

# **DRAFT EDUCATION (SCOTLAND) BILL**

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## **DRAFT POLICY MEMORANDUM**

(DRAFT 26 JUNE 2018)

### **INTRODUCTION**

1. This document relates to the Draft Education (Scotland) Bill. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately.

### **POLICY OBJECTIVES OF THE BILL**

2. 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.

3. 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 greater parental involvement in education and parental engagement with children's learning; and
- Ensure that effective pupil participation is supported in all public schools.

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

- 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. RICs will also provide a range of educational support and improvement functions, to be set out in statutory guidance, in accordance with the principles and scope agreed between the Scottish Government and Convention of Scottish Local Authorities (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 (NPFSS) 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.

## **BACKGROUND**

5. The Scottish Government is committed to putting children and young people at the heart of the services that support them. *Getting it Right for Every Child (GIRFEC)*<sup>1</sup> is the national approach to ensuring that everyone works together to improve a child's outcomes.

6. The National Improvement Framework continues to set the strategic direction for education and details the Scottish Government's approach to measuring the poverty related attainment gap along with milestones towards closing it. These focus on the impact of the education system as a whole and draw on a range of measures that reflect key stages of the learner journey, recognising that both school leadership and teacher professionalism are key drivers of improvement.

7. The Scottish Government is committed to a fairer Scotland and to ensuring that every child is able to develop the knowledge, skills and attributes they will need to flourish in life, learning and work.

8. In school education, this is expressed through a flexible national curriculum framework, Curriculum for Excellence, which sets out experiences and outcomes for learners and asks teachers to design and develop local plans for learning. The purpose of the curriculum is to enable all children and young people to develop the four capacities and become successful learners, responsible citizens, confident individuals and effective contributors.

9. The achievement of this purpose is influenced by the work of everyone involved in the education of children and young people in Scotland across a wide range of professional roles, from local to national level and with a crucial contribution from parents and carers, and from children and young people themselves.

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<sup>1</sup> Getting it Right for Every Child (GIRFEC) - <http://www.gov.scot/Topics/People/Young-People/gettingitright>

10. Curriculum for Excellence provides the national framework for the design of learning and teaching in schools across Scotland. Within this national framework, schools have the freedom and authority to design a curriculum that best meets the needs of their individual learners. The ability to exercise this freedom, however, is at the discretion of the education authority, and as a result empowerment of schools varies widely across Scotland. The Scottish Government wants to empower every teacher and school to make full use of the flexibility that this framework offers in order that they can provide the learning and teaching that every child needs.

11. *Improving Schools in Scotland: An OECD Perspective*<sup>2</sup>, published in December 2015, made a number of positive observations about the implementation of the current curriculum approach in Scotland. It recommended that educational leadership be strengthened and supported and that mutual support and learning across education authorities with schools and networks of schools be provided. It also confirmed that Curriculum for Excellence needed to be managed less from the centre to allow it to become a more dynamic, highly equitable curriculum built in schools, networks and across communities. The proposed Headteachers' Charter and RIC provisions seek to take forward these recommendations.

12. The professionalism of teachers and school leaders is crucial to the success of our education system and it is vitally important that the teaching profession in Scotland is supported to deliver high quality educational experiences for all children and young people. To that end the Scottish Government wants to create a genuinely school and teacher-led system that is centred on the child, and where decisions that shape the education of Scotland's children and young people are made by those working with young people, their parents and communities and are informed by the views of the children and young people themselves.

13. The current evidence shows that the Scottish education system has many strengths. The majority of young people are performing well within Curriculum for Excellence:

- at least 87% of pupils are achieving third level or better in literacy and numeracy by the end of S3;
- the number of Higher passes has risen by 27.5% since 2007 and passes at Advanced Higher have risen by 41.5% in the same period; a higher percentage of young people (93.7%) now leave school for positive initial destinations than at any time on record;
- the highest ever proportion of school leavers from the most deprived communities (88.7%) are going on to a positive initial destination; and
- more of our population is educated beyond school than any other European country (47.8% educated at tertiary level).

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<sup>2</sup> Improving Schools in Scotland: An OECD Perspective - <http://www.oecd.org/education/school/improving-schools-in-scotland.htm>

14. However, there are areas of performance that must be improved. The latest results from the Programme for International Student Assessment (PISA) published in December 2016<sup>3</sup> found that Scotland's overall performance declined in science and reading compared to 2012, and was unchanged in maths. Our relative performance compared to other countries deteriorated across all three areas. Performance measurably deteriorated in science and maths since 2006. The Scottish Survey of Literacy and Numeracy (SSLN) which monitors national performance in literacy and numeracy has shown a decline in numeracy (2011 to 2015) and literacy (2012 to 2016). There is still a clear gap in attainment between children from more deprived and less deprived backgrounds.

15. Evidence also shows that the current system is not achieving excellence and equity for all, given the continued and widespread variation in outcomes and in the performance of education authorities and schools. Whilst improvements are being seen, the Scottish Government is of the view these are not happening fast enough or being driven sufficiently effectively in all localities. The Education Scotland 2017 report on *Quality and Improvement in Scottish Education*<sup>4</sup> confirmed that the quality of education children and young people experience within and across sectors between 2012 and 2016 was too variable. It asserts that Scottish education does not yet provide all children and young people with consistently high-quality learning experiences and that unless this variability is addressed, the national ambition of excellence and equity for all learners will not be achieved.

16. An extensive public consultation on Education Governance 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*<sup>5</sup> in June 2017, and on 5 September 2017 the First Minister announced the Scottish Government's intention to introduce an Education Bill to the Parliament in 2018.

17. The Government also consulted, from June to October 2017, on its future approach to school funding in *Fair Funding to Achieve Excellence and Equity in Education*<sup>6</sup>.

18. Further public consultation on the policy provisions of the Bill was carried out during the period November 2017 to January 2018. Targeted consultation and engagement also took place with key stakeholders including teaching unions and representative associations, COSLA, the Society of Local Authority Chief Executives (SOLACE), the Association of Directors of Education in Scotland (ADES), Scotland's Commissioner for Children and Young People, Children in Scotland, the National Parent Forum of Scotland (NPFs), Bòrd na Gàidhlig, the General Teaching Council for Scotland (GTCS) and the Directors of the Scottish Council of Independent Schools.

19. The development of the Bill has been strengthened by collaborative working between the Scottish Government and Local Government representative organisations. Key aspects of the design of Regional Improvement Collaboratives were developed by a Joint Steering Group

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<sup>3</sup> Programme for International Student Assessment (PISA) - <http://www.oecd.org/publications/pisa-2015-results-volume-i-9789264266490-en.htm>

<sup>4</sup> Quality and Improvement in Scottish Education 2012-2016 - [https://education.gov.scot/Documents/QuISe\\_full\\_2012\\_16\\_web.pdf](https://education.gov.scot/Documents/QuISe_full_2012_16_web.pdf)

<sup>5</sup> Education Governance: Next Steps - <http://www.gov.scot/Resource/0052/00521038.pdf>

<sup>6</sup> Fair Funding to Achieve Excellence and Equity in Education - <http://www.gov.scot/Resource/0052/00521081.pdf>

co-chaired by Scottish Government and SOLACE, which delivered its report and recommendations, supported by both Scottish Ministers and COSLA Leaders, in September 2017. The legislative proposals on parental involvement and engagement benefitted from detailed discussion and joint working with the (NPFs), discussion with the national Parental Engagement Steering Group and additional reference group meetings which included a wide range of organisations. The proposals on pupil participation draw on existing best practice guidance from Education Scotland, published research<sup>7</sup> by the University of Stirling and discussions with young people's organisations.

