

DRAFT EDUCATION (SCOTLAND) BILL

DRAFT EXPLANATORY NOTES

[DRAFT 26 JUNE]

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Summary and Background

3. It is the aspiration of the Scottish Government for Scotland to be the best place in the world in which to grow up. Its 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 real momentum across the Scottish education system, with all partners committed to working together to achieve excellence and equity for children and young people.
4. The objective of the Education (Scotland) Bill is to play an important part in achieving excellence and equity, by further strengthening the Scottish education system to: empower headteachers to be leaders of learning and teaching in their schools and work collaboratively with the education authority and their staff, pupils, parents and other partners so that the decisions that most affect a pupil's experience are taken by those closest to them; enhance the educational improvement support and advice that is available to educational practitioners; encourage an increase in parental and community involvement in education and parental engagement in children's learning; ensure that effective pupil participation is supported in all public schools; and expand the functions of the General Teaching Council for Scotland (GTCS) to reflect the broader educational workforce.
5. Specifically, the Bill aims to support the following five key policy objectives:
 - **Empowering headteachers** by establishing a Headteachers' Charter which requires education authorities to allow 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, in the production of regional improvement plans and in exercising a range of educational support and improvement functions, to be set out in statutory guidance, in accordance with the principles and scope agreed between Scottish Government and COSLA;
- **Strengthening parental involvement and engagement** by making the existing legal duties in relation to parental involvement clearer, introducing the concept of parental engagement in learning, and encouraging stronger collaboration between schools, school leaders and parents. These provisions will strengthen, modernise and extend the Scottish Schools (Parental Involvement) Act 2006 as recommended in the National Parent Forum of Scotland's review;
- **Promoting pupil participation** so that the principles of pupil participation are pursued in every school. This will be achieved by requiring headteachers to promote and support pupil participation in specific aspects of education and school life;
- **Enabling the registration and regulation of a wider range of education professionals** by expanding the role and remit of the General Teaching Council for Scotland.

COMMENTARY ON SECTIONS

Part 1: The Headteachers' Charter

6. This part establishes a Headteachers' Charter, which sets out functions that must be delegated to headteachers by education authorities in order that the headteacher can be the leader of learning and teaching in their school. The Headteachers' Charter explains the parameters within which that delegation takes place and the circumstances in which the education authority may intervene. It requires headteachers to work collaboratively with their school communities. It places duties on education authorities to further empower and support headteachers, and to increase the transparency of school funding decisions and processes.

Section 1: The Headteachers' Charter

7. This section provides that Part 1 of this Act is the Headteachers' Charter and that it makes provision in connection with certain functions relating to school education in Scotland. It applies in public schools, i.e. schools managed by an education authority, only. [It does not apply to independent or grant-aided schools.

Section 2: Role and functions of headteachers

8. This section sets out that the headteacher is the leader of learning and teaching for that school and explains that fulfilling this role requires the headteacher to exercise certain functions in relation to that school on behalf of the education authority. Subsection (3) requires each education authority to delegate to each headteacher in their area such of the education authority's functions necessary to enable the headteacher to carry out the four functions specified in this Part.

9. This section replaces Section 8 in the Standards in Scotland's Schools etc. Act 2000 which previously required education authorities to delegate to the headteacher the preparation of the school's improvement plan, and the management of a proportion of the budget appropriated for that school to be determined by the education authority. Section 8(2) allowed education authorities

to delegate to headteachers such other management functions in relation to the school as the education authority saw fit. These new provisions require more extensive delegation of functions from education authorities to headteachers in order to empower headteachers to lead learning and teaching in their schools.

The Charter functions

Section 3: The Charter functions

10. This section introduces the four Charter functions which education authorities are required to delegate to headteachers: the curriculum function; the improvement function; the budgetary function; and the staffing function. The Charter functions are described in more detail in section 4 to 7.

11. Education authorities continue to be responsible for the provision of education in their area, under the Education (Scotland) Act 1980, and to hold a wide range of statutory duties. Education authorities remain the employer of all staff in schools and as such have contractual obligations to their employees. Headteachers are senior officers of the education authority and as such they must of course carry out their delegated Charter functions mindful of this broader context and framework.

12. Subsection (2) requires that when they are discharging the Charter functions, headteachers must operate in a way that is consistent with the education authority's statutory duties and contractual obligations. The education authority's overarching statutory duties to raise attainment and reduce inequalities of outcome (as set out in sections 3(2), 3B(2) and 3D of the Standards in Scotland's Schools etc. Act 2000) are mentioned as specific examples of such duties, but do not constitute an exhaustive list. The education authority will set out a fuller explanation of their relevant statutory and contractual obligations in the Empowering Schools Scheme, under section 14(2)(d).

