



EVIDENCE FOR THE 'EDUCATION (SCOTLAND) BILL'

Introduction

CELCS is the Centre for excellence for looked after children in Scotland. We exist to improve the experiences and life chances of children and young people in Scotland who are 'looked after' by local authorities, and those who have left care. We do this by working alongside the professionals who touch their lives, and within the wider systems established to ensure their care.

We welcome this opportunity to submit written evidence to the Scottish Parliament's Education and Culture Committee, on the 'Education (Scotland) Bill', which was introduced into the Scottish Parliament on 23rd March 2015 (herein referred to as 'the Bill'). This Bill is highly relevant to looked after children, as annual statistics repeatedly confirm that their average attainment levels (as measured by the tariff score) lag significantly behind the average for the general population. The lived experiences of looked after children can impact significantly on their education, with placement instability and insecure relationships compounding the effects of trauma and loss. However, we also have a good understanding of what works to engage looked after children through all stages of their education, to secure higher attainment. For Scotland to realise sustained improvement in the educational / learning outcomes of its looked after child population (who represent a large proportion of the lowest attaining school pupils), we need to ensure that there is:

- A local plan for improvement in place, which sets out what the local authority and its partners will do to improve the educational attainment of looked after children, by when, and who is responsible and accountable for delivery.
- Planning for the child / young person's educational needs (including assessments for additional support needs in every case)
- Effective co-ordination (including accountability) for looked after children's education plans at a local authority level
- National and local commitment to a revised and enhanced designated manager role in schools
- Meaningful support for teachers (in the classroom and through additional training)
- An inclusive approach to school attendance and engagement (which involves families and carers in prevention, rather than response).

Gaelic

12. Do you agree that the Bill “will establish a clear process for authorities to follow in considering parental requests for an assessment of the need for Gaelic medium primary education”? Do you agree with the thresholds proposed in the Bill in relation to the assessment of parental requests?

There are compelling educational as well as social and cultural reasons for encouraging Gaelic medium education. For example, there is evidence that bilingual children have better educational outcomes overall¹. There is a danger that looked after children, who typically fall behind in their schooling at some point, because of their circumstances rather than educational potential, will be overlooked for additional opportunities. We support those local authorities which prioritise their looked after children (in terms of access to educational opportunities), and believe all should, as part of their duties as ‘Corporate Parents’ (see Part 9 of the Children and Young People (Scotland) Act 2014).

One problem with the proposed legislation relates to who makes the request. It is not entirely clear how (and if) a local authority would make a placing request to itself, or encourage and support birth parents to do so in the case of children it (the local authority) is legally looking after. We do not believe that looked after children should be excluded from the opportunity to be educated in a Gaelic medium school, simply by virtue of the fact that a local authority is responsible for them. We would be keen to see the proposals for how this system would work for looked after children, and we would be happy to discuss with all relevant bodies how Gaelic medium opportunities can be promoted among looked after children and their carers.

Additional Support for Learning

16. What will be the outcomes of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children aged 12 and over with capacity? Please give practical examples.

The extension of rights has a dual benefit for looked after children and young people. Many looked after children and young people are not aware of their rights under the Additional Support for Learning (Scotland) Act 2004. Thus, for looked after children, an outcome of this proposal is helpful, in that it is an opportunity to raise awareness of their rights under the 2004 Act. Alongside this, the extension of rights to children aged 12 and over with capacity would be beneficial.

¹ <http://theconversation.com/how-the-language-you-speak-changes-your-view-of-the-world-40721>

However, it is necessary to clearly define the concept of ‘capacity’. At present, there is a lack of clarity in at least one dimension of the Bill’s definition of capacity, which defines it as ‘a matter related to additional support needs’. This is potentially a very broad definition, which could lead to children and young people (aged 16 and 17) being assessed as lacking capacity on the basis that they have additional support needs. Thus, it would be helpful if there was further clarification in the legislation. Moreover, we are also concerned about the inclusion of ‘best interests’ in section 3A(a), as this could become a barrier to young people being able to exercise their rights (when local authorities decide certain actions, favoured by the young person, are “not in their best interests”).

We are also concerned about who makes the decision regarding a child’s capacity. If it is the local authority with which the child is in dispute, then there would appear to be a conflict of interest. This is especially pertinent to a looked after child who might wish to exercise their rights, for example, by requesting an assessment or a review of their Co-ordinated Support Plan. The conflict here is that the local authority is assessing the child, and reviewing a decision which it made itself. A similar issue relates to children who wish to assert their rights, but where there is subsequently no decision / conclusion from the local authority. In such cases, there is a question about whether a parent can assert that right on their child’s behalf? In the case of a looked after child, this raises an issue of equity, as it may be the local authority who has parental rights and responsibilities. In all these cases, we believe that looked after children and young people should be appointed an advocate who is independent from the local authority decision making process; this individual could be a carer, mentor, children’s rights officer, independent advocate, or representative from the proposed statutory children’s support service.

