

Education (Scotland) Bill

[AS INTRODUCED]

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Education (Scotland) Bill

[AS INTRODUCED]

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

PART 1

INEQUALITIES OF OUTCOME

1 Pupils experiencing inequalities of outcome

- (1) An education authority must, when making decisions of a strategic nature about how to carry out its functions relating to school education, have due regard to the desirability of carrying out the functions in the way mentioned in subsection (3).
- (2) The Scottish Ministers must, when exercising their powers relating to school education which is provided in Scotland, have due regard to the desirability of exercising the powers in the way mentioned in subsection (3).
- (3) The way is a way designed to reduce inequalities of outcome—
- (a) experienced by pupils which result from socio-economic disadvantage, and
 - (b) experienced by other pupils of such description as may be specified in regulations made by the Scottish Ministers.

2 Consultation, advice and support

- (1) Subsection (2) applies to an education authority when it is considering—
- (a) what decisions such as are mentioned in section 1(1) to make, and
 - (b) what steps to take to implement such decisions.
- (2) The authority must, at such times as it thinks appropriate during its consideration of those matters—
- (a) seek and have regard to the views of persons mentioned in subsection (3) in relation to the decisions and steps,

(b) provide any advice and support that the authority thinks appropriate to those persons in relation to its consideration of those decisions and steps.

(3) The persons are—

(a) the head teachers of such schools managed by the authority as the authority thinks appropriate,

(b) such pupils as the authority thinks appropriate,

(c) the parents of such pupils as the authority thinks appropriate,

(d) such voluntary organisations as the authority thinks appropriate,

(e) any other persons the authority thinks appropriate.

3 Guidance

(1) In carrying out the duties imposed under sections 1(1) and 2(2), an education authority must have regard to any guidance issued by the Scottish Ministers.

(2) Before issuing any guidance in relation to such duties, the Scottish Ministers must consult the following persons about the proposed guidance—

(a) each education authority,

(b) the parents of any pupils that the Scottish Ministers think appropriate,

(c) any voluntary organisations that the Scottish Ministers think appropriate,

(d) any other persons that the Scottish Ministers think appropriate.

4 Reports

(1) As soon as practicable after the end of each 2 year period, an education authority must publish, and submit to the Scottish Ministers, a report that sets out—

(a) what steps the authority has taken to comply with the duties imposed under sections 1(1) and 2(2) in that period,

(b) what steps the authority proposes to take to comply with the duties mentioned in paragraph (a) before the end of the next 2 year period, and

(c) any educational benefits to pupils such as are mentioned in section 1(3)(a) or (b)—

(i) that have resulted from taking the steps mentioned in paragraph (a), and

(ii) that the authority believes will result from taking the steps mentioned in paragraph (b).

(2) As soon as practicable after the end of each 2 year period, the Scottish Ministers must lay before the Scottish Parliament a report that sets out—

(a) what steps they have taken to comply with the duty imposed under section 1(2) in that period,

(b) what steps they propose to take to comply with the duty mentioned in paragraph (a) before the end of the next 2 year period, and

(c) any educational benefits to pupils such as are mentioned in section 1(3)(a) or (b)—

(i) that have resulted from taking the steps mentioned in paragraph (a), and

- (ii) that the Scottish Ministers believe will result from taking the steps mentioned in paragraph (b).
- (3) In this section, “2 year period” means—
- (a) the period of 2 years beginning with the date on which this section comes into force, and
- (b) each subsequent period of 2 years.
- (4) The Scottish Ministers may by regulations modify this section so as to amend—
- (a) the periods mentioned in subsections (1) and (2), and
- (b) the definition of the period mentioned in subsection (3).

PART 2

GAELIC MEDIUM EDUCATION

Assessments: primary education

5 Assessment requests

- (1) A person who is the parent of a child who is under school age may request the education authority in whose area the child is resident to assess the need for Gaelic medium primary education (in this Part, “GMPE”).
- (2) A request under subsection (1) must—
- (a) relate to only one child (in this Part, the “specified child”), and
- (b) set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
- (i) resident in the area of the authority to which the request is made, and
- (ii) in the same year group as the specified child.
- (3) A request under subsection (1) may set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
- (a) resident in the area of the authority to which the request is made, and
- (b) in a different year group in relation to the specified child.
- (4) In this Part, “year group”, in relation to an education authority, means the group of children under school age all of whom, on commencing primary education at a primary school in the area of the authority, will be in the same yearly stage of primary education; and references in this Part to a child being in the same or a different year group as other children are to be construed accordingly.
- (5) The Scottish Ministers may by regulations make further provision about requests under subsection (1).
- (6) Regulations under subsection (5) may in particular include provision for or in connection with—
- (a) the form of the request and the manner in which it is to be made,
- (b) information (including evidence in addition to that mentioned in subsection (2)) that is to be set out in, or accompany, the request,

(c) evidence as mentioned in subsections (2) and (3).