13. Section 3 requires education authorities to delegate the four Charter functions to headteachers as a matter of course; and requires headteachers to carry out their functions in accordance with the education authority's statutory duties and contractual obligations. Section 13 provides for education authorities to 'step in' and carry out a Charter function on the headteacher's behalf if this is necessary to remedy, or avoid, the breach of a statutory duty or contractual obligation. This provision is a last resort, as education authorities and headteachers will have processes in place locally to ensure supportive and effective working relationships and minimise the need for such intervention.

14. The statutory guidance to be produced and consulted on under section 17 of this Part will provide further advice to headteachers and education authorities on carrying out the Charter functions effectively and in accordance with statutory duties and contractual obligations. Both headteachers and education authorities are required to have regard to this guidance.

Section 4: The curriculum function

15. This section describes the curriculum function. Subsection (1) requires that headteachers are allowed to design and develop the school curriculum that will best meet the needs of the children and young people in their school. Education authorities must also allow headteachers to

facilitate learning and teaching in the school in accordance with the school curriculum they have designed and developed. Subsection (2) requires headteachers to discharge their curriculum function in accordance with the national framework on the curriculum in Scottish schools.

16. When carrying out the curriculum function, headteachers must act in accordance with relevant statutory duties of the education authority, which would include for example the education authority's duty to promote and support Gaelic Medium Education under the Education (Scotland) Act 2016. In the event that a headteacher's approach to the curriculum function would breach a statutory duty or contractual obligation of the education authority, the education authority is able to step in under section 13 of this Bill.

Section 5: The improvement function

17. This section describes the improvement function. Subsection (1) requires that headteachers must be allowed to determine the improvement priorities for the school and to prepare and report on the school improvement plan for the school. It refers to Section 6 of the Standards in Scotland's Schools etc. Act 2000 ("School improvement plans"), which sets out the requirements of the school improvement planning and reporting process. That section is further amended by section 19 (3) of this Bill which reflects that local authority improvement plans are drawn from school-level improvement planning and prioritisation.

18. Subsection (2) explains that in exercising the improvement function, headteachers must work towards achieving the strategic priorities set out in the National Improvement Framework.

Section 6: The budgetary function

19. This section describes the budgetary function. Education authorities must allow headteachers decision-making and management responsibility for the share of the education authority's budget that has been appropriated for the individual school in a financial year. Subsection (2) explains that the share of the budget appropriated for the school is the amount arrived at through the process of budget-setting detailed in the education authority's Empowering Schools Scheme under section 14 of this Part, and includes the school's staffing budget.

Section 7: The staffing function

20. This section describes the staffing function. Subsection (1) sets out the two components of the staffing function. In terms of subsection (1)(a), headteachers must be allowed to design and implement the staffing structure within the school. Subsection (2) explains that designing the staffing structure includes determining the number and type of promoted posts in the school. Subsection (3) makes clear that in designing and implementing the staffing structure and selecting staff, the headteacher must have regard to the budget for their school as defined in section 6(2).

21. The second component of the staffing function provided for in subsection (1)(b) is the selection of teachers and other staff to be placed at the school by the education authority. This provision, read with section 10(2), means that the headteacher must work collaboratively with the education authority in selecting the staff to be placed at the school.

Other functions of headteachers

Section 8: Other staffing functions: education authority duties to involve headteachers

22. This section applies to general education authority functions relating to the recruitment and employment of teachers and other school staff. Subsection (1) requires the involvement of headteachers in local fora where employment matters are discussed and negotiated. Education authorities can determine appropriate mechanisms for ensuring this, for example through the inclusion of headteacher representatives in local negotiating committees or the establishment of a headteacher representative committee to contribute views to the education authority as employer.

23. Subsection (1) places a general duty on education authorities to seek and take into account the views of headteachers of public schools in their area when exercising these functions.

24. Subsections (2) and (3) require education authorities to seek and take account of the views of headteachers of public schools when designing the recruitment process for teachers and other school staff. This applies to decisions of a strategic rather than everyday operational nature, and it is for education authorities to determine the appropriate mechanism for seeking headteachers' views. This may, for example, involve convening a local headteacher committee or identifying headteacher representatives who will be consulted periodically on the impact of, and potential improvements to, recruitment processes. This provision does not require education authorities to consult every individual headteacher on every individual recruitment and employment decision.