20. In June 2018 the Scottish Government and Local Government representative organisations reached agreement on a shared ambition for the Education (Scotland) Bill. The Joint Agreement reflects that improving the education and life chances of our children and young people is the defining mission that unites the Scottish education system. All parties agree that empowered, responsible and collaborative schools are essential if we are to achieve excellence and equity in Scotland's schools.

21. The Education (Scotland) Bill will provide the legislative framework for the consistent empowerment of schools and school communities across Scotland. Legislation alone cannot transform the culture, capacity and structure of Scottish education, and so the Joint Agreement sets out both legislative and non-legislative enablers and measures that will support and encourage the empowerment of schools across Scotland.

## **THE ROLE OF THE EDUCATION (SCOTLAND) BILL**

22. In order to address the inconsistency in the quality of education in Scottish schools, a programme of both legislative and non-legislative education reforms has been developed and is being taken forward in partnership with local government and the education profession. The Education (Scotland) Bill will take forward the legislative aspects of this reform agenda and by doing so will contribute to the achievement of excellence and equity in the Scottish education system. It aims to achieve this by establishing a school and teacher-led education system which will empower the school community, including education practitioners, parents and pupils.

23. The aim of the Bill is to ensure that the decisions that shape the education of children and young people are made at the most appropriate level, in classrooms and schools by the people who work most directly with them, their parents and communities.

24. The Bill and its reforms apply to all schools managed by education authorities.

### ***Headteachers' Charter***

25. Headteachers are the leaders of learning and teaching in their schools. They are senior officers of the education authority in which they are employed, and as such they have operational responsibility for the service they provide. The majority of decisions about the education provided in a school should therefore be made by the headteacher, working in partnership with their school community – the staff, pupils, parents, education authority and other partners. At present the extent to which headteachers in Scotland are empowered to be

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<sup>7</sup> How Young People's Participation in School Supports Achievement and Attainment - <https://dspace.stir.ac.uk/handle/1893/21534#WxpF1blLmQ>

the leaders of learning and teaching is variable, depending on where they work. Some headteachers are already empowered; while others are prevented from making the right decision for their school by inflexible local policies.

26. Empowering all schools to make the decisions that most affect children and young people's learning is a crucial step towards achieving excellence and equity in Scottish education. Part 1 of the Education (Scotland) Bill 2018 is the Headteachers' Charter, which makes clear that certain areas of decision-making must be the responsibility of headteachers in all but exceptional circumstances. Delivery of education remains the overarching responsibility of education authorities, but this Bill makes it clear that all education authorities must delegate these particular functions to headteachers, so that they are empowered to lead learning and teaching in partnership with their school community. The Headteachers' Charter provides a consistent legal basis for the empowerment of schools across Scotland.

27. To prevent any unintended conflict between decisions that may be best for an individual school and the education authority's wider statutory duties, the Bill makes clear that education authorities must be able to intervene in decisions made by headteachers where statutory, financial or contractual obligations would be breached. This is included as a measure of last resort, as the principles of collaboration and partnership working are central to the Scottish education system. Mutually supportive and respectful relationships between education authorities and headteachers, along with clear local processes explained in Empowering Schools Schemes, will minimise the need for such intervention.

28. The Bill requires education authorities to support headteachers in discharging their Headteachers' Charter functions, to involve headteachers in the design of recruitment procedures, and to publish information on school expenditure. In order to further increase the transparency of school funding, the Bill requires education authorities to develop and consult on new Empowering Schools Schemes to replace Devolved School Management Schemes. Empowering Schools Schemes will explain how delegation (of all the Charter Functions, including management of the school budget) operates in the area. Statutory guidance for education authorities and headteachers will be co-produced by the Scottish Government, local government and teacher and headteacher representatives.

### ***Regional Improvement Collaboratives***

29. *Improving Schools in Scotland: An OECD Perspective*,<sup>8</sup> highlighted the need to strengthen and support educational leadership and to ensure that mutual support and learning across education authorities and networks of schools is provided. The Joint Scottish Government/Local Government Steering Group on Regional Improvement Collaboratives was established to take forward this work. A report was produced by consensus in September 2017 setting out how greater collaboration across education authorities in Scotland should be developed. This process has continued with the establishment of 6 RIC areas, the appointment of RIC leads to oversee their establishment and continued operation, and the production of regional improvement plans by each RIC in January 2018.

30. The Bill will place a duty on education authorities to collaborate with their partners in the development and delivery of a regional improvement plan, which builds on the support

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<sup>8</sup> *op. cit.*

provided by individual authorities and is informed by the priorities of schools across the region. This will provide a basis on which to ensure a consistent level of collaboration by participants. The Bill also places duties on each RIC to publish annually their regional improvement plan and to prepare and publish annually a report on the steps taken in each region to collaborate in improving standards and reducing inequalities. This will secure regional improvement planning and reporting as part of established National Improvement Framework (NIF) cycle, thereby ensuring that improvement planning at a regional level is informed by and is responsive to the improvement needs of schools in the Collaborative and to the national strategic improvement priorities for education set out in the NIF.

### ***Parental Involvement and Engagement***

31. Evidence indicates that parental involvement and engagement in a child's education has a positive effect on outcomes. The Education (Scotland) Bill seeks to build on the recommendations from a review of the Scottish Schools (Parental Involvement) Act 2006<sup>9</sup>, carried out by the NPFS. The review, which involved education authorities, parent organisations and third sector partners as well as interviews with parents and headteachers, made a range of recommendations. These included recommending that amendments be made to the legislation in order to: provide greater clarity about the meaning of key terms; underpin more of a partnership approach and stronger involvement of parents and Parent Council members when reviewing or developing school policies, curriculum or improvement activity, and; ensure that duties related to parental engagement in children's learning feature as a more prominent aspect in the legislative framework. The proposals contained within the Bill draw on the NPFS-led review.

### ***Pupil Participation***

32. One of the aims of Curriculum for Excellence is to put the learner at the centre of their own education and to promote and support learner engagement and participation. Consultation responses have highlighted that currently there are many good examples of pupil participation in Scottish schools.

33. The Bill intends to promote and support pupil participation by reinforcing this as a core requirement in all public schools within the broader context of the Headteachers' Charter. No specific model will be imposed to ensure schools are able to engage with their pupils in the manner that is most appropriate for the pupils themselves.

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<sup>9</sup> Review of the impact on the Scottish Schools (Parental Involvement) Act 2006 - <https://www.npfs.org.uk/wp-content/uploads/2017/05/Final-E-versionpdf.pdf>

## **ALTERNATIVE APPROACHES AND THE ROLE OF LEGISLATION**

34. The Scottish Government has undertaken a significant process of consultation to develop both the provisions in the Bill and the non-legislative measures which are being taken forward in parallel and in partnership with local government and partners across the education system. There is agreement across the system that there is no one solution that will, on its own, raise attainment for all and reduce inequality of outcome. Different measures and partners all have important parts to play in transforming the culture, capacity and structure of the Scottish education system in order to achieve these aims.

