included, engaged and involved

part 2: a positive approach to managing school exclusions

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SCOTTISH GOVERNMENT

included, engaged and involved

part 2: a positive approach to managing school exclusions

The Scottish Government, Edinburgh, 2011

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Ministerial Foreword

We want to develop peaceful, positive and inclusive learning environments where all our children and young people benefit fully from *Curriculum for Excellence*. We want children and young people to be safe, included, responsible, respected, active, nurtured, achieving and healthy in order to grow, develop and become successful learners, confident individuals, effective contributors and responsible citizens. And we want to improve outcomes for those children and young people at risk of exclusion. I am therefore pleased to present to you *Included, Engaged and Involved part 2: a positive approach to managing school exclusions*, to support everyone involved in the delivery of *Curriculum for Excellence* to address the challenging question of how, within this context, we keep all learners included, engaged and involved and how we prevent the need to exclude a learner from their learning environment, however temporary.

Under the values of *Curriculum for Excellence* of wisdom, justice, compassion and integrity, the curriculum must be inclusive, be a stimulus for personal achievement and, through the broadening of experience of the world, be an encouragement towards informed and responsible citizenship. It provides the best opportunity we have to make sure learning is personalised and supported so that everyone has opportunities to move into positive and sustained destinations beyond school, with skills for life and work. It also provides an opportunity to focus on the social, emotional, mental and physical wellbeing of every learner as a requirement for learning.

The development of this guidance through the Included, Engaged and Involved Steering Group and wider consultation has generated extremely constructive ideas and discussion. It has provided an opportunity to look at the very real improvements local authorities, learning establishments and all their partners are making to promote positive relationships and behaviour; and to support learners with additional social, emotional and behavioural needs. The responses to the consultation have reflected the values above, as well as identifying complex issues that we need to continue to address in the future.

I hope this guidance is a useful and helpful resource for local authorities, learning establishments, and their partners involved in delivering *Curriculum for Excellence* and supporting children, young people and families. It is not the end of the story. We will continue to support implementation whether through training, professional development, promoting good practice, and to continue addressing the complex challenges for the most vulnerable children, young people and their families.

Angela Constance MSP
Minister for Skills and Lifelong Learning

1. Introduction

1 The purpose of this guidance is to clarify national policy on exclusion from schools in the context of national and local government responsibilities and aims for children and young people. The overarching aim is to support whole school communities, learning establishments and their partners to keep **all** learners fully included, engaged and involved in their education, wherever this takes place; and, to improve outcomes for those learners at risk of exclusion. This is based upon a shared approach of agencies working together, and responding to the needs of learners early and effectively, in line with the principles of *Getting it Right for Every Child (GIRFEC)*.

2 The entitlements under *Curriculum for Excellence* including: a coherent and inclusive curriculum; a broad general education including planned and personalised experiences; a continuous focus on literacy, numeracy, and health and wellbeing as a responsibility for all staff; support for all learners; and support in moving on to positive destinations provide the best opportunity for learners at risk of exclusion to benefit from *Curriculum for Excellence* and gain the skills all learners need for learning, life and work.

This document is part 2 of guidance focusing on including, engaging and involving learners in their education. *Included, Engaged and Involved: part 1 attendance and absence in Scottish schools,*[1] 2007 deals with the promotion of attendance and management of absence in schools.

Background

3 In Scotland, the power exists to exclude children and young people from school where it is considered that in all the circumstances to allow the child or young person to continue attendance at school would be seriously detrimental to order and discipline in the school or the educational wellbeing of the learners there. Exclusion is therefore rooted in the behaviour policies of schools and local authorities, where it has traditionally been seen as both the ultimate sanction and a deterrent to serious indiscipline, in the context of the wellbeing of the whole school community.

4 The power to exclude rests with local authorities under regulation 4 of the Schools General (Scotland) Regulations 1975 as amended and as such, it is the responsibility of local authorities to devise and implement policies and procedures on exclusion. Their role is strategic, enabling, and supportive. In addition, section 14(3) of the Education (Scotland) Act 1980 places a duty on education authorities to make alternative education provision when a learner is excluded.

1 Included, Engaged and Involved: part 1 attendance and absence in Scottish schools, 2007, Scottish Government

5 It is open to an education authority to devolve power to exclude to senior management within a school and in general, local authorities devolve decision making on exclusions to school headteachers and senior management. 99% of exclusions in Scotland are temporary; 1% of exclusions are removal from register. The local authority remains responsible for the education of **all** children and young people within their establishments, including those who have been removed from the register of one school.

6 Exclusion is usually a short-term measure with the vast majority of exclusions (90%) for less than one week and the average length of exclusion 3 days.[2]

7 The legislative framework for longer-term approaches to additional support needs including behaviour are set out in the Standards in Scotland's Schools etc Act 2000 and the Additional Support for Learning Acts 2004 and 2009. There is a presumption for mainstreaming, but under exceptional circumstances, learners can be educated where their needs are best met, e.g. specialist units within schools or extended support provision or specialist schools. Standards in Scotland's Schools etc Act 2000 section 15 states that children will be educated in mainstream schools unless, in exceptional circumstances, placement would:

- Not be suited to the ability or aptitude of the child;
- Be incompatible with the provision of efficient education for the children with whom the child would be educated; or
- Would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.

Picture of exclusion in Scotland's schools

8 The *Behaviour in Scottish Schools Research*[3] 2009 indicated that 3% of primary headteachers surveyed frequently used, and 16% sometimes used, exclusion; while 29% of secondary headteachers surveyed frequently used, and 48% sometimes used, exclusion. From 2007/08 to 2009/10 the number of exclusions has dropped by 33%. Figures published in December 2010 were at their lowest since national statistics were first collated in 1998/99. Less than 1% of all exclusions are removal from register. Removals from register have also dropped significantly by 60% across the same period and in 2009/10 dropped to under 67 exclusions.

2 Summary Statistics for Schools in Scotland, No.1 - 2010 Edition, Scottish Government National Statistics Publication

3 Behaviour in Scottish Schools Research November 2009, Scottish Government Social Research, University of Edinburgh

9 Numbers of learners more at risk of exclusion also dropped, but the gaps between those without and with risk factors remained. Annual national statistics on exclusions from schools indicate that boys; learners who are Looked After; have additional support needs; and/or are from areas of deprivation are more likely to be excluded. Exclusions peak at S3. Further details on the national picture of exclusion across Scotland is attached at Annex A.

10 Reasons for exclusions range from general or persistent disobedience to verbal abuse, physical abuse and substance abuse. Nationally, 29 reasons are currently recorded as reasons for exclusion, with a further 12 reasons split between incidents against staff or incidents against learners.[4]

11 The *Edinburgh Study of Youth Transitions and Crime*,[5] a longitudinal tracking study, found that one of the most important predictors of criminal record status was school exclusion by the third year of secondary education. Those in this category were almost two-and-a-half times more likely than those not excluded in this period to have a criminal record by age 19. The reasons for, and impact of, exclusion go far beyond engagement with education. Exclusion from school is not in itself a cause of further difficulties in later life, but it is an indicator of other issues which contribute to anti-social behaviour.

12 The drop in exclusions represents significant, concerted efforts by schools and local authorities to implement a range of approaches and solutions to positively engage young people in their education and improve relationships and behaviour. It is essential that this guidance and all key stakeholders consider what can be learned and applied from these reductions in exclusions to improve the inclusion of those most at risk of exclusion. This includes the breadth, flexibility and personalisation afforded by *Curriculum for Excellence*,[6] as well as an entitlement to support.

13 This guidance provides an opportunity to reassess and realign the use of exclusion in schools with current policy and best practice. This includes a focus on prevention, early intervention and response to individual need, incorporating staged interventions.

4 Summary Statistics for Schools in Scotland, No.1 - 2010 Edition, Scottish Government National Statistics Publication

5 Criminal Justice Transitions (no 14) – Edinburgh Study of Youth Transitions and Crime

6 http://www.ltscotland.org.uk/understandingthecurriculum/

2. Purpose and Structure of Guidance

14 This guidance does two things:

- summarises legislation and procedures on exclusions and other relevant legislation
- outlines policy and practice on exclusions in the context of current joint aims and priorities for children and young people including the national outcomes, *Curriculum for Excellence* and *GIRFEC*.

15 This guidance is therefore structured as follows:

- summary of legislation and procedures
- policy context
- key principles
- policy and good practice on:
  - prevention, early intervention, and staged intervention
  - consideration of individual circumstances
  - decision making, managing exclusions, and re-engagement
- annual national statistics on exclusions from schools – key findings (Annex A)
- Included Engaged and Involved Steering Group (Annex B)
- approaches to improving relationships and promoting positive behaviour (Annex C).

16 This guidance is aimed at all staff, practitioners, stakeholders and agencies involved in keeping learners included, engaged and involved in their education including all the community planning partners beyond schools. The scope covers the compulsory years of education from 5 to 16 years and young people up to 18, although policy from very early years; and transitions into destinations of further education, training and employment are integral.

17 Although the law in Scotland on exclusion in schools does apply to nursery schools under the management of education authorities, the use of exclusion in such nursery schools would be unusual. Staff in nursery schools will find this guidance useful as a guide to good practice in promoting positive behaviour and prevention of serious situations developing which may act as a barrier to the full engagement of very young children.

18 This guidance also covers special schools managed by local authorities. The 1975 regulations do not apply to pupils attending independent or grant-aided special schools (GASS) even if their place(s) had been purchased by an education authority. It is possible that an education authority might, as part of the contract for the purchase of a place at an independent or GASS, require that specific procedures, including procedures similar to those in the 1975 Regulations, be first gone through before an education authority funded pupil could be excluded, but that would be a matter of contract and not because the 1975 Regulations apply.

19 *Curriculum for Excellence* is delivered in a range of learning establishments including schools and colleges, and by a range of providers including the third sector working in partnership to plan learning. Scotland's 43 colleges of further and higher education provide flexible learning to people at all stages of their learning lives, including 35% of 16-year-old students and 38% of 17-year-old students.[7] School college activities include part-time vocational programmes in S3 and S4; and taster or short-term courses in S1 and S2. Colleges also include a significant number of disaffected young people in school-college programmes. While colleges have their own exclusion policies and procedures, this guidance is also relevant to colleges in terms of their promotion of positive relationships and behaviour; their approach to exclusion; and their work in partnership with schools with learners at risk of disengagement and exclusion.

Terminology

20 The term schools and learning establishments includes colleges, placements, and extended provision provided by partners. Similarly, the terms teacher or staff could also include college lecturers or practitioners, community learning and development staff, or other third sector providers. References to *Curriculum for Excellence* can be taken to apply wherever learning takes place.

21 The term exclusion refers to an exclusion for a fixed period. The term 'removal from the register' refers to an exclusion which is permanent.

22 The term learner is used to apply to all children and young people in education. There are also references to children and young people in their broader context beyond learning establishments.

23 The term parent[8] or parent/carers includes those with parental responsibility, including those providing a foster or residential placement, or the local authority where full parental responsibility rests with them.

7 National Issues Local Solutions Key Facts 2009, Scotland's Colleges

8 "Parent" is defined in section 135(1) of the Education (Scotland) Act 1980 as including "guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of, a child or young person".

Status of document

24 This document replaces *circular 8/03 Exclusion from School*.

25 This guidance has been developed under the auspices of the *Included, Engaged and Involved Steering Group* (Annex B). It is issued by the Scottish Government. It makes references to law and legislation but is not an authoritative statement of the law. Interpretation of the law is a matter for legal advisers and ultimately the courts. Those involved in exclusion may wish to take legal advice regarding any particular set of circumstances.

Signposting the document: summary of chapters

› **summary of exclusion: legislation and procedures**

The purpose of this section is to summarise the basic legislation and procedures which inform how school exclusions should be carried out including decision making, recording, communicating, providing alternative education, and rights of appeal. For quick reference it is situated at the start of the document, although the following policy context and good practice aims to inform a wider approach to preventing the need for exclusion; considering the needs of learners who are most at risk; and where exclusion is used as a last resort, how best to do this to ensure continuity of learning and re-engagement of the learner.

› **policy context**

Under the United Nations Convention on the Rights of the Child, this section outlines the Scottish policy context for keeping learners included, engaged and involved. This references the most relevant national outcomes, *Early Years Framework, Equally Well, Achieving Our Potential, Curriculum for Excellence, More Choices More Chances, GIRFEC, Additional Support for Learning,* and *Looked After Children*.

› **key principles**

In response to the policy context and priorities of national and local government, this guidance is based on a set of key principles.

- **policy and good practice on:**
  - **prevention, early intervention and staged interventions**

This section of the guidance focuses on preventing the need for exclusion through early intervention and staged intervention. It covers education and care plans; and a wide range of approaches and provision through stages of intervention from universal through to school based and extended provision of education and support.

  - **consideration of individual circumstances**

This section considers the impact of exclusion on learners who are especially vulnerable and at risk; and where learners receive multiple or lengthy exclusions. Learners at risk include those who are Looked After by the local authority, those with additional support needs, and those on the Child Protection Register or for whom there are concerns.

- **decision making, managing exclusions and re-engagement**

This section covers the decision making process and consideration of alternatives to exclusion, as well as the process of exclusion including recording, communication, right of appeal, duration and timing, provision of alternative education whilst excluded, re-engagement, and parental responsibilities and engagement.

3. Summary of Exclusion: Legislation and Procedures

The purpose of this section is to summarise the basic legislation and procedures which inform how school exclusions should be carried out including decision making, recording, communicating, providing alternative education, and rights of appeal. The following chapters on policy context and good practice aim to inform a wider approach to preventing the need for exclusion; considering the needs of learners who are most at risk; and where exclusion is used as a last resort, how best to do this to ensure continuity of learning and re-engagement of the learner.

Legislation

26 The power to exclude a learner from school rests with the relevant education authority. The Scottish Government considers that for this, and for other professional and administrative reasons, each education authority should operate under locally produced exclusion guidelines. **This summary and accompanying policy guidance seeks to inform the content of these local guidelines.** It is not intended to replace those local guidelines, nor should it be relied upon as an exhaustive consideration of the legal duties which may now or in the future, be imposed on education authorities.

27 The power to exclude a learner from a school and the circumstances under which a learner may be excluded are set out in Regulations 4 and 4A of the Schools General (Scotland) Regulations 1975 ("the 1975 Regulations"), as amended [S.I. 1975/1135: the relevant amending Regulations are the Schools General (Scotland) (Amendment) Regulations 1982 (S.I. 1982/56) and the Schools General (Scotland) Amendment (No. 2) Regulations 1982 (S.I. 1982/1735)].

28 The power to exclude, and therefore legal responsibility for exclusion, rests with the education authority. It is, however, open to an education authority to delegate the power to exclude to senior management level within a school.

29 It is the responsibility of the authority to devise and implement policies and procedures on exclusion, which should take account of this guidance. These policies must follow the requirements of appropriate legislation and should provide a helpful and supportive framework within which individual schools can work effectively with pupils and parents to maintain positive behaviour and safety in the school.

30 Exclusion policy should be seen in the wider context of an authority's duties to:

- under section 1 of the Education (Scotland) Act 1980:

  "…secure that there is made for their area adequate and efficient provision of school education…."
- under section 2(1) of the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act"):

  " … secure that the 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."
- under section 2(2) of the 2000 Act in regard of section 2(1):

  "… have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity."
- under section 28 of the Education (Scotland) Act 1980:

  "… have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

31 Therefore, in any relevant procedures, including appeals, the views of the learner as well as those of the parent/s should be accurately represented and appropriately taken into account. As the views of pupils may diverge from their parent/s, it is clearly not sufficient to assume that the views of the parent/s automatically reflect those of the learner.

32 For reasons of accountability, and in the interests of all learners, their families and school staff, it is important also that authorities make their locally produced guidelines available publicly in a form which is easily understandable.

33 Exclusion policies should also be part of a local authority's policy framework on promoting positive relationships and behaviour in schools, under Health and Wellbeing and Supporting Learners. Under the Education (School and Placing Information) (Scotland) Regulations 1982 local authorities must provide information on their general policy or practice with regard to discipline and school rules and arrangements for enforcing school attendance; and make available at each school information to parents on their policy on discipline, school rules and enforcement of attendance.

Regulations

34 Regulation 4 states that an education authority **shall not exclude** a learner from school unless the authority:

- "are of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school"; or
- "consider that in all the circumstances to allow the pupil to continue attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there."

35 **Education authorities, when deciding whether exclusion is necessary, must have regard to the particular facts and circumstances surrounding individual incidents and/or learners.**

36 Exclusion from school of a learner other than in conformity with the terms of the 1975 Regulations has no statutory backing. Failure to comply with the Regulations in such circumstances may render the authority open to legal challenge by the parent/s, or the pupil (where the pupil is a young person or is a child with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991) or to action by Scottish Ministers under section 70 of the Education (Scotland) Act 1980, as amended.

