

Agenda Item	14.
Report No	PEO 10/18

HIGHLAND COUNCIL

Committee: People Committee

Date: 25 January 2018

Report Title: Response to the Consultation on the Provisions of the Education (Scotland) Bill

Report By: Director of Care and Learning

1. Purpose / Executive Summary

This report introduces the proposed Highland Council response to *A Consultation on the Provisions of the Education (Scotland) Bill* published on 7 November 2017.

2. Recommendations

Members are asked to discuss and agree the Council's response to *A Consultation on the Provisions of the Education (Scotland) Bill* as set out at Appendix 1.

3 Background

- 3.1 The Scottish Government proposals for changes to the governance of Education, follow a wide-ranging consultation that ran from September 2016 to January 2017, generating 1154 written responses in addition to the views of 700 people who took part in face to face consultations. A summary of the views garnered can be found at – *Empowering Teachers, Parents and Communities to achieve Excellence and Equity in Education: An Analysis of Consultation Responses* on the Scottish Government website.
- 3.2 The Government published their proposals in a *Next Steps* report on 15 June 2017. This can be found at: <http://www.gov.scot/Publications/2017/06/2941>
- 3.3 Members discussed the *Next Steps* document at the meeting on 29 June 2017. That report is available at: https://www.highland.gov.uk/download/meetings/id/72220/item_12_education_governance_review
- 3.4 The latest set of proposals, *Empowering Schools A Consultation on the Provisions of the Education (Scotland) Bill* were published on 7 November 2017, with a closing date for comments of 31 January 2018. The document can be found at <http://www.gov.scot/Publications/2017/11/9712>.
- 3.5 Members discussed the *Empowering Schools* document at the full Council meeting on 14 December 2017. The report is at: https://www.highland.gov.uk/download/meetings/id/72962/item_15_proposals_for_changes_to_the_governance_of_education
- 3.6 The Council agreed to endorse the approach and conclusions set out in the report. Members further agreed that the Council's response would be confirmed at the People Committee in January.
- 3.7 A parallel consultation on school funding closed on Friday 13 October 2017. A response from Scottish Government is due in the summer of 2018. Although education governance and funding form two streams of work, they are clearly inter-connected.

4 Response to the Proposals

- 4.1 It is worth reiterating that there is much to be welcomed in the stated aims of these proposals:
 - a shared ambition to improve education and the life chances of all children and young people;
 - ensuring head teachers have as much freedom as possible in curriculum design, pedagogical priorities, staff recruitment and budget allocations within their schools, and more access to high quality professional support;
 - enhanced career opportunities for teachers and a promise to “transform the support available to teachers and practitioners at every level in the system” (page 1 of Consultation document);
 - the emphasis on collaboration between schools and between local authorities, as exemplified by the Northern Alliance.

- 4.2 Highland Council has also welcomed the decision, following negotiations with CoSLA, to amend the plans for the leadership of the Regional Improvement Collaboratives to ensure they report to the Chief Executives of the local authorities that make up the Collaborative.
- 4.3 However, we believe that collaboration already happens at all levels within the current arrangements and, although it could undoubtedly be increased and made more effective, we do not believe that wholesale redesign, far reaching legislative change and new duties, are the only way of achieving this.
- 4.4 The crucial issue is to identify the impact of any action on the lives and development of the people served by the system. A new duty on local authorities to collaborate for improvement, supported by regular and meaningful inspection of local authorities on the impact of their collaborative improvement actions, could well form the basis for an effective, locally accountable alternative model which would be much closer to the communities that it serves.
- 4.5 The consultation questions appear to be based on an assumption that there is no alternative, and that the proposals will deliver the anticipated improvements in educational outcomes. However, major concerns remain around:
- the lack of detail on resourcing such an ambitious set of proposals;
 - the centralisation of key functions and loss of local democratically elected checks and balances in the system;
 - a “one size fits all” approach to addressing perceived shortcomings in some Local Authorities;
 - the confusion that will be created with apparently different arrangements for English Medium Education, Gaelic Medium Education, Additional Support for Learning, and Early Learning & Child Care (including within the one establishment);
 - the tensions that will inevitably be created between different parts of the education system;
 - the fragmentation of schools and education from other services for children;
 - the loss of locally based support for schools, and the loss of local contact for communities on many aspects of education.
- 4.6 The above points are set out and further developed in the Respondent Information Form, attached as **Appendix 1** to this report.

5 Implications

5.1 Resources

The Scottish Government initiated a consultation on funding arrangements for education, that has yet to report. There are a number of budget implications included in the proposals, which would need to be addressed if a Bill was presented to Parliament.

