



Assessing our children's educational needs The Way Forward?

SCOTTISH EXECUTIVE RESPONSE TO THE CONSULTATION

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Foreword

In May 2001 we launched the consultation on assessment and recording for children with special educational needs in Scotland. This was in response to growing concerns about the current assessment processes. The consultation aimed to look at how best to move on from the current recording process in order to create a system which provides the very best education for the individual needs of every child.

I am grateful to all those who took the time to respond to the consultation. We received 148 responses in total from a broad range of consultees: parents, schools, education authorities, psychological services, social work departments, Health Boards and NHS Trusts, the Parliament's Education Committee, national associations/trade unions, interest groups, children and academics. These responses expressed a wide range of views on the best way forward.

Reform of assessment and recording is a complex issue and further work now needs to be done to ensure the best possible solution. Our aim is clear. We wish to see a fully inclusive education system, where each child gets the best possible education. Legal documents, such as the Record of Needs, should not always be necessary to ensure that children receive the education they need and deserve. It is clear, however, that legal safeguards are still necessary for children with complex needs, who require additional support. Parents and children themselves must feel confident that the system is there to help and that education, health, social work and other professionals are working together effectively. Their views must be taken into account especially when they have concerns. They must have rights to ensure that the support provided is effective and appropriate.

It is important to emphasise that there is a great deal of very good work going on right across Scotland. It is vital to encourage this to develop and spread. A statutory framework, on its own, is not enough. Instead we must all work together to make certain that children and their parents can expect the same high standards wherever they live.

A handwritten signature in black ink that reads "Cathy Jamieson". The signature is written in a cursive style with a long horizontal line at the end.

Cathy Jamieson, MSP
Minister for Education and Young People

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Introduction

This document summarises the consultation responses received by the Scottish Executive and outlines our proposals for change.

Many of the proposals are not new; instead they aim to clarify and underpin what is expected of education authorities and other professionals involved in assessment and planning. We expect to bring in a number of these changes using legislation and plan to introduce a Bill in the Scottish Parliament when a suitable opportunity becomes available. The Bill would be drafted so as to ensure that certain standards are reached and maintained, that rights are underpinned and that all children's needs are met. However, the processes should be flexible enough to provide for the many variations in children's circumstances and needs. Revised guidance would also be issued to complement any changes made in legislation.

Some of the proposals would entail significant changes to current arrangements. Therefore, they need further consideration and we propose holding some consultation meetings and focus groups with both service providers and users in 2002 to develop some of the specific proposals further. Clearly it will take some time to get these details right. Any draft Bill would then undergo a full public consultation to give everyone the opportunity to comment. In the consultation on a draft Bill, the Scottish Executive will wish to consult representatives from all equality groups, as well as children with additional support needs, parents and other interested parties, to ensure that full account is taken of the impact of the proposals on them.

Any changes made will aim to complement the improvements already being carried out by local authorities and other agencies. They will take into account the National Priorities in Education and section 2 of the Standards in Scotland's Schools etc. Act 2000, which requires education authorities to secure that education is directed to the development of the personality, talents and mental and physical abilities of the child to their fullest potential.

Changes will fit in well with work being undertaken to implement the recent Action Plan for Better Integrated Children's Services, 'For Scotland's Children', and the presumption in favour of mainstreaming of children with special educational needs (with certain specified exceptions) in section 15 of the Standards in Scotland's Schools etc. Act. An improved assessment and recording process will also help to support and complement the duties in the Special Educational Needs and Disability Act 2001 and the forthcoming Education (Disability Strategies & Pupils' Records) Bill, which aim to ensure that pupils with disabilities are protected from discrimination and have full access to education.

Summary of Responses to the Consultation

Legislative Principles

Question 1 - Is there still a need for separate legislation to ensure the provision of additional support when required? If not, what would need to be done to ensure that children's individual educational needs are given appropriate consideration?