6 GMPE assessment areas

- (1) This section applies where an education authority receives a request under section 5(1).
- (2) The authority must designate an area within the area of the authority in respect of which the need for GMPE is to be assessed.
- (3) An area designated under subsection (2) is referred to in this Part as a “GMPE assessment area”.
- (4) In considering what area to designate as a GMPE assessment area, an authority must—
- (a) so far as reasonable, seek to accommodate—
 - (i) demand for GMPE evidenced in the request or contained in evidence accompanying the request, or
 - (ii) any other demand for GMPE of which the authority is aware in respect of children under school age resident in the area of the authority, and
 - (b) take into account factors which affect, or might affect, how any demand for GMPE could reasonably be met in the GMPE assessment area.
- (5) In taking those factors into account, the authority must have regard in particular to—
- (a) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,
 - (b) accessibility in relation to the provision (or potential provision) of GMPE in the GMPE assessment area, and
 - (c) the residence of children under school age in respect of whom there is a demand for GMPE as mentioned in subsection (4)(a).

7 Initial assessments

- (1) This section applies where an education authority receives a request under section 5(1) from the parent of a specified child.
- (2) The authority must make an assessment (an “initial assessment”) of the need for GMPE—
- (a) in relation to the GMPE assessment area designated under section 6(2), and
 - (b) in the specified child’s year group.
- (3) In making an initial assessment, the authority must take into account any information it has which—
- (a) relates to the demand for GMPE in the GMPE assessment area from parents of children—
 - (i) who are resident in the GMPE assessment area, and
 - (ii) who are in the same year group as the specified child, and
 - (b) indicates that there is a demand for GMPE in the GMPE assessment area in respect of children in different year groups.
- (4) The information mentioned in subsection (3) includes information set out in or accompanying the request.
- (5) Where, following an initial assessment in relation to a GMPE assessment area—

- (a) the authority is satisfied that the conditions in subsection (6) are met, the authority must determine that there is a potential need for GMPE in the area,
- (b) the authority is not satisfied that those conditions are met, the authority must determine that there is no potential need for GMPE in the area.

5 (6) The conditions are that—

- (a) taken together, the specified child and the children in respect of whose parents the authority has information as mentioned in subsection (3)(a) number 5 or more,
- (b) the demand for GMPE mentioned in subsection (3)(b) is at, or is likely to increase to, a level the authority considers to be reasonable.

10 (7) The Scottish Ministers may by regulations—

- (a) amend paragraph (a) of subsection (6) so as to substitute for the number of children for the time being specified there a different number,
- (b) provide for the number of children for the time being specified in that paragraph to be read as a different number in the application of that subsection to such education authorities as may be specified in the regulations.

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(8) This section is subject to section 9.

8 Duties of education authorities

(1) Where an education authority makes a determination under section 7(5)(a) in relation to a GMPE assessment area, the authority must—

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- (a) carry out a full assessment of the need for GMPE in the area in accordance with section 10, or
- (b) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

(2) Where an education authority makes a determination under section 7(5)(b) in relation to a GMPE assessment area, the authority must—

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- (a) take no further action to secure the provision of GMPE in the area so far as relating to the request in respect of which the determination is made,
- (b) carry out a full assessment of the need for GMPE in the area in accordance with section 10, or

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(c) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

(3) Subsections (4) and (5) apply where an education authority decides to act—

- (a) as mentioned in subsection (1)(a) or (b), or
- (b) as mentioned in subsection (2)(a), (b) or (c).

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(4) The authority must, no later than 4 weeks after receiving the request in respect of which the determination mentioned in subsection (1) or (2) is made, send notification of its determination and the reasons for it to—

- (a) the parent who made the request,
- (b) parents of other children as mentioned in section 5(2), and

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(c) where the request set out, or was accompanied by, evidence from parents of other children as mentioned in section 5(3), those parents.

- (5) The authority must, before the expiry of the period mentioned in subsection (4), publish on its website—
- (a) its determination as mentioned in subsection (1) or (2) and the reasons for it, and
 - (b) information about the GMPE assessment area in respect of which that determination was made.
- (6) For the purposes of complying with the duty imposed by subsection (1)(b) or (2)(c), the authority must ensure that the GMPE is provided in the GMPE assessment area within such period after making the determination as is reasonable in all the circumstances.

9 Requests that need not be considered

- (1) Subsection (2) applies where—
- (a) a request under section 5(1) (the “original request”) is made,
 - (b) the education authority that receives the original request carries out an initial assessment under section 7 in relation to a GMPE assessment area,
 - (c) the authority decides, under section 8(1) or (2), not to carry out a full assessment of the need for GMPE in the GMPE assessment area in accordance with section 10,
 - (d) the authority receives another request under section 5(1) (a “further request”) which would (but for subsection (2)) require the authority to carry out an initial assessment in relation to the GMPE assessment area, and
 - (e) the further request is received within the period of 2 years beginning with the day on which the original request is received.
- (2) The education authority need not comply with the duty imposed by section 7(2) in relation to the further request (subject to subsection (4)).
- (3) For the purposes of this section, it is irrelevant—
- (a) whether the further request—
 - (i) is made by the same person who made the original request or by another person, or
 - (ii) is made by a parent of a child in the same year group as, or a different year group from, the child whose parent made the original request, or
 - (b) whether GMPE is being provided in the GMPE assessment area to which the requests relate.
- (4) Despite subsection (2), the Scottish Ministers may, in such cases as they consider appropriate, direct an education authority to comply with the duty imposed by section 7(2) in relation to the further request.

