



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND SKILLS COMMITTEE

AGENDA

9th Meeting, 2016 (Session 5)

Wednesday 2 November 2016

The Committee will meet at 9.45 am in the Robert Burns Room (CR1).

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

Additional Support for Learning (Sources of Information) (Scotland) Order 2016 (SSI 2016/299).

2. **Overview Sessions:** The Committee will take evidence on issues raised in its overviews sessions on Further and Higher Education, Skills, Attainment, Children's Services, Curriculum for Excellence and Early Years, from—

John Swinney, Cabinet Secretary for Education and Skills, Aileen McKechnie, Director, Advanced Learning and Science, and Fiona Robertson, Director of Learning, Scottish Government.

3. **Work programme (in private):** The Committee will consider its work programme.

Roz Thomson
Clerk to the Education and Skills Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 85222
Email: Roz.Thomson@parliament.scot

The papers for this meeting are as follows—

Agenda item 1

Paper from the Clerk

ES/S5/16/9/1

Agenda item 2

Paper from the Clerk

ES/S5/16/9/2

SPICe Briefing

ES/S5/16/9/3

Agenda item 3

PRIVATE PAPER

ES/S5/16/9/4 (P)

Education and Skills Committee

9th Meeting, 2016 (Session 5), Wednesday, 2 November 2016

Subordinate Legislation

Introduction

1. This Paper seeks to inform members' consideration of the Additional Support for Learning (Sources of Information) (Scotland) Order 2016 (SSI 2016/299), which is subject to [negative procedure](#).

Procedure in Committee

2. Under the negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed by the parliament (within the 40 day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument.
3. No motion to annul this Order has been lodged.
4. The Order and policy note are attached to this paper at **Annexe A**.

Purpose

5. This instrument specifies three bodies for the purposes of section 26(2)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004.

Background

6. The effect of being specified for the purposes of section 26(2)(i) is that every education authority must publish information about the bodies, in order to notify young persons with additional support needs and the parents of children with additional support needs that advice, information and support, including advocacy support, in relation to additional support needs can be obtained from those bodies.
7. The bodies specified are:
 - Children in Scotland Ltd. (trading as "Enquire", the Scottish advice and information service for additional support for learning);
 - Scottish Independent Advocacy Service; and
 - Govan Law Centre Trust
8. The instrument replaces the Additional Support for Learning (Sources of Information) (Scotland) Order 2010. The 2010 Order, and other SSIs which have amended it, are revoked.

9. This instrument comes into force on 14 November 2016.

Delegated Powers and Law Reform Committee

10. The Order has been considered by the Delegated Powers and Law Reform Committee (DPLR Committee) and agreed that it did not need to draw the Order to the attention of the Committee.

Clerk to the Committee
28 October 2016

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 299

EDUCATION

**The Additional Support for Learning (Sources of Information)
(Scotland) Order 2016**

Made - - - - - *27th September 2016*

Laid before the Scottish Parliament *29th September 2016*

Coming into force - - - *14th November 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26(2)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004^(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Additional Support for Learning (Sources of Information) (Scotland) Order 2016 and comes into force on 14th November 2016.

Publication of information by education authority

2. For the purposes of section 26(2)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004 (power to specify additional sources of information), the persons specified are—

- (a) Children in Scotland Ltd., a charitable body registered in Scotland under registration number SC003527 (trading as “Enquire”, the Scottish advice and information service for additional support for learning);
- (b) Scottish Independent Advocacy Alliance, a charitable body registered in Scotland under registration number SC033576; and
- (c) Govan Law Centre Trust, a charitable body registered in Scotland under registration number SC030193.

^(a) 2004 asp 4; section 26(2)(i) was inserted by section 16 of the Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7).

Revocation

3. The Orders specified in column 1 of the table in the schedule are revoked to the extent described in column 3 of that table.

St Andrew's House,
Edinburgh
27th September 2016

JOHN SWINNEY
A member of the Scottish Government

SCHEDULE REVOCATIONS

Article 3

<i>Orders revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Additional Support for Learning (Sources of Information) (Scotland) Order 2010	S.S.I. 2010/145	The whole instrument
The Additional Support for Learning (Appropriate Agencies and Sources of Information) (Scotland) Amendment of Commencement Dates Order 2010	S.S.I. 2010/276	Article 3
The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011	S.S.I. 2011/102	The whole instrument
The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2014	S.S.I. 2014/103	The whole instrument

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order specifies persons from which parents of children having additional support needs and young persons having such needs can obtain advice, further information and support in relation to the provision for such needs, including such support and advocacy as is referred to in section 14 of the Education (Additional Support for Learning) (Scotland) Act 2004.

Article 3 of this Order revokes the Additional Support for Learning (Sources of Information) (Scotland) Order 2010, article 3 of the Additional Support for Learning (Appropriate Agencies and Sources of Information) (Scotland) Amendment of Commencement Dates Order 2010, the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 and the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2014.

POLICY NOTE

The Additional Support for Learning (Sources of Information) (Scotland) Order 2016 (“the Order”).

SSI 2016/299

The above instrument is made in exercise of the powers conferred by section 26(2)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). The instrument is subject to negative procedure.

Policy Objectives

This Order replaces The Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (“the 2010 Order”), The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (“the 2011 Amendment Order”) and The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2014 (“the 2014 Amendment Order”) which specify persons from whom parents of children or young persons who have additional support needs can obtain advice, further information and support in relation to the provision for such needs, including such support and advocacy as is referred to in section 14 of the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended).

The 2011 Amendment Order, contained an incorrect cross reference to a provision in the 2010 Order, referring to “article 2(b)” of the 2010 Order, however article 2(b) does not exist. The correct reference is to article 2.