The great majority of respondents, especially parents and interest groups, felt that there is still a need for separate legislation to set out the framework for ensuring that children with special educational needs are provided for. Most felt that guidance would not be enough to ensure children's entitlement to the most appropriate provision. However, some educational psychologists and education authorities felt that existing legislation, mainly the Children (Scotland) Act 1995 and the Standards in Scotland's Schools etc. Act 2000, was sufficient to ensure that all children's educational needs were met. They felt that having separate legislation for children with special educational needs runs counter to the current policy of inclusion as it emphasises that these children are different.

Question 2 - What functions/strengths of the Record of Needs should be retained and built on?

The most common strength of the Record cited by respondents was the multi-agency and parental involvement in assessments and reviews. The only respondents who said they were not keen on having different professionals brought together to review a child's progress were the children themselves. They felt daunted by having large numbers of people in meetings about them and they usually were not told whom the professionals were and why they were there.

Other strengths which a number of consultees felt should be kept in place were: that the Record empowers parents and ensures that they are entitled to be consulted, that the Record is a legal document and its contents can be appealed against (and therefore is seen as a means of securing resources) and ensures that the child is assessed in detail by experts at regular intervals.

Question 3 - What weaknesses and concerns should be addressed?

There were numerous complaints about the Record of Needs. Although different types of respondent had different concerns, many concerns were shared by a broad range of consultees. The most common concern was that the Record is too inflexible, bureaucratic and cumbersome to open and review. Linked to this, many complained that the whole setting up and reviewing process was slow and that the associated paperwork places too many demands on professionals' time.

The other most common complaints were that:

- information contained in the Record is often vague and unhelpful and focuses too much on children's deficiencies and weaknesses rather than proposing provision;
- there is a lack of clarity over which children should have a Record and, therefore, there is inconsistency among authorities over which children get Records;
- the process encourages an adversarial relationship between parents and authorities;
- the Record is anti-inclusive by focussing too much attention on a few children, rather than everyone – instead all children should have a Personal Learning Plan or similar document, which would be added to if more detailed planning was needed;
- communication between agencies is not joined-up enough and that there are too many different plans for children (Records, IEPs, Personal Learning Plans, health plans, looked after children's plans, etc.) and too much duplication of assessment;
- it is only articulate, middle class parents who understand their rights and can push authorities to open a Record and secure resources for their child;

- educational psychologists have too much power and influence in the process;
- meetings are often conducted away from the school and do not involve enough the staff who know the child best and work with them on a daily basis (i.e. the child's teachers/auxiliaries, etc.);
- authorities often do not have the funds to provide the resources which the Record identifies as being required.

Definition/Criteria

Question 4 - Should the concept of special educational needs be re-defined and, if so, how?

The majority of respondents felt that the concept of special educational needs should be redefined. Most thought that the definition should be broader and should encompass children with behaviour problems or family difficulties and pupils whose first language is not English. The terms 'additional support needs', 'additional support requirements' or 'support for learning' were generally preferred over the term 'special educational needs', as many felt that this term singled these children out as different and had a stigma attached to it. Several respondents felt we should not talk about 'needs' at all; instead of emphasising difference and children's deficiencies, we should encourage schools to adapt and to make effective provision for diversity.

However, some expressed concern that a broadened definition of special educational needs would give new rights to those not currently considered to have these needs. Unless a lot of extra resources were provided, existing resources might be taken away from those with the greatest needs to provide for others.

Question 5 - Should the criteria for opening a Record of Needs be changed to focus more on the provision being made by the school and, if so, how?

Just over 50% of those who responded to this question felt that there should be more focus on provision being made by the school. However, this 50% was split. Those who favoured a more school-based recording process, with staff better trained to identify and teach children with special educational needs often felt that if a child was being well enough provided for by their particular school, they might not need a Record of Needs, whereas in a different school they might need one. Those who wanted to end the legal recording process altogether wanted to move to an entitlement model, which would focus on all pupils, not just the few. The entitlement model would probably be based around a staged intervention system where children would be entitled to further levels of provision at each stage. The earlier stages would be managed entirely within the school, without needing intervention from the education authority.

