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# SPICe Briefing

## Education (Scotland) Bill: Stage 3

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16/05

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Stage 3 proceedings on the Education (Scotland) Bill (the Bill) will take place on 02 February.

This briefing summarises the legislative and non-legislative recommendations made by the Education and Culture Committee in its stage 1 report and the Scottish Government's response to it. It also summarises amendments passed at stage 2 and considers important areas of debate where no amendments were passed.

SPICe briefing SB 15/19 (Kidner, 2015a) provides an overview of the Bill as introduced.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

The Education (Scotland) Bill was introduced in March 2015 and had its stage 1 debate in October (Scottish Parliament 2015). The Bill covers a disparate range of policies related to school education. Including significant additions made at stage 2, the main proposals are:

- to require local authorities and Scottish Ministers to have regard to the need to reduce inequalities of educational outcome that are created by socio-economic disadvantage, and to report on the action they have taken. This includes replacing existing National Priorities and related reporting requirements on education improvement with reports focused on the National Improvement Framework (Part 1)
- to provide a statutory process for parents requesting Gaelic Medium Primary Education with a presumption that requests will be granted where there is reasonable demand and it is not unreasonable to provide it (Part 2)
- to enable children over 12 to exercise rights in relation to additional support for learning (section 17 and Schedule 1)
- to prevent overlap between complaints made to the Additional Support Needs Tribunal and complaints made directly to Scottish Ministers (s. 19)
- to require local authorities to have a Chief Education Officer (s. 20), head teachers to have certain qualifications (s.22A) and teachers in independent schools to be registered with the GTCS (s.21 - 22)
- to enable Ministers to set the minimum annual number of school hours (s.17B)
- to enable Ministers to require local authorities to provide a certain level of school clothing grant (s.18A)

At stages 1 and 2, the main issues of debate were:

- the merits of the National Improvement Framework and whether the Bill would have any appreciable effect on the link between educational attainment and deprivation
- whether there ought to be an entitlement to Gaelic Medium Primary Education (GMPE)
- in its provisions on additional support for learning, whether the Bill created the right balance in its provisions on capacity and best interests
- the necessity for statutory provision for Chief Education Officer or annual school hours
- the application of head teacher qualifications and GTCS registration to the independent sector
- the lack of consultation on some of the measures.

## INTRODUCTION

The Education (Scotland) Bill was introduced in the Parliament on 23 March 2015 by Angela Constance, MSP, Cabinet Secretary for Education and Lifelong Learning. The Bill seeks to make changes over a range of school policy areas, in particular attainment and provision for Gaelic education. In summary, the Bill as introduced would:

- require local authorities and Scottish Ministers to 'have due regard' to the importance of reducing inequalities of educational outcome that result from socio-economic deprivation. Reports must be published on actions taken (Part 1)
- introduce a process governing how local authorities respond to parental requests for Gaelic Medium Primary Education (Part 2)
- extend rights under additional support for learning legislation to children aged 12 to 16 (s.17, Schedule 1)
- prevent complaints going to Ministers under s.70 Education (Scotland) Act 1980, if they might also be taken to the Additional Support Needs Tribunal (s 19)
- re-instate the requirement that local authorities have a Chief Education Officer (s. 20)
- require that teachers in independent schools register with the GTCS (s.21, 22)
- introduce technical amendments to entitlement to early learning and care for children with guardians (s. 23)
- consolidate existing requirements for entitlement to free school meals (s.18)

SPICe Briefing 15/19 (Kidner 2015) provides more detailed information on the Bill's provisions as introduced. Changes made at stage 2 are detailed in table 4 below.

## PARLIAMENTARY CONSIDERATION

The table below gives dates and links to the various stages of parliamentary consideration at stages 1 and 2.

**Table 1: Summary of Parliamentary Consideration**

<b>Bill introduced</b>	23 March 2015
<b>Stage 1 General Principles</b>	
Education and Culture Committee	<a href="#">28 April</a> , <a href="#">9, 16</a> and <a href="#">23 June</a>
Delegated Powers and Law Reform Committee	<a href="#">5 May</a> and <a href="#">1 September</a>
Finance Committee	<a href="#">27 May</a>
Stage 1 report Education and Culture Committee	<a href="#">10 September</a>
Stage 1 debate	<a href="#">29 October</a>
<b>Further consideration before stage 2</b>	
Evidence on National Improvement Framework and head teacher qualifications	<a href="#">17 November</a>
<b>Stage 2 Consideration of amendments</b>	<a href="#">1, 7, 8 December</a>
<b>Stage 3 Final Consideration (Plenary Debate)</b>	02 February 2016

The remainder of this briefing highlights key points on the Education and Culture Committee's stage 1 report (Scottish Parliament ECC 2015), the Scottish Government's response to that report (Constance, 2015), the main amendments passed at stage 2 and other issues raised at stage 2 which did not result in amendment to the Bill.

## **STAGE 1 KEY ISSUES**

During stage 1 (consideration of general principles) the Committee took oral evidence over four meetings which included representation from teacher unions (SSTA), independent schools (SCIS, Clifton Hall School, International School of Aberdeen) local authorities (COSLA, East Ayrshire Council, Highland Council), parents (Comann nam Parant), Third sector and policy organisations (Reform Scotland, Joseph Rowntree Foundation, Enquire, Inclusion Scotland, Royal Society of Edinburgh) and statutory and professional organisations (GTCS, ADES, SPSO, Bord na Gaidhlig and the Equality and Human Rights Commission).