35. Research evidence suggests that the impact of leadership on student achievement is second only to the quality of learning and teaching and that school leaders can make a difference in school and student performance if they are granted autonomy to make important decisions. The Bill should be considered as part of a multi-faceted approach to empowering and supporting school and system leadership which includes:

- the Pupil Equity Fund and the development of an enhanced leadership support programme, building on the existing national offer of leadership support for headteachers in place through the Scottish College for Educational Leadership and Education Scotland. In preparation for the Charter, this offer will be revised and enhanced to provide all headteachers in Scotland with the opportunity to access resources and support to take forward their empowered role;
- the development of new career pathways for teachers will not only provide them with fulfilling and challenging careers but will enhance innovation and help build the confidence necessary to enable schools to lead the education system;
- and the development of a clear vision and framework within which effective school level collaboration can take place.

### **Non-legislative Changes**

36. The Scottish Government has considered carefully whether legislation is a necessary component of education reform. Responses to the Education Bill consultation indicated a range of views as to the role of legislation in achieving the policy ambition. The current legislative framework already allows for the empowerment of headteachers and schools, and for collaborative work towards improvement. Despite this, and a general agreement as to the value of school level empowerment, the experience of headteachers and their schools across Scotland remains highly variable and there is no evidence that the situation will improve without reform of the existing legislation. This Bill will clarify and strengthen the framework for empowering headteachers and schools, and set a clear expectation that all education authorities must empower their schools and school communities in a culture of supported collaboration.



## CONSULTATION

37. On 7 November 2017, the Scottish Government published *Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill*<sup>10</sup>, a consultation document which invited views on key areas of proposed reform. The consultation document included 24 questions, as follows:

- Questions 1-7 sought views on the establishment of a Headteachers' Charter which will empower headteachers to make the key decisions about learning and teaching in their school in the four areas of curriculum, improvement, staffing, and budgetary functions;
- Questions 8-10 related to the strengthening, modernising and extending the provisions of the Scottish Schools (Parental Involvement) Act 2006 to encourage stronger collaboration with parents and communities within the school. These questions were based on findings from the earlier Scottish Government-led governance review as well as a National Parent Forum-led review of parental involvement<sup>11</sup>;
- Questions 11 and 12 sought views on the provisions that ensure that the principles of pupil participation are pursued in every school;
- Questions 13-16 covered the provisions of the Bill which provide the legislative underpinning for national and local government participation in RICs; and
- Questions 17-24 sought views on the establishment of an education workforce council which would take on the responsibilities of the GTCS and register other education professionals.

38. A formal, 12 week public consultation was undertaken which ran until 30 January 2018. 870 responses were received from a wide range of stakeholders including public, private and third sector organisations, and individuals. Non-confidential consultation responses were published on 27 February 2018 on the Scottish Government website<sup>12</sup>.

39. In parallel with the consultation exercise, Scottish Government officials also met key stakeholder organisations to inform the development of the proposals consulted on. Key stakeholders engaged through this process include COSLA, SOLACE, ADES, and the teaching unions.

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<sup>10</sup> Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <http://www.gov.scot/Publications/2017/11/9712>

<sup>11</sup> Review of the impact of the Scottish Schools (Parental Involvement) Act 2006 <https://www.npfs.org.uk/wp-content/uploads/2017/05/Final-E-versionpdf.pdf>

<sup>12</sup> Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill Published Responses - [https://consult.gov.scot/learning-directorate/education-scotland-bill/consultation/published\\_select\\_respondent](https://consult.gov.scot/learning-directorate/education-scotland-bill/consultation/published_select_respondent)

40. The Scottish Government commissioned the independent market and social research organisation *Why? Research Ltd* to undertake a formal analysis of consultation responses, a report of which was published on 30 April 2018 on the Scottish Government website<sup>13</sup>.

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<sup>13</sup> Empowering Schools consultation: analysis of responses - <https://beta.gov.scot/publications/analysis-responses-empowering-schools-consultation-provisions-education-scotland-bill/>

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

41. The analysis of the 870 consultation responses showed a broad range of differing opinions, with no clear consensus on many of the proposals. Very small proportions of respondents made specific comments on the various questions throughout the consultation document. Overall, there was general support for the principles underpinning the Bill but less clear support for the need for legislation to give effect to these principles. While the Scottish Government acknowledges that some elements of the reforms introduced by the Bill already exist in many schools, it remains convinced that the degree of inconsistency is significant and that legislation is required in order to ensure that all schools are meaningfully empowered to make key decisions and will continue to be so empowered in the future.

42. There was general agreement among respondents to the consultation that school leaders should be able to decide how best to lead learning and teaching in their school, provided that they do so in a collaborative way, taking into account the views of their wider school community. A range of views was expressed as to how a school and teacher-led system could be best achieved in the Scottish education system.

43. Some consultation respondents raised specific concerns about the potential impacts of the proposals to empower schools including increased school leader workloads and the risk of blurred accountability. Many discussed the current challenges some areas are facing in recruiting sufficient teachers, arguing that school empowerment could only be meaningful if workforce supply issues were addressed successfully.

44. While consultation respondents tended to support the principle of collaborative working and welcomed greater opportunity for schools and education authorities to work together across traditional boundaries, there were also calls for greater clarity on the respective roles and responsibilities of education authorities and RICs.

45. In relation to parental involvement and engagement and pupil participation, consultation responses demonstrated majority support for the underpinning principles. Some respondents argued that schools are already putting these principles into action, proactively seeking the views of their Parent Forum and engaging pupils in decisions about the life and work of the school.

46. Responses to the proposal to establish an education workforce council for Scotland were more mixed. Whilst many consultation responses accepted the logic of the proposal to register and regulate a wider range of practitioners and professionals, and saw merit in this being done by one body, a large number questioned whether there was a compelling case for change and expressed significant concern over the potential impact on the operation of the GTCS, if it were to be moved into a new, larger organisation.

47. The consultation responses and subsequent independent analysis, as well as views expressed in discussions with stakeholders and in separate representations, have been considered in the development of the provisions contained within the Education (Scotland) Bill.

## **BILL CONTENTS**

48. The Bill's 4 key themes are:

**PART 1:** Establish a **Headteachers' Charter** to empower headteachers to be the leaders of learning and teaching in their schools, working collaboratively with their school community.

**PART 2:** Provide the legislative underpinning for the establishment of **Regional Improvement Collaboratives**.

**PART 3:** Improve **parental involvement and engagement** in school life and learning.

**PART 4:** Strengthen the voice of children and young people, promoting and supporting **pupil participation**.

## **PART 1: The Headteachers' Charter**

### **Policy objectives**

49. The objective of the Headteachers' Charter is to empower headteachers so that decisions that most affect children and young people's outcomes are made in a collaborative way at school level, within a transparent local education system where partners are working together to improve outcomes for children and young people. The OECD has identified a clear relationship between school autonomy and performance<sup>14</sup>. The consultation undertaken on these Bill provisions demonstrated that there is support for the principle that schools should be empowered to decide, in a collaborative and responsible way, what is best for the children and young people in their care.

