

Education (Scotland) Bill

I welcome the opportunity to comment on the Education (Scotland) Bill and the proposals contained within it.

My role as Scotland's Commissioner for Children and Young People is to promote and safeguard the rights of children and young people by promoting awareness and understanding of children's rights, keeping under review the law, policy and practice relating to the rights of children and young people, promoting best practice and undertaking research.

In responding to this consultation, I have answered only those questions about which I wish to make substantive comment.

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

In order for improvements to attainment to take full effect in Scotland, I believe that the following elements need to be prioritised:

Early Assessment & Identification

This Bill offers the opportunity for Local Education Authorities to change the way in which they look at and monitor attainment. A recent report by the Accounts Commission¹ found that much of the focus on attainment on both national and local levels was on pupils in S4-S6. The same report found that in areas where schools were out-performing expectations, one of the key factors was an early assessment of need, allowing schools to then provide the appropriate individual support.² As such, I believe this Bill should ensure that any approach to improving attainment begins from as early as possible in a child's education.

¹ School Education, Accounts Commission & Audit Scotland, June 2014, p6 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

² School Education, Accounts Commission & Audit Scotland, June 2014, p35 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

Recognising Wider Achievement

My hope is that the Bill will allow for an approach to attainment, which doesn't just focus on academic success, but rather on what success means for individual children and young people, whether that be gaining new skills or building confidence. I am aware that many local authorities already operate structured programmes, for example, the Duke of Edinburgh Award, in order to capture successes beyond exam results. Whilst these are positive, I am conscious that they may also be out of the reach of some of the most disadvantaged children and young people. Other initiatives, such as ASDAN awards, are also helpful in recognising the broader achievements of pupils.

I recognise the work that has been carried out to date by the Scottish Government, Local Authorities, Education agencies and other partners in developing a benchmarking tool to help monitor pupils' wider achievement³. I think this will prove essential in monitoring progress made beyond academic results.

Ensuring Consistent Data Collection & Analysis

One of the main difficulties in assessing Scotland's progress against attainment goals is the collection and analysis of data, particularly prior to S3⁴. This Bill provides a clear impetus for both local authorities and the Scottish Government to take a more strategic and consistent approach towards the collection and analysis of attainment data. I would urge this approach to go beyond the monitoring of academic achievements and take into account the achievements children and young people value most.

I also hope that this Bill will also pull together the various strands of attainment work currently operating in Scotland, thereby creating a more co-ordinated approach.

Greater Participation & Pupil Involvement

My office recently carried out research into How Young People's Participation in School Supports Achievement and Attainment⁵. I believe that this is particularly key to tackling inequalities. Please see my answer to Q4 for more details.

³ School Education, Accounts Commission & Audit Scotland, June 2014, p18 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

⁴ School Education, Accounts Commission & Audit Scotland, June 2014, p17 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

⁵ How Young People's Participation in School Supports Achievement and Attainment, Mannion, Sowerby & l'Anson, Scotland's Commissioner for Children & Young People, February 2015 (<http://www.sccyp.org.uk/publications/education>)

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

No, I do not believe that the current duty is strong enough. As it is currently worded, the duty simply requires local authorities to consider whether it is desirable for them to take action to reduce inequality. Before doing so, there is no requirement to fully assess the level of or nature of inequality in their area or to create any kind of baseline measurement (other than the consultation requirements in Section 2).

As currently worded, it also suggests that a local authority, even where it is aware of possible disadvantage, would have the option of not doing anything, if for example, resources did not allow for this or other local priorities were seen to take precedence.

In common with the duty on Ministers, I believe it would be better for the duty to be worded in much more positive terms, with the expectation being that action will be taken to reduce inequalities.

3. *How should “inequalities of income” be interpreted and should this phrase be defined in the Bill?*

Research suggests that in Scotland attainment is more closely linked to social background than in other countries⁶. It would appear to make sense, therefore, to base any approach upon socio-economic factors. There is, however, a need to strike a balance between universal and targeted approaches, in order to ensure other inequalities are not missed (for example, inequalities of opportunity). In taking an approach based primarily on socio-economic factors, care also needs to be taken to ensure that the attainment needs of particular groups of children and young people are not overlooked (for example, children with disabilities).

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

My office’s recent report, *How Young People’s Participation in School Supports Achievement and Attainment*,⁷ found that what was fundamental to schools outperforming expectations in relation to attainment was a culture of participation

⁶ School Education, Accounts Commission & Audit Scotland, June 2014, p25 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

⁷ *How Young People’s Participation in School Supports Achievement and Attainment*, Mannion, Sowerby & l’Anson, Scotland’s Commissioner for Children & Young People, February 2015 (<http://www.sccyp.org.uk/publications/education>)

and mutual respect between pupils and teachers. Pupils did better when they were involved in the decisions affecting them and their education. This is in line with articles 12, 28 and 29 of the UN Convention on the Rights of the Child.⁸ With that in mind, one key action that education authorities could take is to look at how to instil a participative culture in their schools. There is much good practice already taking place in Scotland in this respect and I am confident that this is a model that could be applied more widely.

