

# **EDUCATION (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Education (Scotland) Bill introduced in the Scottish Parliament on 23 March 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 64–EN.

### **POLICY OBJECTIVES OF THE BILL**

2. The Scottish Government's strategy for education and lifelong learning aims to ensure that everyone develops the attributes, knowledge and skills they will need for life, learning and work. In school education, this is expressed through a flexible curriculum framework – Curriculum for Excellence – which sets out experiences and outcomes for learners and asks teachers to develop and deliver local plans for learning. The ultimate goal is to enable all children and young people to develop the '4 capacities' of Curriculum for Excellence – successful learner, responsible citizen, confident individual and effective contributor. Education represents an investment, not just in children, but in culture, society and economy. A highly skilled population leads to higher wages, better jobs, economic growth and benefits the health and wellbeing of each of us.

3. It is clear from regular engagement and discussions with key partners such as COSLA, the Association of Directors of Education in Scotland and organisations representing the third sector, teachers and parents, that there is a very strong commitment to a shared vision for Scotland's children. While there is evidence that educational outcomes for all learners are improving, promoting greater depth and breadth of attainment and achievement and improving the educational outcomes of all children and young people remains a key priority. There is also a strong consensus that work begin towards eradicating inequalities of educational outcomes and making progress in eroding the deeply embedded correlation found in the majority of Scottish schools between a child's relative point of social deprivation/affluence and their educational attainment.

4. The Programme for Government makes clear the Scottish Government's commitment, as part of its work to tackle poverty and to help make Scotland a fairer, more equal place, to improve education and attainment for all. A comprehensive programme for action has been designed to build on existing activity and is supported by substantial investment in some of Scotland's most deprived communities, through the Scottish Attainment Challenge.

5. A key element of this programme is new legislative provision in the Education (Scotland) Bill placing additional responsibilities on the Scottish Government and education authorities aimed at promoting equity in education and raising attainment for all.

6. The Scottish Government has manifesto commitments which focus on growing and strengthening Gaelic education and the Gaelic provisions in this Bill are largely being brought forward in response to these. In addition, despite growth and progress in Gaelic medium education there remain some gaps and some obstacles to the progress which the Scottish ministers hope to see in Gaelic medium education in Scottish schools. The provisions in this 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. The Bill will also place a duty on authorities to promote and support Gaelic education and a duty on Bòrd na Gàidhlig to prepare guidance on Gaelic education.

7. The Bill will also ensure that children have rights to question any support needs they may have in order to make the most of their learning while at school. It will ensure that all children and young people have highly qualified and trained teachers and that education authorities have an appropriately qualified and experienced Chief Education Officer with responsibility for delivering their education functions. The Bill will also introduce a clear process for parents to make complaints to Ministers with regard to the delivery of educational duties by education authorities.

8. Specifically, the Bill aims to:

- Promote equity of attainment for disadvantaged children and take steps towards narrowing the attainment gap by imposing duties on education authorities and the Scottish Ministers in relation to reducing pupils' inequalities of educational outcome together with a duty to report on progress;
- Place a duty on education authorities both to assess the need for Gaelic medium primary education (GMPE) following a parental request and to actively promote and support Gaelic medium education (GME) and Gaelic learner education (GLE); the Bill will also place a duty on Bòrd na Gàidhlig to prepare guidance on how GME should operate in Scotland;
- Extend rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ("the 2004 Act") to children aged 12 and over with capacity;
- Amend section 53 of the Education (Scotland) Act 1980 ("the 1980 Act") which sets out the provision for school food in Scotland. This section has been amended a number of times since enactment and it is considered that the section would benefit from restatement;
- Modify the types of complaints made to Ministers under section 70 of the 1980 Act, and introduce a power to make regulations about the procedure to be followed in relation to investigations and determination of such complaints;
- Legislate for the role of Chief Education Officer in education authorities in Scotland;
- Modify the powers of the Scottish Ministers to make regulations in relation to independent schools and grant-aided schools in Scotland so they are exercisable in

such a way as to ensure all teaching staff are registered with the General Teaching Council for Scotland; and

- Amend section 47(3) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) as it currently unintentionally excludes a small group of children from the early learning and childcare provisions.

9. Specific public 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.

10. As work on the Bill has progressed there has been on-going engagement with key stakeholders including COSLA, Scotland’s Commissioner for Children and Young People, the Association of Directors of Education in Scotland (ADES), Children in Scotland, National Parents Forum for Scotland, Bòrd na Gàidhlig, General Teaching Council for Scotland (GTCS) and the Directors of the Scottish Council of Independent Schools. Additionally, as part of the Equality Impact Assessment process, a specific meeting was held on 12 January 2015 with interested equalities organisations to consider the impact of the proposed provisions of the Bill on equality matters. Full details of consultations undertaken are provided within the sections below.

## **POLICY OBJECTIVES: SPECIFIC PROVISIONS**

### **Part 1 (sections 1-4): Promote equity of attainment for disadvantaged children and narrowing the attainment gap**

11. Scotland should be the best place to grow up and go to school. The Scottish Government want each child to enjoy an education that encourages them to be the most successful they can be and reach their potential. To achieve this attainment needs to be raised consistently for all children and young people; inequality in educational outcomes progressively reduced.

12. Evidence shows that there is a significant gap in educational attainment between the most and least deprived children and the majority of this variation can be found within rather than between schools. The Programme for International Student Assessment (PISA) 2009 survey estimates that, by the time children leave school, the average difference in attainment between those in the least and most disadvantaged quarters is the equivalent of more than two years of schooling.

13. An attainment gap which opens up in primary school has a greater likelihood of widening through secondary school and leading to inequitable participation in higher education and employment. As educational attainment increases, employment is more likely, physical and mental health is better, earnings are likely to be higher and poverty is less likely. A strong skills foundation, including literacy and numeracy, is fundamental to meeting the demands of an increasingly fast-developing labour market.

14. The Scottish Government has recognised the need to support disadvantaged children more effectively. All key policies and programmes which affect children and young people provide targeted support to children and young people from disadvantaged communities within an overarching universal offer:

- Curriculum for Excellence<sup>1</sup> has promoted greater personalisation, choice and support for individuals and flexibility for teachers to respond to needs;
- Getting It Right For Every Child<sup>2</sup> focusses on building services around the needs of the child;
- The Early Years Framework<sup>3</sup> and the Early Years Collaborative<sup>4</sup>, which promote and support the implementation of evidence-based early intervention;
- Opportunities for All<sup>5</sup>, which ensures that every young person has the support to continue participation in learning, training or work;
- Developing Scotland's Young Workforce<sup>6</sup>, which is aimed at giving all children and young people the skills they need to get into the job market;
- Additional Support for Learning legislation<sup>7</sup>, which prioritises the individual needs of children with additional support needs;
- Teaching Scotland's Future<sup>8</sup>, which is better preparing the teaching workforce to address current challenges;
- The Scottish Schools (Parental Involvement) Act 2006<sup>9</sup> which introduced duties on local authorities to address barriers to the involvement of parents, so that they can support learning and ultimately improve attainment.