This Order therefore rectifies the discrepancy, reaffirms persons from whom parents of children or young persons who have additional support needs can obtain advice, further information and support and revokes the previous Orders referred to above (as well as the Additional Support for Learning (Appropriate Agencies and Sources of Information) (Scotland) Amendment of Commencement Dates Order 2010) and meets a commitment which was made to the Delegated Powers and Law Reform Committee (DPLRC) to correct the information contained within the 2011 Amendment Order.

Consultation

This Order does not result in any change to the persons from which parents and young people can obtain advice, further information and support, therefore, it was considered that public consultation was not required. However, the amendment was considered and agreed by the Advisory Group for Additional Support for Learning.

Impact Assessments

Given this Order simply restates the legal position in terms of the persons from which parents of children or young persons who have additional support needs can obtain advice etc., there will be no new impact on people as a result, therefore, it was considered that carrying out impact assessments was not necessary.

Financial Effects

It was considered that the Order will have no new impact on business or the third sector therefore it was not considered that carrying out a Business and Regulatory Impact Assessment (BRIA) was necessary.

Scottish Government
Learning Directorate

27 September 2016

Education and Skills Committee**9th Meeting, 2016 (Session 5), Wednesday, 2 November 2016****Overview Sessions Themes Paper - Evidence Session with the Cabinet Secretary****Introduction**

1. This paper summarises a selection of the issues highlighted in: SPICe papers for previous overview sessions, the overview evidence sessions themselves, and the supplementary evidence and ministerial responses requested following the sessions. It also highlights developments such as Government announcements relevant to the overview sessions made since the Summer Recess. This is a reference document covering a broad range of subjects. Further information, including all relevant submissions, correspondence, SPICe papers and *Official Reports* are available on the [overview sessions page](#) of the Committee's website.

THEME 1: FURTHER EDUCATION / HIGHER EDUCATIONCollege Governance

2. Possible theme for discussion:

- whether the original intention of college governance changes has delivered on the aim of “putting learners at the heart” of colleges.

College places

3. Both NUS Scotland and Colleges Scotland welcomed the target to maintain FTE students. Vonnie Sandlan stated: “However, that has come at the expense of part-time places, disproportionately affecting women, disabled learners and mature adult returners. We would like to see some investment to rebalance that.” Colleges Scotland agreed, saying, “we would like the imbalance to be redressed.”
4. The SFC explained that the prioritisation of full-time for young people was a decision taken after the economic downturn of 2008 and that the balance of courses offered by colleges should be kept under review. It was suggested that some short courses which support and sustain people with learning disabilities in the community had been lost. SFC refuted this suggestion.

College completion rates and student support

5. The completion rates of FE and HE students studying in Colleges was discussed. Shona Struthers suggested that the some of the 36% that do not complete FE courses may have left to go to a positive destination; she indicated that she would provide figures to the Committee. In [its additional submission](#), Colleges Scotland referred the Committee to a (then) forthcoming SFC publication, [College Leaver Destinations 2014-15](#). Information on the positive

destinations for those who do not complete courses is not detailed in the document.

6. NUS noted that the completion rate in colleges for FE (64%) is lower than HE (71%). NUS linked this to the system of student support available to FE students and welcomed the Scottish Government's commitment to review student support.

Gender balance

7. The gender balance on college boards was discussed by the Committee. Subsequently, a break down of the gender balance of college and universities was provided by both [Colleges Scotland](#) and [Universities Scotland](#). As of 1 October 2015, the percentage of women on college boards of management was 41%, up 6% on the year before. 19% of chairs and 50% of college principals were women. As of August this year, 50% of governing body chairs of HEIs were women and 39% of independent members of governing bodies were women.

Funding for Colleges and HEIs

- progress of national collective bargaining negotiations, and the implications of these for the financial health of the college sector.
- the financial sustainability of colleges and HEIs during a time of financial constraint.
- the particular risks for colleges and HEIs of the recent decision for the UK to no longer be a member of the European Union.

College funding

8. Funding for colleges comes principally from the Scottish Funding Council (SFC) – with this budget accounting for approximately 70 per cent of college income. The Scottish Government budget to the SFC for colleges in 2014-15 was £548 million. Audit Scotland points out in [Scotland's Colleges 2016](#) that Scottish Government funding to the sector has decreased by 18 per cent between 2010/11 and 2014/15. Overall funding for 2015/16 will be increased by 0.2 per cent from the 2014/15 level. The total proposed allocation for 2016/17 represents a reduction of 1.4 per cent (£7.9 million) from the 2014/15 level (SPICe paper).
9. In relation to the cost of colleges mergers, the SFC published its report [The Impact and Success of College Mergers](#) in Scotland in August 2016. The way in which the SFC has calculated the costs and savings of college mergers was discussed in Committee, such as the inclusion of the costs of harmonisation of terms and conditions across the sector and that the SFC's data was not complete. The SFC indicated this was in part due to the information available at the time the report was published and said that it could provide updated figures when they became available.

Collective bargaining

10. Colleges Scotland's submission to the Government's 2017 spending review estimates delivering national pay scales for colleges lecturers could cost up to £80 million. (Herald 26th October)

HEI funding

11. The Audit Scotland report [Audit of Higher Education in Scottish Universities](#) was discussed which found that HEIs are relying more on generating income from fee-paying students, notably those from elsewhere in the UK who can be charged up to £9,000 per academic year for an undergraduate degree programme) and international students (non-EU) where fee levels are not regulated (SPICe paper).

Brexit

12. Universities Scotland noted that through the SFC's Research Excellence Grants and university research, Scotland spends around £280m but then leverages up to three or four times that amount in research funding.
13. The panel discussed the effects on Higher Education of Brexit. The panel said that the impact on funding for research is unclear. Universities Scotland called for clarity over EU students' fee status for students who would start a course in 2017-18. The Government later announced that these students would not be required to pay fees. Universities Scotland also stated in evidence that it welcomed the Scottish Government's "reassuring messages about how much we value EU national staff".
14. A SPICe Briefing on the [implications for the Higher Education sector in Scotland of Brexit](#) was published on 13 October 2016.

