

Business and Regulatory Impact Assessment

[DRAFT 26 JUNE 2018]

Title of Proposal

Draft Education (Scotland) Bill

Purpose and intended effect

It is the aspiration of the Scottish Government for Scotland to be the best place in the world in which to grow up. The Scottish Government's defining mission is to improve the education and life chances of children and young people by closing the unacceptable gap in attainment between the least and most disadvantaged children, and to raise attainment for all. There is broad support for this aim across the Scottish education system, with a wide range of partners committed to working together to achieve this.

The objective of the Education (Scotland) Bill is to play a transformative role in achieving excellence and equity, by further strengthening the Scottish education system to:

- Empower headteachers to be leaders of learning and teaching in their schools and work collaboratively with the education authority and their staff, pupils, parents and other partners so that the decisions that most affect a pupil's experience are taken by those closest to them;
- Enhance the educational improvement support and advice that is available to educational practitioners;
- Encourage an increase in parental involvement in education and parental engagement in children's learning; and
- Ensure that effective pupil participation is supported in all public schools.

Specifically, the Bill aims to support the following four key policy objectives:

- Empowering headteachers by establishing a Headteachers' Charter which requires education authorities to empower headteachers to make key decisions at school level, working collaboratively with their school community;

- Collaborating for improvement, by placing a duty on all education authorities to work together and with Education Scotland within Regional Improvement Collaboratives (RICs), in the production of regional improvement plans and in exercising a range of educational support and improvement functions, to be set out in statutory guidance, in accordance with the principles and scope agreed between Scottish Government and COSLA;
- Strengthening parental involvement and engagement by making the existing legal duties in relation to parental involvement clearer, and encouraging stronger collaboration between schools, school leaders and parents. These provisions will strengthen, modernise and extend the Scottish Schools (Parental Involvement) Act 2006 as recommended in the National Parent Forum of Scotland's review to reflect the importance of parental engagement in children's learning; and
- Promoting pupil participation by requiring education authorities to promote and support pupil participation in specific aspects of education and school life in every public school.

Rationale for Government intervention

The Education (Scotland) Bill aligns closely with the Scottish Government's National Performance Framework in aiming to create a more successful country with opportunities for all of Scotland to flourish. It aligns with the Strategic Objectives of making Scotland Wealthier and Fairer, and Smarter.

It also aligns closely with a number of the National Outcomes, including:

- We are better educated, more skilled and more successful, renowned in our research and innovation;
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens;
- Our children have the best start in life and are ready to succeed;
- We have tackled the significant inequalities in Scottish society; and
- We have improved the life chances for children, young people and families at risk.

A legislative approach is required to ensure comprehensive and consistent empowerment is in place to support children and young people in gaining the best possible education.

Consultation

The Education (Scotland) Bill has been developed in a collaborative way, with extensive involvement from colleagues representing a wide range of interests, both across and out with the Scottish Government.

Within Government

Discussions have been undertaken with colleagues across the Scottish Government to develop the Bill. This has been done through bilateral meetings and working groups and has included the following:

- DLEARN: Curriculum, Qualifications and Gaelic
- DLEARN: Strategy and Performance
- DLEARN: Workforce, Infrastructure and Reform
- DCAF: Creating Positive Futures
- DLGC: Local Government and Analytical Services Division
- TMW: Major Events and Themed Years
- Education Scotland

Public Consultation

An extensive public consultation *Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in Education – A Governance Review*¹ was carried out from September 2016 until January 2017 to gather views on how we should reform education in Scotland. This consultation informed the publication of *Education Governance: Next Steps*² in June 2017 which set out the reform agenda, the legislative elements of which are to be taken forward in the Education Bill.

On 7 November 2017, the Scottish Government published *Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill*³ which invited views on key areas of proposed reform. A formal 12 week public consultation was undertaken from November 2017 to January 2018, and 870 responses were received. These were from a wide range of interested parties including individual teachers and parents, parent councils, teacher groups, education authorities, and other professional organisations.