5.2 Legal These proposals are likely to involve the revision of existing legislation.

- 5.3 **Gaelic** These proposals envisage the local authority retaining responsibility for organising Gaelic medium provision. There are concerns about the likely confusion and tensions this will create.
- 5.4 **Community** Significant concerns have been raised in the consultations to date, on changes to administrative arrangements, about how these proposals would affect children with Additional Support Needs, or living in more disadvantaged communities. They would also appear to raise significant challenges in small rural schools, albeit these would be mediated to a large extent through implementation of the new structures and administrative that Highland Council has already committed to.
- 5.4 There are no new implications regarding **Climate Change**.

Designation: Director of Care and Learning

Date: 12 January 2018

Author: Bill Alexander, Director of Care and Learning

Respondent Information Form

The structure of the Respondent Information Form has the effect of limiting the scope of our responses. A number of key points which we wish to make are, therefore, included as a preamble to the formal response sheet.

1. It is worth making clear at the outset that the Highland Council shares many of the stated objectives for these proposals.
 - (i) the ambition to improve education and the life chances of all children and young people;
 - (ii) ensuring head teachers have as much freedom as possible in curriculum design, pedagogical priorities, staff recruitment and budget allocations within their schools, and more access to high quality professional support;
 - (iii) enhanced career opportunities for teachers and a promise to “transform the support available to teachers and practitioners at every level in the system” (page 1 of Consultation document);
 - (iv) the emphasis on collaboration between schools and between local authorities as exemplified by the Northern Alliance.
2. The Council also welcomes the progress made during 2017 on the remit and leadership of the Regional Improvement Collaboratives (RICs)
3. However, while Highland Council welcome the emphasis on collaboration as key to educational improvement, we believe that collaboration already happens at all levels within the current arrangements, most notably in the GIRFEC approach, and, although this could undoubtedly be further improved, we do not believe that wholesale reorganisation and the proposed new duties are the way of achieving this.
4. The crucial issue is to identify the impact of action on the lives and development of the people served by the education system. We believe that a duty on local authorities to collaborate for improvement supported by regular and meaningful inspection of local authorities on the impact of their collaborative improvement actions, could well form the basis for an effective, locally accountable alternative model which would be much closer to the communities it serves.
5. The consultation questions appear to be based on an assumption that there is no alternative and that the proposals will deliver the anticipated improvements in educational outcomes. However, major concerns remain:
 - (i) the lack of detail about the resource implications of these far reaching proposals makes it difficult to respond in a meaningful way to what are highly significant changes to the legal roles and responsibilities of many professionals and organisations;
 - (ii) the centralisation of key functions and loss of local democratically elected checks and balances in the system;

- (iii) a “one size fits all” approach to addressing perceived shortcomings in some Local Authorities;
 - (iv) the confusion that will be created with apparently different arrangements for English Medium Education, Gaelic Medium Education, Additional Support for Learning, and Early Learning & Child Care (including within the one establishment);
 - (v) the tensions that will be created between different parts of the education system;
 - (vi) the fragmentation of schools and education from other services for children within the GIRFEC framework;
 - (vii) the loss of locally based support for schools, and the loss of local contact for communities on many aspects of education.
6. Given the fundamental changes to the roles and responsibilities of Local Authorities proposed in the consultation document, it is disappointing that there is not a discrete section for respondents to comment, particularly as there appear to be contradictions in their expected role. For example, the diagram on page 14 indicates that the LA’s key functions will be HR and Finance. However, on page 7 it suggests that Local Authorities will be expected to have constructive discussion with headteachers on the rationale of their curricular plans. On page 9, it states that it will be the RICs which will provide ‘robust and constructive challenge and support to headteachers’.
7. It is not helpful at this stage, just ahead of legislation, to have an absence of detail on the role of Local Authorities, with apparently contradictory statements on their future role in relation to schools. This, along with the fact that ASN, Gaelic and Early Years are said to remain with Local Authorities, has the potential to inject further tension and confusion in to what is already an over-stretched system.
8. Although RICs will report to LAs, the overall impression remains, of a more centralised structure driven by Education Scotland. Given the reputational damage done to Education Scotland in the last few years over the handling of Curriculum for Excellence implementation, it is disappointing that HMI are to remain as part of Education Scotland, thereby removing any prospect of independent scrutiny of the education system as a whole.
9. The language of the consultation document implies a view that legislative change will inevitably deliver improvement, and that this is the only way of delivering such improvement. This coupled with the fact that significant aspects of change are already being put in place, could be regarded as casting doubt on the value of this consultation process.