50. As the leaders of learning and teaching in their schools, headteachers play a critical role in achieving excellence and equity for all pupils. Currently, headteachers in Scotland experience varying levels of decision-making autonomy depending on their education authority's approach. Differing approaches to the delegation of decision-making responsibility have arisen from the current legislative framework (in particular section 8 of the Standards in Scotland's Schools etc. Act 2000<sup>15</sup> – "the 2000 Act") which allows significant discretion in the amount of decision-making permitted at school level. While there are examples of good practice in the current system it is variable and as a result headteachers and schools experience differing constraints on their ability to put into action the change which, in their professional judgement, will lead to improvements for children and young people.

51. The existing legislative framework provides significant flexibility for education authorities to determine the scale and terms of delegation in the area. The only functions that education authorities are currently required to delegate (through section 8 of the 2000 Act) are management of all or part of the school's budget and preparation of the school's improvement plan. Education authorities can, however, determine which schools in the area ought to be covered by these arrangements. This has resulted in mixed and at times opaque arrangements in place across Scotland. A headteacher moving from one area to another can find their role is very different depending on the particular local arrangements adopted by their new employer.

52. The Headteachers' Charter will bring greater clarity and consistency to the Scottish education system, making clear the areas of decision-making that should be allowed to take place at school level, rather than being subject to education authority discretion. As senior officers of the education authority, headteachers should have operational responsibility for the service their school provides. The Headteachers' Charter will require education authorities to delegate decision-making responsibility in four key areas to headteachers. The Bill will require headteachers to seek to act collaboratively when reaching their decisions, involving the school's staff, parents, pupils, the education authority and other partners as appropriate. Headteachers will be able to operate a distributive leadership model within their school.

53. The Bill will empower headteachers as the leaders of learning and teaching for their school. Headteachers will be responsible for making decisions on matters covered by the

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<sup>14</sup> OECD (2011) PISA in Focus (2011/9) School autonomy and accountability: Are they related to student performance? - <https://www.oecd.org/pisa/pisaproducts/pisainfocus/48910490.pdf>

<sup>15</sup> Standards in Scotland's Schools etc. the 2000 Act - <https://www.legislation.gov.uk/asp/2000/6/contents>

Charter functions, and accountable both to the education authority as their employer and to their school community. It will be important for headteachers to work collaboratively with their education authority, staff, pupils, parents and other partners to ensure they are making the best decisions for their school. Parts 1, 3 and 4 of this Bill emphasise the need for collaboration with the school community and require a particular focus on parent and pupil involvement.

54. Education authority complaints processes will continue to provide a route for addressing concerns about the provision of education, in the rare event that these arise. Section 18 supports this approach by removing headteachers from scope of section 70 of the Education (Scotland) Act 1980 – legislation which gives the Scottish Ministers a power to enforce a statutory duty if there is evidence of failure to discharge that duty.

55. Education authorities will remain ultimately liable for the provision of education in their area, and will continue to hold overarching strategic and operational duties relating to school education – including, but not limited to, duties relating to meeting the needs of children and young people with additional support needs set out in the Education (Additional Support for Learning) (Scotland) Act 2004; securing best value in the use of public funds set out in the Local Government in Scotland Act 2003; and promoting Gaelic Medium Education set out in the Gaelic Language (Scotland) Act 2005 and Part 2 of the Education (Scotland) Act 2016. Education authorities will also continue to be the employer of all staff in schools, and therefore continue to have contractual obligations to their staff. When carrying out their Charter functions, headteachers will be required to act in accordance with the education authority’s ongoing statutory and contractual obligations.

56. In order that decisions that affect teaching and learning are made at school level wherever possible, and in recognition of education authorities’ important ongoing role, the Bill will allow for education authority intervention in headteacher decisions about Charter functions where the education authority can evidence that this is necessary to remedy or avoid a breach of a statutory or contractual obligation of the education authority. This provision is expected to be used as a last resort, as education authorities and headteachers will have mutually respectful and supportive relationships, with clear local processes in place to minimise the need for such intervention.

57. Headteachers will be supported in a number of ways to take on their empowered role. The Bill requires education authorities to support headteachers in discharging Charter functions, including ensuring that headteachers have the necessary resources, training and opportunities. Through the professional review and development process, education authorities and headteachers will have a regular opportunity to reflect on empowerment and support. The General Teaching Council for Scotland’s Standards for Leadership and Management will be updated to reflect the legislation and provide a clear expectation of headteachers in Scotland. Education Scotland will enhance the national leadership support offer to headteachers and school leaders in order to build further confidence and capability amongst the profession.

58. Part 1 of the Bill applies to school-age provision in public schools managed by education authorities. Where Early Learning and Childcare (ELC) provision is based in a school, the Headteachers’ Charter will naturally result in greater empowerment in relation to curriculum and improvement planning in ELC, as Scotland’s curriculum and the NIF apply to education from age 3 upwards. ELC staffing and budget decisions will continue to be managed locally between education authorities and headteachers.

## The Charter Functions

59. The Headteachers' Charter sets out four functions that education authorities must delegate to headteachers for decision at school level, except where it is necessary for the education authority to intervene to remedy or avoid the breach of a statutory or contractual duty. Section 17 of the Bill provides for new statutory guidance to education authorities and headteachers to support the Charter. This guidance will be produced in partnership between the Scottish Government, local government and teacher and headteacher representatives.

60. The **curriculum function** empowers headteachers to design and develop the school curriculum and to facilitate learning and teaching in the school, within the national framework on the curriculum in Scottish schools. The purpose of Scotland's curriculum is to enable all children and young people to develop four capacities so that they can become successful learners, responsible citizens, confident individuals and effective contributors. The Headteachers' Charter supports this by emphasising that it is for headteachers, working in collaboration with their school community and in accordance with the national framework on the curriculum in Scotland's schools, to design and develop local plans for learning that meet the needs of the children and young people in the school.

61. The **improvement function** empowers headteachers to lead improvement planning and prioritisation for their school. The Bill amends the Standards in Scotland's Schools etc. Act 2000 to make clear that improvement planning must be allowed to take place at school level. Following consultation, the requirement in that Act for education authorities to produce local improvement plans will remain. This Bill amends the 2000 Act to reflect that education authority-level improvement planning is driven by the improvement needs identified at school level. School improvement plans will inform planning and improvement support offers from education authorities and RICs. The NIF continues to set the strategic framework for improvement planning throughout the school system.

62. The **budgetary function** empowers headteachers to make decisions on spending within their delegated budget, which must include the staffing budget. Education authorities will continue to be responsible for the overall education budget and the delegation of funding to schools. The budgetary function will mean that headteachers are able to make key decisions about staffing and spending priorities for the school within their delegated budget. Education authorities will set out local arrangements for managing delegated budgets in their Empowering Schools Schemes.

63. The **staffing function** empowers headteachers to design the staffing structure for their school, and to select the staff who work in the school, with due regard to the education authority's contractual and other legal obligations in relation to employment. The education authority will remain the employer of all staff in schools, and terms and conditions will continue to be negotiated through the national and local negotiating bodies. The Bill will ensure that headteachers have a clear voice in those processes and decisions. In making decisions about staffing appointments and structures, headteachers will be required to work closely with education authorities to ensure that statutory and contractual obligations are honoured. The supporting statutory guidance will cover processes that should be observed when resolving disagreements about staffing matters.