Section 9: Delegation of Charter and other functions

25. This section enables headteachers to delegate the exercise of any of their Charter functions to enable them to discharge their Charter functions to another member of the school staff in a distributive leadership model. Subsection 2 clarifies that this does not apply to the function relating to the design and implementation of the staffing structure (section 7(1)(a)) which may only be discharged by the headteacher.

Section 10: Collaboration among headteachers and with others

26. This section requires headteachers to seek to work collaboratively with their school community (defined as the education authority for the headteacher's school; the pupils of the school; the parents of those pupils; and the teachers and other staff of the school), along with other headteachers and their Regional Improvement Collaboratives. Subsection (3) provides the definition of "relevant Regional Improvement Collaborative" as the regional improvement collaborative of which the education authority for the headteacher's school is a member (Regional Improvement Collaborative has the meaning as set out in section 3DA(3) of the Standards in Scotland's Schools etc. Act 2000, as inserted by section 21 of this Bill.). It is for headteachers to determine the nature and extent of collaborative working in relation to Charter functions that is appropriate for their particular context. This provision does not require collaboration with all parties on all functions.

27. Subsection (1) should be read in conjunction with section 11(3A) of the Scottish Schools (Parental Involvement) Act 2006, as amended by virtue of Part 3. That section requires headteachers to consult and take account of the views of any Parent Council established for the school before making a significant decision about school education or other matters relating to the everyday running of the school as the headteacher considers appropriate. That section also requires

headteachers to decide, in collaboration with the Parent Council, whether or not to consult the Parent Forum about the matter under consideration.

28. Subsection (2) makes specific provision for the exercise of the staffing function in section 7(1)(b). It requires headteachers and education authorities to work collaboratively when selecting the teachers and other staff to be placed at the school by the education authority. The statutory guidance to be produced and consulted on under section 17 will provide further advice to headteachers and education authorities as to how they should work together in selecting staff.

Education authority role in relation to Charter functions

Section 11: Duty on education authority to support headteachers and others in exercise of Charter functions

29. This section requires education authorities to support headteachers and other members of the school staff who are discharging Charter functions. Subsection (2) explains that education authority support for headteachers must include – but may not only be limited to – taking reasonable steps to ensure that headteachers have the resources, training and opportunities that are reasonably necessary to enable them to effectively exercise those functions.

Section 12: Education authority's liability for exercise of Charter functions

30. This section explains that the education authority will continue to be liable for the exercise of the Charter functions by headteachers. Schools and education authorities are already required to have local arrangements in place for resolving complaints or grievances and these processes will apply to the carrying out of functions under this Part.

Section 13: Education authority exercise of Charter functions

31. This section supports education authorities and headteachers in ensuring that the Charter functions are carried out in accordance with the education authority's statutory duties and contractual obligations, as required by section 3(2). It allows education authorities to exercise a Charter function instead of the headteacher, if this is necessary to remedy or avoid the breach of a statutory duty or contractual obligation of the education authority. Subsection (2) also allows the education authority to exercise a Charter function instead of the headteacher if the headteacher is temporarily unable to exercise the Charter function, such as due to sickness absence, and the headteacher has not delegated the exercise of the Charter function to another member of the school staff. This relates only to temporary absence; as education authorities as employers continue to be responsible for putting in place appropriate leadership cover if the headteacher's absence is of significant duration.

32. The education authority must be able to justify that either subsection (2) or subsection (3) reasonably applies, and is required by section 14(2)(d) to provide guidance to headteachers on the statutory duties and contractual obligations that are relevant to the Charter functions. This is a last resort provision, as local working partnerships between schools and education authorities should minimise the need for such intervention.

33. This section allows for the education authority to carry out Charter functions on behalf of headteachers if necessary to remedy or avoid the breach of statutory duties or contractual obligations such as (but not limited to) the education authority's duties to provide additional

support for learning under the Education (Additional Support for Learning) (Scotland) Act 2004; the education authority's duties to promote Gaelic Medium Education under the Education (Scotland) Act 2016; the local authority's duty to secure best value under the Local Government in Scotland Act 2003; and the education authority's contractual obligations to its employees, such as in situations of welfare transfer, disciplinary transfer or compulsory transfer.

34. Subsection (4) explains that the education authority may only exercise a Charter function instead of the headteacher only for so long as is necessary, and only to the extent that it is necessary to do so. Thereafter the Charter functions revert to the headteacher via the delegation duty set out in section 2 of this Part.

35. The statutory guidance to be produced and consulted on under section 17 of this Part will provide further advice to headteachers and education authorities to help ensure there are clear processes in place locally to minimise the need for such intervention, and to set out the processes that should be followed in the event that such a situation arises.

Empowering schools schemes

Section 14: Empowering schools scheme

36. This section requires greater transparency in funding decisions and processes at local 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 headteachers in relation to the functions in this Part.