15. In addition to these policies and programmes, the Scottish Government also has a number of specific priorities focused on narrowing the attainment gap:

- The Scottish Attainment Challenge, backed by a £100 million Attainment Scotland fund over four years, was launched in February 2015 to drive forward improvements in educational outcomes in Scotland's most disadvantaged communities. It will focus on improving literacy, numeracy, health and wellbeing in primary schools in these areas, with the clear objective being to give all primary-school age pupils – regardless of background - the best start in life.
- Raising Attainment For All was launched in June 2014. Twelve local authorities and over 150 schools across Scotland are part of this quality improvement community, building on the work of the Scottish Patient Safety Programme<sup>10</sup> and the Early Years Collaborative. This work aims to support consistent improvement in attainment and achievement.

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<sup>1</sup> <http://www.gov.scot/Topics/Education/Schools/curriculum>

<sup>2</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/background>

<sup>3</sup> <http://www.gov.scot/Publications/2009/01/13095148/1>

<sup>4</sup> <http://www.gov.scot/Topics/People/Young-People/early-years/early-years-collaborative>

<sup>5</sup> <http://www.gov.scot/Publications/2012/11/7618>

<sup>6</sup> <http://www.gov.scot/Topics/Education/edandtrainingforyoungple/commissiondevelopingscotlandsyoungworkforce>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2004/4/contents>

<sup>8</sup> <http://www.gov.scot/resource/doc/337626/0110852.pdf>

<sup>9</sup> <http://www.legislation.gov.uk/asp/2006/8/contents>

<sup>10</sup> <http://www.scottishpatientsafetyprogramme.scot.nhs.uk/>

- Focus on Literacy and Numeracy: development of literacy and numeracy hubs to promote excellence across the country and support improvement.
- Parental and Community Engagement: working closely with the National Parent Forum of Scotland to understand and respond to the needs of parents. A new evidence-based, web resource for schools to support their parental engagement strategies, particularly engaging with families living in deprived areas. A refreshed ParentZone website to improve the information provided to parents has been developed.
- Use of Evidence and Data for Improvement: Insight is a new online benchmarking tool which went live in August 2014 to help bring about improvements for pupils in the senior phase. It is being used to identify areas of success and where improvements can be made.
- The Self-Improving Schools Partnership Programme is continuing to facilitate partnerships within and across schools and education authorities. The Programme, managed by Education Scotland, draws on international educational research.

16. What is apparent, however, is that, while progress is being made there still remains much to be done to reduce inequality. There is a huge amount of will in the sector to raise attainment for all and to narrow the attainment gap. Scotland has a widely accepted approach to learning and teaching, good evidenced-based interventions and a solid framework for improvement. There is a need now to build on this, to bring more focus to inequality and the practical ways to improve outcomes for children and young people.

17. 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. 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. 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.

18. The provisions in the Bill will be consistent and coherent with the existing policy and legislative framework outlined in paragraphs 11 and 12 above.

### ***Benefits***

19. The Bill will bring fresh focus and new impetus to the legislation which underpins standards and improvements in education, much of which pre-dates the implementation of Curriculum for Excellence.

20. More specifically, it will ensure that the need to address the attainment gap remains foremost in the minds of those with responsibility, both locally and nationally, for delivering education services and that day-to-day decisions involve specific and explicit consideration of how best to support more disadvantaged learners. The provisions will ensure that communities

have the opportunity to shape those decisions, with education authorities being required to consult key groups including children and parents. Finally, the provisions will deliver increased accountability on this issue by requiring the publication of plans and reports every two years by both education authorities and the Scottish Ministers, complementing the range of activity already being taken forward at local level.

### ***Alternative approaches***

21. As noted above, a significant range of national and local activity is underway to reduce inequalities of outcome. The alternative to introducing provisions to promote equity of attainment for disadvantaged children would be to continue to highlight the importance of narrowing the attainment gap on a non-statutory basis, through guidance and on-going support for our existing policies, programmes and more specific initiatives.

22. Such on-going activity is clearly fundamental to the Scottish Government's work in this area. It is considered that introducing statutory duties, both for Scottish Ministers, and for education authorities, is nevertheless necessary in order to secure a long-term commitment to a reduction in inequalities of outcome; strengthening the priority given to this aspect of education delivery, and enhancing accountability at both local and national level.

23. Consideration was also given to using secondary legislation to achieve the aim of reducing inequalities of educational outcome caused by socio-economic disadvantage. The Standards in Scotland's Schools etc. Act 2000 contains enabling powers to define in secondary legislation, national priorities in education. The 2000 Act then places duties on education authorities in relation to periodic planning and reporting on education improvement objectives, with reference to those national priorities. It is important to recognise that the duties now being proposed are not limited to periodic planning and reporting although this is an important element of the approach. The duties also require on-going, active consideration of steps to address inequalities of educational outcome and so extend beyond the requirements of the 2000 Act.

24. Whilst it would be possible to amend The Education (National Priorities) (Scotland) Order 2000, to add the promotion of equity of attainment for disadvantaged children to the list of national priorities in education, that approach would not place planning and reporting duties on Scottish Ministers; nor would it offer the enhanced accountability provided by the requirement for education authorities to report to the Scottish Ministers, and the Scottish Ministers to report to the Scottish Parliament. Finally, the planning and reporting requirements associated with the national priorities stipulate a narrower group of consultees than is envisaged for the attainment duties. As such, it is considered that secondary legislation would not provide a sufficiently robust or far reaching approach to addressing the issue of inequalities of outcome.

### ***Consultation***

25. There has not been a formal public consultation on these proposals although, as set out in paragraph 3 above, there is consensus on the need to work to raise attainment and close the attainment gap. There has been discussion of these proposals with COSLA, ADES and the National Parent Forum of Scotland and other key partners alongside the development of the Bill.

26. The Scottish Government did, however, consult on the application in Scotland of the proposed socio-economic inequality duty on public sector bodies in section 1 of the Equality Act

2010. This duty would require all public sector bodies, including local authorities in Scotland, to exercise their functions in a way that is designed to reduce the inequalities of outcome resulting from socio-economic disadvantage. The consultation on the application of this duty in Scotland took place between August and October 2009. The majority of the 69 responses received were supportive of the application of the duty in Scotland.

27. Section 1 of the 2010 Act has yet to be commenced and it is understood that the UK Government intends to repeal it.

## **Part 2 (sections 5-16): Expand provision of Gaelic medium education**

28. Gaelic medium education (GME) is the teaching and learning of subjects through the medium of the Gaelic language. The aim of GME is to produce a certain level of fluency in the Gaelic language. Gaelic learner education (GLE) is the teaching and learning of the Gaelic language as an additional language; in contrast to GME, GLE has more in common with the learning of other languages such as French or Spanish in Scottish schools.