The general principles of the Bill were supported, but with some concern about the level of consultation on some issues, and on the practical effect of some of the measures. The key issues emerging during the stage 1 discussion are summarised below.

### **Attainment**

Most of the discussion related to how the Bill contributed to the wider policy on addressing the attainment gap. With regard to the Bill's provisions, there was some concern whether the provisions would have much practical effect on closing the gap and whether they should be extended to other groups of disadvantaged children.

### **Gaelic Education**

The Bill's provisions do not provide a legal right to Gaelic education, and much of the discussion at stage 1 revolved around whether such a right was feasible or desirable. Gaelic groups argued that the Bill gives too much discretion to local authorities whereas COSLA argued that it restricted local authority decision making. There was also discussion about whether there should be a presumption in favour of granting requests for Gaelic Medium Primary Education, and the Minister indicated that he would address this at stage 2.

### **Additional Support for Learning**

Some stakeholders had strong concerns about whether the provisions were consistent with existing law on capacity, and whether the provisions actually narrowed the scope for young people to exercise their existing rights under the legislation. (See for example a [joint briefing](#) from the Children's Commissioner, Scottish Human Rights Commission and Equalities and Human Rights Commission). Following further discussion between stakeholders and Scottish Government officials, Government amendments in this area were lodged at stage 2 (see table 3). However, there continues to be local authority or Tribunal assessment of 'wellbeing' and 'capacity' for those aged under 16. The above mentioned organisations wrote to the Committee on 17<sup>th</sup> November saying that they did not think the amendments addressed all their concerns (Baillie, 2015).

### **Chief Education Officer**

There were mixed views on whether such a post needed to be statutory. For example, while ADES were in favour, COSLA were firmly opposed, mainly on the grounds that there was no evidence that the lack of such a post had caused problems.

## Other measures

The other measures in the Bill as introduced created less discussion. There was some concern about transition arrangements for registering teachers at independent schools, but in general the principle that they should be registered was accepted. The provisions on school meals and early learning and childcare were not discussed by the Committee.

In response to recommendations from the Delegated Powers and Law Reform Committee, the Scottish Government agreed to change certain regulation making powers from negative to affirmative procedure. These are regulations:

- to alter the threshold for triggering the assessment for Gaelic medium primary education. In the Bill, this threshold is demand in relation to 5 children and regulations can alter this threshold.
- to extend the provisions on Gaelic medium education to include early learning and childcare

## STAGE 1 REPORT

The table below summarises the main recommendations made by the Committee in its stage 1 report and the response to these by the Scottish Government (Constance, A. 2015a). Areas where the Scottish Government indicated that amendments would be brought forward at stage 2 are highlighted in bold.

**Table 2: Committee stage 1 report recommendations and response**

Report para	Recommendation	Scottish Government Response
<b>Attainment (Part 1)</b>		
37	Consider how the provision can be made more effective.	Current duty strikes the right balance but happy to consider suggestions for improvement. <b>Stage 2 amendments will place the National Improvement Framework into statute, with accompanying reporting duties</b>
55	Discuss the proposed content of the reports with key stakeholders	<b>Stage 2 amendment to include statutory guidance on reporting duties.</b>
64	Consider extending the duty to cover other causes of educational inequality	Open minded about extending provision in the future but currently Bill focus is on deprivation.
71	Why do the duties not include early education and childcare?	Duties do extend to early learning and childcare, as this is included in the definition of 'school education' used in the Bill.
<b>Gaelic (Part 2)</b>		
79	Is a legal right to Gaelic Medium Education still being considered?	In order to establish reasonable demand a good process is needed, and the Bill provides this. <b>Stage 2 amendments will provide a presumption in favour of Gaelic Medium Primary Education.</b>
101	In what circumstances would provision be extended to early years and childcare?	It is not the right time to introduce another duty to a sector that is already undergoing considerable change. Therefore the Bill was introduced with regulation making power rather than direct provision. We will keep this under review.
110	Guidance should encourage local authorities to work together	A working group has been established to draft the guidance.
126	What is the projected increase in Gaelic speakers resulting from this legislation?	The aim is to create a secure future for Gaelic. There is not a direct correlation between GMPE

