

Evidence on the Education (Scotland) Bill

Introduction

1. COSLA welcomes the opportunity to provide written evidence to the Committee on the Education (Scotland) Bill. COSLA has been aware for a number of months that Scottish Government were planning a new Education Bill. We responded to the Government's consultation on new Gaelic provisions last September and discussed the Bill's original proposals with our members in the autumn. While we felt there were a number of practical and financial issues with the original proposals – most notably on the Gaelic elements of the Bill – we identified no significant issue of principle with what the Scottish Government were originally proposing.
2. Since the start of 2015, however, there have been two major new additions to the Bill that were not previously consulted upon by Scottish Government. These are proposals for a chief education officer and a duty to tackle the impact of poor socio-economic circumstances on pupil's educational outcomes.
3. This evidence submission focuses on the recent additions to the Bill and proposals for Gaelic medium education. It has been approved by COSLA's cross-party Education, Children and Young People Executive Group and builds on the briefing that we provided to the Committee at the end of April.

Inequalities of Outcome

4. COSLA supports improving attainment and the delivery of better equity within education, but we do not support the proposed new legislation as a mechanism for helping to deliver this goal. However, it is important to make absolutely clear that COSLA fully supports tackling educational inequality in all its forms and our concerns set out below are limited only to this legislation. Our views on the proposal at Part 1 can be summarised in the three points below:
 - **The duty in Part 1 of the Bill is unnecessary and fails to take into account existing legislation and the commitment of authorities to tackle poor attainment;**
 - **Reporting arrangements do not enhance local democracy and duplicate reporting in the Standards in Scotland's Schools Act and the recent Children and Young People Act, and**
 - **The proposals have not been consulted upon and would have benefited from more scrutiny and development time.**
5. We have two main concerns with the proposed legislation. The first is about the overall usefulness of the new duty. The second, which we will discuss later, is about the requirement for local authorities to report to Ministers on how they have delivered on the aforementioned duty.
6. We believe that placing a duty on councils to have due regard to reducing inequalities of outcomes experienced by pupils resulting from socio-economic disadvantage, fails to recognise that this commitment already exists – even if it's not set out explicitly in law. The moral, economic and social case for closing the attainment gap has already been won, even if in practical terms we accept there is still a massive job to do. The question for COSLA is whether new legislation will help councils make more progress to be made on

this vital task, or whether it will just complicate the legislative framework which councils work within and add more form-filling and bureaucracy to the job of local educationalists? To date and having listened to the answers from Scottish Government officials at the evidence session on 28 April, we are inclined to believe that the latter is a more accurate description of the impact of the Bill.

7. The issues which constrain a local authority or its partners from tackling poor educational outcomes, be they financial, practical or as a result of the family circumstances which the young person faces, will not be resolved by this new duty, but by factors outside of the legislative process.
8. This does not mean that legislation cannot be helpful if it is carefully drafted, but we cannot support Part 1 of the Bill because it has been hurriedly drafted and is completely separate from existing laws such as the Standards in Scotland's Schools Act, UK legislation on equalities and child poverty and, most recently, the Children and Young People Act 2014.
9. The duty as framed by the Bill is extremely wide in scope and would seem to apply to every aspect of a local authority's responsibility for the delivery of education. While we accept that poor attainment is tackled by coordinating effort within and across services, the improvement of children's well-being (which includes 'achieving' as a wellbeing indicator) is already subject to recent legislation i.e. Children and Young People Act. Part 3 of the Act requires local authorities and their partners to develop plans to best safeguard, support and promote the wellbeing of children. We would argue this Act, in addition to others listed above is sufficient to provide a legislative framework for all aspects of children's wellbeing, planning and delivery, which by definition must include education attainment and achievement.
10. The Children and Young People Act requires that local authority and the relevant health board to publish after one year a report on the children's services delivered over the period and the outcomes that have been achieved. It should also be remembered that the Standards in Scotland's Schools Act also requires local authorities to produce an annual statement on education improvement. Education Bill introduces a completely separate reporting requirement that will require local authorities to report to Ministers every two years on the steps that have been taken to comply with the duty in Part 1 of the Bill.
11. While we have strong concerns about local authorities being required to report to Ministers about the delivery of a service which they themselves are democratically accountable to local communities - a concern which we will return to later in this submission - we are perplexed by the need for another reporting arrangement when one, which has at its heart the wellbeing of children, has so recently been agreed in law. We have raised this point specifically with the Cabinet Secretary in writing before the Bill was published but were told that Scottish Government was committed to the Bill as has been submitted to Parliament. We were not able to pursue this matter further politically due to the timescale for the publication of the Bill.
12. In normal circumstances we would expect that some of these issues would have been resolved before a Bill was published, either in the normal course of work or in response to public consultation. However, this section of the Bill has been developed extremely quickly – far quicker than is normal for legislation. The first time we became aware that a new duty was being proposed was in January a little over six weeks before the finalised Bill was submitted to Parliament in the first week of March. This gave very little time to iron out any of the issues we have raised thus far with the Committee.

