

The logo for SPICe (The Information Centre) is located in the top left corner. It consists of the word "SPICe" in a large, white, sans-serif font, with "The Information Centre" in a smaller, white, sans-serif font directly below it. The text is set against a dark purple, rounded rectangular background that features a series of white, curved lines and arrows pointing towards the right, creating a sense of motion and information flow.

**SPICe**

The Information Centre

# SPICe Briefing

## Education (Scotland) Bill

23 April 2015

15/19

**Camilla Kidner**

The Education (Scotland) Bill was introduced in the Parliament on 23 March 2015. It covers a range of school policy issues, in particular school attainment and Gaelic-medium Education. This briefing sets out the legislative and policy context of the proposals.



The Scottish Parliament  
Pàrlamaid na h-Alba

# CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>ATTAINMENT</b> .....	<b>4</b>
BILL PROVISIONS ON ATTAINMENT .....	4
ATTAINMENT GAP.....	4
EXISTING LEGISLATIVE FRAMEWORK.....	6
<i>Planning and reporting</i> .....	6
<i>Enforcing the duty on socio-economic inequality in the Bill</i> .....	7
SOCIO-ECONOMIC DUTY IN EQUALITY ACT 2010 .....	8
<i>Further devolution</i> .....	8
<b>GAELIC MEDIUM EDUCATION</b> .....	<b>9</b>
LEGISLATIVE CONTEXT .....	9
<i>Bord na Gaidhlig</i> .....	10
<i>Charter on Minority Languages</i> .....	10
DISTRIBUTION OF GAELIC SPEAKERS AND GAELIC EDUCATION .....	10
<i>Attitudes to Gaelic</i> .....	11
<i>Gaelic Education</i> .....	12
THE BILL PROVISIONS ON GAELIC.....	15
RESOURCES.....	17
<i>Increase in demand</i> .....	17
<i>Supply of teachers</i> .....	17
<i>Requirement to resource provision</i> .....	20
<b>ADDITIONAL SUPPORT FOR LEARNING</b> .....	<b>21</b>
LEGISLATIVE CONTEXT .....	21
BILL PROVISIONS.....	21
<i>Capacity of children</i> .....	21
<i>Capacity of young persons</i> .....	24
<b>SECTION 70 COMPLAINTS</b> .....	<b>25</b>
BILL PROVISIONS ON S.70 COMPLAINTS .....	25
<b>CHIEF EDUCATION OFFICER</b> .....	<b>26</b>
BILL PROVISIONS ON CHIEF EDUCATION OFFICER .....	26
<b>TEACHER REGISTRATION</b> .....	<b>27</b>
BILL PROVISIONS ON TEACHER REGISTRATION.....	27
NUMBERS OF UNREGISTERED TEACHERS .....	27
REGISTRATION REQUIREMENTS .....	27
<b>GUARDIANS</b> .....	<b>28</b>
BILL PROVISIONS ON GUARDIANS.....	28
<b>SOURCES</b> .....	<b>29</b>

## EXECUTIVE SUMMARY

The Education (Scotland) Bill seeks to legislate on a wide range of educational matters. The main areas of change concern attainment, provision of Gaelic medium education and additional support for learning.

The Scottish Government is currently undertaking a number of policy initiatives related to improving attainment and weakening the link between attainment and socio-economic disadvantage. As part of this, the Bill would require local authorities and Scottish Ministers to 'have due regard' to the importance of this issue and to publish reports on actions taken. It is modelled on the 'socio-economic' duty in the Equality Act 2010, which has never been brought into force but is an area proposed for further devolution by the Smith Commission.

The 2011 SNP Manifesto gave a commitment to examine how to introduce an entitlement to Gaelic medium education and Bord na Gaidhlig have a target to increase the number of pupils entering Gaelic medium primary education. The Bill will not introduce an entitlement as such but rather creates a statutory process governing how local authorities should respond to parental requests.

In 2008, the UN Committee on the Rights of the Child recommended that Scotland give children the right to appeal to an Additional Support Needs Tribunal. Currently only parents and young people (16 and 17 year olds) can do this. The Scottish Government decided to go further, and the Bill will extend most of the rights under the legislation to include children over 12 with capacity. Young people with capacity can already exercise rights under the legislation, but the Bill creates a more explicit test. The Bill provides for a 'support service' to help children exercise their rights. Young people already have access to existing advice services.

Partly related to additional support for learning are the proposed changes to 'section 70 complaints'. Currently a person can complain to Ministers if an education authority is not meeting its statutory duties. This has tended to be used for complaints about additional support for learning and school closures. A consultation proposal to replace this with provision by the Scottish Public Services Ombudsman was rejected by consultees. Instead, the Bill provides for regulations to apply statutory timescales to the complaints process and prevents complaints going to Ministers if they fall within the remit of the Additional Support Needs Tribunal.

Other measures in the Bill are:

- amending regulatory powers with the intention to require all teachers in independent schools to be registered with the General Teaching Council Scotland (GTCS).
- re-instating the requirement that local authorities have a Chief Education Officer
- technical amendments to entitlement to early learning and care for children with guardians appointed by their parents and restating existing provision for school meals

The provisions on Gaelic medium education, additional support for learning and complaints have been subject to public consultation. The other provisions have not, although the Policy Memorandum notes that there have been discussions with stakeholders.

# ATTAINMENT

## BILL PROVISIONS ON ATTAINMENT

The Bill requires Education Authorities to “have due regard to the desirability” of carrying out their strategic functions in a way that reduces “inequalities of outcome” experienced by pupils “which result from socio-economic disadvantage”. A similar duty is applied to Scottish Ministers. Education Authorities must consult on what actions to take, must have regard to Ministerial guidance and report every two years to Scottish Ministers. Similarly, Scottish Ministers must report every two years to the Parliament.

Regulations would enable Scottish Ministers to extend this duty to other groups of pupils.

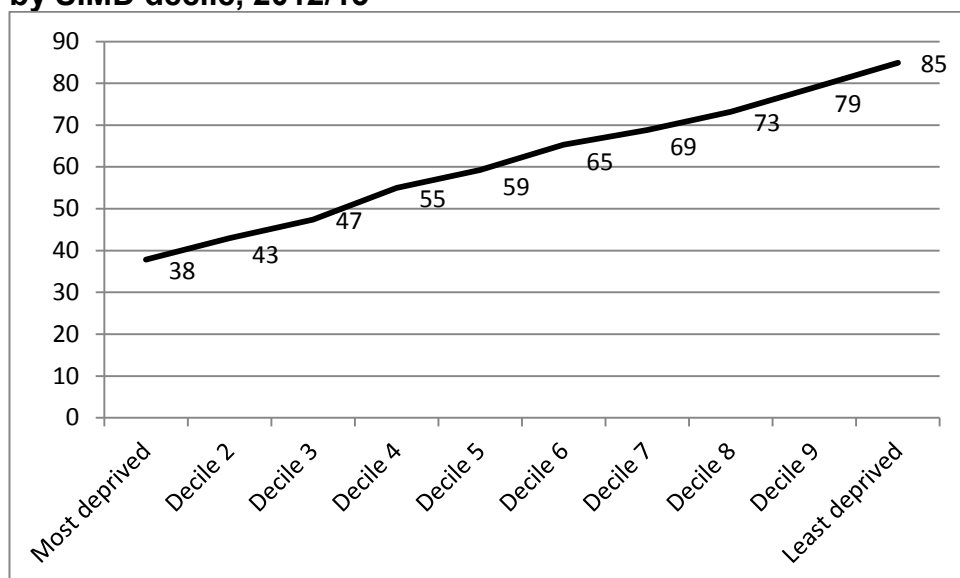
The financial memorandum notes that the new duties are complementary to existing statutory duties and as such, additional cost will be minimal (FM para 32).

## ATTAINMENT GAP

The Bill itself does not refer to an attainment gap, but to “reducing inequalities of outcome”. This phrase is not defined, although the explanatory notes describe it as “inequalities of *educational* outcome” (para 8). The policy memorandum describes the purpose of the duty as being “to improve the attainment of more disadvantaged children” (para 17). Other legislation, discussed below, requires increasing the educational attainment of all children. Achieving both these goals would require the attainment of more disadvantaged children to increase at a faster rate than that of more advantaged children.

The strong link between socio-economic disadvantage and school attainment is a worldwide phenomenon and well established in research. The latest PISA survey found that Scotland was around the OECD average in the effect that social background has on pupil attainment (Scottish Government, 2013a). While there is an argument that the purpose of school is much broader than attaining academic qualifications, the fact remains that the chances of gaining, for example, five standard grades (now National 4 and 5), is strongly linked to social background. This should not be confused with the argument that children have different interests and potentials and not everyone is suited to the ‘academic’ route. The argument is that children living in more deprived areas ought to be just as likely to achieve academic excellence as those living in less deprived areas. Similarly, it begs the question why uptake of vocational routes ought to be linked to social background. The chart below illustrates how academic attainment increases steadily, as deprivation decreases.

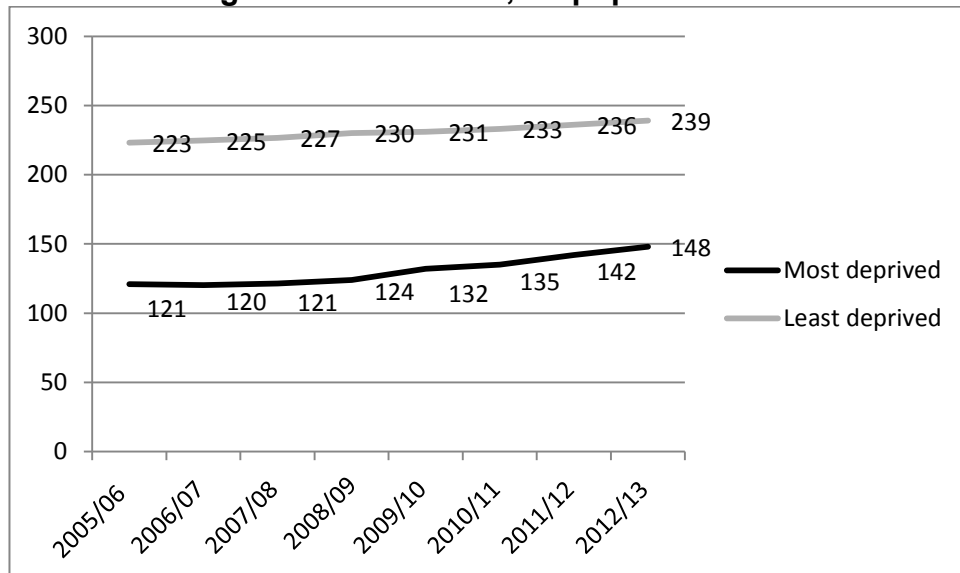
**Chart 1: Percentage of school leavers gaining 5 or more awards at SCQF level 5 or better by SIMD decile, 2012/13**



(Scottish Government 2014a). Includes awards at the level of Intermediate 2, Standard grade credit or better, such as Higher and Advanced Higher. (Data is prior to introduction of National 5).