		and increasing Gaelic speakers as there are other factors that contribute.
<b>Additional Support for Learning (Section 17)</b>		
153	What safeguards are needed for looked after children?	This is provided for in the Code of Practice "Supporting Children's Learning" and in appeal provisions in the Bill. The Code of Practice will be revised to include reference to children of prisoners.
157	Why doesn't the Bill define parental capacity?	This reflects the position in the existing legislation.
186	The factual basis of stakeholders' concerns about capacity, best interests and conflict of interest should be discussed with them	The Government has had further discussions with stakeholders.
188	The Bill should define only when a child has capacity, rather than also when he or she does not.	<b>Stage 2 amendments will</b>
189	Why has a best interests test been introduced for young people?	<ul style="list-style-type: none"> <li>• <b>Remove assessment of best interests and capacity of young people</b></li> <li>• <b>Move from a 'best interests' test to a 'wellbeing' test</b></li> <li>• <b>Amend the definition of 'lacking capacity'</b></li> <li>• <b>Ensure young people in school receive support whatever their age</b></li> <li>• <b>Ensure that only one placing request reference can be made to Additional Support Needs Tribunal (ASNT) each year</b></li> <li>• <b>Allow Ministers to vary the information that must be collected and published in relation to ASL</b></li> <li>• <b>Allow a single convener of the Tribunal to consider appeals regarding capacity and wellbeing without a hearing, and allow for appeals against these decisions to be made to a full Tribunal. Also to require Tribunals to consider the views of children as part of references made.</b></li> <li>• <b>extend the matters which can be covered by Rules and Procedures of ASNT.</b></li> </ul>
197	Why have mediation rights not been extended to children?	This was on the advice of Resolve: ASL Mediation Service
204	Will concerns be addressed regarding the differences between additional support needs cases at the ASNT and disability discrimination cases at the ASNT?	Disability discrimination claims do not carry the same risks as the extension of rights proposed under this Bill. It will be necessary to consider circumstances where a disability discrimination claim and an additional support for learning reference will become consolidated.
<b>Section 70 Complaints (Section 19)</b>		
210	Investigate concerns that it is not always clear when a complaint should go to Ministers and when to the ASNT.	The Bill provides that where any matter can be dealt with by the ASNT, then it cannot go to Ministers under s.70. Non-statutory guidance will be prepared on s.70 complaints.
219	Consult with SPSO and others on regulations under this part.	There will be public consultation on the regulations. The Scottish Government will consult fully with the SPSO.
<b>Chief Education Officer (Section 20)</b>		
232	Agree that all local authorities should have this post, although two committee members disagreed that it needed to be statutory.	<b>Discussions with stakeholders may result in stage 2 amendments to the role of Chief Education Officer</b> but this will not include specific statutory duties assigned to the post.
245	Request further detail about the post	
<b>Registration of teachers in independent and grant aided schools (sections 21, 22)</b>		

262, 266	Request further information about transitional arrangements	Every school in the sector will have the opportunity to comment on the transitional arrangements and routes to registration. Officials have regular discussions with GTCS, Scottish Council of Independent Schools and Education Scotland. We have an open mind about the length of the transition period. There will be wide consultation on the regulations, which will inform the decision on transition time to mandatory registration.
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## PRE-STAGE 2 EVIDENCE

During stage 1 the Scottish Government indicated that it would bring forward amendments in relation to head teacher qualifications and the National Improvement Framework. The Education and Culture Committee asked for written submissions and took evidence on these issues on 17 November.

### *Standard for Headship*

Head teachers will be required to hold the GTCS Standard for Headship. In order to do so, they will need to gain a particular qualification. The requirement includes teachers in independent and grant aided schools (Wyeth, 2015a).

The main concern raised with the Committee was the effect on head teacher recruitment, which many commentators noted has been difficult for some years. There were also concerns raised about whether the three year timescale for implementation was over ambitious and about who should pay for the qualification.

Independent schools were concerned that the skills required in their sector were different, and that they were particularly reliant on recruiting from outwith Scotland. John Edward (Scottish Council of Independent Schools) told the Committee that the independent sector was not consulted when the qualification was being designed (Education and Culture Committee OR 17 November col 32). The submission from George Watson's College suggested that the requirement to hold the Standard for Headship might restrict independent school boards' existing powers to recruit candidates they consider appropriate.

The Cabinet Secretary told the Committee that a headship qualification for the state sector has been Government policy since 2005, although an implementation date after 2018 might be considered for the independent sector (OR col 59).

### *National Improvement Framework*

The proposed National Improvement Framework for Scottish Education is to be placed on a statutory footing by way of stage 2 amendment to the Bill. In particular, amendments propose that;

- Scottish Ministers establish and periodically review the National Improvement Framework
- Education Authorities work towards delivering the priorities set out in the Framework; and
- Scottish Ministers and education authorities prepare and publish reports and plans. (Wyeth, 2015b).



A National Improvement Framework was announced in the Programme for Government 2015. A draft was published on 1 September 2015 (Scottish Government 2015) and, following consultation, a finalised version was published in January. Its provisions on standardised assessment have received extensive comment. In particular there have been concerns about how league tables and ‘teaching to the test’ can be avoided.

The Cabinet Secretary told the Committee that:

“it is fair to say that we have more information about some local authorities than we have about others. We need to ensure that information is consistently available, which points to a strong argument for the need to legislate in the area.” (OR 17 November col 46).

She also argued that there needs to be:

“a clear line of sight between the classroom and local and national policymaking. At local and national levels, we must be acutely aware of whether we are delivering to meet the individual needs of children, and we have to make choices on policy and resources accordingly” (OR 17<sup>th</sup> November col 48).