13. It is important to return to the issue of local accountability as we believe that the duty fundamentally misunderstands the relationship between local and Scottish Government. The Bill team reflected in its oral evidence that local authorities should be accountable to Parliament and Ministers for the work that is being done to improve attainment. We take strong issue with this statement.
14. We have never argued that Parliament and Scottish Government do not have a crucial interest in how well children are educated. We have also consistently argued for better reporting on outcomes both at a local and national level to aid the public scrutiny of service delivery. We believe that the presentation of educational information in a transparent and accessible way to the public is fundamental to our democracy. It would be entirely right, for example, for the results of this exercise to be debated in Parliament. Where we do have an issue is that Ministers should be able to hold to account locally elected members over the detail of how service are delivered, and should be able to demand wide ranging reports on all aspects of how councils are tackling poor attainment.
15. However, in addition to our principled concerns that COSLA has made many times before, it is worth emphasising that even if the reports are submitted to Ministers we think that little in the way of useful information will be gained from their analysis. The Committee has already pointed out that there is no baseline from which improvement in tackling poor attainment could be judged, and we have concerns over the possibility of inaccurate comparisons being made between attainment levels in very different authorities. There is also no ability to judge whether a drop in attainment could be the result of the action taken by the authority or some other external factor out with the control of the authority. When Scottish Government officials were pressed on this issue they could not, in our view, give a good answer for how this issue will be resolved.
16. **In summary Part 1 of the Bill has been developed too quickly and will add very little to education delivery except extra bureaucracy. It undermines local democracy and will provide little in the way of useful information that could aid public scrutiny of education.**

Gaelic Medium Education (GME)

17. COSLA is supportive of the Scottish Government's general commitment to promote Gaelic language. The concerns which we have about the legislation are related mainly to practical and financial aspects of the Bill.
18. The key concerns of COSLA are:
- **The lack of available Gaelic language teachers;**
 - **The lack of new Scottish Government funding for this process;**
 - **That together, these issues will mean demand from parents will potentially go unmet, and**
 - **We are also concerned that the Bill appears to give Scottish Ministers powers to overturn decisions taken by local authorities.**
19. COSLA has discussed GME provision on a number of occasions with our members and the lack of Gaelic language teachers has consistently arisen as a key issue. The availability of staff is a major barrier to provision and we aware that some councils have had unfilled vacancies for a long period. We know that Scottish Government have indicated that they want to increase the number of qualified Gaelic language teacher, but the shortages are being felt now, even before GME provision is potentially expanded as a result of the Bill. It is a concern, therefore, that teacher training and the ability of councils to recruit teachers will not be able to match the demand from parents.

