

To: Education and Children Policy Board

On: 14 May 2015

Report by: Director of Children's Services

Heading: Education (Scotland) Bill

1. Summary

- 1.1. The first draft of a new Education Bill has been placed before Parliament. The Bill covers a number of areas including a change in the duties of the local education authority, Gaelic Medium Education, the provision of schools meals and the reinstatement of the role of chief education officer.
 - 1.2. If the Bill progresses to plan then it should be enacted early in 2016 with likely implementation in the summer of 2016.
 - 1.3. The Scottish Parliament's education and culture committee has launched a call for written submissions on the Bill. The proposed submission is attached as Appendix 1.
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2. Recommendations

- 2.1. The education and children policy board is asked to note the contents of this report and approve the attached submission to the education and culture committee (attached as Appendix 1).
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3. Background

- 3.1. A new Bill has been placed before the Scottish Parliament. This is entitled Education (Scotland) Bill 2015. The Bill will impose duties on local education authorities in relation to reducing pupils' inequalities of outcome, modification to ASL legislation, Gaelic Medium Education, school meal provision, the reinstatement of the role of the chief education officer, additional provision in relation to early learning and childcare along with issues relating to the registration of teachers working in independent and grant aided schools.

Inequalities of Outcome

- 3.2. In light of the recent publication of our own tackling poverty commission report it is significant to note the first of these new duties. This relates to a requirement that local education authorities must take due regard to reducing inequalities of outcome for pupils who experience socio-economic disadvantage. There will be an expectation on public reporting on progress in this area on a two yearly basis.
- 3.3. This section will replace the duty from the 2000 Act which laid a duty on local education authorities to secure school improvement. The revised duty will require us to continue to have regard to securing school improvement, raising attainment and closing the poverty gap.
- 3.4. When making strategic decisions the education authority will have to consult with head teachers, pupils, parents, voluntary organisations and others.
- 3.5. Statutory guidance will be published by the Scottish Government following the enactment of the Bill in order to set the context of how this duty will be implemented in practice.

Gaelic Medium Education

- 3.6. The Bill intends to promote the uptake of Gaelic Medium Education through placing increased duties on local education authorities in relation to assessment of requirement for the service based on parental requests.
- 3.7. Currently we have very small numbers of pupils wishing to take advantage of Gaelic Medium Education. As a result it is not economically viable for us to create and sustain such provisions within Renfrewshire. In addition, the availability of Gaelic Medium Teachers is very challenging. Many local authorities who do provide this service often struggle to recruit and retain suitably qualified staff. For example, the Gaelic unit in Inverclyde has had a series of significant periods of time where no Gaelic speaking teacher was available. When we receive requests for this provision we pay the transport costs to allow a placing request to be made to the Gaelic School in Glasgow.

School Meals

- 3.8. The Bill will seek to bring together legislation in relation to the provision of school meals. This does not appear to make any substantive change to the duties on local authorities. Instead it seeks to bring together the legislation in one place. It is notable that this provision sits in the Education Bill. It is also worth noting the fact that a new key theme of the Early Years Collaborative focuses on nutrition. It should be noted that the proposals will allow ministers to make future amendments to the provision of free school meals. To this end it will continue to be vital that schools and community resources work closely together in order to ensure delivery on the legislative requirements.

Chief Education Officer

- 3.9. Prior to 1996 the role of chief education officer existed in all local authorities across Scotland. At the time of disaggregation COSLA opposed the removal of this requirement from legislation. The Bill will reintroduce this advisory role which requires a suitably qualified senior officer to be in a position of advising the local authority on the carrying out of its functions.
- 3.10. It is not considered that this would cause any issues for the council in light of revised structures with an appropriate senior officer being able to take on this function.

