



# Education (Scotland) Act 2016

## 2016 asp 8

### PART 2

#### GAELIC MEDIUM EDUCATION

##### *Assessments: primary education*

#### 7 **Assessment requests**

- (1) A person who is the parent of a child who is under school age and has not commenced attendance at a primary school may request the education authority in whose area the child is resident to assess the need for Gaelic medium primary education (in this Part, “GMPE”).
- (2) A request under subsection (1) must—
  - (a) relate to only one child (in this Part, the “specified child”), and
  - (b) set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
    - (i) resident in the area of the authority to which the request is made, and
    - (ii) in the same year group as the specified child.
- (3) A request under subsection (1) may set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
  - (a) resident in the area of the authority to which the request is made, and
  - (b) in a different year group in relation to the specified child.
- (4) In this Part, “year group”, in relation to an education authority, means the group of children under school age all of whom, on commencing primary education at a primary school in the area of the authority, will be in the same yearly stage of primary education; and references in this Part to a child being in the same or a different year group as or in relation to other children are to be construed accordingly.
- (5) The Scottish Ministers may by regulations make further provision about requests under subsection (1).
- (6) Regulations under subsection (5) may in particular include provision for or in connection with—

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- (a) the form of the request and the manner in which it is to be made,
- (b) information (including evidence in addition to that mentioned in subsection (2)) that is to be set out in, or accompany, the request,
- (c) evidence as mentioned in subsections (2) and (3).

## **8 GMPE assessment areas**

- (1) This section applies where an education authority receives a request under section 7(1).
- (2) The authority must designate an area within the area of the authority in respect of which the need for GMPE is to be assessed.
- (3) An area designated under subsection (2) is referred to in this Part as a “GMPE assessment area”.
- (4) In considering what area to designate as a GMPE assessment area, an authority must—
  - (a) so far as reasonable, seek to accommodate—
    - (i) demand for GMPE evidenced in the request or contained in evidence accompanying the request, or
    - (ii) any other demand for GMPE of which the authority is aware in respect of children resident in the area of the authority who are under school age and have not commenced attendance at a primary school, and
  - (b) take into account factors which affect, or might affect, how any demand for GMPE could reasonably be met in the GMPE assessment area.
- (5) In taking those factors into account, the authority must have regard in particular to—
  - (a) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,
  - (b) accessibility in relation to the provision (or potential provision) of GMPE in the GMPE assessment area, and
  - (c) the residence of children who are under school age and have not commenced attendance at a primary school in respect of whom there is a demand for GMPE as mentioned in subsection (4)(a).

## **9 Initial assessments**

- (1) This section applies where an education authority receives a request under section 7(1) from the parent of a specified child.
- (2) The authority must make an assessment (an “initial assessment”) of the need for GMPE—
  - (a) in relation to the GMPE assessment area designated under section 8(2), and
  - (b) in the specified child’s year group.
- (3) In making an initial assessment, the authority must take into account any information it has which—
  - (a) relates to the demand for GMPE in the GMPE assessment area from parents of children—
    - (i) who are resident in the GMPE assessment area, and
    - (ii) who are in the same year group as the specified child, and
  - (b) indicates that there is a demand for GMPE in the GMPE assessment area from parents of children—
    - (i) who are resident in the GMPE assessment area, and

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- (ii) who are in a different year group in relation to the specified child.
- (4) The information mentioned in subsection (3) includes information set out in or accompanying the request.
- (5) Where, following an initial assessment in relation to a GMPE assessment area—
  - (a) the authority is satisfied that the condition in subsection (6) is met, the authority must determine that there is a potential need for GMPE in the area,
  - (b) the authority is not satisfied that that condition is met, the authority must determine that there is no potential need for GMPE in the area.
- (6) The condition is that the specified child and the children in respect of whose parents the authority has information as mentioned in subsection (3)(a) number 5 or more.
- (7) The Scottish Ministers may by regulations—
  - (a) amend subsection (6) so as to substitute for the number of children for the time being specified there a different number,
  - (b) provide for the number of children for the time being specified in that subsection to be read as a different number in the application of that subsection to such education authorities as may be specified in the regulations.
- (8) This section is subject to section 11.

