

John Swinney MSP
Deputy First Minister
Cabinet Secretary for Skills and Education
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

6 February 2018

Dear Mr Swinney,

Empowering Schools: A Consultation on the Provisions of the Education (Scotland) Bill

We are writing to provide a response to the above consultation. Our role as the office of the Children and Young People's Commissioner Scotland is to protect and safeguard the human rights of children and young people in Scotland, with particular reference to the [United Nations Convention on the Rights of the Child](#) (UNCRC). Of relevance to this consultation are not just the articles relating to the right to education (article 28) and the aims of education (29) but also the UNCRC's overarching articles:

- Article 2: non-discrimination, all rights apply to all children
- Article 3: decision making must take account of the best interests of children
- Article 6: the right to life and to maximum development
- Article 12: the right to have an opinion, express that opinion and for due weight to be given to it. ¹

The UN Committee on the Rights of the Child's [General Comment 12](#)², which elaborates on Article 12, is of particular relevance to this consultation.

In addition, children have rights under other international human rights treaties. Those particularly relevant to this consultation are the European Convention on Human Rights (ECHR)³, the United Nations Convention on the Rights of Disabled People (UNCRPD)⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵.

¹ <https://www.cypcs.org.uk/rights/uncrcarticles>

² <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

³ http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴ <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

In line with our remit, we do not intend to answer all the questions contained within the consultation document but instead will concentrate on the issues most impacting on children and young people in each section.

In our response to your previous consultation on school governance, in January 2017, we highlighted the importance of improving both parent and pupil participation in schools as a way of driving improvement in achievement and attainment. We highlighted the importance of participation which engages all children and young people and their parents not just in formal structures but across the school. We also highlighted the importance of ensuring that any proposed new structures did not inadvertently increase inequalities.

This consultation rightly draws on the importance of empowerment; however we argue that it is not just headteachers who should be empowered to take an active role in running schools, but also their staff, parents, wider communities and most importantly children and young people. Changes to governance structures, concentrating responsibility on Headteachers and focusing on formal involvement mechanisms is not likely to achieve this. Instead there is a need for a culture change within Education to allow broad engagement across all elements the school community.

Headteachers' Charter

We have concerns that the proposed Headteachers' Charter will not support children's rights. We note responses to this consultation from organisations representing teachers and headteachers which raise concerns about the increase to headteachers workloads this is likely to cause. This may have a negative impact on their ability to ensure their schools deliver children's rights not just to an education but in all areas of school life.

The important role of education authorities in delivering children's rights in school settings seems to have been overlooked in the consultation. There are a number of important legal duties on education authorities in respect to the provision of education and it is not clear where the accountability for these will lie if decision making is devolved to headteachers. Of particular concern are duties relating to looked after children and children with additional support needs.

Education authorities play an important role in supporting headteachers, providing support and advice on:

- ASL provision and aids and adaptations,
- admissions and placing requests,
- behaviour management and exclusions,
- corporate parenting,
- central support for and co-ordination of GIRFEC,
- human resources,

- procurement,
- building management; and
- legal advice and support.

They are also responsible for the admissions process and provide accountability mechanisms for attendance and exclusion policies. Through their Education Committee (or equivalent) they also provide an important mechanism through which education authorities and schools are held democratically accountable for delivering children's rights at a local level. The consultation does not make it clear where these responsibilities, duties and accountability mechanisms will lie within the proposed structure. Indeed, the diagram on page 14 of the consultation document omits most education authority functions. If it is proposed that Headteachers take on many of these functions, there will be a need to a significant amount of training and support for them and it will further reduce the time they can commit to improving learning in their schools. Any changes to the management and leadership arrangements of schools must further develop, rather than inhibit, the collaborative work already taking place within schools, local authority areas and further afield. There is a risk that devolving additional administrative and management functions to schools without additional resource could have an adverse impact on this.

Parental and Community Engagement

There is good evidence that increased parental engagement in learner helps children and young people realise their rights to education as well as the other rights that are delivered in a school environment. Parents' role in their children's lives is highlighted by the UNCRC in [Article 5](#)⁶. However, it is parental engagement in its broadest sense, where parents are actively involved in their child's learning, that has most impact on achievement. Formal structures such as parent councils are only ever likely to engage a minority of parents. If parental engagement is to reach all parents, it needs to expand beyond the school gates and involve community and third sector partners as well as Community Learning and Development services. Some parents may require significant support to be empowered to engage in their children's learning. The UNCRC, in article 5, recognises this as a right of the child.

Where formal structures exist, they need to represent the entire school community, including children and young people. There needs to be scope for children and young people, including pupils and ex-pupils to be involved in formal involvement structures and a role for the wider community. In our earlier consultation response, we highlighted examples of this occurring in Ireland, California and New Zealand. This legislation provides an opportunity to extend the involvement of children and young people in formal structures in line with their rights under Article 12 of the UNCRC.

⁶ <https://www.cypcs.org.uk/rights/uncrcarticles/article-5>

Pupil Participation

We are pleased to see the research we carried out in 2015, [How young people's participation in school supports achievement and attainment](#), quoted in the consultation document. However, our research closely linked attainment to a culture of respect as part of a rights-based education with active participation of all learners in line with the United Nations Committee on the Rights of the Child's [General Comment 12](#)⁷, as a key factor that differentiated schools with higher than average attainment. This was echoed by [Improving Schools in Scotland: An OECD Perspective](#), which highlights as successful cultures in which all learners are active participants in both their learning and in the life of the school⁸.

