

**EDUCATION (SCOTLAND) ACT 2016**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 The Education (Scotland) Act 2016 was passed by the Scottish Parliament on 2<sup>nd</sup> February 2016 and introduced provisions in relation to school education covering new statutory duties to raise attainment and address educational inequalities of outcome for pupils. The Act also contains provisions that modify the Education (Additional Support for Learning) (Scotland) Act 2004 and section 70 of the Education (Scotland) Act 1980; provisions in relation to Gaelic medium education, the provision of school meals, the appointment of Chief Education Officers, the registration of independent schools and teachers in grant-aided schools and the standards of education and training of persons to be appointed as head teachers. It is wide ranging Act that enables provisions to be made requiring a minimum number of hours of school education to be provided, enables provisions to be made about school clothing grants; extends the duty to provide early learning and childcare to certain children; and for connected purposes.
- 1.2 It is recommended that the Community Services Committee:
- a) Note the provisions contained within the Education (Scotland) Act.
  - b) Request a further report is presented to a future meeting of the Committee once the Council receives additional statutory guidance which considers the implications for Argyll and Bute Council and the actions necessary to comply with the new statutory duties.

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**2.0 INTRODUCTION**

2.1 The Education (Scotland) Act 2016 was passed by the Scottish Parliament on 2<sup>nd</sup> February 2016 and introduced provisions in relation to school education covering new statutory duties to raise attainment and address educational inequalities of outcome for pupils. The Act also contains provisions that modify the Education (Additional Support for Learning) (Scotland) Act 2004 and section 70 of the Education (Scotland) Act 1980; provisions in relation to Gaelic medium education, the provision of school meals, the appointment of Chief Education Officers, the registration of independent schools and teachers in grant-aided schools and the standards of education and training of persons to be appointed as head teachers. It is wide ranging Act that enables provisions to be made requiring a minimum number of hours of school education to be provided, enables provisions to be made about school clothing grants; extends the duty to provide early learning and childcare to certain children; and for connected purposes.

**3.0 RECOMMENDATIONS**

3.1 It is recommended that the Community Services Committee:

- a) Note the provisions contained within the Education (Scotland) Act.
- b) Request a further report is presented to a future meeting of the Committee once the Council receives additional statutory guidance which considers the implications for Argyll and Bute Council and the actions necessary to comply with the new statutory duties.

**4.0 DETAIL**

4.1 The Education (Scotland) Act 2016 is split into four parts, School Education, Gaelic Medium Education, Miscellaneous and General. After section four there are modifications to "The Education (Additional Support for Learning) (Scotland) Act 2004.

4.2. Part 1: School Education – main provisions include:

4.2.1 Pupils experiencing inequalities of outcome

The provisions are designed to reduce inequalities for pupils who experience inequalities as a result of socio-economic disadvantage or who experience other inequalities. The education authority duties apply if they are making a decision of

a strategic nature regarding its functions relating to school education or the steps the authority will take to implement such decisions.

#### 4.2.2 Plans and Reports

Scottish ministers along with education authorities must prepare and publish an annual plan setting out the steps they propose to take during the planning period to reduce inequalities. As soon as reasonably practicable after publishing an annual plan each education authority must give a copy of the plan to the Scottish Ministers. If changes to the National Improvement Framework is published then a review of the authorities' annual plan must take place and be revised as necessary.

#### 4.2.3 National Improvement Framework (NIF)

The NIF will be reviewed by Scottish Ministers each year. If Ministers wish to modify the NIF following a review they must prepare and publish a new one which takes account of the modifications. There is a separate detailed paper on the NIF presented to the Community Services Committee on 10 March 2016.

#### 4.2.4 Publication of Statutory Guidance

Prior to any guidance in relation to the duties of education authorities the Scottish Ministers must consult with education authorities, parents, voluntary organisations and any other person that the Scottish Ministers think appropriate.

#### 4.2.5 Parental Involvement Strategy

Each authority must prepare, consult on and publish their strategy for parental involvement.

### 4.3 Part 2: Gaelic Medium Education – Main provisions include:

#### 4.3.1 Assessment of Need

A person who is the parent of a child who is under the school age and has not commenced attendance at a primary school may request the education authority assess the need for Gaelic medium primary education. A request can only relate to one child and must be accompanied by evidence that there is a demand from parents of other children in the same area and year group. Evidence of a demand from parents in the same area with children in a different year group may also be submitted.

4.3.2 In considering what area to designate as a Gaelic Medium Primary Education (GMPE) assessment area an authority must as far as reasonable seek to accommodate the demand for GMPE evidenced in the request or contained in evidence accompanying the request. If the authority is aware of any other demand for a GMPE such as the number of children resident in the area who are under school age and have not commenced attendance at a primary school it can take this into consideration.

#### 4.3.3 Initial Assessment

An authority must make an **initial assessment** if it receives a request from a parent of a specific child. The authority must make an assessment of the needs for GMPE in relation to the designated area and the specific child's year group. The authority must take into account the demand for a GMPE from parents of children who are resident in the GMPE assessment area and who are in a different year group in relation to the specific child. Following on from the assessment the authority must then decide if there is a need for a GMPE in the area or not. The condition is that the specified child and the other children that the authority has information on must number 5 or more.

4.3.4 Where an education authority makes a positive determination to a GMPE assessment area it must carry out a **full assessment** of the need for GMPE in the area or take the necessary steps to secure the provision of GMPE in the area.