37 School exclusions must also operate within the duties imposed by anti-discrimination, human rights and other relevant legislation. Therefore, education authorities and schools should keep fully aware of developments. This includes the Equality Act 2010.[9]

Children and young people with additional support needs

38 The circumstances in which learners with additional support needs may be excluded are the same as for other learners. However, additional considerations apply where the learner has additional support needs. Education authorities remain under an obligation to make adequate and efficient provision for such additional support as is required by the excluded learner, whether that support is expressed in a document such as a co-ordinated support plan or otherwise. The support may include, for example, allied health professional support or educational psychology. The exclusion does not affect the education authority's duty to provide these services whether on school premises or an alternative venue. Therefore, such provision should continue notwithstanding the exclusion. Consultation with any other service providers in order to maintain provision to an excluded learner should take account of the needs of other service users with whom the learner interacts when receiving the service.

9 Equality Act Draft Code of Practice: Schools in Scotland, EHRC, January 2011
Guidance for Education Providers: schools – exclusion, EHRC, http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-education-providers-schools/exclusion-from-school/

39 In reaching a decision to exclude, education authorities have to consider whether they could comply with section 4 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act")(2) which requires the authority to make "adequate and efficient" provision as long as it does not result in unreasonable public expenditure. There will therefore be a need to consider the particular facts and circumstances of each case.

40 Under section 2 of the 2004 Act, a learner requires a co-ordinated support plan if the learner has additional support needs arising from complex or multiple factors that are likely to continue for more than a year and that require significant additional support. A co-ordinated support plan must name the school which the pupil concerned should attend, the basis of the nomination being that the school has the expertise and resources to meet the learner's additional support needs. In these circumstances, exclusion will be particularly problematic for the learner concerned.

41 For example, it might be that the learner's additional support needs cannot be catered for appropriately, unless the learner attends either the nominated school or is immediately transferred to an alternative, suitable school. The learner may have particular support needs during a period of exclusion if alternative provision is either home based (for example, home tuition) or has a different pattern of attendance than previously, which may place considerable stress on the parents or other family members. This may have a severe impact on the ability of parents to comply with their duty under section 30 of the 1980 Act to provide efficient education, whether that be at another school run by the same or a different authority, or an independent or grant-aided special school where the learner has been placed at the expense of the local authority.

42 Accordingly, where a learner with additional support needs is at risk of exclusion, an authority should seek to balance the case for exclusion with the need to take all reasonable steps to secure that appropriate provision is made for the learner's additional support needs. However, this additional consideration would not prevent exclusion where this is deemed absolutely necessary.

43 Under section 10 of the 2004 Act, an authority is required to carry out statutory review procedures to change the nominated school, or any other details, on a co-ordinated support plan.

Procedures

44 Regulation 4A of the 1975 Regulations makes provision for the procedures to be followed in exclusion.

45 The authority must, on the day upon which a decision to exclude a learner is taken, intimate in writing or orally to the learner's parent or if the learner is a young person, the young person (defined in section 135(1) of the Education (Scotland) Act 1980 ("the 1980 Act") as "a person over school age who has not attained the age of 18 years"):

- the decision to exclude; **and**
- the date, time and place where the headteacher, or teacher or official of the education authority, shall be available to discuss the decision to exclude. This meeting must be within 7 calendar days following the day of the decision to exclude.

46 Where intimations are oral, it is good practice to then confirm details in writing.

47 Intimation of exclusion must be made to the parent or young person and the meeting to discuss the exclusion must also be with the parent or young person. It is good practice to inform and involve parents of a young person in consultation with the young person.

48 Section 41 of the 2000 Act extended the right of appeal in section 28H of the 1980 Act to learners with legal capacity. (The Age of Legal Capacity (Scotland) Act 1991 states that a person under the age of 16 has legal capacity to instruct a solicitor where they have a general understanding of what it means to do so, and there is a general presumption that children aged 12 years or more are of sufficient age and maturity to have that understanding.) It is good practice for the education authority to send the intimation to the learner as well as the parent so that the learner has full knowledge of the decision since they may also have the right of appeal, as well as their right to express a view. It is good practice to keep parents of a young person informed and involved.

49 In the case of learners who are under 16 the intimation should be to the parent and the meeting to discuss the decision should be with the parent. The learner may attend the meeting if both the education authority and the parent(s) agree and should attend if it was the learner who exercised the right of appeal.

50 While not required by the relevant legal provisions, it is also good practice for schools to contact parents prior to the learner being required to leave school premises. In all cases, the school should check that appropriate arrangements for the care of a child or young person are being made, before they are sent from school premises.

51 The authority may, and in certain circumstances must, notify the parent or young person in writing of:

- the reason(s) the pupil was excluded;
- the conditions, if any, with which the parent and/or the pupil must comply, or undertake to comply before being re-admitted;
- the right of appeal and how appeals can be initiated; and
- any other information which the education authority considers appropriate.

52 It is **not** a requirement that pre-return conditions are set but return to school can be made the subject of conditions on a learner or parents, depending upon the individual case. For example, a condition might require a learner to comply with a support plan or action plan setting out respective roles and responsibilities.

53 It would be good practice to also provide notification to learners since they may also have the right of appeal. However, this is not a legislative requirement. Parents of a young person could be copied in to notification.

54 The Regulations provide two timescales for providing this notification:

- Where the learner has been excluded for a period exceeding 7 days, or where the parents (or learner where applicable) have not, within 7 days of first being informed of the decision to exclude, indicated to the headteacher that they do not intend to appeal the decision (whether or not the learner has been re-admitted to the school), the subsequent written notification must be issued within 8 days of the decision to exclude.
- Where the learner has been readmitted to the school within 7 days of the decision to exclude and the learner's parent (or learner where applicable) has indicated to the head teacher that they do not intend to appeal the decision, the education authority may issue the subsequent written notification within 8 days of the decision to exclude, or thereafter.

Length of exclusion

55 The length of an exclusion is not defined in the legislation and accordingly is a matter for the discretion of the education authority. However, the local authority remains responsible for the education of the learner, and for the provision of alternative education provision while excluded.

Recording an exclusion

56 Regulation 10(1A) of the 1975 Regulations provides that, where a learner's progress record contains information relating to a decision to exclude, certain other information is also to be recorded. Regulation 10(1A) requires any decision of an appeal committee to be recorded and also a requirement to inform the parent/young person of the terms of the entry. However, information about exclusion is not something which must be included on the record, although there are requirements where such information is included. It is therefore also possible to remove the record of exclusion from a learner's progress record, but any record of an appeal decision must also be removed.

Right of appeal against the decision to exclude

57 The right of appeal is conferred by section 28H of the 1980 Act, as extended by section 41 of the 2000 Act. An appeal against exclusion may be made, in the first instance, to an education appeal committee, set up by the education authority under section 28D of the 1980 Act. A further appeal against the decision of the education appeal committee may be made to the sheriff court.[10] The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 *[SI 1982/1736]* regulate the procedures of appeal committees.

58 Section 28H of the 1980 Act conferred on parents of learners and learners themselves, where they are young persons, a right to refer a decision to exclude to an Appeal Committee. Section 41 of the 2000 Act puts pupils with legal capacity to instruct a solicitor *in the same position as a young person*. *Either* the young person, or a child with the legal capacity to instruct a solicitor, or the parent may appeal. A parent can appeal on behalf of a learner with legal capacity to instruct a solicitor.

59 Appeal Committees are required to give notice to the appellant and to the education authority of the date of the hearing in terms of regulation 8 of the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (S.S.I. 1982/1736). They must also give the appellant a statement of the appellant's rights to appear/be represented, to be accompanied, to lodge written representations and to allow the appellant's case to rest on written representations.

Alternative education provision

60 Section 14(3) of the 1980 Act places a duty on education authorities to make alternative education provision for excluded learners. The duty is to, **without undue delay**, either:

- provide school education for [the excluded pupil] in a school managed by them; or

10 For discrimination cases which involve exclusions please see guidance on the Equalities Act 2010 titled 'What equality law means for you as an education provider: schools' at http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/

- make arrangements for [the excluded pupil] to receive such education in any other school the managers of which are willing to receive [the excluded pupil]; or
- make special arrangements for the excluded pupil to receive education other than at a school.

61 The purpose of section 14(3) is to ensure that excluded learners are given every chance to continue their learning, even in situations where their behaviour has been such that they have to be removed from a school. The duty on education authorities to provide education continues, even when the learner has been excluded, and the duty to provide alternative education for excluded learners must be discharged without undue delay. Without continuation of their studies the likelihood is that such learners will fall further behind in their education and become even more distant from both learning as a process and the learning establishment.

62 Where a learner is to be placed at another school either as part of an exclusion or following removal from the register, education authorities should not only arrange, but also co-ordinate, all aspects of this onward placement, in the best interests of the learner. Parents and learners should be included in any decisions regarding placement at another school.

63 There is no legislative timescale defining "undue delay" as the purpose is to **continue** the education authority's duty to provide education for learners who are not attending school. Education authorities should set their own policies on the provision of alternative education for excluded learners which should include details of who will provide the alternative education as well as where and when it will be provided.

Special arrangements other than at a school

64 **Where the local authority must make special arrangements for alternative education for the learner other than at school, it should seek to provide, as far as possible, the quality, quantity and range of education which was previously available to the excluded learner in school, prior to their exclusion.** The need for any such special arrangements should arise only in exceptional cases, and only as an **interim** measure prior to the learner receiving full-time education in a school setting.

65 Particular consideration should be given where a learner is Looked After by the local authority. Education and social work professionals should collaborate to ensure that reference to the learner's Child's Plan is made, and the learner's appropriate involvement in a structured programme of learning is urgently considered, to meet the educational requirements of their Child's Plan.

Consideration of family circumstances

66 Authorities may find it appropriate to determine, in consultation with social work services, the potential risk involved where learners may be exposed to stressful home situations. At some times consultation may need to be intensive. The Scottish Government's *A Guide to Implementing Getting it Right for Every Child,* June 2010, gives further guidance on co-ordination of needs assessment and intervention. **Social work services should always be informed of a decision to exclude where the learner concerned is on the Child Protection Register or is a Looked After Child, and as far as possible, provision put in place to ensure the ongoing monitoring of the welfare of the learner, as well as provision for their educational needs as described in the Child's Plan.**

Parental roles and responsibilities

67 Parents also have responsibilities. A parent of a child of school age has a duty under section 30 of the 1980 Act to provide efficient education for the child suitable to his or her age, ability and aptitude. This they must do either by causing their child to attend a public (education authority) school regularly, or by other means. Parents continue to be subject to this duty where their child is excluded and therefore they should co-operate with the education authority in making any alternative provision necessary, including any special arrangements.

68 A parent also has an advocacy role, in promoting the views of their child. This is particularly crucial where their child is at risk of being, or has been, excluded. It is good practice to inform parents of how they might gain the support of another adult, professional or organisation, which might assist them or advocate on their behalf, to ensure that the learner receives support when needed. Children's Rights Officers also have an important role to play in supporting children who are being Looked After by the local authority. Although a child of legal capacity, or a young person, has the right to appeal, the role of the parent in supporting the child or young person and promoting their views should be recognised and supported during this process.

69 Scottish Ministers will consider complaints brought by parents, or other interested parties, who think the local authority has failed to fulfill its legal duty under any enactment relating to education, under Section 70 of the Education (Scotland) Act 1980. If Scottish Ministers are satisfied that an authority has failed to fulfil one of its legal duties, they may make an order requiring the authority to carry out that duty.

Terminology

70 The terms 'temporary exclusion' and 'permanent exclusion' are currently used by some education authorities and schools as a matter of practice, and for recording purposes. **The legislation does not make such a distinction. In legislative terms, a learner is merely excluded.**

Exclusion

71 Terms used to describe the exclusion have included 'temporary exclusion' 'suspension', 'informal exclusion', 'cooling off period' and 'sending a learner home'. **All such instances are forms of exclusion and must be recorded as such.**

Removal from the register

72 Previous terms used to describe the above have included 'permanent exclusion' and 'expulsion'. Education authorities and schools should no longer use these terms. The term 'exclusion/removal from the register' should be used in the ScotXed documentation when a pupil is excluded from a school and the learner's name is removed from the school register, the education authority having decided that the learner should not return to that school.

Parent/s

73 For the purposes of this guidance, the definition of 'parent' is as in section 135(1) of the 1980 Act: and includes a guardian or any other person who is liable to maintain, or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of, the child or young person.

Child

74 As in section 135(1) of the 1980 Act: a child means a person who is not over school age.

Legal Capacity

75 The Age of Legal Capacity (Scotland) Act 1991, section 2(4A) and (4B) states that a person under the age of 16 has legal capacity to instruct a solicitor in connection with any civil matter where they have a general understanding of what it means to do so and a child of twelve or more is presumed to be of sufficient age and maturity to have that understanding. Such a person also has legal capacity to sue or to defend in any civil proceedings. Section 41 of the 2000 Act extended appeal rights under section 28H of the 1980 Act to a pupil with such legal capacity.

Young Person

76 As in section 135(1) of the 1980 Act: a young person means a person over school age who has not yet attained the age of 18 years.

Children with Additional Support Needs

77 A child or young person has additional support needs if they are, or are likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for them. For more information see chapter 2 of Supporting Children's Learning Code of Practice (Revised edition).[11]

Looked After Children

78 Section 17(6) of the Children (Scotland) Act 1995 provides that a child who is Looked After by a local authority is a child:

(a) for whom the local authority is providing accommodation under s25 of the 1995 Act;

(b) who is subject to a supervision requirement and in respect of whom they are the relevant local authority;

(c) who is subject to an order made, or authorisation or warrant granted by virtue of Chapter 2, 3 or 4 of Part II of the 1995 Act (e.g. child assessment order, child protection order);

(d) who is subject to an order which has been made in England, Wales or NI and which, by virtue of regulations made under s33 of the 1995 Act, is to be treated as a corresponding Scottish order;

(e) in respect of whom a permanence order is in force.

The majority of children who are considered to be Looked After will come into one of the following two categories:

- **Looked After at home**, where the child is subject to a *Supervision Requirement* ***with no*** *condition of residence* through the Children's Hearing system. The child continues to live in their normal place of residence (i.e. often the family home). A child can also be Looked After but remain at home under the terms of a permanence order which is granted by the court under the Adoption and Children (Scotland) Act 2007. This is an order which gives the local authority the right to determine where the child shall reside but the order can vest parental responsibilities and rights in other individuals so the child's parents could retain some of those parental rights and the local authority could decide that the child may reside at home.

11 *Supporting Children's Learning Code of Practice* (Revised edition)

- **Looked After away from home** (i.e. away from their **normal** place of residence), where the child is subject to a *Supervision Requirement* ***with a*** *condition of residence* through the Children's Hearing system, or is provided with accommodation under section 25 (voluntary agreement) or is the subject of a permanence order under section 80 of the 2007 Act. The child or young person is cared for away from their normal place of residence, e.g. in a foster care placement, residential/children's unit, a residential school, a secure unit or a kinship carer.

4. Policy Context

This section outlines, under the United Nations Convention on the Rights of the Child, the Scottish policy context for keeping learners included, engaged and involved. This references the most relevant national outcomes, *Early Years Framework, Equally Well, Achieving Our Potential, Curriculum for Excellence, More Choices More Chances, GIRFEC, Additional Support for Learning,* and *Looked After Children*.

79 Underpinning the Scottish policy context and activity to improve outcomes for all Scotland's children and young people, is the Scottish Government's commitment to support and promote children's rights and the United Nations Convention on the Rights of the Child (UNCRC). Key principles of the UNCRC include that:

- All rights apply to all children without discrimination and children should be protected from discrimination (Article 2);
- In all actions concerning children, the best interests of the child shall be a primary consideration (Article 3);
- Every child has the right to life, survival and development (Article 6);
- Every child who is capable of forming their own views has the right to express those views freely in all matters affecting them (Article 12);
- In addition, children have the right to an education that is directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential" (Article 29).

80 This includes the right to an education which helps children develop their skills and personality fully, teach them about their own and other people's rights, and prepare them for adult life, and the right to say whatever they believe as long as it does not harm or offend other people. With that comes the responsibility to respect the rights and freedoms of others.

81 The Scottish Government has a single purpose – to create a more successful country where all of Scotland can flourish through increasing sustainable economic growth. The Scottish Government and local government have agreed a set of 15 national outcomes which include that:

- our children have the best start in life and are ready to succeed
- our children and young people are successful learners, confident individuals, effective contributors and responsible citizens
- we have improved the life chances for children, young people and families at risk
- we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others
- we have tackled significant inequalities in Scottish society.

82 In support of these national outcomes the Scottish Government and local government are committed to delivering the *Early Years Framework*[12] along with *Equally Well*[13] and *Achieving Our Potential;*[14] *Curriculum for Excellence*; and more choices and more chances for those at risk of missing out on employment or further learning on leaving school; underpinned by *GIRFEC* in order that services are integrated around the needs of children and young people. Exclusion can be an indicator of need or risk within a child or young person's life which impacts upon their wellbeing; the 8 indicators of which are that they are safe, healthy, achieving, nurtured, active, respected, responsible and included.

National outcome 5: Our children have the best start in life and are ready to succeed.

83 The *Early Years Framework* seeks to maximise positive opportunities for children to get the start in life that will provide a strong platform for the future success of Scotland by investing in a positive early start for all children; and to address the needs of those children whose lives, opportunities and ambitions are constrained by poverty, poor health, poor attainment and unemployment.