The 'attainment gap' is narrowing, but only very gradually. The chart below shows a small narrowing of the difference in 'tariff score'<sup>1</sup> over eight years between S4 pupils living in the top and bottom 10% SIMD areas.

**Chart 2: Change in in tariff score, S4 pupils 2005/06 to 2012/13**



(Scottish Government 2014a)

The Scottish Government is undertaking a wide range of policy initiatives intended to both raise attainment and reduce the attainment gap. These are summarised at:

<http://www.gov.scot/Topics/Education/Schools/Raisingeducationalattainment/Whatarewedoingaboutit>

The following focuses on the specific provisions in the Bill, rather than this wider work.

<sup>1</sup> 'Tariff score' is a unified points score, which enables different qualifications to be compared. For example, Standard Grade 1, = 38 points. The above relates to S4 pupils prior to the abolition of standard grade.

## EXISTING LEGISLATIVE FRAMEWORK

The new duty on inequality of outcome would sit within an existing legal context which requires local authorities to improve the quality of education.

Currently, local authorities must ensure that education is directed to:

“the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential” (s.2, Standards in Scotland’s Schools etc Act 2000 (‘the 2000 Act’)

Local authorities and Scottish Ministers must: “endeavour to secure improvement in the quality of school education” and to exercise their power and functions “with a view to raising standards of education” (s.3, 2000 Act).

Scottish Ministers have also set statutory ‘National Priorities in Education.’<sup>2</sup> The current National Priorities have been in force since 2000 and are:

- (1) to raise standards of educational attainment for all in schools, especially in the core skills of literacy and numeracy, and to achieve better levels in national measures of achievement including examination results
- (2) to support and develop the skills of teachers, the self-discipline of pupils and to enhance school environments so that they are conducive to teaching and learning
- (3) to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages
- (4) to work with parents to teach pupils respect for self and one another and their interdependence with other members of their neighbourhood and society and to teach them the duties and responsibilities of citizenship in a democratic society
- (5) to equip pupils with the foundation skills, attitudes and expectations necessary to prosper in a changing society and to encourage creativity and ambition

The third National Priority deals with equality but does not explicitly mention socio-economic inequality. A [performance report](#) on National Priorities was published in 2003 (Scottish Executive 2003). At that time, reducing the attainment gap was one of the ‘social justice milestones,’<sup>3</sup> although it was not explicit within the National Priorities. The new Bill would create a much clearer statutory focus on this aspect of inequality.

### Planning and reporting

Under the 2000 Act local authorities must:

- prepare and publish an annual statement of education improvement objectives
- prepare and publish an annual report as to its success in achieving these objectives

---

<sup>2</sup> Education (National Priorities) (Scotland) Order SSI 2000/443

<sup>3</sup> Social justice milestone 9 was “Bringing the poorest-performing 20% of pupils, in terms of Standard Grade achievement, closer to the performance of all pupils” (Scottish Executive, 1999)

- consult with representatives of parents, and staff, and give children an opportunity to make their views known

Among other things, this must include an account of how they will “encourage equal opportunities and in particular equal opportunities requirements” (s.5, 2000 Act). ‘Equal opportunity requirements’ means those covered by UK legislation. This does not include socio-economic inequality (because part 1 of the Equality Act is not in force). It could be argued however, that socio-economic inequality is included in the requirement to ‘encourage equal opportunities’ generally because the 2000 Act uses the Scotland Act definition of Equal Opportunities which includes social origin. However, there is also the argument that because the Scotland Act prevents any regulation of equal opportunities in devolved legislation, Scottish legislation cannot be used to extend the scope of equal opportunities beyond what is already covered in UK legislation.

The annual statement should set out objectives in relation to each of the National Priorities and also any other performance measure that the local authority considers appropriate.

Taking account of the local authority objectives, each school must:

- prepare an annual development plan which takes account of the authority’s annual statement of education improvement objectives and sets objectives for the school;
- prepare an annual report on the implementation of the plan, and
- consult with, where appropriate, parents, staff, pupils and other persons

Although socio-economic inequality could be argued to be included in the current reporting requirements, this is not entirely clear cut. The current Bill would create a clearer focus on local authorities reporting on this aspect of inequality. However, it does this using a new, ‘stand alone’ duty rather than adding to the existing framework established in the 2000 Act. Local authorities will therefore have to report on their improvement objectives, and have a separate duty to report on reducing socio-economic inequality of outcome. While schools are required to produce development plans under the 2000 Act, there is no specific duty on schools in this new Bill. Instead, the duties are placed on Scottish Ministers and Education Authorities.

### **Enforcing the duty on socio-economic inequality in the Bill**

As Bill places a new statutory duty on local authorities, a complaint could be made to Ministers under s.70 of the Education (Scotland) Act 1980 (the 1980 Act) (see below). The new duty in the Bill is to “have regard to the desirability” of reducing inequality of outcome. Local authorities would not be failing in this duty if they failed to reduce inequality. Perhaps more importantly, the Bill includes a duty to report. Again, this does not require particular action, but does require both local authorities and Scottish Ministers make clear what action they have taken and plan to take.

## **SOCIO-ECONOMIC DUTY IN EQUALITY ACT 2010**

Part 1 of the Equality Act 2010 would, if brought into force, enable Scottish Ministers to apply the following duty to Scottish public bodies, such as local authorities:

“when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”

Inequality of outcome is not defined. The Explanatory Notes to the Equality Bill as introduced in the House of Commons on 24 April 2009 stated:

“Such inequalities could include inequalities in education, health, housing, crimes rates, or other matters associated with socio-economic disadvantage. It will be for public authorities subject to the duty to determine which socio-economic inequalities they are in a position to influence.”

There are clear similarities in the wording of this UK legislation and the proposal in the current Education Bill.

In 2009, the Scottish Government consulted on introducing to Scotland a general socio-economic duty. Its [consultation report](#) found that 64% of all respondents agreed with such a duty. There was less support from local authorities

“most local authority and partnership respondents (along with COSLA and SOLACE) indicated that they did not agree that the socio-economic duty should be applied to public authorities in Scotland” (Scottish Government 2009)

This consultation was on a general socio-economic duty, rather than school education specifically. The Scottish Government has not held a formal consultation on the socio-economic duty in this education Bill. Applying the duty only to education authorities may raise different issues to the proposal to apply a duty across the public sector.

Although Part 1 of the Equality Act remains on the statute book, the UK Government stated in 2010 that they would not bring it into force (Guardian, 2010). This is an area proposed for further devolution by the Smith Commission as discussed below.

### **Further devolution**

The Smith Commission proposed that the socio-economic duty in Part 1 of the Equality Act be devolved to the Scottish Parliament, in so far as it relates to devolved areas. The UK Command Paper states “Clause 24 will devolve to the Scottish Parliament [...] the consideration of socio-economic inequality when making strategic decisions.” (HM Government, 2015 para 6.2.1). It is therefore interesting that the Scottish Parliament already has the ability to legislate in this area in this education Bill before the Smith recommendations are implemented. The duty in the Bill to “have regard to the desirability of” reducing inequalities of outcome due to socio-economic disadvantage is hard to distinguish from the way such a duty might be applied to education authorities following implementation of the Smith Commission proposals. This raises the issue of what, in relation to school education, this further devolution would add to existing powers to legislate in this area.



# GAELIC MEDIUM EDUCATION

The Scottish Government made a manifesto commitment to “examine how we can introduce an entitlement to Gaelic medium education.”

The Bill sets out how a local authority must respond to requests for Gaelic medium education and how it must promote and support this and Gaelic learner education (sections 5 – 16). It does not create an entitlement to Gaelic medium education but rather, as the consultation in 2014 proposed, it would create a statutory process for assessing parental requests.

In 1997 the then Scottish Office consulted on measures to support Gaelic including a proposal that Education Authorities have a duty to provide Gaelic-medium primary education where a reasonable local demand existed. At that time COSLA opposed the proposal (GTCS, undated). The current Scottish Government consulted on the current proposals in 2014 (Scottish Government 2014b). This consultation asked whether a legislative process should be in place for local authorities to respond to parental requests for GME. Six of the 13 local authorities responding agreed, as did 51 of the other 66 responses.

The following sets out the current provision for Gaelic education before describing the Bill’s provisions in more detail.

## LEGISLATIVE CONTEXT

The Bill provisions need to be seen in the existing legislative context which:

- requires Gaelic to be taught in Gaelic speaking areas<sup>4</sup>
- has regard to the general principle that children should be educated in accordance with the wishes of their parents<sup>5</sup>
- establishes Gaelic as a statutory National Priority in school education<sup>6</sup>
- requires local authorities to make an annual statement of the ways in which or the circumstances in which they will provide Gaelic medium education and how such provision will be developed<sup>7</sup> (This is done through inclusion in their Annual Statement of Improvement Objectives and must take account of any local Gaelic language plan and any guidance issued by Bord na Gaidhlig).
- enables Bord na Gaidhlig to publish guidance on Gaelic education<sup>8</sup>
- provides that the National Gaelic Plan must include a strategy for Gaelic education<sup>9</sup>
- provides that permanently stopping provision of Gaelic medium education triggers the same statutory consultation requirements as closing a school<sup>10</sup>

In brief, the Bill would supplement existing legislative provisions by providing:

---

<sup>4</sup> s.1 Education (Scotland) Act 1980, although Gaelic speaking areas is not defined

<sup>5</sup> s.28 Education (Scotland) Act 1980

<sup>6</sup> SSI 2000/443, part of the National Priority on equality

<sup>7</sup> s.4 Standards in Scotland's Schools etc Act 2000

<sup>8</sup> s.9 Gaelic Language (Scotland) Act 2005

<sup>9</sup> s. 2 Gaelic Language (Scotland) Act 2005

<sup>10</sup> schedule 1, Schools (Consultation) (Scotland) Act 2010. Stopping GME is defined as a school closure.