## STAGE 2 MAIN AMENDMENTS AGREED TO

The following table summarises the amendments agreed to at stage 2 which represent a key policy change or reflect issues raised by the Committee at stage 1. It does not cover minor drafting amendments. In total, 174 amendments were lodged. All the Government amendments were agreed to, 12 by division. Non-government amendments were successful in relation to Gaelic education and requirements on Ministers to consult stakeholders. Major changes at stage 2 included:

- a presumption in favour of granting a request for Gaelic Medium Primary Education where there is reasonable demand
- removal of the requirement, which was in the Bill as introduced, that young people (16 and over) be assessed in relation to capacity and best interests before exercising their existing rights under the 2004 Act.
- inclusion of the National Improvement Framework and repeal of the existing National Priorities for Education
- regulation making powers to set the number of hours in the school year and the level and eligibility for school clothing grants.
- regulation making powers to set out the experience and qualifications required by head teachers

**Table 3: Summary of main amendments agreed to at stage 2**

<a href="#">Day 1: 1st December 2015</a>	
<b>Part 2: Gaelic Medium Education</b>	
<b>Amendments 1,2, 3,4,27, 35 - 40</b> Alasdair Allan Agreed without division	<b>Requests:</b> Ensures that requests for GMPE can only be made in relation to children that have not yet started primary school and makes technical amendments to improve clarity of drafting.
<b>Amendments 5 - 12.</b> Alasdair Allan.	<b>Initial assessment conclusions;</b> As introduced, the Bill required a local authority to conclude, in its initial assessment, that there was potential demand for GMPE if,

Agreed without division.	firstly there was demand in relation to 5 children and, secondly demand was likely to increase to a reasonable level. Amendment 10 removed the 2nd condition. The other amendments are either consequential, or clarify drafting.
<b>Amendments 13 to 21.</b> Alasdair Allan. Agreed without division	<b>Initial assessment:</b> timescale: The timescale for a local authority to conduct an initial assessment is extended from 4 to 6 weeks (amendment 15). The requirements for providing reasons are also extended. As introduced, the local authority had to provide reasons for its decision about whether there is potential demand for GMPE. Following amendment, reasons must also be provided for a local authority's decision whether to proceed to full assessment, provide GMPE without a full assessment or (where there is no potential demand), take no further action.
<b>Amendments 22, 23.</b> Alasdair Allan. Agreed without division.	<b>Time bar on requests:</b> Clarifies that a second request made within two years need not be considered, whether or not the first request was subject to a full assessment or only an initial assessment.
<b>Amendments 24 - 26, 28 - 33.</b> Alasdair Allan. 24,25, 30 agreed by division 7:2. 26 - 29, 31-33 agreed without division. <b>Amendments 130, 131</b> Angus MacDonald. Agreed by division 5:4	<b>Presumption in favour of GMPE:</b> The Minister stated that these amendments, in particular amendment 30: "creat(e) a presumption in favour of GMPE and an effective entitlement to such provision where demand exists and where it is not unreasonable to provide it" (OR 1 Dec 2015 col 15). He referred to the SNP Manifesto commitment in 2011 and the committee's stage 1 report.  As introduced, the Bill gave the local authority the option of not providing GMPE, regardless of the outcome of the assessment. The Bill as amended required the local authority to secure GMPE unless it would be unreasonable to do so. Liam McArthur and Mary Scanlon voted against this. Liam McArthur said that the amendments would "create a level of false expectation" amongst parents (OR 1 Dec 2015, col 18). The Minister stated: "there is a distinction between the right to make such a request and a direct statutory right to receive GMPE. That explains why we have talked about presumption rather than entitlement in the text of the Bill, but I strongly believe that what we now have is what we promised, which is entitlement" (OR 1 Dec 2015 col 20).  Amendment 28 removes the requirement to have regard to the availability of teachers, although the requirement to consider the potential to recruit or assign teachers remains.  Amendment 130 removes the requirement to consider the extent to which Gaelic culture exists in the local area and replaces it with consideration of the potential to develop Gaelic language use in the area. Four committee members voted against this.  Amendment 33 requires that when the local authority publishes its reasons for its decisions, this must address each of the factors listed in s.10 as well as how it applied the new reasonableness test introduced by amendment 30.
<b>Amendment 34</b> Alasdair Allan. Agreed without division	<b>Extension to early learning and childcare:</b> Regulations can require, (rather than only enable) local authorities to treat a request for GMPE as a request for Gaelic medium early learning and childcare.
<b>Section 17 and Schedule: Additional Support for Learning</b>	
<b>Amendments 41 - 46, 48, 49, 51 - 60, 62 - 65, 67 - 69, 72, 75, 76, 91. 86 88, 89, 93, 101, 103</b> Alasdair Allan. Agreed without division.	<b>Young people - assessment of capacity and best interests:</b> Removes the requirement to assess a young person's (those aged 16 or over who are still at school) capacity and best interests before they can exercise their existing rights under the 2004 Act.
<b>Amendments 50</b>	<b>Young People - definition of capacity.</b> There are now separate definitions for