84 *GIRFEC* is a national programme that aims to improve outcomes for all children and young people in Scotland. It seeks to do this by providing a framework for all services and agencies working with children and families to deliver a co-ordinated approach which is appropriate, proportionate and timely. *GIRFEC* provides the golden thread that knits together our policy objectives for children and young people and provides the methodology of delivering the social frameworks of *Equally Well*, the *Early Years Framework* and *Achieving our Potential.*

National outcome 11: We have strong resilient and supportive communities where people take responsibility for their own actions and how they affect others.

85 Parents, carers, and families are by far the most important influences on children's lives. Learning starts, and is supported throughout the school years, by parents and carers in the home environment. Schools do their best work for children when they develop positive partnerships with parents. The Scottish Schools (Parental Involvement) Act 2006 requires local authorities to promote the involvement of parents in their children's education and to have a strategy in place that addresses the needs of all parents. Parents with an active involvement in their child's education and who are engaged with the life of the school can help promote a learning community in which parents and learners can further develop positive relationships. The Scottish Government has produced a toolkit for schools *Parents as Partners in Their*

12 The Early Years Framework, 2009, Scottish Government

13 Equally Well Implementation Plan, 2008, Scottish Government

14 Achieving Our Potential: A Framework to tackle poverty and income inequality in Scotland, 2008, Scottish Government

Children's Learning[15] which looks at the different ways parents and carers can be involved in their child's learning. Parents are the link with local communities which also have a huge influence on children and young people as they grow and develop.

National outcome 4: We want children and young people to become confident individuals, successful learners, effective contributors and responsible citizens.

86 *Curriculum for Excellence* is the totality of experiences which are planned for children and young people through their education, wherever they are being educated. The starting point for learning is a positive ethos and climate of mutual respect and trust based upon shared values across whole school communities including parents. All members of staff should contribute through open, positive, supportive relationships where learners will feel that they are listened to and feel safe and secure; and where staff model behaviour which promotes effective learning and well being within the school community.

87 Health and wellbeing underpins all the experiences, learning, and development which take place through *Curriculum for Excellence*. Learning through health and wellbeing promotes confidence, independent thinking and positive attitudes and dispositions. Because of this, it is the responsibility of every teacher to contribute to learning and development in this area.

88 Learning in health and wellbeing ensures that children and young people develop the knowledge and understanding, skills, capabilities and attributes which they need for mental, emotional, social and physical wellbeing now and in the future.

89 Through the breadth, flexibility and personalisation of *Curriculum for Excellence,* we can help to create the learning environments needed for positive relationships and behaviour with opportunities for more engagement, motivation and enjoyment. Equally, *Curriculum for Excellence* cannot be delivered without good relationships and positive behaviour.

15 Parents as Partners in Their Children's Learning: Toolkit, 2006, Scottish Government

National Outcome 8: We have improved the life chances for children, young people and families at risk.

90 *Curriculum for Excellence* should therefore meet the needs of those children and young people at risk of becoming excluded or disengaged from their education and improve their life chances. Prevention, early intervention, and staged interventions throughout learning are central.

91 *Curriculum for Excellence* will ensure that all learners can participate, whatever their circumstances. It aims to provide a coherent, inclusive curriculum for all young people, with more choices and chances for some learners who need tailored support to move into positive, sustained destinations after leaving school. All learners, but particularly those who need more choices and chances, will benefit from different approaches to learning and opportunities to access learning in different contexts, using a range of provision delivered within the classroom, the school and beyond the school.

92 *Determined to Succeed (DtS)*[16] and other strategies for enterprise education are developing enterprise and employability skills in all our young people, making sure they are equipped to participate in a global economy. Work with employers is a core element of *DtS* and *Curriculum for Excellence* to ensure learning is relevant, experiential and engaging. Other support available includes college or vocational placements; social development programmes; flexible provision; local authority educational provision; or provision through the Third Sector. *16+ Learning Choices*[17] will ensure all young people have an offer of an appropriate place in post-16 learning before leaving school or any other episode of learning in the Senior Phase of *Curriculum for Excellence*.

National Outcome 7: We have tackled significant inequalities in Scottish society

93 The Education (Additional Support for Learning) (Scotland) Act 2004 as amended provides the legal framework underpinning the system of supporting learners with additional support needs throughout their education, short or long term and whatever the reason including family circumstances. Education authorities and appropriate agencies such as NHS boards, Skills Development Scotland, all colleges of further education and all institutions of higher education in Scotland, are under a duty to have regard to the Code of Practice[18] when carrying out their functions under the Act. Sub-sections 1(A) and (1B) of that Act deem that all

16 Determined to Succeed: A Review of Enterprise in Education, 2002, Scottish Government

17 16+ Learning Choices: Policy and Practice Framework: supporting all young people into positive and sustained destinations, 2010, Scottish Government

18 Supporting Children's Learning Code of Practice (Revised edition), 2010, Scottish Government

Looked After Children have additional support needs unless the local authority determines that they do not require additional support to benefit from their education.

94 Corporate parenting provides both an opportunity and a statutory duty on all parts of a local authority to co-operate in promoting the care and welfare of children and young people who are Looked After by them. The extended corporate family provides support to Looked After Children through health, police, housing, community planning partnerships, further and higher education, independent agencies and the voluntary sector.

5. Key Principles

In response to the policy context and priorities of national and local government, this guidance is based on a set of key principles.

- Under *Curriculum for Excellence*, all learners are entitled to experience a broad general education; need to be included, engaged and involved throughout their learning, wherever that might take place; and where health and wellbeing is a responsibility of all.
- Schools and learning establishments need to be safe and secure for **everyone** in the learning community, including staff, learners and parents. Staff should feel confident and supported in their management of relationships and behaviour.
- Positive behaviour and relationships need to be framed within clearly developed and communicated policies through which schools and learning establishments can set expectations and boundaries. Exclusion is ultimately a very short-term option – schools, learning establishments and local authorities must have policies, procedures and positive interventions to address issues around challenging behaviour constructively in the longer term.
- Exclusion is an extremely serious option of last resort with an impact on all learners and, in particular, on our most vulnerable learners. It is to be used within an overall ethos of prevention, early intervention and support for learners; and consistently applied policies for promoting positive relationships and behaviour in schools.
- Every case referred for exclusion should be considered on an individual basis taking account of the individual circumstances of the child or young person. Consideration of other options should be undertaken; and consideration of additional risk factors such as additional support needs and Looked After Child status should also be undertaken.
- Prevention of the need for exclusion is paramount and includes the identification of learners at risk of exclusion and the assessment, planning and provision of support to prevent this happening. The decision making process should be based within a systematic process of assessment, the stages of which should be exhausted and evidenced prior to the need to exclude. On occasions it may be necessary to exclude for a severe or unpredicted incident. Consideration of exclusion should always trigger the need to introduce or re-evaluate stages of intervention. Risk assessment of the learner may be necessary in some cases.
- The exclusion should be for as short a period as possible as continuity of education is paramount. Entitlements under *Curriculum for Excellence* to support and meet additional support needs should be maintained. The duration of time should be used to constructively resolve the situation; identify and plan new support or provision; and safeguard a successful return, in partnership with learners and their parent(s) or carer(s), and where appropriate other relevant key workers.

- Where there has been serious negative behaviour, resolution for everyone affected is equally important to a successful re-integration. Consideration of the impact of the incident or behaviour leading to an exclusion on other learners and staff should be undertaken prior to the resolution meeting and appropriate follow-up support and resolution implemented; reintegration should consider the needs of **all** parties.

6. Prevention, Early Intervention and Staged Intervention

This section of the guidance focuses on preventing the need for exclusion through early intervention and staged intervention. It covers education and care plans; and a wide range of approaches and provision through stages of intervention from universal through to school based and extended provision of education and support.

95 An appropriate curriculum which is broad and relevant, with good teaching and learning as set out in *Curriculum for Excellence* is the starting point for engaging and motivating learners. Promoting positive behaviour and maintaining peaceful and positive learning environments can be achieved through a whole range of strategies, provision and stages of additional support. A range of support within the classroom, within schools and beyond schools can ensure that the behaviour of an individual learner does not disrupt their own or others' learning. This does not imply that inappropriate behaviours should be accepted or considered acceptable.

Early intervention and staged intervention

96 Every learner is entitled to support to enable them to gain as much as possible from the opportunities which *Curriculum for Excellence* can provide, wherever they learn. Support should be appropriate, proportionate and timely. Early and staged intervention provide a framework for additional support where behaviour, for whatever reason, becomes more challenging. Every local authority will have their own model of staged intervention from universal to the most targeted support.

97 Each stage will include identification and assessment of learning need, appropriate planning mechanisms, and types of provision which may be put in place. Movement between the stages usually follows the exhaustion of the provisions at the level below. It is likely that evidence of such provisions will be required before moving to the next level, although in some cases acceleration through the stages, or intervention at a later stage may be required to meet the individual needs of the learner.

98 At each stage of intervention, practitioners should reflect on a series of questions that should shape how they respond to concerns:

- What is getting in the way of this learner's wellbeing?
- Do I have all the information I need to help this learner?
- What can I do now to help this learner?
- What can my agency do to help this learner?
- What additional help, if any, may be needed from others?

99 Identifying and assessing need can be supported by applying the *GIRFEC* principles, utilising the wellbeing wheel with its 8 indicators of wellbeing and the *My World Triangle*.[19]

This offers a systematic means of considering how the learner is growing and developing, what the learner needs from others, and the impact of the wider world on the learner.

100 Planning is one of the main processes through which assessment of need is generated and delivered. Education plans may include:

- **Personal learning planning** – process by which learners and parents are involved in discussions with schools about the goals of learning, including those for personal development. Its focus is in line with all learners' entitlement to "frequent and regular opportunities to discuss their learning with an adult who knows them well and can act as a mentor".[20]
- **Individualised Educational Programme (IEP)** – written document which outlines the steps to be taken to help learners with additional support needs to achieve specified learning outcomes.
- **Co-ordinated Support Plan (CSP)** – a statutory plan to help identify and ensure provision of services for learners whose additional support needs arise from one or more complex factors or multiple factors which have a significant adverse effect on their school education; are likely to last at least a year; and, require significant additional support to be provided by an education authority and at least one other non-education service or agency (see s.2 (1) (d) (i) of the 2004 Act). A learner may be assessed for a co-ordinated support plan, in accordance with the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended by the Education (Additional Support for Learning) (Scotland) Act 2009) at any point within staged intervention if the criteria for a plan are met.

101 Some learners will be the subject of more than one plan, for example Individualised Educational Programmes and the Looked After Child's Plan. In these circumstances, particularly where there is multi-agency intervention, there should be a single overarching plan (*GIRFEC*) recognised by the local authority. Individualised educational programmes emerge from internal assessment frameworks. Information required in statutory plans such as the Co-ordinated Support Plan should be readily identifiable and able to be presented separately if necessary. Local authorities are developing systems of planning to ensure compatibility across all plans relating to one child.

19 A Guide to Getting it Right for Every Child, Scottish Government, 2008

20 Curriculum for Excellence: Building the Curriculum 3, 2008, Scottish Government

102 Staged interventions comprise a range of stages from universal through to more targeted support models locally adapted across local authorities. The *Behaviour in Scottish Schools Research 2009* found that all local authorities operated a form of staged intervention whereby increasing levels of support were made available to learners with behavioural needs. Systems varied but a common theme was in locating responsibility for learners with schools, supported by specialist support from local authority officers and wider support and specialist help. The emphasis was on building capacity at local level to support learners rather than referring them on. Respondents found it difficult to separate promoting positive behaviour and dealing with negative behaviour. General approaches of promoting a positive ethos, establishing positive relationships and praise and reward systems, as well as good learning and teaching, were complemented by targeted support for children and young people with needs, with multi-agency approaches for tackling often complex problems.

103 Within various models of staged interventions a range of stages can be identified including:

- universal: whole school ethos and classroom climate
- stage 1: support needs met within school, e.g. personal support staff, parents, additional support staff, and specialists
- stage 2: support needs met beyond the school within local school clusters and wider local authority provision
- stage 3: extended provision beyond the local authority.

Universal

104 The ethos and values within schools are fundamental to, and permeate, every aspect of school life. To enable all children and young people to be included, engaged and involved in their education, schools should develop an inclusive ethos where everyone's contribution to the school community is valued and everyone belongs. School ethos and values heavily influence school policies and procedures, school rules and relationships. These also underpin positive relationships at all levels across whole learning communities.

105 All primary and secondary headteachers who responded to the *Behaviour in Scottish Schools Research 2009* indicated that they promoted positive behaviour through whole school ethos and values.

106 This is also reflected by the *Improving the Odds, Improving Life Chances*[21] report which states that "Inspectors established that of all the features identified by learners, teachers and senior managers as key to improving the odds, the most important was the quality of the relationships between staff and learners throughout the school or department. The characteristics of high quality relationships were mutual respect and trust, high expectations and aspirations, and self-belief: a shared 'can do' attitude." School leadership has a crucial role in the development and implementation of school ethos, as do school staff in the provision of positive role models of the values of the school. Children and young people cite positive role models as treating people fairly and equally within classrooms.

107 There are a number of aspects which contribute to the creation of a positive ethos in schools, starting with the implementation of whole-school approaches to positive relationships. These can include:

- shared values and inclusive culture
- ensuring that staff and learners are involved in decision making in matters that affect them
- sharing information and successes with the whole school, for example, through regular assemblies, information, flat screens, and events
- attunement through positive and consistent welcoming and settling of learners into the school and their classrooms
- the health and wellbeing experiences and outcomes within *Curriculum for Excellence*
- restorative, solution focused, nurturing and motivated schools.

108 The climate of the classroom, effective classroom management and high quality learning and teaching, all have a significant impact on the promotion of positive relationships. Where learners have a clear understanding of what is expected of them in terms of both behaviour and learning, through engagement, explanation and clarity of expectations and where teachers are attuned to the class and are present to welcome the class in a calm, orderly fashion and settle them to work quickly, there appears to be an improvement in classroom behaviour.

109 The universal stage represents good active learning and teaching practice that may be expected within any classroom or learning environment. The identification of learning needs and planning to meet those needs rests with the class teacher. The class teacher may need to differentiate and adapt the learning environment and curriculum to meet the range of needs within the class group as a whole. Teachers may seek advice and support from other appropriate staff from within the school and from visiting professionals but teachers will be responsible for implementation of recommendations. Teachers will not be teaching or making

21 Improving the Odds, Improving Life Chances, 2008, HMIE

decisions in isolation, but working within an agreed whole school ethos, behaviour policy and approaches to promoting positive behaviour. Teachers can be supported by behaviour co-ordinators and behaviour support teams.

110 Staged interventions sit within wider whole school approaches and curricular programmes to promote and manage positive behaviour. These approaches can be used universally across whole school environments and targeted towards personalised support for learners. They include, but are not limited to:

- solution oriented approaches
- restorative approaches
- motivation based approaches
- social and emotional wellbeing programmes
- nurturing approaches.

Further information on these approaches; and support for implementation can be found at Annex C.

111 The *Behaviour in Scottish Schools Research 2009*[22] confirmed the use of a wide range of support and provision for children and young people, delivered by teaching and management staff, additional support staff, behaviour co-ordinators and support teams, and specialists. Secondary headteachers who responded to the research indicated that they frequently or sometimes used:

- curriculum programmes in social and emotional skills and well being (97%)
- anti-bullying policy (96%)
- buddying/peer mentoring (94%)
- break time supervision (97%)
- restorative practices (75%)
- solution oriented approaches (79%)
- reward systems (92%).

112 Local authorities have a key role in the provision of support and training for schools. The *Behaviour in Scottish Schools Research* 2009 also confirmed the important role of local authorities to provide policy frameworks, support and training to staff.

22 Behaviour in Scottish Schools Research November 2009, Scottish Government Social Research, University of Edinburgh

113 The development of a positive ethos and culture; and the implementation of approaches to improve relationships, emotional health and wellbeing, and behaviour, is equally relevant across all learning establishments. For example, colleges have their own behaviour policies and may use *The Motivated College*[23] or *Engaging or Enraging Toolkit*[24] as tools to develop and maintain motivational and peaceful learning environments. More information and links can be found on the Scotland's Colleges website.[25]

Stage 1: Supporting individual needs within school

114 Within stage 1 the responsibility for identifying and planning to meet the needs of the learner remains with the class teacher. However, it is necessary to have a strategy for provision of support where all available classroom options have been exhausted. In this case referral to an in-school assessment/co-ordinating team, such as a school liaison group comprising personal care and support and behaviour support staff, to consider other options available within school for the provision of appropriate support, may be required.

115 The team should consider which planning mechanism is most appropriate for the support being provided, for example an Individualised Educational Programme. Support and advice may be provided by visiting professionals, classroom assistants, and learning support provision. Parents and carers and learners should be involved in the development of planned support.

116 It may be appropriate for an Individualised Educational Programme to be developed to support the planning and delivery of additional support to learners. The purpose of the plan is to provide a coherent structure to the achievement of learning outcomes and the support to be provided towards achieving them. The plan should include clear objectives with named supports and times for review. It should also be available and highlighted to all relevant staff.

