

John Swinney, MSP
Deputy First Minister
The Scottish Parliament
Edinburgh
EH99 1SP

16 November 2016

Dear Mr Swinney

Standards in Scottish Schools etc Act 2000 - Draft Statutory Guidance

Thank you for the opportunity to respond to this consultation. My role as Children and Young People's Commissioner Scotland is to promote and safeguard the rights of children and young people in Scotland with particular reference to the United Nations Convention on the Rights of the Child (UNCRC).

General Comments

A number of UNCRC articles are relevant to this consultation, particularly Articles 28 and 29. Children have the right to an education which develops their skills and personal attributes to the full. One of the guiding principles of the UNCRC is contained in Article 12: the views of children and young people must be considered and taken into account in all matters affecting them¹. In the Children and Young People (Scotland) Act 2014, the Scottish Government is under a duty to consider steps they could take to further effect the UNCRC². It is on this basis that I provide the following comments on the consultation.

The Education (Scotland) Act 2016 amended the Standards in Scotland's Schools etc Act 2000 by adding new duties for education authorities in relation to reducing inequalities of educational outcomes as a result of socio-economic disadvantage. I welcome these changes³. However, the causes of these inequalities must also be reduced by addressing child poverty, as the government has highlighted in its recent consultations on Social Security and Child Poverty.

I am pleased to see the inclusion of children and young people in the list of people who education authorities must consult in section 3B(3) of the Act. However, this list is weakened by each category being qualified by the inclusion of "as the authority

¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

² <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

³ <http://www.legislation.gov.uk/asp/2016/8/contents>

thinks appropriate” in each section. This may result in very narrow consultation, particularly with children and young people, taking place. This list is the minimum level of consultation which should be carried out. In paragraph 2.12 of the draft guidance, it would be good to see the inclusion of pupil councils and other groups representing children and young people in this list.

Specific Questions

1. Do you have any comments on the definition of “decisions of a strategic nature”?

The definition of decisions of a strategic nature would seem to be a reasonably broad one encompassing a range of functions of education authorities.

2. Do you have any comments on the definition of “due regard”?

The definition of a “due regard” duty in the guidance would seem to be an accurate one. However, the guidance does not address how such due regard could be evidenced. The “due regard” duty is similar to that which exists with regard to the Public Sector Equality Duty, with which education authorities will already be familiar. That duty is evidenced through the completion of Equality Impact Assessments. By completing Child Rights and Wellbeing Impact Assessments (CRWIA), education authorities would demonstrate the consideration of all aspects of children’s rights, including socio-economic disadvantage, in policy making.

3. Do you have any comments on the definition of “inequalities of outcome”?

Paragraphs 2.23 and 2.24 acknowledge the difficulties in defining and measuring improved outcomes in education, but do not provide a means to overcome these difficulties. It is important to emphasise ways of measuring broader achievement in this guidance, to avoid a continuing focus on attainment as the prime measure of educational outcomes. Schemes that recognise non-academic achievement – such as ASDAN and school data on positive destinations – are examples of broader measurements of achievement and this section would benefit from a clear link to the National Improvement Framework.

4. Do you have any comments on the definition of “socio-economic disadvantage”?

I am pleased to see that the legislation has been drafted in such a way to include both those who live in disadvantaged communities and those who experience poverty. The latter group can be difficult to provide individual support to and will present a challenge to education authorities. It is much easier to target entire schools, but this may not result in the most disadvantaged children receiving the support they need. Even within disadvantaged communities, it is essential that support is targeted at those most in need of it.

5. The legislation is intentionally silent on how education authorities should report on the fulfilment of their duties. The draft statutory guidance reflects the legislative position and leaves it open to education authorities to determine how best to report against their duties. Do you agree that education authorities should determine how they report? Would you find some form of template helpful?

I feel it would be difficult to make sense of progress at a national level without some form of reporting template, particularly if the intention is to aggregate responses nationally. Some consistency in reporting will also make it easier for children, young people and their parents to understand these reports.

6. Do you have any comments on the proposed planning period for the Scottish Ministers of 1 January to 31 December? Do you have any comments on how this proposed planning period timeframe will work with that proposed for education authorities (1 September to 31 August)?

I assume that the intention is to have different timescales to allow education authorities time to develop their plans. However, I note that the Scottish school year runs from 1 August to 31 July and feel that this will be more meaningful for children, young people and their parents.

I have no comments to make on questions 7 and 8 as these do not relate to my area of work.

Thank you again for the opportunity to provide a response to this consultation.

Yours sincerely,

A handwritten signature in black ink that reads "Tam Baillie". The signature is written in a cursive style with a large initial 'T'.

Tam Baillie
Children and Young People's Commissioner Scotland