29. The National Census 2011 recorded an increase from 2001 in the proportion of children and young people between the ages of 3-4, 5-14 and 15-19 who speak Gaelic. In these age categories the percentage of Gaelic speakers increased from 0.5% to 0.7%; from 1.0% to 1.2% and from 0.9% to 1.0% respectively. The number of young people entering GME at P1 has increased from 428 in 2012 to 486 in 2013 to 536 in 2014. Although the number of children and young people speaking Gaelic and the number of pupils in GME is increasing, the numbers receiving GME are not yet sufficient to reverse the long term decline of the Gaelic language in Scotland. From 1981-91 the decline was 16,662; from 1991-2001 the decline was 7,306 and from 2001-11 the decline was 1,050. The health of a language is based on many factors but, in strictly numerical terms, there would need to be an increased rate of growth of Gaelic speakers to reverse the long term decline of the language. The expansion of GME is required to support the desired rate of growth.

### ***Place a duty on education authorities to assess the need for Gaelic medium primary education (GMPE) following a parental request***

30. The policy aim is to promote the growth of GMPE, recognising that GMPE can make an important contribution to the overall numbers who speak Gaelic and thus to the health and strength of the Gaelic language in Scotland. The Bill aims to facilitate the growth of GMPE by establishing a clear process whereby education authorities must respond to parental requests for an assessment of the need for GMPE. A statutory process and timescales for the assessment of a parental request will ensure consistent practice across Scotland and provide clarity for education authorities and parents about the nature of the parental entitlement and the manner in which a parental request will be handled. This process has the potential to lead to a faster rate of growth in GMPE.

### ***Place a duty on education authorities to actively promote and support GME and GLE***

31. Twenty two education authorities currently receive varying levels of Gaelic Specific Grant funding and are already asked to promote the availability of GME in their area or the opportunity to send children to neighbouring areas to receive GME or GLE. The ways in which these education authorities promote Gaelic is not currently specified. The Bill will impose a

duty on all education authorities to promote GME and GLE, irrespective of whether education is currently provided by these means in that education authority area and, where GME and GLE are provided, to support that provision. Further detail on how education authorities should fulfil these duties will be included in the guidance that will be issued under the Bill. Where GME is not provided, it will be a requirement for education authorities to publicise the process whereby parents can request an assessment of the need for GMPE.

### ***Place a duty on Bòrd na Gàidhlig to produce guidance about the delivery of GME and GLE***

32. Although GME is an established part of Scottish education, there are aspects of both classroom practice and education authority delivery that could benefit from clarification. For example, there are questions about the extent of the immersion phase, usually regarded as P1-P3, and the subsequent balance between GME and English medium education in GME classes. Other matters that could benefit from clarification in guidance are the extent of the area within which education authorities must assess the need to provide GMPE and the profile and visibility of Gaelic in a school, for example, Gaelic signage within a school. The guidance, which will be subject to public consultation, will also provide an opportunity to offer further direction for the operation of some of the GME provisions in the Bill.

### ***Benefits***

33. The Bill proposes to establish a detailed statutory procedure which will give parents the confidence that their requests for an assessment of the need for GMPE will be handled in an open, transparent and fair system within a reasonable time. Imposing timescales on education authorities also has the potential to contribute towards a faster growth in the rate of GMPE provision by requiring a decision within a set timeframe.

34. The development of guidance will aim to standardise the delivery of GME across Scotland, clarifying for parents, education authorities and schools what GME should consist of, managing parental expectations and also assisting Education Scotland with the on-going inspection of GME delivery.

### ***Alternative approaches***

35. As stated above, one of the main policy aims of Part 2 of the Bill is to promote the growth of Gaelic medium primary education; by establishing a clear process whereby education authorities must respond to parental requests for an assessment of the need for Gaelic medium primary education within specific timescales, by placing a duty on education authorities to promote and support Gaelic medium education and Gaelic learner education and by requiring Bòrd na Gàidhlig to prepare guidance on the provision of Gaelic education and the development of such provision. There is no existing provision in primary legislation that achieves these ends and no existing secondary legislation making powers that could be exercised to do so.

36. Consideration was given to whether these ends could be achieved by any of the secondary legislation making powers in the 1980 Act. It was concluded that provision had to be made in primary legislation for new powers and duties to achieve these policy aims and satisfy the ambitions of the Scottish Government for Gaelic education.



37. The provisions in Part 2 of the Bill confer new powers on the Scottish Ministers and impose new duties on education authorities and Bòrd na Gàidhlig as well as containing a range of definitions that clarify the application and effect of these provisions. Primary legislation was considered to be the appropriate vehicle to combine these elements into a cohesive scheme which will be accessible to and provide legal certainty for those affected by the scheme, principally: individuals and local authorities.

38. Consideration was also given to whether the policy aims could be met through existing powers under the Gaelic Language (Scotland) Act 2005 (“the 2005 Act”) but these powers were considered inadequate to meet these aims. The 2005 Act established Bòrd na Gàidhlig as a body with the functions to promote the use and understanding of the Gaelic language as well as to promote Gaelic education and culture. Under the 2005 Act, Bòrd na Gàidhlig must prepare a national Gaelic language plan at least once every 5 years which must include a strategy for promoting and facilitating the promotion of the use and understanding of the Gaelic language, Gaelic education and Gaelic culture. Having regard to the national Gaelic language plan and the extent to which the Gaelic language is already used as well as the potential to develop that use, Bòrd na Gàidhlig may then require Scottish and cross-border public authorities to prepare and publish Gaelic language plans in connection with the exercise of their functions. Bòrd na Gàidhlig considers such Gaelic language plans for approval and monitors their implementation. The Scottish Ministers also have a power under the 2005 Act to issue directions to enforce implementation of a Gaelic language plan. The 2005 Act contains no powers that would allow the Scottish Ministers to establish a process for parents to request an assessment of the need for GMPE and according to which education authorities must carry out such an assessment. It was also concluded that reliance on the powers in the 2005 Act alone would lead to a piecemeal approach to the promotion and support of Gaelic medium education and Gaelic learner education as Gaelic language plans vary from authority to authority.

39. However, the existing power in the 2005 Act for Bòrd na Gàidhlig to prepare and publish (subject to approval by the Scottish Ministers) guidance on the provision of Gaelic education and the development of that provision has been strengthened by the Bill to convert the power into a duty.

40. Gaelic education (both GME and GLE) has been operating without specific statutory provisions for many years but there are a number of gaps in this provision that, following consultation, the Scottish Government has concluded can only be filled through a cohesive statutory scheme. Primary legislation is the most suitable vehicle to impose a duty on authorities to respond to a parental request for an assessment of the need for GMPE, a duty on authorities to promote and support Gaelic medium education and Gaelic learner education and a duty on Bòrd na Gàidhlig to prepare guidance on Gaelic education.

### ***Consultation***

41. A consultation paper on ‘Gaelic Education Legislation’ was published on 2 July 2014. 79 responses were received, just over half (53%) from individuals, the remainder from organisations, including 13 local authorities.