117 The flexibility provided by *Curriculum for Excellence* should be utilised to ensure a broad general education which is engaging, as well as personalised to meet the needs of the child or young person. 96% of secondary headteachers who responded to the *Behaviour in Scottish Schools Research 2009* indicated that they frequently or sometimes use broad curriculum options such as vocational opportunities, personal and social development programmes, ASDAN awards, Princes Trust XL, Duke of Edinburgh, and HE/FE college placements to promote positive behaviour.

23 http://www.scotlandscolleges.ac.uk/curriculum/the-motivated-college/the-motivated-college.html

24 http://www.scotlandscolleges.ac.uk/curriculum/more-choices-more-chances/mcmc-useful-information.html

25 http://www.scotlandscolleges.ac.uk/curriculum/more-choices-more-chances/mcmc-professional-learning-opportunity.html

Support provision within school

118 In planning support for learners at risk of exclusion, school staff may consider the use of school-based provision such as enrichment groups, support classes, time within support bases, and, where appropriate, nurture groups. This planned support enables the learner to work intensively towards specific goals, for example learning techniques which support improved behaviour, or purposeful conversations using restorative or solution oriented approaches. The support provided helps the child or young person to remain in class, hopefully reducing the likelihood of the move towards being excluded from school. Wider whole school approaches such as restorative or solution oriented approaches can contribute positively to discussions, collaborative planning and decision making at this stage. Support from a range of staff can be planned and delivered through a team around the child model. It is essential to work with a range of partners at every stage of intervention.

119 In May 2010, HMIE published *Out of Site, Out of Mind?*[26] a report on provision for young people with behavioural needs. It noted that in the best practice, designated bases in mainstream schools provide a supportive ethos for young people in danger of being excluded. They provide them with appropriate experiences, and clear targets designed to help them progress steadily within the curriculum and improve their behaviour. Staff monitor learners' progress closely against these targets and help them return as soon as possible to mainstream classwork.

120 Secondary headteachers who responded to the *Behaviour in Scottish Schools Research* 2009 indicated that they frequently or sometimes used:

- time out (81%)
- targeted small group work (86%)
- learner or behaviour support bases (74%).

121 Primary headteachers who responded to the *Behaviour in Scottish Schools Research 2009* indicated that they frequently or sometimes used:

- time out (79%)
- targeted small group work (62%)
- learner support bases (14%).

26 Out of Site, Out of Mind?, 2010, HMIE

122 Nurture groups are being used more frequently within primary schools and are more effective when operated within a nurturing school ethos or context of nurturing principles. They have also been introduced in secondary schools.

123 Many staff work with young people who exhibit challenging behaviour. Setting a policy at local authority level on de-escalation, restraint and physical intervention will help to clarify for school staff what the appropriate levels of intervention are when handling disciplinary matters. However, the vast majority of children and young people in our schools will never require any form of restraint or physical intervention.

124 Conflict and aggression can be minimised by using effective de-escalation techniques and by assessing environments around the school using tools such as the environmental checklist used in Framework for Intervention (FFI). Confident, trained staff, aware of the impact their behaviour may have on the young people and working within a supportive working team climate, will feel they can handle day-to-day situations effectively and will feel happy to call on the support of colleagues.

125 Above all, it is the combination of strategies and approaches, including multi-agency and partnership working under strong leadership, that can lead to reductions in the need to exclude.

Stage 2: Support needs met beyond the school within local school clusters and wider local authority

126 The focus of stage 2 is where the needs of the learner cannot be met fully within the resources available at the school. In considering the needs of learners at risk of exclusion, many schools and local authorities are able to employ the wider resources available to them across local authority services including other education services, children's services and leisure services; and, to bring together key representatives such as Skills Development Scotland, health, police, and voluntary sector. Jointly, they can consider the learner's needs from a range of differing perspectives and bring individual expertise to the planning and implementation of an action plan to support the learner. Therefore, local authority wide specialist and partner resources may be accessed to ensure provision of support and continuity of learning. This support is likely to be required following the exhaustion of provision from within the school's own resources. Previous learning plans will help evidence this.

127 Support will be co-ordinated through an authority based multi-agency team, operating under *GIRFEC* principles. Support provided may include a special school or special unit, provision or support from the Youth Support team, social work services, youth and community services, health, the police and the voluntary sector. Where learners attend provision outwith schools, the provision should be appropriate to their learning needs and should be of as high a quality as would be offered in schools.

128 Under *GIRFEC*, the role of the named person is to take initial action if a child needs extra help, formalising the activities universal agencies are undertaking routinely in their day-to-day work. Using the *National Practice Model*[27], the named person will help to decide what actions to take and how to work more efficiently with others. Where a child needs help from two or more agencies, the lead professional will co-ordinate multi-agency planning and make sure that the different services provide a network of support around the child in a seamless, timely and proportionate way. More detail on named persons and lead professionals can be found in the *GIRFEC* implementation document, *Messages from pathfinders and learning partners*.[28]

Local learning partnership and community cluster approaches

129 In these circumstances it may be appropriate for a referral to be made to the relevant 'learning partnership' or 'community/cluster' groups of secondary and associated primary schools for the assessment and establishment of necessary support. Examples of support may include community link workers, support assistants, or counselling staff. Planning mechanisms which may be used within this stage may be Individualised Educational Programmes and, where appropriate, co-ordinated support planning. Educational planning should also be recorded in the Child's plans where appropriate. Further personalisation of the curriculum to meet the learning needs of the learner should be incorporated within learning targets and planned learning outcomes.

130 The benefits of a cluster, community or collegiate approach include the sharing of school resources and decision making, with wider responsibility for learners across schools, but with support from other schools. Some local authorities operate a service to co-ordinate referrals at a school cluster level through headteachers and a joint agency team with shared support workers to work with learners, their families and other agencies. Clusters or local authority wide groups of headteachers can also be established to monitor exclusions, discuss individual cases, and develop support strategies.

Hostings or managed moves

131 Some local authorities have introduced a policy to support learners where they are finding it difficult to maintain a placement in their mainstream school. A strategy that can be used is a 'hosting' arrangement between two educational establishments. It is likely that the learner will have been excluded on several occasions and will already have been receiving additional support. The objectives of a 'hosting' arrangement may be to:

27 A Guide to Getting it Right For Every Child, Section 4: *Getting it Right for Every Child:* the approach in practice, 2008, Scottish Government

28 A Guide to Implementing Getting it Right for Every Child: Messages from pathfinders and learning partners, 2010, Scottish Government

- sustain learners in mainstream education and reduce any loss of time to a minimum
- provide a 'fresh start' for a learner and therefore enhance the likelihood of success in a new learning establishment.

132 The learner would move to the 'host' school for a trial period which would be reviewed regularly and carefully monitored. During the trial period the base school would retain responsibility for the learner. However, following a successful trial period all partners would agree an appropriate date for the 'host' school to take full responsibility for the learner. Managed moves can be used within a cluster of schools, a local authority, or across local authorities. Due to the complex nature of these cases very careful assessment and planning is required involving all key partners including the learner.

Maintenance of links with extended support provision

133 It is essential that a designated link teacher, e.g. from learner or personal support maintains links with the young person and the provider of full or part time placements to ensure continued provision of personal support by the school or placement partner. Young people who remain on the school roll remain the responsibility of the school and their IEP or CSP needs to consider reintegration and return dates. Clearly identifying responsibilities and in complex cases assigning a lead professional to monitor progress is essential. Authorities should be mindful of their responsibilities to Looked After Children in the prevention of their exclusion.

134 *Out of Site, Out of Mind?*[29] noted that in best practice, day special schools and extended support bases were supported very well by their education authorities. Schools and bases which had strong leadership were characterised by clear aims and values, supportive social and learning environments for children and young people, good quality relationships throughout including teamwork amongst staff, and effective partnerships with parents and other agencies.

135 In the best practice, staff in extended support bases worked closely with staff from the learner's mainstream school. Effective coordination between the base and the mainstream school ensured that both could build effectively on the learner's prior achievements. An important measure of an extended support base's success in supporting learners lay in the degree to which they helped them return successfully to full-time mainstream education.

136 *A Climate for Learning*,[30] published by HMIE in 2005 recognised that extended support provision combined with school provision to provide a programme of learning was particularly

29 Out of Site, Out of Mind?, 2010, HMIE

30 A Climate for Learning, 2005, HMIE

effective. It is essential that schools and local authorities maintain a working relationship to ensure effective educational provision through monitoring and quality assurance. The most effective practice emerged where the underlying principle of the learning package was that learners should remain the responsibility of mainstream schools and that in most circumstances plans should include a full return to the mainstream school. HMIE have identified emerging good practice within extended support provision but there is not yet a consistent approach across authorities.

137 Nurture Groups can also be delivered on a cluster or learning partnership basis shared between schools, with learners going for part of the day to a nurture group at another learning establishment while the class teacher retains overall responsibility for the learner.

Flexible learning packages

138 In prevention of exclusion, schools may consider the use of planned packages of support on a split placement basis, where a learner attends school for part of the week and other specialist provision for the remainder of the school week. However, schools should continue to ensure that learners attend school or another learning environment for the widely accepted norm of 25 hours in primary schools and 27.5 hours for secondary schools as described in *Guidance Circular 4/2002: Length of the school week: learners in special schools and units*.[31] Local authorities should monitor the use of flexible packages of support.

Consideration of use of colleges (in schools and college based)

139 For some learners in the Senior Phase, a different learning environment may be helpful. Partnership working between schools and colleges offers young people the opportunity to develop their knowledge and skills in contexts that are suited to their individual needs and aspirations. This may offer the learner an opportunity to become re-engaged with and motivated by learning whilst learning new skills which may be brought back to the class and school environment. Consideration should be given to the emotional maturity of the young person to cope with this environment. An HMIE report on school-college partnership programmes in Scotland *Expanding Opportunities*[32] found that learners undertook a wide variety of practical learning activities and almost all learners worked well in practical classes, and engaged constructively with learning.

140 Effective partnerships between schools and further education establishments can support the delivery of personalised learning to support improved motivation and learning. Through developing a personalised learning experience which engages learners at risk of

31 Circular 4/2002: Length of School Week: Pupils in Special Schools And Units, 2002, Scottish Government

32 Expanding Opportunities, A report on school-college partnership programmes in Scotland, 2008, HMIE

disaffection, or who are already experiencing disaffection, learners engagement with education may be improved, bringing benefits to motivation, confidence and learning.

141 Attendance at partnership provision should be monitored, in line with national guidance on attendance, *Included, Engaged and Involved: Part 1*.[33] Therefore it is essential that good records of attendance and absence are maintained and that schools are informed of any concerns or inappropriate behaviour.

142 In all circumstances involving support and intervention from extended support resources, schools retain responsibility for their learners and should be directly involved in developing and monitoring progress within the schools review, planning and assessment framework. There should be continuity of personal support in line with the entitlement to support which is outlined in *Building the Curriculum 3*.[34] The principle of what is in the best interests of the learner remains and the school will retain responsibility and continue personal support for that learner, including access to careers guidance, skills guidance and planning.

Stage 3: Provision beyond the local authority

143 The next stage is where it is considered that the needs of the child go beyond the provision which can be made within the authority. In these circumstances placements may be made to specialist provisions which are outwith the resources available to the authority. For example, provision may be made by a learning centre or school managed by a voluntary organisation, or other local authority. This may be a day or residential placement.

144 The assessment of need at this level is likely to be made by a multiagency group with an overview of all of the resources available within and outwith the authority. It is essential that appropriate planning and monitoring arrangements are in place to ensure continuity and quality of learning for all learners. As part of ongoing monitoring a return to authority and community based resources should be considered wherever possible.

33 Included, Engaged and Involved part 1: Attendance and absence in Scottish schools, 2007, Scottish Government

34 Entitlement to review of learning and planning of next steps; gaining access to learning activities which will meet their needs; planning for opportunities for personal achievement; preparing for changes and choices and support through changes and choices; pre-school centres and schools working with partners.

Monitoring of external placements

145 Some local authorities have an external placements monitoring officer who liaises with all external day providers. The monitoring officer requests weekly updates on attendance, engagement, achievement and attainment. The reports are then shared with relevant partners. This enhanced monitoring identifies issues at an early stage so that reviews can be called promptly and new support plans developed.

146 Other local authorities have formed a group of senior officers from education and social services to assess and monitor all day and residential external placements. Referrals are closely scrutinised before an agreement is reached to make the referral to the external provider. The referrals have detailed information pertaining to the case, evidence of the support already given from the authority and clear reasons why only an external placement is appropriate to meet individual needs. The case is closely monitored by the group as well as individual case managers throughout the duration of the placement. Service level agreements are put in place and plans for future re-integration back to the authority discussed at every review.

7. Consideration of Individual Circumstances

This section considers the impact of exclusion on learners who are especially vulnerable and at risk; and where learners receive multiple or lengthy exclusions. Learners at risk include those who are Looked After by the local authority, those with additional support needs, and those on the Child Protection Register of for whom there are concerns.

Introduction

147 Against a 33% drop in exclusions over 2006/07–2009/10, vulnerable learners are still more likely to be excluded. Although rates are also going down for those groups, significant gaps remain and are not getting smaller.

148 Learners are more likely to be excluded where:

- they have a disability (1.6 times more likely)
- they are Looked After (8.5 times more likely)
- they are from the most deprived areas (7.7 times more likely)
- they have an additional support need (ASN) variable across type of need and provision
- the additional support need is social, emotional and behavioural.[35]

149 Excluding a learner from school is an extremely serious step. It can impact significantly upon learning and in all circumstances it is necessary to consider whether the exclusion will contribute to an improvement or change in the behaviour which is leading to exclusion. Annual national statistics on exclusion from school[36] show that around 60% of learners who are excluded will only be excluded on one occasion. The most common reasons for exclusion are general and persistent disobedience (32%) and verbal abuse of staff (27%).[37] However, that does that not mean that exclusion is the only option in many cases, and there may be other options such as restorative approaches in schools which could deal with those types of issues.

35 Summary Statistics for Schools in Scotland, No.1 - 2010 Edition, Scottish Government National Statistics Publication

36 Ibid

37 Ibid

Multiple exclusions

150 A significant number of learners receive multiple exclusions throughout the year. In 2008/09, 2,068 learners were excluded more than three times.[38] In all cases, schools should consider the impact and desired outcomes sought from an exclusion, as well as the impact on the school community. Schools and authorities with learners who are receiving multiple exclusions should consider carefully the impact exclusion from school is having on the behaviour of the learner concerned. Regardless of whether the decision to exclude is taken, schools and authorities should consider the need to activate or review staged intervention processes to assess and plan support for the learner with the aim of improved behaviour and maintenance of school provision. Schools and authorities may wish to consider the number of exclusions which would be such a trigger, or the severity of repeated incidents leading to exclusion which would provide a catalyst for intervention. Particular care and consideration is required around individual circumstances.

151 Where there are multiple exclusions for one learner, or a lengthy exclusion, it is good practice for cases to be referred to the local authority in order to support decision making. Good practice includes local authority policies which specify where multiple exclusions; the cumulative length of multiple exclusions; or a lengthier exclusion should be referred for joint decision making and meeting with relevant support agencies.

152 Many local authorities have introduced a system to monitor multiple exclusions. When the total number of exclusions reaches an established benchmark, for example 15 days in any school session, schools are required to report the case to the senior officer with responsibility for exclusions for further advice and support. Alternatively some local authorities monitor multiple exclusions from the centre and the responsible officer will make contact with the school when concerns arise. This monitoring can be done through SEEMIS and other management information systems.

Length of exclusion

153 In order to support headteachers in the decision making process, a number of local authorities have asked headteachers to notify the authority prior to the final decision regarding an exclusion being made where the length of exclusion being considered is more than a certain number of days, e.g. 5 days. Decisions to exclude should be taken in consideration of the interests of the individual learner, other learners and staff.

38 Ibid

Looked After Children

Who are Looked After Children?

154 Looked After Children are those who are subject to a supervision requirement through the Children's Hearing system or some form of local authority intervention, either at home where they continue to live with their family or away from home, e.g. foster care, kinship care, or residential care. As at 31 March 2009 there were 15,288 children Looked After by local authorities. 39% of Looked After Children in Scotland remained at home with their family; around 20% were Looked After by friends or relatives; 29% were Looked After by foster carers and 10% were in residential care. Children may move between these different types of care whilst being Looked After.[39] Becoming Looked After away from home may enable a child to be living in an improved environment where they feel safe and cared for, where they have a sense of stability and routine and are being Looked After rather than looking after themselves. Local authorities have certain responsibilities to children who are Looked After by them in terms of section 17 of the Children (Scotland) Act 1995.

155 Outcomes for Looked After Children remain poor compared to children not Looked After:

- around 77% had at least one qualification at SCQF level 3+ compared to 97.4%[40]
- 59.3% had both English and Maths at SCQF level 3+ compared to 93.2%[41]
- school attendance is around 88.4% compared to 93.3%[42]
- exclusion rates are 8.5 times higher.[43]

156 There can still be a perception that children are Looked After because they have done something wrong. Most are Looked After for reasons of care and protection. Very few are as a result of offending behaviour and those who are have generally experienced care and protection issues before they start offending.