Non-confidential consultation responses were published on 27 February 2018 on the Scottish Government website.⁴

The Scottish Government commissioned the independent consultancy firm *Why? Research* to undertake a formal analysis of consultation responses. This was published on 30 April 2018 on the Scottish Government website.⁵

¹ Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in Education: A Governance Review - <http://www.gov.scot/Publications/2016/09/1251>

² Education Governance: Next Steps - <http://www.gov.scot/Publications/2017/06/2941>

³ Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <http://www.gov.scot/Publications/2017/11/9712>

⁴ Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <https://consult.gov.scot/learning-directorate/education-scotland-bill/>

⁵ Analysis of responses to Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <http://www.gov.scot/Publications/2018/04/6098>

In parallel with the consultation exercise, the Scottish Government also conducted a series of meetings with key stakeholders.

Business

The Education (Scotland) Bill will primarily place duties on education authorities. The Bill provisions that are likely to have an impact on businesses and third sector organisations are the duties on third and private sector providers in relation to parental engagement.

Third and private sector providers of early learning and childcare (ELC) who deliver the funded entitlement of ELC under an arrangement with an education authority will be affected by the duties placed on education authorities in relation to parental involvement and engagement. The Bill places a duty on the education authority to promote the involvement of parents in matters of policy and improvement related to the ELC establishment, and a further duty to ensure that ELC providers in the third or private sectors support parental engagement in children's learning.

Throughout the formal consultation period Scottish Government officials held a number of meetings with key stakeholder organisations. This afforded the opportunity for potential Bill provisions to be discussed in detail and for the feedback given to be considered during development of the Bill. This included GTCS, COSLA, teacher unions, headteacher professional organisations, NPFS and Early Years Scotland.

Further details on cost to the Scottish Government and education authorities of potential changes are included in the financial memorandum.

Options

As stated above, third and private sector providers of early learning and childcare under an arrangement with an education authority will be affected by a duty on the education authority to promote the involvement of parents in matters of policy and improvement related to the ELC establishment, and a further duty to ensure that ELC providers in the third and private sectors support parental engagement in children's learning. The Bill duties are imposed on education authorities as the strategic authority responsible for the provision of ELC. The duties have been framed in such a way as to provide flexibility for authorities to ensure that parental involvement and engagement is facilitated in ways that fit with the authority's overall approach as well as provider circumstances and resources. The consultation document invited views on whether this "broad and flexible" duty would be preferable to the incorporation of existing detailed (and prescriptive) duties on Parent Councils. Respondents endorsed the "broad and flexible" duty as the preferred method, noting that this would minimise the financial impacts on providers in meeting the duty. A flexible approach to these duties enables different existing (and new) good practice to be adopted.

Option 1: Do Nothing

This would involve excluding third and private sector providers from the legislative framework on parental involvement and engagement. Providers would be excluded from the scope of the legislation, with the potential impact that practice and approach is less consistent and is experienced as such by parents.

Option 2 (preferred option): Legislate for broad, flexible duties on parental involvement and engagement relating to third and private sector providers

Benefits

The key benefit is that providers would be brought under the scope of the legislation, ensuring that the legal framework covers the entire 3-18 curriculum. The good practice evident across many providers would be highlighted and spread across the entire sector, improving the overall consistency of approach. This would help to provide a legal basis for parents to be involved and engaged in learning throughout their child's education – a consistent “offer” to parents from 3 to 18.

Costs

Discussions with Early Years Scotland as well as feedback from the consultation process indicate that the majority of providers are already taking steps to ensure that parents are fully involved and engaged in their children's learning. The proposed legal duties provide the opportunity to improve consistency and to help spread effective practice. The flexible and general nature of the duties will allow flexibility for authorities to work in partnership with providers to consider alternative methods and to implement any changes in a planned and measured way, delivering any changes to approach within their overall funding arrangements.

Option 3: Impose all of the Scottish Schools (Parental Involvement) Act 2006 duties on third and private sector providers

This would mean the imposition of duties in relation to Parent Council on all third and private sector providers, with associated detailed rules and requirements on membership and operation of the Parent Council.

Benefits

There would be consistency with the duties imposed on primary and secondary schools.