10 Full assessments

- (1) This section applies where an education authority—
- (a) receives a request under section 5(1), and
 - (b) decides, under section 8(1)(a) or (2)(b), to carry out a full assessment of the need for GMPE in a GMPE assessment area.
- (2) The authority must—

- (a) notify the persons mentioned in subsection (3) of the request,
- (b) provide those persons with information about the request,
- (c) provide those persons with the information the authority took into account under section 7(3) in making an initial assessment, and
- 5 (d) seek the views of those persons on—
- (i) the information mentioned in paragraphs (b) and (c), and
- (ii) the authority's determination under section 7(5).
- (3) The persons are—
- 10 (a) Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the 1980 Act),
- (b) Bòrd na Gàidhlig,
- (c) the body known as the National Parent Forum of Scotland.
- (4) The persons mentioned in subsection (3)(a) and (b) must—
- (a) provide the views sought under subsection (2)(d), and
- 15 (b) do so before the end of the period of 4 weeks beginning with the day on which the views are sought.
- (5) The education authority must decide whether to secure the provision of GMPE in the GMPE assessment area.
- (6) In making a decision under subsection (5), the education authority must have regard to—
- 20 (a) the matters mentioned in subsection (7), and
- (b) any other matters that the authority considers relevant to the making of the decision.
- (7) The matters are—
- 25 (a) views provided under subsection (4),
- (b) any views provided otherwise than under subsection (4) sought under subsection (2)(d),
- (c) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,
- (d) information that the education authority took into account in making an initial
- 30 assessment under section 7(2),
- (e) in relation to the demand for GMPE mentioned in section 7(3) from parents of children, where those children reside,
- (f) any information the education authority has relating to the demand for GMPE in the area of the authority from parents of children under school age,
- 35 (g) where GMPE is provided in the area of the education authority, or the area of another education authority adjacent to that area, the location of that provision,
- (h) the extent to which—
- (i) children resident in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5) could access GMPE
- 40 in the GMPE assessment area,

- (ii) children resident in the GMPE assessment area could access GMPE in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5),
- 5 (i) the availability and suitability of any premises in the education authority’s area in which GMPE is being, or could reasonably be, provided,
- (j) the costs of providing GMPE in the GMPE assessment area,
- (k) the availability of persons to teach GMPE in the GMPE assessment area at the time of making the decision mentioned in subsection (5),
- 10 (l) the potential to recruit persons to teach GMPE in the GMPE assessment area,
- (m) any Gaelic language plan published by the education authority under section 5(9) of the Gaelic Language (Scotland) Act 2005 in force at the time of making the decision mentioned in subsection (5),
- (n) the extent to which—
- 15 (i) Gaelic culture exists, and Gaelic education is provided for, in the education authority’s area (“Gaelic culture” and “Gaelic education” having the meanings given by section 10 of the Gaelic Language (Scotland) Act 2005),
- (ii) the Gaelic language is used in the authority’s area, and
- 20 (iii) activities relating to the Gaelic language are carried out in the authority’s area.
- (8) The Scottish Ministers may by regulations—
- (a) modify subsection (3) or subsection (7),
- (b) make such other modifications of this section as the Scottish Ministers think necessary or expedient in consequence of any modification of subsection (3).

25 **11 Procedure following full assessment**

- (1) This section applies where an education authority has carried out a full assessment of the need for GMPE in a GMPE assessment area in accordance with section 10.
- (2) The authority must prepare a report setting out—
- 30 (a) its decision on whether or not to secure the provision of GMPE in the area,
- (b) the reasons for its decision, and
- (c) where the decision is to secure the provision of GMPE in the area, the period within which the authority considers it would be reasonable for GMPE to be provided in the area.
- (3) The authority must send a copy of the report to—
- 35 (a) the parent who made the request in relation to which the full assessment was carried out,
- (b) parents of other children as mentioned in section 5(2), and
- (c) where the request contained, or was accompanied by, evidence from parents of other children as mentioned in section 5(3), those parents.
- 40 (4) The authority must publish the report on its website.

- (5) Publication of the report under subsection (4) must be no later than 10 weeks after the authority decides to carry out the full assessment.
- (6) Where the authority decides to secure the provision of GMPE in the GMPE assessment area, it must take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.
- (7) In taking those steps, the authority must ensure GMPE is provided in the GMPE assessment area within such period after making the decision mentioned in subsection (6) as is reasonable in all the circumstances.

Early learning and childcare

12 Power to extend Part to early learning and childcare

- (1) The Scottish Ministers may by regulations make such provision as they consider necessary or expedient for or in connection with the purpose mentioned in subsection (2).
- (2) The purpose is to enable an education authority in receipt of a request under section 5(1) to treat it as a request to assess the need for Gaelic medium education in its area which, if provision for such education were made, would discharge (wholly or in part) the duty mentioned in subsection (3).
- (3) The duty is the duty under subsection (1) of section 1 of the 1980 Act to the extent it is exercisable as mentioned in subsection (1A) of that section (duty of education authorities to secure provision of early learning and childcare).
- (4) Regulations under subsection (1) may in particular—
- (a) modify this Part, the 1980 Act or any other enactment,
 - (b) provide for any provision of this Part, the 1980 Act or any other enactment to apply—
 - (i) with such modifications as may be specified in the regulations, or
 - (ii) without modifications.

Gaelic medium education: promotion, support and guidance

13 Duty to promote and support Gaelic medium education and learning

- (1) Every education authority must promote the potential provision of school education in the area of the authority—
- (a) by means of Gaelic medium education by publicising, in such manner as it thinks appropriate, the right to make a request under section 5(1) to the authority, and
 - (b) by means of Gaelic learner education in such manner as it thinks appropriate.
- (2) Where subsection (3) or (4) applies, an education authority must, so far as reasonably practicable, promote and support—
- (a) Gaelic medium education provided in its area,
 - (b) Gaelic learner education provided in its area, or
 - (c) (as the case may be) both.