157 The term "corporate parenting" is often used but is not a statutory term. Local authorities have a duty under the Children (Scotland) 1995 Act to safeguard and promote the welfare of children who are Looked After. "Corporate parenting" may be used to describe

39 Statistics Publication Notice Health and Care Series: Children Looked After Statistics 2008/09, Scottish Government

40 SQA Attainment and School Leaver Qualifications in Scotland: 2008-09, Scottish Government

41 Ibid

42 Summary Statistics for Schools in Scotland, No.1 - 2010 Edition, Scottish Government National Statistics Publication

43 Ibid

this relationship towards the child. Corporate parenting requires formal and local partnerships between all local authority departments and services to meet the needs of Looked After Children. Just as good parenting is at the heart of bringing up children, corporate parenting is at the heart of bringing up children in care. What this means is that everyone responsible for the up-bringing of children in care needs to talk to each other and co-operate to meet children's needs. Teachers, primary health care and social workers (and lead professional, if different) all have a role in the actions of local authority, when the authority is the corporate parent. Specialist health and education services, Skills Development Scotland staff, further and higher education colleges, police, the Third sector and other partners in the delivery of *Curriculum for Excellence* wherever that takes place could be seen as members of an extended corporate family. Again, the lead professional is crucial for co-ordinating multi-agency planning of different services and support around the child or young person.

158 Looked After Children are not a homogenous group with the same backgrounds or needs. When children become Looked After, it is essential that there is robust and flexible planning for their future from the outset. Stability is crucial to children's development and happiness and the system should support stability through minimising moves. All Looked After Children must have a Child's Plan in place which is reviewed at regular intervals by the local authority and which, amongst other things, must include information about:

- why the child is being Looked After;
- the child's health history and current state of health;
- the child's education history and current arrangements for provision of education;
- personality and social development;
- interests and recreational activities; and
- any services to be provided to meet the care, education and health needs of the child.

The contents of the Child's Plan are set out in regulation 5 and in Schedules 1 and 2 of the Looked After Children (Scotland) Regulations 2009.

159 Corporate parenting is not only a responsibility but an opportunity. Being a good corporate parent means:

- accepting responsibility for the council's Looked After Children
- making their needs a priority
- seeking for them the same outcomes any good parent would want for their own children.

160 All staff in education have an important role and unique opportunities to support and guide Looked After Children through their everyday interactions. Teachers are often cited by young people as the most influential or constant person in their lives.

"The child in care can go through quite a traumatic time. There can be all sorts of feelings of rejection, which can lead to disruptive behaviour in school. However, for a lot of these kids, school is the one stable thing in their lives. They know where they are and what they are doing. They often feel safe in school because things stay constant and they know how we will react."[44]

- A child who has become Looked After is likely to have had some difficult experiences in that process. Their experiences may bring challenges to their well being and learning. For example, they may have experienced or be experiencing instability, separation or anxiety.

Designated managers in educational and residential establishments

161 All educational establishments, including schools, residential schools, colleges and nurseries, should appoint a designated senior manager with specific responsibility for Looked After Children. The designated senior manager has a key role in guiding and supporting learning establishment staff and linking with the wider multi-agency network. Staff in all learning establishments should be aware of who is undertaking the designated senior manager's role.

162 *Core tasks for Designated Managers in Educational and Residential Establishments in Scotland*[45] provides detailed advice on the role of designated senior managers in relation to communication, meeting Looked After Children's needs, advocacy, learning and development, and ensuring an educationally rich environment. Aspects of this role may be delegated to individual teachers or staff for individual Looked After Children. However, overall responsibility remains with the designated senior manager.

163 Some Looked After Children may have some form of joint educational plan encompassing additional support needs. The Education (Additional Support for Learning) (Scotland) Act 2004 as amended 2009[46] states that all Looked After Children will be deemed to have additional support needs unless assessed otherwise. Assessment and planning for all Looked After Children could include an assessment of risk of behaviour likely to lead to

44 These Are Our Bairns: A Guide for Community Planning Partnerships on being a good corporate parent, 2008, Scottish Government

45 Core tasks for Designated Managers in educational and residential establishments in Scotland, 2008, Scottish Government

46 As amended by the Education (Additional Support for Learning) (Scotland) Act 2009 – section 1(1A)

a possible exclusion; support and provision to prevent this arising; and plans including who to contact in the event of this situation arising. This will also depend upon identifying and accessing support including specialists and agencies within and beyond the local authority.

Impact of exclusion

164 The exclusion of a learner who is Looked After can mean that their already potentially challenging circumstances are likely to be exacerbated and an additional loss of learning is likely. Exclusion from school may also have a significant impact upon their home lives. An exclusion from school may be the catalyst to a change in placement due to the need to find an alternative school, which can unsettle the learner and disrupt learning. The need to ensure appropriate care and supervision for the learner whilst they are excluded may be a significant pressure on a parent or carer and respite may need to be considered. The pressure to deal with the learner's ongoing behaviour 24 hours a day for the period of the exclusion may bring significant pressure to a placement. These issues should be considered by a multi-agency team as part of the decision to exclude a Looked After learner.

Planning and decision making around exclusion for Looked After Children

165 School staff should consider very carefully the decision to exclude a Looked After Child and if at all possible should avoid taking the decision to exclude them. Staff should discuss any potential decision to exclude a Looked After Child with the designated social worker and lead professional, if different, prior to the exclusion taking place. Staff should refer to the Looked After Child's Plan, assessment, support and provision agreed for that child, and contingency planning in the event of a potential exclusion.

166 In considering exclusion, school staff must ensure that appropriate arrangements are in place to ensure the care and wellbeing of any Looked After Child before they are excluded and sent home during school hours. If appropriate arrangements are not in place the learner should remain in school during school hours until such time as arrangements are in place.

167 The local authority has a statutory duty to safeguard and promote the child's welfare. As with any other child, the local authority as the child's corporate parent is responsible for ensuring the health, wellbeing and educational prosperity of the child; should wish for the most positive outcome for them; and should do all that it can to support him or her. A key question that all parents would ask, and that school staff as corporate parents should ask, "Is this good enough for my child?". A number of local authorities have developed a set of core questions for reflection when exclusion is being considered. This has a positive impact upon how situations are managed. These include:

- what interventions have been effected?
- is exclusion a last resort?
- what will exclusion achieve, and would an alternative be successful?
- what is the likely impact upon the young person, and their wider circumstances?
- does the young person require additional adult (and / or peer) support?
- if so who can best provide this?
- what are the views of their lead professional, social worker, residential designated senior manager or key worker, foster carer?
- what will the impact be on a foster, kinship or residential placement or a potential adoption placement?
- what impact will this have on the planning mechanisms in place such as the Child's plan, an Individualised Educational Programme or Co-ordinated Support Plan?

168 Some local authorities have introduced a system that clearly advises that it is the responsibility of the headteacher, if considering exclusion, to raise their concerns at an early stage with the responsible social worker in order to formulate or amend the Looked After Child's Plan. Where exclusion is being considered the case social worker, the carer (either children's carer or residential unit) and the Head of Service with responsibility for education should be informed and their opinion sought in advance of the exclusion.

Children and young people on the child protection register or for whom there are current or previous child protection concerns

169 Child protection concerns may arise from a number of differing reasons: from concerns about potential abuse or neglect to behaviours by the child or young person themselves which may put them at risk. It is essential that staff in all educational establishments (including pre-school, schools and colleges) know which senior staff are aware of who is or has been on the child protection register or for whom there are concerns.

What is child protection?

170 'Child protection' means protecting a child from child abuse or neglect. Abuse or neglect need not have taken place; it is sufficient for a risk assessment to have identified a likelihood or risk of significant harm from abuse or neglect. Equally, in instances where a child may have been abused or neglected but the risk of future abuse has not been identified, the child and their family may require support and recovery services but not a Child Protection Plan. In such cases, an investigation may still be necessary to determine whether a criminal investigation is needed and to inform an assessment that a Child Protection Plan is not required.

171 There are also circumstances where, although abuse has taken place, formal child protection procedures are not required. For example, the child's family may take protective action by removing the child from the source of risk. Children who are abused by strangers would not necessarily require a Child Protection Plan unless the abuse occurred in circumstances resulting from a failure in familial responsibility. For example, if a young child is abused by a stranger, a Child Protection Plan may be required only if the family were in some way responsible for the abuse occurring in the first instance, or were unable to adequately protect the child in the future without the support of a Child Protection Plan.

172 Abuse and neglect are forms of maltreatment of a child. Somebody may abuse or neglect a child by inflicting, or by failing to act to prevent, significant harm to the child. Children may be abused in a family or in an institutional setting, by those known to them or, more rarely, by a stranger. Assessments will need to consider whether abuse has occurred or is likely to occur.

173 All local authorities are responsible for maintaining a central register of all children - including unborn children - who are the subject of an inter-agency Child Protection Plan. This is called the Child Protection Register. The register has no legal status but provides an administrative system for alerting practitioners that there is sufficient professional concern about a child to warrant an inter-agency Child Protection Plan. Local authority social work services are responsible for maintaining a register of all children in their area who are subject to a Child Protection Plan, though the decision to put a child on the register will be based on a multi-agency assessment. The local authority may have its own register or maintain a joint register with other authorities. The Child Protection Register provides a central resource for practitioners concerned about a child's safety or care[47].

174 In cases where a school or college is considering the need to exclude a learner who may be on the child protection register or for whom there are current or previous child protection concerns, the member of staff with responsibility for child protection within the school or college, and/or the child protection co-ordinator should be informed and where the decision to exclude may be taken social work services must be informed of the decision. **It is essential that this is done prior to the child or young person being sent home in order to ensure their health and wellbeing immediately, and throughout the period of exclusion from school.** A child or young person for whom there are child protection concerns should not leave school premises during school time until this has been carried out. In all

47 The National Guidance for Child Protection in Scotland, Scottish Government, December 2010 http://www.scotland.gov.uk/Publications/2010/12/09134441/0

cases where a decision to exclude is being taken schools should be prepared to undertake a risk assessment to ensure that the child will not be placed at further risk whilst excluded from school, and that alternative provision should be available without undue delay.

175 When considering the exclusion of a learner for whom there are concerns relating to child protection, the following should be considered:

- check that there are appropriate arrangements for the care of a child or young person before they are sent from the school premises
- consider whether there are family or other circumstances that mean support is required if a child is excluded
- find out whether the child concerned is on a Child Protection Register, or compulsory measures of care, in which case Social Work **must** always be informed
- undertake a risk assessment to ensure that the child will not be placed at further risk while they are excluded from school
- where there are child protection concerns, consult the education authority to seek alternative educational provision for the learner while excluded from school, without delay
- consider appropriate arrangements for re-integration into school after the exclusion. For children and young people who have experienced abuse or neglect, stability and consistency in schooling is essential. If an exclusion is necessary, reintegration into the same school is often in the best interests of the child.

176 As with any other vulnerable learner, alternatives to exclusion which enable the ongoing wellbeing and stability of the learner should be explored and exhausted with exclusion from school being a last resort.[48]

Children and young people with additional support needs

177 The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended 2009) places specific duties on education authorities and other appropriate agencies to provide adequate and efficient additional support to ensure that all learners for whose school education they are responsible are able to benefit from school education. The *supporting children's learning code of practice*[49] which supports the implementation of the Act states that an additional support need may be of short or long duration, and may arise for any reason, for

48 Protecting Children and Young People: What you can do to help if you are worried about a child or young person http://www.scotland.gov.uk/Resource/Doc/35596/0023644.pdf

49 Supporting Children's Learning Code of Practice (Revised edition), 2010, Scottish Government

example could be due to the learning environment, family circumstances, a disability or health need, or social and emotional factors. Examples of learners who receive additional support may be some who are being bullied, those with social, emotional and behavioural needs, those with English as an additional language, from asylum seeking families, or from Gypsy/Traveller families. Regardless of the reason for the need for additional support, education authorities must make arrangements for the identification of individual additional support needs, make adequate and efficient provision for them, and keep under consideration the needs identified and the adequacy of the support provided for them. In many cases learners will have complex needs spanning more than one of these or other types of situations.

178 It is essential that the personal needs of each learner are considered, therefore, to determine whether or not learners may need additional support.

179 In considering the exclusion of a learner who receives additional support, school staff should take account of the potential impact of the loss of both their learning and support provision. Staff should be aware of the arrangements in place with other agencies, such as social work services and health services in making provision and take account of the impact of any disruption to the provision of these services to the learner, and to the services themselves. Learners should be allowed to continue to access any therapeutic support such as physiotherapy, speech and language therapy or occupational therapy as ongoing and necessary support and intervention.

180 School staff should be aware that a period of exclusion from school creates a transition point for children and young people to return to school, which can be particularly challenging for some learners with additional support needs. In considering an exclusion from school, transition planning should be factored into the plans for return to school.

181 As part of their duties to make adequate and efficient provision and keeping that provision under review, education authorities and schools use a range of planning mechanisms. For some learners with additional support needs an Individualised Educational Programme will be in place which will contain details of learning targets and support provided towards the aim of the plan. For those who meet the criteria, a co-ordinated support plan will contain the details of learning outcomes and support provided across multi-agencies towards specific learning aims. School staff and, where appropriate, multi-agency partners will require to take account of an exclusion within learning targets. The plan may require adjustment to reflect aspects of the exclusion, which may include the incident leading to exclusion, and any subsequent follow-up actions.

182 The provisions of the additional support for learning legislation include those learners who have social, emotional and behavioural needs. Exclusion statistics indicate that this group of learners have by far the highest rates of exclusion amongst those with additional support needs.[50]

183 In considering the exclusion of learners with social, emotional and behavioural needs schools and authorities should take account of the ongoing support which learners are receiving to support their additional needs and to ensure continuity of provision throughout any exclusion to support their learning needs. Integrating all areas of support for learners may be effective in ensuring that children and young people in need of support for social and emotional factors have consistent access to that support provision and are less likely to be removed from it.

184 Whole school approaches, in combination with more specific and targeted emotional health and wellbeing programmes for learners with social, emotional and behavioural needs are important.

185 School and authority staff may wish to consider the need to carry out risk assessment in relation to the needs of learners with additional support needs. Communication with supply and other staff who do not regularly work with learners who have particular behaviours related to an additional support need is essential to ensure consistency in practice and responses to behaviours to prevent further escalation of challenging behaviours which may lead to exclusion.

Children and young people with disabilities

186 In considering the exclusion of a learner with a disability as defined by the Equality Act 2010 schools and education authorities should ensure that they comply with the provisions of that Act in relation to discriminatory behaviour in the context of exclusion from school. The Disability Discrimination Act 1995 Code of Practice[51] indicates that responsible bodies must not discriminate against a learner with a disability by excluding him or her for a reason related to the learner's disability. New guidance on the Equality Act 2010[52] as applied to education in Scotland (and including exclusion) has been developed and is available on the Equality and Human Rights Commission website.

50 Summary Statistics for Schools in Scotland, No.1 - 2010 Edition, Scottish Government National Statistics Publication

51 The Disability Discrimination Act 1995 Code of Practice

52 http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/

Exclusion and referral to the Reporter

187 Where considering whether a learner should be excluded because of disruptive behaviour for example, physical assault on learners or staff; or, deliberate damage to buildings or equipment, consideration of referral to the Reporter may be appropriate. The referral of a learner to the Reporter would suggest there is a need to intervene on a **compulsory basis** because the learner is deemed "at risk" and his/her behaviour is giving serious cause for concern and should be addressed or challenged. Referral to the Reporter would normally be considered once the school's formal processes have been followed and there has been integrated multi-agency involvement, although in some cases it may be appropriate to refer at an earlier stage. In some local authority areas, where police have been involved, they will automatically refer the learner to the Children's Reporter.

188 There may be other reasons for a learner's behaviour – those who display particularly challenging behaviour may be the victims of neglect or abuse and/or be the witnesses of domestic abuse. The individual circumstances of the learner, again using a multi-agency approach, should be considered as part of the decision on whether to make a referral to the Children's Reporter in line with local authority procedures. The grounds for referral are set out in section 52(2) of the Children (Scotland) Act 1995.

189 On referral, the Reporter will investigate the case and determine whether compulsory measures of intervention may be required. If compulsory measures are considered necessary, a Children's Hearing will be held. More information is available from the Scottish Children's Reporter Administration (SCRA)[53].

53 Scottish Children's Reporter Administration (SCRA): www.scra.gov.uk

8. Decision Making, Managing Exclusions and Re-engagement

This section covers the decision making process and consideration of alternatives to exclusion, as well as the process of exclusion including recording, communication, right of appeal, duration and timing, provision of alternative education whilst excluded, re-engagement, and parental responsibilities and engagement.

Introduction

190 The legal framework for exclusion: Regulations 4 and 4A of the Schools General (Scotland) Regulations 1975 as amended, sets out the circumstances in which a learner may be excluded. The regulations sit within the wider context of the Education (Scotland) Act 1980, the Standards in Scotland's Schools etc Act 2000, and the Education (School and Placing Information) (Scotland) Regulations 1982; as well as requiring to be considered within the context of the Education (Additional Support for Learning) (Scotland) Act 2004 as amended and the Equality Act 2010. This chapter continues to outline policy and practice in relation to decision making and managing exclusion and removal from register, and reintegration.