- a statutory process for local authorities to assess a request for Gaelic medium primary education, detailing certain factors that must be taken into account
- a requirement that any provision made must be resourced
- a requirement that, whether or not the local authority decides to make provision, it must provide reasons
- a requirement that all local authorities, whether providing Gaelic medium education or not, must publicise the ability to make requests for Gaelic medium primary education and must also promote Gaelic learner education.
- that the power for Bord na Gaidhlig to publish education guidance would become a duty.

A more detailed description of the Bill provisions is given below at p.15.

## **Bord na Gaidhlig**

The Gaelic Language (Scotland) Act 2005 (the 2005 Act) established Bord na Gaidhlig to support and promote the language and enabled them to ask public authorities to develop a Gaelic Language Plan. Bord na Gaidhlig are themselves required to produce a National Gaelic Language Plan every five years, which as mentioned above, must include an education strategy. Their current strategy, for the period 2012 to 2017, includes the following outcomes for school education (Bord na Gaidhlig 2012a):

- to increase Gaelic medium education intake to 800 by 2017. P1 intake in 2013/14 was 488 (Bord na Gaidhlig, 2014)
- an annual increase in pupils engaged in Gaelic learner education
- an expansion in availability of Gaelic medium education subjects in secondary schools

## **Charter on Minority Languages**

The UK is a signatory to the European Charter for Regional or Minority Languages. The Council of Europe's latest [recommendations](#) for the UK were published in 2014 and include to:

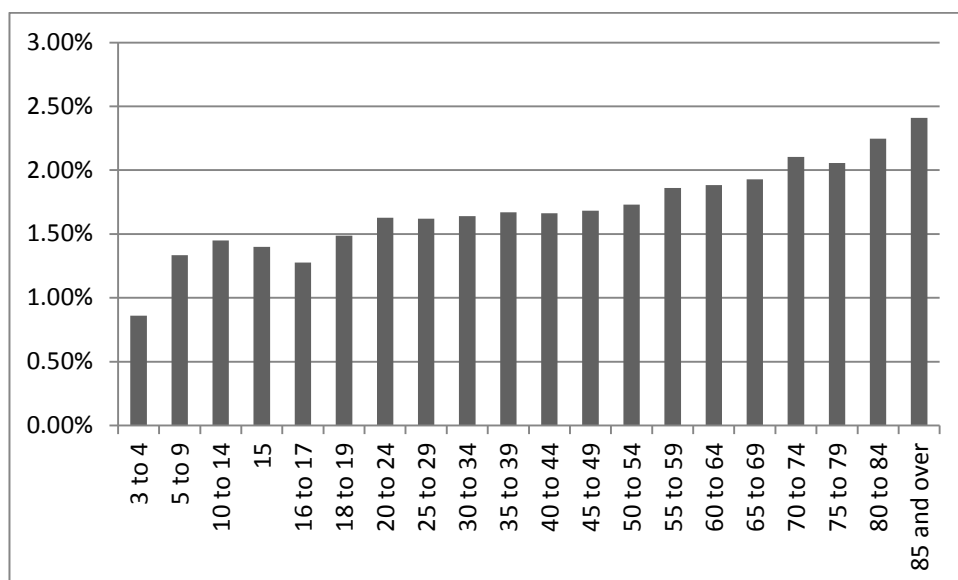
- continue taking measures to strengthen Scottish Gaelic education, especially through the training of teachers and the production of teaching and learning materials
- ensure that the present cuts in public spending do not have a disproportionate effect on the protection and promotion of minority languages

## **DISTRIBUTION OF GAELIC SPEAKERS AND GAELIC EDUCATION**

Over the last hundred years, the proportion of the population able to speak Gaelic has declined from 4.25% to 1.1% (1911 census online, National Records of Scotland 2013).

In 2011, the proportion of the population aged 3 and over in Scotland who could speak, read, write or understand Gaelic was 1.7% (87,000), compared with 1.9% (92,000) in 2001. Despite an increase in the number of young people speaking Gaelic, the overall age profile of the language suggests that, without specific measures to promote it, it will continue to decline.

**Chart 3: Percentage of age group that can speak, read, write or understand Gaelic, 2011.**



*(National Records of Scotland, 2013).*

The geographical distribution shown in chart 4 below shows that every local authority in Scotland has some people with some ability in the language. Most Gaelic speakers live in the Highlands and Eilean Siar, but there are also substantial numbers in Glasgow, Edinburgh and Argyll and Bute.

### **Attitudes to Gaelic**

The Scottish Social Attitudes Survey in 2012 (O’Hanlon et al, 2013) asked about people's perceptions of Gaelic and found that a substantial minority would like to see the numbers of Gaelic speakers increase (42%). However, most (55%) wished such efforts to be focused on areas where Gaelic is already spoken, with only 32% wanting Gaelic to be encouraged throughout Scotland.

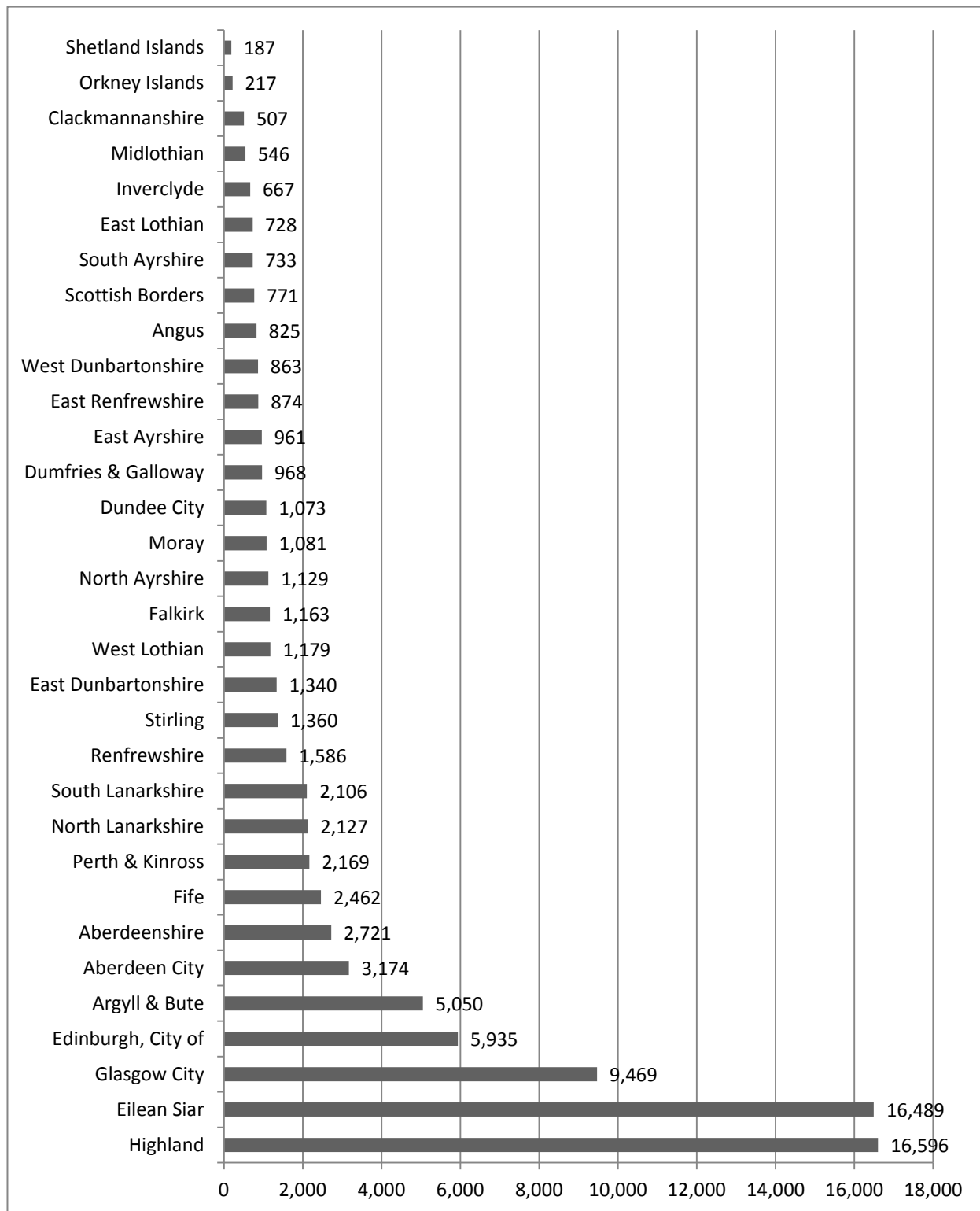
Around three quarters (76%) of people considered the Gaelic language an important part of Scottish heritage. Over two thirds (67%) said that teaching some children in Gaelic is essential to the future of the Gaelic language

Almost half of respondents thought that parents should have the right to choose Gaelic medium education for their children, wherever they live in Scotland (48%). A similar proportion thought that the right to access Gaelic medium education ought only to exist in areas where Gaelic is spoken (43%). Only 8% thought there should be no right to choose Gaelic medium education

Paterson et al (2014) sum up views towards Gaelic as mainly positive:

“Not only is there almost no hostility to the language, but there is a quite widespread willingness to accord rights to use it, and a quite widespread hope that it will be more widely used. Gaelic is seen by a large majority of people as being important to the heritage of the whole of Scotland, even though only a small minority believe that being able to speak Gaelic is important to being Scottish.”

**Chart 4: Number of people who can speak, read, write or understand Gaelic, by local authority, 2011**



(National Records of Scotland, 2013).

