

THE EDUCATIONAL INSTITUTE OF SCOTLAND

SUBMISSION ON THE EDUCATION (SCOTLAND) BILL 2015

Introduction

The Educational Institute of Scotland (EIS) welcomes this opportunity to provide an initial written submission on the key elements which are included in the new Education (Scotland) Bill. The EIS is Scotland's largest education union representing around 55,000 members employed in Nursery, Primary, Special, Secondary, Further and Higher Education (around 80% of the teaching profession).

The aims of the bill are outlined in a policy memorandum and are defined as follows:

- a) "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;
- b) Place a duty on education authorities both to assess the need for Gaelic medium primary education following a parental request and to actively promote and support Gaelic medium education (GME) and Gaelic learner education; the Bill will also place a duty on Bòrd na Gàidhlig to prepare guidance on how GME should operate in Scotland;
- c) Extend rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children aged 12 and over with capacity;
- d) Amend section 53 of the Education (Scotland) Act 1980, 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;
- e) Modify the types of complaints made to Ministers under section 70 of the Education (Scotland) Act 1980, and introduce a power to make regulations about the procedure to be followed in relation to investigations and determination of such complaints;
- f) Legislate for the role of Chief Education Officer in education authorities in Scotland;
- g) 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
- h) Amend section 47(3) of the Children and Young People (Scotland) Act 2014 as it currently unintentionally excludes a small group of children from the early learning and childcare provisions."

In direct response to the Committee's questions the Institute provides the following responses.

Attainment

1. The EIS believes that the introduction of the Bill alone will not deliver significant change in reducing inequalities of educational outcome or impact greatly on the attainment gap created by socio-economic inequality, as it creates duties but fails to link those to discernible means to secure the desired outcome. The EIS is in favour of ring-fenced funding linked to specific objectives as a means of driving forward policy aims in a meaningful way.

A desirable level of improvement would be a significant narrowing in the existing attainment gap, which saw a 50% reduction over the life of the next Parliament.

2. No. To be only required to "have regard to the desirability" of reducing inequalities of outcome" does not have the same impact as a duty requiring direct measures. There is ambiguity as to the extent of the measures that should be taken. No one in Scottish Education would dispute the desirability of reducing inequality but without providing the means government runs the risk of making pious statements.
3. It would be helpful to provide a definition of what is meant by "inequalities of outcome". Please also see our answer to question 6 (below) for further explanation.
4. The EIS is of the view that education authorities at present have the mechanisms and structures to support actions that are aimed at tackling inequalities of outcome but the resources available for this have been a limiting factor, e.g. smaller class sizes, as Scottish Government has acknowledged, can contribute significantly to reducing inequality of outcome but this requires expenditure. Without increased resources the actions necessary will not happen.
5. The addition of equity of attainment duty would fit with existing statutory National Priorities for Education and requirements to produce annual statements of improvement objectives and school development plans. However, the EIS would have concerns if this addition placed additional bureaucratic burdens on head teachers, teachers and schools. The placing of this duty in primary legislation, rather than amendment of The Education (National Priorities)(Scotland) Order 2000, is welcomed if the greater accountability from the requirement for education authorities to report to the Scottish Ministers, and the Scottish Ministers to report to the Scottish Parliament is realised. The ongoing duty to consider steps to address inequalities of educational outcome is also welcomed.

6. The terms used within Policy Memorandum and the Bill itself would benefit from clear interpretation and definitions. Educational stakeholders will have an understanding of the terms in both but there needs to be clarity of what education authorities must do to meet the legal requirement. Such clarity would assist delivery of policy objectives.
7. The experience of potential sanctions in relation to previous agreements on maintaining teacher numbers had mixed success, with Scottish Government eventually moving more towards a more incentivised approach. There is always a concern that the imposition of financial sanctions on education authorities could have a negative impact on delivery of the service. A process by which education authorities and Scottish Ministers are held accountable publicly may provide further incentive to comply with the duty. The process by which the assessment of whether or not the duty has been met should also be given considerable thought and be subject to further consultation. Again, the use of ring fenced funding offers a potential mechanism in this area.
8. The EIS has no specific concerns in this regard.
9. The EIS believes that all inequality of outcome, of both achievement and attainment, should be addressed. It is also our view that raising attainment for all is important. However, the EIS is clear that it is essential to focus on the attainment and achievement inequalities caused by socio-economic disadvantage, which remains as the single biggest barrier, in terms of educational progress, facing young people in Scotland.

Gaelic

10. – 14. The EIS is well aware of the importance of Gaelic to the cultural identity of Scotland and also the beneficial educational outcomes which derive from successful language study. We support the provision of Gaelic medium education, particularly in response to parent and pupil led demand, but believe it is important, in a time of budget pressure, to achieve an overall balance in relation to Educational priorities.
15. The EIS has concerns over the resources which would need to be available to meet new requirements given the cuts to education budgets. We would wish to recognise that there are many living languages in Scotland and appropriate support should be provided to these languages, also.

