STANDARDS IN SCOTLAND’S SCHOOLS ETC. BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Standards in Scotland’s Schools etc. Bill introduced in the Scottish Parliament on 19 January 2000. It has been prepared by the Scottish Administration to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Administration and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 6–EN.

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2. This document is the policy memorandum relating to the Standards in Scotland’s Schools etc. Bill as required by Rule 9.3 of the Standing Orders.

Policy Objectives of the Bill – General

3. The policy objectives of the Bill are to secure continuous improvement and the raising of standards in Scotland’s schools. The provisions of the Bill complement and support a wide ranging policy programme which is being taken forward by the Executive in partnership with education authorities, schools, HMI and a range of other interested parties.

4. The provisions cover a number of areas relating to this overall objective and this memorandum reviews each of these. The principal areas are:

- The improvement framework - sections 1-12
- Pre-school education – sections 29-36
- School boards and parents – sections 23 - 28
This memorandum relates to the Standards in Scotland’s Schools etc. Bill (SP Bill 6) as introduced in the Scottish Parliament on 19 January 2000

- Reform of the General Teaching Council - sections 41-50
- Abolition of the Scottish Joint Negotiating Committee - section 51
- Repeal of self-governing schools legislation - sections 14-20.

In addition there is a series of other measures relating to the ending of corporal punishment, the registration of independent schools, placing requests and the provision of education outwith school.

5. Consultation was undertaken on the Improvement framework, pre-school education, school boards and repeal of the self-governing legislation in the document Improving our Schools published on 7 July 1999. This document included draft provisions in these areas. Consultation on the GTC was undertaken by a consultation document issued on 14 July 1999.

6. Consultation on these and on other provisions is as described in the paragraphs below. A fuller report of the consultation response is being published separately by Scottish Ministers.

THE IMPROVEMENT FRAMEWORK (SECTIONS 1-12)

Policy Objectives

7. Sections 1-12 set out a framework to guide the improvement in Scottish schools. In particular at sections 1 and 2 they establish a right for every child to education provided by a local authority and require local authorities to provide education directed at developing the potential of each child or young person. These provisions are intended to focus attention on the individual child or young person as the beneficiary of the education process and to make clear that the educational process should be guided by broad aims relating to development of the child’s personality, talents and mental and physical abilities. Sections 3-12 establish a framework to secure improvement and raising of standards through a set of duties on the Scottish Ministers and local authorities which will require the development of planning and monitor improvement in standards of performance in schools.

8. Continuous improvement in schools depends on rigorous and careful planning for improvement in key areas of performance. The framework of the Bill provides the basis for that planning and for the setting of improvement objectives by authorities in relation to national priorities that are identified by the Scottish Ministers following consultation. Those improvement objectives will be reflected in school development plans prepared in accordance with these provisions.
9. This framework develops existing approaches to school improvement through school development plans. It reflects the experience of school development plans and is designed to provide greater rigour and consistency in approaches to planning. It will also clarify the process of consultation at national local and school levels on which plans and the setting of objectives depends. It is also designed to make clear the roles and responsibilities of the Scottish Ministers, local authorities and schools. They will be subject to similar duties in relation to the securing of improvement and raising standards. It is the role of the Scottish Ministers to identify national priorities and measures of performance. It will be the role of local authorities to develop local improvement objectives and ensure that these are reflected in school development plans. The local authority will also have to monitor progress made by schools and if necessary take action to rectify unsatisfactory performance.

10. The sections also provide for the inspection of the education authority by persons appointed by the Scottish Ministers. The new power to inspect the education functions of local authorities is central to the framework for promoting improvement and raising standards in Scotland’s schools. The authority role to support and challenge its schools is of vital importance to ensuring that schools focus on improvement and it is important that each authority approaches this task consistently and determinedly. The new provision allows the Scottish Ministers to be assured that authorities are discharging their functions effectively and will be a vehicle for the dissemination of best practice throughout the education system. The process of inspection will build on the existing voluntary arrangements for such inspections and, through the code of practice, a draft of which was issued with the consultation paper in July, establish a clear basis on which such inspections will take place.

