

EDUCATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Gaelic Medium Education

Assessments: primary education

27. This Part sets out the assessment process to be followed by an education authority following receipt of a parental request to assess the need for GMPE, as well as imposing duties on an education authority to promote and support GME and GLE and on Bòrd na Gàidhlig to publish guidance on GME and GLE.

Section 7: Assessment requests

28. Subsection (1) provides that the parent of a child who is under school age and who has not commenced attendance at a primary school may make a request to the education authority in whose area the child is resident for an assessment of the need for GMPE. Section 18(1) explains that the term “parent” has the same meaning as in the 1980 Act and so such a request can be made by the guardian of, or any person who has parental responsibilities in relation to, such a child.
29. Subsection (2)(a) states that a parental request under subsection (1) can only be made in relation to one child, who must be specified in the request. However, subsection (2)(b) states that a request under subsection (1) must contain, or be accompanied by, evidence that there is a demand for GMPE from other parents of children resident in that same education authority area and who are in the same year group as the specified child. Subsection (3) provides that a parental request may also contain evidence that there is a demand for GMPE from parents of other children under school age who are resident in the same education authority area but who are in a different year group to the specified child.
30. Subsection (4) provides for the meaning of “year group” to be the group of children under school age who will be in the same yearly stage of education on commencing primary school in the area of the education authority that has received the request.
31. Subsections (5) and (6) state that the Scottish Ministers may, by regulations, make further provision about parental requests under section 7(1), including provision about the form of the request and how it should be made; information to be included in, or accompany, the request; and evidence for the purposes of subsections (2) and (3). These regulations are subject to the negative procedure.

Section 8: GMPE assessment areas

32. Subsections (1) and (2) require that, on receipt of a parental request, an education authority must designate the area in relation to which it will undertake its assessment of the need for GMPE. Subsection (3) states that that area will be referred to as a ‘GMPE assessment area’. Subsections (4) and (5) stipulate the broad approach that the education authority must take to designating a GMPE assessment area. An education authority

must, so far as reasonable, seek to accommodate the demand for GMPE evidenced in the request and any other demand that the authority knows about from parents of children resident in that education authority area who are under school age and have not yet commenced attendance at a primary school. An education authority must also take into account factors that might affect how that demand could reasonably be met, such as the residence of the children who the demand relates to, accessibility in relation to the potential provision of GMPE in that GMPE assessment area and guidance issued by Bòrd na Gàidhlig.

Section 9: Initial assessments

33. Subsection (1) states that this section applies where an education authority receives a parental request under section 7(1). Subsection (2) further explains that, on receipt of such a request, an education authority must make an initial assessment of the need for GMPE in relation to the designated GMPE assessment area and the year group of the child specified in the request.
34. Subsections (3) and (4) state that, in making an initial assessment, an education authority must take into account any information it holds - including any information contained in the parental request - that relates to the demand for GMPE in the designated GMPE assessment area from parents of children resident in that area and who are in either the same or a different year group as the child specified in the request, provided that the children in those year groups are under school age (see the definition of “year group” in subsection (4) of section 7).
35. Subsection (5) provides that, following an initial assessment, an education authority must decide that there is a potential need for GMPE in the GMPE assessment area if it is satisfied that the condition in subsection (6) is met. If an education authority is not satisfied that that condition is met, the authority must decide that there is no potential need for GMPE in that area. The condition in subsection (6) is that the child specified in the request and the children resident in that GMPE assessment area who are in the same year group as the specified child and in respect of whose parents the authority holds information about demand as mentioned in section 9(3)(a), total 5 or more in number.
36. Subsection (7) gives the Scottish Ministers the power to amend subsection (6) by regulations so as to substitute a different total number of children. The Scottish Ministers may exercise this power so that a different number applies in different education authority areas. These regulations are subject to the affirmative procedure.
37. Subsection (8) highlights that this section is subject to section 11 (which explains the circumstances in which there is no duty on an education authority to undertake an initial assessment following receipt of a parental request).

Section 10: Duties of education authority

38. This section explains the duties that apply to an education authority after it has undertaken an initial assessment of the need for GMPE in relation to a GMPE assessment area.
39. Subsection (1) states that, where an education authority decides under section 9(5)(a) that there is a potential need for GMPE in the GMPE assessment area, the authority must either carry out a full assessment of the need for GMPE in accordance with section 12 or, without carrying out such an assessment, simply exercise its discretion to take such steps as are necessary to secure the provision of such GMPE as it considers appropriate in the GMPE assessment area.
40. Subsection (2) states that where an education authority decides under section 9(5)(b) that there is no potential need for GMPE in the GMPE assessment area, the authority must either take no further action to provide GMPE in relation to that parental request, carry out a full assessment of the need for GMPE in that area in accordance with

section 12 or, without carrying out such an assessment, take such steps as are necessary to secure the provision of such GMPE as it considers appropriate in the area.

