Act applies only to statutory duties that must be carried out under an Act of Parliament

Chief Education Officer in education authorities

What is this for?

The Bill proposes to introduce changes to the law which are designed to support Councils in providing education by ensuring they have a Chief Education Officer.

How will the Bill do this?

The Bill will make it a new legal requirement for all Councils to appoint a Chief Education Officer. They will provide professional advice to education authorities on providing education services. This person will need to have suitable experience and qualifications.

The Scottish Government will also produce guidance on the role and functions of a Chief Education Officer to help education authorities in doing this.

Why is this change necessary?

There are growing ambitions within Scotland for our education system, with a particular focus on raising educational attainment and closing the equity gap that affects young people in too many parts of Scotland. These ambitions will demand a high degree of professional knowledge at a local level. The appointment of a Chief Education Officer will support education authorities in fulfilling the ambitions for Scotland's education system

Registration of practicing teachers with General Teaching Council for Scotland

What is this about?

The Bill proposes to introduce changes to the law which will ensure that all practicing teachers in Scottish schools, including independent and grant aided schools are registered with the GTCS.

How will the Bill achieve this?

It is currently the case that all teachers who work in Council run schools must be registered with the GTCS, the majority of teachers in independent and grant-aided schools are registered on a voluntary basis. However, there is currently no requirement for independent and grant aided schools to only employ teachers who are GTCS registered. The Bill will enable Scottish Ministers to make regulations which require all current and future teachers working in Scottish schools, including independent and grant aided schools, to be registered with the GTCS.

Why is this change necessary?

The compulsory GTCS registration of all teachers will assure parents that wherever their children attend school, the standards and quality of the teaching is regulated by a professional body.

Technical amendments in the Education (Scotland) Bill 2015

The Bill will also include technical amendments on two areas which already exist in law.

Free school meals

Section 53 of the Education (Scotland) Act 1980 contains the law for school food in Scotland, including the arrangements for free school lunches. This has been amended a number of times since 1980 and the Education (Scotland) Bill 2015 will simply restate this to clarify the law.

Contact

If you have any questions about the provisions of the Bill please contact Hallé Brown in the Education Bill team at the Scottish Government: Halle.Brown@scotland.gsi.gov.uk

Kinship care

The Children and Young People (Scotland) Act 2014 makes provision for early learning and childcare. It has unintentionally excluded a very small group of children from the mandatory early learning and childcare provisions - children aged 2 or over who have, or who have had, a parent appointed guardian who are not at risk of becoming looked after.

While statutory guidance has been in place to ensure that no child was excluded, the Bill will amend the law to address the unintentional exclusion. It will ensure that all children aged 2 and over, who have or have had, a parent appointed guardian or guardian appointed guardian, will be entitled to the mandatory amount of early learning and childcare.