Alternative approaches

11. The approach to securing improvement that is envisaged in the Bill has been developed to take account both of existing good practice and the views expressed in response to consultation on draft proposals. The Executive wishes to build on and consolidate throughout the system existing good practice. Schools and education authorities agree with this approach and have not advocated an alternative. The proposals were consulted upon fully and while many points of detail were received, there was no significantly different structure or approach suggested.

Consultation

12. The proposals were set out in the consultation paper *Improving our Schools* which was issued on 7 July. 27,000 copies were issued and over 60 meetings were held involving Ministers and officials discussing the proposals with a range of people – including parents, teachers, the voluntary sector and local authority officers.
13. A number of changes have been made to the proposals in the light of responses. In particular, sections 1 and 2 have been added to increase the focus on individual children and meeting their needs and to clarify the purpose of education so that it is clear in which direction improvement should be aimed. Other changes to the provisions reflect the comments received and widen the range of consultees at various stages of the planning process so that they now include staff at schools and children and young people, and further to reflect the importance of parents to raising standards. Authorities are now required within their improvement objectives to identify the measures that they have in place to seek to involve parents in their children’s education. Finally, a new section (section 4) has been added to make clear the process of identifying national priorities.

PRE-SCHOOL EDUCATION (SECTIONS 29-36)

Policy Objective

14. The sections concerning pre-school education update the existing statutory framework so as to ensure universal access to such provision. The Executive, in common with its predecessor administrations, believes that the pre-school years are an important and distinctive phase in children’s development and that they benefit greatly from a well planned pre-school learning experience. The benefits are social, educational and emotional - preparing children for primary school and having a positive impact on later attainment.

15. At present, under the 1980 Act, local authorities have a power, but not a duty, to provide pre-school education in nursery schools and classes. Universal access will be achieved by placing local authorities under a statutory duty to secure pre-school education. The provisions are designed also to give a statutory basis to partnerships between local authorities and other providers of pre-school education services. The Scottish Ministers are committed to a diversity of provision in order that the needs and preferences of parents and children can be met. The new legislation will ensure that innovative and flexible partnerships between public, private and voluntary sectors, which meet the needs of parents and children, can continue and flourish. The Bill will also give local authorities the explicit power to contract with third parties for the provision of pre-school education.

16. The extent of the duty (in terms of eligible children and the amount of pre-school education to which they are entitled) will be described by an order of the Scottish Parliament. The Executive’s policy which will be reflected in this order is that pre-school children should have access to up to two years of part-time pre-school education.

17. The Bill also confers on local authorities a power to secure pre-school education beyond the extent of the duty specified, should they choose to do so. This
means, for example, that local authorities will be able to secure pre-school education for younger children, or to secure all-day places.

18. The Bill also prohibits any charging for that pre-school education which is secured under the statutory duty: where authorities are fulfilling their duty, they must do so without requiring parents to pay. However authorities may charge for pre-school education which extends beyond their statutory duty.

19. The Bill also empowers the Scottish Ministers to issue guidance to authorities on the exercise of their pre-school education functions and on any other functions which relate to their pre-school powers and duties; and it requires authorities to take account of this guidance in planning and securing pre-school education in their area. Such guidance would be issued when the new provisions come into force.

20. The Scottish Ministers believe that guidance will be useful to authorities at a time when universal provision for three and four year olds will only recently have been achieved and also when there will be an increasing need to develop innovative partnerships with the private and voluntary sector. In this climate of growth and change guidance will assist in the embedding of good practice. Such guidance may also help parents to benchmark services offered by pre-school centres.

