

## CHILDREN IN SCOTLAND

### RESPONSE TO EDUCATION AND CULTURE COMMITTEE CALL FOR WRITTEN SUBMISSIONS

#### EDUCATION (SCOTLAND) BILL 2015

#### Introduction

Children in Scotland welcomes the opportunity to offer our comments to the Committee's call for evidence. We are the umbrella body for the children's sector, including education, health, social care, early years and childcare. We have over 450 members and our staff are delivering a wide range of projects and programmes in schools and other settings, with an array of public, private and third sector partners

#### 1. Attainment

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

1.2 Too many children from deprived backgrounds finish their formal education with significantly lower levels of attainment than their more affluent peers<sup>1</sup>. We strongly support the current political priority of reversing this trend and welcome measures contained within the Education (Scotland) Bill (the Bill) aimed at narrowing the attainment gap.

1.3 We believe that the Bill will help to bring fresh impetus upon those with local and national responsibility for delivering education services to focus specifically on addressing the needs of children experiencing socio-economic disadvantage.

1.4 However, while additional focus on the needs of this particular group of pupils is welcome, it is likely that the Education Bill will have a limited impact on its own.

1.5 The inequalities that stem from socio-economic disadvantage are complex and multifaceted<sup>2</sup>. The key factors in unequal educational attainment also relate to early experience and home learning environment. Not only do we need to support families more effectively in providing this, if we are to achieve meaningful change we need to ensure that all children get the best 'inputs' in early life, irrespective of whether their parents are able to provide these. This

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<sup>1</sup> OECD (2007) *Reviews of National Policy for Education - Quality and Schooling in Scotland*

<sup>2</sup> Sosu and Ellis (2014) *Closing the Attainment Gap in Scottish Education*

should include action to support families to engage in their children's learning, learning at home as well as in early years settings and schools.

1.6 Likewise, long-term, sustained and evidence-led strategies that are targeted on improving every aspect of the lives of those affected by poverty are clearly required<sup>3</sup>, and while this Bill represents an important and necessary statement of intent, it must form part of a series of measures aimed at tackling this longstanding issue if it is to achieve the outcomes that are desired.

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

2.1 Children in Scotland's membership includes 22 local authorities. Our engagement with this section of our membership suggests that the vast majority of local authorities across Scotland are acutely aware of the problems of socio-economic disadvantage and already paying "due regard to the desirability... [of] reducing inequalities of outcome"<sup>4</sup>. This being so, local authorities will find that meeting the duty imposed by the Bill an easy test to pass.

2.2 If this duty is to achieve the effects noted in the Policy Memorandum, consideration should be given to strengthening and clarifying this duty, with the phrase "pay regard to" replaced with the word "must". This part of the Bill will also be rendered more meaningful if it provides clearer direction to local authorities as to how they might measure the success (or failure) of action taken to narrow the attainment gap.

## **3. How should 'inequalities of outcome' be interpreted and should this phrase be defined in the Bill?**

3.1 If the Bill is to meet the expectations outlined in the Policy Memorandum, it is essential that the phrase "inequalities of outcome" is clearly defined and includes meaningful and measurable benchmarks.

3.2 Children in Scotland believes that 'inequalities of outcome' should be interpreted as broadly as possible and should encompass academic attainment as well as a range of other indicators and achievements that influence inequalities of outcome, such as those set out in the Curriculum for Excellence, in the direction of travel outlined in the senior phase benchmarking tool and beyond.

3.3 There is presently no formal national benchmarking of attainment outcomes through Curriculum for Excellence, other than the broad levels of progression. This does not provide robust data for measuring outcomes and this point should be addressed by the Bill.

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<sup>3</sup> Cooper and Stewart (2013) *Does money affect children's outcomes? A systematic review*

<sup>4</sup> See, for example, the written submission from our member East Lothian Council

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

4.1 Children in Scotland does not believe that the proposed Bill will allow education authorities to take any further action to reduce inequalities of outcome, over and above the steps that they are already able to take.

4.2 However, national and local level reporting will provide valuable statistical information which will aid in the development of measures and strategies to tackle inequalities arising from socio-economic disadvantage.

4.3 The publication of reports will also help to increase accountability, which, in the absence of sanctions, will better enable third parties to scrutinise action taken to narrow the attainment gap and help inform what wider community action and intervention may be required.

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

5.1 Children in Scotland recognises the need for further action to eliminate the attainment gap, but we do not believe that imposing sanctions for failing to achieve the policy intentions of the Bill is the appropriate course of action.

5.2 If, for example, the sanctions were economic in nature, depriving a failing local authority of resources would have a detrimental effect and counterproductive effect on their ability to deliver the type of support required to meet the policy intentions of the Bill.