42. The consultation responses showed widespread support for GME, with many respondents viewing GME as having a key role to play in securing a future for the Gaelic language in Scotland. 80% agreed that a legislative process should be put in place to prescribe

the manner in which education authorities respond to parental requests for the provision of GME. Respondents also recommended that when considering parental requests, education authorities should consider not only their own GME resources, but those of neighbouring authorities too; with joint provision and working to be encouraged.

43. 90% of those who responded stated that guidance from central government is necessary in order to create a common understanding and expectation of the arrangements under which GME should operate. Some respondents recommended that the Scottish Government should develop such guidance in conjunction with education authorities, Bòrd na Gàidhlig and other relevant stakeholders.

44. There has been previous consultation on various aspects of GME which produced broad support for increased provision. Consultation on the Gaelic Language (Scotland) Bill in 2004 demonstrated a demand for GME as did the consultation on the Schools (Consultation) (Scotland) Bill in 2009. However, neither Bill provided for a statutory right to request an assessment of the need for GME.

### **Section 17: Extending rights to children under the Additional Support for Learning legislation**

45. The Scottish Government has made clear its commitment to recognising, respecting and promoting children's rights in Scotland.

46. On 20 October 2008, the United Nations Committee on the Rights of the Child issued recommendations in a [report](#) for the United Kingdom that the state party (United Kingdom) "ensure that children who are able to express their views have the right to appeal to the special educational needs tribunals". At the time of [responding to the UN Committee](#) it was considered by the Scottish Government that the rights of the child, as set out above, were already served by the 2004 Act. This requires education authorities to seek and take account of the views of the child on decisions that affect them, unless the authority is satisfied that the child lacks capacity to express a view. This builds upon education authorities' responsibilities under the [Standards in Scotland's Schools etc. Act 2000](#) which requires education authorities to have due regard so far as reasonably practicable to the views of children and young people in carrying out their duty to secure education.

47. A child under the age of 16 years does not, however, have the right to appeal (make a reference) against a decision taken by an education authority under the 2004 Act. Under the 2004 Act, parents currently hold rights on behalf of their children. In addition, young people with capacity (aged 16 - 18 in education) are able to exercise rights on their own behalf. These rights are detailed fully at Annex A.

48. Following changes made on 18 March 2011 by the Equality Act 2010, a disabled person (including a child over 12) can make a claim of disability discrimination against an education establishment to the Additional Support Needs Tribunals for Scotland (ASNTS). Disability discrimination in education may include less favourable treatment of a disabled child, which the school cannot justify, and failure to make 'reasonable adjustments' to ensure the child is not at a substantial disadvantage, compared with others. Therefore, currently, a child can bring a disability discrimination claim to the ASNTS but not appeal (make a reference) against any

decision taken by an education authority under the 2004 Act. So, under current arrangements, there is potential inequity built into the legal framework, depending on which legislation is used to make decisions.

49. It is proposed that the majority of the rights under the 2004 Act be extended to children aged 12 and over who have capacity and may have additional support needs. Capacity will be determined by the responsible education authority or where there is an appeal to the ASNTS, the Tribunals. This determination will take into account the child's understanding of the request they are making and their maturity to manage any potential outcome of exercising their rights. Education authorities and the Tribunals will also have to consider whether the use of their right is in the child's best interests. Guidance to education authorities on determining capacity and best interests will be produced following the introduction of these amendments. It is intended that parents' rights under the 2004 Act (as amended) will remain.

50. It is proposed that, where a child or parent disagrees with the decision on these matters they will be able to make an appeal (reference) to the ASNTS where a review of the decision will take place and an independent view will be reached.

51. The extension of rights to children with additional support needs has been very carefully considered in relation to each particular right. In the light of this consideration and of the responses to the consultation of December 2013, it is proposed that the right to make a placing request (a request to go to a school out with the child's catchment area) should not be extended to children. It was felt that there is potential for a child to have a successful placing request to a school in another authority area, another country in the UK or overseas which their parent does not agree with. This would significantly disrupt family life and cut across the duties placed on parents to provide education for their child. Similarly, following consultation with key stakeholders, it is proposed that the right to request independent mediation, which allows disputing parties to seek to resolve their differences with the assistance of a mediator acting as an impartial third party, will not be extended. Independent mediation was considered to put significant responsibility and pressure on the child as they would have to be the lead party in any negotiations and be able to compromise towards an agreement. However, it is proposed that the Bill will enable children to have their view taken into account during mediation. Mediation providers are supportive of this approach.

### ***Establishment of a children's support service***

52. It was clear from the responses to the consultation that the majority of stakeholders felt that a comprehensive support system would be required to enable children aged 12 and over to properly exercise their new rights (the current position for parents and young people is detailed in Annex A).

53. The Scottish Ministers currently fund an information and advice service and are required to fund an advocacy service (encompassing legal representation) for parents and young people. The Bill will require the Scottish Ministers to establish and provide a comprehensive support service for children to raise awareness of the extension of rights and to ensure support is available to them where they wish to act on their own behalf. The Scottish Ministers have elected to legislate for this provision to ensure parity of service status with that for parents and young people.

54. It is proposed that the four components of this service will be:

- Advice and information services to provide an independent and confidential service to help children who may wish to seek further information on their rights and how they exercise them. It is also envisaged that the service will produce publications and leaflets in a child-friendly format;
- Advocacy services to support children to navigate the various processes involved with exercising their rights;
- Legal advice and representation services to support and represent children in any aspect concerning education law;
- A service to independently seek children's views and to represent children's views during any process where it is determined that the views of the child (regardless of capacity) would inform decision making and where it has not been possible to get them via other routes.

55. It is intended that child-friendly resources produced by the children's support service, as detailed above, will be publicly available and provided directly to children who may have additional support needs by the named person who has responsibility to advise, inform or support the child, young person or parent under the Children and Young People (Scotland) Act 2014. This will ensure that any children considering exercising their rights are provided with accurate advice and an opportunity to discuss the potential impact of exercising their rights with the support service.

### ***Benefits***

56. The proposed amendments will enable children aged 12 and over, with capacity (and where it is in their best interest), to directly influence the identification and the planning and review of provision to meet their additional support needs. This is a significant development in the landscape of children's rights. Both the UK (in relation to England) and Welsh Assembly Governments have extended the rights of children with special education needs but only in relation to allowing them to make appeals to the Special Education Needs Tribunal. The proposed amendments go further, giving children with capacity the opportunity to directly influence and ask for support to be put in place for them.

### ***Alternative approaches***

57. The consultation sought views on three proposals in relation to children's rights:

- The first proposal on providing children with their own rights in relation to additional support for learning in principle;
- The second proposal on providing children with additional support needs, who have capacity, with appeal rights to the ASNTS;
- The third proposal on providing children with full rights (equal to those of parents and young people) under the 2004 Act.

58. All respondents to the first proposal agreed that children with capacity should have their own rights in relation to additional support for learning. This therefore eliminated any

further consideration on the principle of whether or not children should have their own rights. Further consideration was therefore given to the second and third proposals.