- (3) This subsection applies where an education authority, in pursuance of its duty under section 1(1) of the 1980 Act (duty of education authorities to secure provision of education) to the extent it relates to school education, secures the provision in its area of—
- 5 (a) Gaelic medium education,
 (b) Gaelic learner education, or
 (c) both.
- (4) This subsection applies where an education authority exercises the power in section 1(1C) of the 1980 Act by securing the provision in its area of—
- 10 (a) Gaelic medium education,
 (b) Gaelic learner education, or
 (c) both.
- (5) In carrying out its duty of promotion under subsection (2), an education authority must take reasonable steps to ensure that it publicises, in such manner as it thinks appropriate, the provision in its area of—
- 15 (a) Gaelic medium education,
 (b) Gaelic learner education, or
 (c) (as the case may be) both.
- (6) In carrying out its duty of support under subsection (2) in relation to education as mentioned in that subsection, an education authority must—
- 20 (a) take reasonable steps to ensure that teachers in any class where the education is provided have such resources, training and opportunities as are reasonably necessary to adequately and effectively provide the education,
 (b) take reasonable steps to ensure that pupils in any such class have such resources as are reasonably necessary to adequately and effectively receive and benefit from the education, and
- 25 (c) have regard to any guidance under section 9 of the Gaelic Language (Scotland) Act 2005.

14 **Guidance**

- 30 (1) Section 9 of the Gaelic Language (Scotland) Act 2005 (guidance on Gaelic education) is amended as follows.
- (2) In subsection (1), for “may” substitute “must”.
- (3) After that subsection insert—
- 35 “(1A) Guidance under subsection (1) may, in particular, include provision relating to the provision of Gaelic education in schools.
- (1B) In subsection (1A), “schools” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.”.
- (4) After subsection (2) insert—

“(2A) Any relevant public authority having functions relating to, or to the provision of, Gaelic education must, to the extent that guidance under subsection (1) relates to the functions, have regard to the guidance in carrying out the functions.”.

5 *Definitions and interpretation of Parts 1 and 2*

15 Meaning of “Gaelic education” and “Gaelic medium education”

(1) In section 10(1) of the Gaelic Language (Scotland) Act 2005 (interpretation), in the definition of “Gaelic education”, after “means education” insert “consisting of teaching and learning”.

10 (2) In the Schools (Consultation) (Scotland) Act 2010, in schedule 1 (relevant proposals), in the definition of “Gaelic medium education” in paragraph 12, after “teaching” insert “and learning”.

16 Interpretation of Parts 1 and 2

(1) In Part 1 and this Part (except where the context otherwise requires)—

15 (a) the following expressions have the meanings given by section 135(1) of the 1980 Act—

“early learning and childcare”,

“education authority”,

“parent”,

20 “primary school”,

“pupil”,

“school”,

“school age”,

“school education”,

25 (b) “area”, in relation to an education authority, is to be construed in accordance with that section (see the definition of “education authority”),

(c) references to primary education are to be construed in accordance with section 135(2) of the 1980 Act.

(2) In Part 2—

30 “full assessment” is to be construed in accordance with section 10,

“Gaelic language” means Gaelic language as spoken in Scotland,

“Gaelic learner education”, in relation to the Gaelic language, means the teaching of the language to, and learning of the language by, pupils to whom education is provided primarily by means of the English language,

35 “Gaelic medium education” means teaching and learning by means of the Gaelic language,

“Gaelic medium primary education” means primary education consisting of teaching and learning by means of the Gaelic language other than—

(a) the early learning and childcare the availability of which an education authority is required to secure under section 47(1) of the Children and Young People (Scotland) Act 2014, and

(b) any school education that an education authority is enabled to secure the provision of under section 1(1C) of the 1980 Act,

“GMPE” means Gaelic medium primary education,

“GMPE assessment area” is to be construed in accordance with section 6,

“initial assessment” is to be construed in accordance with section 7,

“specified child” is to be construed in accordance with section 5(2),

“year group” is to be construed in accordance with section 5(4).

PART 3

MISCELLANEOUS MODIFICATIONS OF ENACTMENTS

17 Modifications of Education (Additional Support for Learning) (Scotland) Act 2004

The schedule to this Act contains modifications of the Education (Additional Support for Learning) (Scotland) Act 2004.

18 Provision of school meals

(1) The 1980 Act is amended as follows.

(2) For section 53 (provision of school meals) substitute—

“53 Provision of school meals

(1) This section applies to pupils in attendance at public schools and other educational establishments under the management of an education authority.

(2) The authority must provide pupils falling within subsection (7), free of charge, with a school lunch.

(3) The authority may provide—

(a) other food or drink to pupils falling within subsection (7),

(b) food or drink to other pupils.

(4) Where the authority provides food or drink under subsection (3)(a) or (b) to pupils, it may—

(a) do so free of charge, or

(b) charge the pupils.

(5) The authority may exercise the power under subsection (4) to provide food or drink free of charge—

(a) in relation to pupils who satisfy such conditions as the authority thinks fit,

(b) at such times of the day as the authority thinks fit.