<p><b>74, 77 - 85, 94</b> Alasdair Allan. Agreed without division.</p>	<p>capacity of child (para 2) and young person. Amendment 50 changes the definition of when a young person lacks capacity to if they do "not have sufficient understanding to do it." It relates only to a young person (not child) and removes the reference to specific disabilities and additional support needs.</p>
<p><b>Amendments 61, 66, 70, 71, 73. 87, 90, 95, 102</b> Alasdair Allan. 61, 66, 71 agreed on division 6:3 95 agreed on division 8:1 Remainder agreed without division</p>	<p><b>Children - Assessment of well-being:</b> Changes the assessment of 'best interests' to an assessment of whether exercising their rights would "adversely affect the well-being" of a child. Well-being is to be assessed with reference to the SHANARRI indicators - safe, healthy, achieving, nurtured, active, respected, responsible and included.</p>
<p><b>Amendment 97</b> Alasdair Allan. Agreed without division.</p>	<p><b>Young People - definition:</b> Currently the 2004 Act uses the same definition of 'young person' as is used in the Education (Scotland) Act 1980. This amendment extends the application of the 2004 Act to school pupils aged 18 or over that are still at school. This is a change that has been requested for a number of years and made again in written submissions on the Bill, (see for example, unsuccessful amendment to Education (Additional Support for Learning) (Scotland) Bill (Kidner, 2009) and Govan Law Centre, 2015).</p>
<p><b>Amendment 92</b> <b>Alasdair Allan.</b> Agreed without division.</p>	<p><b>Placing requests</b> Currently, a parent can only make one reference per year to the Tribunal in relation to a placing request decision. This amendment clarifies that this applies even if the second reference is to a different school. Placing requests are the most common reason for references to the Tribunal.</p>
<p><b>Amendment 98 - 103</b> Alasdair Allan. Agreed without division.</p>	<p><b>Tribunal rules:</b> Specifies that Ministers can make rules for the Tribunal which can include:</p> <ul style="list-style-type: none"> <li>• seeking the views of children whose parents have made references to the Tribunal</li> <li>• that capacity and wellbeing can be determined by a Tribunal convenor, sitting alone and without a hearing</li> <li>• practice and procedure where the convener determines matters alone</li> <li>• specifying action following a convener's decision about a child's capacity and well-being</li> </ul>
<p><b>Amendment 96.</b> <b>Alasdair Allan.</b> Agreed without division.</p>	<p><b>Information collection.</b> Currently the 2004 Act sets out specific types of information that is to be collected by Scottish Ministers each year from education authorities in relation to additional support needs. Amendment 96 changes this so that the information collected will be specified in regulations rather than on the face of the Act.</p>

**Day 2: 7th December 2015**

**Part 1: Attainment**

This group of amendments replaces Part 1 of the Bill, as introduced, in its entirety.

<p><b>Amendment 104, 105</b> Angela Constance. <b>104G</b> Mark Griffin. Agreed without division</p>	<p><b>Inequalities of outcome</b> This replaces s.1 of the Bill as introduced. Rather than a stand alone duty, the replacement section inserts similar duties into the Standards in Scotland's Schools etc Act 2000. The duty to 'have regard to the desirability' is now 'to have regard to the need,' and provision is made on the face of the Bill to consider inequalities other than those related to socio-economic disadvantage. Amendment 104G adds teacher unions to the list of consultees.</p>
<p><b>Amendments 106,</b> Angela Constance. Agreed by division 7:2. <b>Amendment 159</b> Mary Scanlon. Agreed without division.</p>	<p><b>National Improvement Framework</b> This gives a legislative basis for the National Improvement Framework and repeals the existing National Priorities for School Education. Ministers must:</p> <ul style="list-style-type: none"> <li>• prepare a statement of strategic priorities and objectives</li> <li>• review this annually, having regard to views of others</li> </ul> <p>Education Authorities must carry out their existing statutory duty to secure</p>

	<p>improvement in school education with a view to achieving the priorities in the National Improvement Framework.</p> <p>The Bill does not set out any detail on the Framework – for example it makes no mention of national assessments. This will be left to the Framework itself. Section 6 of the 2000 Act is also repealed. This required local authorities to publish annual statements of improvement objectives. This is replaced by provision made in amendment 107 (see below).</p> <p>The <a href="#">Education (National Priorities) (Scotland) Order SSI 2000/443</a> set out the following national priorities:</p> <ul style="list-style-type: none"> <li>• to raise standards of educational attainment for all in schools, especially in the core skills of literacy and numeracy, and to achieve better levels in national measures of achievement including examination results;</li> <li>• to support and develop the skills of teachers, the self-discipline of pupils and to enhance school environments so that they are conducive to teaching and learning;</li> <li>• to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages;</li> <li>• to work with parents to teach pupils respect for self and one another and their interdependence with other members of their neighbourhood and society and to teach them the duties and responsibilities of citizenship in a democratic society; and</li> <li>• to equip pupils with the foundation skills, attitudes and expectations necessary to prosper in a changing society and to encourage creativity and ambition.</li> </ul> <p>These have not been altered since they were made in 2000. Section 4 also enabled Ministers to define measures of performance in relation to the National Priorities.</p> <p>Repealing s.4, the Cabinet Secretary said: "our education system has moved on from those significantly. In the future, our priorities for the education system will be contained in the national improvement framework. They will be reviewed annually to reflect emerging trends and any evidence gathered through the framework. That will allow us to respond more quickly without the need for secondary legislation, which is a key shortcoming of the existing arrangements under the 2000 Act" (OR 7th December 2015 col 5).</p> <p>Amendment 159 requires Scottish Ministers to consult stakeholders before issuing guidance under s.13 of the 2000 Act.</p>
<p><b>107</b>Angela Constance. Agreed by division 7:2. <b>Amendment 159</b> Mary Scanlon and <b>Amendments 108 to 112</b> Angela Constance Agreed without division</p>	<p><b><i>Education Authority Plans and Reports</i></b> These amendments make changes to Education Authorities’ duties for plans and reports under the Standards in Scotland’s Schools etc Act 2000. Education Authorities’ existing duty to prepare ‘annual statements of improvement objectives’ and report on this each year is replaced by a requirement to publish an annual plan and report on reducing inequalities of outcome and progress against the National Improvement Framework.</p> <p>The previous duties under s.5 of the 2000 Act required education authorities to provide an annual statement in relation to equal opportunities, Gaelic medium education, health promotion and parental involvement. Because s.5 is repealed by amendment 106, these same duties are replicated in relation to health (amendment 111), equal opportunities (amendment 107) and parental involvement (amendment 112). There is now a clearer requirement to report annually on what has been done in these areas over the previous year. The requirement to make an annual statement and report on the ways and circumstances in which Gaelic medium education will be provided and developed is repealed. Reporting on</p>