59. Almost all respondents agreed with the second proposal, that the Scottish Ministers should extend the right to enable children to make an appeal to the ASNTS under the 2004 Act. It is however acknowledged that all respondents who considered that children should not have appeal rights to the ASNTS noted that it would not be logical to extend the right to appeal to the ASNTS without extending all rights, including the right to request an assessment on the provision of support in the first instance.

60. In relation to the third proposal, almost all the respondents agreed that the Scottish Ministers should extend the rights which are currently afforded to parents and young people with capacity under the 2004 Act to children to enable them to exercise their own rights where appropriate.

61. The majority of children consulted by Children in Scotland on the proposals wanted the proposed full extension of their rights. Pupils felt that having these rights would provide them with more choice and more control. In addition, the response from the Scottish Youth Parliament indicated that children with capacity should have their own rights in relation to additional support for learning.

62. The results of the consultation indicated therefore that respondents agreed with proposals to provide rights equal to those of parents and young people to children under the 2004 Act.

63. Currently rights are provided by the 2004 Act to parents and young people. It was considered that the power in the Ancillary provision of the 2004 Act (section 32) did not give sufficient vires to allow the required changes to be made by secondary legislation. Therefore it was considered necessary to amend the 2004 Act by primary legislation in order to achieve the policy aim of providing rights to children.

### ***Consultation***

64. A consultation was issued on 20 December 2013 on extending to children the rights currently afforded to parents and young people under the 2004 Act. The consultation sought views on two options: (a) extending the “appeal rights” to the Additional Support Needs Tribunals for Scotland currently afforded to parents and young people to children with capacity, and (b) extending various other rights under the 2004 Act to children with capacity.

65. The consultation proceeded on the premise that only those children aged 12 and over would be considered as having capacity (this aligns with the provisions of the Age of Legal Capacity (Scotland) Act 1991 which provides that a person over the age of 12 years has capacity to consent to the making of an adoption order; instruct a solicitor and consent to surgical, medical or dental treatment).

66. Responses indicated that there was majority support for the general principle of extending to children the rights currently afforded to parents and young people under the 2004 Act (including appeal rights), with the exception of the right to make a placing request. It is considered that an extension in relation to placing requests may cut across the duties placed on

parents under section 30 of the 1980 Act to provide education for their child. It is not the intention to enable children with capacity to undermine the fulfilment of this duty by parents.

### **Section 18: Free School Meals**

67. It is considered that section 53 of the 1980 Act, which sets out the provision for school food in Scotland, including the arrangements for free school lunches, would benefit from restatement. This section has been amended a number of times since its enactment, most recently via the 2014 Act. Rather than reflecting a change in policy, the proposed amendments simply restate and clarify the law to avoid the potential for any confusion or misinterpretation for those using the legislation.

#### ***Benefits***

68. Taking this opportunity to restate section 53 will clarify the legislation for those who need to consider these provisions.

#### ***Consultation***

69. It was considered that no formal consultation was necessary on the restatement of section 53, as no policy changes are being made.

### **Section 19: Improve the process of consideration of section 70 complaints to the Scottish Ministers**

70. The Scottish Ministers can consider a complaint by anyone about an education authority, the manager of a school or educational establishment, or other persons who it is argued have failed to discharge any educational duty. The Scottish Ministers may, after investigation (sometimes involving Education Scotland), make an order declaring the education authority, manager of the school or educational establishment or other person in default and requiring them to discharge that duty within a specific time period.

71. At the Education and Culture Committee meeting on 26th June 2012, the then Cabinet Secretary for Education and Lifelong Learning, Michael Russell, expressed dissatisfaction with the section 70 complaints process and committed to look carefully at how it could be improved. Currently, the process can be particularly time consuming. It involves consideration of written evidence from the complainer and the respondent by officials on behalf of the Scottish Ministers - both parties are also given an opportunity to respond to the evidence submitted. Following consideration of the evidence, the Scottish Ministers make the final decision on whether or not there has been a failure to comply with a duty and whether the relevant responsible body should be made to carry out that duty through making the order referred to in paragraph 65 above.

72. The consultation paper of 20 December 2013 also highlighted a specific concern in relation to section 70 complaints being made to the Scottish Ministers in relation to other matters where there are more appropriate mechanisms to readdress these. This included appeals (references) made to the ASNTS (for failures relating to additional support needs matters in terms of the 2004 Act) and failures relating to school closure proposals in terms of the Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act").

***Establish new statutory timescales to be met by those involved in the process***

73. Due to the complex nature of section 70 complaints, the parties involved (i.e. the complainant and relevant responsible body) need to be given an opportunity to provide appropriate, current information to allow the Scottish Ministers to properly investigate and make a decision on the basis of the most accurate information available about the complaint. If it is considered appropriate, time must also be factored in to allow Education Scotland to carry out a thorough investigation of the school, including the education provision available for the child concerned and prepare a report for Ministers. It is proposed that section 70 is amended to give Ministers a regulation-making power to prescribe fixed timescales for each of these stages. Different timescales might be fixed for different types of complaint.

74. If a section 70 complaint is received by the Scottish Ministers and it is decided, based on the initial information received, that an investigation by Education Scotland is required, it is proposed that the full process may take up to a maximum of 112 working days. Where it is determined that an investigation is not required, it is expected that a decision on the complaint will be reached within 40 working days of receiving the application. These timescales will be prescribed by regulations and will be publicly consulted on prior to implementation.

***Preventing specified complaints to the Scottish Ministers under section 70***

75. Further amendments will ensure that matters which are under the jurisdiction of the ASNTS will remain with the ASNTS. This will ensure the Scottish Ministers are not considering an issue or reconsidering a decision which should be dealt with by the ASNTS. Therefore, section 70 will be amended to make it clear that where there is an allegation of a failure by an education authority to comply with a duty under the 2004 Act which may be the subject of a reference to the ASNTS, it will not be competent to make a section 70 complaint in relation to it.

76. Following detailed consideration it was decided that the Bill would not restrict the types of complaints that could be made in relation to school closures under the 2010 Act. Further detail is set out below at paragraph 76.

***Alternative approaches***

77. The consultation proposed repealing section 70 of the 1980 Act and introducing an alternative provision which would allow complaints to be made in relation to alleged duty failures to the Scottish Public Service Ombudsman instead of the Scottish Ministers. However, this option received limited support.

78. Consultees were asked to provide comments to support their answer. 51% of respondents who answered no to repealing section 70 included in their comments that implementing timescales would improve the current process.

79. It is also not considered that there are any subordinate powers in the 1980 Act which would have allowed section 70 to be amended either to exclude complaints in relation to education authority failures under the 2004 Act or to impose time limits on investigation and determination of section 70 complaints.