41. Whatever action an education authority decides to take following an initial assessment of the need for GMPE, subsections (3) and (4) make it clear that the authority is obliged to notify the parent who made the request, the parents of other children in the same year group who requested GMPE and the parents of other children who were included in the parental request as evidence of demand in a different year group. According to subsection (5), the authority is also obliged to publish its determination as to whether or not there is a potential need for GMPE, its decision about what action to take, the reasons for its determination and decision and information about the GMPE assessment area in respect of which it made its determination. Such information must be published on the authority's website no later than 6 weeks after receipt of the request that triggered the assessment.
42. Where an education authority decides under either subsection (1) or (2) to take steps to secure the provision of GMPE, subsection (6) requires that the authority must ensure that the GMPE is provided in the GMPE assessment area within such period after making the decision as is reasonable in all the circumstances.

Section 11: Requests that need not be considered

43. Subsection (2) states that an education authority need not comply with the duty in section 9(2) to undertake an initial assessment in relation to a parental request under section 7(1) (a "further request") where the conditions in subsection (1) apply. These are that a parental request under section 7(1) (the "original request") was made within the preceding 2 years in relation to the same GMPE assessment area and an initial assessment was carried out in relation to that request. This exemption from the duty in section 9(2) applies whatever the outcome of the earlier initial assessment.
44. Subsection (3) clarifies that the exception in subsection (2) applies irrespective of whether the further request is made by the same person who made the original request or by another person, or is made by a parent of a child in the same or a different year group from the child whose parent made the original request, or whether or not GMPE is in fact being provided in that GMPE assessment area.
45. However, subsection (4) gives the Scottish Ministers the power to direct that an education authority must comply with its duty under section 9(2) to undertake an initial assessment, even if the conditions in subsection (1) are met, where the Scottish Ministers consider this appropriate.

Section 12: Full assessments

46. This section applies where an education authority has received a parental request under section 7(1) and has decided, under section 10, to carry out a full assessment of the need for GMPE in a GMPE assessment area.
47. Subsections (2) and (3) state that, in undertaking a full assessment, an education authority must provide Her Majesty's inspectors of schools (in practice this means Education Scotland), Bòrd na Gàidhlig, Comann nam Pàrant and the National Parent Forum of Scotland with details of the request and the information the authority took into account under section 9(3) in making an initial assessment. The education authority must seek the views of those bodies on those matters and on the authority's determination under section 9(5) as to whether there is, or is not, a potential need for GMPE in the GMPE assessment area. Subsection (4) provides that Education Scotland and Bòrd na Gàidhlig must provide these views within 4 weeks of being asked. Comann nam Pàrant and the National Parent Forum of Scotland are under no duty to provide these views, but may do so; and subsection (6)(a) of this section requires that the education authority must have regard to all views provided within that 4 week period,

including any of Comann nam Pàrant and the National Parent Forum of Scotland, when undertaking the full assessment.

48. Subsection (5) explains that, at the completion of a full assessment, an education authority must decide whether or not to secure the provision of GMPE in the GMPE assessment area. Subsection (5) is subject to subsection (7), which provides that the authority must decide to secure the provision of GMPE in the GMPE assessment area unless, having regard to the matters in subsection (6), the authority considers it would be unreasonable to do so.
49. Subsection (6) states that an education authority must have regard to a number of mandatory factors in making the decision under subsection (5). The mandatory factors are set out in paragraphs (a) to (l) of subsection (6). Because education authorities have the power under section 23 of the 1980 Act to provide education to pupils belonging to other education authority areas, these factors include, at paragraphs (f) and (g), a requirement for education authorities to have regard to the location of GMPE provision in neighbouring education authorities as well as the extent to which children resident in another education authority, adjacent to the GMPE assessment area, could access GMPE in that area and the extent to which children resident in the GMPE assessment area could access GMPE in another education authority, adjacent to the GMPE assessment area.
50. Subsection (8) gives the Scottish Ministers the power by regulations to modify subsections (3) and (6). This power may be exercised to change the bodies from whom views must be sought during the full assessment or to amend, remove or add a factor to the list of factors that an education authority must have regard to in deciding whether or not to secure the provision of GMPE in that GMPE assessment area.