Costs

Whilst some ELC providers operate Parent Council style arrangements, our understanding is that the majority prefer to set up their own more informal parental groups. This involves the adoption of alternative methods to involve parents in ways that meet their individual circumstances. Requirements to set up formal Parent Councils with all of the associated procedural requirements would impose additional costs on provider organisations that would exceed any costs identified for Option 2.

Sectors and Groups affected

The main sectors and groups affected by the legislative provisions in the Education (Scotland) Bill are likely to be:

Businesses and Third Sector:

- Third and private sector providers of early learning and childcare and the managers of the relevant establishments

Education Authorities:

- Education authorities, who will need to reflect these legal requirements in their arrangements with providers and in any guidance that they provide locally to all early years establishments.

Scottish Firms Impact Test

Throughout the policy development process policy officials met with key stakeholder organisations that will be affected by the provisions of the Bill.

Competition Assessment

The provisions in the Education (Scotland) Bill relate to services for children in schools and private/third sector early learning and childcare provision. It is expected that it is unlikely that there will be any impact on competition within the current market.

Test run of business forms

No new business forms will be brought in with the implementation of the proposed legislation.

Legal Aid Impact Test

It is not expected that there will be any greater demand placed on the legal aid system by the commencement of any of the provisions within the Education (Scotland) Bill.

The Bill makes a technical amendment to Section 70 of the Education (Scotland) Act 1980, which provides for the Scottish Ministers to enforce a statutory duty if there is evidence that the duty-holder has not carried out its duty. The amendment excludes headteachers from direct scrutiny by the Scottish Ministers, in order to ensure that complaints about the provision of education and engagement of parents locally continue to be dealt with locally in accordance with school and education authority complaints processes. Parents will continue to be able to lodge Section 70 complaints in relation to education authorities, but this is not a new requirement.

Enforcement, sanctions and monitoring

Duties in relation to parental involvement and engagement responsibilities of third and private sector providers

Monitoring of the service provided under arrangements for the provision of ELC is undertaken by education authorities. Relevant monitoring arrangements would need to be updated to take account of the requirements on parental involvement and engagement.

Implementation and delivery plan

Duties in relation to the parental involvement and engagement responsibilities of third and private sector providers

The Scottish Government will consult with education authorities, providers and others to develop the statutory guidance that will accompany the statutory duties. The Scottish Government will also consult with the sector in relation to the proposed commencement date for the provisions in order to ensure that relevant guidance, training and advice is in place advance of commencement. Third and private sector providers will also be included within the scope of the Scottish Government's national action plan on parental involvement, parental engagement, family learning and learning at home.

Post-implementation review

It is anticipated that reviews will take place and legislation will be amended should the need arise.

Summary and recommendation

In summary, the introduction of the Education (Scotland) Bill will support the Scottish Government's aspiration that 'Scotland is the best place to grow up'. It is expected that there will be minimal business and regulatory impact on private/third sector ELC providers.

Summary costs and benefits table

Duties in relation to parental involvement and engagement responsibilities of third and private sector providers

In relation to the duties on education authorities in relation to third and private sector providers of ELC it is recommended that Option 2 outlined above should be taken forward.

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|---|---|---|
| <p>Option 1 Do Nothing</p> | <p>This option would allow private or third sector providers to continue to involve parents using existing non-compulsory practices.</p> | <p>There will be no regulatory impact on private or third sector providers of ELC who would be excluded from any duties on education authorities in relation to the involvement of parents and support for their engagement in children's learning.</p> |
| <p>Option 2 Legislate for broad, flexible duties on parental involvement and engagement relating to third and private sector providers</p> | <p>Providers would be brought within the scope of the legislation via their arrangements with a education authority, providing legal duties covering the 3-18 curriculum. This would help to provide a legal basis for parents to be involved and engaged in learning throughout their child's education.</p> | <p>The flexible and general nature of the duties will allow flexibility for authorities to engage with providers to consider how they meet the requirements and to implement any changes in a planned and measured way, delivering any changes to approach within their overall funding arrangements.</p> |

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name – John Swinney MSP
Minister's title – Deputy First Minister and Cabinet Secretary for Education and Skills

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