



**REPORT TO: EDUCATION, CHILDREN'S AND LEISURE SERVICES
COMMITTEE 24 NOVEMBER 2021**

SUBJECT: LEGISLATIVE CHANGES AND IMPACT ON EDUCATION

**BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND
ORGANISATIONAL DEVELOPMENT)**

1. REASON FOR REPORT

- 1.1 To provide Committee with an update on Legislative changes, the potential impact on Education so that the Council are prepared for implementation, namely:
- the incorporation of the United Nation Convention on the Rights of the Child (UNCRC);
 - Angela Morgan's Additional Support Needs Review – which will likely lead to amended legislation;
 - the Independent Care Review and implementation of "The Promise" – will lead to amended legislation.
- 1.2 This report is submitted to Committee in terms of Section III (D) (1) of the Council's Scheme of Administration relating to all the functions of the Council as an Education Authority.

2. RECOMMENDATION

- 2.1 **It is recommended that the Committee agree to consider and note both reports and the potential implications for education in Moray which may arise from the recommendations within the reports.**

3. BACKGROUND

- 3.1 The UNCRC was adopted by the United Nations in 1989 and came into full force in the UK in 1992. The convention has 54 Articles which cover all aspects of a child's life and upbringing. In 2019, the Scottish Government intimated their intention to incorporate the UNCRC into Scots Law. The Bill aims to ensure that:
- children's rights are respected and protected in the law and;
 - public authorities are legally required to respect and protect children's rights in all the work that they do.

- 3.2 In September 2019, the Deputy First Minister of Scotland commissioned a review of Additional Support Needs and appointed Angela Morgan as the Independent Chair. The remit for the review made clear that “the principle of presumption of mainstreaming for children and young people was not under review; and the relevant issues would be considered within existing resources”. The review concluded in February 2020 with the report “Support for Learning: All our Children and All their Potential” published in June 2020. The Scottish Government has accepted all recommendations.
- 3.3 In October 2016, the First Minister made a commitment to figure out how Scotland could love its most vulnerable children and give them the childhood they deserve. She commissioned the Independent Care Review.
- 3.4 The Care Review listened very carefully to over 5,500 experiences of those living and working in and around the ‘care system’ to understand what needs to change. In February 2020, the review published, ‘The Promise’. The Promise sets out the changes that require to be made and has cross party support. The expectation is that the recommendations are fully implemented over the next 9 years and legislation change is likely to support delivery. By 2030, the Promise must be kept.

4. THE UNCRC

- 4.1 The UNCRC can be broadly broken down into 3 areas:
- Protection (from harm and exploitation)
 - Participation (an active participant in own lives and society)
 - Provision (survival needs, education, health care, shelter, food and nutrition)
- 4.2 The main purpose of the Bill is to “incorporate” the UNCRC. This means we will have to comply rather than give regard to and report on progress. The Bill does things to make sure that the incorporation works, including:
- public authorities must not act in a way that’s incompatible with the UNCRC;
 - courts will have powers to decide if legislation is compatible with the UNCRC;
 - the Scottish Government can change laws to make sure they are compatible;
 - the Children and Young People’s Commissioner in Scotland will have power to take legal action if children’s rights are breached;
 - the Scottish Government must publish a Children’s Rights Scheme (participation, awareness, budgeting and Child Rights and Well-being Impact Assessment) to guide expectations;
 - the Scottish Government must review and report on how the Scheme is working every year;
 - other public authorities must report progress and compliance every three years.

4.3 Stage one of the bill was completed on 19 January 2021 with stage two on 11 February 2021. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed on 16 March 2021. It was to have received Royal Assent on in mid-April and was due to come into force 6 months after Royal Assent (October 2021).

4.4 The UK government announced on 13 April 2021 that it was referring the legislation to the Supreme Court, on the basis that some aspects of the legislation exceed the Scottish Parliament's devolved powers in some limited respects. The Supreme Court subsequently ruled on 4 October 2021 that certain parts of the Bill fall outwith the competence of the Scottish Parliament. Following the ruling the Deputy First Minister pledged that protections in the bill will go ahead. The Bill will not now become law however the Scottish Government remain committed to the incorporation of the UNCRC to the maximum extent possible as soon as practicable.

4.5 Key articles for education are:

- 28 – Right to an education. This must respect children's dignity;
- 29 – Education must develop every child's personality, talents and abilities to the full;
- 31 – Relax, play and take part in a wide range of cultural and artistic activities.