Question 1

The Headteachers' Charter will empower headteachers as the leaders of learning and teaching and as the lead decision maker in how the curriculum is designed and provided in their schools. What further improvements would you suggest to enable headteachers to fulfil this empowered role?

Highland Council is committed to Headteachers being leaders of learning, not burdened with administrative and bureaucratic tasks, and has an ambitious improvement programme in place to continue to take this forward.

The consultation document lacks any clear statement on what is seen as the purpose of education. Nor is there any attempt to base proposed improvements around the child's / young person's journey from pre-school to post-school.

This is a missed opportunity to build improvements in pedagogy and curriculum structures by addressing issues such as the discontinuity between pre-school / P1, and the long-standing discontinuity in both pedagogy and curricular structure between primary / early secondary in which significant numbers of young people begin to flounder. A lack of parity of esteem between vocational / academic courses in the Senior Phase is an equally long-standing challenge.

In such circumstances, Headteachers should have support to create a clear strategic approach that does not conflate pedagogy and curricular structures and is based on providing clear pathways for each child / young person as they travel from pre-school to meaningful positive destinations post-school.

Given there is no detail yet provided on the Headteachers Charter, it is difficult to comment further other than urging that nothing is done that jeopardises advances already made in a number of ASGs in Highland to create coherent routes for individuals at all transition points.

Question 2

The Headteachers' Charter will empower headteachers to develop their school improvement plans collaboratively with their school community. What improvements could be made to this approach?

Headteachers should already be developing school improvement plans with their wider communities, and all parents and community partners should be clear on their involvement in this process. However, we should not underestimate the challenges in engaging parents and partners in school improvement planning, and we must continue to find engaging and innovative ways in which to involve all stakeholders in the school improvement planning process. New approaches will require significant additional resource.

There is a need to consult parents on how comfortable they would be in getting in to this level of discussion on the rationale, structure and content of improvement plans.

If there is an appetite amongst parents for such a high level involvement, there would be a need to provide quality training and ongoing support for parents, in order ensure equity of opportunity for participation by the whole parent body and thus avoid polarisation in parent participation.

Question 3

The Charter will set out the primacy of the school improvement plan. What are the advantages and disadvantages of this approach?

There appears to be a contradiction between the diagram on page 14 which suggests that School Improvement Plans (SIPs) will feed in to RIC Plans. However, on page 8 it says that Headteachers 'should align their school's priorities for improvement with the policy direction set out in the National Improvement Framework'. The fact that RICs are expected to have their initial improvement plans in place by the end of January 2018, suggests that it is a top down model.

The clear advantage of a school improvement plan is that it identifies priorities specific to the school and appropriate timetables for improvements to be introduced and embedded.

The clear disadvantage of a RIC Plan that covers a number of local authorities over a vast geographical area, and includes inner city schools and remote rural schools – is that it will be too broad to be relevant to many schools.

The aspiration expressed by the Cabinet Secretary in the Foreword to the Consultation that RICs (and their plans) should be 'relevant, designed by, and close to the communities they serve' can only be achieved if (as it says elsewhere in the document) the School Improvement Plan has primacy and that it is indeed the SIP that drives the improvement agenda, not a RIC or National plan. This concern is all the more valid given that there is no detail on how RICs will be structured in order to be 'relevant, designed by, and close to the communities they serve'.

Question 4

The Headteachers' Charter will set out the freedoms which headteachers should have in relation to staffing decisions.

- a. What are the advantages and disadvantages of headteachers being able to have greater input into recruitment exercises and processes adopted by their local authority?

This largely reflects existing practice in relation to teaching staff in Highland Council. Headteachers would not be expected to recruit a range of other staff, and neither should they have that responsibility.

There is enormous potential for confusion if there are different arrangements for English Medium Education, Gaelic Medium Education, Additional Support for

Learning, and Early Learning & Child Care within a school or authority.

There requires to be a strategic oversight of all staffing decisions, as the workforce and HR issues extend well beyond the school gate. There is certainly potential here for HR and LNCT tensions and challenge.

- b. What are the advantages and disadvantages of headteachers' ability to choose their teams and decide on the promoted post structure within their schools?

There are clear advantages if Headteachers select teams and create structures that suit their schools, but this requires to be within a clear good practice framework in relation to both HR, Learning & Teaching, and regarding other aspects of the management of a sizeable organisation.

There needs to be clarification as to what happens if a Headteacher seeks to put in place a different structure in light, for instance, of existing contractual employment terms and conditions.

This also needs to be seen in context of proposals for any new career structure for Teachers.

Question 5

Should headteachers be able to decide how the funding allocated to their schools for the delivery of school education is spent? If so, what is the best way of doing this?

