Submission to the Education and Culture Committee on the Education (Scotland) Bill

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1. I welcome this Bill and the Scottish Government’s endeavour to bring greater structure to the delivery of Gaelic education in Scotland. I am concerned, however, that the Bill as drafted is unlikely to bring significant change, particularly in relation to the 18 education authorities that do not currently provide Gaelic-medium education. It is most disappointing that this number has not increased since 1998, despite the advent of the Gaelic Language (Scotland) Act in 2005.

2. The single most important change I would recommend for this Bill is to establish a legally enforceable right to Gaelic-medium education in place of the analytically complex but fundamentally weak ‘entitlement’ mechanism that is currently set out. Such a right could be based on section 23 of the Canadian Charter of Rights and Freedoms, but there are alternative models. The key principle is that the availability of Gaelic-medium education would ultimately be controlled by parental choice rather than administrative discretion.

3. Question 10 in the Committee’s Call for Written Submissions asks whether the provisions in the Bill should be limited to primary schooling. They should not. Specifically, section 12 of the Bill provides that the Scottish Ministers may by regulations extend the Part of the Bill dealing with Gaelic education to cover ‘early learning and childcare’, but it would be better to formalise this extension within the Bill itself. This is particularly appropriate as it may be relatively easier for local authorities to establish Gaelic-medium pre-school provision than primary provision (staff recruitment may be easier, for example, accommodation requirements are more flexible, and it is easier to discontinue in case of diminishing demand). It would also be helpful to consider extending obligations to take in secondary education, particularly as it is acknowledged that the failure to provide a rich Gaelic-medium education at secondary level is a key weakness in the Gaelic education system at present.

4. There are a number of specific points arising from the Bill as introduced and these will be addressed in turn.

5. Section 5(2)(a) of the Bill does not appear to take into account the possibility of parents making requests on behalf of twin children (or indeed triplets).

6. In relation to the regulations concerning requests for assessment (section 5(6) of the Bill), it would be helpful to specify the matter of timing as a factor to be included. It is extremely important that a reasonable time frame be set and that education authorities are required to commence provision reasonably expeditiously. Most authorities establish a deadline by which parents of children who are to commence school the following August need to register their children. The same deadline should apply to requests for assessment of the need for GME. It would be inappropriate to require any earlier deadline.
7. In relation to the designation of ‘GMPE assessment areas’ under section 6(4), there is a lack of clarity as to how these would be defined. The third page of Annex A to the Education Secretary’s 23 April reply to the Committee’s questions does not resolve the matter. In particular, it is not clear whether parents would have an entitlement to trigger an evaluation in a council area such as Edinburgh where GMPE is currently provided, but in a school well removed from the centre that requires very time-consuming travel for children who live on the other side of the city. The bill should be amended to make clear that parents should be entitled to initiate the process even in urban authorities where GMPE is currently offered in at least one school.

8. The assessment process in relation to GMPE is framed in terms of ‘need’. This conceptualisation is fundamentally flawed. Provision should be a matter of viability and not necessity. If a sufficient number of parents have indicated that they wish GMPE for their children, it should be provided, especially given the strong policy in support of Gaelic that is set out in the Gaelic Language (Scotland) Act 2005.

9. It might be helpful to define the terms ‘initial assessment’ and ‘full assessment’ in sections 7(2) and 8(1)(a) of the bill.

10. Section 7(3) of the bill requires education authorities to ‘take into account any information it has’ concerning the demand for GMPE among other parents. However, nothing is said about how such information should be gathered, and specifically about an obligation to inform parents and solicit their views in a systematic fashion. This is particularly problematic in relation to education authorities that do not currently provide GMPE, as to whom the promotional duties are extremely weak (as discussed in paragraph 18 below in relation to section 13(1) of the bill). The third page of Annex A to the Education Secretary’s 23 April reply to the Committee’s questions is vague and provides little reassurance.

11. In relation to section 7(6)(a) of the bill, either the word ‘and’ or ‘or’ would appear to have been omitted at the end, immediately preceding the comma. The disjunctive ‘or’ would be more appropriate.

12. Section 8(4) of the bill establishes a four-week time limit for sending notification of the education authority’s full assessment determination but there is no counterpart time limit in section 7 in relation to the initial assessment. This is critical; in no circumstances should an education authority be permitted to drag out the determination process in such a way that a parent who makes a request under section 5 in the year before their child starts school would not be guaranteed that GMPE (if circumstances were appropriate) would be in place by the following August.

13. Section 9(e) of the bill is highly inappropriate. A period of one year rather than two should be specified. The entitlements of individual parents and children should not be prejudiced in such a way. Given the small numbers that may be involved, and the extent to which interest in Gaelic education can be transformed rapidly through informational and promotional campaigns or by even one or two families relocating to the area, this two-year bar constitutes an unreasonable hurdle.
14. Section 10(7)(e) and (f) of the bill are inappropriate for the same reasons set out in paragraph 10 above in relation to section 7(3). Education authorities should be placed under a statutory obligation to gather this information in a systematic and timeous fashion, and to give all parents of preschool children sufficient information to allow them to make an informed judgment on the matter.