However, nearly 50% of respondents felt that there should not be a focus on the provision being made by the school. Some said that recording should focus primarily on the needs of the individual child, but that consideration of the school's provision and management should also be taken into account. Others felt that there should be no more focus on the school's provision because this gave rise to the threat of children needing to fit into/put up with what the school could provide. There would also be difficulties if the child then moved to a different school. Many were concerned that teachers might not be well enough trained to identify that a child had special educational needs, and the school might not have the staff or resources to provide the necessary support.

Pre-school

Question 6 - Are there aspects of early identification and assessment of pre-school children with special educational needs which should be underpinned by legislation? If so, what should the legislation cover?

All those who responded to this question agreed that early intervention was very important. However, less than 50% stated that early identification and assessment should be underpinned by further legislation. The majority of respondents felt that there should be steps to ensure that assessment is initiated at the earliest possible stage. However, a few organisations felt that, although assessment and planning should be provided, Records of Need were of little use to pre-school children whose needs are constantly changing.

A number of respondents also stated that pre-school joint assessment teams should be promoted further and that there should be key workers at community level who liaise with families to ensure early identification and support. Therefore, respondents supported closer links between health visitors, education authorities and social work departments to ensure that the education authority was alerted to any child who may have special educational needs.

Staged Assessment

Question 7 - Are there any benefits to providing a statutory underpinning to aspects of the EPSEN staged approach to assessment? If so, which aspects and what rights should parents and children have?

The great majority of consultees were in favour of having some form of staged intervention in place. However, less than half were in favour of a statutory underpinning of the EPSEN approach. Many felt that EPSEN needed to be updated as it lacks flexibility and implies that a Record should be the end goal of the assessment process. Many felt that a new model of staged intervention and assessment should be

put in place and this should be backed up by guidance, rather than legislation. Some suggested that staged intervention should be closely linked to Personal Learning Plans and Individualised Educational Programmes, so that the Record would not be needed.

Transition points/future needs

Question 8 - What arrangements should there be for review in the case of children with significant special educational needs? Should there be a statutory requirement to have these needs reviewed at key transition points through a Record of Needs process, or other system?

Nearly all respondents felt that there should be regular reviews for children with significant educational needs, either at least a formal review at transition points, if not every year. Some felt that the Record, IEP or other planning documents should be 'live' documents, under constant review. However, less than half of respondents stated that reviews at key transition points should be a statutory requirement. Others felt that guidance should state that children's Records should be reviewed at certain points, but that these should not be set in stone as review times should depend on the child's circumstances.

Question 9 - Should there continue to be a statutory underpinning to the Future Needs Assessment? If so, should this be available to pupils with "additional support needs"?

A majority of those who replied to this question felt that there should still be statutory underpinning to the Future Needs Assessment (FNA). Even a few of those who felt that the Record of Needs should no longer be used saw the benefit of keeping the FNA. Nearly half stated that all children with additional support needs, who might have difficulties in the transition from school, should have the opportunity to have a FNA. Very few stated that the FNA should not be available to those without Records.

Many also supported the recommendations of the Beattie Committee in relation to key workers being allocated to provide support and advice to young people who may need additional support after they leave school. Agencies such as Careers Scotland, colleges and other support services should be involved in the Future Needs Assessment.

Monitoring Progress

Question 10 - What improvements could be made to ensuring that children's needs and progress are monitored and services planned?

The majority of respondents to this question felt that there should be better joined up working and more integrated service planning between education, health, social work and other professionals involved with children with special educational needs. They supported the idea of having their various plans in a common format, so children might have a core plan (such as a Personal Learning Plan), which would have different plans added to it. Better co-ordination of children's services should therefore avoid duplication of information.