37. Section 14 requires education authorities to prepare and publish an 'empowering schools scheme' for all the public schools in their area. This section replaces section 8(1) of the Standards in Scotland's Schools etc. Act 2000 which required each education authority to have a scheme for delegating specified matters to headteachers of public schools in the area, known as a Devolved School Management Scheme.

38. Subsection (2) sets out the matters that the education authority must cover in its empowering schools scheme. Under subsection (2)(a) the scheme must set out the process by which the education authority's budget for school education is allocated between schools and central educational services. Subsection (2)(b) requires that the scheme must further set out the process by which the part of the authority's budget allocated to schools is appropriated to each individual school. The school's appropriation includes the staffing budget for the school.

39. Subsection (2)(c) provides for the empowering schools scheme to specify local arrangements for managing the budget that is delegated to headteachers under their Charter budgetary function in section 6(1).

40. Subsection (2)(d) provides for the education authority to give guidance to headteachers on the statutory duties and contractual obligations which have a bearing on the Charter functions, such as (but not limited to) the authority's duties to provide additional support for learning under the Education (Additional Support for Learning) (Scotland) Act 2004; the authority's duties to promote Gaelic Medium Education under the Education (Scotland) Act 2016; the authority's duty to secure best value under the Local Government in Scotland Act 2003; and the authority's

contractual obligations to its employees, such as in situations of welfare transfer, disciplinary transfer or compulsory transfer.

41. Subsection (2)(e) requires the empowering schools scheme to set out how the education authority will comply with their duty under Section 11 of this Part to support headteachers and other school staff in discharging Charter functions. Subsection (2)(f) allows for the empowering schools scheme to cover any other matters the education authority considers appropriate.

42. Subsection (3) allows for the education authority's empowering schools scheme, in setting out the matters outlined in subsection (2), to make provision in relation to particular types of school, as well as generally in relation to all schools.

43. Subsection (4) requires education authorities to consult the persons specified in subsection (5) on their empowering schools scheme before its publication. These specified persons are the headteachers of public schools in the authority's area; other teachers and other staff of such schools; any trade union which appears to the authority to be representative of headteachers, teachers and other staff of public schools; parents of pupils at public schools. It also allows for education authorities to consult any other person the authority considers appropriate. Education authorities are required to have regard to any views expressed by the specified persons during the consultation period.

44. Subsection (6) provides that education authorities may determine the consultation period for their empowering schools scheme but it must be a continuous period of at least 6 weeks, the majority of which falls in term time. This requirement also applies to an education authority's consultation on a review of their empowering schools scheme under section 15.

Section 15: Empowering schools scheme: review

45. This section requires education authorities to review their empowering schools schemes at least once during every three year period. Subsection (2) requires that the review includes consultation with the persons named in Section 14(5) of this Part, and that the education authority has regard to views expressed by those persons during the consultation period. Subsection (3) allows for education authorities to revise their empowering schools schemes in the light of review and requires education authorities to publish the revised scheme.

Publication of information on school expenditure

Section 16: Education authority duty to publish information on school expenditure

46. This section increases the transparency of decisions about education funding at local authority level. It places a duty on education authorities 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. The statutory guidance to be produced and consulted on under section 17 will provide further advice to education authorities on the publication of financial information.

Guidance

Section 17: Guidance on exercise of Charter functions etc.

47. This section allows the Scottish Ministers to prepare and publish guidance relating to the functions of headteachers and education authorities under this Part. Headteachers and education authorities are required to have regard to any such guidance under subsections (2) and (3), respectively.

48. Subsection (4) requires the Scottish Ministers to consult specified persons about the proposed guidance: each education authority; the headteachers of public schools; the teachers and other staff of such schools; any trade union which appears to Scottish Ministers to be representative of headteachers, teachers or other school staff; and the parents of any pupils of such schools that the Scottish Ministers think appropriate. The Scottish Ministers may also consult any other persons that they think appropriate.

49. Subsection (5) provides that Scottish Ministers may from time to time revise the guidance published under this section, and that the same consultation requirement, and requirement for headteachers and education authorities to have regard to the guidance, applies to revised guidance.

General provisions

Section 18: Enforcement of duties of education authorities and other persons

50. This section amends Section 70 (“Powers to enforce duty of education authorities and other persons”) of the Education (Scotland) Act 1980 to the effect that headteachers carrying out Charter functions are not directly subject to investigation and enforcement by the Scottish Ministers. Instead, complaints about the exercise of Charter functions should be addressed through existing school and education authority complaints processes. Section 70 of the 1980 Act continues to provide for the Scottish Ministers to take steps to enforce statutory duties if they are satisfied that persons listed in the section have failed to discharge any statutory duty. .