20. COSLA will provide a response to the Finance Committee in relation to the Financial Memorandum (FM) which accompanies the Bill. We have concerns that the estimated number of parental requests and new GME units that are established as a result of the Bill are too low. The FM estimates one additional parental request a year and one additional GME unit every two years. However, in giving evidence to the Committee on 28 April the Bill team noted that they expected the Bill to lead to faster growth in GME throughout Scotland. This statement does not seem consistent with the estimate in the FM for the number of additional units that will be created. COSLA's concern is that the Bill will indeed generate demand for faster growth in GME provision than is possible to deliver with the available resources.
21. COSLA can understand the rationale for setting a numerical threshold that triggers the consideration by the local authority of additional GME activity. However, the proposed threshold appears to be an arbitrary figure. We also do not support the power of Ministers to change the number of the threshold on a local authority by local authority basis. If there is a need to vary the threshold, and we can imagine cases where it is appropriate for requests from a smaller or a larger number of parents to be given full consideration, we feel that local authorities should have the flexibility for agreeing with communities how to handle requests. This would empower local authorities to work with parents in a way that is right for communities, rather than relying on a top-down Ministerial power.
22. We are concerned with section 9, subsection 4 of the Bill which appears to give Ministers the power to overturn a decision taken by a local authority not to carry out an initial assessment. There are a number of considerations outlined in the Bill which a local authority must take in making a decision on whether or not to carry out an initial assessment – including the availability of teachers. It is strange to us that after creating a new process for local authorities to follow in order to ensure greater consistency in the handling of GME requests, that Scottish Government is then seeking what could be argued to be an arbitrary power to overturn a local decision if it is 'considered appropriate' by Ministers. The Bill is not clear as to what grounds would be considered appropriate for a Ministers to overturn a decision which has been arrived at by the authority after consideration of all the facts. We would argue strongly that an authority that makes a reasonable decision based on the law and the information which is available should not be faced with its decision being 'called in' by Ministers just because they do not agree with the decision.
23. The Bill calls for local authorities to provide information when parental requests are to be formally considered to Education Scotland, Bòrd na Gàidhlig and the National Parent Forum of Scotland. The Bill sets a timeframe for Education Scotland and Bòrd na Gàidhlig to provide their views to the local authority. The National Parent Forum of Scotland may if they so choose submit their views, and the local authority must have regard to all the views submitted. This seems a very bureaucratic process and we are uncertain what additional information or assistance either Education Scotland or Bòrd na Gàidhlig is expected to provide to the authority. Without a clearer statement of the added value that each agency will provide, this risks becoming a 'box ticking' exercise, without a clear purpose and benefit to either the authority or the parents making the request.
24. In terms of engagement with parents, COSLA completely supports the proper consultation with parents, children and the wider community on changes to education provision – including GME. We would simply ask why the Bill sets out a requirement to consult with the National Parent Forum, when it would seem more appropriate for meaningful local consultation to take place with parents, pupils and staff.

25. **In summary we are concerned that due to the lack of available Gaelic language teachers and the lack of funding for increased provision local authorities may not be able to meet parental expectations which will be raised by the Bill. We are also opposed to the powers of Scottish Ministers to set new thresholds and overturn local authority decisions.**

Chief Education Officer

26. This is the second recent addition to the Bill. As with the duty in Part 1 we learned about its likely inclusion within the Bill only about 6 weeks before the Bill was submitted to Parliament. As a result we have been unable to resolve the issues that are discussed below.

27. COSLA remains to be convinced that all councils should have a chief education officer. We are taking this position as we believe all authorities will already employ someone senior within the authority who will have a recognised education qualification and experience, or will have in place arrangements which draw upon the skills and expertise of all their staff – including school leaders and other educational staff - in a collegiate manner to advise on the delivery of statutory functions. We believe that making a post of chief education officer a statutory requirement will have a minimal impact on quality of advice provided to the authority on the delivery of education and children’s services. Our views on the proposal can be summarised in the three points below:

- **The Chief education officer proposal will add little value to education services;**
- **We do not have answers to key questions on the qualifications that will be required by law for chief education officers, and**
- **Chief education officers should not be equated with Chief Social Work Officers**

28. With education services increasingly being connected to other children’s services run by local authority and community planning partners, senior officers need to be able to demonstrate skills and experience beyond those of an educationalist. We believe that it is a mistake to focus on just the education aspect of a senior staff members jobs when there is no evidence that councils are receiving anything other than good quality education advice from their staff.

29. It should be noted that we are not aware of Education Scotland raising any concerns about council management structures and their impact on the quality of education locally. Scottish Government officials, in their evidence on 28 April, stated that the chief education officer was required to “plug a gap” in local authority provision. However, at this time we see no evidence for the existence of any gap that needs to be “plugged” and that the proposal from Government feels instead like a solution in search of a problem.