Many said that it should be ensured that Records, IEPs and PLPs are reviewed regularly to improve planning for individuals. Many also wanted IEPs to have a statutory underpinning as with Records. However, most felt the content of IEPs should not be part of the legal framework as this would limit their flexibility.

Information and Advice

Question 11 - What support should be offered to parents and young persons in discussions on special educational needs and which aspects, if any, should be underpinned by statute? Are there aspects of equality which need to be addressed in terms of any groups or communities in Scotland?

Nearly all respondents agreed that many parents, children and young people did not receive enough information or support from professionals, especially from the education authority. Many said that authorities should make better effort to involve parents more in the process and should respect their views. Many others felt that, although authorities provided information, it should be more readily accessible and written in language that was easy to understand. Some felt that authorities should be under a duty in legislation to provide all relevant information to parents regarding their rights, provision available, support groups which could help them, etc. More importantly, the authority must ensure that parents and young people had received and understood this information.

Linked to these points, many respondents said that information for parents should be available in languages other than English and in alternative formats, and interpreters or signers should be available in meetings for parents or children for whom English is not their first language or for those who are hearing impaired.

Several respondents said that the use of the Named Person as an advocate to support parents should be further encouraged, but most felt that only Named Persons with knowledge and experience of special educational needs should be used. Some agreed that parents should have access to a Named Person without necessarily having to have their child being considered for a Record of Needs. Others felt that, if parents did not find a Named Person themselves, the education authority should provide them with a list of suitable Named Persons they could use and that the authority should be under a duty to inform parents about Named Persons as many were not aware that they could have one.

A number of respondents also felt that parents should be given one contact person in an authority whom they could go to for all the information they needed about their child, rather than having to go to lots of different professionals. This contact person would co-ordinate the child's meetings and the administration of the Record if the child has one.

Appeals

Question 12 - What statutory rights of appeal should parents have in relation to their child's special educational needs?

The great majority of respondents to this question felt that parents should at least be able to appeal against the provision the education authority proposed (Part V of the Record). Many felt that parents should have more rights, but they did not necessarily specify what these rights would be. Some also felt that children should be able to appeal against their Records, especially in cases where they might not agree with their parents over provision or which school they should attend.

Question 13 - What arrangements should there be for how appeals are handled and decisions reached?

Many felt that if the Record of Needs ceased to be available with the move towards an entitlement model then appeals would no longer be necessary as there would be better, more flexible parent-authority relations and mediation services would be in place.

However, of those who agreed that an appeals system would be necessary, very few wanted to keep the existing system. The majority felt that an independent SEN Tribunal should be set up, probably similar to the Tribunal which operates in England and Wales. Some instead would prefer a local appeals system of either school-based appeals, local authority tribunals (along the lines of Education Appeal Committees) or independent local appeals tribunals.

Question 14 - How can disagreement between parents and education authorities best be resolved?

Nearly all those answering this question agreed that mediation should be available to parents and education authorities to try to resolve differences before resorting to an appeal. Many thought that this should be independent mediation, along the lines of the Enquire pilot. Some also said that this mediation should be compulsory and that parents should not be able to appeal without having tried mediation first. The time within which parents have to lodge an appeal would have to be extended to allow time for mediation.

Others felt that if authorities were more ready to listen to parents and work in partnership with them, then disputes would be resolved much more easily.

Timescales

Question 15 - Should more precise timescales for the assessment and recording process be introduced for parents and authorities?

A significant majority of respondents felt that there should be more precise timescales and deadlines for the assessment and recording process. Some said that these should be underpinned by legislation as it was not fair that parents had only a limited time to respond, but authorities could allow the process to drag on for ages. Others felt that there should normally be precise timescales, but that legislation or guidance should allow for more time consuming, complex cases.

However, some argued that removing the Record will remove the rigid, cumbersome formalities and that this would reduce waiting times in the great majority of cases.

