Background:

1. ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with over 5000 members in 44 local branches and via individual membership. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers. ENABLE Scotland provides social care services to more than 2,000 people across Scotland who have learning disabilities or mental health problems.

2. ENABLE Scotland also provides a range of services in schools and colleges across Scotland to support young people with a learning disability to make a successful transition into a positive post-school destination. For example our Stepping Up programme which was highlighted by the Commission for Developing Scotland’s Young Workforce\(^1\) as an example of best practice.

3. The evidence below focuses on 4 areas – attainment, additional support for learning, registering of teaching staff and complaints.

Attainment:

4. We broadly support the policy intentions of the Education Bill to “ensure that everyone develops the attributes, knowledge and skills they will need for life, learning and work. We also acknowledge the clear correlation between a child’s socio-economic status and educational attainment and agree that more needs to be done to raise the attainment of the most disadvantaged children.

5. However we would question the ability of the provisions in this Bill to achieve these aspirations. We would also like to make the point that poor socio-economic circumstances are not the only reason for low educational attainment or achievement. Children and young people with disabilities also experience an “attainment gap” for a variety of reasons that include but are not limited to disability-related poverty.

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\(^1\) Education Working for All! Commission for Developing Scotland’s Young Workforce Final Report (2014).
6. We also believe that work to reduce inequalities of outcome should begin much earlier than school, as research shows that early intervention is key to promoting healthy development. We would therefore suggest that the proposals in the Bill be extended to include early learning and childcare settings.

7. In our recent evidence to the Education and Culture Committee's investigation into the educational attainment gap, we made the following points which are of relevance here:
   - The term “attainment” should not just refer to formal qualifications; these are important but do not reflect the full breadth of achievement in terms of skills and abilities developed in school in readiness for adult life.
   - Any new measures to raise attainment should include meaningful participation by parents in decisions about their child’s education and in planning support.
   - There are multiple factors giving rise to socio-economic disadvantage, disability being one of them. Therefore any discussion about narrowing the attainment gap should take disability into consideration specifically.

8. It is ENABLE Scotland’s view that the Bill as it currently stands is not strong enough to deliver real improvements in attainment, in achievement and in reducing inequalities, although it will help to prioritise the importance of reducing inequalities of outcome caused by socio-economic disadvantage. Any efforts to reduce inequalities should specifically address the impact of disability.

9. The duty in the Bill to “have regard to the desirability” of “reducing inequalities of outcome” is not meaningful enough to have the desired policy effect. As it stands, this duty simply means that education authorities and Scottish Ministers should think about the desirability of reducing inequalities of outcome resulting from socio-economic disadvantage when exercising their functions. ENABLE Scotland considers that this duty is not strong enough to effect real change with regards to reducing inequalities of outcome and suggests that the words “the desirability” should be removed.

10. Without a clear definition of the phrase “inequalities of outcome” in the Bill, it is difficult to know exactly what this means. The Policy Memorandum uses the term “inequalities of educational outcomes” which seems to imply the level of attainment of exam results/qualifications. For young people with a learning disability, qualifications, while important, do not reflect the full breadth of achievement in terms of the range of skills developed in school or readiness to progress beyond school. A successful outcome for a disabled child may look very different to that for a non-disabled child. Any discussion of outcomes must take this into account and not be restricted to discrete academic qualifications.
11. It is difficult to see what specific actions education authorities will be able to take to reduce inequalities of outcome as a result of this Bill, which is any different from what they already do under existing legislation.

12. National Priority 1 is “to raise standards of educational attainment for all in schools, especially in the core skills of literacy and numeracy, and to achieve better levels in national measures of achievement including examination results.” National Priority 3 is “to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages.” An alternative approach would be to amend National Priority 3 to explicitly mention socio-economic inequality. This would have the effect of ensuring that education authorities consider socio-economic factors when preparing their annual improvement plans and annual reports on how they have met their improvement objectives. Individual schools would also have to focus on socio-economic inequality in their annual reporting procedures. The approach proposed in the Bill places reporting duties on Education Authorities and Scottish Ministers but not on schools. This means that schools will produce development plans based on local authority education improvement objectives under the Standards in Scotland’s Schools (2000) Act and education authorities will have to report on improvement objectives under the 2000 Act AND report separately on reducing inequalities of outcome caused by socio-economic disadvantage under the new Bill. The advantage of the new proposals would be to increase accountability by requiring education authorities to report to Scottish Ministers and for Ministers to report to Parliament and focusing efforts specifically on the reduction of inequalities of outcome. The disadvantage is that it creates an extra layer of paperwork, with implications for staff time and resources, with (possibly) very little concrete gains in terms of outcomes for individual pupils. On balance, ENABLE Scotland would suggest that the Committee considers whether it would be preferable to amend the existing secondary legislation under the 2000 Act rather than creating new duties under the Education Bill.