4.3.5 If a request is not being considered then the education authority must, no later than 6 weeks after receiving a request, send its decision and the reason for its decision to the relevant person. The authority then must publish the decision on its website.

#### 4.4.1 Full Assessment

If a full assessment is required the authority must notify Her Majesty's Inspectors, Bord na Gaildhlig, Comann nam Parent and the National Parent Forum of Scotland. The authority must then provide these bodies with information regarding the request and information the authority took into account when making the initial assessment.

4.4.2 If an authority carries out a full assessment then it must prepare a report setting out its decision on whether or not to secure a GMPE and the reason for its decision.

#### 4.5.1 Gaelic Medium Early Learning and Childcare

If a request is made for an assessment for a Gaelic Medium education for the provision of early learning and childcare the same assessment procedures must be followed as with one being made for GMPE.

4.6.1 Every education authority must promote the potential provision of school education in the area by publicising Gaelic medium education in a way the authority deems appropriate.

4.6.2 The most significant issue for all education authorities in meeting the above statutory provisions will be the capacity to respond to the volume of potential requests and, even more challenging, the practical ability to either accommodate or recruit sufficient staff to sustain a Gaelic education provision. There will be significant costs associated with this duty and the council awaits clarity of any funding arrangements..

4.7 Part 3: Miscellaneous Provisions include:

#### 4.7.1 Learning Hours

4.7.2 An education authority must secure that no fewer than the prescribed number of learning hours are made available during each school year to each pupil. There is currently no specified figure for the prescribed learning hours; however, it is understood that the statutory guidance will require no fewer than 25 hours in primary schools. This provision should have no immediate impact on Argyll and Bute Council but will impact significantly on authorities that have reduced class contact time – it does however preclude the authority from considering that option in future.

#### 4.7.3 Provision of school meals

The Act sets out revised eligibility criteria for free school meals related to the Welfare Reform Act 2007 and the Children and Young People Act. As a result of the Children and Young People Act, all pupils in Primary 1-3 are entitled to a free school meal. The Act provides the power to require provision of meals other than school lunches. Scottish Ministers may therefore issue regulations imposing a duty on education authorities to provide, or secure the provision of a free meal other than a school lunch.

#### 4.7.4 Clothing Grants

Scottish Ministers may by regulations make provisions requiring an education authority to pay a grant of a specified amount for the provision of clothing for the pupil. Currently the decision on what value of grant to be provided has been delegated to individual authorities to determine. Statutory Regulations will be issued which will establish an actual value of grant.

#### 4.7.5 Appointment of Chief Education Officer

An education authority must appoint an officer to advise the authority on the carrying out of the authority's functions under this Act and any other enactment. The qualifications and specific duties which the Chief Education Officer will be carrying out will be confirmed by statutory regulation.

#### 4.7.6 Mandatory Head Teacher Qualification

Scottish ministers may by regulations prescribe that only a person who has achieved such standards of education and training (this qualification relates to the Into Headship Qualification (Standard for Headship) may be appropriate to qualify for a head teacher role. This mandatory qualification will prove a further significant obstacle to the recruitment of head teachers in areas such as Argyll and Bute and the council has sought clarification that acting headship arrangements may be established pending a successful candidate working towards that qualification post appointment.

4.8 The main Modifications of the Education (Additional Support for Learning (Scotland) Act 2004 are:

#### 4.8.1 Capacity of Children and Young People:

For the purpose of this Act, a child has capacity if they have sufficient maturity and understanding to carry out an act. A young person lacks capacity if they do not have sufficient understanding of an act. A child who has attained the age of 12 years may only do something if an education authority is satisfied that the child has capacity in relation to the thing. An education authority may or must do something in relation to such a child only if the authority is satisfied that the child has capacity for the thing to be done in relation to the child.

#### 4.8.2 Assessment of wellbeing

By virtue of this Act, an education authority or Tribunal is required to consider whether the wellbeing of a child who has attained the age of 12 years would or would not be adversely affected. The authority or tribunal must consider the child is: safe, healthy, achieving, nurtured, active, respected, responsible and included.

#### 7.4 Provision of support services

Scottish Ministers must secure the provision of a support service to be available, on request and free of charge, to children who have attained the age of 12 years.

### **8.0 CONCLUSION**

8.1 The Scottish Parliament has passed the Education (Scotland) Act 2016 and this report highlights the key statutory provisions. A further report will be presented to a future meeting of the Community Services Committee to detail some of the implications for the council arising from the Act once additional statutory guidance has been received.

### **9.0 IMPLICATIONS**

9.1 Policy – ensure that all policy is up to date and in line with any amendments made to the Education (Scotland) Act 2016.

9.2 Financial – pending statutory guidance being received there may be financial implications involved in implementing the provisions of the Act. It would be anticipated that CoSLA would engage with the Scottish Government regarding the negotiation of any associated financial settlement to meet the costs of implementation.

9.3 Legal – pending statutory guidance being received there may be legal implications involved in implementing the amendments to the Act.

9.4 HR – None.

9.5 Equalities – The Act introduces new statutory duties on local authorities to plan for reducing educational inequalities of outcome.

9.6 Risk –None.

9.7 Customer Service – ensure that all requests e.g. GMPE are dealt with in strict accordance with procedures and timescales.

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**10<sup>th</sup> February 2016**

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