Section 19: Minor and consequential modifications

51. This section makes consequential modifications to the Standards in Scotland’s Schools etc. Act 2000 to align its improvement planning provisions with the Headteachers’ Charter improvement function. Subsection (3)(a) amends section 6 of the 2000 Act (“School improvement plans”), in order to clarify that local improvement plans are drawn from individual schools’ improvement plans and priorities. Subsection (3)(b) makes a small technical amendment to the same section to remove superfluous text. The amendment in subsection (3)(c) requires that the school’s improvement plan includes a statement of the headteacher’s ambitions for the school, rather than a statement of the education authority’s ambitions for the school, reflecting the Headteachers’ Charter improvement function under section 5.

52. Subsection (4) repeals Section 8 (“Delegation Schemes”) of the 2000 Act, which required education authorities to have delegation schemes through which specific and limited functions must be delegated to headteachers. That section is replaced by this Part, which requires education authorities to delegate a series of functions to headteachers as explained above. Subsection (5) amends section 13 (“Guidance to education authorities: raising standards and delegation schemes”) of the 2000 Act to remove the reference to section 8, which is repealed.

Section 20: Interpretation

53. This section provides the definitions of terms that are used in Part 1.

Part 2: Regional Improvement Collaboratives

54. Part 2 of the Bill establishes the basis on which education authorities and the Scottish Ministers will be required to plan, work together and report on joint activity to secure improvement in the quality of education provided in the schools managed by the education authority members of the Regional Improvement Collaborative (RIC).

Section 21: Regional Improvement Collaboratives

55. Section 21 amends the Standards in Scotland's Schools etc. Act 2000. It inserts a new section 3DA which requires each education authority for the purpose set out in subsection (4) to work with one or more other education authorities, and with the Scottish Ministers, within a RIC. It also requires the Scottish Ministers to collaborate with each Regional Improvement Collaborative. It specifies in subsection (3) that these groups of education authorities and the Scottish Ministers are to be known as Regional Improvement Collaboratives. It further specifies in subsection (4) that the purpose of Regional Improvement Collaboratives is for its members to work together to endeavour to secure improvement in the quality of education provided for the schools managed by the authorities in the Collaborative, and to do so in such a way as to raise standards of education and reduce inequalities of outcomes for pupils who experience those inequalities as a result of socio-economic disadvantage or are otherwise specified by Scottish Ministers in regulations. In this context "schools" also includes the early years settings managed or funded by the authorities in the Collaborative (subsection (5)(b)).

56. Subsections (6) and (7) of the new section 3DA also specifies that Regional Improvement Collaborative members may collaborate with one another in relation to any of their functions relating to the provision of school education, and that each Collaborative may collaborate with other persons it considers appropriate for the purpose of seeking to secure improvement, including with other Collaboratives. This ensures that Collaborative activity strengthens but does not displace or restrict wider partnership working, where individual members of a Collaborative, and/or the Collaborative as a whole, can continue to work with other partners, including with national agencies and organisations, third sector and private partners, and with authorities outwith their Collaborative area.

57. Subsection (9) of the new section 3DA also specifies that a "Regional Improvement Collaborative" refers to the members of that Collaborative acting jointly.

Section 22: Regional improvement plans

58. Section 22 inserts a new section 3EA into the 2000 Act which requires each Regional Improvement Collaborative to prepare and publish a regional improvement plan.

59. It specifies in subsection (1) of the new section 3EA that the plan is to set out the steps the Collaborative proposes to take: to collaborate to improve standards and reduce inequalities (the purpose set out in the new section 3DA(4)); to consult about that collaboration with headteachers of schools managed by the education authorities which are members of the Collaborative, and with

other persons the Collaborative considers have an interest; and towards achieving the aims of the National Improvement Framework (NIF). It also requires the plan to include any educational benefits for pupils which the Collaborative considers will result from it taking these steps.

60. Subsection (2) of section 3EA specifies that each collaborative must have regard to the school improvement plans of the schools managed by the education authorities which are members of the Collaborative when it prepares its regional improvement plan and (in subsection (3)) that, to ensure consistency with the NIF, it must provide a copy of the plan to the Scottish Ministers as soon as is reasonably practicable after its publication.

61. Subsection (4) of section 3EA requires each Collaborative to review, revise if necessary and, if so, publish a new regional improvement plan if a new National Improvement Framework is published. Such a revised plan is also to be provided to the Scottish Ministers. Subsection (5) specifies that the planning and consulting by the Regional Improvement Collaboratives which it refers to is to take place during an annual planning period of 12 months, the start date of may be established by the Scottish Ministers in Regulations (and subsection (6) establishes that those Regulations are to be subject to the negative procedure).

