

EAST AYRSHIRE COUNCIL

EDUCATION COMMITTEE – 04 FEBRUARY 2004

RESPONSE TO CONSULTATION : ENSURING IMPROVEMENT IN OUR SCHOOLS

Report by Director of Educational and Social Services

1. PURPOSE

- 1.1 To seek approval for a response to the Scottish Executive on the consultation and draft Bill entitled “Ensuring Improvement in our Schools”.

2. BACKGROUND

- 2.1 On 06 November 2003 the Scottish Executive issued a document entitled “Ensuring Improvement in our Schools”. The covering letter from the Minister for Education and Young People states the intention of the Bill as being:

“The aim of this Bill is to ensure that Ministers have the power to direct an education authority to take action to secure improvement, at either school or authority level, if the established steps of inspection, professional support and development have not already done so. These new powers will only be activated on the recommendation of HMIE.

The Bill also proposes changes to the existing legislation that covers the registration and monitoring of independent schools.”

- 2.2 A copy of the document has been lodged in the Members’ information point. It can also be accessed on the Scottish Executive website at: <http://www.scotland.gov.uk/ensuringimprovement>.
- 2.3 Responses are required to be lodged with the Scottish Executive, but in keeping with established practice it has been agreed that a submission after the deadline and within the Council’s committee cycle will be accepted.

3. THE MAIN PROPOSALS OF THE BILL

- 3.1 In the preamble to the Bill, the Scottish Executive acknowledge the positive response of education authorities and schools to the inspection process together with the shared commitment to improve provision. It is felt however that Ministers presently have insufficient powers to take action if an authority response to an HMIE inspection is inadequate. The

judgement on the adequacy of the response will rest with HMIE who will, as necessary make a formal referral to the Scottish Ministers. This will then trigger a two-stage process:

First Stage: a preliminary notice – the authority will be required to state in writing why it considers it has made an adequate response, or to justify why it has not taken satisfactory steps.

Second Stage: enforcement direction – if after considering the Authority response and consulting HMIE the Scottish Ministers consider that satisfactory steps have not been taken the power will exist to issue an enforcement direction. There will be a duty to comply with this direction which will set out the necessary steps required and the time period in which there must be compliance.

There will be power to vary or revoke enforcement directions without a further preliminary notice. This will allow account to be taken of changing circumstances.

Ministers will be required to report any use of these powers to Parliament.

4. RESPONSE TO CONSULTATION

- 4.1** The proposed response to the consultation is attached at appendix 1. This responds directly to the consultation 17 questions posed by the Scottish Executive, but also deals with some general issues not raised explicitly in the exercise.
- 4.2** In summary, the proposals in relation to education authorities could be improved. Although the intention is clear the proposals do not take full recognition of the educational context in Scotland. Some aspects of the proposals in relation to grant-aided or independent schools are acceptable. Here comments from East Ayrshire are made in the context of the authority being a purchaser of services from these establishments, or where there is some other direct involvement.
- 4.3** The proposals in the draft Bill fundamentally alter the nature of the present relationship between the Scottish Executive, HMIE and education authorities. While there is a simplicity to putting HMIE in a role where their recommendations will be given Ministerial force, the impact of this should not be underestimated. In effect this means that HMIE recommendations cease to be that, and become more accurately, instructions. In other words HMIE are put in a position where they will be more directly managing the service. This is the proper role of authorities, it is not a role for which HMIE were established, nor for which their procedures are

intended. It also alters the patterns of relationships and accountabilities that have worked together so effectively to secure improvements in the service.

- 4.4** The majority of the proposals in relation to independent schools are, however, welcome. Beyond the accountabilities that are proposed for the state sector, a number of additional measures are proposed. These relate to modernising the independent sector regulations and, in particular, to improving care and welfare arrangements and educational provision. Such improvements will bring the sector into line with the state sector and will be an important protection to all involved.
- 4.5** Since the Standards in Scotland's Schools etc Act 2000, this is the third piece of legislation dealing with an aspect of Scottish education in as many years. A number of other laws have also impacted significantly on the service, notably in the areas of race relations and disability discrimination. The legal framework within which the service operates is becoming increasingly complex owing to a growing body of intertwined laws. It is disappointing that this particular issue, if as important as now being stated, was not anticipated in the 2000 Act that has apparently made it necessary.

5. POLICY/LEGAL IMPLICATIONS

- 5.1** Nil

6. FINANCIAL IMPLICATIONS

- 6.1** There are no financial implications arising directly from this consultation. However, if implemented, there would be significant direct financial implications and the Council's budgetary processes.