Post study visa pilot

15. Universities Scotland confirmed that it had not been aware of the post-study visa pilot being undertaken with four universities in England until it was announced and Universities Scotland was not consulted.

Widening Access to Higher Education

- whether current activity to widen access is sufficiently robust and focused to meet the Scottish Government's target of 20 per cent of places at HEIs going to those from the 20 per cent most deprived areas in Scotland by 2030.
- the progress towards appointment of the Commissioner on widening access, including whether this should be a Ministerial appointment, how the appointment process should work, the length of tenure for the role and its intended goals.

16. The Commission recommended that the Scottish Government appoint a Commissioner for Fair Access (Recommendation 1) and also that it should report on progress against the recommendation "12 months after issuing its response" (Recommendation 34). To date the Scottish Government has not produced a formal written response to the Commission's report. It did, however,

as part of the Scottish Parliament statement on the programme for government agree to appoint in the summer (2016) a Commissioner on Access to drive the change needed, including ensuring that all of the recommendations of the Widening Access Commission are carried forward “in full”.

17. Universities Scotland spoke in evidence about three aspects of the HE sector’s plan to deliver broader access to universities. Those areas were: reviewing and improving the admissions systems; developing bridging programmes more collaboratively; and streamlining articulation from colleges.
18. SFC described how outcome agreements are “about collaborative working between the university and college sector and the funding council to reflect priorities”: “we are working with Universities Scotland on a wide basket of measures, including parental income, which will give a better match between what is and what is not a widening access student. It is important that that is done consistently across the country, so that we can measure the progress of one institution against another.”
19. The appropriateness of using SIMD as a measure for deprivation of students was discussed by the panel. Both Universities Scotland and SFC agreed that SIMD is not perfect and works better at a national level. Universities Scotland said: “Universities Scotland has been looking at other measures, such as receipt of free school dinners, whether people are care experienced and their carer status. We might look at schools with low progression to higher education. There are various other indicators that some universities use in their contextualised admissions”
20. Prior to the Committee meeting NUS Scotland pointed out that, on current trends, the Scottish Government is unlikely to meet its target of 20 per cent of entrants to HEIs coming from the 20 per cent most deprived areas in Scotland. It is argued that the target will take an additional twenty years to achieve, with progress in recent years being pointed out as very slow ([The Herald](#), Monday 29 August 2016).
21. The Committee discussed the availability of university places. It was noted that demand for places from Scottish students has been increasing faster than supply. SFC noted that should funding not be increased, increasing the students from the most deprived SIMD quintile may displace places currently being taken by students from areas with less deprivation. SFC also argued that the widening access targets could be met in different ways, for example involving articulation from colleges to universities.

The Higher Education and Research Bill – UK legislation

- the implications of this legislation for Scotland, including any risks for teaching or research in Scotland.

22. Universities Scotland said there should be a “financial firewall” between the two responsibilities of the merged research body, and therefore the devolved nations should have representation on the board. “Scotland is hugely successful at

securing research council funding, far more than our share of population would determine, so we've lobbied hard on that." The NUS had "significant concerns" about the proposals, adding the metrics proposed for the new teaching excellence framework in England "don't align very well with the Scottish system and the 'students as partners' approach the Scottish institutions have taken and developed very well".

23. The Committee is holding an evidence session on the LCM for the Bill on 16th November with these organisations based on further submissions received from these organisations, UCU and RSE.

THEME 2: SKILLS

Modern Apprenticeships

- the challenges and potential benefits of extending the number of apprenticeships.
- the roles of SDS, employers, the third sector and education establishments in delivering apprenticeships.

24. Standard Life set out some of its initiatives including involving modern apprenticeships and this was praised by SDS as a good example of best practice and something it was encouraging other businesses to replicate. SCDI suggested the modern apprenticeships policy and its operation had a positive reception from its members and STUC was also positive, including on the extent to which the living wage is adopted.
25. The STUC raised some concerns over gender segregation between some of the apprenticeship programmes and the number of disabled workers that get access to apprenticeships. Its Disabled Workers Committee had heard one of the main barriers was that some training providers did not have awareness of how to make reasonable adjustments. Supplementary evidence was requested on participation levels which reflected that 8.8% of 16-24 year olds up to the end of quarter 1 2016/17 were self-declared as disabled.

Foundation apprenticeships

26. STUC raised the issue that people doing foundation apprenticeships are not employed and are not paid. It appreciated why this was the case but was keen to ensure there is no exploitation of young people and that there is a link into apprenticeships with minimum wage requirements.

Apprenticeship Levy

- the risks and opportunities of delivering programmes using funds raised through the apprenticeship levy.

27. Witnesses were in general agreement that the introduction of the levy should not result in a notable change in approach in Scotland, rather that initiatives that were delivering results in relation to employability such as Delivering Scotland's Young Workforce, should benefit from it.

28. The number of different uncertainties in relation to the operation of the Apprenticeship levy was a clear theme of the evidence session, highlighted by business interests and Skills Development Scotland. For example the funding allocation, the extent that funding would come back to Scotland and whether it would be through the Barnett Formula or whether it would be ringfenced. Cross border issues were also raised as well as concerns at the potential levels of bureaucracy, possible changes to thresholds, and the impact on other levies such as the CITB levy. The STUC was welcoming of the general intent of the Levy and the SCDI stated the majority of members would not be opposed to the principle behind the levy.
29. The Committee agreed to write to the Minister for Employability and Training to highlight these uncertainties and concerns of the brief period of time to iron out practical details of how the levy would operate before its introduction. The Minister's response details the Government's work in this area.
30. It also states that many of the issues have arisen because the UK Government did not engage with anyone in a substantive way before introducing the levy. The Minister said he was seeking to secure a date for a meeting with the UK Government Ministers and Ministers from Wales and Northern Ireland to take discussions forward and committed to keep the Committee informed.