80. After further consideration, it was concluded that the Bill should not amend section 70, to restrict complaints in relation to failures by an education authority to comply with the 2010 Act, for while that Act provides a strong process to resolve some issues relating to proposals to close schools (“the call in process” in terms of section 15 of the 2010 Act), that is not available for consultations in relation to other types of proposals (such as a proposal to relocate a school). Furthermore, it is important to preserve the ability to raise a section 70 complaint in relation to failure by an authority to comply with a condition attached to the consent to the closure of a school.

### ***Benefits***

81. Introducing statutory timescales to the section 70 complaint process will address a consistent concern that the current process is overly lengthy and does not bring direct benefits. The proposed amendments will allow the process to continue to be robust whilst significantly shortening the time taken to reach a decision.

82. Ensuring that complaints which are under the jurisdiction of a specialised mechanism (the ASNTS) will allow for these complaints to be addressed by the most appropriate means using a process which is tailor-made to the specific concerns.

### ***Consultation***

83. A consultation which sought views on repealing section 70 of the 1980 Act was published on 20 December 2013. Views were sought from consultees on replacing the complaint mechanism under section 70 with an alternative provision to allow complaints in relation to failures by education authorities, or other bodies, to discharge duties imposed on them by education related enactments to be made to the Scottish Public Service Ombudsman. 59 responses were received from a broad range of consultees.

84. Responses indicated there was little support for the proposal of repealing section 70 and transferring the complaints route to the Ombudsman. Those opposed to the proposal instead preferring the option of implementing strict timescales to ensure a swifter resolution of complaints under section 70.

### **Section 20: Requirement that education authorities appoint a Chief Education Officer with appropriate qualifications and experience**

85. The Bill will introduce a requirement that education authorities must appoint a suitably qualified and experienced Chief Education Officer to provide professional advice to education authorities on the provision of their education functions.

86. The delivery of education is an important function of local authorities and accounts for almost 40% of their budgets. The legislative landscape surrounding education is increasingly complex and requires a sound professional knowledge base. Therefore, it is expected that local authorities will appoint a Chief Education Officer who has the appropriate qualifications and experience to provide professional advice on the extensive education provisions that the education authorities are responsible for.



### ***Benefits***

87. Since 1980, successive legislative requirements placed upon the education authority have resulted in increasingly complex functions. These require a sound professional knowledge base on which advice to the education authority should be based, to avoid adverse impacts on the delivery of education locally.

88. There are growing ambitions for the Scottish 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. Other proposals are to be included in the Bill which further enhance the expectations placed upon education authorities, and which demand a high degree of professional knowledge.

89. The qualifications of the Chief Education Officer will be stipulated in the regulations made under the Bill. Guidance will also be issued on the role and function of a Chief Education Officer (essentially that the officers are required to support local authorities and their elected members and add value to a local authority and its partners in delivering positive outcomes locally).

### ***Alternative approaches***

90. It was concluded that there were no powers within the 1980 which would allow the Scottish Ministers to impose a requirement on education authorities to appoint a Chief Education Officer by subordinate legislation.

91. Non-legislative approaches such as seeking commitment from all authorities to appoint a Chief Education Officer, or to otherwise ensure the consistent and full involvement of suitably experienced and qualified senior officers in education decision making were considered by the Scottish Ministers and rejected on the grounds that there would inevitably be inconsistencies in provision across the country. The Scottish Ministers expressed a preference for legislating for this role to ensure consistency across Scotland.

### ***Consultation***

92. No formal public consultation has been carried out on these proposals, although there have been a number of discussions with one of the key stakeholders, the Association of Directors of Education for Scotland which is supportive. Further discussions about these proposals have been held with COSLA, ADES and other key partners alongside the development of the Bill. The Scottish Government have agreed to work in partnership with COSLA, and other stakeholders, in developing the regulations and guidance that will accompany this provision.

### **Sections 21 and 22: Ensure all practicing teachers are registered with the General Teaching Council for Scotland (GTCS)**

93. The Requirement for Teachers (Scotland) Regulations 2005 (SSI 2005/355) require local authorities to employ as teachers, only individuals who are GTCS registered teachers. There is currently no requirement for teachers in independent schools or grant-aided schools to be GTCS registered. The GTCS is required to maintain a register of teachers in accordance with article 6(a) of the Public Services Reform (General Teaching Council for Scotland) Order 2011 (SSI

2011/215). The GTCS has kept a similar register for teachers in local authority schools under previous legislation since it was established in 1966. This register has always been open to teachers in the independent schools sector and in the further education sector and voluntary registration by teachers in the independent sector has always been encouraged by both GTCS and the Scottish Council of Independent Schools.

94. There are eight grant-aided schools in Scotland, seven of which are special schools (GASS). GASS receive grant-aid from the Scottish Government in order to support them in delivering education, care and health provision for children and young people with complex additional support needs. These schools are run by a Board of Managers and, therefore, function in a similar way to an independent school with the significant exception that GASS must meet the conditions and additional requirements of grant set out in the Special Schools (Scotland) Grant Regulations 1990 (SI 1990/2551) (“the Special School Grant Regulations”). The Scottish Government are aware that only two teachers within these schools are not yet registered with GTCS and that these teachers will be registered prior to the commencement of the proposed Bill provisions and regulations made thereunder.

95. Jordanhill School is the only mainstream grant-aided school in Scotland. The school was approved as a grant-aided school in 1987. It is managed by a charitable company limited by guarantee under the Companies Act 1985, constituted by the parents, guardians and staff of the school. It is currently run by a Board of Managers. It is fully grant-aided by the Scottish Government receiving recurrent and non-recurrent grant in order to run and maintain the school. The Jordanhill School Grant Regulations 1988 (SI 1988/328) set out standard conditions on, and requirements of, the grants provided. These largely focus on ensuring the school provides Ministers with financial information and audited accounts. The Regulations also cover the disposal of school property and apply the Schools General (Scotland) Regulations 1975 (SI 1975/1135) to Jordanhill School – those Regulations set out duties on running a school such as admissions, length of school year and pupil records.

96. There is currently a requirement on Jordanhill School via regulation 10 of the Requirements for Teachers (Scotland) Regulations 2005 to employ only GTCS registered teachers.

***Impose a duty on independent schools and grant-aided schools to only employ teachers who are GTCS registered***

97. The effect of the Bill provisions is to enable the Scottish Ministers to make regulations which require all current and future teachers working in independent and grant-aided schools to be GTCS registered, in order to support high quality teaching and learning for all. Implementing the policy by way of using subordinate legislation powers is the preferred route as this will allow for detailed discussions with the independent schools sector as to the specific criteria to be met and the timescales for introduction. It will also allow for transitional arrangements to be made in respect of teachers who are currently working in independent schools and grant-aided schools to achieve the required standard to obtain GTCS registration. The requirements for registration with the GTCS, including references to the qualifications and standards required, are set out in

‘The General Teaching Council for Scotland Registration and Standards Rules’ which can be viewed on the GTCS website.<sup>11</sup>

### *Benefits*

98. There is a clear relationship between poor teacher quality and weakness in the provision of education. This is evidenced through the inspection process when weaknesses in education are identified. Through current legislation the Scottish Ministers can impose conditions, disqualification orders or serve a notice of complaint to address weakness relating to teachers in independent schools. Such weaknesses can be identified through the normal inspection of the quality and standards of schools by Education Scotland. Independent schools, like all schools in Scotland, are subject to inspection by HM Inspectors of Education in accordance with section 66 of the Education (Scotland) Act 1980. However, the introduction of regulation of the independent school teaching workforce through compulsory registration with GTCS would offer assurance that the registration requirements as set out in ‘The General Teaching Council for Scotland Registration and Standards Rules’ were being met and maintained from the outset.