64. The Bill requires Scottish Ministers to prepare, consult on and publish guidance relating to these functions. This statutory guidance will provide practical advice to headteachers and education authorities on empowerment and will underpin mutually supportive and respectful local relationships with clear roles and responsibilities. It will include examples of the statutory and contractual obligations of the education authority that headteachers must act in accordance with when discharging Charter functions, and the circumstances under which the education authority's power to intervene (in Section 13) may be relevant.

65. The Scottish Government has committed to the co-production of this supporting guidance with local government and teaching representative organisations.

### **Duties on education authorities to empower schools and school communities**

66. In addition to the four functions, the Bill places duties on education authorities to further empower schools:

- Education authorities must ensure that they take the views of headteachers into account when exercising their functions relating to the recruitment and employment for staff – for example, ensuring headteachers are consulted on the design of recruitment processes, and involved appropriately in local negotiating committees;
- Education authorities must also support headteachers in discharging their Charter functions. The Education Bill consultation indicated that the provision of school business management resource will be a key aspect of supporting empowered schools; and
- Education authorities must publish information on school expenditure, in order to increase the transparency of decisions about education funding at education authority level. Education authorities are required by the Bill to publish information on the total expenditure attributable to each public school in their area, as soon as reasonably practicable after the end of each financial year.

67. The Bill repeals and replaces section 8 of the 2000 Act<sup>16</sup>. Instead of producing a Devolved School Management Scheme (as previously required by section 8 of the 2000 Act), each education authority will be required to develop, consult on and review an Empowering Schools Scheme. Empowering Schools Schemes will result in greater transparency in funding decisions and processes at education authority level, as well as providing education authorities with the opportunity to set out local guidance on delegation and the support that will be available to empowered headteachers. Education authorities must consult on their Empowering Schools Scheme locally.

68. The Bill requires that Empowering Schools Schemes set out the process by which the education authority's budget for school education is allocated between schools and central education services; along with the process by which the education authority's budget for schools is appropriated to each individual school. As a result it should be clear to headteachers

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<sup>16</sup> Standards in Scotland's Schools etc. the 2000 Act – op.cit



and school communities how their school's funding allocation has been calculated. The Scheme must also set out detailed provision on the local arrangements for managing the budget that is delegated to headteachers under the Charter. Work is already underway through a joint Scottish Government and COSLA Reference Group to develop supporting guidance on Empowering Schools Schemes.

69. The Bill also requires that education authorities use their Empowering Schools Schemes to make sure headteachers are clear about the statutory and contractual obligations of the education authority which are relevant when headteachers are carrying out Charter functions. Education authorities should also explain in their Scheme the support that will be available to empowered schools and headteachers locally.

## **Consultation**

70. Informed by the OECD's 2015 Review of the Scottish education system, the Scottish Government's 2016 Delivery Plan set out the intention to further empower teachers, schools and communities to deliver improvements for children and young people. Extensive consultation took place on a range of issues relating to governance and empowerment through the 2016 consultation *Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in education – A Governance Review*.<sup>17</sup>

71. That consultation informed the development of education reforms in *Education Governance: Next Steps - Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children*<sup>18</sup> which was published by the Scottish Government in June 2017. This included a proposal to establish a Headteachers' Charter to set out the rights and responsibilities of headteachers as the leaders of learning and teaching in their schools, and the expectations of education authorities.

72. The consultation *Fair Funding to Achieve Excellence and Equity in Education*<sup>19</sup> found significant support for the current funding arrangements, based on education authorities' Devolved School Management Schemes, but also scope for these schemes to be improved and strengthened to deliver greater and more consistent autonomy for headteachers with more control over funding and decision making at the school level.

73. Further consultation was undertaken in 2017-2018<sup>20</sup> on proposals for the areas in which headteacher empowerment would be particularly beneficial to children and young people's outcomes - curriculum, improvement, staffing and funding. The independent analysis<sup>21</sup> of the responses to that consultation found the following in relation to the Headteachers' Charter:

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<sup>17</sup> Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in education – A Governance Review - <http://www.gov.scot/Publications/2016/09/1251/>

<sup>18</sup> Education Governance: Next Steps - Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children: Executive Summary - <http://www.gov.scot/Publications/2017/06/7994>

<sup>19</sup> Fair Funding to Achieve Excellence and Equity in Education - <http://www.gov.scot/Publications/2017/06/2057>

<sup>20</sup> Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <http://www.gov.scot/Publications/2017/11/9712>

<sup>21</sup> Analysis of responses to Empowering Schools: A consultation on the provisions of the Education (Scotland) Bill - <http://www.gov.scot/Publications/2018/04/6098>

- Support exists for a number of elements of the Headteachers' Charter including headteachers being empowered as main decision-makers and leaders of learning within the school. However it was noted by some respondents that this is already underway in many schools with headteachers having devolved funding responsibilities and input into teacher recruitment;
- Some respondents highlighted the risk of greater inconsistency across Scotland's schools, both in quality and capacity of individual headteachers and disparity between education authority areas;
- Clarity was sought by some respondents on the interaction between the proposed legislation and the existing agreements set out nationally by the Scottish Negotiating Committee for Teachers and subject to local negotiation through Local Negotiating Committee for Teachers;
- Respondents raised concerns about the potential impacts of empowering headteachers to select their teams on the employment rights of individuals and the responsibilities of education authorities as employers; and
- A key theme highlighted across the responses was the need for adequate support and advice for headteachers from education authorities.

74. The Scottish Government will continue to engage stakeholders throughout the parliamentary process in order to further strengthen and improve the legislative provisions.

### **Alternative approaches**

75. The Scottish Government has considered carefully whether legislation is an appropriate route for taking forward its policy agenda of empowering schools and headteachers. It is clear that legislative change alone will not lead to the transformational change in culture, capacity and structure that is required to raise attainment and reduce inequalities of outcome. Legislation is however an important element of a wider reform agenda comprising both legislative and non-legislative action.

76. The principle of empowerment is already embedded in Scottish education legislation. Section 8 of the 2000 Act <sup>22</sup> and its supporting statutory guidance were intended to encourage and promote delegation of responsibility from education authorities to individual schools, in order to enable decisions to be taken closer to the children and young people affected by them. This legislation has, however, led to a variable education system, with schools and headteachers empowered to different degrees depending on local decisions. There is no clear evidence that such a system will, in the long term, lead to an improvement in outcomes for children and young people.

77. Following consultation, and taking into account the OECD's in-depth review of the Scottish education system, there is agreement that there ought to be consistency in the empowerment of Scotland's schools. Educational professionals ought to be trusted to make key

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<sup>22</sup> Standards in Scotland's Schools etc. the 2000 Act – op.cit

decisions about learning and teaching. The current legislation and statutory guidance are not sufficiently ambitious in their vision of an empowered education system, as evidenced by the wide variation in empowerment of schools across education authority areas. The Education (Scotland) Bill will set clear expectations of the empowerment and support that all headteachers and schools should experience.

78. The Scottish Government is clear that school level empowerment must not result in a change in the legal status of individual headteachers and that they must not be personally liable for statutory duties. The Education (Scotland) Bill will therefore require the delegation of functions from education authorities to headteachers, with education authorities continuing to hold overall responsibility for securing the adequate and efficient provision of school education for their area under the Education (Scotland) Act 1980<sup>23</sup>.