Scottish Government's review of enterprise and skills agencies

- the number of schemes and providers of skills provision in Scotland and the risk of duplication for individuals and businesses.
- in anticipation of the report of the end-to-end review, what the current links are between SDS, enterprise agencies, education providers, and the Scottish Funding Council

31. Standard Life suggested the current landscape was very cluttered and there was a need to 'cut through the noise' and connect employers with colleges and schools. SDS suggested it was most congested in STEM subject areas. Standard Life mentioned there is an issue with colleges and schools knowing what the skills gaps are and DYW and City Deals can add more and more complexity. *Marketplace* was highlighted as a means of colleges and schools making the connection on skills gaps with employers. SDS stated this initiative is to seek to avoid multiple employer websites seeking to do this and has been created with SDS funding and support.
32. A lack of communication and co-operation between colleges/schools and businesses was highlighted including Ian Wood's findings that less than 30% of employers have any contact with colleges and schools and 27% provide work experience. SDS suggested those figures were improving. Colleges Scotland also reported an improvement during their session. STUC contested this improvement, specifically from a learner perspective. It cited a reduction in learner opportunities for skills based courses to improve employability, including part time courses.

33. The Phase 1 report of the Review of Enterprise and Skills Agencies highlights the need to tackle the perceptions of a cluttered landscape and has made a number of recommendations including 'we will create a new Scotland-wide statutory board to co-ordinate the activities of HIE and SE, including SDI, SDS and the SFC. It also states it will 'conduct a comprehensive review of the Learning Journey focused on sustained employment, with significantly enhanced use of labour market information in skills planning at its heart.'

[It should be noted in exploring these issues with the Cabinet Secretary that, while Skills Development Scotland sits within his remit, the Review is the responsibility of the Cabinet Secretary for the Economy, Jobs and Fair Work.]

THEME 3: ATTAINMENT

Measuring the Attainment Gap

- how to ensure any targets do not skew behaviour in undesired ways
- the types of targets that might be set

Attainment and achievement

34. Dundee Council suggested senior phase indicators for an individual were exam results and positive destinations. Literacy and numeracy were ongoing core measures at school. Early years indicators such as diction were cited as early signs of barriers to attainment - these can be assessed by health visitors amongst others.
35. The Head teacher of Broomhouse Primary School highlighted the importance of a child having a sense of *achievement* in one area and this could lead to confidence to go on to *attainment* in other areas. SPTC supported an emphasis on achievement as opposed to an over focus on specific attainment in exams. SPTC also warned of an over emphasis on gathering statistics to compare schools against each other.
36. Education Scotland highlighted that Curriculum for Excellence includes profiles for individual children and this includes very rich data on what children are achieving in the round, beyond exam results, for example volunteering locally and other activities. The quality of achievement is equally valued alongside attainment measures in this approach. Education Scotland said identifying one measure on attainment could cause perverse incentives.

Attainment at primary school

37. The SPTC highlighted the extent to which challenges with attainment or achievement is linked to poverty levels. Education Scotland highlighted the importance of addressing attainment gaps at an early stage in life, highlighting the 15 month gap in diction on entry to P1 between children from the most and least deprived areas. Education Scotland suggested consistent measures of attainment were in place at senior phase but "we are working on looking at developing that in the primary sector as well."

38. When asked about the prospect of tests through primary school education the Head teacher stated: "I hope that the national tests will be more of a reflection of curriculum for excellence than the standardised testing has been."
39. Following the session the Committee wrote to the Cabinet Secretary on the timescales for setting out the criteria/indicators against which the Government will measure progress in relation to the attainment gap. The response suggested indicators would be available, following consultation, next Summer.

Additional Support Needs

40. In terms of the accuracy of information collated, the Head teacher observed that a small number of pupils with particular support needs take up quite a large amount of resource and time. Ross Greer MSP observed that "resource deployment is obviously going to have a huge bearing on how we close the attainment gap but...there is a postcode lottery going on when it comes to identifying young people with additional support needs in the first place" (15% in Renfrewshire and 35% in neighbouring West Dunbartonshire being queried as an unexplained difference in percentages). SPTC responded "...we often hear from parents that their voices are not listened to when they have asked for a diagnosis, and they struggle to engage with that support...that is not happening universally across Scotland."

Funding

- ensuring greatest impact
- methods of allocation and distribution
- comparing targeted approach of the 'schools programme', Challenge Authorities and proposal for free school meal based allocations which would cover almost all schools

41. When asked whether free school meals was the best measure for identifying children who need help Education Scotland stated that SIMD data and bands 1 and 2 were not a perfect measure "no measure is ever perfect, because it is difficult to develop simple, clear criteria that will identify poverty in all parts of the country...Scotland has a lot of rural poverty that postcodes do not help to identify, and free school meal entitlement does not necessarily capture it either." "it is challenging to find a set of criteria that are clear and fair and that accurately identify poverty." It outlined ongoing work in this area including looking at approaches in other countries.
42. When asked for timescales to identify criteria given the investment being made in the Scottish attainment fund raised through the council tax, Education Scotland suggested it would not be contributing the criteria for the allocation of funding. A further question was on whether the Scottish Government would allocate the attainment fund raised through council tax, Education Scotland was unsure of the mechanism that would be used.

Contribution of early learning and childcare to narrowing the attainment gap

- contribution of early learning and childcare to future attainment at school

Funding to deprived areas

43. The means of targeting funding to deprived areas was discussed during the early years session and COSLA suggested this would be picked up through the attainment challenge. Supplementary evidence was offered of pilots taking place to seek to address the attainment gap with a targeted approach. At time of drafting this information had not been received.