15. Section 7(h)(i) of the bill is extremely problematic. For many years local authorities adjoining other authorities which offer GMPE, particularly those around Edinburgh and Glasgow, have declined to establish GMPE themselves but have instead entered into arrangements with the neighbouring authority to send pupils to the school at which GMPE is offered. At best this means complex and time-consuming travel, but in many cases more unacceptable logistical problems arise; there is reason to believe that the phrase ‘could access’ in this section might be interpreted by education authorities in a fashion that burdens pupils and parents unduly. Further, there have been recent difficulties in both Edinburgh and Glasgow by which the authority that does provide GMPE has begun restricting access to the school in question to pupils from the home authority. All in all, the availability of GMPE in an adjoining authority should not be enumerated as a factor that might allow an education authority to decline to establish GMPE provision. On the other hand, if it should be the case that by taking in pupils from an adjoining authority, it might become practicable for an education authority to establish GMPE provision, such a positive factor should be required to be taken into account. This important issue should be considered in light of paragraph 1 and the fact that no additional authorities have commenced GMPE provision since 1998.

16. Perhaps the single most unacceptable provision of the bill is section 10(n). As drafted, this section effectively allows education authorities to decline to establish GMPE on the basis of historical factors and to ignore actual demonstrated demand from the parents of young children living in the area today. It is true that many areas of Scotland, and almost all of the 18 local authority areas where GMPE is currently unavailable, the Gaelic language is little used; typically only about 1% of the population speak Gaelic. However, the fundamental aim of government policy on Gaelic since the 1980s has been to support the revitalisation of the language on a national basis, and the Gaelic Language (Scotland) Act 2005 makes clear that public bodies across Scotland must take into account ‘the potential for developing the use of the Gaelic language’ (section 3(5)(c)). Demonstrated demand from parents is excellent evidence of such potential. Section 10(n) should be removed from the bill.

17. Section 11(2)(c) appears to contemplate the possibility that if a parent makes a request under section 5 in the year before their child starts primary school, the authority would not actually establish GMPE by the following August. Authorising such a delay would seriously undermine the viability of the ‘entitlement’ that is supposedly being created by this bill. Given the nature of Gaelic immersion, if a child is unable to start in Gaelic-medium from the outset of their primary education, they will be seriously disadvantaged linguistically. If there is sufficient parental demand for GMPE, authorities should have an obligation to move expeditiously and satisfy the demand of the specific parents who have demonstrated that demand, by putting GMPE in place by the time their children commence primary school.
18. Section 13(1) of the bill is extraordinarily weak and effectively imposes no obligations at all. As drafted, an education authority could state that because there are few Gaelic speakers in the area and there has been no previous demand for Gaelic education, it is appropriate to provide no information to parents about the potential availability of GMPE and its potential benefits, but simply to respond to any request that might spontaneously arise. This is effectively useless and is unlikely to do anything to undo the negative dynamic outlined in paragraph 1 by which no new education authorities have begun to offer GMPE since 1998.

19. In light of these deficiencies, the duty to ‘promote and support’ Gaelic education should apply equally to all authorities. Section 13(1), the introductory clause to section 13(2) (‘Where subsection (3) or (4) applies’) and sections 13(3) and (4) should be stricken.

20. Section 13(6) of the bill is potentially very useful but it is not clear how it is to be implemented and, especially, whether additional resourcing is to be provided to facilitate this. The points made concerning these provisions on the seventh page of Annex A to the Education Secretary’s 23 April reply to the Committee’s questions are somewhat vague. For example, in relation to subsection (a) and ‘resources, training and opportunities’, the issues of teaching materials and professional development opportunities have been major strategic concerns in Gaelic education for many years. How would this bill change matters? In relation to pupils’ claims on resources, an issue of major significance is increasing pupil-teacher ratios, especially in large schools such as those of Edinburgh, Glasgow and Inverness, and the need for classroom language assistants. Could this section be interpreted to impose an enforceable obligation on education authorities to improve current provision for Gaelic-medium pupils? If so, is this a reasonable approach in the absence of additional dedicated funding?

21. Finally, the Government’s indication on the seventh page of Annex A to the Education Secretary’s 23 April reply to the Committee’s questions that the bill does not establish any appeals process when a local authority determines that it need not provide GMPE is very unsatisfactory. The other remedies the Government notes are slow and inappropriate. The bill should be amended to create an expeditious appeals process specific to the issue of GMPE. This is particularly important given the need for continuity in immersion education explained in paragraph 17 above.

I wish the Committee success in revising and strengthening this Bill.

Wilson McLeod

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