Highland Schools already have the greatest bulk of the education budget devolved to them via Devolved School Management Arrangements. Aspects not devolved are those where there are greater economies of scale in centrally managing costs, for example ASN, transport, catering etc. Headteachers have no great desire to have control over these.

It should be noted that budgetary management can be a challenging area for Headteachers, and many require significant support from local authority officers. Greater responsibility for budgets and increased accountability will not be welcomed by many. While most secondary and many primary Headteachers say they would want maximum say on how devolved funding is spent, they point out that unless there is a significant increase in the funding they receive, they will simply be moving funding around to plug gaps.

At the moment, given the level of devolved budget already in place, it is difficult to envisage what additional responsibilities or freedoms would be available, given that most budget goes on fixed costs such as staffing.

Also, and once again, there potential for significant confusion if different arrangements are in place for English Medium Education, Gaelic Medium Education, Additional Support for Learning, and Early Learning & Child Care.

Question 6

How could local authorities increase transparency and best involve headteachers and school communities in education spending decisions?

In Highland, Headteachers have been involved in discussion about Council education budgets for a number of years.

Question 7

What types of support and professional learning would be valuable to headteachers in preparing to take up the new powers and duties to be set out in the Headteachers' Charter?

The local link and relationship between the local authority and the Headteacher is of paramount importance with regard to meeting individual needs, and providing informed advice, support and challenge. The RIC can provide enhanced support for certain aspects of work, to add greater value or economies of scale.

In meetings with Highland Headteachers during November and December 2017, the promise of 'more autonomy' was not objected to. However, these discussions indicated that most Headteachers were far from convinced that the proposed model is either workable or desirable. They were sceptical that such significant structural change would of itself bring the attainment improvements envisaged.

They also pointed out that the proposals do not address the issues that currently concern them: staff reductions and staff shortages (including supply), the effect of core budget cuts, and workload/bureaucracy which is not seen to be reducing. They felt that addressing these problems would be a more fruitful first step towards the shared national desire to improve overall attainment.

Headteachers are concerned that the RICs will add another layer of bureaucracy and will be remote from schools. Many value the professional support that can best be provided by colleagues in local offices who know the schools and their communities. This is particularly true of many primary Headteachers.

Schools currently allocated additional funds via the Pupil Equity Fund (PEF) and the Attainment Scotland Fund welcomed the additional funding and flexibility in spending decisions, but pointed out that it came with additional workload and bureaucracy, and did not compensate for the funds that have been cut from core budgets. They question the value of more control over budgets if there is no significant injection of financial resources to accompany this.

Finally, they expressed disappointment that concerns raised in previous rounds of consultation were not addressed in the latest consultation document. They felt the document lacked an understanding of the current system and what is actually already happening for young people and families in schools and in children's services.

Any reform built on legislation and the reluctant compliance of key players will not bring the improvements that are sought.

Question 8

Are the broad areas for reform to the Scottish Schools (Parental Involvement) Act 2006 correct?

Whilst there is an acknowledgement of the difference between parental involvement and parental engagement (p17), the argument and evidence put forward in the consultation relate to the known benefits of parental engagement, whereas the proposed legislative changes relate much more directly to parental involvement in school improvement and curricular design.

It is difficult to see how Headteachers will be able, in practical terms, to fulfil their new legal duty to collaborate with the wider Parent Forum on matters such as “school policy, improvement planning and curricula design” (p18).

Whilst it is possible to strengthen the duties of Parent Councils through legislation, it is not clear that legislative change can impact on the much broader aspect of parental engagement in a child’s learning.

Given the major difficulties of recruitment, the introduction of the specified legislative requirements on Headteachers and Parent Councils may well make Headteacher-ship and Parent Council Membership much less attractive than at present.

Question 9

How should the Scottish Schools (Parental Involvement) Act 2006 be enhanced to ensure meaningful consultation by headteachers with parents on substantive matters of school policy, improvement planning and curriculum design?

A legal requirement is an absolute and it is therefore not possible to consider enhancement. There is either a legal requirement or there is not.

Practical guidance on definitions, activities and impact measurement would enhance understanding of the proposed legal requirements. However, since there is no detail on these matters, the value of the consultation exercise is greatly reduced.

Question 10

Should the duties and powers in relation to parental involvement apply to publicly funded early learning and childcare settings?

It is unclear whether this question envisages the implementation of the proposed legislative changes in early learning and childcare settings or whether it relates to the proposals in bullet point 3 on page 19.

Those proposals are seen as beneficial in terms of reinforcing good practice in order to provide consistency.