Other Matters

- 3.11. There are a small number of other matters covered by the Bill which will tidy up provision due to omissions in relation to additional support needs and early learning and childcare. These are not large in scope but will be accounted for in due course.
- 3.12. Progress of the Bill
- 3.13. The timetable for the Bill is that it is expected to be enacted by January 2016 with implementation in the summer of 2016. Statutory guidance on its implementation will be published following its enactment as is usual with these processes.
- 3.14. It is possible that other requirements are introduced at stage 2 of the Bill. For example, there may be an introduction of legislation in relation to the length of the school week.

Implications of this report

- 1. Financial Implications**
None.
- 2. HR and Organisational Development Implications**
None.
- 3. Community Plan/Council Plan Implications**

Children and Young People	- Once legislation is enacted appropriate amendments will be included in future planning.
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- 4. Legal Implications**
None.
- 5. Property/Assets Implications**
None.
- 6. Information Technology Implications**
None.

7. Equality and Human Rights Implications

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. Health and Safety Implications

None.

9. Procurement Implications

None.

10. Risk Implications

None.

11. Privacy Impact

None.

List of Background Papers

None.

The foregoing background papers will be retained within Children's Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is Gordon McKinlay, Head of Service, Tel 0141 618 7194.

Children's Services

GMCK/LG

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Renfrewshire Council

Response to Education and Culture Committee – call for written submissions on the Scottish Government’s Education (Scotland) Bill.

Attainment

The Committee has recently taken evidence to suggest there should be a greater emphasis on pupils’ or young people’s educational *achievement*, as opposed to their attainment (which is often seen in terms of qualifications or exam results). The Bill’s Policy Memorandum, in describing these provisions, uses the word ‘attainment’ on several occasions but uses ‘achievement’ only twice. The Bill itself uses neither term.

1. What improvements in attainment, in achievement and in reducing inequalities of outcome do you consider the Bill in itself could deliver? What would be a desirable level of improvement?

Renfrewshire Council is fully committed to ensuring all children and young people get the best start in life. Where children are affected by the negative impact of deprivation there is growing awareness and understanding of the implications this has for ensuring effective service delivery. It is a point of debate whether or not the Bill in itself can be effective in making appropriate improvements in attainment.

Raw measures of attainment on their own do not provide an appropriate context for all learners. A far wider range of indicators leading to sustained destinations as young people leave school are highly significant and should not be ignored.

The impact of deprivation on learning goes far beyond the school gate. As a result the scope of an Education Bill cannot mitigate against all aspects of poverty on children and young people. It must be recognised that factors outwith the sphere of influence of schools will also have an impact on educational outcomes.

2. The duty in the Bill is to ‘have regard to the desirability’ of ‘reducing inequalities of outcome’. Is this meaningful enough to have the desired policy effect?

The definition of the statement of the duty provides an appropriate level of clarity.

3. How should ‘inequalities of outcome’ be interpreted and should this phrase be defined in the Bill?

The term should be interpreted in a way that will allow services provided to have a positive impact on the outcomes of children and young people.

4. What specific actions will education authorities be able to take to reduce inequalities of outcome that they are currently unable to take?

None.

5. How do the provisions on attainment fit with existing statutory National Priorities for Education and the requirements to produce annual statements of improvement objectives and school development plans?

The provisions on attainment fit appropriately with existing national priorities for education in Scotland. The duty to raise attainment for all is complemented by addition of the duty to close the attainment gap.

The existing duties to produce annual statements of improvement objectives and school development plans provide an appropriate framework within which local education authorities and schools identify development and improvement priorities.

The Bill's Policy Memorandum uses a range of terms that do not appear in the Bill, for example—

- ☐ “promote equity of attainment for disadvantaged children”
- ☐ “narrowing the attainment gap”
- ☐ the correlation between a child's “social deprivation/ affluence and their educational attainment”.

6. Do you consider that such terms are clearly defined and widely understood? Could the different terms used in the Policy Memorandum and in the Bill create any problems in delivering the policy objectives?

It will be important that all terminology is clearly understood by all stakeholders. For example “disadvantaged children” is not always associated with socio-economic disadvantage.

7. Should the Bill contain sanctions in the event that the Scottish Government or local authorities fail to achieve the policy intention of reducing inequalities of outcome? If so, what sanctions would you suggest are appropriate?