## **10 Duties of education authority**

- (1) Where an education authority makes a determination under section 9(5)(a) in relation to a GMPE assessment area, the authority must—
  - (a) carry out a full assessment of the need for GMPE in the area in accordance with section 12, or
  - (b) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.
- (2) Where an education authority makes a determination under section 9(5)(b) in relation to a GMPE assessment area, the authority must—
  - (a) take no further action to secure the provision of GMPE in the area so far as relating to the request in respect of which the determination is made,
  - (b) carry out a full assessment of the need for GMPE in the area in accordance with section 12, or
  - (c) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.
- (3) An education authority must, no later than 6 weeks after receiving the request in respect of which a determination mentioned in subsection (1) or (2) is made, send to the persons mentioned in subsection (4) notification of—
  - (a) its determination,
  - (b) its decision to act as mentioned in subsection (1)(a) or (b) or, as the case may be, subsection (2)(a), (b) or (c), and
  - (c) the reasons for its determination and decision.
- (4) The persons are—
  - (a) the parent who made the request,
  - (b) parents of other children as mentioned in section 7(2), and

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- (c) where the request set out, or was accompanied by, evidence from parents of other children as mentioned in section 7(3), those parents.
- (5) An education authority must, before the expiry of the period mentioned in subsection (3), publish on its website—
- (a) its determination as mentioned in subsection (1) or (2),
  - (b) its decision to act as mentioned in subsection (1)(a) or (b) or, as the case may be, subsection (2)(a), (b) or (c),
  - (c) the reasons for its determination and decision, and
  - (d) information about the GMPE assessment area in respect of which its determination was made.
- (6) For the purposes of complying with the duty imposed by subsection (1)(b) or (2)(c), the authority must ensure that the GMPE is provided in the GMPE assessment area within such period after making the determination as is reasonable in all the circumstances.

## **11 Requests that need not be considered**

- (1) Subsection (2) applies where—
- (a) a request under section 7(1) (the “original request”) is made,
  - (b) in pursuance of the original request, the education authority that receives the original request carries out an initial assessment under section 9 in relation to a GMPE assessment area,
  - (c) the authority receives another request under section 7(1) (a “further request”) which would (but for subsection (2)) require the authority to carry out an initial assessment in relation to the GMPE assessment area, and
  - (d) the further request is received within the period of 2 years beginning with the day on which the original request is received.
- (2) The education authority need not comply with the duty imposed by section 9(2) in relation to the further request (subject to subsection (4)).
- (3) For the purposes of this section, it is irrelevant—
- (a) whether the further request—
    - (i) is made by the same person who made the original request or by another person, or
    - (ii) is made by a parent of a child in the same year group as, or a different year group from, the child whose parent made the original request, or
  - (b) whether GMPE is being provided in the GMPE assessment area to which the requests relate.
- (4) Despite subsection (2), the Scottish Ministers may, in such cases as they consider appropriate, direct an education authority to comply with the duty imposed by section 9(2) in relation to the further request.

## **12 Full assessments**

- (1) This section applies where an education authority—
- (a) receives a request under section 7(1), and
  - (b) decides, under section 10(1)(a) or (2)(b), to carry out a full assessment of the need for GMPE in a GMPE assessment area.

- (2) The authority must—
- (a) notify the persons mentioned in subsection (3) of the request,
  - (b) provide those persons with information about the request,
  - (c) provide those persons with the information the authority took into account under section 9(3) in making an initial assessment, and
  - (d) seek the views of those persons on—
    - (i) the information mentioned in paragraphs (b) and (c), and
    - (ii) the authority's determination under section 9(5).
- (3) The persons are—
- (a) Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the 1980 Act),
  - (b) Bòrd na Gàidhlig,
  - (c) the body known as Comann nam Pàrant,
  - (d) the body known as the National Parent Forum of Scotland.
- (4) The persons mentioned in subsection (3)(a) and (b) must—
- (a) provide the views sought under subsection (2)(d), and
  - (b) do so before the end of the period of 4 weeks beginning with the day on which the views are sought.
- (5) Subject to subsection (7), the education authority must decide whether to secure the provision of GMPE in the GMPE assessment area.
- (6) In making a decision under subsection (5), the education authority must have regard to—
- (a) views provided by virtue of subsection (2)(d) before the end of the period of 4 weeks beginning with the day on which the views are sought,
  - (b) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,
  - (c) information that the education authority took into account in making an initial assessment under section 9(2),
  - (d) in relation to the demand for GMPE mentioned in section 9(3) from parents of children, where those children reside,
  - (e) any information the education authority has relating to the demand for GMPE in the area of the authority from parents of children who are under school age and have not commenced attendance at a primary school,
  - (f) where GMPE is provided in the area of the education authority, or the area of another education authority adjacent to that area, the location of that provision,
  - (g) the extent to which—
    - (i) children resident in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5) could access GMPE in the GMPE assessment area,
    - (ii) children resident in the GMPE assessment area could access GMPE in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5),
  - (h) the availability and suitability of any premises in the education authority's area in which GMPE is being, or could reasonably be, provided,
  - (i) the costs of providing GMPE in the GMPE assessment area,