21. In order that high quality provision is maintained, the Scottish Ministers also think it essential for rigorous independent inspection of pre-school centres to continue within the new framework of pre-school education. The existing powers of the Scottish Ministers to cause inspections of pre-school centres are linked to the current system of grant funding of pre-school education which will be dismantled when the proposed duty is brought into force. Hence there is a need to update inspection powers. The Bill empowers the Scottish Ministers to cause inspection of all centres (including private and voluntary sector providers) where publicly funded pre-school education is taking place – whether the education results from the exercise of the local authority’s duty to secure provision or the exercise of its power. The Bill allows such inspections to be made by Her Majesty’s Inspectors of Schools, or by other agents of the Scottish Ministers, or by HM Inspectors and other appointed agents acting in concert (as for example happens at present when HM Inspectors conduct inspections with lay appointed inspectors.)

Alternative Approaches

22. There are two main alternatives to the approach proposed by the Bill.

23. The first alternative would be to propose that there be no change to the present situation, where local authorities have a power, but not a duty, to secure pre-school education. The Scottish Ministers expect that, in such a situation, local authorities
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would voluntarily continue the expansion of pre-school education services. Nonetheless, the Scottish Ministers believe that there is value in conferring a status on pre-school education similar to that enjoyed by the rest of the school education system, which would not be the case if its statutory basis were limited to a discretionary power. The Scottish Ministers believe, in particular, that parents will welcome the firm foundation for accessing pre-school education which will be provided by the proposed duty on authorities.

24. The second main alternative would be to proceed on the basis of a duty on local authorities to provide pre-school education services, rather than one to secure services. This alternative would involve all pre-school education being provided directly by local authorities, to the exclusion of private and voluntary providers. The Scottish Ministers believe that this approach would be to the detriment of parents and children. It would prevent the flexible partnerships with different providers which are greatly valued by many parents and their children. In particular, partner providers’ can often offer flexible, all-day services, which help parents balance work and family commitments.

Consultation

25. A consultation paper Education in Early Childhood: The Pre-school Years was issued by The Scottish Office Education and Industry Department in November 1997. This paper sought views on a wide number of issues connected to pre-school education including statutory backing for pre-school and funding arrangements. There was widespread support for, in the longer term, legislation which would place local authorities under a duty to secure pre-school education. There was also support for the consolidation of pre-school grant resources into the general local government finance settlement once this duty was in place. This is what the Scottish Ministers now intend.

26. There has also been extensive consultation on the draft Bill issued in July 1999. Most respondents were in favour of placing authorities under a duty to secure pre-school provision.

SCHOOL BOARDS AND PARENTS (SECTIONS 23-28)

Policy Objectives

27. The Scottish Executive considers that School Boards play a positive role in supporting their school and in particular, in carrying out their function of promoting contact between the school, parents and the local community. Such positive links and relationships can have a significant impact on improvement and standards. The
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objective of the sections of the Bill relating to School Boards is to help ensure that School Boards are as effective as possible. Most significantly, it makes clear that School Boards must exercise their functions with a view to raising standards and they must support the school in its endeavours to secure improvement.

28. A major consultation exercise in 1998 found that although parents wanted to be consulted on key issues, they did not want to manage schools. The Scottish Executive endorses this view and believes that it is time to set out unambiguously that School Boards’ purpose is to support schools and not manage them. Other provisions relating to headteacher appointments and the seeking of further powers will clarify this position repealing parts of the legislation which have the potential to introduce conflict between School Boards and the local authority. The Scottish Executive wishes to focus on ensuring that School Boards can be as effective as possible. The provisions to limit the use of by-elections in the election process will assist this, as will non-legislative commitments such as providing better information for School Boards.

29. The development and role of School Boards must however be seen in the context of a wider strategy to involve parents in education and the work of schools. There are many strands to this – and the new provision referred to in the section on improvement planning in which authorities are required to set out the ways in which they will seek to involve parents complements the developments on School Boards.

Alternative Approaches

30. Some respondents to the consultation exercise on the Bill proposed a more wide-ranging review of the legislation on School Boards to provide a better focus for parental involvement at school level. Some also suggested that the current legislation should be repealed and replaced with a general duty on authorities to draw up schemes to involve parents in their children’s schools. The Scottish Ministers agree that School Boards should not be the only means of involving parents in education and as has been indicated above they are pursing a wide ranging set of strategies to improve parental involvement. Within that framework they consider that School Boards will continue to play a valuable role and wish to encourage and support them. To sweep away the legislation would not be justified.