Section 13: Procedure following full assessment

51. This section explains the duties that apply to an education authority following completion of a full assessment of the need for GMPE in a GMPE assessment area under section 12.
52. Subsections (2), (4) and (5) provide that an education authority must publish on its website, no later than 10 weeks after deciding to carry out a full assessment, a report that sets out its decision on whether or not to secure the provision of GMPE in that GMPE assessment area. The report must also set out the reasons for the authority's decision with reference to its duty under section 12(7) and each of the factors listed in section 12(6). Finally, the report must set out the period within which the authority thinks it would be reasonable for GMPE to be provided where it has taken the decision to secure GMPE provision. Therefore, an education authority must complete a full assessment no later than 10 weeks after deciding to carry out a full assessment.
53. Subsection (3) requires the authority to send a copy of the report to the parent who made the request and to other parents who were considered in the authority's assessment of the level of demand for GMPE at the initial assessment stage.
54. Subsections (6) and (7) state that, where a full assessment leads to the authority deciding to secure the provision of GMPE in the GMPE assessment area, it must take the necessary steps to secure the provision of such GMPE as it considers appropriate. The authority must do this within such a period as is reasonable in all the circumstances.

Early learning and childcare

Section 14: Power to extend Part to early learning and childcare

55. This section gives the Scottish Ministers the power, by regulations, to require an education authority to treat a parental request made under section 7(1) as a request to assess the need for GME at the level of early learning and childcare. As enacted,

the Act provides that the assessment process applies only to primary school education. Specifically, subsections (1) and (2) provide that the Scottish Ministers may, by regulations, make such provision as they consider necessary or expedient to require an education authority to treat a parental request made under section 7(1) as a request to assess the need for GME at the level of early learning and childcare provided under sections 1(1) and 1(1A) of the 1980 Act. This means the mandatory amount of early learning and childcare that an education authority is required to secure under section 47(1) of the Children and Young People (Scotland) Act 2014. Section 14(4)(a) provides that such regulations may do so by modifying Part 2 of the Act or any other enactment. Section 14(4)(b) provides that such regulations may do so by providing that the Act or any other enactment applies with or without such modifications as may be stated in the regulations. These regulations will be subject to the affirmative procedure.

Promotion, support and guidance

Section 15: Duty to promote and support Gaelic medium education and learning

56. Subsection (1) provides that, irrespective of whether GME and GLE are in fact provided in an education authority area, an education authority must promote the potential provision of school education in its area by means of GME by publicising the right to make a request under section 7(1) and promote the potential provision of school education in its area by means of GLE in such manner as it thinks appropriate.
57. Subsections (2) to (4) provide that, where an education authority secures the provision of GME or GLE in pursuance of its duty under the 1980 Act to secure the provision of school education, including mandatory early learning and childcare, it must promote and support that provision so far as reasonably practicable.
58. Subsection (5) provides that the duty of promotion under subsection (2) includes a duty to take reasonable steps to publicise the existing provision of GME and GLE in its area, in such manner as it thinks appropriate.
59. Subsection (6) provides that the duty of support under subsection (2) requires an education authority to take reasonable steps to ensure that teachers in any class providing GME or GLE have such resources, training and opportunities as are reasonably necessary to adequately and effectively provide that education, and that pupils in any such class have such resources as are reasonably necessary to adequately and effectively receive and benefit from that education. An education authority must also have regard to any guidance on Gaelic education published by Bòrd na Gàidhlig under section 9 of the Gaelic Language (Scotland) Act 2005 (“the 2005 Act”) when carrying out its duty of support.

Section 16: Guidance

60. This section amends section 9 of the 2005 Act (guidance on Gaelic education) to convert the existing power of Bòrd na Gàidhlig to issue guidance on Gaelic education into a duty. Subsection (3) clarifies that this guidance may, in particular, cover the provision of Gaelic education in schools. Subsection (4) ensures that any relevant public authority having functions relating to Gaelic education must have regard to the guidance in carrying out its functions. A “relevant public authority” is defined in section 10(2) of the 2005 Act to mean a Scottish public authority, the Scottish Parliamentary Corporate Body or a cross-border public authority in relation to functions exercisable in Scotland that do not relate to a reserved matter. The meaning of “Scottish public authority” is given by section 126 of the Scotland Act 1998 to be “any public body, public office or holder of such an office whose functions are exercisable only in or as regards Scotland”.

Definitions: other Acts

Section 17: Meaning of “Gaelic education” and “Gaelic medium education”

61. This section makes amendments to the 2005 Act and the Schools (Consultation) (Scotland) Act 2010 to ensure that the definitions of “Gaelic education” and “Gaelic medium education” in those Acts are consistent with the definitions given in this Act.

Interpretation of Part 2

Section 18: Interpretation of Part 2

62. This section contains definitions relevant to Part 2, including definitions of “full assessment”, “Gaelic language”, “Gaelic learner education”, “Gaelic medium education”, “Gaelic medium primary education”, “GMPE”, “GMPE assessment area”, “initial assessment”, “primary education”, “primary school”, “specified child” and “year group”. Various other expressions are ascribed the meanings given to them by section 135 of the 1980 Act.