13. It is the opinion of ENABLE Scotland that the following terms are neither clearly defined nor widely understood -

- equity of attainment
- the attainment gap
- correlation between a child’s “social deprivation/ affluence and their educational attainment”.

These terms mean different things to different audiences. For example, is attainment just about exam results or does it include wider achievements and development of life skills? If so, how can we recognise these wider achievements, and measure them?

14. There is potential for confusion because the Policy Memorandum appears to use these terms interchangeably without clearly defining them, while the Bill does not use these terms at all. It only refers to “inequalities of outcome”, which is not defined either. Without knowing precisely what is being measured, it is hard to understand how a measurable improvement can be made.
15. We believe it is unlikely that sanctions would achieve anything in the event that the Scottish Government or local authorities fail to reduce inequalities of outcomes. Providing appropriate support for local authorities who fail to achieve policy intentions might be a more positive approach.

16. Consultation requirements - The Bill states that education authorities “must, at such times as it thinks appropriate, seek and have regard to the views of...head teachers, pupils, voluntary organisations and other persons...as the authority thinks appropriate.” The wording used here implies that education authorities can avoid their duty to consult by simply stating that they don’t feel it is appropriate. We would prefer to see much stronger language used with regards to consultation. For example removing the words “at such times as it thinks appropriate”. If the education authority feel there is compelling reason NOT to consult, they should be required to set this out in writing.

17. Reporting requirements – the requirement on education authorities and Scottish Ministers to report every 2 years on what steps they have taken to comply with their duties will help to ensure a continuing focus on the need to reduce inequalities of outcome. It will also increase transparency and accountability. However there is no point in reporting without a commitment to review and take action where failures to reduce inequalities are identified. We would suggest that the Committee seek clarity on what that review process might look like.

18. ENABLE Scotland would highlight the fact that other groups of children and young people also experience “inequalities of outcome” and work to address this should not focus only on socio-economic disadvantage. We therefore recommend that the Bill should address other reasons for inequality of outcome, including those experienced by children and young people who have a learning disability.

19. The average tariff score for pupils with a learning disability is still about 5 times lower than pupils with no ASN – an average score of 89 compared to 439.

20. One reason for this may well be attributed to the link between disability and socio-economic disadvantage. Families with disabled members are more likely to experience poverty. In 2012/13, 20% of Scottish households containing a disabled adult were in relative poverty. Those worst hit by welfare reforms are households with both disabled adults and children whose annual income has reduced by an average of £1900; this is 3 times the reduction experienced by non-disabled households.² It has been calculated that it costs 3 times more to raise a disabled child than a non-disabled child due to the extra costs (e.g. aids and adaptations, special treatments, travel to medical appointments, special diets, increased heating costs etc.)³

³ Contact a Family (2012), Counting the Cost: the financial reality for families with disabled children across the UK.
addition, the responsibility of caring for a disabled child can impact on parents’ employment opportunities. The Joseph Rowntree Foundation reported that disabled people are more likely to be low paid than non-disabled people with the same level of qualifications, and that people in families with a disabled adult are nearly twice as likely to be in poverty as others.4

21. However, financial hardship is by far not the only factor contributing to disabled children’s experience of inequality of outcomes. ENABLE Scotland’s Bridging the Training Gap research stressed the need for improved teacher training, to equip teaching staff with the skills, knowledge and understanding they need to support disabled learners.5 This need was further highlighted by Graham Donaldson’s Review of Teacher Education6 and Peter Doran’s Review of Learning Provision for Children and Young People with Complex Additional Support Needs.7 When teaching staff lack these necessary skills, children are not given the support they need in school and this results in poor educational outcomes.

22. Specifically in relation to disabled children and young people, ENABLE Scotland would like to bring to the attention of the Committee the disproportionate rates of exclusion among disabled children and those with additional support needs, and the negative impact this has on educational attainment and wider achievements. (Please see our comments under Other Issues for more details.)