Consultation

31. A major consultation exercise on parental involvement in their children’s education, Parents as Partners, was undertaken in 1998. The previous administration’s White Paper, Targeting Excellence proposed the removal of the by-election from the election process which was widely supported in the responses to the consultation on the document. The draft Bill published in July 1999 also contained that proposal, which has been refined in light of responses. The proposals in the Bill
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that are new include a number of other proposals made or arising from views expressed during the most recent consultation.

REFORM OF THE GENERAL TEACHING COUNCIL (SECTIONS 41-50)

Policy objectives

32. Sections 41-50 relate to the General Teaching Council for Scotland (GTC) and make substantial amendments to the Teaching Council (Scotland) Act 1965, which established the GTC. A highly professional and committed teaching force is essential to the successful raising of standards in Scotland’s schools. The Executive

• wishes to support and promote teachers’ professional development;
• to develop and implement standards for the teaching profession;
• to improve the quality of teaching in Scotland.

33. It considers that the GTC have an essential role to play in ensuring high professional standards in the teaching force and is proposing to strengthen the Council in their role. The broad policy objectives underpinning its proposals are:

• to enhance the GTC’s effectiveness in contributing to the policy objectives set out above by extending their role beyond regulating entry to the profession, into the areas of teachers’ continuing professional development (CPD) and incompetence;

• to ensure balance and representation of relevant interests in the GTC’s membership and to enhance their public interest role

34. The provisions therefore revise the constitution and the composition of the GTC in the light of these objectives, and provide for a number of new duties and powers. These provisions will ensure that the membership of the Council, while retaining a majority of registered teachers, more satisfactorily represents both the teaching profession and other interested parties. The Council are for the first time given aims consistent with the general raising of standards in the profession and are made subject to a general public interest duty. New powers are included in relation to the deregistration of teachers whom the council judges to be unfit to remain in the profession because of serious incompetence or ill-health. In the case of incompetence the GTC will consider whether to take action after a teacher’s employer has taken a decision to dismiss or start proceedings which could lead to dismissal. This reflects the concern to ensure that the role of the employer and the GTC are properly identified.
Alternatives

35. At a general level Ministers do not consider that there is an alternative approach to having the GTC – indeed its operation and functions have been widely studied and imitated in other countries. Their consideration therefore was limited to detailed alternatives presented during consultation on the proposals to strengthen and extend the role of the GTC. These are described in the following paragraphs.

Consultation

36. The GTC are a non-departmental public body (NDPB). NDPBs are subject to regular reviews. Such reviews are undertaken to assess whether the functions of a particular body continue to be necessary, or if they might be discharged through some other means. On 7 December 1998, the then Education Minister, Helen Liddell, announced a review of the GTC to look at the Council’s role in raising standards and enhancing professionalism in the Scottish teaching force and its effectiveness in carrying out present and possible future functions. The review, which was carried out by Deloitte and Touche, concluded that the current functions of the GTC are necessary and that no other body is more suitable to carry out those functions. The consultants also concluded that both operational changes and an enhancement of functions were appropriate if Ministers’ objectives were to be achieved.

37. On 14 July 1999, the Scottish Executive published a consultation document about the General Teaching Council for Scotland (GTC)\(^1\). It informed interested parties about the outcome of the Deloitte and Touche review and set out proposals relating to the GTC which would require changes in primary legislation, in order that views could be taken into account in preparing provisions for inclusion in the Bill.

38. Approximately 5600 copies of the consultation document were issued to interested parties, including Directors of Education, schools, teacher education institutions, higher education institutions, further education colleges and teacher unions. The document was also made available on the Scottish Executive Education Department (SEED) website. Around 130 responses to the consultation paper were received.

39. In general, more respondents to the consultation document supported the proposals than disagreed with them, and Ministers have therefore proceeded to bring forward legislation in line with the proposals, with modifications in some instances in the light of comments received.