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- (j) the potential to assign or recruit persons to teach GMPE in the GMPE assessment area,
  - (k) any Gaelic language plan published by the education authority under section 5(9) of the Gaelic Language (Scotland) Act 2005 in force at the time of making the decision mentioned in subsection (5),
  - (l) the potential to develop or increase—
    - (i) the use of the Gaelic language in the education authority’s area, and
    - (ii) the carrying out of activities relating to the Gaelic language in the authority’s area.
- (7) The education authority must decide to secure the provision of GMPE in the GMPE assessment area unless, having regard to the matters mentioned in subsection (6), it would be unreasonable to do so.
- (8) The Scottish Ministers may by regulations—
- (a) modify subsection (3),
  - (b) modify subsection (6) so as to amend, remove or add to the matters for the time being mentioned in that subsection,
  - (c) make such other modifications of this section as the Scottish Ministers think necessary or expedient in consequence of any modification of subsection (3).

### **13 Procedure following full assessment**

- (1) This section applies where an education authority has carried out a full assessment of the need for GMPE in a GMPE assessment area in accordance with section 12.
- (2) The authority must prepare a report setting out—
- (a) its decision on whether or not to secure the provision of GMPE in the area,
  - (b) the reasons for its decision with reference to—
    - (i) each of the matters mentioned in section 12(6), and
    - (ii) its duty under section 12(7), and
  - (c) where the decision is to secure the provision of GMPE in the area, the period within which the authority considers it would be reasonable for GMPE to be provided in the area.
- (3) The authority must send a copy of the report to—
- (a) the parent who made the request in relation to which the full assessment was carried out,
  - (b) parents of other children as mentioned in section 7(2), and
  - (c) where the request contained, or was accompanied by, evidence from parents of other children as mentioned in section 7(3), those parents.
- (4) The authority must publish the report on its website.
- (5) Publication of the report under subsection (4) must be no later than 10 weeks after the authority decides to carry out the full assessment.
- (6) Where the authority decides to secure the provision of GMPE in the GMPE assessment area, it must take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

- (7) In taking those steps, the authority must ensure GMPE is provided in the GMPE assessment area within such period after making the decision mentioned in subsection (6) as is reasonable in all the circumstances.

#### *Early learning and childcare*

### **14 Power to extend Part to early learning and childcare**

- (1) The Scottish Ministers may by regulations make such provision as they consider necessary or expedient for or in connection with the purpose mentioned in subsection (2).
- (2) The purpose is to require an education authority in receipt of a request under section 7(1) to treat it as a request to assess the need for Gaelic medium education in its area which, if provision for such education were made, would discharge (wholly or in part) the duty mentioned in subsection (3).
- (3) The duty is the duty under subsection (1) of section 1 of the 1980 Act to the extent it is exercisable as mentioned in subsection (1A) of that section (duty of education authorities to secure provision of early learning and childcare).
- (4) Regulations under subsection (1) may in particular—
- (a) modify this Part, the 1980 Act or any other enactment,
  - (b) provide for any provision of this Part, the 1980 Act or any other enactment to apply—
    - (i) with such modifications as may be specified in the regulations, or
    - (ii) without modifications.