Sanctions would not be appropriate. Whilst schools will continue to work hard to ensure the aspiration of the duty is fulfilled this is a complex area with many issues lying outwith their control or influence.

8. Do you have any views on the consultation and reporting requirements set out in this part of the Bill?

Consultation is good practice and the council welcomes the opportunity to report every two years on progress. It will be important that these reports should reflect local reporting arrangements and help to support improvement rather than narrowing the scope to a small number of discrete indicators.

9. The Bill focuses on reducing inequalities of outcome resulting from pupils' socio-economic disadvantage. Should all examples of inequality of outcome be addressed?

It will be important that this legislation does not cut across duties which may be covered by the Equality Act 2010.

Gaelic

10. How significant a change in Gaelic medium primary education will the Bill deliver? Do you agree these provisions should be limited to primary schooling?

It will only deliver a significant change if there is a need after carrying out the initial and full assessment and provision has to be made. This only refers to parents of children under 5 therefore over a period of time there may be a cultural shift resulting in more provision of Gaelic medium education.

These provisions should be limited to primary schooling as the challenges around provision at any other stage would not allow effective delivery of high quality learning experiences.

11. What are the most appropriate ways for education authorities, particularly those with low levels of Gaelic usage, to promote and support Gaelic medium education and Gaelic learner education? What impact is this promotional work likely to have on the Gaelic language and the number of Gaelic speakers?

The promotion and support of Gaelic medium education in areas of the country where there is little historic use of the language should not be a means for diverting resources away from mainstream education. It is not anticipated that publicity of provision will automatically result in an increase in uptake.

12. Do you agree that the Bill “will establish a clear process for authorities to follow in considering parental requests for an assessment of the need for Gaelic medium primary education”? Do you agree with the thresholds proposed in the Bill in relation to the assessment of parental requests?

It is to be welcomed that there is a clear process established for local authorities to follow. The thresholds are very low and could result in significant additional costs. There are implications that the local authority require to consider:

- *suitable premises*
- *increased cost / value*
- *availability of trained teachers and*
- *potential difficulties in recruiting and training.*

13. Under existing legislation, education authorities must have regard to Bord na Gaidhlig’s education guidance when they are producing their annual statement of improvement objectives. What will the requirement in this bill add to this?

This may mean that every two years there will be assessments carried out following parental request.

14. Overall, to what extent will the Bill help to deliver the Scottish Government's commitments to grow and strengthen Gaelic education?

The Bill seeks to raise the status of learning Gaelic medium primary education in Scotland. It will ensure that local authorities will continue to engage with parents and respond appropriately to their requests.

15. What potential impact on other educational services might arise from the local authority having to implement these new duties?

At a time of ongoing financial constraint, there may well be a significant impact on other educational services e.g finance used to support curriculum development may need to be diverted to support Gaelic. This process will involve local authority officer time to carry out the assessments, write reports and engage with parents.

Where numbers of learners remain relatively small in some areas the cost of providing Gaelic medium education in the primary school will be high.

The current challenge in relation to the availability of suitably qualified teachers should not be underestimated. Where a demand is identified provision may still not be possible due to the severe lack of available staff.

16. What will be the outcomes of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children aged 12 and over with capacity? Please give practical examples.

Extending the rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children 12 and over with capacity would be in line with the recommendation made by the UNCRC (20th October 2008), strengthening the rights of children. This will bring the ASL Act in line with the Equalities Act where a child with capacity can bring a disability discrimination case to the Additional Support Needs Tribunal. This proposal also compliments Part 1 of the Children and Young People (Scotland) Act 2014 by putting children's rights at the centre of public services.

Although we welcome children's rights being extended in this way, in practice this could lead to situations where the child and parent are in dispute where the child has a different view of their own needs. Although children may have capacity, they may lack emotional maturity in respect of the best outcome for them or the longer term impact of decisions they may make.