79. Consultation respondents commented in particular about the proposals to empower headteachers in relation to staffing, highlighting the role of education authorities as the employer of staff, and the existing national and local negotiating structures. The policy intention throughout has been that education authorities remain the employer of headteachers and other school staff, rather than individual schools becoming employers. The Headteachers' Charter provisions make clear that headteachers will work in partnership with their education authority when discharging the staffing function, and require headteachers to act in accordance with the education authority's statutory and contractual obligations. They allow for education authorities to intervene if an obligation of the authority would be breached.

80. The Scottish Government considered, through the consultation *Fair Funding to Achieve Excellence and Equity in Education*<sup>24</sup>, an alternative approach to school funding of increased targeting of elements to funding directly to schools. Although that approach could have some advantages and is the basis of Pupil Equity Funding, on balance our priority is to ensure that the current funding for the majority of education provision, which is provided to education authorities through the local government distribution settlement, achieves maximum impact. Instead, the Education (Scotland) Bill requires, as a key part of empowering schools, a new and strengthened approach to the delegation of budgets by education authorities to schools. This will be underpinned by statutory guidance that will be co-produced with local government to achieve the greater consistency, equity and transparency in school funding that is our ambition.

## **PART 2: Regional Improvement Collaboratives**

### **Policy objectives**

81. Regional Improvement Collaboratives are being established to bring together, and through collaboration enhance, the educational improvement support and advice that education authorities, Education Scotland and others provide to headteachers and other practitioners to support children's learning. Their purpose is to provide a space and a framework for collaborative working, to ensure that schools receive consistent, responsive and high quality improvement support which has a positive impact on children's learning.

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<sup>23</sup> Section 1(1) of the Education (Scotland) Act 1980 – <https://www.legislation.gov.uk/ukpga/1980/44/section/1>

<sup>24</sup> Fair Funding to Achieve Excellence and Equity in Education – op.cit

82. That collective focus is underpinned by a duty to collaborate in the development and delivery of a regional improvement plan, which builds on the support provided by individual authorities and is informed by the priorities of schools across the region. The scope of this collaborative working is informed by the report of the Joint Scottish Government / Local Government Steering Group on RICs, which has been accepted by both the Scottish Government and by local government. To ensure that regional improvement planning is responsive to the improvement needs of schools in the Collaborative and to the national strategic improvement priorities for education, duties on the preparation and publication of regional improvement plans and reports, place regional improvement planning within the established National Framework Cycle.

83. This addresses a central finding from the OECD's review of Scottish education *Improving Schools in Scotland: An OECD Perspective*<sup>25</sup>, which called for a strengthened "middle" operating through networks and collaboratives among schools, and in and across education authorities. Creating a legislative duty for existing education authorities and partners to collaborate within RICs addresses the OECD's recommendation for greater consistency in collaborative professionalism and for moving towards higher quality collaborative practices that have the most positive effects on learning outcomes, and does so without the creation of new formal bodies.

84. RICs are not new structures and are not intended to replace the educational support provided by individual education authorities to educational staff and establishments in their area. Rather, they provide the framework for education authorities, Education Scotland and other partners to work together in sharing knowledge and best practice, in identifying and developing joint approaches to address regional educational improvement priorities, and in promoting and supporting collaborative working across the system.

### **Consultation**

85. Discussion on the Scottish Government's policy proposals to strengthen collaboration and draw together educational expertise and support across wider geographical areas began with the consultation *Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in education – A Governance Review*<sup>26</sup>, which was launched in September 2016.

86. That consultation informed the development of education reforms in *Education Governance: Next Steps - Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children*<sup>27</sup> which was published by the Scottish Government in June 2017. This included a proposal for the creation of new RICs to bring together education authority and Education Scotland expertise within regions, in order to strengthen educational improvement and collaborative support to headteachers, teachers and other practitioners.

87. In August 2017, a joint Steering Group which included representation from the Scottish Government, Education Scotland, COSLA, SOLACE and ADES was established to develop

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<sup>25</sup> *Improving Schools in Scotland: An OECD Perspective, op. cit.*

<sup>26</sup> *Empowering Teachers, Parents and Communities to Achieve Excellence and Equity in education – op.cit*

<sup>27</sup> *Education Governance: Next Steps - Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children: Executive Summary – op.cit*

detailed options for the establishment and operation of new RICs. That group delivered a report to the Scottish Government and to Local Government leaders in September 2017, which was accepted by the Deputy First Minister and the COSLA Spokesperson for Children and Young People as the basis for the initial establishment and operation of RICs. That report was subsequently accepted by COSLA Leaders on 29 September 2017.

88. The Scottish Government has continued to liaise with local government, Education Scotland and other partners on the detailed establishment of the new RICs and on the development of their regional improvement plans, which are a key part of this agreement.

89. In the formal consultation for this Bill, more respondents agreed than disagreed that the Bill should include provisions requiring education authorities to collaborate with partner councils and with Education Scotland within RICs. Respondents to that consultation also requested: further detail on the respective roles and responsibilities of RICs and their constituent education authorities; clarification on the range of geographies of the emerging regions; and reassurance that RICs will support local collaboration and accountability. That detail will be provided to stakeholders as part of the continued development of RICs, including through consultation on the provision of statutory guidance and other supporting materials.

### **Alternative approaches**

90. A framework for the establishment and operation of new RICs has been developed jointly by the Scottish Government, local government and Education Scotland. This sets out areas where education authorities and Education Scotland should collaborate on in strengthening the support for educational improvement across their region, but does not place a duty on them to do so. There is therefore a risk that, without an underpinning statutory requirement, the level of engagement in the Collaboratives may vary over time and the potential reach, impact and sustainability of collaborative working could be impacted.

91. The provisions in the Bill are therefore designed to strengthen that framework and put into legislation a duty for members of the Collaboratives to work together in the design, delivery and publication of their regional improvement plans. That duty is also supported by the power to make statutory guidance, subject to a requirement to consult on any such guidance. Statutory guidance will provide further clarity, including to stakeholders who will be consulted on such guidance, about the core functions that the Collaboratives must work together and with partners on, to thereby improve outcomes for children and young people. Collectively, these arrangements will ensure that RIC members and stakeholders have clarity on the purpose and role of their RIC, and that RIC activities are appropriate to the context of schools in their region.

## **Part 3: Parental involvement and engagement**

### **Policy objectives**

92. The legislative changes draw on the findings from the Scottish Government's consultation on education governance<sup>28</sup> and on a wide-ranging review of the Scottish Schools (Parental Involvement) Act 2006 which was conducted by the National Parent Forum of

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<sup>28</sup> Scottish Government's consultation on education governance - [op.cit](#)

Scotland. The amendments introduced by this Bill are intended to modernise, extend and strengthen the provisions in the 2006 Act.

93. The policy objective is to underpin a further increase in parental involvement and parental engagement and to complement a wider national action plan. The Bill seeks to underpin more of a collaborative approach to parental involvement. It seeks to fully reflect the role of schools in promoting and supporting parental engagement in children's learning<sup>29</sup>. A further objective is to improve the quality, consistency and depth of parental involvement and support for parental engagement in order that effective practice is more consistent across schools.