[evidence on the role of teachers and the Governance Review were also raised in the session on Curriculum for Excellence and so is detailed below in the CforE section]

THEME 4: CURRICULUM FOR EXCELLENCE

Reducing bureaucracy and streamlining guidance

- further plans for simplification and clarification
- teacher workload

Decluttering

44. Reducing the burden on teachers was highlighted by the Cabinet Secretary in evidence to the Committee as a Scottish Government priority.

45. The RSE opening remarks criticised the lack of any baseline information against which to benchmark the success, or otherwise, of Curriculum for Excellence. The scale of reference documents was also set out by RSE and the associated comments in the OECD report. It was also suggested by RSE that a distinction between what is 'instruction' and what is 'suggestion' in guidance would be useful.

46. There was a lack of clarity as to whether Experiences and Outcomes and significant aspects of learning were superceded by new benchmarking documents. RSE was unaware that any supercede the other. The Headteacher of Shawlands Academy was of the view that they were superceded. The Cabinet Secretary in his response to the Committee explained that Es and Os remained, and significant aspects of learning would be superceded by the benchmarking documents.

Teacher workload

47. Dundee Council (a challenge authority) commented on the note of the Raploch meet and greet on education including the 'extension of teachers' role into the social sphere'.

48. EIS highlighted issues with teacher workload a number of times and the importance of 'creating space' for teachers wherever possible.

Role of Education Scotland

- Effect of 2011 legislation

49. The RSE expanded in evidence on its submission which stated that: The RSE expressed concern about the creation of Education Scotland in 2011 as a single agency with responsibility for both policy development and quality assurance in its submission to the Committee. The RSE stated “this is the case where Education Scotland carries out the development work *and* has responsibility for evaluating those developments. As an action arising from the Delivery Plan, we note that Education Scotland has recently reviewed the CfE-related demands placed on schools by each local authority. We reject the implication in this action that local authorities have been more responsible than government and national agencies in generating unnecessary workload.”

Senior Phase: Assessment of National Qualifications

- any remaining issues around assessment workload following the agreement on unit assessments.
- place of external assessment in the perceived value of a qualification

50. The Cabinet Secretary announced on 21 September 2016 that Unit Assessments would be removed. The SQA provided further information to the Committee and said it will be “changing the way in which we assess candidates’ knowledge and skills by moving [those elements currently assessed in unit assessments] to the course assignments—such as projects—and making sure that the examination has greater course coverage than it currently has.” Dr Brown later stated that the SQA was in the planning stage of re-aligning its assessments.
51. Dr Brown stressed the importance and benefits of the participation teachers in its work. She noted that the SQA may require more markers as a result of the removal of unit assessments and she noted that teachers undertake this work out of school hours and are fully compensated.
52. Dr Brown was asked to provide details of the SQA’s quality assurance processes when producing question papers. The SQA subsequently provided the Committee with [details of the production process for examination question papers](#).
53. The nature of the national 4 qualification and particularly its lack of external assessment or final exams was discussed by the panel. There was support for national 4 in the panel, however, it was noted that there may be a problem of perception. Susan Quinn of the EIS suggested a “cultural shift and the understanding of employers, parents and other groups about the purpose of national 4” is required.

Governance Review

- views on the consultation

54. Recent coverage suggested some parents felt a knowledge of the existing governance arrangements was required in order to contribute to the consultation on the Scottish Government's Governance Review.
55. A SPICe paper on current governance arrangements and associated funding is available separately as paper 3.
56. The Head teacher of Shawlands Academy suggested the focus of the review was creating a structure for the sharing of ideas and that this was welcome.
57. The RSE spoke of the 'appeal of local variability' if that was to be part of what the review would deliver. It raised the culture in schools as the most important factor in delivering change.

THEME 5: CHILDREN'S SERVICESOverview of the system

- proposals for changes to the existing system

58. Who Cares? Scotland highlighted that the current care system is over 100 years old and there was a need for a look at the entirety of the care and protection system through a root and branch review. The cost of the current system was also highlighted - 2.5 billion (at present there are 15,404 children in care). Social Work Scotland witness stated that "there needs to be a shift and a transformation in the whole system" but he had "never been more optimistic that the foundations are there." Children 1st was keen to see co-design of systems with families and communities as opposed to "imported programmes" and hoped any new systems that this would involve early interventions such as by health visitors and more family support.
59. The day after the session the Accounts Commission published a [report on social work services](#) questioning the sustainability of the service in its current form going forward.
60. A Scottish Government child protection review is due to be published in December. The First Minister announced a root and branch review of Children's services at the SNP Conference. A supplementary submission to the Committee from Who Cares? Scotland sets out what the review should entail and details the New Zealand model. This was raised by them in evidence as an approach that merited consideration.

Children's hearings

- Nature of hearings
- Advocacy services

61. Children 1st suggested these can be very complex hearings often making it very hard for parents or children to contribute. Children 1st also raised a trend of inconsistency of treatment in the hearing system. Children 1st were supportive of the 'family decision hearings' introduced by the Children and Young People 2014 Act.
62. Who Cares? Scotland highlighted the lack of available advocacy services for children attending panel hearings. It stated in evidence under 2% of the 36000 children appearing before panels last year had an advocate. Section 122(2) of the 2011 Act requires the panel chair to inform a young person of their right to an advocate. This is yet to be commenced and a written answer in 2014 stated: We will commence section 122 of the 2011 Act and introduce the associated regulations when we are satisfied that new services can be suitably designed and sustainably resourced for the young people within the hearings system that want and need this provision.