	<p>Gaelic is required in the assessment process in Part 2 and also in some Gaelic language plans which some local authorities may have.</p> <p>School development plans are renamed 'school improvement plans.'</p> <p>Currently, education authorities are required to review school performance from time to time using measures that they have defined. Amendment 107 requires that those measures take into account the National Improvement Framework and the annual plan for improvement.</p> <p><b>Annual Report: Scottish Ministers.</b> Amendment 107 requires Scottish Ministers to publish an annual report on inequalities of outcome and the National Improvement Framework. This must take account of international benchmarking data. Although not specified in the Bill, this could mean surveys such as PISA - the survey of 15 year olds, conducted every four years in OECD countries.</p> <p>Amendment 159 from Mary Scanlon adds consultation requirements to the issuing of Ministerial guidance under s.13 of the 2000 Act.</p>
<p><b>Part 3: Miscellaneous: Early Learning and Childcare</b></p>	
<p><b>Amendment 113</b> Angela Constance, agreed without division</p>	<p><b>Alternative provision:</b> Under s.14 of the Education (Scotland) Act 1980, if an education authority is satisfied that a pupil cannot attend school due to extraordinary circumstances they may; and, if they cannot attend due to ill-health, they must, make alternative provision. This amendment clarifies that this provision applies to all providers of statutory early learning and childcare, including partner providers. (i.e private and third sector pre-school providers as well as local authority schools and nurseries).</p>
<p><b>Teaching time</b></p>	
<p><b>Amendment 164</b> Angela Constance. Agreed by division 7:2</p>	<p>Regulation making powers will enable Ministers to prescribe the annual number of hours of school education.</p> <p><b>Background:</b> Schools must be open 190 days per year, but the length of the school week is not statutory. Current practice is a 25 hour school week in primary schools (950 hours per year), although sometimes it is shorter for young pupils. Teachers are required to provide 22.5 hours of class contact time. The shortfall must be filled by an additional teacher (these additional hours are often referred to as 'McCrone hours').</p> <p>The length of the teaching week has been an issue in a number of local authorities and there was a parliamentary petition in 2011 (<a href="#">PE1391 on behalf of Renfrewshire Parent Council Forum</a>), which the Education and Culture Committee closed on <a href="#">12th March 2013</a>. The petition had sought to make it a legal requirement that qualified teachers teach children for 25 hours in a normal school week, subject to existing local flexibility of school hours in primary 1 and 2. The then Cabinet Secretary had written to the Committee saying there was no need for legislation.</p> <p>More recently, local authorities, such as Falkirk, proposed a shorter school week as part of their budget savings leading to parliamentary questions in March 2015 (S4O-4138 and S4W-24701). At that time, Ministers reiterated the position that the length of the school week was a matter for local authorities, although Angela Constance said on <a href="#">18th March</a>: "I have consistently made clear that the Government would not support any steps taken by Falkirk Council or other councils to cut the length of the school week with a view to reducing teacher numbers."</p> <p>In <a href="#">August this year</a>, Reform Scotland published a report on the different number of teaching hours provided across Scotland (Holyrood 2015). Local authorities' views on the budgetary difficulties caused by 'McCrone hours' have been raised with the Committee in their work on budget scrutiny this year.</p>



	<p>In OECD countries pupils receive, on average, 804 hours per year instruction time in primary schools. See <a href="#">Indicator D1: how much time do students spend in the classroom?</a></p> <p><b>Debate:</b> The Cabinet Secretary referred to budget proposals by local authorities to reduce the teaching week, saying: "We are not talking about placing new and unreasonable burdens on local authorities. It is about protecting primary school pupils from reductions to their school week that have been proposed purely on the ground of budget savings without regard to our commitment to raising attainment for all and reducing inequalities of outcome. No-one can argue that less teaching time is the route to improving attainment" (OR 7th December col 36). There will be consultation before making the regulation. Liam McArthur, Liz Smith and Mary Scanlon had strong objections to these amendments, Liam McArthur referring to lack of consultation, lack of evidence and lack of respect to local authorities and the committee. "The Cabinet Secretary's decision to lodge that type of substantive amendment out of the blue and without any prior warning shows utter contempt for the committee" (OR 7th Dec 2015 col 37). Liz Smith said: "there is as yet no evidence whatever that the length of time in the classroom delivers better outcomes" (OR 7th Dec 2015 col 44).</p>
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### School Clothing Grants