In Learning Lessons,⁹ a report co-produced by my office and Save the Children, a clear message was that inequalities often extend beyond school and into the local community. In order to best support those children and young people who are most vulnerable and raise their attainment, then consideration will need to be made of how Local Authorities can take a whole council approach to the issue, rather than focusing purely on a child or young person's educational needs.

In the same report, children reported that their parents struggled to help them with their homework because of their own difficulties at school. Work needed to be done to increase confidence and skills amongst some parents, in order to help children and young people. Raising the aspirations of both parents and pupils was seen as key to helping pupils succeed¹⁰.

Children talked of finding it difficult to do homework in crowded and noisy living conditions or struggling to access the technology to type up/print a piece of work for school¹¹. These are hidden factors affecting attainment and educational professionals need to be sensitive to the additional pressures facing children and young people living on limited incomes and, where possible, find solutions that respect the child's privacy and do not draw attention to their circumstances¹².

Children and young people also highlighted the hidden costs of school and explained how quite modest sums of money could limit their educational options. Some pupils reported making subject choices based on the costs associated with the course. For example, a food technology course was seen to be out of reach for some children, as the cost of ingredients was prohibitively

⁸ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁹ Learning Lessons – Young People's Views on Poverty and Education in Scotland, Elsley, Susan Dr, Save the Children Scotland & Scotland's Commissioner for Children and Young People, 2014 (<http://www.sccyp.org.uk/publications/education>)

¹⁰ School Education, Accounts Commission & Audit Scotland, June 2014, p40 (http://www.audit-scotland.gov.uk/utilities/search_report.php?id=2571)

¹¹ Learning Lessons – Young People's Views on Poverty and Education in Scotland, Elsley, Susan Dr, Save the Children Scotland & Scotland's Commissioner for Children and Young People, 2014, p14

¹² Cost of the School Day, Child Poverty Action Group and Poverty Leadership Panel, p5 (<http://www.cpag.org.uk/content/cost-school-day-project>)

expensive¹³. Children and young people also said that they found it particularly difficult when fun activities had a charge associated with them and asked for these to be free¹⁴.

Teaching professionals and managers should also receive training on the delivery of rights-based education and participatory practices. This should be further developed on a national basis, perhaps by Education Scotland, in order to ensure a consistent approach. Teaching professionals should also be allowed more resources/flexibility at a local level in order to resolve difficulties for their pupils who might otherwise struggle to participate.¹⁵

Alongside this, there needs to be a systematic sharing of good practice throughout Scotland¹⁶. There are many networks already in existence to facilitate this, including online systems such as Glow.

5. How do the provisions on attainment fit with existing statutory National Priorities for Education and the requirements to produce annual statements of improvement objectives and school development plans?

The Bill provides a good opportunity to consider re-framing and re-aligning these documents. In relation to National Priority 1 of the National Priorities for Education, I believe that the focus of this priority should be not just on improving literacy, numeracy and examination results, but also on celebrating wider achievements. I would also suggest that National Priority 4 could be re-worded to reflect an approach founded in the participation of children and young people in their own education. That is, the focus should move from simply teaching children and young people about self respect and respect for broader society, to demonstrating this to them through a participative and inclusive culture in all schools. There is nothing more likely to convince children and young people of the need to treat others with respect, than being treated with respect themselves.

In relation to the Annual statement of improvement objectives, beyond ensuring children and young people are consulted about certain decisions (as required by the 2000 Act), I believe that the statement should also explicitly include provision for the local authority to seek to involve pupils in decision-making processes in

¹³ Learning Lessons – Young People’s Views on Poverty and Education in Scotland, Elsley, Susan Dr, Save the Children Scotland & Scotland’s Commissioner for Children and Young People, 2014, p14

¹⁴ Cost of the School Day, Child Poverty Action Group and Poverty Leadership Panel, p4

(<http://www.cpag.org.uk/content/cost-school-day-project>)

¹⁵ By Diverse Means: Improving Scottish Education, Centre for Scottish Public Policy, Reform Scotland, March 2013, p46

¹⁶ By Diverse Means: Improving Scottish Education, Centre for Scottish Public Policy, Reform Scotland, March 2013, p46

relation to their education. I am confident that there is scope to easily include the provisions of this Bill within existing School Development Plans.

6. Do you consider that such terms are clearly defined and widely understood? Could the different terms used in the Policy Memorandum and in the Bill create any problems in delivering the Policy Objectives?

I believe that the terms used are widely understood by adults. However, I would suggest that where attainment is being discussed with children and young people, then a more accessible term should be used. In our recent research with children and young people¹⁷ we used the phrase “doing well”. This was a term that children and young people interpreted widely, providing a range of options as to what they felt helped them succeed, both in their education and in their day to day life.

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

No, I do not believe that the use of sanctions would be helpful. I would prefer instead to have an approach based on positive development. Taking a more punitive approach will be unhelpful as some local authorities will find it easier to show improvement than others, where it may take a considerable amount of time for improvements to be visible.