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\(^1\) Improving our Schools: Consultation on the General Teaching Council for Scotland :ISBN 0748082409.
40. There was a mixed response to a proposal that the Council’s 49 members should comprise 25 elected teacher representatives and 24 appointed and nominated members to represent other interests. Ministers are proceeding with the proposal for 25 elected teacher members and 24 others as they consider that this provides a reasonable balance, particularly in the context of strengthening the GTC’s public interest role.

41. However, Ministers also consider that a key element of the way in which the GTC should undertake their new statutory duty to have regard to the public interest is that it should become a more consultative body. Ministers therefore intend that GTC should publish a code of practice on how they will take the public interest into account in exercising their functions. This should include consultation with all relevant interests, including young people.

42. Ministers acknowledge the concerns raised about the proposal to give the Council powers to deregister on health grounds and the complexity of the issues which will need to be addressed but take the view that conferring a power relating to de-registration on ill-health grounds would be consistent with the GTC's public interest role, part of which is to protect children from people who might present a risk if they are allowed to continue to teach. However, Ministers fully accept that there is a need for further consideration to resolve issues such as the links between employers, the Occupational Health Service, the Scottish Public Pensions Agency and the GTC, the transfer of information between those agencies, the criteria to be used before reaching decisions and the question of review of cases should a teacher's condition improve. Ministers expect the GTC to consult all interested parties before drawing up its rules in this area. The GTC will also be expected to publish a code of practice on how they take decisions on deregistration across all areas.

ABOLITION OF THE SCOTTISH JOINT NEGOTIATING COMMITTEE
SECTION 51

Policy objective

43. The Scottish Ministers consider that the present negotiating machinery embodied in the Scottish Joint Negotiating Committee (the “SJNC”) has not delivered either the positive levels of remuneration that teachers are entitled to expect nor has it enabled the development of flexible and progressive developments in terms and conditions of employment. In particular they consider that the present management structures and aspects of the working practices of teachers as enshrined in agreements of the SJNC may no longer be consistent with the requirements of a modern school system. This latter view is shared by CoSLA and formed part of the discussions with teachers’ representatives as part of the Millennium Review in 1997 and 1998.
44. The failure of the SJNC as a negotiating machinery was seen in its inability to make any progress on a pay and conditions package that had been discussed extensively over the course of 1999 and which was decisively rejected by teachers in September. Following the failure of these negotiations the Minister for Education set up the McCrone Committee to report on future pay and conditions. He also announced to Parliament his intention to remove the statutory basis of the SJNC. This is achieved by repealing the relevant sections of the Education Scotland Act 1980. Existing agreements under the SJNC are maintained until such time as they are replaced. The future arrangements will be determined in the light of the McCrone Committee’s recommendations.

45. The existing statutory framework means there is no alternative to repeal of these provisions to remove the statutory basis of the SJNC so that new arrangement can be introduced in due course.

Consultation

46. The future of the SJNC has been widely discussed since the early 1990’s and more recently following the publication of Targeting Excellence which indicated that its future would be reviewed in the light of the progress made in reforming teachers’ pay and conditions.

47. The draft section was issued to interested parties on 11 November. In the preceding weeks, the Minister for Education had met CoSLA, each of the teachers’ unions and parents representatives to hear their views on the future of the SJNC. CoSLA support the Executive’s approach; teachers’ unions take different views with the EIS, who has the largest number of seats on the SJNC, strongly opposed.

SELF-GOVERNING SCHOOLS SECTIONS 14-20

48. Sections 14-20 of the Bill returns self-governing schools which had ‘opted out’ to the management of the local authority, and a provision in schedule 3 repeals the relevant provisions of the Self-Governing Schools etc. (Scotland) Act 1989.

49. The Scottish Executive considers that self-governing schools have no place in the Scottish system. Local authorities are best placed to take an overview of provision needed in their area and to monitor and support schools accordingly. The Bill places schools at the centre of improvement, but within that positive local authority framework. Relations between self-governing schools and authorities have not been positive. It also stresses the importance of parental involvement in raising standards and achievement in schools. The proposal to return self-governing schools to the management of the local authority is part of this overall policy. It demonstrates a shift of emphasis towards parental support of the school instead of parental
management; with the school remaining the centre of improvement within a framework of support and challenge from the local authority.