7. RECOMMENDATIONS

It is recommended that Members :

- (i) approve this response to the Scottish Executive; and
- (ii) otherwise note the contents of this report.

John Mulgrew
Director of Educational and Social Services

GRS/GRS

30 January 2004

Members requiring further information should contact Graham Short, Head of Service: Quality Improvement, (01563-576089).

LIST OF BACKGROUND PAPERS

1. Ensuring Improvement in our Schools, consultation document issued by SEED, November 2003

Implementation Officer: Graham Short

Appendix 1

Response to Consultation “Ensuring Improvement in our Schools” by East Ayrshire Council; January 2004

General Points

The preamble to the consultation document acknowledges the positive approach taken by local authorities to improvement in educational services. It would therefore appear that it is accepted by the Scottish Executive that there is fundamentally no wrong to be corrected. Even if this were not the case we disagree with the argument presented on page 6 in relation to the application of section 70 of the Education (Scotland) Act 1980. Under the earlier sections of that Act, particularly as amended by the Standards in Scotland's Schools etc Act 2000, the authority is under clear legal obligations as regards the adequacy and efficiency of its provision and to secure improvement. It is therefore difficult to accept that Section 70 could not be used if there were questions in these areas, which in turn should be central to any HMIE inspection.

If, as implied by that page 6 reference, the idea is to empower Ministers in relation to specific HMIE reports, then this has the potential to create real difficulties. To do so would be to give HMIE reports a place in the management of education for which they were never intended nor designed. HMIE do not have a comprehensive overview of the educational system beyond the results of an annual programme of point sampling. To use reports in this way would introduce a random and inconsistent element. HMIE were not established for, nor their procedures developed, to exercise this role in the system. The present patterns of accountability on HMIE themselves are insufficiently rigorous to ensure that they could perform such a task while maintaining the confidence of the service. It would fundamentally alter the relationship between HMIE and schools and authorities in a way which would not be helpful to any of the partners concerned.

- 1. The proposals are similar to the Ministerial powers introduced by the Local Government in Scotland Act 2003 and are intended to promote consistency in the Executive's approach to relations with local authorities. Do you agree with this approach ?**

No.

The assumption of this approach is that all local government services are essentially homogenous in nature : that they can be measured in the same way, using the same parameters and processes; that the patterns of accountability both in practice and in law are the same; that information is collected, analysed and published in the same way; and last, but perhaps most importantly, in

particular relation to education that HMIE functions in exactly the same way as other national audit bodies.

The relationship between government departments, whether Scottish Executive or Scottish Office, local authorities and schools has always been different to other local government services. This relationship has built different and strong patterns of accountability. HMIE themselves are one of the longest existing national agencies of accountability, and have been instrumental in developing systems which rest on professional roles, self-evaluation and continuous improvement. These notions have been for a long time firmly established within and throughout the education service. As a result, the Scottish system of educational accountability is seen to be world class and is being adopted widely. Equally, it is a system that other local government services are reviewing themselves and are looking to adapt to their own practice. The proposals outlined in this Bill could fundamentally change all of this positive work by placing HMIE in a new and unfamiliar role for which they were not established. Most importantly it could negatively alter their relationship with schools and authorities.

The preamble to the consultation document clearly acknowledges the very positive response that has been made to continuous improvement and inspection processes. It is difficult therefore to see why this measure is necessary.

2. The proposals limit use of the new Ministerial powers to circumstances where HMIE considers them to be necessary. Should the powers be limited in this way ?

The proposed new Ministerial powers are held to be unnecessary. It is the contention of this Authority that there is already a wide remedy available in the legislation and therefore this question does not arise.

3. Do you agree that the scope of the education authority proposals should allow action after HMIE inspections of both schools and education authorities ?

No.

The proposal creates two fundamental difficulties. It is education authorities that manage schools, not HMIE. The intervention of HMIE in the way envisaged by the proposals in effect puts them in a position of managing the service. In doing so it assumes that HMIE judgements, which presently deserve and earn a respect earn a new status. Given that school inspections may be conducted with very limited exposure to HMIE personnel, their procedures would require to be much more robust than those designed for present purposes. They would certainly have to take much more account of the organizational context of

schools, authorities and the national government itself – particularly in the areas of budget, resources and accommodation.

The second difficulty arises from finances. If local authorities have to manage the whole service, they cannot divert resources to particular establishments merely because they have been inspected as part of a national sample. Such pressure will bring clear distortions in the system of resource distribution which will not be to the advantage of global service improvement. Indeed it is almost mutually exclusive from the associated concepts of genuine strategic management and quality improvement.