17. Do you agree with the proposal that not all of the rights in the ASL legislation should be extended to children (see paragraphs 49 and 50 of the policy memorandum)?

Yes, we agree that this seems like a pragmatic proposal, when considering the purpose of mediation in these situations, and when it is the adults in dispute.

18. What are your views on the statutory children’s support service proposed by the Scottish Government?

A statutory support service providing accessible information, created with young people, and regarding their rights could be beneficial. It needs to go beyond just providing information, and should also provide a workable advocacy service for children and young people, which is equitable across the country. The service should complement and work alongside existing advocacy providers, to ensure there is sufficient capacity and reach. Moreover, for looked after children, it is important that existing relationships (such as with mentors, befrienders or advocates) are not

marginalised; these individuals should be considered, in the first instance, for the role of the child's advocate.

Chief Education Officer

19. What would be the possible advantages and disadvantages of legislating for the role of Chief Education Officer (CEO) in every education authority in Scotland? Are there any previous examples of the Scottish Government seeking to instruct local authorities to employ a person in a particular role? If so, are there any lessons to be learned from how this worked?

The advantages of the role of a Chief Education Officer would be that it would ensure that local authorities continue to have access to high quality educational expertise within their management structures. Without a statutory role (such as CEO) there is a risk that responsibility for leadership and improvement in education is given to more junior officers. However, we would note that, within a small country like Scotland, the appointment of 32 high-quality CEOs might be problematic. It may even draw talent away from school leadership roles, where such individuals are also needed.

Reflecting on the role of Chief Social Work Officer in local authorities (which has been in place for many decades), we have two key observations. First, that the position itself will not deliver change; the role needs to be well-defined and articulated, with responsibilities and accountability stated clearly in statute. Will, for instance, this individual be subordinate, equal or superior to the Director of Education (where this still exists)? Will the individual report directly to the Chief Executive of the local authority? Our second observation, closely linked to the first, is that the individual person matters. Who fulfils these designated posts largely determines the impact of the post, and we should not put faith in the role itself (however well defined) delivering improvement. We need the right people in the job, and in view of our comments in the paragraph above, that may require an approach to recruitment that looks beyond Scotland.

20. What roles could a CEO most usefully perform and to what extent are such roles already carried out within education authorities?

The CEO could bring educational expertise and innovation into local authorities. They could provide a valuable strategic overview, linking research evidence into policy and practice. Education Scotland could work alongside these CEOs, ensuring the latest educational developments are understood and acted upon. Together, Education Scotland and CEO's could support implementation within pre-school institutions and schools. It will be important to appoint people to the CEO role with high levels of research literacy, to ensure that subsequent practices are research-informed and research-led.

Our view is that the education of looked after children (and care leavers) needs to be championed at the highest levels of local authorities and national government. The scale of the challenge is that only such leadership will deliver the changes in educational systems these children need. The appointment of CEO's is an important opportunity to embed this leadership in local authority structures, by giving the role explicit responsibility for improving the educational outcomes of looked after children. This would mean that Scotland's CEO's perform a similar function to the Virtual School Heads in English local authorities, adding accountability and high-level support to an agenda which can frequently lack both.

Complaints

23. The Bill will introduce a power to make regulations about the procedure to be followed in relation to complaints to Scottish Ministers. Paragraph 74 of the Policy Memorandum sets out some proposed deadlines. What is your view on the deadlines for these procedures?

It is helpful to have a timeline for the process of complaints. The timeframe for the response is lengthy in terms of a child's life, however we realise this needs to be balanced against the time taken to investigate the complaint itself.

25. Overall, how will the Scottish Government's proposals affect parents' ability to complain about the actions of an education authority or other relevant body? Will the new system be more effective? Is it clear which matters can and cannot be the grounds of a complaint to Scottish Ministers?

In terms of making this system as clear as possible (i.e. when a complaint can and cannot be the grounds of a complaint to Scottish Ministers) it would be helpful to use some form of visual depiction to convey the message. For example, this could be in the form of a diagrammatic decision tree, or something similar. This could be a further support to help people to understand the process.

Thank you for this opportunity to contribute to this important Bill. We would welcome any further discussions with Committee.

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