62. Section 22(3) inserts a new section 3GA into the 2000 Act which requires each Regional Improvement Collaborative to prepare and publish a report as soon as is reasonably practicable after the end of the period covered by the regional improvement plan required by section 3EA. Subsection (1) of section 3GA specifies that the report must set out the steps the Collaborative has taken in pursuance of the purpose set out in the new section 3DA; the steps it has taken to consult about its collaboration with headteachers and others; any steps it has taken in pursuance of the aims of the NIF; and any educational benefits for pupils which the Collaborative considers have resulted from it taking these steps. Subsection (2) specifies that the Collaborative must provide a copy of the report to the Scottish Ministers as soon as is reasonably practicable after its publication, in accordance with the wider NIF arrangements.

63. Collectively, the provisions inserted into the 2000 Act by section 22 place regional improvement plans and reports within the established NIF cycle. This ensures 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.

Section 23: Regional Improvement Collaboratives: guidance

64. This section inserts a new section 14A into the 2000 Act which requires the Scottish Ministers to prepare and publish guidance to education authorities in relation to the collaboration required under section 3DA. Subsection (2) of the new section 14A specifies that this guidance may in particular cover: the establishment, operation and leadership of the Regional Improvement Collaboratives; the matters on which they are to collaborate both within the Collaborative, including the sharing of best practice among its members, and with others by virtue of section 3DA(7); and the preparation by Regional Improvement Collaboratives of regional improvement plans.

65. Subsection (3) of section 14A specifies that this guidance may be general or particular, that the Scottish Ministers may issue it to different persons or for different purposes (for example, separate guidance could be provided to individual RICs, or to individual RIC members, where

such guidance may be specific to an individual region or authority area) and (in subsection (5)) that before publishing or revising it they must consult with each education authority; headteachers, teachers and other staff of schools managed by education authorities; any trade union which represents such staff; parents of school pupils; and any other persons that the Scottish Ministers think appropriate. Subsection (4) of section 14A requires education authorities to have regard to this guidance in complying with their duty to collaborate with other authorities and the Scottish Ministers under section 3DA(1).

Section 24: Regional Improvement Collaboratives: consequential amendments

66. This section amends section 13(1) of the 2000 Act to the effect that guidance relating to new sections 3DA, 3EA and 3GA may not be issued under section 13 of that Act. Guidance on these sections will instead be issued under new section 14A.

Part 3: Parental Involvement and Engagement

67. Part 3 of the Bill amends the Scottish Schools (Parental Involvement) Act 2006. It modifies and extends duties on the Scottish Ministers, education authorities and headteachers of public schools in relation to parental involvement, and introduces new duties in particular in relation to parental engagement in their own children's learning and development. It further updates and strengthens the requirements on education authorities in relation to parental involvement strategies, and modifies the functions of Parent Councils. Part 3 also extends parental involvement and engagement in Early Learning and Childcare.

Section 25: Promotion of parental involvement and engagement

68. Section 25 replaces subsections (1) and (2) of section 1 of the 2006 Act. New subsection (1) provides a modified version of the duty of the Scottish Ministers to promote the involvement of parents of pupils in attendance at public schools in the education provided to those pupils by those schools. The duty further requires Ministers to promote the engagement of parents with their own children's learning and development.

69. New subsection (2) restates the duty on education authorities to promote the involvement of parents of a pupil in attendance at a public school in the education provided by the school to that pupil, and to that school's pupils generally. The duty further requires education authorities to promote the engagement of those parents with their own children's learning and development.

70. Subsection (2A) sets out matters included in the reference to involvement. These are:

(2)(a)(i) communication between schools and the parents of each pupil in attendance at the school about the education provided to that pupil;

(2)(a)(ii) communication between the school and parents about the work of the school generally;

(2)(a)(iii) participation of parents in relation to the making of the kind of decisions set out in subsection (2B) in relation to the school (whether through any Parent Council for the school or otherwise); and

(2)(a)(iv) the provision of support by parents in relation to the work of the school.

71. Subsection 2B provides that the decisions referred to in 2A relate to significant decisions about the education provided by the school, as well as such other matters in relation to the running of the school as the authority considers appropriate.

72. Subsection 2C states that the term “learning and development” includes activities which are connected to the education provided by the school but undertaken independently of the school.