8. Do you have any views on the consultation and reporting requirements set out in this part of the Bill?

I have some concerns about the wording of sections 2 (2) and 2 (3) which appear to suggest a wide discretionary power for Local Authorities in who they consult with, in particular the use of the phrase “the authority thinks appropriate”.

Whilst I understand that this is designed to allow local authorities some flexibility, I am concerned that, as currently worded, some children and young people may find themselves excluded from the consultation process or a consultation may be carried out too narrowly (e.g. where a proposal affects over 1,000 pupils, that a consultation is carried out with only 10 pupils).

Recent research commissioned by my office from the Children’s Parliament found that pupils are often very well placed to come up with solutions to their

¹⁷ How Young People’s Participation in School Supports Achievement and Attainment, Mannion, Sowerby & l’Anson, Scotland’s Commissioner for Children & Young People, February 2015

own difficulties¹⁸ and so it would seem sensible – and consistent with my previous suggestions – to include them as part of any process seeking to develop or amend guidance in this respect.

In terms of the reporting requirements, I note that these do not align with the reporting requirements of the Children & Young People (Scotland) Act 2014. For consistency, it may make sense to do so. However, I do recognise that it is desirable to have a short reporting cycle, in order that progress (or otherwise) can be assessed as soon as possible.

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

As previously stated, I would suggest it would be sensible to focus on socio-economic factors in the first instance. It may also be helpful for there to be some assessment of the attainment needs of particular groupings of children and young people (e.g. disabled children and young people, children and young people from Gypsy Traveller communities etc.) and to look at how support can be best targeted towards them. I note that there is scope within 1 (3)(b) of the current Bill to target support towards particular groups through regulations.

Additional Support for Learning

16. What will be the outcomes of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children aged 12 and over with capacity? Please give practical examples.

I welcome this extension and believe that it is right that children over the age of 12 should be able to influence decisions which directly affect their education and well-being. This rights-based approach is consistent with the recommendations made by the UN Committee on the Rights of the Child when examining the UK in 2008¹⁹. It also resolves the current inconsistency whereby younger children and young people can bring a discrimination case to the ASNTS, but not any other type of case.

I note that the extension of rights is likely to be particularly beneficial to groups of children and young people who might otherwise have struggled to bring a complaint via the parental route, for example, looked after children and young people.

¹⁸ Together We Can Fix It, Children's Parliament and Scotland's Commissioner for Children & Young People, 2015.

¹⁹ (www2.ohchr.org/english/bodies/crc/docs/.../CRC.C.GBR.CO.4.pdf)

However, there are a few areas which I believe merit further exploration. The first is in relation to children and young people's capacity. If it is expected that the local authority will assess the capacity of a child or young person, then I believe that there is potential for a conflict of interest. Whilst unlikely, a local authority could decide that a child does not have capacity, in order to avoid carrying out their wishes. For this reason, I believe that there should be scope for an independent assessment of capacity where there is a dispute.

Secondly, there should be some exploration of processes to be followed where a child with capacity and a parent fundamentally disagree on what should happen.

17. Do you agree with the proposal that not all of the rights in the ASL legislation should be extended to children?

Yes, I agree that the balance is correct. Whilst I have been supportive of extending most rights to under-16s, I do agree that, on balance, children and young people should not be able to make a placing request, given the potential for financial or other impacts upon parents.

18. What are your views on the statutory children's support service proposed by the Scottish Government?

I welcome the establishment of this support service as I see it as essential in helping children and young people to fully enjoy their rights. The service will need to be run by those already familiar with speaking to children and young people on a day to day basis. It will also need to be fully accessible to children and young people with a range of disabilities and will need to be accompanied by a range of age appropriate support materials. Funding this service should also not restrict children and young people from accessing other local support, where they wish to do so.

Chief Education Officer

19. What would be the possible advantages and disadvantages of legislating for the role of Chief Education Officer (CEO) in every education authority in Scotland? Are there any previous examples of the Scottish Government seeking to instruct local authorities to employ a person in a particular role? If so, are there lessons to be learned?

I believe the reinstatement of a Chief Education Officer in every local authority is a positive move. If there is a real commitment to improving attainment and achievement across Scotland, then there needs to be a senior level person providing leadership within each local authority.

However, it is important that this role is suitably funded and additional funding should be provided for this purpose. Education budgets are already under great strain and I would be keen to ensure that the creation of this role did not divert resources from other educational issues e.g. general teacher numbers, Additional Support for Learning, English as a Second Language etc.

23. The Bill will introduce a power to make regulations about the procedure to be followed in relation to complaints to Scottish Ministers. Paragraph 74 of the Policy Memorandum sets out some proposed deadlines. What is your view on the deadlines for these procedures?

I believe it is helpful to have timescales in place and agree that the proposed timescales are reasonable. Previously, the process was open-ended. This could mean that by the time a decision was made regarding a Section 70 complaint, the matter could have moved on considerably or the pupil may even have left education altogether. I would hope that where a matter is subject to an investigation, however, that there would be scope to provide an earlier decision where this was at all possible.

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

Yes, I agree with this proposal. I believe that the legislation is clear in relation to which cases should be dealt with through the Tribunal.

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