(6) Any charge under subsection (4) must be the same for the same quantity of the food or drink provided.

- (7) A pupil falls within this subsection if—
- (a) the pupil is, or the parents of the pupil are, in receipt of—
 - (i) income support,
 - (ii) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995),
 - (iii) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance),
 - (b) the parents of the pupil are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999.

- (8) The Scottish Ministers may by regulations modify subsection (7) by—
- (a) adding a description of pupil by reference to—
 - (i) any benefit or allowance received by the pupil, or the parents of the pupil, in such circumstances as may be prescribed in the regulations,
 - (ii) any tax credit, or element of a tax credit, within the meaning of the Tax Credits Act 2002 received by the pupil, or the parents of the pupil, in such circumstances as may be so prescribed,
 - (iii) the yearly stage of primary or secondary education of the pupil,
 - (b) adding such other description of pupil as may be prescribed in the regulations.

(9) An education authority must provide such facilities as the authority considers appropriate for the consumption of food or drink brought by pupils to schools or other educational establishments as mentioned in subsection (1).

(10) An education authority may provide food or drink (including a school lunch) under this section—

- (a) on the premises of the schools or other establishments as mentioned in subsection (1) where education is provided, or
- (b) at any other place.

(11) For the purposes of this section, a pupil for whom an education authority has made special arrangements under section 14 may, at the discretion of the authority, be deemed to be in attendance at a public school.

(12) In this section and sections 53A and 53B, “school lunch” means anything provided under subsection (2) in the middle of the day which the education authority considers is appropriate for consumption as a meal at that time of the day.”.

- (3) In section 133 (regulations, etc.), in subsection (2YA), for “section 53(3)(c) of this Act” substitute “subsection (8) of section 53 that modify subsection (7) of that section as mentioned in subsection (8)(a)(iii) or (b) of that section”.

19 Enforcement of statutory duties

In section 70 of the 1980 Act (powers to enforce duty of education authorities and other persons), after subsection (2), insert—

- “(3) Despite subsection (2), no order under subsection (1) may be made in respect of a failure by an education authority that is of a type mentioned in subsection (4).
- (4) The types of failure are—
- 5 (a) a failure mentioned in section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) (references to an Additional Support Needs Tribunal for Scotland),
- (b) a failure in relation to a decision or information mentioned in section 18(3) of the 2004 Act,
- 10 (c) a failure mentioned in section 18(5A) or (5B) of the 2004 Act,
- (d) where a failure mentioned in paragraph (a), (b) or (c) also constitutes a failure to discharge the duty imposed by section 4 of the 2004 Act, a failure under that section that is so constituted.
- (5) The Scottish Ministers may by regulations make provision for or in connection with the procedure to be followed in relation to—
- 15 (a) the investigation of an alleged failure by an education authority, the managers of a school or educational establishment or other person to discharge a duty mentioned in subsection (1),
- (b) the determination of whether to make an order under that subsection.
- (6) Regulations under subsection (5) may—
- 20 (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.”.

20 Appointment of Chief Education Officer

After section 77 of the 1980 Act insert—

“Appointment of Chief Education Officer

78 Appointment of Chief Education Officer

- (1) An education authority must appoint an officer to advise the authority on the carrying out of the authority’s functions under this Act and any other enactment.
- 30 (2) An officer appointed under subsection (1) is to be known as the Chief Education Officer.
- (3) An officer appointed under subsection (1) must have—
- (a) such qualifications as may be prescribed by regulations made by the Scottish Ministers, and
- 35 (b) such experience as the authority considers appropriate in relation to the carrying out of the advisory function mentioned in that subsection.
- (4) In subsection (1), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

21 Registration of independent schools

In section 133 of the 1980 Act (regulations, etc.), after subsection (2C) insert—

“(2D) Regulations under section 98A(6) of this Act defining “prescribed person” may—

- (a) make different provision for different purposes,
- (b) make supplementary, incidental, consequential, transitional, transitory or saving provision,
- (c) modify any enactment.

(2E) In subsection (2D), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

22 Employment of teachers in grant-aided schools

In section 90(1) of the 1980 Act (employment of teachers), after “authorities” insert “, or managers of grant-aided schools,”.

23 Provision of early learning and childcare: children with guardians

(1) The Children and Young People (Scotland) Act 2014 is amended as follows.

(2) In section 47 (duty to secure provision of early learning and childcare), in subsection (3)—

(a) the words from “is”, where it second occurs, to “order” become paragraph (a) of that subsection (and accordingly paragraphs (a) and (b) become sub-paragraphs (i) and (ii) respectively of paragraph (a) as so created), and

(b) for the words “or a child falling within section 71(3)(f)” substitute “, or

(b) has, or had, a guardian by virtue of an appointment under section 7 of the 1995 Act.”.

(3) In section 49 (looked after 2 year olds: alternative arrangements to meet wellbeing needs), in subsection (1)(a), for “47(3)(a)” substitute “47(3)(a)(i)”.

PART 4

GENERAL

24 Meaning of “the 1980 Act”

In this Act, “the 1980 Act” means the Education (Scotland) Act 1980.

25 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

- (a) different provision for different purposes,
- (b) such supplementary, incidental, consequential, transitional or transitory provision, or savings, as they consider appropriate.

(2) Regulations under section 1(3)(b) are subject to the affirmative procedure.