4.6 Article 4 – "Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention....State Parties shall undertake such measures to the maximum extent of their available resources' – what does this mean for us? We have lots of good practice to build on in Moray including:

- raising awareness of children's rights (Rights Respecting Schools Award, Global Goals etc). UNCRC Train the Trainer events were held in term for all schools with 70% of schools, primary and secondary, represented. Schools have continued to progress with the RRSA. In Primary – Registered – 18%, Bronze – 36%, Silver – 21% and Gold – 10%. School not participating 15%. In secondary all schools are participating with 63% at Bronze and 37% at Silver. Work is progressing across ELC also with engagement started with Education Scotland and officers attending events to support work moving forwards. A few nurseries have charters developed and there is emerging evidence of nursery children being aware of their rights and what this means for them including the right to play;
- schools who through their vision, values, ethos and culture promote children's rights at every opportunity for example this was reported during HMIE inspections of Newmill, Tomintoul and Glenlivet Primaries. This is further evidenced through displays within the school, class/school/playground charters, newsletters and various social media posts;
- involving children and young people in school improvement (Young Leaders of Learning, Pupil Committees, Councils, Ambassadors, Captains, Prefects, etc);

- seeing children and young people as a key stakeholder when driving improvement, providing them with opportunities for meaningful engagement in decisions affecting them and acting on their views;
- professional Learning delivered to all newly qualified teachers in 2020/21 included: GIRFEC, UNCRC and Supporting all learners - developing an awareness of Inclusion, Additional Support and Equality, from Education Scotland and Moray Colleagues;
- engagement with Education Scotland – rolling out training for school leaders and staff. Training event on Rights, Reviews and the Promise was offered across Moray with 81% of schools represented. Further training is being offered this term;
- children being active participants in their learning, making choices and suggestions regarding what and how they learn evident through school standards and quality reports;
- further development of Teams groups to support UNCRC/RRSA leads in delivering the UNCRC and RRSA have been established, allowing staff to share good practice and support one another through various awards and training. Various training materials and resources are also shared in this space;
- schools continuing to implement the 54 UNCRC Articles into school policies and guidance when under review to reflect application and engagement.

4.7 However, even with good practice, the Service recognise there is scope for improvement in a number of areas in some of the Council's schools or ELC settings:

- reducing exclusions (especially where no alternative provision has been made);
- developing a shared understanding of rights and language of rights including recording (Staff and pupils);
- addressing inconsistency in the logging of and acting on allegations of bullying including improving how schools deal with bullying;
- mitigating poverty impacts – cost of the school day e.g. reviewing charges for certain subjects in secondary schools (Home Economics, Technical, Art and Design etc). There is currently some Scottish Government funding for this although the allocation to Moray does not meet costs last year. The Association of Directors of Education Scotland (ADES) are working with the Scottish Government on this. If this extends to all areas of the curriculum including extra-curricular then this is a financial pressure for the Council;
- extending positive behaviour policies across all schools to address any use of sanctions or punitive actions which could be deemed not to respect children's rights (e.g. names on a board, golden time/reward systems/behaviour clouds etc);
- improving children and young people's involvement in meaningful learning conversations, setting next steps and targets;
- removing unhelpful 'controls' over toilet access;
- ensuring proper discretion with dispensing of controlled medicines (member of staff tells x to go and get bloods tested, or visual reminder in classroom which identifies the child as having a medical need);

- enhancing choices available for senior phase young people over the course of the three years either in school or as a collaborative opportunity;
- ASN – Improvements in: (note a number of these have actions in the ASN plan):
 - use of differentiation;
 - planning and recording, ensuring in place and appropriate non-judgemental, constructive staff contributions and language used – LPS, IEP, SCP, Child’s Plan etc;
 - solution focussed needs based local provision;
 - involving the child/young person in decisions that affect them; setting objectives, plans, reviews, transitions, placings. Giving these consideration and recording.