<p><b>Amendment 169.</b> Angela Constance. Agreed to without division.</p>	<p>Regulations can specify a specific amount that should be provided as a school clothing grant.</p> <p>The Cabinet Secretary intends to negotiate with COSLA and "provided that agreement can be reached to ensure implementation, there will be no need to call on the enabling powers in amendment 169" (OR 7th Dec col 51).</p> <p><b>Background:</b> The Education (Scotland) Act 1980 enables local authorities to pay grants for school clothing. The level of school clothing grants has been an issue for a number of years. A parliamentary petition in 2006 from the Dundee Anti-poverty forum resulted in the Scottish Government establishing a working group in 2008. The group completed its work in 2009 and the report was <a href="#">published in 2011</a>, recommending that the grant should be £70. In August 2015, the <a href="#">BBC reported</a> that councils were not meeting this recommendation.</p>
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### School Meals

<p><b>Amendments 114 to 125, 168.</b> Angela Constance. Agreed without division.</p>	<p>Extends provision of free school meals, and other food and drink, so that this applies to eligible pre-school children who receive their funded entitlement to early learning and childcare at partner providers, (i.e voluntary and private sector organisations under contract to the local authority to provide statutory early learning and childcare). Education authorities will be able to provide lunch, or other food and drink themselves, or pass on the funding to partner providers.</p> <p>Regulation making powers will allow Scottish Ministers to require local authorities to provide or secure meals, other than lunch (eg breakfast), free of charge to eligible pre-school children who meet the free school meal criteria.</p>
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### Section 70 Complaints

<p><b>Amendment 171</b> Gordon MacDonald. Agreed without division.</p>	<p>Requires consultation on any regulations made under s.19 of the Bill on changes to s.70 complaints (i.e complaints that an education authority is not complying with a statutory duty).</p>
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[Day 3: 8th December 2015](#)

### Head teacher Qualifications

<p><b>Amendment 133.</b></p>	<p>Enables regulations to be made by Scottish Ministers to specify the qualifications</p>
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<p>Angela Constance. Agreed without division.</p>	<p>and experience required of head teachers in local authority, grant aided and independent schools.</p> <p>The Cabinet Secretary referred to policy since 2005 on improving qualifications of head teachers. Regulations would be consulted on, and provide mandatory qualification requirements for new head teachers from 2018-19. She said she would work with the independent sector and grant aided schools to ensure the requirements were appropriate for their circumstances. She will work with ADES to consider difficulties in recruitment and consider the funding model. She said: "I believe that a clear, high-quality and supportive route to headship will make the post more attractive and will help to address recruitment issues."</p>
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## STAGE 2 MAIN AMENDMENTS NOT MOVED, WITHDRAWN OR NOT AGREED TO

The table below lists the key amendments that were not agreed to, withdrawn or not moved. It does not cover every such amendment, but focuses on key areas of debate and issues raised by the Committee during stage 1. During stage 2 the Minister did not indicate whether there would be any Scottish Government amendments at stage 3.

**Table 4: Summary of main amendments not agreed, withdrawn or not moved at stage 2**

<u><a href="#">Day 1: 1st December 2015</a></u>	
<b>Part 2: Gaelic Medium Education</b>	
<p><b>Amendments 140 - 143</b> Mary Scanlon. 140 - 142 Not moved.</p>	<p><b>Initial assessment – factors to consider:</b> Would have required local authorities to consider the availability of teachers and premises at the initial assessment phase. It would also have given local authorities more flexibility to determine at the initial assessment stage that it may not be possible to provide GMPE. In opposing the amendment, the Minister said "our aim in the Bill has been to make the initial assessment as light as possible"(OR 1 Dec 2015 col 5). Mary Scanlon indicated that she might return to these amendments at stage 3 (col 8).</p>
<p><b>Amendment 143</b> Mary Scanlon. Withdrawn.</p>	<p><b>Threshold:</b> Would have enabled a local authority to apply a different threshold for determining parental demand for GMPE. In opposing it, the Minister said it would most likely be used by local authorities "to increase the threshold to make it less likely that it would be obliged to proceed to the full assessment" (OR Dec 1 2015, col 10).</p>
<p><b>Amendment 146.</b> Mary Scanlon. Not moved.</p>	<p><b>Ministerial Directions:</b> Would have removed the ability of Ministers to direct local authorities to consider a request for GMPE even though it is made within two years of a previous request. At stage 1, COSLA indicated that it was strongly opposed to this power of Ministerial direction. In arguing against its removal, the Minister said that it would only be used in unusual circumstances, and examples will be provided in guidance. He considered "it provided an important safeguard" by providing reassurance to parents that their request will be considered if there is a change in circumstances (OR 1 Dec 2015 col 13). Mary Scanlon indicated that she might return to this amendment at stage 3.</p>
<p><b>Amendment 147 - 149:</b> Mary Scanlon. 147 Withdrawn, 148, 149 Not moved</p>	<p><b>Full assessment – speech and language:</b> Would have added consideration of speech and language services to the list of factors to consider when deciding whether to provide GMPE. In opposing, the Minister said that, while he agreed that speech and language therapy was important, it would not be right to highlight this one particular issue in relation to GMPE. Such issues will be covered in guidance. (OR 1 Dec 2015 col 24).</p>

<p><b>Amendment 132, 134</b> Rhoda Grant. Withdrawn and not moved.</p>	<p><b>Appeal:</b> Would have provided an ability to appeal against a decision not to provide GMPE, even though reasonable demand has been demonstrated. In opposing, the Minister said that an appeal process was not necessary because: earlier amendments created a presumption in favour of GMPE, parents could use s.70 complaints process or judicial review and that adding an appeals process would add to the time taken to resolve the issue (OR 1 Dec 2015 col 27-28). Mark Griffin (speaking for Rhoda Grant) said he may return to the issue at stage 3.</p>
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**Section 17 and schedule: Additional Support for Learning**