### Gaelic Education

An HMLe report in 2011 described how Gaelic medium education grew from parental demand. Organisations like *Comann nam Pàrant* were set up to promote it and support parents.

However, HMle noted that there was some ambivalence towards Gaelic education in some local authorities.

“There remains, some 25 years on in the development of Gaelic Medium Education in particular, a debate about the difficulties faced by the legitimate expectation of parents to establish Gaelic medium provision. It would appear that there remains within some education authorities a degree of ambivalence about the value and worth of providing and developing Gaelic Medium Education

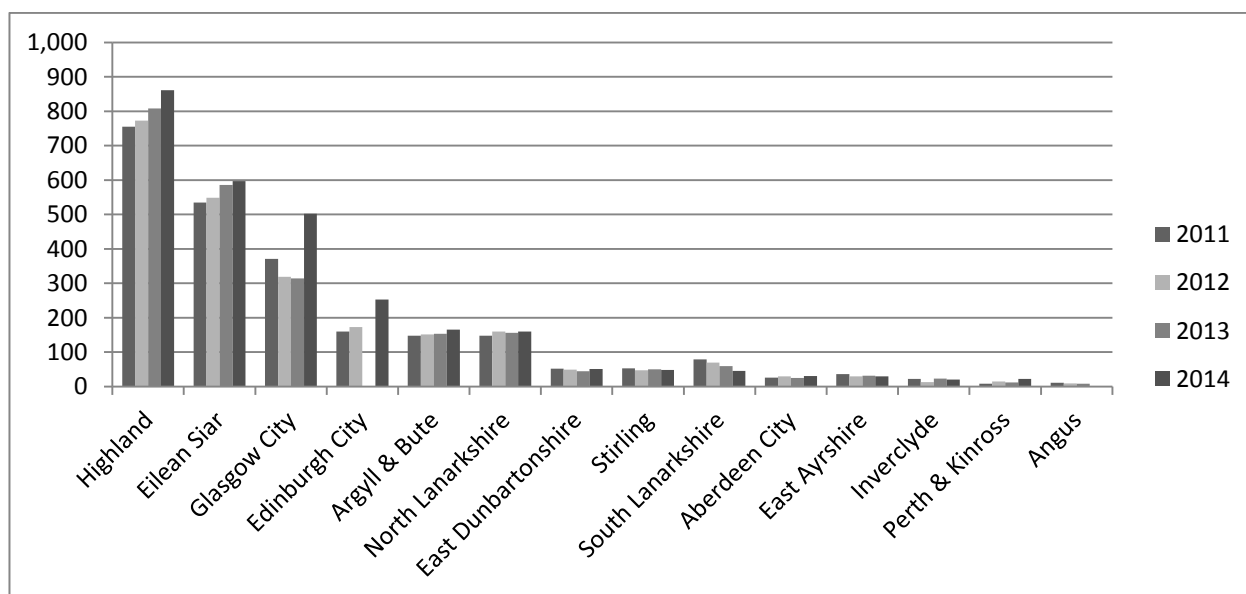
[...]

They (parents) would like to have more support in securing their entitlement to Gaelic Medium Education. In some cases, parents cited examples of negotiations taking so long that children missed out on learning through the medium of Gaelic.” (HMle, 2011).

In their response to the consultation on the Gaelic elements of the Bill, COSLA noted that their members’ views were mixed and raised issues about local discretion, flexibility and availability of teachers.

The Bill provisions focus mainly on Gaelic medium primary education, and provision for this is increasing. In 1998, there were 1,816 pupils (GTCS undated). In 2014 there were 2,791 (Scottish Government, 2014c). The chart below illustrates the trend over the last four years showing the geographical distribution. This shows particularly strong growth in numbers in Glasgow and Edinburgh in 2014.

**Chart 5: Primary pupils in Gaelic Medium Primary Education, 2011 to 2014.**



(Scottish Government 2012a, 2012b, 2013b and 2014c). n.b: Data for Angus in 2014 was not zero, but a disclosure control was applied due to low numbers.

In contrast, provision for Gaelic medium secondary education is far less developed. In 2011 HMle described it as:

“still at a very early stage of development. Of the 46 schools currently offering Gaelic in some form, only 14 are providing subjects other than Gaelic, through the medium of Gaelic. These subjects are available in S1 and S2, but only a few schools provide continuity through to S4.”

In relation to Gaelic learner education, the reported noted that there is a:

“lack of consistency as to when Gaelic Learners Education (GLE) is available to young people and whether progression is provided. Delivery can be driven by whether suitably qualified staff are available and sometimes by the interests of the primary or secondary head teacher.”

The Bill requires that where either Gaelic medium education or Gaelic learner education<sup>11</sup>, is provided, it must be supported (s.13). Table 1 below shows 2014 statistics for Gaelic medium and Gaelic learners.

**Table 1: Provision for Gaelic Education, 2014**

	Pre-school GME (providers)	Primary GME pupils	Primary GLE pupils	secondary GME pupils	Secondary GLE pupils
Aberdeen City	1	30	-	10	-
Aberdeenshire	1	-	-	-	*
Angus	-	*	*	-	-
Argyll & Bute	4	165	377	34	203
East Ayrshire	1	29	-	6	327
East Dunbartonshire	1	51	391	23	-
Edinburgh City	2	253	585	51	-
Eilean Siar	19	597	1,264	338	968
Falkirk	-	-	382	-	-
Fife	-	*	*	-	-
Glasgow City	3	502	-	238	-
Highland	21	861	476	433	990
Inverclyde	1	20	-	-	-
North Lanarkshire	2	160	-	59	*
Perth & Kinross	-	22	457	-	238
South Lanarkshire	2	45	-	24	-
Stirling	-	48	641	15	-
All local authorities	58 providers	2,791 pupils	4,581 pupils	1,231 pupils	2,746 pupils

(Scottish Government 2014c, Care Inspectorate 2013). n.b: \* means fewer than five pupils or where disclosive information could be identified through differencing. For pre-school, the data is for numbers of providers rather than numbers of pupils. Data for pre-school services is for 2013. Secondary GME pupils includes pupils studying Gaelic an d/or other subjects through the medium of Gaelic.

The remaining 15 local authorities, which currently have no provision, would need to publicise the ability to make a request and also promote Gaelic learner provision.

<sup>11</sup> In Gaelic medium education pupils are taught some or all school subjects in Gaelic. Gaelic learner education is where Gaelic is taught through the medium of English.

## THE BILL PROVISIONS ON GAELIC

The Bill sets out a process for parents to request an assessment for the need for Gaelic medium primary education. However local authorities are not required to provide Gaelic medium education. Rather, the Bill sets out how a local authority should go about making its decision.

### *Making a request*

A parent of a child under school age may ask the local authority to assess the need for Gaelic medium primary education. The parent must provide evidence of demand amongst other parents of children in the same year group and can, if they wish, provide evidence of demand in relation to children under school age in different year groups (s.5).

For example, a group of parents whose children are at a Gaelic pre-school might want their children to continue to receive Gaelic medium education when they are in primary school. A request might be made for one child, with the other children included as evidence of demand.

The assessment process does not cover requests for children who are already at primary school who would like to transfer to Gaelic medium provision. Nor does it cover requests for Gaelic learner education, Gaelic medium secondary education or Gaelic medium pre-school (s.16 excludes Gaelic pre-school from the definition of GMPE). However, regulations can be made to extend the system to pre-school education (s.12).

### *Initial assessment process*

When a local authority receives a request it must identify an area within which demand for Gaelic medium primary education is to be assessed and then make an initial assessment of potential need. The policy intention is that the area may be the entire local authority but in larger authorities it could be defined as an area within this based on, for example, reasonable travel distances for primary school pupils.

The local authority must conclude that potential need exists if:

- there is demand for Gaelic medium primary education in relation to 5 or more children in the same year group (this number can be changed by regulations which can also stipulate that different thresholds apply in different local authority areas), and
- demand in different year groups is 'reasonable' or likely to increase to a reasonable level (the local authority decides what is 'reasonable')

If there is potential need for Gaelic medium primary education the local authority must either:

- provide Gaelic medium primary education, or
- carry out a 'full assessment'

If there is no potential need the local authority has the option of doing nothing (s.8) and no other request in relation to the same assessment area (so determined by the local authority) need be considered for another two years (s.9). The local authority would also have the options to proceed to a full assessment or to establish Gaelic medium primary education.

The local authority must, within 4 weeks of receiving a request, send notification of their decision, together with reasons, to the parents involved. It must also publish relevant information on its website (s.8)

### *Full assessment (s.10)*

Where the local authority proceeds to a full assessment it must seek the views of Education Scotland, Bord na Gaidhlig and National Parent Forum of Scotland. Both Bord na Gaidhlig and Education Scotland must provide their views within 4 weeks, but the same duty does not apply to the National Parent Forum of Scotland.

In making their decision, the local authority must have regard to certain factors, including:

- views provided, including those of Education Scotland, Bord na Gaidhlig and NPFS
- guidance on Gaelic Education produced by Bord na Gaidhlig
- where the children live within the area being assessed
- the location of any existing provision, and its accessibility for those children,
- resources such as availability of suitable premises and teachers as well as the general cost of provision
- local authority Gaelic Language Plan if there is one
- the extent to which “Gaelic culture exists,” Gaelic education is provided for, the Gaelic language is used and activities related to Gaelic are carried out. Gaelic culture is defined as the traditions, ideas, customs, heritage and identity of those who speak or understand the Gaelic language. (s.10 2005 Act)

A report must be published within 10 weeks, giving the decision about whether to provide Gaelic medium primary education, along with reasons. If the decision is taken to provide Gaelic medium primary education, it must then be provided within a reasonable period (s.11).

### *Promotion and support (s.13)*

Every local authority, whether or not they make provision for Gaelic education, must promote the ability to make a request for Gaelic medium primary education as well as promote Gaelic learner education “in such manner as it thinks appropriate”.

In addition, if a local authority is already providing Gaelic medium education or Gaelic learner education, it must also:

- publicise that provision,
- have regard to any education guidance issued by Bord na Gaidhlig, and
- “take reasonable steps to ensure” adequate resources are provided for it.