99. It is also intended that introducing compulsory GTCS registration for both independent and grant-aided schools will offer assurance to parents that, irrespective of where their children are educated, the standards and quality of the teaching staff is regulated by the GTCS. In addition, there will also be benefits to teachers through Professional Update. Professional Update is a process which has been introduced to ensure that teachers are not “registered for life” – the process effectively requires re-affirmation by the GTCS every five years that a teacher has kept their professional skills and knowledge up to date. The aim of this is to support, maintain and enhance teachers’ continued professionalism through professional learning. The requirement will also provide independent and grant-aided schools with assurances of the standard and quality of the teachers they are employing.

### *Alternative approaches*

100. As an alternative to the approach described above, the Scottish Ministers could choose to retain the current arrangements, whereby there is no legal requirement that teachers working in independent schools or grant-aided schools be GTC registered. If this approach were to be retained, there would continue to be limited mechanisms in place for ensuring adequate standards and the quality of teaching in those schools. School inspection, registration (in the case of independent schools) and individual complaints would be the means for identifying and addressing concerns and driving improvement within that element of the teaching workforce. However, the protections offered through these arrangements are limited. When considering registration of an independent school, details of teacher and staff recruitment policies are considered but there remains significant scope for those policies to be applied to varying degrees. Where poor application of those policies or poor teaching practice is evident, this could be identified through inspection or a complaint but both these measures are retrospective and do not allow for robust, independent scrutiny of a teacher’s suitability from the outset. This issue would be addressed through the approach now proposed in the Bill.

101. There is scope to require GTCS registration for all teachers working in independent schools through use of the current enabling power in section 98A(6) of the 1980 Act. However, that enabling power without the amendment proposed in section 21 of the Bill, could not support

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<sup>11</sup> <http://www.gtcs.org.uk/web/FILES/FormUploads/registration-and-standards-rules-0614-pd.pdf>

the transitional arrangements which are considered necessary in this instance in order to ensure a phased implementation of the policy. Those transitional arrangements will afford all teachers currently employed within independent schools a period following commencement within which to secure GTCS registration. At the same, all new teachers who take up employment in those schools after the commencement date will need to be GTCS registered. The Scottish Government believes this phased approach represents the most effective and proportionate way of implementing the new requirements

102. As mentioned above, the Special Schools Grant Regulations authorise conditions to be attached to the payment of grant by the Scottish Ministers to GASS. Regulation 5(2) allows for payment of grants to be subject to further conditions as the Scottish Ministers may determine in any particular case. The Scottish Government has considered whether the Scottish Ministers could just make grant subject to the condition that the GASS only employ GTCS registered teachers and specify this in the grant letter. However, given the terms of section 90(1) (which expressly refers to regulations under section 2 and 74(1) of the 1980 Act being able to include provision about education authorities only employing registered teachers in public schools), it is considered doubtful that the Special Schools Grant Regulations could authorise such a course of action. The Scottish Government has therefore concluded that the amendment of section 90(1) of the 1980 Act by section 22 of the Bill is necessary in order to achieve the policy objective.

103. The Scottish Government also considered whether to exclude GASS from the proposed requirement that teachers be GTCS registered, given that, when policy was being developed there was only one teacher working in the 7 GASS who was not GTCS registered. It was decided however, in order to ensure the new provisions are comprehensive and future-proofed against potential changes in the workforce, that GASS should be included within this provision.

#### *Consultation*

104. Discussions have taken place with the GTCS with regards to proprietors of independent schools employing only teachers who are GTCS registered. GTCS fully supports the proposal and is already working with the sector to encourage registration. Discussions have also taken place with the Director of the Scottish Council of Independent Schools (SCIS) to gauge the likely response from the sector. SCIS indicated that it felt the sector would support the proposal.

105. Discussions have also taken place with each of the eight grant-aided schools in Scotland. This was not perceived to be a significant issue for them as generally the position has always been to only employ only those teachers who are registered. The schools are aware that this provision will affect them; they are confident, however, that by the time the Bill provisions commence, all teachers will already be registered.

106. A fuller consultation on how any proposed changes will be implemented will be undertaken through a group involving the GTCS, SCIS and all interested stakeholders.

## **Section 23: Kinship care**

107. The 2014 Act unintentionally excludes a small group of children aged two and over who have, or who have had, a guardian appointed under section 7 of the Children (Scotland) Act 1995 (“the 1995 Act”) from the provision of early learning and childcare (those who would not be “eligible” for kinship care assistance in terms of section 71(5) of the Act). The Bill will, therefore, amend section 47(3) of the 2014 Act to address this unintentional exclusion, by ensuring that all children aged two and over who have, or who have had, a guardian appointed under section 7 of the 1995 Act will be entitled to the mandatory amount of early learning and childcare.

108. The Scottish Government do not hold information on how many children have been affected by this exclusion since the mandatory early learning and childcare provisions came into force in August 2014. However, the [statutory guidance<sup>12</sup> in relation to Part 6 \(Early Learning and Childcare\) of the Children and Young People \(Scotland\) Act 2014](#) on early learning and childcare, issued on 1 August 2014, has advice in paragraphs 74-79 as to what local authorities should do in the interim in respect of the group of children aged two and over with a guardian appointed under section 7 of the 1995 Act, if they present themselves, until this exclusion is addressed in legislation. Paragraph 75 advises that “education authorities will use discretionary powers under section 1(1C) of the 1980 Act to provide early learning and childcare to a child with a parent guardian who is not at risk of becoming looked after; and, to promote this alongside any local promotion of the entitlement”. This new statutory guidance on early learning and childcare indicated that it would only affect an extremely small number of children. This guidance was agreed by COSLA, ADES and other key stakeholders and no issues have been raised since implementation.

### ***Benefits***

109. Amending this legislation will ensure that all children aged two and over who have, or have had, a guardian appointed under section 7 of the 1995 Act are entitled to the mandatory amount of early learning and childcare.

### ***Alternative approaches***

110. The first alternative approach that we considered was whether the Scottish Government could use the power in the Ancillary provision of the Children and Young People (Scotland) Act 2014 to rectify the unintentional exclusion of this category of children from the mandatory early learning and childcare provision. However, it was concluded that this would not give sufficient vires. The second alternative approach that we considered was taking no action and simply leaving things as they were, with this category of children continuing to be excluded from the mandatory early learning and childcare provision. However, our policy objective was to ensure that no child with a guardian missed out on the mandatory early learning and childcare provision, regardless of how the guardian was appointed, and it was therefore concluded that this was not an option.