- (3) Regulations under section 12(1) or 26(1) containing provisions which add to, replace, or omit any part of the text of this or any other Act are subject to the affirmative procedure.
- (4) Otherwise, regulations under this Act are subject to the negative procedure.
- (5) This section does not apply to regulations under section 27(2).

5 **26 Ancillary provision**

- (1) The Scottish Ministers may by regulations make such supplementary, incidental, consequential, transitional or transitory provision, or savings, as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- 10 (2) Regulations under subsection (1) may modify any enactment (including this Act).

27 Commencement

- (1) This Part (other than section 24) comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- 15 (3) Different days may be appointed for different purposes.
- (4) Regulations under this section may include transitional or transitory provision or savings.

28 Short title

The short title of this Act is the Education (Scotland) Act 2015.

SCHEDULE
(introduced by section 17)

MODIFICATIONS OF THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004

1 The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as
5 follows.

2 For section 3 (children and young persons who lack capacity), substitute—

“3 Children and young persons: capacity

(1) For the purposes of this Act, a child or young person has capacity—

10 (a) in relation to an act that may be carried out by the child or young person
under a provision of this Act, if the child or young person has sufficient
maturity and understanding to carry out the act,

(b) in relation to a decision of the child or young person mentioned in a
15 provision of this Act, if the child or young person has sufficient maturity
and understanding—

(i) to make the decision,

(ii) to communicate the decision,

(iii) to understand the decision and its implications for the child or
20 young person, and

(iv) to retain the memory of the decision,

(c) in relation to the provision, under a provision of this Act, of any
25 information, advice or co-ordinated support plan by an education
authority to the child or young person, if the child or young person has
sufficient maturity and understanding to understand the information,
advice or (as the case may be) plan,

(d) in relation to any view of the child or young person mentioned in this
30 Act, if the child has sufficient maturity and understanding to express the
view;

and any references in this Act to a child or young person who lacks capacity
are to be read accordingly.

(2) For the purposes of subsection (1), a child or young person lacks capacity if the
35 child or young person does not have sufficient maturity or understanding as
mentioned in that subsection by reason of—

(a) mental illness,

(b) developmental disorder,

(c) learning disability,

(d) an inability to communicate because of a physical disability, or

(e) a matter (not falling within paragraphs (a) to (d)) related to having
40 additional support needs.

- (3) But a child or young person is not to be treated as lacking capacity by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human, electronic or mechanical aid (whether of an interpretive nature or otherwise).”.

5 3 After section 3 insert—

“3A Children and young persons: assessment of capacity, etc.

- (1) Subsection (3) applies where, under a provision of this Act—

10 (a) a child who has attained the age of 12 years may do something only if an education authority is satisfied that the child has capacity in relation to the thing,

(b) an education authority may or must do something in relation to such a child only if the authority is satisfied that the child has capacity for the thing to be done in relation to the child,

15 (c) a child or young person may do something in relation to an education authority only if the authority is satisfied that the child or young person does not lack capacity in relation to the thing, or

(d) an education authority may or must do something in relation to a child or young person only if the authority is satisfied that the child or young person does not lack capacity in relation to the thing.

- 20 (2) Before a child or young person does a thing as mentioned in subsection (1)(a) or (c), the child or young person must notify the education authority that he or she proposes to do the thing.

- (3) Before the child, young person or (as the case may be) education authority does the thing, the education authority must—

25 (a) carry out an assessment of the capacity of the child or young person to do the thing, or have the thing done in relation to the child or young person, and

30 (b) consider whether it is in the best interests of the child or young person to do the thing or have the thing done in relation to the child or young person.

- (4) Subsection (5) applies where an education authority, having complied with its duties under subsection (3), is satisfied that—

(a) the child or young person lacks capacity to do the thing or have the thing done in relation to the child or young person, or

35 (b) it is not in the best interests of the child or young person to do the thing or have the thing done in relation to the child or young person.

- (5) The child, young person or (as the case may be) education authority may not do the thing in question.

- 40 (6) Where an education authority is notified by a child under subsection (2) that the child proposes to do the thing mentioned in that subsection, the education authority must—

(a) notify the child’s parents that the authority intends to—

(i) carry out an assessment of the child’s capacity to do the thing, and

(ii) consider whether it is in the child's best interests to do the thing, and

(b) notify the child and the child's parents of—

(i) the result of the assessment, and

(ii) the authority's determination as to whether it is in the child's best interests to do the thing.

(7) Where an education authority is notified by a young person under subsection (2) that the young person proposes to do the thing mentioned in that subsection, the education authority must notify the young person of—

(a) the result of the assessment carried out under subsection (3)(a), and

(b) the authority's determination under subsection (3)(b) as to whether it is in the young person's best interests to do the thing.

3B Rights of parents of children aged 12 or over

(1) Subsection (2) applies where—

(a) a right is conferred under this Act on a child who has attained the age of 12 years,

(b) the right is one that is also exercisable by the parents of the child,

(c) the child—

(i) does not wish to exercise the right, and

(ii) does not wish the child's parents to exercise it, and

(d) the parents of the child do wish to exercise the right.

(2) The parents of the child may exercise the right.”

4 In section 6 (children and young persons for whom education authority is responsible)—

(a) after subsection (3)(a) insert—

“(aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,”, and

(b) in subsection (4)—

(i) the words “the person who made the request of that fact” become paragraph (a) of that subsection, and

(ii) after that paragraph insert “, and

(b) where that person is a child falling within subsection (3)(aa), the child's parent of that fact.”