Decision making

191 An education authority may only exclude a learner from school if the authority:

- considers that in all circumstances to allow the learner to continue attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational wellbeing of the learners there; or
- is of the opinion that the parent of the learner refuses or fails to comply, or to allow the learner to comply, with the rules, regulations or disciplinary requirements of the school.

192 The power to exclude a learner and therefore the legal responsibility for school exclusion rests with local authorities. In practice, decisions on exclusion are initially delegated to schools with the majority of decisions on exclusions made within school by the senior management team. Decisions on removal from the register of a school are in practice made by education authorities where the recommendation has been made by the senior management team or headteacher within a school. This enables a consistent approach across a local authority and joint consideration of educational provision and placement. In some local authorities, in order to support headteachers in their decision making process regarding exclusions, the decision to remove a learner from the register can only be made by the Director of Education.

193 The decision to exclude a learner from school is a difficult one for school and authority staff. A number of local authorities have developed a set of core questions which can be used when exclusion is being considered. These questions can have a positive impact upon how situations are managed. These include:

- what interventions have been effected?
- is exclusion a last resort?
- what will exclusion achieve, and would an alternative be possible?
- what is the likely impact upon the learner, and their wider circumstances?
- does the learner require additional adult (and/or peer) support?
- if so who can best provide this?

Recording this process may also support decision making.

194 It is very important to identify what the purpose of the exclusion is and what positive outcomes can be achieved by an exclusion. This might include:

- a positive change in learner behaviour or recognition of harmful behaviours
- cool down or reflection
- learner involved in or taking responsibility for resolving the situation
- making sure parents recognise the harmful behaviour, and where parents may have been reluctant to engage, do so because of the formality of the action
- carrying out a risk assessment
- instigating or reviewing support plans
- resolution or support for other learners or staff affected by the behaviour.

195 Identification of purpose and positive outcomes allows consideration of other means to bring about the same effect as an exclusion:

- Restorative meetings can restore relationships between learners and staff involved in or affected by the behaviour or incident.
- Solution oriented meetings find solutions and pathways through challenges and difficult situations and enable participative, solution finding approaches where the end goal is uncertain, where there are many people involved and where people feel generally ‘stuck’.
- An opportunity to engage with parents or carers may be particularly appropriate where staff are concerned that the learner’s behaviour or actions may not benefit from an exclusion as such, but certainly require some formalised response and an opportunity to introduce or review education plans. Immediate engagement with parents where they are available must not however lead to taking the learner home informally.

- A period of cool down or reflection in a learner support base, although regular use of the support base for particular learners should be monitored and reviewed as part of staged intervention
- Support for other learners or staff affected by the behaviour.

Seeking the views of the learner

196 In taking the decision to exclude a learner school staff and education authorities should take account of the child or young person's views as part of the decision making process where the learner wishes to express a view. In practice, this might mean that someone not directly involved in the behaviour or incident leading to the exclusion could ask the learner for their views, and why they should not be excluded. This may also help to resolve the situation by ascertaining the learner's understanding of and responsibility for harm caused and by allowing the learner to contribute to resolving the situation. This applies to all learners including those with additional support needs, and communication needs to be adapted to the individual learner's abilities and understanding. It would also be very useful to record this process to ensure that it has happened and to inform future resolution of the situation.

Sending home without excluding

197 Any decision to exclude a learner which does not conform with the legislative framework provided by the Schools General (Scotland) Regulations 1975 is illegal and may leave the authority open to legal challenge by the parent or the learner themselves. A complaint may also be raised under section 70 of the Education (Scotland) Act 1980.

198 Schools and education authority staff should therefore be aware that learners being sent home for periods of time to 'cool off' or 'cool down' or for longer term assessment and planning **must** be formally excluded, including where parents have given permission for their child to return home. Learners must not be sent home from school for reasons relating to behaviour or an incident without being excluded.

199 Schools and local authorities do use short-term, half-day cool down periods as part of education plans, and to positively engage parents. However, there is a legal requirement to record this approach as exclusion so that it remains transparent and carefully monitored. It is proposed that where half-day cool down periods are used as part of an agreed plan with parents/carers, this is clearly and positively reflected in all verbal and written communication about the exclusion.

Consideration of individual circumstances

200 Schools and authorities should be aware of legislation relating to Human Rights and other relevant legislation and ensure an ongoing awareness of developments in the law in this area. Schools and education authorities will wish to ensure that any decision to exclude complies with duties relating to anti-discrimination. The Equality Act 2010 Act does not prohibit schools from excluding learners with a protected characteristic but does prohibit schools from excluding learners **because of** their protected characteristic. It is also unlawful direct discrimination to exclude a learner because they are perceived to have a protected characteristic or because they are associated with someone with a protected characteristic. Protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Schools also have a duty to make reasonable adjustments to the exclusions process for disabled learners[54].

201 It is essential that in considering excluding a learner, school staff and the senior management team take into account the specific circumstances of the case in balance with the consideration of the individual circumstances of the child themselves. This is particularly significant where the learner is vulnerable or may be at risk.

202 Where all alternatives have been unsuccessful or where a learner's behaviour has been so extreme, exclusion may be the appropriate response.

Communication with parents/carers

203 The authority must, on the day on which a decision to exclude a learner (where the learner is under 16 years) is taken, inform the learner's parent (and carer, if appropriate) either in writing or verbally of:

- the decision to exclude; and
- the date, time and place where the headteacher, or teacher or official of the education authority, shall be available to discuss the decision to exclude. This meeting must be within 7 calendar days immediately following the date of the decision to exclude.

204 Where a parent or carer has been informed of the decision to exclude verbally, it is good practice for the details to be confirmed in writing or where appropriate in an alternative communication format. This is very important as verbal information may be difficult to understand immediately or remember fully, especially if the situation is emotionally difficult for parents.

54 The Equality and Human Rights Commission Statutory Code of Practice (draft at January – April 2011) and Practical Guidance.

205 The vast majority of exclusions last one week or less; with the average length around 3 days.[55] In order to make sure there is sufficient review, assessment and preparation for return to school, successful reintegration and introduction of new or additional support; it may be necessary to meet with parents/carers more quickly or urgently.

Communication with learners

206 Where the learner is a young person (over school age who has not yet attained the age of 18) the authority must, on the day on which a decision to exclude a learner is taken, inform the young person either in writing or verbally of:

- the decision to exclude; and
- the date, time and place where the headteacher, or teacher or official of the education authority shall be available to discuss the decision to exclude. This meeting must be within 7 calendar days immediately following the date of the decision to exclude. It is not required to inform or involve parents/carers of a young person, but it is good practice.

Communication about the decision to exclude – legal capacity

207 In Scotland, there is a presumption that a child aged 12 years and over has legal capacity to instruct a solicitor in connection with any civil matter. Children with that legal capacity have the same rights of appeal as a parent or learner who is a young person. Therefore a decision to exclude a learner who is aged 12 years and over and under 16 should also be communicated directly to the learner in addition to their parent/carer; and the learner involved in the discussion/meeting.

208 In the case of learners who are under 16 and are not considered to have legal capacity, the learner's parent (and carer, if appropriate) should be informed of the decision to exclude and the meeting to discuss the decision should be with the parent or carer.

209 Regardless of age, the views of the child or young person should be sought and taken into account on a decision which will significantly affect them. For example, the child or young person could be asked if they think there is a reason why they should not be excluded.

Communication about the decision to exclude – Looked After Children

210 A Looked After Child may continue to reside with their parents at home or may be placed with a foster carer, kinship carer, with prospective adopters or in a residential establishment. Reference is made to paragraphs 154-168. As a matter of good practice, when

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considering whether to exclude a child who is Looked After, local authorities should identify and communicate with all potential carers of the child as well as any person who is not the child's parent but who may have parental rights and responsibilities in respect of the child.

211 There are particular responsibilities and considerations for the corporate parent regarding the exclusion of a Looked After Child, including the implications for the placement; the emotional impact on a child or young person who may already have attachment issues and may have experienced considerable lack of stability. School staff should be able to answer the question "Is this good enough for my child?" positively to ensure that the welfare of the child is paramount in making decisions.

212 It is recognised that ultimately, the headteacher or senior management of a school makes the decision to exclude on behalf of the local authority. However, as part of the local authority's duties to safeguard and promote the health and wellbeing of Looked After Children the decision to exclude a learner who is Looked After should be taken in consultation with the child's social worker and lead professional, if different. Where a decision to exclude is taken this should be communicated by the designated senior manager or staff member with responsibility for Looked After Children within a school to the lead professional nominated within the Looked After Child's Plan. The meeting to discuss the exclusion should be held with those who hold parental responsibility and the child's carers. This may be parents, guardians, carers or the key worker or a combination of all.

Procedures immediately following the decision to exclude

213 In addition to the above, staff must contact the child's parents (and their carers, if appropriate) prior to the learner being required to leave the premises during school time to ensure the safety and wellbeing of the child or young person. In the case of a learner who is Looked After, staff should ensure that appropriate arrangements for the care of the child or young person are in place prior to the learner leaving the school premises. For children Looked After by the authority, they may be residing with a kinship or foster carer or placed with prospective adopters or residing in a residential establishment.

Children and young people on the Child Protection Register or for whom there are child protection concerns

214 Similar communication and procedures as outlined above will be required for learners on the Child Protection Register or for whom there are concerns.

Communication about the reason for exclusion and right of appeal

215 As indicated, the authority must notify the parent (and carer, if appropriate); or a young person in writing and alternative format where appropriate, of:

- the reason(s) the learner was excluded;
- conditions if any with which the learner and/or parent must undertake prior to re-integration
- the right of appeal and how appeals can be initiated; and
- any other information considered relevant or appropriate.

216 It is essential that letters are clear, accessible and personalised. Local authorities can provide further guidance on the format of the letters. Other information could include what options were considered, what support could be offered, and what alternative education will be provided. It may also be appropriate to provide information on independent support and information services, e.g. ChildLine, ParentLine, or Enquire[56]. For children who are Looked After by the local authority, the local authority should provide notice to the child's carers as well as their parents. The child's carers may be foster carers, kinship carers, prospective adopters or the head of a residential establishment. They should be informed that they may have a right of appeal against the decision but should seek their own advice in this regard.

217 It is **not** a requirement to set conditions for return to school. Depending upon the individual case, it may be appropriate to develop and agree action or support plans with the parents and learner as part of a re-integration meeting; and as part of a review of staged interventions including the identification of respective roles and responsibilities. This means there is greater flexibility around re-integration planning.

218 It is good practice to also notify the learner where the learner has legal capacity, and the parent where the learner is a young person.

219 The Regulations provide two timescales for providing this notification:

- Where the learner has been excluded for a period exceeding 7 days, or where the parents (or learner where applicable) have not, within 7 days of first being informed of the decision to exclude, indicated to the headteacher that they do not intend to appeal the decision (whether or not the learner has been re-admitted to the school), the subsequent written notification must be issued within 8 days of the decision to exclude.

56 Childline, www.childline.org.uk ParentLine, www.children1st.org.uk/parentline
Enquire, www.enquire.org.uk

- Where the learner has been readmitted to the school within 7 days of the decision to exclude him and the learner's parent (or learner where applicable) has indicated to the headteacher that they do not intend to appeal the decision, the education authority may issue the subsequent written notification within 8 days of the decision to exclude, or thereafter.

Local authorities can clarify this through their own guidance, practice standards and paperwork, e.g. written notification on the day of exclusion, and further written notification within 3 days as standard.

The right of appeal against a decision to exclude

220 Section 28H of the Education (Scotland) Act 1980, and section 41 of the Standards in Scotland's Schools etc. Act 2000 provides the right of appeal against a decision to exclude a learner. An appeal is referred to the education appeal committee set up by education authority in the first instance. A further right of appeal against the decision of an education appeal committee lies to the sheriff court.

221 The 1980 Act provides parents and young persons with rights of appeal against a decision to exclude. In the case of Looked After Children, the child's carers (for example kinship or foster carers) may wish to appeal against the decision. That will be a matter for the appeal committee to determine. Where the excluded learner is a young person, the right of appeal lies solely with the learner, not with the learner's parent. The Standards in Scotland's Schools etc. Act 2000 confers *these same rights* on learners with legal capacity to instruct a solicitor (broadly those over 12 with sufficient maturity and understanding of what it means to do so, although those under the age of 12 may also have that understanding and therefore also the capacity to instruct a solicitor). Even where a learner does have legal capacity to instruct a solicitor, his or her parent may appeal on their behalf.

222 In order for the process of appeal to function effectively it is necessary for education authorities to provide parents or the young person, and where appropriate learners with legal capacity, with information about the procedures involved, the type of evidence which may be heard and the support which they can bring with them to the committee hearing.

Communication between colleges and other flexible placements beyond the school

223 Where a learner has a placement at a college or other provision, it is good practice to let the college or placement know if a learner has been excluded. This should include the reason and the purpose of the exclusion in order that the placement can consider any related

issues such as safety. However, on this basis it is not necessary to expect the college or other placement to also exclude the learner and indeed there may be clear benefits to continuing a positive placement and aspect of the learner's education. The learner should be aware of what colleges and extended providers or placements are told about the exclusion. Equally, where a learner is excluded from a college or another placement, this should be communicated to the school.

Duration and timing of exclusion

224 The length of an exclusion is not defined in legislation and is accordingly a matter for the discretion of the education authority. The exclusion should be for as short a period as possible. It is good practice for the local authority to set a limit of duration for exclusions beyond which there is a need to refer back to education authority level. The guiding principle is that the exclusion should be as short as possible and should be used to constructively resolve the situation with all those affected; plan for any new support or provision; and safeguard a successful return, in partnership with learners and their parent(s) or carer(s). This will be in relation to individual circumstances and include time to successfully resolve and arrange reintegration.

225 In response to very serious incidents such as serious physical assault, use of weapon or dealing in illegal substances, there may need to be additional interventions such as contact with police, referrals to the Children's Reporter, and case conferences within the staged intervention approach described earlier. There may also need to be a risk assessment.

226 Where the timing of a decision to exclude a learner means that it falls near the end of a school term it is good practice to resolve the exclusion and re-admission processes within the same term. This is very important for the benefit of everyone involved.

227 A learner or parent's decision to appeal against exclusion should in itself have no effect on the length of the exclusion, or any conditions attached to the learner's return. A learner can return to school after a period of exclusion regardless of the appeal process and timing.

228 In the circumstances where the exclusion meeting has resulted in an agreed resolution between the learner, their parents and the school, a return to school prior to the end of the exclusion period may be appropriate. This decision should be taken by the headteacher.

Where exclusion affects exams

229 In some circumstances a learner's behaviour or the occurrence of an incident may lead to exclusion around the time where a learner is due to be presented for examinations. Every effort should be made to ensure that the learner is able to sit their exams as planned, or within an alternative location in the school. Where this is not possible schools should make arrangements to enable the learner to sit their exams within another centre or location. Schools should contact the Scottish Qualifications Authority (SQA) for advice and to progress any arrangements should this be required.

Recording the decision to exclude

230 The decision to exclude a learner can be included in the learner's progress record. Where included, there are requirements as to what should be recorded. It is important within the context of ongoing assessment and planning for the learner's needs and individual circumstances that appropriate information is recorded.

231 Where an appeal has been made to the education appeal committee and/or to the sheriff court in relation to an exclusion the decision of the appeal committee or sheriff must also be noted within the record. The parent or the young person should be informed of the terms of entry in the record as soon as practicable after the information is included.

232 Where the decision of an education appeal committee or sheriff court has been to annul the exclusion, this information should be deleted from the learner's progress record and this information should not be disclosed as part of the learners' progress record.

Consideration of alternative educational provision during exclusion and timescales

233 Education authorities have a duty under section 14(3) of the Education (Scotland) Act 1980 to make alternative education provision for excluded learners **without undue delay**. The duty is to either:

- Provide school education for (the excluded learner) in a school managed by them; or
- Make arrangements for (the excluded learner) to receive such education in any other school the managers of which are willing to receive (the excluded learner); or
- Make special arrangements for the excluded learner to receive education other than at an educational establishment.

234 National statistics indicate that around 86% of learners excluded **do not** receive any educational provision and around 13% receive other provision which includes work sent home.[57] This indicates that learning ceases during the exclusion and the impact of this is likely to increase disaffection from school and increase learners' difficulty in re-integrating into classes and homework on their return.

235 Alternative provision in the form of homework or learning in an alternative educational establishment will contribute to continuity of learning which is of a similar standard to the education provided prior to exclusion and **should be put in place as soon as practicable**.

236 The duty to provide education never stops. The legislation does not specify within how many days alternative education provision should be provided as the purpose is to **continue** providing education to learners not attending school. In practice, alternative provision will need to be in place within days rather than weeks; although it may be necessary to allow for an immediate cool-down on the actual day of exclusion. It is reasonable to expect alternative education provision after 3 days, and not 10 days as previously advised. It will not be practically possible to deliver the same standards of curriculum provision during an exclusion, within the context that 99% of exclusions are 10 days or less. Equally, it is not acceptable that 86% of those excluded do not receive alternative educational provision of some form.