Section 26: Functions of a Parent Council

73. Section 26 amends Section 8 (1) (f) of the 2006 Act in order to require a Parent Council established for a school to report the Parent Forum’s views about matters set out in section 8 (1) (e) of the 2006 Act to the Parent Forum, in addition to the recipients of this information already listed in section 8 (1) (f).

Section 27: Duties of education authority and headteacher to a Parent Council etc.

74. Section 27 amends section 11 of the 2006 Act, which sets out duties of education authorities and headteachers in relation to Parent Councils. It substitutes section 11 (1) in order to add a further requirement on the education authority to provide such advice and information as the authority considers the Parent Council reasonably requires in connection with the exercise of its functions, in addition to the existing requirement to provide advice and information on request.

75. It further inserts new subsections (3A) and (3B), which deal with matters of parental involvement. Subsection (3A) requires the headteacher, before making a significant decision in relation to the education provided by the school and such other matters relating to the running of the school as the headteacher considers appropriate, to consult the Parent Council in relation to the decisions, decide (in collaboration with any Parent Council for the school) whether to consult the wider Parent Forum, and have regard to the views of the Parent Council and (where consulted) the Parent Forum.

76. Subsection (3B) sets out the types of decisions to which subsection (3A) applies, as referred to above, and provides that subsection (3A) applies to significant decisions only.

77. Subsection (4) restructures subsection (6) of the 2006 Act and requires education authorities to inform Parent Councils of: the Parent Council’s duty under section 8 (1) (c) of the 2006 Act (to promote contact between the school, the Parent Forum, parents of prospective pupils of the school, pupils, the community and such other persons as the Parent Council deems appropriate); the headteacher’s duties under new subsection (3A) of the 2006 Act; and the school’s arrangements for consultation between parents and teachers. New subsection (6A) restates the second limb of the existing subsection (6), which relates to representations by the Parent Council.

78. Subsection (5) adds new subsection (8) to the 2006 Act, which requires advice and information provided to a Parent Council to be provided in a way that is accessible to the Parent Council.

Section 28: Duties of education authority and headteacher to parents generally

79. Section 28(2) adds new subsection (3) to section 12 of the 2006 Act, which requires headteachers to take reasonable steps to encourage and support members of the Parent Forum to support and engage with their own children's learning and development. New subsection (4) requires advice and information provided to under section 12 to be provided in a way that is accessible to that parent. New subsection (5) adopts the definition of "learning and development" from new section 1(2C) for section 12. Section 28(3) amends the title of section 12 of the 2006 Act to become "Duties of education authority and headteacher to parents generally".

Section 29: Parental involvement and engagement: complaints

80. Section 29 adjusts the wording of section 15(1) of the 2006 Act to widen its application.

Section 30: Application of 2006 Act in relation to early learning and childcare

81. Section 30 inserts new sections 18A, 18B and 18C, which make provision relating to early learning and childcare (ELC) provided under section 1(1) and (1A) of the Education (Scotland) Act 1980.

82. New section 18A specifies that the definition of "pupil" includes a child who is under school age only if that child is in attendance at a primary school (whether or not in a nursery class in such a school). As a result the 2006 Act continues to apply to parents of children who are receiving ELC provided under section 1 (1) and (1A) of the 1980 Act in public primary schools.

83. New section 18B applies section 1 of the 2006 Act to relevant ELC provision outside primary schools, i.e. provision in nursery schools managed by the education authority and ELC provision delivered pursuant to an arrangement under section 35 of the 2000 Act (a provider of the latter is defined in subsection (7) as an "early learning and childcare provider" for the purposes of this section and section 18C).

84. Subsections (3) to (6) provide modifications subject to which section 1 must be read in its application to ELC under section 18B, in order to enable that section to operate effectively in relation to relevant ELC provision. Subsection (3) of Section 18B states, for the avoidance of doubt, that in section (2)(a) of the 2006 Act "school" is to be read as including a nursery school managed by an education authority. Subsection (4) clarifies that in relation to a child falling in subsection (2)(b) "school" is to be read, except in certain specific cases provided for in subsection (5), as including an early learning and childcare provider. Subsection (5) provides that references in section 1 (2A) of the 2006 Act to "work of the school generally" are to be read as "work of the child's early learning and childcare provider generally". Subsection (5) further provides that in section 1 (2B) (b) of the 2006 Act "in relation to the everyday running of the school" is to be read as also applying to the provision of education under section 35 of the 2000 Act. Subsection (6) sets out a further modification of section 1 in its application to ELC as specified in subsection (2), in that it disapplies a part of a provision which references Parent Council; no Parent Councils are required for these ELC settings.

85. Subsection (7) defines an "early learning and childcare provider" as a person with whom an education authority have entered into an arrangement under section 35 of the 2000 Act.