23. ENABLE Scotland would also highlight the findings of studies8 that found that young people with Special Educational Needs are twice as likely to experience social exclusion by their peers. The study concluded that young people with a SEN are particularly vulnerable to all forms of bullying, because they are perceived as being different from other young people.

24. This is relevant to discussions about inequalities of outcome and addressing the attainment gap due to the association between being bullied and lower levels of attainment9. Being bullied is also is a significant reason for disengagement with education10.

25. ENABLE Scotland believes that the Education Bill could be an opportunity to address these important issues that contribute to the inequality of outcomes of pupils who have a disability.

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5 ENABLE Scotland (2011), Bridging the Training Gap.
8 Department for Children, Schools and Families (2009) The characteristics of bullying victims in schools. DCSF-RBX-09-14,
Additional Support for Learning:

26. In our response to the 2014 consultation on extending the rights of children with capacity under the ASL Act, ENABLE Scotland agreed that children with capacity should have their own rights under ASL legislation and should have the right to appeal to the ASNTS. We also said that information, support, advice and advocacy should be provided to children to help them understand and exercise their rights in this regard and that extra resources should be made available for this purpose. We are pleased to see that all these proposals have been included in the new Act.

27. We also suggested that the term “capacity” needed to be clearly defined. We note that the Schedule to the Education Bill which sets out modifications to the ASL Act defines a lack of capacity as “if the child or young person does not have sufficient maturity or understanding…by reason of...(c) learning disability.” This definition could be interpreted as meaning that children and young people with a learning disability will be presumed not to have capacity. ENABLE Scotland would like to point out that in many cases, this is not true and that in fact many children and young people with a learning disability do have the capacity to make, communicate, understand and remember decisions. We therefore suggest that the definition in the Bill is given further consideration and that associated guidance provides more clarity on how to assess capacity. This will help to avoid making the mistaken assumption that a child or young person cannot have capacity simply because they have a learning disability.

28. Potential outcomes for children of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 will include:

- the opportunity to directly influence decisions regarding the additional support they require to benefit from their education
- more choice and control over their own lives, with subsequent increase in self-esteem and confidence

A practical example of the benefits of extending children’s rights in this area might be seen in a family where a young carer with disabled parents wants an additional support for learning assessment, but the parents are unable to request this because of mental, physical or cognitive limitations.

29. The extension of rights to children with capacity will require the ASNTS to scrutinise their practices and systems, to ensure these are child-friendly and accessible.

30. ENABLE Scotland agrees that the right to make a placing request has the potential to cause conflict within families, and should not be extended to children. Also the right to request independent mediation would put undue pressure on children to be the lead party in negotiating an agreement and should not be extended to under 16’s with capacity.

31. ENABLE Scotland welcomes the proposal to establish a comprehensive support service for children to enable them to exercise their extended rights under the ASL Act. In our response to the 2014 consultation, we stated that
“children would need to be supported to understand their rights under the ASL Act, and advocacy is essential to that process.” We also made the point that “clear and accessible information (in appropriate child-friendly formats including Easy Read) would be essential” and that “local authorities should be proactively informing children of their rights.” Therefore we are pleased to see that the proposals include the intention to make “child-friendly resources… publicly available and provided directly to children who may have additional support needs, by the named person.” We strongly suggest that these resources should be co-produced with children to make sure that they are appropriate and accessible.

32. Advocacy provision for children is currently very patchy across Scotland. ENABLE Scotland would like to seek reassurances that the new support service will be able to plug the considerable gaps in terms of advocacy provision, as this will be an essential element of the support required by children to enable them to fully exercise their new rights.

33. There will also need to be a wide-reaching awareness campaign to inform children about their new rights, and how they can access the new support service.

Registering Teaching Staff:

34. ENABLE Scotland was surprised to learn that over 700 teachers in independent schools are not currently registered with the GTCS. We agree with the intention of the Bill to require ALL teachers to be GTCS registered and to introduce this in a phased way that will cause minimum disruption.

35. A requirement to be registered with the General Teaching Council for Scotland will provide a measure of consistency in terms of standards and quality of teaching staff. This will be reassuring both for families when making decisions about which school to choose for their child, and for grant-aided and independent schools when recruiting new teachers. The core values required by GTCS for all teachers are especially important - these include Social Justice, Integrity, Trust and Respect. Teachers who hold and develop these values will embrace diversity and strive to create an inclusive, welcoming learning environment which is of benefit to all pupils.