237 However, over 1% of exclusions are more than 10 days (in 2009/10 there were 501 exclusions more than 10 days[58]) and it is imperative that alternative education is provided in those cases.

238 Any special arrangements should, in the first instance, involve providing learners with the same classwork and homework for completion, marking and return which they could expect had they not been excluded. Unless the exclusion is of only a few days duration, it will not be sufficient simply to provide excluded learners with homework or classwork if they do not also receive sufficient teaching to enable them to understand the material. Any arrangements should therefore involve contact with learners on a regular basis. There is a responsibility on learners and parents to make sure the provision arranged is carried out and used during a period of exclusion.

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239 **Consideration as to the amount of contact time required needs to be given on an individual basis.** Younger children who are less well able to work on their own, children with pre-existing difficulties in learning, children working towards examinations and those whose families may be less able to support their learning, might be considered to have greater needs for direct teacher contact. The division and spread of allocated contact time should also be based on individual need. The reason(s) for a learner being excluded should be taken into account when deciding levels of contact, in order to ensure the security of all those involved.

240 The duty is on local authorities to provide alternative education, and the school can provide work and has a responsibility to do this. It may be appropriate to include a timescale or level of frequency of exclusion, following which the local authority will jointly contribute to decision making on and provision of alternative education while the learner is excluded. Some local authorities set expected standards of provision within timescales, e.g. homework programme up to 4 days, additional tutorial session/s up to 5 days or 10 days. Other local authorities provide continuity of provision for Looked After Children through a designated teacher who will prioritise workloads and schedules to provide direct support to the learner during the exclusion at a more vulnerable period of their life.

Re-engagement

241 Following a period of exclusion, it is necessary to arrange the readmission of the learner to school. It is good practice to meet with the learner to discuss their return to classes and the work which they will have to complete, if appropriate. It is recognised that too much focus on work to be caught up on may, however, be de-motivating.

242 It may be necessary to implement a range of support provision to put together a package of personalised support to meet the needs of the learner. In the circumstances where a learner is accessing extended support provision as part of meeting their learning needs, it is essential that appropriate assessment, planning and review are carried out jointly between the two education providers to ensure a consistent approach.

243 Re-integration meetings with learners and their parents/carers may include agreeing to a support plan, including an understanding of future behaviour, expectations and responsibilities. It is not required to seek guarantees or contracts of behaviour with parents although conditions with which learners and/or parents are required to comply with, or to undertake to comply with, may be set prior to the learner being readmitted to the school.

244 Re-admission should take into consideration preparing and meeting the needs of staff and other learners affected by the behaviour/incident which led to the exclusion and follow-up support. It may be appropriate to hold a restorative meeting with staff and learners involved in the incident/behaviour leading to exclusion to restore and repair relationships and trust as part of the return to school. Schools which use restorative or solution oriented approaches are in a strong position to use those approaches for re-integrating learners, dealing positively with other learners and/or staff affected, and achieving resolution of the situation. Further information on restorative approaches is included in Annex C.

245 Other forms of follow-up support for staff and other learners include:

- feedback on how the incident/learner(s) has been dealt with
- informal meetings
- formal meetings within school
- protected time to recover, discuss or debrief
- meeting at local authority level (e.g. head of service, quality improvement officer, educational psychologist)
- a confidential helpline or counselling support.

246 The *Behaviour in Scottish Schools Research 2009* found that teachers and support staff generally felt supported and confident that senior management would help with behaviour management difficulties. Informal support from colleagues was also valued. Where teachers had experienced a serious incident the most common type of follow-up support for teachers was feedback on how learners had been dealt with and/or a restorative or informal meeting. Counselling was hardly ever used and some incidents were not followed up at all. It is essential that schools and local authorities support all staff who report serious incidents so the resolution takes into consideration the needs of staff affected as well as the learner.

Removal from register

247 In 2009/10, fewer than 70 learners were removed from the register of a school.[59] In the context of local authorities' continuing duty to provide education, and the range of approaches and options for learners at risk of removal from the register, it is imperative that everything possible is considered to avoid such a situation. It is important that removal from register does not represent a failure to assess and implement the range of approaches and options available, including managed moves or transfers across school clusters or local authorities, with learner and parent involvement in decision making.

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248 In very exceptional circumstances it may be that the school believes that the learner's behaviour is such that it may merit the learner's removal from the register of the school and therefore referral to the education authority for consideration.

Admission to a new school following removal from the register

249 Where the decision is made to remove a learner from the register, education authorities must arrange for new educational provision to be made. This is usually in the form of attendance at another establishment. Arrangements for transfer of the learner to a new establishment should be made expediently to ensure minimal risk to educational provision for the learner. In addition, alternative provision must be made during any period of exclusion.

Schools must ensure timely transfer of educational records and plans to support the effective transition of the learner to their new educational provision.

250 Following the learner's return to school after exclusion, support provision and planning mechanisms should be reviewed. Schools and education authorities should go back into the staged intervention process as outlined earlier.

Use of part-time hours

251 As part of an initial support package on return to school it may be appropriate, particularly where a crisis situation has developed, for the learner to return to school on a part-time basis for a short period of phased re-admission. This may also support learners who are reluctant to attend. Any such plans should be considered within the staged intervention framework and documented within the appropriate planning mechanism. These arrangements should be considered as an interim step to expedite a prompt return to full time education and should have a clear timescale attached. The length of this arrangement should be kept to an absolute minimum. Where a learner is receiving a part-time timetable on this basis there remains a legal requirement to mark attendance as attendance and time absent as exclusion. The educational programme is a consequence of exclusion and it is important that such approaches are transparent and closely monitored. However, the wider context of communication through the education plans, letters, and meetings with parents/ carers should reflect that the approach is positive, planned, agreed and carefully monitored, and does not reflect negatively on the learning establishment's use of exclusion. Local authorities should be aware of and monitor carefully any part-time provision including targets for full time provision.

Communication and engagement with families and/or carers

252 In addition to the formal communication processes around the exclusion itself, school staff may wish to continue to be in touch with families/carers following the return to school to ensure that any ongoing concerns may be dealt with quickly and consistently. This ongoing relationship between school and home may also enable any wider concerns resulting from the exclusion itself, for example around the ongoing placement of a Looked After Child, to be raised and appropriate support put in place by other agencies. Regular communication by phone or email can support this process.

Parental responsibility and engagement

253 It is important to remind parents of their responsibilities in terms of ensuring attendance, as well as to support alternative education during an exclusion, and to support re-engagement of their child. Good, accessible and positive communication with parents or carers verbally and through letters is an essential part of this. *Parents as Partners in Their Children's Learning*[60] is a toolkit which looks at the different ways parents and carers can be involved in their child's learning and provides guidance on involving all parents in school life. For some parents, their own experience of school or a history of difficulties between themselves and the school may lead to reluctance to engage with school both prior to, and in dealing with, exclusion. Regular communication with parents by telephone or email should help to overcome this. A solution oriented or restorative meeting may be used to positively engage and support parents.

Use of solution-oriented re-admission meeting

254 Multi-agency meetings are frequently held by schools prior to exclusions, often called Joint Assessment Teams or School Liaison Groups; or following an exclusion, often termed re-admission meetings. The purpose of such meetings is often cited as providing opportunities for the learner, parents, school and others to identify ways of understanding and shaping behaviour so that possible future exclusions become unnecessary. Historically, such meetings have often been tightly chaired within an information-sharing context while meetings are now characterised by a participative style and a solution-finding context. Several forms of solution oriented meeting are now used across the country.

255 The 7-step solution oriented meeting is based on the Rational Approach to Decision Making Model, enhanced by solution oriented and creative thinking techniques. Typically its duration is 30-45 minutes; it is conducted by an outcome-neutral facilitator and places the child and family at the centre of the solution-finding process. It is highly visual and participative and concludes with an action plan. (See annex C for further information.)

60 Parents as Partners in Their Children's Learning: Toolkit, 2006, Scottish Government

Mediation

256 In the circumstances where relationships between school or authority staff and parents/carers have become difficult, mediation may be a useful tool in discussion and reaching an agreement around a specific issue or circumstance. Mediation may be used, where both parties agree, to work together towards an agreed solution. Where exclusion from school may relate to an additional support need mediation may be requested and provided through the framework of the Additional Support for Learning legislation.

Communication with staff on exclusion policies and individual cases

257 It is important to communicate school policies on exclusion so that all staff are aware of overall principles as well as more specific school aims. In the context of individual confidentiality staff, including supply staff, ought to be proactively provided with information so that they are aware and understanding of individual situations.

The role of local authority guidance

258 Local authorities set policy frameworks to support local policy development and implementation. Exclusion policies should be part of a wider strategy or policy on health and wellbeing, supporting learners, and positive relationships and behaviour. To support implementation, local authority policies could cover the range of issues outlined such as flexible, personalised packages of support; school to school transfers; risk assessment procedures; physical intervention and restraint and follow-up support for staff where there has been a serious incident; and exclusions.

259 Local authorities may provide additional guidance and support on:

- Decision making, especially where exclusions are lengthy or frequent;
- Alternative education provision during an exclusion;
- Extended provision to prevent an exclusion or re-engage a learner;
- Joint prioritisation of extended provision and flexible learning packages; and
- Monitoring and self regulation.

260 Local authorities can and do delegate decision making powers on exclusion to the senior management of schools; and they have a duty and responsibility to assist and support headteachers in decision making. Schools are increasingly working in partnership with local authorities to deliver a broad curriculum and flexible, personalised learning packages, across a

range of provision and placements; and managed moves to other schools or learning centres. Local authority quality improvement officers also have a key role to monitor levels of exclusion including those learners who are excluded on a number of occasions and for longer periods of time, so that joint planning and support can be used to prevent further exclusion.

Monitoring

261 National monitoring provides important indicators of levels of serious negative behaviour in learning establishments as well as the levels of work to promote positive behaviour and support learners with additional behaviour needs. National statistics also provide important indicators and data on learners who are more vulnerable, e.g. those who are Looked After or have additional support needs.

262 Local monitoring is more effective for analysing and understanding local trends and patterns. Local authorities should be aware of lengthy or repeated exclusions as well as general awareness of the exclusion rates of all their schools. Local authority policies may require joint working where, for example, exclusions are over a certain length; certain level of frequency; or of Looked After Children, in order to support joint planning, interventions and provision.

263 Arrangements for monitoring consistency of decision making in exclusion from school are a matter for schools and local authorities themselves. Review of the information collected by schools will offer insights into the types of incidents and where collected, locations of incidents enabling schools to identify hotspots where exclusion frequently occurs. Collecting information on types of learners excluded (for example, Looked After Children or by ethnicity) will enable monitoring of trends and may point to areas of inconsistent treatment or where more support work is needed.

264 It is vital that local authorities understand how exclusion levels across learning establishments vary in order to identify trends and patterns which reflect school policies and practice; and constantly analyse prevalence, increases or decreases in numbers. Local authorities should also support learning establishments to address any prevalent or increasing trends.

265 A number of local authorities have put in place specific measures to monitor and track exclusions within all schools. The exclusion statistics are published twice a year and shared with all headteachers. The information is presented in a graph so that patterns can be easily identified. Senior education managers visit the school regularly to discuss exclusion patterns and offer advice and CPD opportunities to support the school.

266 Individual schools use SEEMIS as a tool to help them analyse exclusion patterns. The system can easily identify particular periods in the day, days of the week, and times of the year which gives senior management teams helpful information so that they can provide the appropriate support at these particular flash points.

267 Nationally the Scottish Government has collected and published annual statistics on exclusions from school since 1998/99. This has enabled analysis of levels and patterns of exclusion within local authorities across Scotland. This information has been used to support the development of national policy and guidance. The latest national statistics on exclusion from school are available from
http://www.scotland.gov.uk/Publications/2010/12/01091355/0

268 Guidance and a data specification on this national collection are published by ScotXed and can be found at:
https://www.scotxed.net/ScotXed%20Web%20Parts/Attendance,%20Absence%20and%20Exclusions.aspx?PageView=Shared

269 Following a user consultation survey on school statistical publications completed in September 2010, the Scottish Government will reduce the frequency of national statistical collection publications on attendance and absence and exclusion to every 2 years, summarised as part of a wider compendium of learning statistics. Fuller statistical analyses will continue to be available on the Scottish Government website. This will continue to inform national research and indicators of behaviour in schools, as well as approaches to improving relationships and behaviour. It will also enable the monitoring of patterns across learners who are more vulnerable and at risk of exclusion to be monitored. However, the key value of recording and monitoring is at a local level, where statistics can be analysed and understood in the context of patterns across learning establishments and for individual learners.

Annex A

Exclusion from Schools – Scottish Government National Statistics

Table 1a: Cases of exclusion by type of exclusion, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Exclusions in total	**38,912**	**41,974**	**42,990**	**44,794**	**39,717**	**33,917**	**30,211**
Temporary exclusions	38,736	41,703	42,726	44,546	39,553	33,830	30,144
Removed from register	176	271	264	248	164	87	67

Table 1b: Number of cases of exclusion per 1,000 pupils, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Exclusions in total	**53.3**	**58.1**	**60.4**	**63.9**	**57.5**	**49.9**	**44.7**
Temporary exclusions	53.0	57.8	60.0	63.5	57.3	49.7	44.6
Removed from register	0.2	0.4	0.4	0.4	0.2	0.1	0.1

(1) Some of the 2003/04 figures in other tables include grant-maintained schools, so they may not add to this published total.

Table 2a: Cases of exclusion by gender, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06[2]	2006/07	2007/08	2008/09	2009/10
Primary							
Total	**4,478**	**5,319**	**5,779**	**6,018**	**5,616**	**4,953**	**4,433**
Boys	4,155	4,845	5,253	5,525	5,188	4,537	4,030
Girls	323	474	525	493	428	416	403
Secondary							
Total	**33,472**	**35,513**	**36,136**	**37,566**	**32,905**	**27,704**	**24,665**
Boys	25,906	27,109	27,312	28,323	24,985	20,933	18,559
Girls	7,566	8,404	8,824	9,243	7,920	6,771	6,106
Special							
Total	**976**	**1,142**	**1,075**	**1,210**	**1,196**	**1,260**	**1,113**
Boys	860	1,039	985	1,103	1,077	1,116	1,007
Girls	116	103	90	107	119	144	106

Table 2b: Cases of exclusion rate per 1,000 pupils by gender, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06[2]	2006/07	2007/08	2008/09	2009/10
Primary							
Total	**11.0**	**13.4**	**14.8**	**15.7**	**15.0**	**13.4**	**12.1**
Boys	20.0	23.9	26.4	28.3	28.2	25.0	21.5
Girls	1.6	2.4	2.7	2.6	2.3	2.3	2.2
Secondary							
Total	**105.1**	**111.7**	**114.4**	**119.9**	**106.5**	**91.3**	**81.6**
Boys	161.9	170.0	172.4	180.4	161.7	137.6	122.3
Girls	47.1	53.0	56.1	53.1	51.3	44.8	40.6
Special							
Total	**134.3**	**162.9**	**158.6**	**182.5**	**187.3**	**195.0**	**174.1**
Boys	175.7	217.7	213.6	243.4	246.3	250.6	229.2
Girls	48.9	46.0	41.5	51.0	59.1	71.8	53.1

(1) the 2003/04 Secondary school figures include 7 temporary exclusions from mainstream grant-maintained schools. The 2004/05 to 2008/09 figures do not include grant-aided schools.