We also have some reservations with regards to the education authority having the responsibility for determining capacity. Although there will be guidance about this, this additional responsibility will put more pressure on the already stretched resources of the educational psychology services

17. Do you agree with the proposal that not all of the rights in the ASL legislation should be extended to children (see paragraphs 49 and 50 of the policy memorandum)?

We agree that the issues of placing requests could cut across parental duties however the views and wishes of children should be considered and recorded during the process.

In relation to mediation we do not agree that young person should be disbarred from participating in this process. Young people with capacity should be allowed to engage in process where they are supported to enter into a position where they can negotiate and compromise towards an agreement.

18. What are your views on the statutory children's support service proposed by the Scottish Government?

Children with capacity will need advocacy, guidance and support from adults therefore we welcome the provision of the statutory children's support service. This service should be provided to children without cost to the education authority.

Chief Education Officer

19. What would be the possible advantages and disadvantages of legislating for the role of Chief Education Officer (CEO) in every education authority in Scotland? Are there any previous examples of the Scottish Government seeking to instruct local authorities to employ a person in a particular role? If so, are there any lessons to be learned from how this worked?

The role of chief education officer is welcomed and will provide the communities we serve with the assurance that the responsibilities relating to education are being considered at the highest level.

20. What roles could a CEO most usefully perform and to what extent are such roles already carried out within education authorities?

The role of the CEO should be to ensure a suitably qualified and experienced individual is able to advise the local authority on its statutory duties and ensure the ongoing improvement in the quality of outcomes for all children and young people in each community. Although this role is already typically carried out within each local authority the return of this role will ensure it remains a priority at the highest level of strategic responsibility.

Registering teaching staff

21. How would grant-aided schools, independent schools and their pupils benefit from their teaching staff being registered with the General Teaching Council for Scotland? What different or new skills would such teaching staff acquire as a result of registration? Is it likely that attainment would improve in the schools in question?

All children in Scotland should have access to high quality learning and teaching experiences delivered by GTCS registered teachers.

22. What transitional arrangements would be appropriate, particularly to avoid the risk of smaller special schools being unable to operate?

Transitional arrangements should ensure the move is made without significant delay.

Complaints

23. The Bill will introduce a power to make regulations about the procedure to be followed in relation to complaints to Scottish Ministers. Paragraph 74 of the Policy Memorandum sets out some proposed deadlines. What is your view on the deadlines for these procedures?

We welcome the fact that deadlines are being introduced however we feel that these deadlines are too long.

24. The policy intention is that Scottish Ministers should not consider an issue or reconsider a decision which should be dealt with by the Additional Support Needs Tribunals for Scotland (ASNTS). Do you agree with this proposal and will it always be clear cut when a complaint is solely for the ASNTS?

If ASNTS are to remain as a separate complaints system then it makes sense for this to be the mechanism to deal with all complaints in relation to the 2004 Act. Having a separate route to Scottish Ministers can cause confusion and parallel processes being followed. However in relation to sections 4,5 and 18 of the Children and Young People (Scotland) Act 2014 there could be an overlap between an additional support need and a wellbeing need which could lead to confusion so it will not always be clear cut when a complaint is solely for the ASNTs.

25. Overall, how will the Scottish Government's proposals affect parents' ability to complain about the actions of an education authority or other relevant body? Will the new system be more effective? Is it clear which matters can and cannot be the grounds of a complaint to Scottish Ministers?

We do not think that the new system will be more effective as we were of the view that one system (complaint to Ombudsman) would have streamlined the process. There is not sufficient information and guidance available as to what constitutes a section 70 complaint. In addition, complaints in relation to the duties of the Children and Young People Act will be considered by the Ombudsman.

Learning and childcare

The Scottish Government is seeking to amend section 47(3) of the Children and Young People (Scotland) Act 2014 as it currently unintentionally excludes a small group of children from the early learning and childcare provisions.

26. Are there any reasons to distinguish between guardians and kinship carers for the purposes of entitlement to free early learning and childcare?

We welcome the inclusion 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.