5 In section 7 (children and young persons for whose school education an education authority is not responsible)—

(a) after subsection (3)(a) insert—

“(aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,”,

(b) in subsection (8)—

(i) after paragraph (a) insert—

“(aa) in the case of a child falling within subsection (3)(aa) who the authority is satisfied has capacity in relation to the information or advice, the child,”, and

(ii) in paragraph (b)(ii) for “to understand” substitute “in relation to”, and

5 (c) after subsection (8) insert—

“(9) Subsection (10) applies where an education authority receives a request as mentioned in subsection (1) relating to a child or young person attending an independent or grant-aided school.

10 (10) The authority may request the managers of the school to provide the authority with such information and advice as the authority thinks appropriate for the purpose of enabling the authority to assess the capacity of the child or young person in relation to the request.”.

6 In section 8 (assessments and examinations)—

(a) after subsection (2)(b)(i) insert—

15 “(ia) where the proposal relates to a child who has attained the age of 12 years, the child,”, and

(b) after subsection (2) insert—

“(2A) But a child who has attained the age of 12 years is an appropriate person for the purposes of subsection (2) only if—

20 (a) in a case where paragraph (a) of that subsection applies—

(i) the authority is satisfied that there has been no significant change in the circumstances of the child since the request mentioned in that paragraph was made, or

25 (ii) where the authority is not so satisfied, the authority is satisfied that the child has capacity to make the request referred to in subsection (1)(b) at the time that request is made,

(b) in any other case, the authority is satisfied that the child has capacity to make the request referred to in that subsection.”.

7 In section 8A (assessments and examinations: further provision), after subsection (3)(a) insert—

30 “(aa) where the request relates to a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,”.

8 In section 9 (duty to prepare co-ordinated support plans), in subsection (2)(d)—

35 (a) in sub-paragraph (i), after “parent” insert “can obtain advice and further information”,

(b) after that sub-paragraph insert—

40 “(ia) in the case of a plan prepared following a request mentioned in section 6(2), 7(2)(a) or 10(4) for a child who has attained the age of 12 and who the authority is satisfied has capacity in relation to advice or further information from the officer, the child can obtain such advice and information,”,

(c) in sub-paragraph (ii)—

- (i) for “to seek” substitute “in relation to such”, and
- (ii) after “parent” insert “can obtain such advice and information”, and

(d) the words “can obtain advice and further information” are repealed.

9 In section 10 (reviews of co-ordinated support plans), after subsection (5)(a) insert—

5 “(aa) in the case of a co-ordinated support plan prepared for a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,”.

10 In section 11 (co-ordinated support plans: further provision)—

(a) in subsection (3)—

10 (i) after paragraph (a) insert—

“(aa) where the proposal—

(i) arises as a result of a request mentioned in section 6(2), 7(2)(a) or 10(4), and

(ii) relates to a child who has attained the age of 12 years,

15 the child,” and

(ii) in paragraph (b)(ii), for “to understand” substitute “in relation to”, and

(b) in subsection (5)—

(i) after paragraph (a)(i) insert—

20 “(ia) in the case of a child who has attained the age of 12 years, to the child (but only if the plan was prepared or amended following a request mentioned in section 6(2), 7(2)(a) or 10(4) made by the child),” and

(ii) in paragraph (a)(ii), for “to understand” substitute “in relation to”.

11 In section 12 (duties to seek and take account of information)—

25 (a) in subsection (2)(b), in each of sub-paragraphs (i) and (ii), for “to express” substitute “in relation to”, and

(b) in subsection (6)(b), in each of sub-paragraphs (i) and (ii), for “to express” substitute “in relation to”.

12 In section 13 (provision of information etc. on occurrence of certain events)—

30 (a) in subsection (4A), for “to express” substitute “in relation to such”, and

(b) in subsection (5)—

(i) before paragraph (a) insert—

“(za) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to give consent, the child,” and

35 (ii) in paragraph (a), for “a” substitute “any other”.

13 In section 14 (supporters and advocacy), in subsection (2)—

(a) after paragraph (a) insert—

“(aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity in relation to discussions or representations as mentioned in subsection (1), the child,” and

5 (b) in paragraph (b)(ii), for “to participate in discussions or make” substitute “in relation to discussions or”.

14 In section 14A (provision of advocacy service: Tribunal), in subsection (2)(b)(ii), for “to participate in discussions or make” substitute “in relation to discussions or”.

15 In section 15 (mediation services)—

10 (a) in subsection (1)(c), for “to express a view or make decisions for” substitute “as respects views or decisions relating to”, and

(b) after subsection (1) insert—

15 “(1A) In making arrangements under subsection (1) for the provision of mediation services in respect of a matter that is the subject of a disagreement (or potential disagreement) between an education authority and the parents of a child, the authority must seek and take account of the views of the child in respect of the matter.”.

16 In section 16 (dispute resolution)—

(a) in subsection (1)—

(i) after paragraph (a) insert—

20 “(aa) any child who has attained the age of 12 years and who the authority is satisfied has capacity as respects views or decisions relating to the purposes of resolving such disputes,” and

(ii) in paragraph (c), for “to express a view or make a decision for” substitute “as respects views or decisions relating to”, and

25 (b) in subsection (3), after the word “parent”, where it occurs in each of paragraphs (a) and (b), insert “, child”.