- 4. Any enforcement direction would be addressed to the education authority. This means that the authority would be responsible for complying with the direction. Do you agree that this is the best way of securing improvement ?**

If there has to be an enforcement direction, there is no doubt that it should be addressed to the education authority.

- 5. The proposals outline a two-stage process to give education authorities a formal opportunity to explain their position. Do you agree with a two-stage process ?**

If there has to be a process then the type of two-stage framework appears the only practicable way forward. However, it is pointed out that the two stage process outlined in the consultation document is not satisfactory. Since the procedure rests on a referral from HMIE, and that referral is presumably based on a presentation of evidence, then there should be no subsequent referral back to them. Once both HMIE and the authority have submitted their cases, these should be subject to some form of independent scrutiny to assist the Scottish Ministers in reaching a view.

- 6. We consider these proposals in relation to education authorities to be cost neutral. Do you agree ? If not, what financial impact do you think these changes will have for education authorities ? It would be helpful if these could be split between one-off and ongoing costs, plus any evidence you have to explain your conclusions.**

No.

They are clearly not cost neutral. The areas of increased cost will be:

- Increased officer time in responding to HMIE reports at draft 3 stage in assembling counter evidence where necessary.

- Increased costs for authorities and HMIE in negotiating over the Draft 3 report.
- There will obviously be costs involved associated with compiling a response to any preliminary notice. Such costs will inevitably involve reference to lawyers, whether in-house or external

The main financial significance will however not be in terms of absolute costs but in the process of financial reallocation. To overtake HMIE recommendations in relation to buildings, accommodation and resources – which are amongst the most common – outwith agreed capital and revenue programmes could have significant and unquantifiable financial implications. In order for the system to work in a way in which schools and authorities did not feel financially and politically vulnerable, the Scottish Executive give strong consideration to establishing a capital fund to finance these areas of recommendation in HMIE reports.

Grant-aided schools

- 7. Do you agree that grant-aided schools should be covered by the legislation ?**

No comment.

- 8. Do you agree that the procedures for grant-aided schools should be similar to those for education authorities ?**

No comment.

- 9. We consider these proposals in relation to grant-aided schools to be cost neutral. Do you agree ? If not, what financial impact do you think these changes will have ? It would be helpful if these could be split between one-off and ongoing costs, plus any evidence you have to explain your conclusions.**

No comment.

Independent Schools

- 10. In the definition of an independent school, we plan to remove the reference to the minimum number of pupils so that no school escapes scrutiny. Do you believe this is the correct approach ?**

This authority has no objection, in principle, to this part of the proposals. However, we would seek to point out that this may introduce significant difficulties of definition, if “parents who choose to educate at home” are to be excluded from the definition. This is because a significant number of parents

who nominally are educating at home at present, in fact operate under collective arrangements with like minded families. It is not uncommon, for example, for such parents to operate specialist centres to deliver particular subjects to children, or to employ tutors. This problem of legal definition, may, in turn, create logistical difficulties for HMIE. It will not have escaped the Scottish Executive's attention that sometimes parents educating at home have philosophical difficulties in announcing their intentions to the authorities, so the very identification of such centres or collective arrangements (if they are to fall within the definition of a "school") may prove difficult.

- 11. What type of information do you think should be necessary for a person who wishes to operate an independent school to give before the school can be registered ? Do the examples given under Registration of an independent school on page 20 form a useful basis ?**

The types of information listed on page 20 appear to be satisfactory.

- 12. Do you agree with the proposal to remove provisional registration and replace it with a power to set conditions on the operation of the school ?**

Yes.

- 13. Do you agree that Ministers should, in addition to the existing grounds, be able to refuse to register a school if they are not satisfied:**

13.1 that the welfare of pupils will be adequately safeguarded and promoted; or

Yes.

13.2 that efficient and suitable education will be provided ?

Yes.

- 14. Do you agree that the time specified for the managers to take the necessary action outlined in any notice of complaint should be appropriate to the circumstances and therefore potentially shorter than 6 months ?**

Yes.

- 15. Do you agree the Independent Schools Tribunal should be abolished and the route of appeal transferred to the Sheriff Principal ?**

Yes.

- 16. Do you think it is appropriate to look at the individual(s) involved in running the school when considering whether the proprietor is a “proper person”?**

Yes.

- 17. What financial impact, if any, do you think these changes will have ? It would be helpful if these could be split between one-off and ongoing costs, plus any evidence you have to explain your conclusions.**

No comment.