### *Guidance*

The 2005 Act gave Bord na Gaidhlig the power to produce guidance on Gaelic education. It has never done so, and this Bill changes that power into a duty, so that they must provide such guidance. That guidance must be taken into account by:

- local authorities that provide Gaelic medium education or Gaelic learner education (s.13 of the Bill)



- any relevant public authority having functions relating to Gaelic education (s.14 of the Bill). These are not named but are likely to include Education Scotland, Bord na Gaidhlig, Scottish Qualifications Authority, Scottish Funding Council and Scottish Government.
- local authorities in their annual statements of improvement objectives (s.4, 2000 Act)

## **RESOURCES**

The main resource issues are the amount of new demand that will be created by this Bill, and the cost of resourcing Gaelic medium education and Gaelic learner education.

### **Increase in demand**

As noted above, Gaelic medium education developed primarily as a result of parental demand. There are a number of factors that the Bill would require a local authority to consider when deciding whether to provide Gaelic medium primary education. These include the availability of resources such as suitable premises and teachers as well as the general cost of provision. (See s.10(7), subsections (i) to (l)). It is unlikely that a local authority would go ahead with developing Gaelic medium primary education, even if there was some demand, unless it was confident that it could provide teachers and premises. The purpose of the Bill is to encourage expansion of Gaelic education, and Gaelic medium primary education in particular, but it does not require development where there are no resources to support it. This might serve to constrain the rate at which new Gaelic medium primary education units are created.

The financial memorandum states that "the effect the Bill will have on the rate at which new units open is difficult to predict" (para 8), but it estimates 3 new units every six years "beyond those which would have opened in any event" (para 9). This is based on the opening of three Gaelic medium education units in the last six years and the expectation that the "rate of new units would increase even without the provisions of the Bill." The consultation paper (Scottish Government 2014b) noted that 3 new Gaelic schools were due to open between 2011-16 in Fort William, Glasgow and Portree.

### **Supply of teachers**

The availability of teachers is an important factor in the potential for Gaelic medium education to expand. The supply of Gaelic teachers has been a perennial issue in teacher workforce planning and it continues to be a priority in allocating teacher training places. In 2011, HMIE reported that: "Staffing in the primary sector has improved but can still be difficult, especially with cover for absences." However staffing in secondary schools is more complex.

Universities are free to recruit as many student teachers of Gaelic as possible, although the Scottish Funding Council (SFC) notes that there can be difficulties recruiting students. To that end, they ask universities to promote part-time as well as full-time courses. Provision for 2015/16 student intake includes:

- 5 places at Aberdeen University
- 20 places at Strathclyde University
- 10 places at Edinburgh on their Gaelic and Primary Education MA
- 8 places to UHI for secondary Gaelic medium
- 60 places to UHI for primary both English and Gaelic medium

Ministerial guidance to the SFC for 2015/16 states:

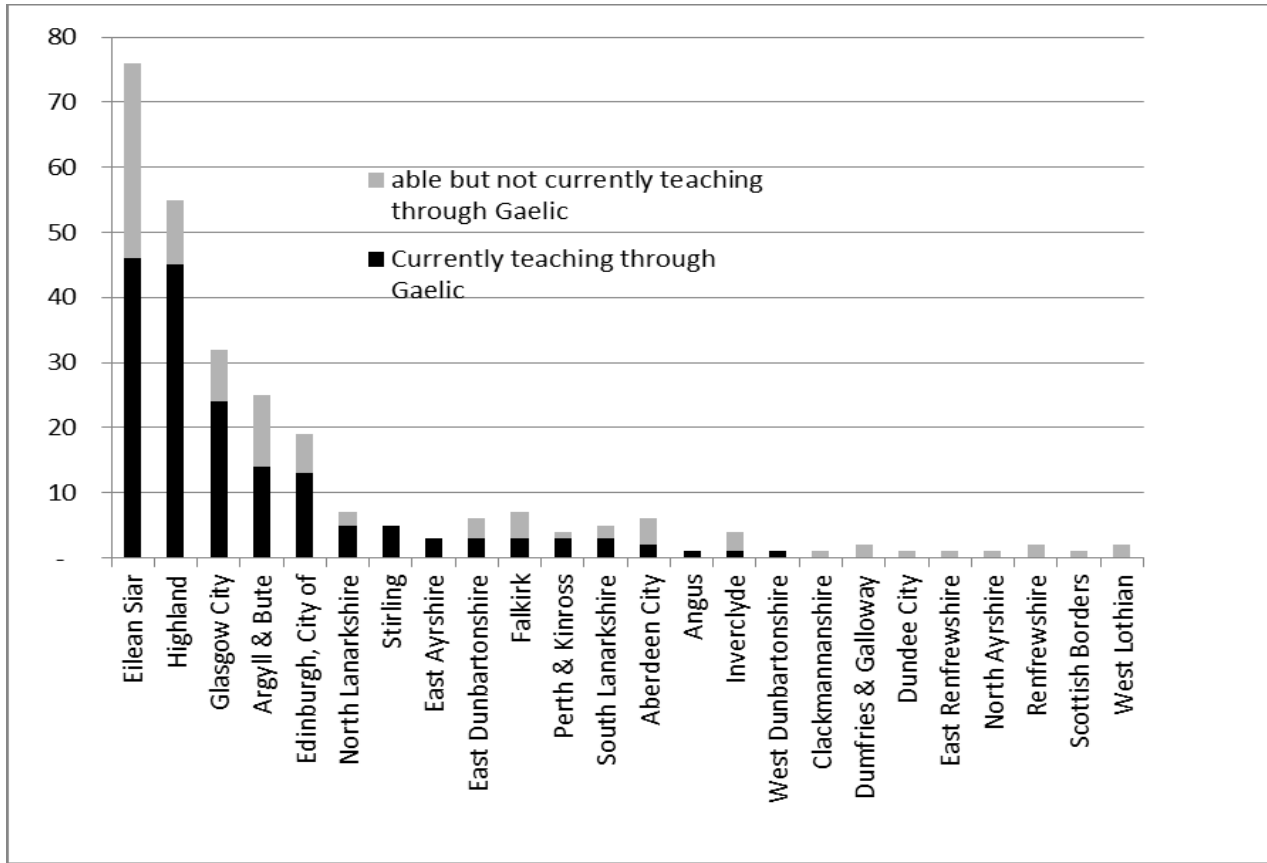
“The supply of teachers able to teach in the medium of Gaelic continues to be a priority for the Scottish Ministers. [...] We would not wish to see any diminution in either the positive action taken by SFC in allocating extra PGDE places at Strathclyde (20) and Aberdeen (5) university specifically to support primary Gaelic medium provision, or in SFC continuing to encourage all ITE (initial teacher education) providers to promote a positive approach in relation to applicants for all ITE courses by interviewing all who would be able to teach in Gaelic medium education.” (Scottish Funding Council 2015)

As mentioned, Bòrd na Gàidhlig have an ambitious target to double the number of P1 entrants to Gaelic medium primary education. It provides a [website](#) promoting Gaelic teaching and there is a [Gaelic Medium teacher education strategy](#) 2012-16. Amongst a range of actions is included extra funding for Gaelic speaking student teachers.

“Under this scheme, support is available with fees for those who are not eligible for support from SAAS (Student Awards Agency for Scotland). Bòrd na Gàidhlig also offers support with other costs associated with your course (e.g. books, travel, accommodation, etc). Up to £1,000 is available (dependent on the course and year of study) per student “([Bòrd na Gàidhlig online](#))

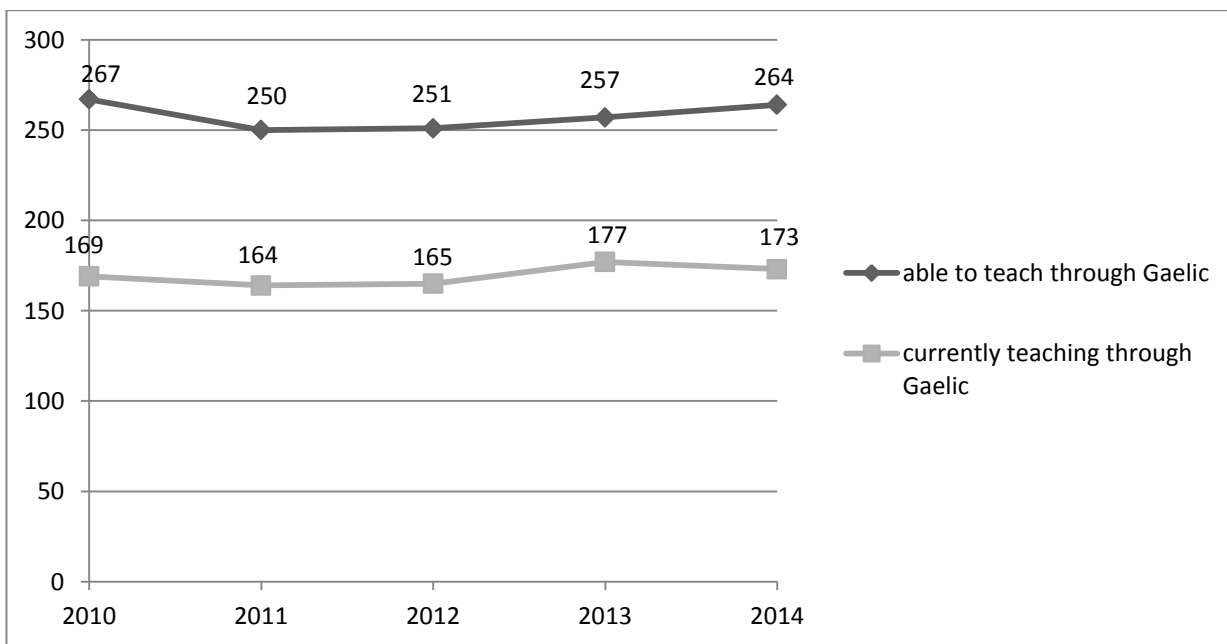
There are currently 264 primary school teachers able to teach through the medium of Gaelic. However, only 173 currently do so. This would suggest there is some capacity in the system to expand Gaelic medium provision, although it does depend on matching the location of supply and demand. Chart 6 below shows that there are some Gaelic teachers in areas which do not have Gaelic provision currently. Chart 7, shows that over the last five years, there has been relatively little change in the number of primary school teachers able or currently teaching through the medium of Gaelic.