Implications for the Education Service/Moray

- 4.8 The Bill will required the Scottish Government to develop a Children’s Rights Scheme to guide the work. Inevitably case law will in time provide a fuller appreciation of the extent to which UNCRC will impact on public bodies and services that are delivered. A court could require an organisation to change what they are doing, if the court agrees that they are not protecting children’s rights properly.
- 4.9 The General Teaching Council for Scotland (GTCS) standards, last reviewed in August 2021 now reflect the standard and teachers will include this in their professional learning as part of their professional review and development annually and professional update every five years.
- 4.10 The importance of children and young people’s “voice” adds to the growing emphasis on meaningful participation and engagement with children and young people in the development of policy and service delivery. This includes influencing decision making, planning improvement, being included (ASN) – schools and ELC settings need to consider how to take this forward.
- 4.11 One of the Quality Improvement Officers (QIO) Supporting all Learners will take a lead on this work for the Education service, however there will also be work progressed within Education Resources and Communities and a service lead will also be identified to ensure that this is in place. The QIO will lead on any training requirements, ensure information is passed on and that where necessary Children’s Rights and Wellbeing Impact Assessments (CRWIA) are completed. All Officers will require to align central policy documents with UNCRC and this will create additional workload. The current Education Service plan workplans take account of this and where necessary schools and ELC settings will ensure that this is incorporated into the Improvement Plans.
- 4.12 The Bill proposes to place a duty on LAs to prepare and publish reports every three years on what they have done to comply with the legislation. This would replace the existing duty set in the Children and Young People (Scotland) Act 2014.
- 4.13 It is important to recognise that this will have a direct bearing on the whole Council and the Moray Children’s Services partnership. To ensure that the views of children and young people are genuinely considered when taking decisions which affect them, the Council should routinely adopt a child rights-

based approached (CRBA) to the design, development and commissioning of services and approaches as the Service move forward. These approaches will support the service to continue to take an asset-based view of the children and young people.

- 4.14 Many Community Planning Partnerships are looking at becoming UNICEF accredited and as such have joint action plans to take this forward. A paper will be taken to the Moray Community Planning Board to invite them to consider this.

5. THE MORGAN REVIEW

- 5.1 The remit of the review was to consider the implementation of the legislation ie Education (Additional Support for Learning) (Scotland) Act 2004: across ELC centres, primary, secondary and any special schools; the quality of learning and support; the different approaches to planning and assessment; the roles and responsibilities of support staff; and the areas of practice that could be further enhanced through better use of current resources to support practice, staffing or other aspect of provision.
- 5.2 Reference was made to the recommendations of the Morgan review while undertaking the ASN review, which meant that it was possible to incorporate appropriate actions within the improvement plan to take account of the issues raised by Morgan in how local issues were addressed. Some examples of these actions are incorporated below.
- 5.3 As part of the review the voices of children and young people were taken and from this were a number of key messages, including:
- meaningful relationships are essential;
 - technology can be helpful – we need staff to adapt teaching methods to our learning styles;
 - we want to feel safe and have a choice of calm, quiet or sensory areas and choose when we use them;
 - we want all staff to better understand ASN and not underestimate us, we don't want to be defined by our additional support need;
 - we want our peers to understand us and want bullying to be addressed quickly;
 - Primary and secondary schools need to talk to each other and there needs to be more communication between schools;
 - we want to be involved in decision making;
 - Additional Support for Learning (ASfL) needs to be funded adequately;
- 5.4 The overarching recommendation from the Morgan review is that – children and young people must be listened to and involved in all decision making relating to additional support for learning. Co-creation and collaboration with children, young people and their families will support more coherent, inclusive and all-encompassing policy making, which improves implementation, impact and experience. We will need to demonstrate in Moray that we act on what children say. The recommendations of the Morgan report, set out below, were taken into account in the ASN Review and will have an ongoing bearing on the actions in the plan agreed as a result of the review.

- 5.5 The recommendations are in nine broad themes:
- Theme 1 - Vision and visibility (vision and measurement)
 - Theme 2 – Mainstreaming and inclusion
 - Theme 3 – Leadership and strategic planning
 - Theme 4 – Resources
 - Theme 5 – Workforce development and support
 - Theme 6 – Relationships between school and parents
 - Theme 7 – Relationships and behaviour
 - Theme 8 – Understanding rights
 - Theme 9 – Assurance mechanism
- 5.6 Vision – a national vision statement for children and young people who have additional support needs must be developed in partnership with children and young people in order to raise their profile to ensure equity. This includes the need to:
- **Celebrate** the achievements and successes of children and young people with ASN in equivalence to attainment and exam results;
 - **Change the language** used to describe children and young people with additional support needs, and the services that support them. It should move away from describing children and young people as their condition and should not be solely focused on deficits.
- 5.7 A national measurement framework must be developed to ensure that there is **no reduction in aspiration** and ambition for all to achieve to the maximum of their learning potential.
- The National Improvement Framework must be revised to:
- **ensure parity** for additional support for learning;
 - Be rooted in improvement methodology to encourage a **culture of improvement**;
 - To recognise that **qualifications are not relevant learning objectives** for some.
- 5.8 The investment in Pupil Support Assistants must be measured for impact and improvement on children and young people's experiences and achievements. Local authority and school managers must plan a strategy to review the deployment of Pupil Support Assistants, which takes account of recommendations from the current national research. This will be incorporated into considerations as deployment of the resources agreed by the Council on 15 September 2021 is taken forward.
- 5.9 Leadership and strategic planning - There must be clear values-driven leadership, shared communication, support and challenge at all levels of the system to ensure that the experiences and achievements of children and young people with additional support needs are visible and continue to be improved.
- 5.10 In order to drive a holistic approach and support the visibility of children and young people with additional support needs, local authority planning must