30. We are also not convinced by the rationale behind the proposal for a chief education officer. We understand that the original idea for a chief education officer was proposed by ADES late last year after their annual conference. We believe that this came about partly because of concern from some of their members about the status and relationship of education compared to children’s services, especially where children’s services (although not education) were being integrated as per the Public Bodies (Joint Working) Act. While we would never dismiss the concerns of ADES, we are not convinced that the proposal of chief education officer – which in most local authorities may only involve a change to a current post-holders job title - will resolve any professional and practical issues that may arise during the initial stages of the integration of services.

31. It should be noted though that the integration of children’s services - either as part of joint boards or not – is carried out with the democratic agreement of local authorities, and has

been a long term objective of this and past Scottish administrations. To suggest a statutory post purely for education, we think actually works against the integrated thinking and the breaking down of professional barriers that local and Scottish Government have been looking to achieve for a decade or more. So while we understand why this post is wanted by some within ADES, we are concerned that Scottish Government have adopted a proposal from a stakeholder organisation without any consultation with other partners or the public which would have highlighted these wider concerns.

32. Another reason which has been provided by Government for the need for a chief education officer is the increasing complexity of education and the slimming down of management structures due to budgetary constraints. It seems ironic to COSLA that Scottish Government, which is both the source of most education legislation and the main funder of local government services, should raise this as a justification for a post that they themselves have adopted. We are on record with our views on education funding and the impact of Government policies such as teacher numbers on the decision faced by councils, but we think that this financial challenge that they pose is not a justification for having a new statutory post with qualification set by Ministers. If anything it is a case for more local decision making over how to get the best blend of education and management experience, while maintaining public-facing services, with the success or failure left to local people to decide.
33. We are also not convinced that education legislation is any more complex than it was when the post of chief education officer was removed in the 1990s. However, since the chief education officer proposal in the Bill will, in most circumstances, not lead to many changes in personnel, a better solution to complex legislation would be for Scottish Government to stop proposing unnecessary duties that simply add complexity to an existing legislative framework, as is being proposed in Part 1 of the Bill.
34. We understand that Scottish Government additionally view the proposal for a chief education officer as being analogous to that of chief social work officer. We strongly refute this argument. While we do not yet know what qualifications will be necessary for a chief education officer, we can say with some certainty that the functions of the two posts will be quite different.
35. As we understand it the chief education officers will be required to offer advice on the statutory duties of the local authority. A chief social work officer has a similar advice function, but also has other responsibilities set out in law. These can include the ability to take, under certain circumstances, a decision as to whether a young person should lose their liberty and be placed in secure care. There is clearly a rationale that when decisions of this nature are being made that those with a responsibility to authorise them should be in a senior role and be properly qualified. In this regard education is not, in our opinion, in a similar position to social work, and we would urge caution about equating the need for a chief social work officer as an argument for a chief education officer.
36. We have indicated above that we remain to be convinced about the need for a chief education officer. Beyond the issues discussed above, we are taking this position because we still do not have answers to some practical questions regarding the qualifications and experience that will be necessary for the employment of a Chief education officer. These questions are important and have still not been answered, even though they are in our view necessary for the consideration of the principle of the proposal at stage 1 of the Bill:
 - What qualifications will be necessary for a Chief education officer?

- Will regulations specify the level within the authority that the Chief education officer will have to be employed?
- Will a Chief education officer be required to be qualified teacher or have been a school leader or maintain GTCS registration?
- Will qualifications gained elsewhere in the UK allow a person to be employed as a chief education officer?
- Will other non-teaching qualifications and experience be considered appropriate for a chief education officer e.g. Community learning and development or early years?

37. In summary, for some good reasons we remain to be convinced by the need for a chief education officer. So far Scottish Government have failed to develop a convincing business case or rationale for the post and have rushed to implement a proposal that will have negligible educational impact on the flimsiest of premises. In our view this is not how good legislation is developed.

Conclusion

38. We will be happy to explain our thinking further in oral evidence to the committee. In the meantime we would be happy to assist Committee members if they have any specific questions or wish to discuss the COSLA position on the Bill.

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