111. The Minister for Children and Young People considered these alternatives and agreed to our recommendation of amending the Children and Young People (Scotland) 2014 Act through a

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<sup>12</sup> <http://www.gov.scot/Resource/0045/00457025.pdf>

subsequent piece of legislation, the Gaelic Medium Education Bill (now the Education Bill) in order to resolve this issue.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

112. An Equality Impact Assessment (EQIA) has been carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, across the protected characteristics required for the EQIA.

113. To develop and inform the EQIA the Scottish Government held a workshop in January 2015 to discuss the impact of the Bill on equalities issues. Stakeholders from organisations including but not limited to Stonewall, Scotland's Commissioner for Children and Young People, ENQUIRE, Resolve Mediation, LGBT Youth and Common Ground Mediation were in attendance.

114. The EQIA concluded that the Bill will not have any direct or indirect negative impacts on anyone who exhibits any of the six protected characteristics as described in the Equality Act 2010. Evidence and data gathered indicate that, overall, the Bill provisions will have a positive impact on equality issues, children, young people, and parents/carers.

115. Gaps were identified in the current evidence base around the effects of the Bill on groups that share certain characteristics. In particular, Scottish Government research and consultation identified gaps in knowledge around gender reassignment and the experiences of transgender children and parents.

### **Human rights**

116. The Bill provisions on extending rights to children under Additional Support for Learning legislation potentially raise issues with regard to Articles 6 and 8 of the European Convention on Human Rights but to the extent that they do, they have a legitimate aim of furthering the Scottish Ministers' commitment to recognising, respecting and promoting children's rights in Scotland, they are proportionate (they apply only to children aged 12 or over where they have capacity) and have appropriate safeguards in place and are, therefore, compatible. The duties in relation to reducing pupils' inequalities of educational outcome in Part 1 of the Bill potentially engages Article 2 of Protocol 1 as read with Article 14, but, again, the measures in the Bill are a proportionate means of achieving the legitimate aim of improving educational outcomes for the most disadvantaged children. Therefore, the Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

117. The type of GME provided for in the Bill and the guidance issued under the Bill will present a high quality model of bilingual education and young people from all backgrounds will have an opportunity to access GMPE if sufficient demand exists in the area and the education authority assess that GMPE should be provided.

118. The Scottish Government has also considered if privacy implications would arise as a result of the Bill and has completed a Privacy Impact Assessment (PIA). There is currently no evidence that any aspect of the Bill should be reconsidered as a result of privacy concerns therefore, as a result, no formal PIA will be produced.

### **Island communities**

119. The Bill will apply to all communities across Scotland, including island communities. GME is well represented in a number of Scotland's island communities and this Bill has the potential to expand and strengthen provision that is already in place through the provisions about parental requests, promotion, support and guidance.

120. Expanded and strengthened provision of GME in island communities will have a positive impact on education related employment and also protect the heritage of these areas. It is clear that there are also a number of island communities that do not share a Gaelic heritage. These communities will find reassurance in the Bill provisions as they are suitably qualified to ensure proportionate application where the Gaelic language is not considered relevant to the identity and heritage of certain island communities.

### **Local government**

121. The Bill will directly impact on education authorities by placing a number of new duties on them. Specifically the Bill proposes the introduction of:

- Duties on education authorities to have due regard to the desirability of reducing inequalities of educational outcome experienced by pupils as a result of socio-economic disadvantage; to have regard to the views of certain persons when taking decisions about how to exercise functions in accordance with the duty above; to have regard to guidance issues by the Scottish Ministers in carrying out these new duties and to prepare and publish a report every two years setting out the steps they have taken to fulfil the new duties.
- Duties on education authorities to assess the need for Gaelic medium primary education and to actively promote and support Gaelic medium education and Gaelic learner education. The provisions of the Bill will bring greater consistency to local authority procedures around Gaelic. The extent of promotion and support will vary in terms of the level of provision that is in place in any area.
- A duty on education authorities to appoint a Chief Education Officer to advise the authority on carrying out its education functions.

122. The changes proposed to the 2004 Act which would extend the rights of children under that Act could also impact on education authorities if the exercise of those rights by a child resulted in the need to provide alternative support arrangements for that child.

123. The changes that the Bill proposes to section 70 of the 1980 Act will also impact on education authorities. The Bill provides a regulation making power which will enable the Scottish Ministers to prescribe new procedures for dealing with complaints under section 70 which could include the setting of fixed timescales for each stage of the complaints process.

This could result in education authorities being required to comply more quickly with a duty imposed on them by an order under section 70(1) of the 1980 Act.

124. There will be no impact on education authorities as a result of the free school meals provisions – this is simply a restatement of the existing legislative position.

#### ***Consultation and engagement with local government***

125. Consultation has been undertaken with local authorities on the Bill. 13 local authorities responded to the Gaelic medium education consultation. 15 local authorities responded to the consultation on extending the rights of children under the 2004 Act and the proposed changes to the handling of complaints under section 70 of the 1980 Act.

126. Extensive engagement has been undertaken with COSLA and the Association of Directors of Education on the provisions in the Bill – including on those such as the inequalities of provision and Chief Education Officer provisions which were not subject to formal consultation. These organisations and specific local authorities have been involved in the development of the provisions of the Bill and the production of the Financial Memorandum.

#### **Sustainable development**

127. An initial pre-screen review was undertaken to assess whether or not a Strategic Environmental Assessment was required. This highlighted that, while the Gaelic Medium Education provisions in the Bill may lead to new schools/units being built, that it would be for the planning authorities and developers to undertake the Strategic Environmental Assessment at the time at which the buildings were to be constructed.



## **ANNEX A**

### **RIGHTS UNDER THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004**

Under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) parents and young people (aged 16-18 and in education) with capacity currently hold the following rights:

- 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
- 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
- have a supporter or advocate present at an Additional Support Needs Tribunals for Scotland (ASNTS) hearing.
- apply to the Additional Support Needs Tribunal about the decisions of an education authority, specifically in relation to:
  - the preparation of a multi-agency support plan (CSP) for the child
  - the decision to continue or discontinue a CSP
  - the timescales for reviewing the CSP

*This document relates to the Education (Scotland) Bill (SP Bill 64) as introduced in the Scottish Parliament on 23 March 2015*

- a decision not to comply with a request to establish whether a child or young person needs a CSP
- a decision 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

For the purposes of the 2004 Act, a young person is deemed to lack capacity if they are incapable of doing something by reason of mental illness, developmental disorder or learning disability or of inability to communicate because of a physical disability. However, the young person is not to be treated as lacking capacity if any deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).



*This document relates to the Education (Scotland) Bill (SP Bill 64) as introduced in the Scottish Parliament on 23 March 2015*

# **EDUCATION (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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