incorporate the implications of additional support for learning for all local authority and partner services.

- 5.11 ASN need is growing nationally and locally as is evidenced by the increasing number of referrals for ASN funding. In her review, Angela Morgan stated that 30.9% of a population is not marginal. The evidence is that fulfilling the vision of the Additional Support for Learning legislation through “tweaking” systems and provision around a baseline assumption of educating children who may have support needs, but not “additional” support needs is not workable. We need a different starting point: all our children and all their support needs’. The International Council of Education Advisers (ICEA) back this suggesting a focus on universal design. In Moray this is acknowledged in the developing work on supporting all learners and our presumption towards inclusion.
- 5.12 Teacher Education and Development - Teacher recruitment, selection, education and professional development and learning processes must align with the changed and changing profile of children and young people in Scotland to ensure that:
- all teachers hold and enact professional values of inclusion and inclusive practice;
 - all teachers understand what additional support needs are and their role in adapting learning to take account of additional support needs;
 - all teacher education and development includes nationally specified practice and skills development as a core element;
 - professional learning must include where and how to access specialists’ expertise and support;
 - communication, relationship building and positive mediation skills development are incorporated and embedded into teacher education and development, supported by coaching and mentoring opportunities;
 - parity of career progression, pathway structures and opportunities for specialist teachers of Additional Support for Learning.
- 5.13 Specific additional provision has been made for professional learning and development and resources have been agreed to support this. The outcomes of the Morgan report will be incorporated into this work.
- 5.14 Pupil Support Assistants (PSAs) - a review of the roles and remit of Pupil Support Assistants must be undertaken. This must include the development of clear specifications for how classroom teacher and pupil support assistant roles interact and complement each other. It must also consider standards of practice, learning pathways, career progression routes and remuneration. Evidence from Education Endowment Foundation is a key consideration/driver. A review of the role and deployment of PSAs is planned as part of the ASN action plan. The role of Pupil Support Worker has also recently been introduced to recognise the skills and training required for this specialist area of work.
- 5.15 Relationships between schools and parents – schools and local authorities must work in partnership with parents and carers to develop, and deliver, ways of working together that support and promote positive relationships,

communication and cooperation. This must include clear pathways on transitions for children and young people with additional support needs, in the context of learning for life, allowing parents, carers, children, young people and professionals to be informed and supported at key transition points. Parents and carers must be involved as equal partners in the development of key guidance, to contribute their knowledge and lived experience. Further investment is needed to strengthen support services for families; allowing these services, and the support that they provide, to be embedded. The benefits of the use of mediation must be widely promoted at a national, regional and local level and consideration should be given to how mediation can be developed through professional learning, to support the workforce.

5.16 Relationships and CSPs - The planned review of Coordinated Support Plans (CSPs) must consider:

- planning mechanisms within a whole life perspective for children and young people with lifelong conditions, including transitions between and beyond education settings;
- clarifying the interaction between CSPs, child's plan and GIRFEC;
- the relationship between education and partners in health, social work and other agencies to identify where re-alignment is needed in the preparation and delivery of support; and
- where improvements are needed in the availability and accessibility of information and guidance about planning, and its processes, for all parents, carers, children and young people.

5.17 Assurance mechanisms - Following this Review, there must be a mechanism put in place to allow progress against these recommendations to be reported and scrutinised. A progress report should be produced for Scottish Ministers and COSLA one year after the publication of this report and its recommendations. Local authorities must take account of the findings of this report to review and align their quality assurance processes. This must drive improvements in processes, practice and outcomes at all levels in the system.