Alternate

50. The Executive’s general views on self-governing schools have been widely endorsed. Alternative approaches in relation to the schools in question would have been to maintain the status quo, or grant St Mary’s Episcopal Primary School grant-aided status. Neither of these options however would bring self-governing schools within the supportive framework of the local authority which the Executive believes is the most effective way of delivering a high quality education to all children.

Consultation

51. The provisions were set out in the consultation paper *Improving our Schools* and were widely endorsed.

OTHER PROVISIONS

52. The other provisions in the Bill include:

- **Registration of Independent Schools (Sections 21 and 22)**

  These sections make three changes to the arrangements for the registration of independent schools to improving the protection of children likely to attend those schools. They ensure that there will sufficient time for checks to be carried out on the manager and staff of the school and on proposed premises before the school becomes operational; they allow provisional registration to be refused on the grounds that the proprietor is not a proper person to be the proprietor of any school, that a teacher to be employed is not a proper person to be a teacher in any school or that the school premises, or any part of those premises, are unsuitable for use as a school. These provisions were included in the draft Bill published in *Improving our Schools* and received widespread support. No other options were considered. The Scottish Executive believes that these provisions reflect the priority it gives to the protection and welfare of children in Scotland.

- **Placing requests (Sections 39-40)**

  The Executive supports parental choice of school but recognises that this has to be balanced with authorities’ ability to plan provision efficiently. The Bill amends placing request legislation to simplify its administration by local authorities in areas where difficulty has been encountered. In particular, an
additional ground for refusing a placing request is proposed to support the 
Executive’s policy on reducing class sizes by avoiding the necessity for 
additional teachers or classrooms further up primary school. The other two 
amendments will allow authorities to reserve places at schools for children 
moving into an area, and will clarify the legislation on early entry to primary 
school on which there is conflicting case law.

Some respondents to the Bill consultation exercise proposed that the placing 
request legislation be repealed and replaced with a duty on authorities to draw 
up their own schemes. The Scottish Executive recognises that the placing 
request legislation gives rise to difficult decisions locally. However it believes 
that the present balance between meeting parental choice and allowing local 
authorities to manage schools effectively and plan provision should be 
maintained. It does not believe that simply removing the present legislative 
framework would assist local planning because to ensure equity and 
consistency of provision for parents the framework of rights and exceptions 
would have to be repeated elsewhere. The amendments which are being 
proposed are significant and the Executive believes the effect of these changes 
should be carefully monitored and evaluated before any further changes are 
considered.

• Corporal punishment (Section 13)

This section proposes to make corporal punishment unlawful in all 
independent schools and publicly funded pre-school centres. This will bring 
Scottish legislation into line with legislation covering England and Wales. 
These provisions were included in the consultation paper Improving our 
Schools and were widely endorsed.

• Provision of education outwith school. (Section 37)

Ministers wish to ensure that educational provision of the highest quality is 
available to all children and this provision has the effect of clarifying local 
authority responsibilities in relation to ill-children, young carers and children 
excluded from school.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND 
COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE 
DEVELOPMENT ETC

53. Two provisions in section 42 of the Bill would have a positive effect on equal 
opportunities. They are:

• repeal of the provision in the 1965 Act which prohibits people aged 70 or 
over from taking up appointment on the GTC; and
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- amendment of the definition of “employed” in the 1965 Act to allow teachers who work part-time to stand for election to the GTC.

54. The provision in section 1 accords with article 2 of Protocol 1 to the European Convention on Human Rights. That on abolition of corporal punishment helps to safeguard a child’s right under Article 3 of the Convention to protection against inhuman or degrading treatment.

55. The provisions have significant implications for local government in that they define clearly the role of authorities in securing improvement in schools and for the inspection of authorities in the carrying out of their functions in relation to school education.

56. There are no implications for island communities or for sustainable development.