**Chart 6: Primary school teachers able to teach through Gaelic, 2014**



(Scottish Government 2014d). The eight local authorities not listed have no primary teachers able to teach through Gaelic. These are: Aberdeenshire, East Lothian, Fife, Midlothian, Moray, Shetland, South Ayrshire and Orkney.

**Chart 7: Primary school teachers able to teach through Gaelic, 2010 – 2014. Scotland.**



(Scottish Government, 2010a, 2011, 2012c, 2013c, 2014d)

## Requirement to resource provision

The Scottish Government funds Stòrlann<sup>12</sup> (£530,000 annually) to provide curriculum resources and also provides the Gaelic Education specific grant of £4.482m<sup>13</sup>. Both of these have remained the same in cash terms over the last few years. (See table 1 in the financial memorandum).

An HMIE report in 2011 noted that Gaelic medium education could be constrained by a lack of resources:

“Commendable work has been done to develop resources through the medium of Gaelic by, for example *Stòrlann* and Learning and Teaching Scotland (LTS). There is, however, a shortage of magazines, novels and information and communications technology (ICT) resources available through the medium of Gaelic”

While the Bill doesn't require Gaelic medium education to be provided, it does require that, if it is provided, it is to be adequately resourced. Section 13(6) requires that the local authority must "take reasonable steps to ensure" that teachers and pupils have access to resources "reasonably necessary to adequately and effectively provide, receive and benefit from the education."

In existing legislation,<sup>14</sup> local authorities must ensure provision of 'adequate and efficient' school education. It could be inferred from this that the local authority must provide such resources as might reasonably be considered necessary, but this is not explicitly stated. It is interesting that such an explicit statement was considered necessary in this Bill.

In comparison, the approach in the additional support for learning legislation is slightly different. Under the Education (Additional Support for Learning) Act 2004 (the 2004 Act), local authorities must "make adequate and efficient provision for such additional support as it required" by a child with additional support needs. Rather than requiring reasonable resources, the 2004 Act creates a negative requirement - by not requiring the education authority to do anything which "would result in unreasonable public expenditure" (s.4, 2004 Act). Similarly, the requirement in the 1980 Act, that children should be educated in accordance with the wishes of their parents, is also qualified by not requiring unreasonable expenditure.<sup>15</sup>

---

<sup>12</sup> organisation charged with co-ordinating the production and distribution of Gaelic educational resources throughout Scotland.

<sup>13</sup> local authorities can apply for a share of this in order to support the costs of providing Gaelic education in their area.

<sup>14</sup> s.1, 1980 Act

<sup>15</sup> s.28, 1980 Act

# ADDITIONAL SUPPORT FOR LEARNING

## LEGISLATIVE CONTEXT

The 2004 Act is a complex piece of legislation which sets out the duties of education authorities to make provision for children with additional support needs. Parents and young people have certain rights. For example; rights to request an assessment, to make placing requests, to have access to dispute resolution mechanisms (including appeal), to receive information and to have their views taken into account. The policy memorandum summarises the rights afforded to parents and young people by the Act. The Code of Practice, 'Supporting Children's Learning' (Scottish Government 2010c) gives a detailed description of the legislation.

In the 2004 Act

- a 'child' is a person not over school age (i.e. aged under 16).
- a 'young person' is a person over school age, but under 18 years of age

## BILL PROVISIONS

The Schedule to the Bill modifies the 2004 Act. Most rights in the Act currently can be exercised by parents and by young people (16 and 17 year olds) whom the Education Authority consider do not lack capacity. The Bill would extend most, but not all, of those rights to children aged between 12 and 16, where the Education Authority, and in some cases the Additional Support Needs Tribunal for Scotland (ASNTS), consider that they have capacity. In doing so, it makes changes to the way in which the capacity of young people is assessed, and as with children, requires a 'best interests' test to be applied.

A consultation on the policy underpinning these provisions was held in 2014.

### Capacity of children

In general, children under 16 do not have legal capacity unless they are considered to have sufficient maturity and understanding. For example, in family law cases, a child aged 12 is presumed to be mature enough to give their views and have them taken into account by the court (Children (Scotland) Act 1995 s.11) and to appeal against decisions of a Children's Hearing. A child can consent to medical treatment, but only where the medical practitioner considers they have sufficient understanding (Age of Legal Capacity (Scotland) Act 1991, (the 1991 Act)).

#### *Bill provisions on children's capacity*

Unlike young people, children (i.e under 16 years) currently have very few rights under the 2004 Act. Those they do have generally relate to their views being taken into account. The Bill extends most of the remaining rights to children aged 12 and over, but only where the education authority make an assessment that they have sufficient maturity and understanding and that it is in their best interests to exercise the right. The Education Authority's decision on capacity can be appealed to the ASNTS (Schedule to the Bill inserting s.18)(3)(ea))

In addition, the Bill makes some provision for where child and parent rights conflict. If a child does not want to exercise a right, they cannot prevent a parent exercising that right on their behalf (s.3B).

There are two areas where rights under the 2004 Act are not extended to children. That is: placing requests and some issues related to disputes.

### *Placing Requests*

The current Bill does not extend the right to make a placing request to children with capacity. This reflects the outcome of the consultation exercise, and the policy memorandum states that:

“it is considered that an extension in relation to placing requests may cut across the duties placed on parents under s.30 of the 1980 Act to provide education for their child. It is not the intention to enable children with capacity to undermine the fulfilment of this duty by parents” (PM para 66).

This raises the question of whether the right to make a placing request would impinge on parents’ rights in a way that exercising the other rights would not. A placing request is a right to choose which school a child attends. Any parent of a school age child can make a placing request, although the law is slightly different if the child has additional support needs. Section 30 of the 1980 Act requires parents to provide education for their children, either by attending public school or by other means. This duty is therefore explicitly related to attendance at a school, rather than broader issues about how education is provided.

All school age children have a right to be provided with school education by the local authority (s.1, 2000 Act) and to have their views taken into account in how the education authority provides that education (s.2, 2000 Act). They do not have the right to make placing requests. If rights to additional support needs placing requests were extended to children, then that would give them a right that other school children do not have.

Rights under the 2004 Act which are extended to children by this Bill, include the right to:

- appeal to the Additional Support Needs Tribunal on a wide range of issues related to co-ordinated support plans.
- request a review of a Co-ordinated Support Plan

Both of these could include disagreements about the type of school education provided to a child where it is conceivable that the child and parent might have different views.

### *Support and Dispute resolution*

The Bill extends to children the right to have a supporter or advocate present in discussions with the local authority. It does not extend to them the existing provisions for independent mediation<sup>16</sup> or advocacy for references to the ASNTS. Instead, the Bill establishes a free ‘support service’ which can be used by children in relation to any of their rights under the 2004 Act (s.31A). The service will provide, free of charge:

- advice and information including legal advice
- a person to be present at discussion with the education authority
- a person to conduct discussions with the education authority
- an advocacy service for references to the ASNTS

The table below compares the current rights for young people, parents and children.

---

<sup>16</sup> although children’s views must be taken into account

**Table 2: Mediation and advocacy for additional support for learning**

	<b>Young people and parents</b>	<b>Children (<i>new provision in the Bill</i>)</b>
Discussion with Education Authority	Right to a have supporter present in discussions and to have an advocate (person to conduct discussion make representations on their behalf). Education authority does not have to pay for this. s.14, 2004 Act	Right to a have supporter present in discussions and to have an advocate (person to conduct discussion make representations on their behalf). Education authority does not have to pay for this. (s.14 2004 Act as amended by the Bill)
Disagreement with Education Authority	Education Authority must provide independent mediation, but might be charge for this. s.15, 2004 Act	Scottish Ministers must establish a free Support Service, to provide: <ul style="list-style-type: none"> <li>• advice (incl. legal advice)</li> <li>• assistance and information</li> <li>• supporter present in discussions,</li> <li>• person to conduct discussions or make representations</li> <li>• advocacy for ASNTS references (conduct discussion or make representations)</li> </ul>
Reference to ASNTS	Scottish Ministers must provide advocacy service, free of charge. Advocate can conduct discussions or make representations on a person's behalf. s.14A, 2004 Act	(proposed s.31A, 2004 Act)

The Advocacy service for the tribunal is currently provided by [Lets Talk ASN](#), a partnership between Kindred and Govan Law Centre. The financial memorandum states that, due to potential conflicts of interest, a different organisation will deliver children's advocacy.

Local authorities are required to provide independent mediation services for young people and parents. According to [Enquire](#), current providers are:

- Children 1<sup>st</sup>
- Scottish Mediation Network
- Parent to Parent
- Common Ground, and
- Resolve: ASL

The Scottish Government also funds an information service, Enquire, which is for parents and young people, although this is not required by statute.

Following the implementation of the Bill's proposals, children, young people and parents would have the right to have a supporter or advocate present in local authority discussions. However, for children this will be provided free of charge through the support service.

Children will have a statutory right to a free advice and information service, whereas for young people and parents, this remains a non-statutory service.

Young people and parents already have a right to independent mediation to help resolve issues with the local authority. While specific mediation services are not extended to children, the local authority will have to take children's views into account in relation to any mediation that relates to them.

## Capacity of young persons

In general, a person aged 16 or over has legal capacity to enter into 'transactions'; a term defined broadly in the relevant legislation (the 1991 Act). However, there are some protections for young people aged 16 and 17. Parents have a responsibility to provide guidance until a young person reaches the age of 18 (Children (Scotland) Act 1995) and some legal transactions can be set aside in some circumstances. However, a child can consent or refuse medical treatment (1991 Act, s.2), 16 year olds can marry and a Bill has been introduced to lower the voting age to 16.