17 In section 18 (references to Tribunal)—

(a) in subsection (2)—

(i) after paragraph (a) insert—

30 “(aa) where the decision, failure or information relates to a child mentioned in subsection (2A), the child,” and

(ii) in paragraph (b)(ii), after “reference,” insert “or it is not in the young person’s best interests to do so,”,

(b) after subsection (2) insert—

35 “(2A) The child is a child who has attained the age of 12 years and—

(a) who the Tribunal is satisfied has capacity to make the reference, and

(b) in respect of whom the Tribunal considers it is in the best interests to make the reference.

(2B) For the purposes of subsection (2)(b)(ii)—

40 (a) a young person lacks capacity if the Tribunal is satisfied that that is the case,

(b) it is not in the best interests of the young person to make the reference if the Tribunal consider that to be the case.”,

(c) after subsection (3)(e) insert—

“(ea) a decision of an education authority in relation to the capacity of—

(i) a child who has attained the age of 12 years to exercise a right under this Act, or

(ii) a young person to exercise such a right,

(eb) a decision of an education authority that it is, or is not, satisfied as respects a matter relating to the best interests of such a child or young person,” and

(d) after subsection (7) insert—

“(8) Subsection (7) applies in relation to a decision referred to in subsection (3)(ea) or (eb) as it applies in relation to a decision referred to in subsection (3)(da) or (e); but only where any further reference would relate to—

(a) the same right as mentioned in subsection (3)(ea)(i) or (as the case may be) (ii) as the last such reference relates to, or

(b) the same matter as mentioned in subsection (3)(eb) as the last such reference relates to.”.

18 In section 19 (powers of Tribunal in relation to reference), in subsection (2), for “or (d)(iv)” substitute “, (d)(iv), (ea) or (eb)”.

19 In section 26 (publication of information by education authority)—

(a) in subsection (2)(f)—

(i) the word “and” immediately following sub-paragraph (i) is repealed, and

(ii) after that sub-paragraph insert—

“(ia) children having additional support needs and who have attained the age of 12 years, and”, and

(b) in subsection (2A)—

(i) after paragraph (a) insert—

“(aa) in the case of such a child who has attained the age of 12 years, the child,”, and

(ii) in paragraph (b)(ii), for “to understand” substitute “in relation to”.

20 In section 27 (code of practice and directions), in subsection (2), after paragraph (d) insert—

“(da) the carrying out of assessments under paragraph (a) of subsection (3) of section 3A,

(db) the consideration of whether something is in the best interests of a child as mentioned in paragraph (b) of that subsection,

(dc) the assessment of whether there has been a significant change in the circumstances of a child as mentioned in section 8(2A)(a),”.

21 In section 31 (duty to inform in writing or alternative permanent form), after the word “parent”—

(a) where it first occurs, insert “, child who has attained the age of 12 years”, and

(b) where it second occurs, insert “, child”.

22 After section 31 insert—

“31A Provision of support service

5 (1) The Scottish Ministers must secure the provision of a support service to be available, on request and free of charge, to children who have attained the age of 12 years and—

(a) who wish to exercise, or are considering exercising, relevant rights, or

10 (b) whose parents wish to exercise, or are considering exercising, relevant rights.

(2) In this section, “a support service” means a service under which—

(a) advice (including legal advice), assistance and information in relation to relevant rights are provided to children mentioned in subsection (1),

15 (b) a person is provided to be present at any discussions with an education authority in relation to the relevant rights of such a child for the purpose of supporting the child (where the child wishes such a person to be present),

20 (c) a person is provided to conduct such discussions (or any part of them), or make representations to an education authority, on behalf of such a child (where the child wishes such a person to be provided), and

(d) an advocacy service (within the meaning of section (3) of section 14A) is provided to such children (the reference in that subsection to persons mentioned in subsection (2) being read as if such children were mentioned in that subsection).

25 (3) Subsection (4) applies where—

(a) a child, or parent, as mentioned in subsection (1) wishes to exercise, or is considering exercising, relevant rights, or

(b) some other thing is done, or proposed to be done, under this Act by or in relation to such a child.

30 (4) Any person providing a support service under this section may seek the views of the child as respects—

(a) the exercise of the relevant rights, or

(b) the doing, or proposed doing, of the thing.

(5) In this section, “relevant rights”—

35 (a) in relation to a child who has attained the age of 12 years, means any rights conferred by or under this Act on such children, and includes the right—

(i) to receive any document or information, and

(ii) to give consent in relation to any matter, and

40 (b) in relation to the parents of such a child, means any rights conferred on the parents by or under this Act.”.

23 In schedule 1 (Additional Support Needs Tribunal for Scotland), after paragraph 11(2)(ka) insert—

“(kb) enabling a convener of a Tribunal alone to determine specified matters relating to the decision of an education authority as respects—

- 5 (i) the capacity of a child who has attained the age of 12 years to exercise a right under this Act,
- (ii) the capacity of a young person to exercise a right under this Act,
- (iii) whether something is in the best interests of a child who has attained the age of 12 years, or
- 10 (iv) whether something is in the best interests of a young person.”.

Education (Scotland) Bill

[AS INTRODUCED]

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

Introduced by: Angela Constance
Supported by: Dr Alasdair Allan
On: 23 March 2015
Bill type: Government Bill

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