5.3 Rather than “sanctions” as such, a focus on “remedies” might be more appropriate. Children in Scotland would welcome an approach which focussed on providing appropriate specialist support, advice and guidance to help to local authorities which fail to achieve the policy intentions of the Bill. This could take the shape of inter-authority knowledge and personnel sharing activities based around supporting local authorities to develop their improvement strategies. This would bring authorities that are meeting their expectations under the Bill together with those who are making less progress, and allow the sharing of successful approaches.

5.4 However, if such an approach was taken this should be done with tact and sensitivity, recognising that each local authority faces its own, unique challenges.

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

6.1 Child poverty and the correlation between socio-economic deprivation and low attainment are serious issues which have long affected Scotland<sup>5</sup> and we

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<sup>5</sup> Sosu and Ellis (2014) *Closing the Attainment Gap in Scottish Education*

support the Scottish Government in its determination to take action to address this problem.

6.2 However, the fact remains that in the long term, we wish to see levels of attainment raised for all children and young people - regardless of economic circumstance.

6.3 So while we welcome the special focus on narrowing the attainment gap between those from higher and lower socio-economic backgrounds, the overall aim must be to remove all barriers to learning that children face and improve achievement and attainment for all.

## **7. Additional Support for Learning**

### **7.1 What will be the outcomes of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children aged 12 and over with capacity?**

7.2 In practice, it is likely that the extension of rights might only directly affect a small amount of individual children<sup>6</sup>. However, for children who choose to exercise these rights, the potential outcomes will be significant, as they will be empowered to take a direct stake in how their needs are identified and how support is delivered in order to meet them.

7.3 The proposed changes have particular relevance for looked after children, as they will now be able to pursue their own rights independently, thus addressing and hopefully resolving the internal conflict which results from a local authority's dual role as a corporate parent and care provider.

7.4 However, the proposed extension of rights also has a wider significance. The extension of rights demonstrates Scotland's continuing efforts to improve the status of the rights of the child and will be a clear statement as to how we in Scotland value and respect the views of children as part of our society.

7.5 An immediate outcome of the extension of rights will be to further coincide Scots law with our international obligations<sup>7</sup> and the 2008 recommendations of the United Nations Committee on the Rights of the Child<sup>8</sup>.

7.6 Yet if the extension of rights is to achieve the desired outcomes and be adequately utilised, every possible step should be taken to ensure that children are given adequate support in order to access their rights.

7.7 Dispute resolution is a complex landscape, and the proposed support service will have a vital role to play in providing information, advice, advocacy and guidance so that children are properly supported at every stage.

7.8 We welcome steps that would strengthen the role played by children to make choices that effect their own lives, but are mindful of the potential for conflict -either in situations where a parent or guardian disagrees with the

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<sup>6</sup> See written submission from Govan Law Centre:  
[http://www.scottish.parliament.uk/S4\\_EducationandCultureCommittee/Education%20\(Scotland\)%20Bill/GovanLawCentre.pdf](http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Education%20(Scotland)%20Bill/GovanLawCentre.pdf)

<sup>7</sup> See, for example, European Convention on the Exercise of Children's Rights 1996

<sup>8</sup> United Nations Committee on the Rights of the Child (UNCRC) 2008

course of action pursued by their child, or when the local authority disagrees that a child has the requisite capacity to use their rights.

7.9 The Bill in its present form sets out that a child must be sufficiently mature, able to understand how to carry out their rights, how to make, communicate, understand and remember a decision that they want to make and understand the advice and information that they are given.

7.10 We believe that further consideration and great care must be given to the decision making process around who has and who doesn't have capacity to avoid such disagreements.

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

8.1 Children in Scotland believes that it is right that the Bill takes a common sense approach and chooses not to extend the right to make placing requests. Practical considerations have also meant that the right to mediation will not be extended to children. Although Children in Scotland can see merit in the argument that this could be extended to children with capacity, we have concerns over the balance of power in a mediation setting, which leads us to support the position expressed in the Policy Memorandum.

## **9.1 What are your views on the statutory children's support service proposed by the Scottish Government?**

9.2 The extension of rights should be based firmly on the premise of accessibility. However, there is a very real risk that these rights will be underutilised if special effort is not made to ensure that children are aware of their rights and are fully supported in order to utilise them.

9.3 Therefore, Children in Scotland believes that the creation of a statutory children's support service will be absolutely essential if the extension of rights is to achieve the Bill's intentions.

9.4 As part of our earlier response to the Scottish Government consultation on the extension of rights of April 2014, Children in Scotland performed a consultation exercise with 28 S3 pupils from two local authorities in order to canvas their views on the proposed extension of rights.

9.5 The majority of pupils stated that they felt it was important to be able to access clear and accessible information that was tailored to their individual needs and have the opportunity to discuss their rights with a supportive and knowledgeable professional.

9.6 Our consultation demonstrated that while the majority of pupils reacted positively to the proposed extension of these rights, only two felt confident that they would understand and be able to use them without such support.