5.18 Scrutiny - Education Scotland must take account of the findings of this report and take action to ensure that their scrutiny frameworks, and inspection activities, are in line with it. Education Scotland must use the findings of this Review, and the conditions identified for good practice, to support and develop improvement in local authorities, regional improvement collaboratives and schools.

Implications for the Education Service/Moray

5.19 Officers, schools and ELC settings will need to ensure that the achievements of children and young people with ASN are celebrated and that these are wider than qualifications. There needs to be an understanding when scrutinising examination results, as an inclusive authority, that for an increasing number of young people they will not feature on tariff score tables as this is not an appropriate measure of success for them.

5.20 The current implementation of the actions arising from the ASN Review will continue to take account of all recommendations of the review including a strategy to measure the impact of PSA resource as well as ensuring that

officers consistently draw on research to provide support, advice and training for school and ELC staff. ASN should be at the heart of improvement planning at ELC/School and authority level in all aspects of our strategic planning processes and we need to ensure we are confident that this is the case.

- 5.21 Within the Morgan review it stated that “Children and young people with additional support needs must be proactively and fully considered in policy making and appropriate cross-Government links made at the earliest stage.
- 5.22 Children and young people, parents and carers must be partners in the development of key policies and guidance across the system.” As we consider the ASN review and the wider Getting it Right for Every Child (GIRFEC) agenda there are plans to ensure that there is wide involvement of stakeholders as work progresses on the ASN action plan to ensure their views and experiences are captured and have influence.
- 5.23 As we progress the local review of ASN in line with the Morgan Review we will consider our local recruitment processes, induction and training on offer and review and develop this in line with expectation with a clear plan in place as part of the wider professional development strategy and framework for all staff across schools, ELC centres and centrally. Central officers will need to ensure that all aspects of career development and progression are taken into consideration. There are already plans to include the role of PSA in this work.
- 5.24 The review of our Parental Engagement Strategy including the statutory parental engagement needs to consider any implications of the review on this work. One of the vacant QIO posts will lead this work in future.
- 5.25 As part of the review of ASN services CSP guidance will be reviewed to ensure that expectations within the Morag Review are taken into account and planned for.
- 5.26 The ASN review takes account of the need for Quality Assurance processes and will include a programme of visits and other ways to ensure a clear ASN focus for quality improvement activity. In addition, Moray needs to be prepared for any scrutiny activity around ASN and Education Resources & Communities and Education officers will work together to support self-evaluation and quality improvement approaches across schools and ELC settings to be ready for this change in approach.

6. THE INDEPENDENT CARE REVIEW

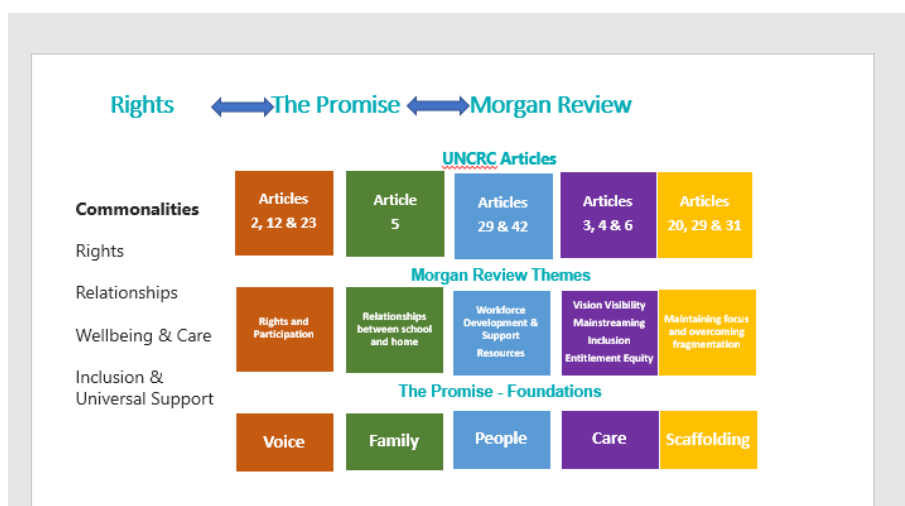
- 6.1 Work to #KeepThePromise between 2021 and 2030 will be shaped by a series of three plans, each lasting three years and outlining the priorities and action across that period. The first is Plan 21-24.
- 6.2 The Promise is built on five foundations: Voice, Family, Care, People and Scaffolding. Our Children’s Services team have briefed members on this and Plan 21-24.
- 6.3 Care experienced children and young people (CECYP), like all children, have a right to education. They will receive all they need to thrive at school. There

will be no barriers to their engagement with education and schools will know and cherish their care experienced pupils.