Given the potential for confusion in the system better to have a consistent approach through Early Years to Secondary. However, there are clear issues where some people who manage local authority Early Learning & Childcare settings are not Headteachers and where much such provision is operated in the third and private sector (on a 'provider neutral' basis).

Question 11

Should the Bill include a requirement that all schools in Scotland pursue the principles of pupil participation set out in Chapter 3? Should this be included in the Headteachers' Charter?

The consultation document lacks detail on the practicality of achieving its aims in this area.

It is difficult to see how a legislative approach could be beneficial in relation to an aspect that is significantly dependent on ethos of school.

Question 12

What are your thoughts on the proposal to create a general duty to support pupil participation, rather than specific duties to create Pupil Councils, committees etc.?

It is more likely to be beneficial to the experience of learners to establish a general requirement, rather than one based on a narrowly defined legislative requirement.

Question 13

Should the Bill include provisions requiring each local authority to collaborate with partner councils and with Education Scotland in a Regional Improvement Collaborative?

The Northern Alliance is already well established as an improvement collaborative and has come together without any legislative provisions in place. It has developed as 'a coalition of the willing' to look at where we can add the greatest value and make the most significant difference to the lives and educational outcomes of young people in our eight unique local authority areas.

Given that the RICs have already been established, it is difficult to see the value of this question.

As a general principle, it is difficult to understand the need for legislation on this issue, given the other proposed structural changes and - very importantly - given the well documented consensus locally and nationally in regard to the benefits of collaboration and the need for improvement for outcomes for learners.

Question 14

Should the Bill require each Regional Improvement Collaborative to maintain and to publish annually its Regional Improvement Plan?

The local authority should continue to have statutory responsibility for improvement.

That aside, given the complexity and resource implications of developing an Improvement Plan relevant (for example, in an area as wide and diverse as the Northern Alliance) and also the likely complexity of producing meaningful impact reports, a two/three year cycle (with review) is seen as more achievable and more likely to have an impact on outcomes and experiences for learners.

Question 15

If we require Regional Improvement Collaboratives to report on their achievements (replacing individual local authority reports), should they be required to report annually? Would less frequent reporting (e.g. every two years) be a more practical and effective approach?

The local authority should continue to have statutory responsibility for improvement.

Whilst it is agreed that improvement in outcomes for all is essential, there is a fundamental need to ensure that improvements can be “bedded in” and their impact meaningfully measured. Thus, reducing both planning and reporting frequency would be beneficial.

Question 16

In making changes to the existing planning and reporting cycle, should we consider reducing the frequency of national improvement planning and the requirement on Ministers to review the National Improvement Framework?

The National Improvement Framework sits alongside other planning and performance frameworks in children’s services. There has to be greater

rationalisation across children's services planning, and any review of the NIF needs to be part of that.

Question 17

Are the proposed purpose and aims of the Education Workforce Council for Scotland appropriate?

The aspiration behind the Purpose and Aims is positive and laudable, but there is a real risk of fragmentation and new areas of demarcation across the children's services workforce, including arbitrary decisions about whether professional roles come within the remit of the Education Workforce Council

Question 18

What other purpose and aims might you suggest for the proposed Education Workforce Council for Scotland?

See 17

Question 19

Are the proposed functions of the Education Workforce Council for Scotland appropriate?

The GTCS is acknowledged as fulfilling a positive role in education. It is difficult to see the practical benefits of establishing one body to fulfil such a diverse range of functions relating to such a number of 'education' disciplines.

At a time when teacher recruitment and retention are problematic, it might be seen as beneficial to reinforce and integrate the role of the current GTCS and other regulatory bodies.

Question 20

What other functions might you suggest for the proposed Education Workforce Council for Scotland?

See 19

Question 21

Which education professionals should be subject to mandatory registration with the proposed Education Workforce Council for Scotland?

The positive outcomes for children and young people in Scotland are in great measure due to the current care and learning system, which relies on a broad range of professionals - many of whom, for example, health and social care professionals, have their own regulatory and professional development bodies.

The proposals do not take full account of all the professionals involved in a young person's care, education and developmental journey; nor do they make a soundly argued and founded case to demonstrate the benefits for professionals or learners of creating one very complex body to replace the GTCS and certain of the other bodies involved in regulation and development of professional standards.

Question 22

Should the Education Workforce Council for Scotland be required to consult on the fees it charges for registration?

Yes.

Question 23

Which principles should be used in the design of the governance arrangements for the proposed Education Workforce Council for Scotland?

It should be fully independent.

It is a concern that professionals do not form a majority in what is to be the sole regulatory body for professionals. Surely they have the experience, expertise and insight to be key members?

Question 24

By what name should the proposed Education Workforce Council for Scotland be known?

No comment.