<p><b>Amendment 150, 151, 152</b> Liam McArthur. 150 Withdrawn. 151-152 Not moved. <b>Amendment 50A</b> Liz Smith Not moved.</p>	<p><b>Definition of capacity.</b> Amendments 150 - 153 would have replaced the Bill's definition of capacity with one inserted into the Age of Legal Capacity (Scotland) Act 1991. That is, a person under 16 would have capacity where they have a general understanding of what it would mean to exercise their rights, with the presumption that someone aged 12 or over would have sufficient maturity and understanding. Amendment 50A would insert a different definition of capacity related to having sufficient understanding. Liz Smith said she may return to the issue at stage 3.</p>
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<p><b>Amendment 153.</b> Liam McArthur. Not moved.</p>	<p><b>Assessment of capacity and best interests:</b> Would have removed the requirement to assess a child's or young person's capacity and best interests prior to them exercising their rights under the 2004 Act.</p> <p>Liam McArthur argued that the Government's approach was that: "instead of looking at how that process [of using rights under the 2004 Act] could be made more child friendly, they have instead chosen to take an approach whereby only those who are judged by adults to be most resilient are ever likely to be able to exercise their rights." [OR 1 Dec 2015 col 31].</p> <p>Opposing amendments 150 – 157, the Minister said: "I strongly believe that, where a child wishes to act on their own behalf, an education authority and the Additional Support Needs Tribunal should pause and consider how that child might cope with the processes associated with that right and whether their wellbeing might be adversely affected. I do not believe that this is being done in a paternalistic way." [OR 1 Dec 2015 col 34].</p>
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<p><b>Amendment 154 to 157.</b> Liam McArthur. Not moved.</p>	<p><b>Child's consent.</b> This would have required the child, where that child had capacity, to agree for their parent to exercise a right on their behalf.</p> <p>Opposing, the Minister argued that: "Parents also have rights and responsibilities in relation to their children's education. I believe that amendments 150 – 157 would fundamentally change the nature of those rights and responsibilities."</p> <p>Mr McArthur considered that, as it stood, the Bill appeared paternalistic and not in keeping with the approach in the Age of Legal Capacity (Scotland) Act 1991. He said he may revisit these issues at stage 3.</p>
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**Day 2: 7th December 2015**

**Part 1: Attainment**

<p><b>Amendment 104A, 104B</b> Mark Griffin. Disagreed to by division 3:6. <b>Amendment 104B, 104C, 104F</b> Malcolm Chisholm. Not moved. <b>Amendment 104E</b> Mary Scanlon.</p>	<p><b>Inequalities of outcome:</b> These would have added specific groups for whom inequalities should be addressed i.e looked after children (Mark Griffin) and those with health conditions (Malcolm Chisholm). Amendment 104F would have required schools to provide medical treatment and medication.</p> <p>Amendment 104E would have specified that inequality of outcome includes inequality of access and participation in education.</p>
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Disagreed to by division. 4:5.	
<p><b>Amendment 106A</b> Liam McArthur. Disagreed to by division 1:8</p> <p><b>Amendments 106B, 107A to D.</b> Mary Scanlon. Not moved.</p> <p><b>Amendments 107E, 160 to 163.</b> Mark Griffin. Disagreed to by division 3:6.</p>	<p><b><i>National Improvement Framework:</i></b> 106A would have prevented the National Improvement Framework including national assessment.</p> <p>106B, 107A to D, would have required Ministers to set and report on targets for Education Authorities and Scottish Ministers in relation to the National Improvement Framework</p> <p>107E would have required a review of the Framework 6 months after it was introduced, taking into account international surveys of education.</p> <p>160 would have required a review of Part 1 of the Bill one year after Royal Assent.</p> <p>161 would have required progress in reducing inequalities of outcome to be addressed in school inspections.</p> <p>162 and 163 would have set specific curricular and child development targets to be achieved by 2025 and 2020.</p> <p>The Cabinet Secretary opposed setting targets "that focus on a small number of measures"[...] "target setting also appears to go against the guiding principles of our education system and of curriculum for excellence, which is designed for every child to reach their full potential." (OR 7th Dec col 4).</p>
<b>School Hours</b>	
<b>Amendment 165</b> Mark Griffin. Not moved.	Would have required provision of 25 hours per week teacher contact time.
<b>School Clothing</b>	
<b>Amendment 170.</b> Mary Scanlon. Not moved.	Would have required local authorities to provide a school clothing grant on the same criteria as free school meals income related criteria.
<a href="#"><u>Day 3: 8th December 2015</u></a>	
<b>Chief Education Officer</b>	
<b>Amendment 172.</b> Liam McArthur. Disagreed to by division.	Would have deleted the requirement that local authorities employ a Chief Education Officer, introduced by s. 20 of the Bill. Liam McArthur argued that statutory provision was: "unnecessary, disproportionate and misplaced." While the Cabinet Secretary agreed that: "it is true that we are not yet facing a widespread problem" she argued that "surely is it preferable to act now to safeguard the future presence of suitably qualified and experienced educationalists."

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