86. New section 18C requires the education authority to ensure that headteachers of nursery schools managed by the authority and early learning and childcare providers (under Section 35 arrangements) to take reasonably practicable steps to encourage and support parents to support and engage with their own children's learning and development.

Section 31: Guidance

87. Section 31 replaces section 19 of the 2006 Act. New section 19 (1) requires the Scottish Ministers to issue guidance about the exercise of functions conferred by the 2006 Act on education authorities, headteachers, Parent Councils and Combined Parent Councils. Under subsection (3) the Scottish Ministers must consult education authorities, headteachers, Parent Councils and Combined Parent Councils, parents, pupils and other persons they consider appropriate before issuing the guidance. Subsection (4) requires a person exercising a function which is covered by the guidance to have regard to the guidance when doing so. Subsection (5) permits the Scottish Ministers to issue revised guidance from time to time. Subsection (6) provides that subsections (3) and (4) apply to revised guidance in the same way as they apply to guidance first consulted on and issued under subsection (1).

Section 32: Education authority's liability for exercise by headteacher of functions under the 2006 Act

88. Section 32 provides that an education authority remains liable for the exercise of functions conferred upon a headteacher by the 2006 Act.

Section 33: Minor and consequential amendments

89. Section 33 makes a number of minor and consequential modifications. It amends the references in Section 6 (1) (a) of the 2000 Act and Section 2 and 2A of the 2006 Act in order to substitute "strategies for parental involvement" with "strategies for parental involvement and engagement". It amends Section 8 (1) (b) of the 2006 Act in order to substitute reference to the education authority's arrangements in relation to "parental involvement" with a reference to their duties under section 1 (2) of the 2006 Act. It amends section 11 of the 2006 act to replace reference "to promote parental involvement" with a reference to "the authority's duties under section 1 (2) of the 2006 Act. It amends Section 13 (2) of the 2006 Act to replace reference to "development plan" with reference to "improvement plan".

Section 34: Interpretation of Part 3

90. Section 34 defines "the 2006 Act" for the purposes of this Part of the Bill.

Part 4: Pupil Participation

91. This part of the Bill provides duties relating to pupil participation.

Section 35: Pupil participation functions

92. Section 35 requires each education authority, in respect of pupils in attendance at a public school in their area:-

- to promote and support pupils' participation in, and engagement with, the school education provided to those pupils;
- to promote pupils' participation in such other activities as are considered appropriate; and
- to take such steps as are reasonable to promote and support pupils' participation in relation to the making of decisions about matters relating to school education and such other matters relating to the running of the school as are considered appropriate.

93. Subsection (4) requires the education authority to ensure that the headteacher of each school within the authority's area takes such steps as the headteacher considers will contribute to the authority complying with its duty to promote and support pupil participation.

94. Section 35(5) deals with matters of interpretation.

Section 36: Guidance

95. Section 36(1) requires the Scottish Ministers to prepare, consult on and publish guidance about the functions covered in section 35. Under subsection (2), the Scottish Ministers must, before publishing any guidance, consult education authorities, headteachers, such parents and pupils as Ministers consider appropriate and such other persons as Ministers consider appropriate. Subsection (3) requires a person exercising functions under section 35 to have regard to that guidance. Subsection (4) permits the Scottish Ministers to prepare and publish revised guidance from time to time. Subsection (5) provides that subsections (2) and (3) apply to revised guidance in the same way as they apply to guidance first consulted on and published under subsection (1).

Section 37: Parent Council function in relation to pupil participation

96. Section 37 amends section 8 of the Scottish Schools (Parental Involvement) Act 2006 which relates to the functions of Parent Councils. The amendment requires Parent Councils to support the endeavours of those managing the school to comply with duties imposed by section 35 of this Bill in relation to pupil participation.

Part 5: General and miscellaneous

Section 38: Ancillary provision

97. This section specifies that the Scottish Ministers may make regulations to make incidental, supplementary, consequential, transitional, transitory or saving provisions which they consider appropriate for the purposes of this Act and that those regulations may modify any enactment (including this Act).

Section 39: Commencement

98. This section specifies that it, and sections 66 and 67 above and the short title (section 40 below) come into force on the day after Royal Assent and that the Scottish Ministers may make regulations to specify the dates on which other provisions come into force. It specifies that those regulations may include transitional, transitory or saving provisions and may make different provision for different purposes.

Section 40: Short title

99. This section specifies that the short title of this Act is the Education (Scotland) Act 2018.

EDUCATION (SCOTLAND) BILL

EXPLANATORY NOTES