Currently the 2004 Act provides that the rights afforded to young people are generally with the proviso that they transfer to the parents "where the education authority are satisfied that the young person lacks capacity." A young person lacks capacity if they are incapable by reason of; mental illness, developmental disorder or learning disability or inability to communicate due to physical disability where that cannot be made good by human or mechanical aid (s.3, 2004 Act).

### *Bill provisions on young persons' capacity*

The Bill adds to the definition of when a young person lacks capacity: "a matter related to having additional support needs". This is a significant addition because additional support needs is a very broad concept, defined as:

"where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education" (s.1, 2004Act).

This would appear to broaden out the circumstances in which a young person (16 and 17 year olds) might be assessed as lacking capacity.

The requirements for assessment are much more explicit than in the current legislation and add a test of 'best interests'. The Bill would require that:

- the young person inform the local authority that they wish to exercise a right,
- the local authority consider that the young person has capacity, and
- the local authority consider exercising that right to be in the young person's best interests (new s.3A(3)).

The Education Authority's decision can be appealed to the ASNTS (Schedule to the Bill inserting s.18)(3)(ea)) who also make an assessment of capacity and best interests.

This change in emphasis and introduction of a 'best interests' test for 16 and 17 year olds raises the issue of whether this is removing some of the existing autonomy that young people currently have to exercise their rights under the 2004 Act. Another way of looking at it would be that it provides extra protection. The crux of the issue is how best to achieve the difficult balance between protection and autonomy for young people.

A test of 'best interests' is different from a test of capacity. Although not a direct analogy, the issue is addressed in the following extract describing the right of a child to consent to medical treatment:

"Capacity to consent is a purely factual question of the child's ability to understand, this to be determined by the medical practitioner attending the child. There is no requirement that the proposed procedure or treatment be in the child's best interests or indeed that it in any way enhances his or her welfare. This is logical: once the child understands, he or she will understand the risks involved and will be able to determine him or herself whether or not to



take these risks which the law should allow him or her the opportunity to do” (Wilkinson and Norrie, 2013).

In very broad terms, a person with capacity has the right to do something but it doesn't have to be good for them. A 'best interests' test would mean that a person couldn't do something unless someone else thought it was good for them.

## SECTION 70 COMPLAINTS

Section 70 of the Education (Scotland) Act 1980 enables a person to complain to Scottish Ministers that an education authority has failed to undertake a statutory education duty. Ministers can order the education authority to perform the function by a certain date. If they do not do so, then the Court of Session may order them to perform the duty. The Faculty of Advocates describe the provision as a useful last resort:

“The enforcement powers of section 70 may not have been used, but this does not mean that they are not important or efficacious. The existence of a 'last resort' power means that authorities will know that they must comply with statutory duties” (Faculty of Advocates, 2014)

A [freedom of information request](#) (Trotter, R.) found that there were three complaints made to Ministers under s.70 in 2013. These related to school closures, additional support for learning and employment of children. The financial memorandum notes that, over the last two years, only two s.70 complaints were made in relation to additional support for learning. Neither of these related to the ASNTS (FM para 25).

## BILL PROVISIONS ON S.70 COMPLAINTS

A consultation proposed replacing s.70 with provision by the Scottish Public Sector Ombudsman. [Responses to the consultation](#) (Scottish Government 2014e) were in general not in favour of this, and the Bill proposals are instead to prevent s.70 being used for issues that could be appealed to the Additional Support Needs Tribunal.

Appeals to the ASNTS can be further appealed to the Court of Session, (s.21, 2004 Act). Similarly, a failure of a local authority to perform a statutory function within the time limit set by Scottish Ministers, can be referred to the Court of Session (s.70, 1980 Act).

The Bill restricts the type of complaints that can be considered by Ministers under s.70 Education (Scotland) Act 1980 and provides for regulations to further specify the complaints process.

Although not on the face of the Bill, the policy memorandum refers to the intention of introducing a statutory process for making s.70 complaints. The policy memorandum describes the current, non-statutory process as “time consuming”, requiring investigation by Education Scotland. The current form for making complaints is available [here](#). The Bill includes regulation making powers, which the Policy Memorandum indicates will be used to create a statutory process.

## CHIEF EDUCATION OFFICER

There used to be a requirement to have a chief education officer but this was repealed in 1996. Section 78 Education (Scotland) Act 1980 used to require that:

“The education authority shall employ a director of education, who shall be the chief education officer of the authority and shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit.”

This was repealed by Schedule 14 of the Local Government etc (Scotland) Act 1994, which dealt mainly with the local government re-organisation. The explanatory notes to the current Bill state that the provision was removed “as it was considered that this should be left to the discretion of the new unitary authorities.”

Councils are currently required by law to designate senior managers to be Head of Paid Service, Monitoring Officer, Chief Financial Officer and Chief Social Work Officer (Improvement Service, 2012).

The Head of Paid Service (the Chief Executive) is the principal policy adviser and primary manager of the council. The Chief Financial Officer is responsible for the proper administration of the financial affairs of the council. The Monitoring Officer works with elected members to provide guidance and support to help them fulfil their role.

The Chief Social Work Officer provides professional advice on the council’s social work function. They must be a qualified social worker<sup>17</sup> and certain legal decisions can only be taken by them. For example, it is the Chief Social Worker who, together with the manager of the accommodation, decides whether a child must be kept in secure accommodation (Children’s Hearings (Scotland) Act 2011, s151(3)). The Scottish Government published guidance on the [role of the Chief Social Work Officer](#) in 2010. This described the role of the Chief Social Work Officer as one which:

enhances professional leadership and accountability, but provides a key support and added value to a local authority and its partners in delivering positive outcomes locally.

## BILL PROVISIONS ON CHIEF EDUCATION OFFICER

Section 20 of the Bill requires Education Authorities to appoint a ‘Chief Education Officer’ with experience and qualifications as set out by Scottish Ministers in regulations. (The previous provision did not include qualification requirements).

The Bill does not propose giving the Chief Education Officer any particular statutory function. Rather, the policy memorandum describes the role as providing professional advice (PM para 85). It refers to the “increasingly complex functions” of education authorities and the “high degree of professional knowledge” required (para 87).

The provision has not been subject to formal consultation, although the policy memorandum notes that informal discussions have taken place with ADES, COSLA and “other key partners.” When the Bill was published, COSLA commented that: “We will question the need for a chief education official when councils already employ extremely dedicated and well qualified senior education staff” (COSLA, personal communication 2015).

---

<sup>17</sup> 1996 No. 515 (S.49) The [Qualifications of Chief Social Work Officers \(Scotland\) Regulations 1996](#)

# TEACHER REGISTRATION

Teachers in local authority schools must be registered with the General Teaching Council Scotland (GTCS). Teachers in independent and grant aided schools can, but do not have to be registered.

## BILL PROVISIONS ON TEACHER REGISTRATION

The Explanatory Notes state that the policy intention is to require all teachers in independent and grant-aided schools to be registered with the GTCS. This is not on the face of the Bill, but is to be brought in through regulations. There already exist regulatory powers that could require GTCS registration. However, the Bill amends the scope of these existing powers so that the policy can be introduced in a phased way.

There has been no public consultation on this policy, although the Policy Memorandum refers to discussions with the managers of the grant aided schools and the director of the Scottish Council of Independent Schools. The business impact assessment includes the views of a few independent schools which indicates a wide range of opinion:

- Aspire Education (special school) – already require GTCS registration
- Aberdeen International School: “The impact would be devastating to the excellent international programme we have established here in Aberdeen.”
- St Leonard’s School Fife. “A staged introduction would be essential”
- Kibble Education and Care (special school) Most teaching staff already GTCS registered
- Strathallan School, Perthshire: much depends on how flexible the GTCS would be in recognising different qualifications

## NUMBERS OF UNREGISTERED TEACHERS

The Policy Memorandum notes that of the 8 grant aided schools, 1 (Jordanhill) is already required to employ only GTCS registered teachers and in the other 7, there are only 2 unregistered teachers (PM para 95-96) The [Scottish Government’s Business impact assessment](#) (2015) estimates that 732 (18%) teachers in independent schools were not GTCS registered as at September 2013. It states that:

“It is anticipated that around 240 of those teachers may find it more difficult to meet the GTCS criteria. Detailed discussions with the independent and grant aided schools sector as to the specific criteria and the timescales for introduction will take place; this will allow for transitional arrangements in respect of teachers who are currently working in independent and grant aided schools to achieve the required standard to obtain GTCS registration.”

## REGISTRATION REQUIREMENTS

In order to register with the GTCS, a teacher must have a recognised teaching qualification and also meet the ‘standard for registration’ established by the GTCS. In order to maintain registration, there are newly introduced requirements for [‘professional update’](#) This involves:

- annual update of details with GTCS
- engagement in ongoing professional learning
- self-evaluation against the GTCS Professional Standards
- discussion as part of professional review and development process
- maintain a professional learning record

- every five years, confirm the above with the GTCS.

## **GUARDIANS**

The Children and Young People (Scotland) Act 2014 (the 2014 Act) provides for early learning and care for certain vulnerable two year olds – primarily those at risk of being ‘looked after’. Subsequent regulations have extended provision to those whose parents receive out of work benefits. Further regulations will extend provision to those who would, if they were at school, be eligible for free school meals.

Under s.7(1) of the 1995 Act a child’s parent may appoint a person to be guardian of the child in the event of the parent’s death. Currently, any two year olds in this situation are only eligible for free early learning and childcare if they are at risk of becoming ‘looked after’<sup>18</sup>.

## **BILL PROVISIONS ON GUARDIANS**

The Bill would extend the provision of free early learning and care to those two year olds who have a guardian but are not at risk of becoming ‘looked after’ (s.23 amending s.47 of the 2014 Act).

This is likely to affect an extremely small number of children. The provision would benefit those two year olds whose parents have died, but who are neither at risk of becoming looked after, nor on a very low income.

A guardian can also be appointed by the court under s.11(2)(h) of the 1995 Act where such an appointment would be in the best interests of the child. However, these guardians are deemed ‘kinship carers’ under the 2014 Act and any two year olds they look after are therefore already entitled to free early learning and care under the Act.

---

<sup>18</sup> ‘looked after’ under the Children (Scotland) Act 1995 would include situations such as foster care, residential care and some forms of kinship care.