36. One of the standards for full registration requires that teachers “know how to promote and support the cognitive, emotional, social and physical wellbeing of all learners, and demonstrate a commitment to raising all learners’ expectations of themselves.” This is particularly important for pupils with a learning disability, who may have low expectations of what they could achieve (as may their parents), low self-esteem and little confidence in their strengths and abilities. Teachers who are not afraid to challenge low expectations and who support all learners to reach their full potential can make a huge difference to outcomes for children, not just in terms of
educational attainment but also with regards to emotional wellbeing e.g. self-esteem and confidence.

37. Teaching staff will also have the benefits of Professional Update which will enable them to keep their skills and knowledge fresh and up-to-date. It will also mean that teachers in grant aided and independent schools who are not currently registered with GTCS will have more employment opportunities open to them when they have completed the necessary qualification.

38. It is likely that outcomes for pupils with a learning disability and/or other additional support needs would improve in schools where teachers adopt an inclusive approach, are able to support pupils' wellbeing in all areas and demonstrate a commitment to raising all learners' expectations of themselves.

Complaints:

39. ENABLE Scotland’s view is that the proposed timescales for the procedure to be followed in relation to complaints to Scottish Ministers under Section 70 are reasonable, but that it should be remembered that there is a child at the centre of any investigation, who may not be in school for the duration of the process. Therefore it is in the child’s best interests for the complaint to be resolved as quickly as possible.

40. Parents need to know what they can do in cases where timescales are not met – will there be a means of redress, and what would that process look like?

41. ENABLE Scotland agrees with the proposal that Scottish Ministers should not consider issues which are more appropriately within the remit of the Additional Support Needs Tribunal. It does not make sense to duplicate efforts that can be dealt with by a specialised mechanism (the ASNTS). There is a possibility that cross-cutting issues may arise in complex situations where it is not clear who should deal with the complaint. Published guidance should set out the process for deciding who the responsible body will be for considering Sect 70 complaints under these circumstances.

42. ENABLE Scotland believes that most parents will feel reassured that they have a ‘last resort’ complaints process to Scottish Ministers, with clear statutory timescales. However parents will only be able to avail themselves of this process if they are aware of its existence. Therefore clear and understandable information must be provided to enable parents to make an informed decision about making a Sect 70 complaint. This information should be available in a variety of formats, including Easy Read.

43. Having clear statutory timescales should help to make the process more effective; however we believe that more clarity is required on which matters
can and cannot be the grounds of a complaint to Scottish Ministers. This is not always made clear in the Policy Memorandum or the Bill itself.

Other issues - Exclusion:

44. ENABLE Scotland believes that a key element in the drive to improve education and attainment for all is to ensure that all of Scotland’s schools and classrooms are truly inclusive. This will not be achieved until the exclusion rates among certain disadvantaged groups are reduced, for example:

- The exclusion rate per 1,000 pupils, for pupils with Additional Support Needs (ASN) of any kind is more than 4 times higher than those who have no ASN.
- Pupils with a learning disability are 3.5 times more likely to be excluded than those with no ASN.
- Rates of exclusion among pupils attending special schools is high at 148 per 1,000 compared to 58 per 1,000 in secondary and 10 per 1,000 in primary.
- Rates of exclusions per 1,000 pupils are more than 6 times greater for pupils living in the 20% of areas associated with most deprivation, compared with pupils living in the 20% associated with least deprivation.
- For looked-after children the rates of exclusion are almost nine times greater.

45. These Scottish Government statistics do not include so-called “informal exclusions”, where a parent is asked to take their child home to ‘cool off’. This common practice is unlawful. On every occasion where a child is sent home from school this should be recorded as an exclusion, even where this is done with parental consent as part of an agreed plan. A report on exclusions suggested that this practice is widespread in England. Anecdotal evidence suggests that a similar situation exists in Scotland. Enquire dealt with several calls on this subject during 2013-14 and our discussions with parents has confirmed that it is a widespread problem for families, causing disruption to the child’s education and mental wellbeing, to family life and parental employment.

46. ENABLE Scotland believes that the Education Bill could be an opportunity to address these important issues. We would be happy to discuss some ideas about this with interested members of the Committee.

For more information about this evidence, please contact:

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