9.7 Children in Scotland's partner organisation Enquire has considerable experience of delivering information and advice to parents, professionals and children and young people. 80% of calls received are from parents, who very

often experience considerable difficulty in understanding the full range of dispute resolution mechanisms available to them under the Education (Additional Support for Learning) (Scotland) Act 2004.

9.8 This being so, we are of the firm view that children should be fully supported by a statutory advice support service that features clear, accessible information, professional advice and well resourced advocacy services.

## **10. Complaints**

**10.1 The Bill will introduce a power to make regulations about the procedure to be followed in relation to complaints to Scottish Ministers. What is your view on the deadlines for these procedures?**

10.2 Children in Scotland supports proposals that would create timescales within which Section 70 complaints will be dealt with, as this will help to offer greater clarity and assurance to parents over how and when their dispute may be resolved.

10.3 We believe that the proposed 40 working day deadline is both realistic and appropriate, and represents a relatively swift turnaround given the often complex and individual nature of such complaints.

10.4 However, Children in Scotland has some concern over the 112 working day deadline proposed when an investigation by Scottish Ministers is required, which mean that Scottish Ministers will have, in effect, six months in which to deal with a complaint.

10.5 While Children in Scotland appreciate the weight of work involved in investigating a complaint and recognise that these deadlines offer a considerable acceleration of the process in comparison to current practice, Ministers should be mindful of the disruptive and at times damaging toll that investigations can take on child's life and education, and take whatever steps are possible to resolve the dispute as swiftly as possible.

10.6 The welfare and wellbeing of the child caught in the middle of the dispute should always be the primary consideration. While we would not wish to jeopardise the quality or depth of the investigatory work of Education Scotland, consideration should be given as to the feasibility of reducing the maximum deadline and introducing statutory milestones within the investigation process itself, which would help to minimise the impact on parents and children during the investigations process.

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

11.1 Children in Scotland agrees with this proposal and support moves which will more clearly delineate which dispute resolution mechanism is appropriate for parents, children and young people.

11.2 While it may not always be immediately obvious to parents which mechanism of dispute resolution is appropriate to their individual case, directing Scottish Ministers so that they do not consider cases that should be dealt by the ASNTS will provide additional clarity and provide assurance to parents that the appropriate mechanism is being used to hear their case.

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

12.1 The proposed changes will improve the Section 70 complaints process by providing parents with greater clarity over how long their complaint will take to process and investigate. However, it should be noted that the proposed changes do not introduce a “new system”, but merely alter the existing system that is already in place.

12.2 While we welcome such improvements, Children in Scotland believes that the section 70 complaints process remains a less than perfect means of dispute resolution and will likely remain little understood and underutilised.

**13. Chief Education Officer**

**13.1 What would be the possible advantages and disadvantages of legislating for the role of Chief Education Officer (CEO) in every education authority in Scotland?**

13.2 Our experience of managing Enquire offers us insight into the experience of parents and young people who wish to take matters up with an education authority and the disparity that exists between local authorities where the organisational structure of these departments are concerned.

13.3 While Children in Scotland places value in the theory of subsidiarity, the creation of the role of a Chief Education Officer would ensure that local authorities have access to high quality educational expertise within their management structures and will provide clarity to parents, children and young people and professionals over who is ultimately accountable for matters relating to education.

13.4 If this role is to achieve the desired outcomes, however, it will be important to clearly define the role, responsibilities and accountabilities in statute.

**14. Registering teaching staff**

**14.1 How would grant-aided schools, independent schools and their pupils benefit from their teaching staff being registered with the General Teaching Council for Scotland? What different or new skills would such**

**teaching staff acquire as a result of registration? Is it likely that attainment would improve in the schools in question?**

14.2 Children in Scotland believe that this provision will offer assurance to parents in that irrespective of where their children are educated, the standards and quality of the teaching staff will be regulated by the GTCS.

14.3 Independent schools, like all schools in Scotland, are subject to inspection by HM Inspectors of Education in accordance with Section 66 of the Education (Scotland) Act 1980. However, the introduction of regulation of the independent school teaching workforce through compulsory registration with GTCS would offer assurance that the registration requirements as set out in the General Teaching Council for Scotland Registration and Standards Rules were being met and maintained from the outset.

**15. Gaelic**

15.1 Children in Scotland support moves to offer parents a standardised process to request GME. Parents should have confidence that their request is being dealt with in a timely and efficient manner, and introducing greater clarity and transparency into the system will be of benefit to parent, child and local authority alike.

15.2 However, in a system where demand often outstrips supply, managing parental expectations sensitively and effectively will be key. The Scottish Government, working in partnership with Bòrd na Gàidhlig, should ensure that local authorities are properly supported in order to carry out these duties and that resources are made available in areas where demand is likely to be higher.