(2) one primary school exclusion where gender was not reported

Table 3a: Cases of exclusion by stage from 2003/04 to 2008/09

Primary schools

	Total	P1	P2	P3	P4	P5	P6	P7
2003/04	4,478	80	178	322	492	851	992	1,562
2004/05	5,319	130	245	402	717	938	1,284	1,603
2005/06	5,779	134	225	400	714	1,151	1,321	1,833
2006/07	6,018	156	305	400	653	1,062	1,534	1,908
2007/08	5,616	152	225	398	589	968	1,358	1,926
2008/09	4,953	137	246	339	567	824	1,167	1,673
2009/10	4,433	174	252	347	559	757	964	1,380

Secondary schools

	Total	S1	S2	S3	S4	S5	S6
2003/04[1]	33,465	5,180	8,948	11,032	7,342	807	156
2004/05	35,513	5,413	9,708	11,809	7,558	890	135
2005/06	36,136	5,570	9,444	12,400	7,723	865	134
2006/07	37,566	6,312	9,942	12,497	7,652	993	170
2007/08	32,905	5,139	8,723	10,912	7,202	801	128
2008/09	27,704	4,643	7,123	9,108	5,966	722	142
2009/10	24,665	3,985	6,553	8,240	5,042	691	154

Special schools

	Total
2003/04	976
2004/05	1,142
2005/06	1,075
2006/07	1,210
2007/08	1,196
2008/09	1,260
2009/10	1,113

Table 3b: Cases of exclusion by stage per 1,000 pupils, 2003/04 to 2008/09

Primary schools

	Total	P1	P2	P3	P4	P5	P6	P7
2003/04	11.0	1.4	3.2	5.7	8.5	14.5	16.6	25.5
2004/05	13.4	2.4	4.4	7.1	12.6	16.3	21.9	26.9
2005/06	14.8	2.6	4.2	7.2	12.6	20.3	22.9	31.4
2006/07	15.7	3.0	5.8	7.5	11.8	18.8	27.1	33.2
2007/08	15.0	3.0	4.4	7.6	11.0	17.5	24.2	34.1
2008/09	13.4	2.6	4.9	6.6	10.9	15.4	21.2	29.9
2009/10	12.1	3.3	4.9	6.9	10.9	14.5	18.1	25.1

Secondary schools

	Total	S1	S2	S3	S4	S5	S6
2003/04[(1)]	105.1	83.0	145.1	184.7	121.5	17.1	5.8
2004/05	111.7	89.1	155.5	190.1	128.2	19.0	5.0
2005/06	114.4	94.6	155.3	197.7	126.2	19.0	5.0
2006/07	119.9	109.6	169.1	204.5	124.2	20.9	6.5
2007/08	106.5	90.7	151.1	184.6	119.5	16.8	4.7
2008/09	91.3	83.4	125.3	157.2	102.2	15.4	5.1
2009/10	81.6	72.3	117.6	144.2	88.1	14.7	5.1

Special schools

	Total
2003/04	134.3
2004/05	162.9
2005/06	158.6
2006/07	182.5
2007/08	187.3
2008/09	195.0
2009/10	174.1

(1) Unlike in tables 2, 4, 5 and 6, the 2003/04 does not include the 7 temporary exclusions from mainstream grant-maintained schools.

Table 4: Cases of exclusion by deprivation indicator, 2007/08 and 2008/09

	2007/08		2008/09		2009/2010	
	number	rate per 1,000 pupils	number	rate per 1,000 pupils	number	rate per 1,000 pupils
Most deprived 20% SIMD2006)	17,308	117	14,416	100	13,076	91
Least deprived 20% (SIMD2006)	2,008	15	1,756	13	1,614	12

Table 5a: Cases of exclusion (temporary and removals) amongst pupils Looked After by local authorities, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06	2006/07[2]	2007/08[3]	2008/09	2009/10
Total Looked After	**1,396**	**2,601**	**3,046**	**3,787**	**3,938**	**3,853**	**3,875**
Looked After at home	643	1,878	2,259	2,505	2,444	2,402	2,355
Looked After away from home	753	723	787	1,282	1,494	1,451	1,520
Not Looked After by local authority	35,647	39,373	39,944	40,900	35,778	30,064	26,336
Data not available	1,883						

Table 5b: Number of cases of exclusion per 1,000 pupils amongst pupils Looked After by local authorities, 2003/04 to 2008/09[1]

	2003/04[1]	2004/05	2005/06	2006/07[2]	2007/08[3]	2008/09	2009/10
Looked After at home	242	339	337	368	522	433	376
Looked After away from home	264	323	333	358	359	325	326
Total Looked After	**253**	**354**	**341**	**380**	**445**	**384**	**355**
Not Looked After by local authority	49	53	55	60	52	45	40

Rate has been calculated on the basis of Looked After status recorded at time of exclusion and is the rate within the particular group.

(1) The 2003/04 figures include 7 temporary exclusions from mainstream grant-maintained schools.

(2) Data not available for 107 removals from register in Glasgow where Looked After status was unknown.

(3) Data not available for one removal from register in Glasgow where Looked After status was unknown.

Table 6a: Cases of exclusion (temporary and removals) amongst pupils with additional support needs, by provision type, 2003/04 to 2008/09

	2003/04[1]	2004/05	2005/06[2]	2006/07	2007/08	2008/09	2009/10
Primary							
With ASN	940	1,282	1,258	1,668	1,537	1,573	1,565
Without ASN	3,123	3,716	3,896	4,310	4,048	3,346	2,837
Data not available	415	321	605	40	31	34	31
Secondary							
With ASN	2,804	3,339	3,943	4,928	4,890	4,911	5,049
Without ASN	29,264	30,735	30,867	32,000	27,828	22,612	19,424
Data not available	1,404	1,439	1,326	638	187	181	192
Special	976	1,142	1,075	1,210	1,090	1,179	1,037
Data not available					106	81	76

Table 6b: Number of cases of exclusion per 1,000 pupils amongst pupils with additional support needs, by provision type, 2003/04 to 2008/09[1]

	2003/04[1]	2004/05	2005/06[2]	2006/07	2007/08	2008/09	2009/10
Primary							
With ASN	69	88	81	105	93	89	79
Without ASN	8	10	10	12	11	9	8
Data not available					##	##	##
Secondary							
With ASN	290	309	328	372	366	343	287
Without ASN	95	100	102	107	94	78	68
Data not available					##	##	##
Special	134	163	159	183	171	183	162
Data not available					##	##	##

(1) THE 2003/04 figures include 7 temporary exclusions from mainstream grant-maintained schools.

(2) There are 20 cases missing from this table which are included in tables 1,2,3,4 and 5.

Annex B

Included, Engaged and Involved Steering Group

The development of this guidance was overseen by the Included, Engaged and Involved Steering Group. This group includes the following representatives:

- Mike Gibson, Scottish Government (Chair) replaced by Maggie Tierney
- Steve McCreadie, Aberlour Child Care Trust
- Carol Kirk, Association of Directors of Education
- Bill Eadie, Association of Directors of Social Work
- Mary Duffy, Morag Treanor, and Jessica Cundy, Barnardo's
- Bryan Livingstone, Care Commission
- Veronica Rankin, Educational Institute for Scotland replaced by Steve McCrossan
- Brian Stewart and Douglas Hutchison, Her Majesty's Inspectorate of Education
- Elsie Aitken, Headteacher, Longridge Primary School, West Lothian
- Liz Ervine, Headteacher, Sprinburn Academy, Glasgow City Council
- Robert Nicol, CoSLA

Annex C

Approaches to improving relationships and promoting positive behaviour

Introduction

1 The Scottish Government, in partnership with local government and other agencies, has supported the development of a range of approaches which encourage the creation of peaceful learning environments and promote positive behaviour based on improved relationships, positive behaviour, engagement and motivation, and curricular programmes on positive social and emotional wellbeing. In addition, the Scottish Government has established the Positive Behaviour Team, a team of experienced educational professionals working regionally across Scotland, to provide training, advice and support to schools, learning establishments and local authorities across a range of approaches.

2 This section contains descriptions of practice which promote positive behaviour and can be adopted within learning establishments, with support where needed from the Scottish Government's Positive Behaviour Team. A body of evidence, both qualitative and quantitative, is emerging that points to the positive impact of those practices and approaches if adopted across learning establishments and particularly where actively supported by headteachers and senior leadership teams.

Restorative approaches

3 Restorative approaches are based on a philosophy which places relationships, respect and responsibility at the heart of effective practice. The skills and processes which are key elements of Restorative approaches are considered by schools, early years establishments and other learning settings as more effective in addressing issues of discipline and conflict than more traditional approaches based on rewards and sanctions.

Training in Restorative approaches may include:

- developing a restorative ethos through activities such as peer support and circle time
- developing restorative conversations when staff/peer mediators intervene in a situation
- for schools where restorative approaches have been embedded coherently in practice, developing more restorative meetings and conferences involving all those affected by an incident including families where appropriate
- consideration of restorative meetings in circumstances where young people have presented very challenging behaviour.

Many schools (primary and secondary) across Scotland have, over the last few years, successfully introduced a range of Restorative approaches and report improvements in school discipline. This was reflected in research recently carried out by Glasgow and Edinburgh Universities which reported on the effectiveness of Restorative approaches in three Scottish Local Authorities.

In addition to offering an effective means of promoting positive relationships within the school community, Restorative approaches also provide further support for children and young people to become successful learners, confident individuals, effective contributors and responsible citizens.

Solution Oriented Approaches

4 Solution oriented approaches provide staff with opportunities to explore aspects of their working environment and relationships within it. When a problem has been identified SOAs enable the individual to identify the skills, strengths and resources that they already have which can help them to find their own solutions. The approach aims to build individual capacity for effective problem solving and reflective practice.

SOA encourages a pragmatic approach through focusing upon:

- the future – acknowledging the problem and seeing beyond it
- what people can do…. not what they can't do
- what is working well now
- situations when the problem is either less or not there
- working with others to generate solutions

Training in solution oriented approaches may include:

- exploration of the key principles
- identification of applications to be used in day to day practice
- planning and organising a solution oriented meeting including multi-agency meetings, pre- and post-exclusion meetings and professional development reviews.

Solution oriented approaches have been used in schools for a number of years with regard to informing day-to-day practice and can also be used as a tool to inform the strategic planning process.

Being Cool in School

5 *Being Cool in School* is a curricular programme for developing emotional literacy and teaching pro-social behaviour in young people.

Developed by teachers in Fife Council, it proactively helps children to:

- cope positively with everyday situations
- show sensitivity
- respect themselves and others.

This approach asks the question: why do we take good behaviour for granted? Whilst positive behaviour is not always obvious, its absence is highly noticeable in the form of acting out behaviours, or withdrawal and isolation, poor self-image, and inability to cope when things go wrong.

Being Cool in School demonstrates that positive behaviour can be learned and practised. By adopting this approach schools can provide all children with learning opportunities to develop these skills.

Packs are available for infants, middle and upper primary. *What's Going On?* has been developed for S1/S2 learners.

Creating Confident Kids

6 *Creating Confident Kids* is a comprehensive health and wellbeing curriculum programme which has been designed to highlight the importance of emotional literacy within the learning process and to enable children to develop their emotional wellbeing.

Developed by staff within the City of Edinburgh Council, it recognises that all children begin with an in-built potential to understand and handle the world of emotions. Experiences help children make sense of this and develop skills in making best use of emotions.

The programme is delivered sequentially through a whole-school community approach, early years to P7, and aims to help develop emotional and social competence in all children.

Creating Confident Kids is based on four emotional literacy domains:

- self-awareness
- self-management
- empathy
- relationship management.

These domains are considered through a thematic approach which includes 'Fresh start', 'Friendships', 'Reaching goals' and 'Feelings' and are taught throughout the school year.

The programme has been shown to have a positive effect on outcomes for children including:

- self-esteem
- educational progress
- behaviour in class
- interpersonal skills, e.g. in groupwork
- personal responsibility.

Framework for Intervention (FFI)

7 Framework for Intervention (FFI) is a systemic approach to the management of low-level disruptive behaviour in the classroom and in the wider community of the school or establishment. It uses a peer support model, enabling teachers and other staff to support each other in forming solutions. The approach is based around the use of environmental checklists which can also be used for classroom audits, whole school and learning environment audits including areas such as the playground.

Training can include the following:

- Introducing FFI to your school
- Solution oriented approaches for peer mentoring
- Restorative approaches and peer mediation.

The checklists can also be used by probationer teachers, supply teachers and returning teachers.

Nurturing approaches and nurture groups

8 We are aware of the importance of attachment and positive nurturing experiences on childhood development. Some children arrive at school without having had opportunities to develop positive, nurturing relationships with a significant adult and as a result suffer from poor attachments and an inability to thrive emotionally, therefore being unable to meet the social and intellectual demands of the curriculum.

Schools which have adopted nurturing approaches recognise this gap experienced by some children and have developed principles and practices which contribute to the growth of a nurturing environment, where all children and young people have opportunities to thrive emotionally and educationally. These may be characterised by:

- Learning needs being understood in terms of development
- Social and emotional development being assessed
- Every young person feeling a sense of belonging to the community of the school and their class
- The environment of the classroom meeting the identified social and emotional development needs of all children
- The environment of the classroom being conducive to formal and informal learning
- Opportunities for engagement and positive role modelling
- Emotional literacy being a key part of the Health and Wellbeing curriculum and also evident across the whole school.

Nurture Groups

9 Where children have been identified as having significant social, emotional and behavioural needs, they may benefit from a small group learning environment such as a nurture group.

The emphasis within a nurture group is on emotional growth. This provides a focus on broad based experiences in an environment which promotes security, routines, clear boundaries and carefully planned learning opportunities.

Training may include:

- attachment theories
- resilience
- brain development
- establishing and maintaining a nurture group
- developing a nurturing ethos within schools and early years establishments

Nurturing approaches continue to grow in primary schools and early years establishments and are now increasingly in evidence in secondary schools in Scotland.

Motivation based approaches

10 *The Motivated School* programme provides a comprehensive framework for staff in schools to consider what motivates young people and (adults) to learn. It hinges on the interaction between learning environment and learner characteristics, challenging us to think differently about managing learner disaffection. The aim is to optimise the learning environment, whilst progressing learners towards greater autonomy and self motivation. The approach gives staff advice on how to motivate children displaying different levels of motivation.

Training may include the following:

- motivation
- developing practical motivational skills
- the motivated classroom.

The Motivated School links directly with the *Social, Emotional Learning Framework (SELF)* which enables schools to rigorously assess and monitor learners' individual learning needs and plan for them appropriately.

Towards Emotional and Social Health and Wellbeing

11 We are increasingly aware of the significance of emotional and social wellbeing with regard to personal growth and development. This is of particular relevance to teachers and all adults working within children's services. In order to promote the conditions and attitudes which enable children and young people to develop emotionally and socially, it is crucial that adults are emotionally resilient.

This interactive programme has been designed to support teachers and all staff working with children and young people, to provide them with an opportunity to reflect upon the significance of emotional and social wellbeing in their work and to consider the implications of our increasing knowledge and understanding in this area.

The programme supports the general principles of *GIRFEC* and *Curriculum for Excellence* - making coherent links with Health and Wellbeing - and reflects upon opportunities to ensure direct and positive impact upon the broader learning environment.

Key components of the programme are:

- Experiences and outcomes for health and wellbeing
- Early childhood development
- Brain development
- Emotional health and wellbeing
- Building relationships
- Positive interventions.

The programme has been designed to help inform the improvement planning processes of local authorities and schools, supporting a strategic approach to building curriculum for excellence through positive relationships and behaviour while continuing to build on staff skills. This programme provides a progressive, sequential approach which builds upon our understanding of emotional and social wellbeing and how this may impact upon our thinking and practice. It also provides an opportunity for flexible access, enabling participants to explore specific aspects within a compact time frame.

Confident Staff, Confident Children

12 Developed by staff within the City of Edinburgh Council's *Growing Confidence* project, this course leads participants on a professional journey to explore what influences positive mental health and emotional wellbeing. It provides an opportunity to consider how we can best promote this in ourselves and in the children and young people we work with.

The course draws upon the latest research in neuroscience and psychology and covers key areas sequentially, building upon emerging knowledge.

The course is interactive providing participants with a range of opportunities to share their own thoughts and experiences within a number of key areas including:

- Brain development
- Attachment and relationships
- Resilience
- Developing empathy
- Thinking – feeling – doing
- Minding our own wellbeing
- Insights and inspiration.

Confident Staff, Confident Children aims to increase staff understanding and confidence around emotional health and wellbeing and to explore, explain and confirm why what we do makes a difference to the lives of our children and young people.

Building Positive Relationships

13 Support staff provide a valuable contribution to improving behaviour in schools and working with some of our most vulnerable children and young people. They are often at the forefront of dealing with behaviour in schools.

Support staff need opportunities to extend their knowledge, skills and confidence to effect change within their current practice through the development of positive relationships.

Support staff should be given the opportunity to:

- reflect on practice;
- be more effective practitioners by redefining skills;
- further develop knowledge, understanding and confidence;
- become equipped with effective practical strategies to support the delivery of everyday duties; and
- be familiar with the range of programmes currently used in schools, e.g. restorative approaches and solution oriented approaches.

Building Curriculum for Excellence through Positive Relationships and Behaviour - a training programme for early career teachers

14 This course provides early career teachers with the opportunity to gain both new knowledge and skills and also develop a framework within which to look at their own practice and plan for improvement.

Training may include:

- An overview and rationale linking the course to current policy, the context and ongoing developments.
- Looking in more detail at why Health and Wellbeing and Emotional Literacy is important and some of the factors that help or hinder progress.
- Getting it right with relationships.
- Looking at how a teacher's personality and style can impact in the classroom, what needs to be in place to promote positive relationships, learning and teaching and how we can audit our own, and others' practice.

- Examining the importance of good communication skills in fostering positive relationships and behaviour including active listening, effective questioning (in relation to relationship problems), rules, routines, rewards and consequences and the fair classroom.
- Looking in more detail into why some young people present challenging behaviour, the notion of a continuum of intervention from least intrusive to most intrusive, recognising signs and triggers and the use of appropriate language (scripts) when things become difficult.
- Examining specific problematic low-level and more challenging areas and discussing options to minimise disruption.
- Practical modules which ask the course participants to problem solve 'difficult' and 'off-task' behaviour using the skills and knowledge learned in previous modules.

A reflective log is provided for each participant. The aim of this reflective log is to help course participants reflect in more detail on the material in each module, to look at how they can practically use the new knowledge and skills and also to provide additional, more detailed reading/links on themes outlined within the course.

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