Numbers of children at risk or in care outwith the hearings panel system

- Children in care under voluntary measures
- Children on the edge of care

63. The value of the role of kinship carers, both formally recognised and informal carers was highlighted during the session. Children 1st detailed the many thousands of kinship carers who care for children informally and that these carers are not entitled to an allowance. It also highlighted the disparity in approach to support for these carers across different local authorities.
64. Social Work Scotland commented on the numbers of referrals to panels stating that: "in Glasgow the number of children on child protection orders has gone from something like 3,500 to 1,900. The demand for social work under GIRFEC has meant that more and more children are in care under voluntary measures-under section 25 of the Children (Scotland) Act 1995 and consequently are not seen by the children's hearings system."
65. In relation to children on the edge of care, SWS gave a sense of the scale of the numbers citing Glasgow where there are 12,500 open cases being dealt with by 295 social workers.
66. Issues with recruiting foster carers was also highlighted by Social Work Scotland and Who Cares? Scotland.

Getting the right placement first time

- how often we 'get it right first time'

Attachment

67. Who Cares? Scotland stated that 68% of children in the system have three placements a year. There is a need for a system that prioritises early decision making that provides for early permanence and attachment to be established and maintained.

Cautionary processes

68. There was a discussion on organisations having a 'fear of getting it wrong'. Who Cares? Scotland suggested on the same topic later in the meeting that the bureaucracy needs to be simplified as at present there is an over protection of the system not of the children. Children 1st suggested the system was “over professionalised” with lots of work generated through “over-processes because you're terrified of what might go wrong”.

Trauma informed recovery support

69. Children 1st made clear that the impact of trauma can make children difficult to look after and there is a lack of 'trauma informed support' at the start of the process. When asked what this support should consist of Children 1st explained this meant a compassionate approach by those assessing a child that attributes behaviour to what's happened to a child, encourages emotional literacy and enables a child to then access the appropriate forms of support. Children 1st also suggested social workers don't have time and initial placements made in haste often break down.

THEME 6: EARLY YEARS

Funding allocation

- local authority underspends of Scottish Government funding for funded early learning and childcare

70. The Government's [financial review](#) highlighted some local authorities that had significant underspends in allocated funding compared to the amount of Government funding allocated. COSLA began the session by refuting the figures on local authority underspends and said they would provide the Committee with COSLA compiled information that would demonstrate the basis for this position. A holding response dated 26th October explains the October holiday has caused a delay in providing this information.

Flexibility of provision

- ensuring flexibility and choice for parents
- ensuring parents can access the 600 hours funded early learning and childcare

Cross border working

71. Issues with cross border working where parents live in one local authority but work in another was raised. COSLA offered to provide supplementary evidence of this working in practice. At time of drafting this had not been received.

Child account

72. The idea of a 'child account' was raised in evidence, allowing parents more flexibility to select the childcare of their choosing. The First Minister recently announced a consultation on new funding models to "maximise the options available to parents." Two specific proposals are that: parents would be able to choose the provider that best served their needs with funding provided by the local authority; and accounts that give parents/carers funding so they can purchase services that "offered them the best solution".

Capacity for growth

- potential to expand use of childminders
- increase in workforce required to deliver increased hours of funded early learning and childcare

Low use of childminding to provide funded childcare

73. The Scottish Childminding Association provided supplementary evidence showing use of childminding by local authority alongside underspend of allocated government funding. From this information, there does not appear to be a clear correlation between underspend and lack of use of childminding. When asked why there was a big variation in the use of childminding to provide local authority childcare the Scottish Childminders Association suggested it was primarily about which authorities understand and value the service of childminding. It was also suggested local authorities do not offer childminding as part of an equal choice, seeking to fill their nursery places first. A third of local authorities do not use childminders at all.

Workforce

- additional 20,000 staff to deliver additional hours of funded early learning and childcare

74. The Committee explored the challenge of recruiting 20,000 additional staff with witnesses who agreed securing such an increase to deliver additional funded childcare would require innovative thinking. COSLA talked of a 'blended workforce' including more encouraging more part time learning, older people perhaps returning to work (the B and Q approach) and also more men. COSLA also stated this would require a review of the whole workforce and that this was the biggest increase required in the workforce since World War II. The Committee wrote to the Minister for Early Years and Childcare to ask how the 20,000 figure had been calculated. The Minister replied to the Committee on 28 October 2016 explaining that the figure was an estimate based on a simple extrapolation; the letter also outlined some of the issues that the Scottish Government is in its recently published consultation [A Blueprint for 2020](#):

[Expansion of Early Learning and Childcare in Scotland](#). The minister recognised that the scale of the recruitment required will be “challenging”.

75. The Committee also explored what barriers there were to delivery of these additional staff.

- *Creation of roles* - the Scottish Childminding Association made clear they would not seek to recruit additional staff unless they were assured councils would use them to deliver free childcare and at this stage use of childminding is limited and very variable between local authorities.
- *Nursery funding* - the NDNA suggested partner providers needed to be funded at a rate that allows them to meet the need and that a fundamental rethink of the funding formula is needed.
- *Challenge of self-employment* - training or other demands on childminders to develop skills was unremunerated time.
- *Living wage* - the number of nursery staff who were not receiving the living wage was highlighted, and this could impact on the appeal of moving into the industry sector.
- *College course availability* – there was a suggestion that college courses were being arranged at present for the additional staff required to deliver the increased funded childcare. There was a concern that these courses would not produce qualified staff in time to deliver the funded childcare by 2020.



Education and Skills Committee

9th Meeting, 2016 (Session 5), Wednesday, 2 November 2016

School Governance

Introduction

The Scottish Government is holding a review of school governance which will run until [January 2017](#) . This paper gives some background on the current system of governance for publicly funded schools in Scotland.