94. The Bill expands the current duties on education authorities in order to cover both parental involvement and parental engagement. It strengthens the duties on schools in relation to Parent Councils, in particular by requiring headteachers to work in a collaborative way with the school's Parent Council and, where appropriate, the wider Parent Forum. The duties will also ensure that education authority strategies are up-to-date and effective and that they are reviewed no less frequently than every three years to ensure they are current. There are also amendments to clarify the application of the 2006 Act to early learning and childcare (ELC) and to extend its application to ELC provision in education authority nursery schools, and ELC provision which is funded but not provided by the public sector.

## **Consultation**

95. The proposals contained within the Bill consultation were developed in light of earlier outline proposals explored via the Scottish Government's Education Governance Review consultation.<sup>30</sup>

96. The proposals also drew upon findings from an independent review of the Scottish Schools (Parental Involvement) Act 2006<sup>31</sup> which was commissioned by Scottish Government and conducted by NPFS. The review included independent research conducted by IPSOS Mori, a reference group involving national parent organisations, the Association of Directors of Education, the Educational Institute of Scotland, focus groups with headteachers and parents and a survey of Parent Councils. The final report from the review helped to inform the proposals for legislative change contained within the Bill consultation. In particular, the Scottish Government considered Recommendation 1 from the review, which recommended that the government should consult on "a range of significant amendments to the Parental Involvement Act...to modernise, extend and strengthen the legislative framework on parental involvement". The Scottish Government also considered section 10.3 in the review which contained a list of initial proposals aimed at strengthening the 2006 Act.

97. Around half of respondents to the Bill consultation opted to provide input to the questions on Parental and Community Engagement. The key theme to emerge was the need for further clarification and detail in relation to the amendments to be introduced by the Bill. There was broad agreement that parental involvement and engagement can lead to better

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<sup>29</sup> Parental involvement with schools is for example, involvement in Parent Councils, going on trips, reporting to parents about children's progress. Parental engagement with children's learning is active support for children's learning, learning in the home and family learning.

<sup>30</sup> Scottish Government's consultation on education governance - op.cit

<sup>31</sup> Independent review of the Scottish Schools (Parental Involvement) Act 2006 – op.cit

educational outcomes but also a question as to whether change was required since, it was suggested, schools already involve parents in decisions.

98. Key concerns highlighted were:

- Professionalism of staff should not be undermined by parental demands;
- A small proportion of respondents noted that a lack of parental understanding of the wider picture can make it difficult to make an informed choice – parents should not have a say in substantive matters relating to curriculum design or improvement planning; and

99. The proposed amendments contained within the Bill aim to take account of the comments received in the consultation as well as the findings and recommendations from the earlier independent review of the 2006 Act. In particular, the Scottish Government has sought to ensure greater consistency in approach whilst minimising the level of prescription in relation to headteacher duties.

100. In addition to the formal consultation, Scottish Government officials met with a range of organisations in order to gather their views on the detailed provisions within the Bill. This included meetings and discussions with NPFS, a discussion at the “Teacher Panel”, chaired by the Deputy First Minister, several discussions with the national Parental Engagement Steering Group (which in addition to the NPFS includes a range of other parent organisations), discussions with Early Years Scotland and discussions with education authority representatives from the Scottish Parental Involvement Officer Network.

### **Alternative approaches**

101. Legislation on parental involvement in schooling (Parent Councils) has been in force for over 10 years. The legislative changes proposed for this Bill are intended to improve the way that the available resources are utilised by strengthening, modernising and extending the 2006 Act’s application in early years (i.e. pre-school) education provision. The extension in the early years has been framed in a way so as to maximise flexibility for providers to meet their obligations in a way that suits their circumstances.

102. The 2006 Act has been in force since 2007. An alternative approach would have been to retain the current 2006 Act, stop short of legislative changes but issue further guidance on how schools can encourage greater collaboration between Parent Councils, schools and education authorities. A further alternative approach would be to make amendments to create additional prescription. This would involve further detailed provisions either in primary legislation or in Regulations which would prescribe the specific steps that headteachers must take to support parental involvement via Parent Councils and parental engagement in children’s learning.

103. A final option would have been to reinstate school boards in legislation or to adopt a “Board of Governors” arrangement. The NPFS’ Review of the 2006 Act did not support this option. It concluded that parents did not wish to return to those arrangements, and that they were not likely to represent the voice of the wider parent forum.

104. The Scottish Government concluded that the best way to support the policy objectives would be a set of amendments, aimed at: underpinning collaborative working between headteachers and Parent Councils and the wider Parent Forum; good practice based on current best practice; and greater clarity about the meaning of parental involvement and engagement, and clear duties relating to education authorities' strategies.. It was concluded that guidance on its own would not achieve the step-change in culture and approach recommended in the NPFS' independent review of parental involvement, which made a clear recommendation that further amendments to legislation were required. The Government further concluded that School Board arrangements would undo the important improvements that have been achieved over the past 11 years following the creation of Parent Councils.

## **PART 4: Pupil Participation**

### **Policy objectives**

105. The policy objective is to ensure that effective pupil participation is supported in all public schools, including nursery classes in public primary schools. The aim of Curriculum for Excellence is to put the learner at the centre of their own education; pupil participation is also one of CfE's core principles. Evidence tells us that pupil voice has an important effect on pupils' attainment. The duty introduced by the Bill is intended to underpin and reinforce pupil participation as a core requirement in the wider context of the Headteachers' Charter.

106. The Bill establishes a duty on education authorities to promote and support pupil participation in specified matters. In doing so, they must ensure that the headteacher of each public school in the authority's area takes appropriate steps to contribute to that duty being complied with. The 'promotion' element of the duty is directed at the advancement of pupil participation in relation to specified matters across the school, including by way of the headteacher's leadership function. The 'support' element is envisaged to ensure that headteachers take such effective measures as are appropriate in the context of their school to enable and facilitate pupil participation. This may include putting in place such structures, resources and activities as appear to them to achieve that aim.

107. The pupil participation provisions within the Bill are framed to include:

- Pupil engagement in relation to their own learning: this relates to key tenets of Curriculum for Excellence and supporting documentation and includes opportunities for pupils to contribute their views to relevant decisions that impact on their experience of learning and teaching at the school;
- Pupil participation in decisions relating to the life and work of the school: this includes ensuring that appropriate arrangements are in place to enable pupils to influence decisions relating to the running of the school, such as the contents of school policies, timetabling, procedures and rules, and the school improvement plan and related activities; and
- Pupil participation in the wider community: this relates to participation opportunities for pupils in relation to the "wider" or extended curriculum, community activities that are linked to the school, such as local or national volunteering opportunities or



opportunities which offer greater interaction in the school between learners and community members.

108. This duty has been framed so as to be flexible and not to prescribe particular methods or activities. It takes account of rights-based approaches and recent Education Scotland guidance on learner participation, published in April 2018. It provides flexibility for education authorities and headteachers to discharge the duty in such ways as are appropriate to the particular context of their school. The duty within the Bill is intended to support approaches which enable pupils to influence priorities that are important to pupils themselves rather than simply provide views or reflections on measures already agreed upon or decisions already taken. It is anticipated that accompanying statutory guidance will reinforce the flexibility but provide certain key principles for schools to bear in mind.