Additional Support for Learning/

Additional Support for Learning

16. The EIS supports the Scottish Government's commitment to recognising, respecting and promoting children's rights in Scotland and the proposed extension of rights under the 2004 Act is a manifestation of this commitment. It is essential to recognise, however, that the extension of rights to children aged 12 and over with capacity is likely increase the current burdens on the system and require additional resources for support of those children who wish to assert their rights.
17. The rationale presented on the limitations on the child's rights, i.e. regarding mediation and placement requests, seems reasonable and balanced in terms of the child's best interest.
18. The establishment, funding and promotion of a children's support service will be important in supporting children to understand and assert their rights. The EIS has concerns over the resourcing and support for those in the role of named person. There would need to be consideration of the interface between named persons and the children's support service and appropriate consultation as establishment of this service is progressed.

Chief Education Officer

19. The EIS recognises the importance of Education Authorities having a knowledgeable and experienced educationalist to lead the education service within a council area, preferably as Director of Education. The need for a post such as Chief Education Officer appears to have arisen from the practice of Local Authorities increasingly moving towards combined departments where Education is often subsumed within a more generic service model, leading to prime responsibility for Education lying with someone who would not necessarily have the Education background which the EIS would regard as both desirable and essential.

Many of the statutory duties placed on a local authority, however, relate to the provision of education services and it makes sense for the lead role in education also to be underpinned on a statutory basis. The EIS is not opposed, therefore, to legislation which would ensure that every education authority in the country appointed a Chief Education Officer (CEO) but we are clear that this should not be seen as a mechanism for further reducing the leadership role which we believe should be provided by Education Directorates. We would also advocate that any individual considered for the position of CEO should be registered with the General Teaching Council (Scotland). Section 78 of the Education (Scotland) Act 1980 did contain provisions for the appointment of a "Director of

Education” and the position of Principal Educational Psychologist has responsibility to the education authority for a number of statutory duties connected to the delivery of Psychological Services within the local authority area.

20. The main role of a Chief Education Officer should mirror the previous provisions of the 1980 Act and should reflect the main statutory responsibilities of the local authority but should be free from political interference. The duties of the Principal Officer for Education should also reflect the key leadership role of the CEO with regard to the delivery of these statutory functions.

Registering Teaching Staff

21. The EIS supports the compulsory registration of all teachers employed in Scotland’s schools regardless of whether these schools are Local Authority, Grant-Aided or Independent. In short any school inspected by Education Scotland Inspectors should only employ GTC(S) registered teaching staff as a guarantee of the standards of teaching and as a means of ensuring the highest level of professional standards. The inclusion of questions regarding “new skills” and “improvement in attainment” are somewhat surprising given the support of all Governments since the 1960s for the statutory requirement for all teachers in the state sector to be registered with GTC(S) as a means of guaranteeing teaching standards as part of all pupils’ education.
22. In terms of transitional arrangements, the two year period of grace suggested as part of the consultation would be beneficial with additional support provided for individual teachers to allow them to secure appropriate additional qualifications and undertake appropriate professional learning.

Complaints

23. The provision of a mechanism to allow parents (or others) to complain about the actions of an education authority should comply with the standards set out by the Scottish Public Service Ombudsman, particularly in relation to the structuring of local authority complaints procedure. The deadlines outlined in the Policy Memorandum should also be in line with SPSO models.
24. Separate provision should remain, however, for matters which come under the jurisdiction of the Additional Support Needs Tribunals for Scotland (ASNTS) and these should not be dealt with by Scottish Ministers.
25. As indicated in 23 (above) the Local Authority Complaints Procedure should be SPSO compliant and should allow for consideration by the Ombudsman in the event of any dissatisfaction with the outcome of a complaint to a local council

regarding its education services. In addition the opportunity should be taken to streamline the complaints process in relation to the section 70 provisions of the 1980 Act and the statutory responsibilities of the SPSO. The EIS is strongly opposed to the proposal that Education Scotland should have an investigative role in any complaints procedure.

Learning and Childcare

26. We see no reason to distinguish between guardians and kinship carers for the purpose of entitlement to free early learning and childcare.

Other Issues

School Meals

27. EIS policy supports the provision of free school meals for all children and young people in state funded schools. We believe that there should be a review of existing policy rather than a re-stating of the extant position. A change to increase the provision of free school meals would have both learning and health benefits for the young people of Scotland.

Early Learning

28. The Bill fails to take the opportunity to clarify, define and extend the requirement for access to a GTCS registered teacher for all 3 to 5 year olds in state funded education. It is the EIS view that raising attainment and tackling inequality of outcomes would be assisted by this measure, a view supported by extensive research evidence. Scotland has a 3-18 curriculum but no statutory or regulated framework to ensure that teachers are directly involved, as part of a team of professionals, in delivering nursery education.

Primary School Week

29. There is a growing threat, owing to financial pressures on local authorities, to the length of the pupil week in primary and legislation is needed to ensure that the current provision is at least maintained. A reduction of teaching and learning time is neither beneficial to raising attainment nor to closing the attainment gap. The EIS believes that Scottish Government should take the opportunity of the current Bill to regulate pupil entitlement in terms of the number of hours which constitute a school week.

Teacher Numbers

30. The Bill provides an opportunity to provide a definitive position on teacher numbers. An agreed mechanism on teacher numbers would resolve a contentious public debate. The EIS believes the issue is best resolved through a minimum national staffing standard.

Teachers subject to Frivolous or Vexatious Complaints

31. There are significant pressures on teachers arising from frivolous or malicious complaints. Scottish Government should consider whether parents and guardians should continue to enjoy, in law, the protection of qualified protection. In addition, statutory protection should be afforded to teachers from cyber bullying.