The role and functions of the following bodies and organisations are within the scope of the review:

- all publicly-funded schools, including Gaelic medium and denominational schools
- all publicly-funded early learning and childcare provision, including local authority provision and that being delivered by private providers and the third sector
- all special publicly-funded provision for children and young people, including for those with additional support needs
- local authorities
- Education Scotland
- Scottish Government
- Care Inspectorate
- Scottish Social Services Council
- Scottish Qualifications Authority
- General Teaching Council for Scotland
- Scottish College for Educational Leadership
- universities providing Initial Teacher Education

This briefing focuses on the governance arrangements for local authority school education, but also touches on the other areas covered by the review. It focuses on the statutory decision making powers of:

- Scottish Ministers
- Local authorities
- Head teachers
- Parents

Scottish Ministers

Scottish Ministers have general oversight of the education system. They may make regulations to prescribe the standards and requirements to which every education authority shall conform when discharging its functions (s.2, 1980 Act)¹.

One of Scottish Ministers' main powers to ensure quality is through the school inspection system. They can require school inspections to be made, and appoint HMIE to do so (s.66, 1980 Act). HMIE can make a reference to Scottish Ministers who may make an enforcement direction, requiring local authorities to take action.

Ministers also have powers to investigate local provision and deal with complaints about education functions of local authorities. If, following a complaint or otherwise, Scottish Ministers consider that an education authority has not discharged an education duty, they can make an order declaring them to be in default, and require them to discharge the duty (s.70, 1980 Act). In addition they can require a local inquiry to be held (s.67 and Schedule 1, 1980 Act).

Scottish Ministers can establish joint boards for the discharge of any local authority function (s.62B, 1973 Act).

Although teachers are employed by the local authority and regulated by the GTCS, Scottish Ministers can require teachers to be registered.

Ministerial Consent for changes

In some circumstances, proposals for changes to the school estate or admissions arrangements require Ministerial consent. In particular;

- Scottish Ministers may 'call-in' school closure proposals if certain statutory grounds are met. However, since 2015, the power to give consent is remitted to an independent [School Closure Review panel](#), rather than being granted by Scottish Ministers.
- Certain changes to denominational schools require consultation with the church and Ministerial consent. These include: closing or relocating the school and changing admission arrangements. The issue for consent relates to adequacy of provision for religious instruction.

Advice to Ministers and Education Authorities

Scottish Ministers may establish an advisory council consisting of persons qualified to represent the views of various bodies interested in education. Ministers shall take into account their advice and representations. (s.71, 1980 Act).

Scottish Ministers may establish a regional advisory council, to advise education authorities and other managers of schools. (s.71, 1980 Act)

Funding education

Local authority schools are, in practice, funded from a block grant issued to local authorities. Legally, Scottish Ministers may make grants to:

- education authorities

¹ This has been used to, for example, require that teachers register with GTCS, set maximum class sizes and minimum number of school days in a year.

- managers of educational establishments
- any other person

for providing education (s.73, 1980 Act)

Grant maintained schools

There are eight 'grant-maintained' schools which are funded directly by Scottish Ministers. These are Jordanhill, a mainstream secondary school, and seven special schools. The funding arrangements for the grant-maintained special schools are being considered as part of the implementation of the 2012 [Doran Review](#).²

A scheme for assisted places is provided for in the 1980 Act. This is only used to provide public funding for places at St Mary's Music School under the [St Mary's Music School \(Aided Places\) \(Scotland regulations 2015\)](#).

Previous legislation to enable schools to 'opt-out' of local authority control was provided for in the Self-Governing Schools etc (Scotland) Act 1989. Only two schools became self-governing – Dornoch Academy and St Mary's Episcopal Primary school, Dunblane. Dornoch returned to local authority control in 1999. The 1989 Act was largely repealed by the Standards in Scotland's Schools etc Act 2000, which gave Ministers the power to make and Order for the cessation of a grant-aided school. St Mary's was returned to local authority control in 2001 ([St Mary's Episcopal Primary School \(End of Self Governing Status\) Order 2001](#)).

Local Authorities

The basic requirement to ensure provision of school education rests with local authorities. Education authorities are local authorities under s.123 Local Government (Scotland) Act 1973. Their discretion in this area is limited by the statutory framework on specific areas (which is not described in detail in this paper) and national agreements on teacher employment.

Every child of school age has the right to be provided with school education by, or through arrangement made by, the education authority (s.1, 2000 Act).

The Education (Scotland) Act 1980 requires:

“every education authority is to secure that there is made for their area adequate and efficient provision of school education.”

In addition, they are required to provide Early Learning and Childcare of a specified amount (currently 600 hours) (2000 Act, s.32). They can contract with private and voluntary sector providers in order to fulfil this duty, but the requirement rests with local authorities.

Local authorities are required to provide sufficient school accommodation and have the power to open new schools where they consider it necessary. This may be following representations from parents or, for denominational schools, the relevant church/religious body (s.17). Local authorities have the power to close or move their schools, and associated land and buildings (s.22, 1980 Act).

² the Scottish Government response to the review stated that: The Scottish Government will also build on the work of the Review to create a clear and transparent strategic commissioning process for the allocation of national funding

The education authority must be the employer of teachers in education authority schools (s.87, 1980 Act) and they are required to employ sufficient teachers (1975 regulations). However pay and conditions are subject to national negotiating structures (the SNCT) and teachers are regulated by an independent body – the GTCS.

Local authorities have the power to establish a committee that covers its education functions. In practice such a committee may include other local authority functions in its remit.

Following the Education (Scotland) Act 2016, local authorities will be required to have a Chief Education Officer “to advise the authority on the carrying out of the authority's functions”(provision not yet in force).

Local Authorities can arrange to discharge any of their functions jointly (s.56, local Government (Scotland) Act 1973).

Religious bodies

The origins of school education in church schools remains in the provision for church involvement in some aspects of school education.

- local authority education committees must include 3 church representatives (s.124, 1973 Act)
- the parent council of a denominational school must include a person nominated by the church (s.7, 2006 Act).
- teachers employed in denominational schools must be approved by the Catholic Church with respect to their “religious belief and character” (s.21, 1980 Act).
- Ministerial consent is required for certain changes to denominational schools

A local authority must appoint a “supervisor of religious instruction” for denominational schools, to report on the efficacy of religious instruction in such schools. Such a person is subject to church approval (s.21, 1980 Act).