## **Consultation**

109. The policies contained in the Bill proposals build on earlier consultation for the Scottish Government's education governance review. This included in-depth consultation activity with large numbers of young people, summarised in a final Excite.Ed consultation report.<sup>32</sup>

110. In relation to the Bill consultation there was wide support for the principles of pupil participation and a belief that this should be an expectation and a right.

111. Benefits of pupil participation highlighted in consultation responses include:

- Pupils respond positively to being empowered with decision-making relating to learning;
- Educators can understand things better from a pupil perspective; and
- A greater focus on citizenship and wider achievement for young people.

112. There was support for pupil participation to be a general duty which schools can apply flexibly rather than having particular methods or approaches prescribed. This would allow for innovative and new approaches to be trialled and for locally appropriate approaches to be adopted which could be beneficial for small or rural schools or for schools where pupils would prefer alternative methods and approaches.

113. Some respondents indicated that pupil participation is already happening in many schools and should not need to be legislated for. Some consultees commented that pupil participation should be real and meaningful and not a tokenistic or "tick box" exercise. Amongst the smaller proportion of consultees who opposed the principle of pupil participation it was commented that pupils often do not have the educational expertise to make informed decisions which could lead to decisions being made that could be detrimental to their education.

114. In addition to the formal consultation the Scottish Government engaged with a small group of young person organisations including Young Scot, Children in Scotland and Scottish Youth Parliament. The Scottish Government discussed with the relevant organisations how

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<sup>32</sup> Excite.Ed: How to deliver excellence and equity in Scottish Education - <http://www.gov.scot/Resource/0052/00521082.pdf>

best to frame the relevant provisions and to discuss potential “best practice principles of pupil participation” which could feature in accompanying guidance.

### **Alternative approaches**

115. The following alternative approaches were considered:

- Not legislating for duties on pupil participation. This was proposed by some respondents to the Bill consultation who stated that pupil participation was already a key feature of schools.
- Being more prescriptive in the legislative requirements, for example by imposing specific duties on headteachers to consult with pupils on specific matters or legislating to make Pupil Councils a formal requirement for all schools.

116. It was concluded that while there is evidence of good practice amongst schools (a wide range of individual and group methods to gather and share pupil perspectives exist including pupil councils and pupil parliaments) this is not consistent enough to ensure that all pupils have the right to their voice being heard with regard to decisions that affect their education. It was concluded that clear duties on the face of legislation, coupled with clear statutory and best practice guidance, would play an important role in setting clear expectations of the degree of empowerment and quality of experience that pupils will be entitled to. In relation to the option of being more prescriptive it was concluded that additional prescription on the face of the Bill would not be appropriate in the context of the broader decision-making empowerment provided by the Headteachers’ Charter, and may serve to encourage a “one size fits all” approach (for instance, Pupil Councils as the one and only approach to supporting pupil participation) which would not fit the specific context for an individual school.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

117. An Equality Impact Assessment (EQIA) has been carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, across the protected characteristics required for EQIAs.

118. The EQIA concluded that the Bill’s provisions are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, gender, pregnancy, marriage and civil partnership, sexual orientation or gender reassignment. It also found that there are a number of potential benefits to the proposals and positive impacts on individual groups that share a protected characteristic, and these include:

- A duty on education authorities to promote and support pupil participation and engagement in school education and related activities and collaboration between pupils and school staff on decision making. This will foster good relationships between adults and young people. The increased focus on parental engagement will also include parents from a range of age groups;

- Encouraging better collaboration, increased parental engagement and enhanced pupil participation which should lead to the promotion and fostering of good relationships and greater equality of opportunity; and
- The opportunity to provide statutory guidance which can link the duties on parental involvement and engagement to authorities' broader equality duties.

119. The EQIA process has highlighted the need for the Scottish Government to continue to engage closely with stakeholders to ensure that equalities issues continue to be at the forefront of education policy development and that any new issues can be dealt with as they arise.

120. The impacts of the Bill on the protected characteristics have been considered as a result of the EQIA. No changes have been proposed to any of the provisions as a result of this process and it is expected that the Bill will help to advance equality of opportunity and foster good relations within and between groups.

121. The EQIA has helped us to ensure that the Bill will develop better outcomes for people and communities through the creation of a school- and teacher-led education system, centred on the child. It will enable trusted professionals, working with young people, their parents and communities, to take decisions that shape the education of young people. The Bill will encourage better collaboration through the RICs and promote an increased focus on engagement and involvement in schools from parents and pupils.

122. A Children's Rights and Wellbeing Impact Assessment (CRWIA) was also carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, on children and young people.

123. The Education (Scotland) Bill will improve the rights, wellbeing and participation of Children and Young People. The available evidence suggests, either directly or indirectly, that the Education Bill will have a positive impact on children's rights and wellbeing. Overall, the proposed legislative changes will have a positive effect on the life and work of schools and their staff which will in turn improve the quality and effectiveness of learning by children and young people. The provisions not only comply with the requirements of the United Nations Convention on the Rights of the Child, but also have the potential to advance the realisation of children's rights and wellbeing.

### **Human rights**

124. The Bill has no disproportionate effect on human rights.

### **Island communities**

125. The Bill will apply to all communities across Scotland, including rural and Island Communities.

126. RICs will provide a practical collaborative framework to facilitate the sharing of best practice and innovation across the education system. They will support school to school and

peer level collaboration between education professionals, and maximise their professional learning opportunities. Staff in rural schools will, therefore, have better opportunities to collaborate with peers in other rural schools in different education authorities and to benefit from experiences and approaches to improvement from a wider a range of schools.

127. Our reforms will pool, focus and strengthen resources within the RICs, in order to enhance the improvement support that schools can access. They will help schools and education professionals to close the attainment gap and deliver the best possible learning experience for all children and young people.

128. RICs will be tasked to ensure that the improvement offer in each region is shaped by local priorities identified by individual schools regardless of their location. This will ensure that regional planning and the allocation of resources and specialist support is driven by the needs of children and young people in the area.

129. Proposals for parental involvement and engagement and pupil participation are intended to be scalable to a wide range of communities. Prescription about how and in what ways involvement, engagement and participation are to be achieved are minimised so as to enable a wide range of approaches. Parental involvement and engagement is based on the principle that we draw on the assets and strengths within the parental community which can be a particularly pertinent point in rural communities.

### **Local government**

130. The Bill will place duties on education authorities in relation to empowerment of headteachers; collaboration with other authorities and with Education Scotland; the involvement and engagement of parents in learning and school life; and the promotion of pupil participation in all schools in their area.

131. Education authorities will retain their key role as employers of school staff and their existing legal duties in relation to securing adequate and efficient provision of education, and securing improvement in the quality of education.

132. The development of the Bill has been informed by collaborative working between the Scottish Government and Local Government representative organisations (COSLA, ADES and SOLACE).

### **Sustainable development and Environmental Issues**

133. A pre-screening report was completed which considered that the Bill will have minimal or no impact on the environment and consequently that a full strategic environmental assessment was not required for the purpose of section 7 of the Environmental Assessment (Scotland) Act 2005.



# **DRAFT EDUCATION (SCOTLAND) BILL**

## **POLICY MEMORANDUM**