Learner participation in schools and early years settings includes all the ways in which children and young people engage in practices and dialogue with educational staff, parents, carers and community members to create positive outcomes and changes. Children and young people need opportunities to be participants in dialogues that make a difference. To harness participation effectively educators should inclusively collaborate with learners, families and other stakeholders to enact and evaluate the curriculum, culture and ethos of settings.

Learner participation is not an 'add-on' to what schools are already doing, it should be an integral part of a child's right to an education. The UN Committee on the Rights of the Child's General Comment 1 (relating to Article 29 of the UNCRC) states that a UNCRC compliant education is one that [respects the dignity of the child and enables the child to express his/her views freely in accordance with Article 12 and to participate in school life](#)⁹.

[Learning for Sustainability](#) embeds social justice and children's rights in the professional standards for all teachers, it gives an entitlement to children and young people to outdoor learning, children's rights, sustainable development education, international education and education for citizenship. Every practitioner, school and education leader should demonstrate Learning for Sustainability in their practice. Learner participation cannot be seen to be separate from learning about children's rights, they are indivisible¹⁰. The United Kingdom's [Concluding Observations 2016](#) from the UN Committee says that children's rights education should be mandatory¹¹.

The description of pupil participation in the current consultation documentation is one of a narrow understanding of participation, by a limited number of pupils through formal structures such as pupil councils or pupil parliaments. It is not a model which allows for the agency of children and young people or the active involvement of all in their learning and the life of the school. We would urge any new duty to be closely

⁷ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁸ <http://www.oecd.org/education/school/Improving-Schools-in-Scotland-An-OECD-Perspective.pdf> p120-121

⁹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en

¹⁰ <https://education.gov.scot/improvement/documents/res1-vision-2030.pdf>

¹¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

linked to children's rights as outlined in Article 12 of the UNCRC and in General Comment 12 Children and young people also have a right to be part of policy development at a local, regional and national level: within local authority Education Committees, Regional Improvement Collaboratives, the Scottish Government's Learning Directorate and Education Scotland. The present consultation document is silent on how this can be achieved and we would urge any duties arising from the proposed bill to include duties to ensure the active participation of children and young people in all decision making structures.

We understand that work is ongoing with Education Scotland to develop participation guidance that builds on our research. Any general duty introduced by legislation must be compatible with that guidance, built on the principles we outline and be framed in children's human rights.

Regional Improvement Collaboratives

We note that despite their creation being part of this consultation, the Regional Improvement Collaboratives (RICs) outlined in the consultation document are, in fact, already in existence and due to publish their first Regional Improvement Plans. We will be monitoring the extent to which children and young people have been involved in the planning process of each RIC and in any evaluation of their implementation.

RICs have the potential to drive educational improvement through increased opportunities for collaboration. There is also the possibility of RICs being able to deliver the sort of specialist advice that has been reduced as curriculum and additional support teams have reduced in education authorities. If this occurs it will help headteachers deliver an education develops all children's "[personality, talents and mental and physical abilities to their fullest potential](#)"¹².

Regional Improvement Plans and the National Improvement Framework should be reviewed regularly, however timescales should be sufficiently long that schools have the opportunity to plan, implement and embed. Constant cycles of review and development reduces opportunities for meaningful engagement of children and young people as this work requires a significant time commitment

Education Workforce Council for Scotland

The importance of classroom support staff, particularly for children with additional support needs, and the contribution they make towards realising the rights of all children to an education that meets their needs, is regularly highlighted to us. They are particularly important in realising the rights of children with additional support needs, as set out in Articles 28 and 29 of the UNCRC and, for those with a disability, Article 24 of the UNCRPD. Yet, at our roundtable event on Additional Support for

¹² <https://www.cypcs.org.uk/rights/uncrcarticles/article-29>

Learning in February 2017, we heard that the training this group of staff receive can be inconsistent and some staff report not receiving any training at all.

We believe that registration of this vital group of staff will increase their status as educational professionals, improve their access to training and development opportunities and provide a career progression route to improve retention of experienced staff. It will also encourage consistency in roles and responsibilities between schools and local authorities.

We note the opposition of teaching unions and the GTCS to the proposed Education Workforce Council Scotland (EWCS) and the OECD highlighting the GTCS as an international example of good practice. We are not convinced that the replacement of the functions of the GTCS (and other registration bodies) with the EWCS will improve the realisation of children's rights in Scotland. Indeed, there are advantages to education staff in the early years sector, who have a significant care component to their work, being registered via the Scottish Social Services Council, as these setting are subject to the new Health and Social Care Standards and inspection by the Care Inspectorate. Should the EWCS be created, it is important that it recognise that all education staff have responsibilities for both learning and care.

However, we believe it is vitally important to progress registration for classroom support staff, as the only significant group of unregistered education staff, whether that is delivered through the EWCS, via an existing agency such as SSSC given their caring role or otherwise.

Conclusion

Whilst we welcome some proposals contained within the consultation document, we are concerned that there is an excessive focus on formal structures such as the Headteacher's Charter, Parent Councils, Pupil Councils and a re-organisation of responsibilities between local authorities and Regional Improvement Collaboratives. It is not clear where accountability lies in relation to these new structures. In particular, we are concerned that accountability for the duties regarding some of the most vulnerable children (looked after children and those with additional support needs) may remain with education authorities with limited scope to deliver them.

We believe that a more constructive approach would be to effect a culture change that increased the active engagement of all members of school communities (staff, parents, the wider community and most importantly children and young people) in school life in its widest sense.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Adamson'. The signature is stylized with a large, looped initial 'B'.

Bruce Adamson

Children and Young People's Commissioner Scotland