Head teachers

Although in practice head teachers run the day to day operation of schools, they are not given many specific legal duties in statute. Rather, their authority comes from being delegated the implementation of the Education Authority’s legal duties.

Education Authorities must have a scheme for delegating management of part or all of a school’s budget to the head teacher (s8, 2000 Act). This includes delegating the preparation of the school development plan and such other management functions as the authority thinks fit.

Following a review, updated national [Guidance on Devolved School Management](#) was published by the Improvement Service in 2012. This guidance, accompanied by a self-evaluation ‘toolkit’ is a list of principles to be observed in developing local schemes.

Parents

Parents are required to ensure their children are educated, whether by sending them to school or through home education (1980 Act s.30).

Provision for school boards was replaced in 2006 by the establishment of parent councils and parent forums. Parent councils are essentially an advisory body.

The parents of pupils constitute the “Parent Forum”, which may be represented by a “Parent Council”. The functions of a parent council include:

- to support those managing the school in raising standards and providing quality education
- to make representations to the head teacher and education authority. Representations to HMIE can only be made if they are first made to the head teacher and education authority.
- to ascertain the views of parents and report them to the head teacher and the education authority.

A head teacher and education authority are to have regard to the views of a parent council.

The parent council must be involved in the appointment of head teachers and deputy head teachers (s.14, 2006 Act).

There are various places in legislation where local authorities are required to consult or have regard to the views of parents. In particular, Education Authorities and Scottish Ministers must have due regard to the principle that pupils are to be educated in accordance with the wishes of their parents (s.28, 1980 Act).

Children

Children have the right to be provided with education by the education authority. There are various requirements in statute which require their views to be taken into account. For example, local authorities must have regard to their views when carrying out their education functions (s.2, 2000 Act).

Public Bodies

There are a number of public bodies with particular relevance to the governance of school education and early learning and childcare. These listed below together with a brief summary of their role in education governance.

Scottish Qualifications Authority – a statutory NDPB established by the Education (Scotland) Act 1996, it has two separate functions:

- development of qualifications below degree level.
- accreditation of others’ non-degree qualifications for use in Scotland

These two functions are kept separate in the administrative arrangements of the SQA.

Education Scotland – an executive agency. Key functions of most relevance to governance issues are:

- inspection of schools
- inspection of early learning and childcare if it is part of the statutory, funded entitlement (i.e the 600 free hours)

- provides guidance on the curriculum
- provides a report to the local authority on the educational benefit of certain kinds of changes such as school closures, relocation and changes to catchment areas.

Care Inspectorate – a statutory NDPB which regulates and inspects social care providers. This includes regulation and inspection of all early learning and childcare provision. Originally established in 2001 as the Care Commission, it became Social Care and Social Work Improvement Scotland under the Public Services (Reform)(Scotland) Act 2010. It is generally referred to as the Care Inspectorate.

Scottish Social Services Council – a statutory NDPB which regulates the social care workforce. With the exception of childminders, those working in early learning and childcare must be registered with the SSSC. The register is based on obtaining certain qualifications. It was established under the Regulation of Care (Scotland) Act 2001.

General Teaching Council for Scotland – an independent statutory body which regulates the teaching profession. Its functions include:

- maintaining a register of teachers in Scotland
- setting the Professional Standards expected of all teachers
- accrediting programmes leading to the award of GTCS Standards, including Initial Teacher Education programmes at Scottish universities

Established as a statutory body in 1965, the GTCS became an independent regulatory body in 2012 under the Public Services Reform (General Teaching Council for Scotland) Order 2011. For further details see [SPICe briefing GTCS](#).

The Scottish College of Educational Leadership was established as a not-for profit company in 2014. Its principal activities include: “to develop, articulate and implement the vision and strategy for educational leadership development and leadership education in Scotland.” ([annual report 2014/15](#)). In particular, it is taking forward the development of qualifications for headship. Section 28 of the Education (Scotland) Act 2016 enables Scottish Ministers to introduce regulations that will require head teachers to have met a certain standard. However the qualifications and standard for headship are accredited by the GTCS.

Committees and negotiating structures

[Scottish Negotiating Committee for Teachers](#)

The SNCT is made up of:

- local authorities
- teacher unions
- Scottish Ministers

The SNCT sets pay, terms and conditions of teacher employment. Certain matters are devolved to Local Negotiating Committees for Teachers and subject to local agreement.

Scottish Teacher Education Committee

The STEC comprises representatives from the eight universities providing Initial teacher education.

- [University of Aberdeen - School of Education](#)
- [University of Dundee, School of Education and Social Work](#)
- [University of Edinburgh, Moray House School of Education](#)
- [University of Glasgow](#)
- [University of the Highlands and Islands](#)
- [University of Stirling](#)
- [University of Strathclyde - School of Education](#)
- [University of the West of Scotland - School of Education](#)

“The committee meet regularly with partner organisations in Scotland, including ADES, GTCS, SCEL, the Scottish Government and SQA, to promote information sharing and partnership working.” ([SCEL online](#)). ITE provision is accredited by the GTCS.

Legislation

The main legislation referred to in this briefing is:

- Local Government (Scotland) Act 1973
- Schools (General)(Scotland) Regulations 1975
- Education (Scotland) Act 1980
- Education (Scotland) Act 1996
- Standards in Scotland’s Schools etc Act 2000
- Regulation of Care (Scotland) Act 2001
- Scottish Schools (Parental Involvement) Act 2006
- Schools (Consultation) (Scotland) Act 2010
- Public Services (Reform) (Scotland) Act 2010
- Public Services Reform (General Teaching Council for Scotland) Order 2011/215
- School Education (Scotland) Act 2016

Camilla Kidner
 Senior Researcher, Schools, children’s services
 SPICe
 19th October 2016