#### *Promotion, support and guidance*

### **15 Duty to promote and support Gaelic medium education and learning**

- (1) Every education authority must promote the potential provision of school education in the area of the authority—
- (a) by means of Gaelic medium education by publicising, in such manner as it thinks appropriate, the right to make a request under section 7(1) to the authority, and
  - (b) by means of Gaelic learner education in such manner as it thinks appropriate.
- (2) Where subsection (3) or (4) applies, an education authority must, so far as reasonably practicable, promote and support—
- (a) Gaelic medium education provided in its area,
  - (b) Gaelic learner education provided in its area, or
  - (c) (as the case may be) both.
- (3) This subsection applies where an education authority, in pursuance of its duty under section 1(1) of the 1980 Act (duty of education authorities to secure provision of education) to the extent it relates to school education, secures the provision in its area of—
- (a) Gaelic medium education,
  - (b) Gaelic learner education, or

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- (c) both.
- (4) This subsection applies where an education authority exercises the power in section 1(1C) of the 1980 Act by securing the provision in its area of—
  - (a) Gaelic medium education,
  - (b) Gaelic learner education, or
  - (c) both.
- (5) In carrying out its duty of promotion under subsection (2), an education authority must take reasonable steps to ensure that it publicises, in such manner as it thinks appropriate, the provision in its area of—
  - (a) Gaelic medium education,
  - (b) Gaelic learner education, or
  - (c) (as the case may be) both.
- (6) In carrying out its duty of support under subsection (2) in relation to education as mentioned in that subsection, an education authority must—
  - (a) take reasonable steps to ensure that teachers in any class where the education is provided have such resources, training and opportunities as are reasonably necessary to adequately and effectively provide the education,
  - (b) take reasonable steps to ensure that pupils in any such class have such resources as are reasonably necessary to adequately and effectively receive and benefit from the education, and
  - (c) have regard to any guidance under section 9 of the Gaelic Language (Scotland) Act 2005.

## 16 Guidance

- (1) Section 9 of the Gaelic Language (Scotland) Act 2005 (guidance on Gaelic education) is amended as follows.
- (2) In subsection (1), for “may” substitute “must”.
- (3) After that subsection insert—
  - “(1A) Guidance under subsection (1) may, in particular, include provision relating to the provision of Gaelic education in schools.
  - (1B) In subsection (1A), “schools” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.”.
- (4) After subsection (2) insert—
  - “(2A) Any relevant public authority having functions relating to, or to the provision of, Gaelic education must, to the extent that guidance under subsection (1) relates to the functions, have regard to the guidance in carrying out the functions.”.



*Definitions: other Acts*

**17 Meaning of “Gaelic education” and “Gaelic medium education”**

- (1) In section 10(1) of the Gaelic Language (Scotland) Act 2005 (interpretation), in the definition of “Gaelic education”, after “means education” insert “consisting of teaching and learning”.
- (2) In the Schools (Consultation) (Scotland) Act 2010, in schedule 1 (relevant proposals), in the definition of “Gaelic medium education” in paragraph 12, after “teaching” insert “and learning”.

*Interpretation of Part 2*

**18 Interpretation of Part 2**

- (1) In this Part, the following expressions have the meanings given by section 135(1) of the 1980 Act—
  - “early learning and childcare”,
  - “education authority”,
  - “parent”,
  - “pupil”,
  - “school”,
  - “school age”,
  - “school education”.
- (2) In this Part—
  - “area”, in relation to an education authority, is (except where the context otherwise requires) to be construed in accordance with section 135(1) of the 1980 Act (see the definition of “education authority”),
  - “full assessment” is to be construed in accordance with section 12,
  - “Gaelic language” means Gaelic language as spoken in Scotland,
  - “Gaelic learner education”, in relation to the Gaelic language, means the teaching of the language to, and learning of the language by, pupils to whom education is provided primarily by means of the English language,
  - “Gaelic medium education” means teaching and learning by means of the Gaelic language,
  - “Gaelic medium primary education” means primary education consisting of teaching and learning by means of the Gaelic language,
  - “GMPE” means Gaelic medium primary education,
  - “GMPE assessment area” is to be construed in accordance with section 8,
  - “initial assessment” is to be construed in accordance with section 9,
  - “primary education” is to be construed in accordance with section 135(2) of the 1980 Act but does not include—
    - (a) early learning and childcare the availability of which an education authority is required to secure under section 47(1) of the Children and Young People (Scotland) Act 2014, and
    - (b) any school education that an education authority is enabled to secure the provision of under section 1(1C) of the 1980 Act,

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“primary school” is to be construed in accordance with section 135(2) of the 1980 Act but does not include a nursery school or nursery class (within the meaning of section 135(1) of that Act),

“specified child” is to be construed in accordance with section 7(2),

“year group” is to be construed in accordance with section 7(4).