- 6.4 A key area of note is around the language of care which is used by those working with families so that they are not stigmatised. For example we use the term 'vulnerable' family however these are families who have been under supported, thus the system has made them vulnerable. Also the term 'families' includes all ie families of origin, kinship families, foster families and adoptive families.

Implications for the Education Service/Moray

- 6.5 Education staff need to consider how best to support CECYP including working with Children's Services officers to plan the use of the CEYP grant provided to the Council.
- 6.6 Officers will need to review policies including attendance and attainment so that there is robust tracking in place for CECYP so that support can be identified early and given where necessary. Schools need to consider use of PEF monies to include plans for CECYP. Schools and wider employability teams need to ensure that CEYP go on to genuine positive destinations, including further education and employment.
- 6.7 Schools need to ensure that CEYP are able to actively participate in all subject and extra curricular activities. School improvement plans will value and recognise the need for care experienced pupils to receive sufficient supports along with other identified children and young people.
- 6.8 The Exclusion policy has been reviewed to take account of the Promise however schools, central support teams and other agencies need to work together to ensue that formal and informal exclusion of CEYP ends.
- 6.9 Professional development needs to include staff being trained in trauma informed practice so that they are able to respond to behaviour appropriately.
- 6.10 Physical restraint policies need to be updated, reviewed and with appropriate training (provided by the Social Work Training Team) so that all children and young people, including those care experienced, are only restrained to keep them safe.
- 6.11 Research indicates that there will be a significant increase in the number of children identified as vulnerable as we recover from the pandemic and therefore the local system will experience increased demand. We need to try to get ahead of this challenge now so that we are well placed to respond. This includes an increase in the number of families in poverty and the Moray Children's Services Plan identifies key priorities to move this work forwards.
- 6.12 To summarise the diagram below demonstrates the commonalities which underpin rights, promises and reviews. The columns show how interconnected the three themes are and how they naturally flow from the UNCRC articles.



7. SUMMARY OF IMPLICATIONS

(a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

This report was informed by the priorities within the Corporate Plan and 10 Year Plan and in particular to Our People, Our Place and Our Future and A Growing and Diverse Economy and Building a better future for our children and young people in Moray.

(b) **Policy and Legal**

All of the reports/reviews highlighted have legal implications for the Council and we need to ensure that there

(c) **Financial implications**

Any financial implications related to training will be met from existing budgets.. However Committee should consider the implications of legislative changes around charges for curricular activity beyond core curriculum is imposed as this is a financial risk to the Council.

(d) **Risk Implications**

UNRC – if we do not embed and embrace children’s rights in our work we will face increasing challenge from young people and also parents and carers which could result in additional tribunals and reputational damage.

Morgan Review – if we do not implement the recommendations across Moray, we will face legislative challenge in the form of ASN tribunals.

The Promise – failure to keep the promise

(e) **Staffing Implications**

There are no staffing implications arising directly from this report, however taking forward this work will have an impact on officer workload and ability to prioritise the increasing number of action plans and local reviews.

(f) **Property**

There are no property issues arising from this report.

(g) Equalities/Socio Economic Impact

None arising directly from this report.

(h) Consultations

The Depute Chief Executive (Education, Communities and Organisational Development), the Head of Education Resources and Communities, Quality Improvement Managers, Quality Improvement Officers, Head Teachers, Early Years Service Managers, Senior HR Advisor, Paul Connor, Principal Accountant, LNCT Joint Secretaries, the Equal Opportunities Officer and Tracey Sutherland, Committee Services Officer, have been consulted on this report and agree with the sections of the report relating to their areas of responsibility.

8. CONCLUSION

8.1 Committee is asked to consider the three documents/policies and the legislative impact on the Council and work across Education at this time.

Author of Report:	Vivienne Cross, Head of Education (Chief Education Officer)
Background Papers:	Scottish Government - UNCRC policy UNICEF UNCRC https://webarchive.nrscotland.gov.uk/20210425012928/www.gov.scot/groups/additional-support-for-learning-review https://thepromise.scot/
Ref:	SPMAN-1315769894-178