## SOURCES

1911 Census (online) Available at:

[http://www.visionofbritain.org.uk/census/SRC\\_P/10/S1911POP](http://www.visionofbritain.org.uk/census/SRC_P/10/S1911POP)

Bord na Gaidhlig. [online] *Thig Gam Theagasg/ Gaelic Teaching* Available at:

<http://www.teagasg.com/en/>

Bord na Gaidhlig. (2012a). *National Gaelic language plan 2012-17*. Available at:

<http://www.gaidhlig.org.uk/bord/wp-content/uploads/sites/2/National-Gaelic-Language-Plan-2012-2017.pdf>

Bord na Gaidhlig. (2012b) *Gaelic medium teacher education strategy*. 2013-17. Available at:

<http://www.gaidhlig.org.uk/bord/wp-content/uploads/sites/2/National-Gaelic-Education-Strategy-Teacher-Education.pdf>

Bord na Gaidhlig. (2014) *National Education Strategy*. Available at:

<http://www.gaidhlig.org.uk/bord/wp-content/uploads/sites/2/National-Gaelic-Education-Strategy-Over-arching.pdf>

Care Inspectorate. (2013) *Childcare statistics 2013*. Dundee: Care Inspectorate. Available at:

[http://www.scswis.com/index.php?option=com\\_docman&task=cat\\_view&gid=467&Itemid=378](http://www.scswis.com/index.php?option=com_docman&task=cat_view&gid=467&Itemid=378)

Council of Europe. (2014) *Recommendations of the Committee of Minister on the application of the European Charter for Regional and Minority Languages by the United Kingdom*. CoE: Strasbourg Available at

[http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec4\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec4_en.pdf)

*Education (Scotland) Bill [as introduced] Session 4 (2015)*. SP Bill 64. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Education%20\(Scotland\)%20Bill/b64s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Education%20(Scotland)%20Bill/b64s4-introd.pdf)

*Education (Scotland) Bill. Explanatory notes and other accompanying documents) Session 4 (2015)*. SP Bill 64-EN. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Education%20\(Scotland\)%20Bill/b64s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Education%20(Scotland)%20Bill/b64s4-introd.pdf)

*Education (Scotland) Bill. Policy memorandum. Session 4 (2015)*. SP Bill 64-PM. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Education%20\(Scotland\)%20Bill/b64s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Education%20(Scotland)%20Bill/b64s4-introd-pm.pdf)

*Equality Bill 2009 [as introduced Bill 85 of 2009] Explanatory Notes*. London; House of Commons. Available at;

<http://www.publications.parliament.uk/pa/cm200809/cmbills/085/voli/2009085i.pdf>

Faculty of Advocates. (2014) *Response by the faculty of advocates to consultation on extending the rights of children with capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 and repealing section 70 of the Education (Scotland) Act 1980*. Available at:

<http://www.gov.scot/Resource/0044/00448516.pdf>

The Guardian. 17 November 2010. *Theresa May scraps legal requirement to reduce inequality*. Manchester: the Guardian. Available at:

<http://www.theguardian.com/society/2010/nov/17/theresa-may-scraps-legal-requirement-inequality>

GTCS. (undated) *Teaching in Gaelic medium education. Recommendations for change*.

Edinburgh: GTCS. Available at: [http://www.gtcs.org.uk/web/FILES/FormUploads/teaching-in-gaelic-medium-education1659\\_221.pdf](http://www.gtcs.org.uk/web/FILES/FormUploads/teaching-in-gaelic-medium-education1659_221.pdf)

GTCS. (online) Professional Update. Available at: <http://www.gtcs.org.uk/professional-update>

HM Government. (2015) *Scotland in the United Kingdom: An Enduring Settlement*. London: HM Government. Available at: <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>

HMIe. (2011) *Gaelic Education: Building on the successes, addressing the barriers*. HMIe: Livingston. Available at: [http://www.educationscotland.gov.uk/Images/gebse\\_tcm4-712947.pdf](http://www.educationscotland.gov.uk/Images/gebse_tcm4-712947.pdf)

Improvement Service. (2012) *2012 Councillor induction pack. Notebook 9: useful information and FAQs*. Available at: [http://www.improvementservice.org.uk/assets/em-notebook-9---cosla\\_web.pdf](http://www.improvementservice.org.uk/assets/em-notebook-9---cosla_web.pdf)

National Records of Scotland. (2013) *2011 Census: Key results on population, ethnicity, identity, language, religion, health, housing and accommodation in Scotland – Release 2A*. Edinburgh: National Records Scotland. Available at: <http://www.scotlandscensus.gov.uk/documents/censusresults/release2a/StatsBulletin2A.pdf>

O'Hanlon, F., Paterson, L., Ormston, R. and Reid, S. (2013) *Public Attitudes to Gaelic in Scotland*. ScotCen: Edinburgh: Available at: <http://www.natcen.ac.uk/media/176045/public-attitudes-to-gaelic-in-scotland-2012.pdf>

Paterson, L., O'Hanlon, F., Ormston, R., and Reid, S. (2014) *Public attitudes to Gaelic and the debate about Scottish Autonomy*. in *Regional and Federal Studies*. Available at: [http://www.centreonconstitutionalchange.ac.uk/sites/default/files/papers/Gaelic\\_and\\_the\\_constitutional\\_debate\\_corrected.pdf](http://www.centreonconstitutionalchange.ac.uk/sites/default/files/papers/Gaelic_and_the_constitutional_debate_corrected.pdf)

Scottish Executive. (1999) *Social Justice – a Scotland where everyone matters*. Edinburgh: Scottish Executive. Available at: <http://www.gov.scot/Publications/1999/11/SocialJustice>

Scottish Executive. (2003) *National priorities in education. Performance report 2003*. Edinburgh: Scottish Executive. Available at: <http://www.gov.scot/Publications/2003/12/18654/30569>

Scottish Funding Council. (2015) *Intake Targets and funded places for the controlled subject of initial teacher education in universities for academic year 2015-16*. SFC/AN/2015. Edinburgh: Scottish Funding Council. Available at: <http://www.sfc.ac.uk/communications/Announcements/2015/SFCAN042015.aspx>

Scottish Government. (online) *What are we doing to raise attainment?* Available at: <http://www.gov.scot/Topics/Education/Schools/Raisingeducationalattainment/Whatarewedoingaboutit>

Scottish Government. (2009) *UK Equality Bill; socio-economic duty – analysis of consultation responses*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2009/12/18150933/0>

Scottish Government. (2010a) *Teacher census supplementary data 2010*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/teachersupplementarydata>

Scottish Government. (2010b) *The role of the chief social work officers*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2010/01/27154047/0>

Scottish Government. (2010c) *Supporting children's learning code of practice*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2011/04/04090720/0>

Scottish Government. (2011) *Teacher census supplementary data 2011*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/teachcensus2011>

Scottish Government. (2012a) *Pupil Census 2011 supplementary data*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/suppupils2011>

- Scottish Government. (2012b) *Pupil Census 2012 supplementary data*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/dspupcensus/pupcensus2012>
- Scottish Government. (2012c) *Teacher census supplementary data 2012*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/Summarystatsforschools/teachcensus2012>
- Scottish Government. (2013a) *Pisa 2012: Highlights from Scotland's results*. Edinburgh: Scottish Government. Available at; <http://www.gov.scot/Publications/2013/12/4338>
- Scottish Government. (2013b) *Pupil Census 2013 supplementary data*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/dspupcensus/pupcensus2013>
- Scottish Government. (2013c) *Teacher census supplementary data 2013*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/teachcenssuppdata/teachcensus2013>
- Scottish Government (2014a) *Attainment and leaver destinations supplementary data 2012/13*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/leavedestla/follleavedestat/attainmentandleavers1213>
- Scottish Government. (2014b) *Consultation on Gaelic medium education bill: Analysis of written responses*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2014/12/2395>
- Scottish Government. (2014c) *Pupil Census 2014 supplementary data*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/dspupcensus/dspupcensus>
- Scottish Government. (2014d) *Teacher census supplementary data 2014*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/teachcenssuppdata/teachcensus2014>
- Scottish Government. (2014e) *Analysis report: Extending the rights of children with capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 and repealing section 70 of the Education (Scotland) Act 1980*. Edinburgh: Scottish Government. Available at: <http://dera.ioe.ac.uk/19101/7/00451485.pdf>
- Scottish Government. (2015) *Education (Scotland) Bill 2015. Business and Regulatory Impact Assessment*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Resource/0047/00473534.pdf>
- SNP. (2011) *Election Manifesto*. Edinburgh: SNP. Available at: [http://votesnp.com/campaigns/SNP\\_Manifesto\\_2011\\_lowRes.pdf](http://votesnp.com/campaigns/SNP_Manifesto_2011_lowRes.pdf)
- Trotter, R. (2014) *Response to freedom of information request. Response dated 13 January 2014*. Available at: <https://www.whatdotheyknow.com/request/189006/response/470230/attach/2/FoI%20Response%201301959.pdf>
- Wilkinson, A and Norrie, K.(2013) *The law relating to parent and child in Scotland*. 3<sup>rd</sup> ed. Edinburgh: Greens.

## **Legislation**

Children and Young People (Scotland) Act 2014

Children (Scotland) Act 1995

Education (Additional Support for Learning)(Scotland) Act 2004

Education (National Priorities) (Scotland) Order SSI 2000/443

Education (Scotland) Act 1980

Equality Act 2010

Gaelic Language (Scotland) Act 2005

Local Government (Scotland) Act 1994

Qualifications of Chief Social Work Officers (Scotland) Regulations SI 1996/515

Schools (Consultation) (Scotland) Act 2010

Standards in Scotland's Schools etc Act 2000



THIS PAGE IS INTENTIONALLY BLANK.



# SPICe

The Information Centre

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Camilla Kidner on extension 85087 or email [Camilla.kidner@scottish.parliament.uk](mailto:Camilla.kidner@scottish.parliament.uk)

Members of the public or external organisations may comment on this briefing by emailing us at [SPICe@scottish.parliament.uk](mailto:SPICe@scottish.parliament.uk). However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk).

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH 99 1SP

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)