Children's Views

Question 16 - What rights should children have in terms of assessment of their individual needs and how these are met?

Almost all respondents felt that children should be able to participate in meetings about them if they wish to and that their views should be sought and considered from an early stage. If they do not wish to participate in meetings, they should still have the opportunity to discuss their progress and any difficulties they are facing.

Quite a few respondents said that children should not just be allowed to participate in meetings; they should also be given support to enable them to do so. If children need an interpreter or signer, then one should be provided for them; and a teacher or other key worker should be there to explain the process to them and to speak on their behalf if they do not wish to go to the meeting themselves.

Although most children who were consulted at meetings organised by Children in Scotland and Enable had a Record, few (less than 25%) were aware of this. Of those who went to meetings, none seemed to know who the professionals at the meetings (other than their teachers) were. Most said they found the meetings boring and felt too intimidated to speak or, if they did, felt that the adults there were not really listening to what they said. Meanwhile, those who did not want to go to meetings were normally not consulted further or asked if they wanted to attend future meetings.

Some had a key worker (normally a teacher) who they could speak to about assessments and any problems they were experiencing. Those who did not thought that they would like one.

Sharing Information

Question 17 - How can sharing information be made easier for those professionally involved with the child?

The majority of respondents to this question felt that class/learning support teachers/other professionals involved with a child should see the Record of Needs, although some felt that parents or children should be asked at the start of the process if information could be shared with relevant professionals.

A few respondents suggested that an inter-agency database, with restricted access, should be set up to enable professionals to see the relevant information and to keep it up to date. Details of all the relevant assessments and others plans (IEPs, PLPs, etc.) could also be included. Ideally all children with special educational needs would have their details on the database and details could easily be passed on if the child moved to another area. A number of respondents also felt that details of psychological, health and any other assessments should be attached to hard copies of the Record so that other professionals could use them to help them make informed decisions.

Good Practice

Question 18 - Is there a case for Scotland to have a statutory Code of Practice? If so, how would it improve provision for special educational needs?

Opinion was split fairly equally amongst those who answered this question, with just over 50% (55 out of 108) saying they were in favour of a Code of Practice. Parents and voluntary organisations felt that a Code of Practice would ensure that authorities maintained certain standards so that there was consistency of approach and provision between local authorities.

Those against having a statutory Code of Practice felt that the English Code of Practice was bureaucratic and unsuccessful in ensuring consistency of standards and, therefore, it would not be wise to attempt to write a Scottish Code. They stressed that the tradition in Scotland was to use guidance and advice about good practice, which were less prescriptive and allowed for the diversity in arrangements between local authorities. A few respondents argued that there should only be a Code if it streamlines practice, rather than adding to bureaucracy and the administrative workload of professionals.

The Way Forward – Outline Proposals

The Assessment and Planning Framework

Scottish Ministers propose a revised framework based around the duty on education authorities under section 2 of the Standards in Scotland's Schools etc. Act 2000 to secure that education is directed to the development of the personality, talents and mental and physical abilities of the child to their fullest potential. Under this duty, education authorities should ensure that children's additional support for learning needs are met.

Most children's learning needs would be identified by schools' and pre-school centres' routine progress monitoring arrangements. However, to meet the duty in the 2000 Act, education authorities will also be required to have a staged intervention process in place for children who require extra support. This process would include children for whom English is an additional language, refugees and asylum seekers, children with social, emotional and behavioural difficulties and Gypsy/Traveller children; and may also include gifted or more able children.

Staged intervention processes should be in place in schools and in pre-school education and also managed within communities by pre-school joint assessment teams to enable agencies to start planning for children before they start nursery school. The staged intervention process should aim to build on and expand information and planning contained within Personal Learning Plans (for those children who have one) and other pupil records, such as progress files and Individualised Educational Programmes (IEPs).

Scottish Ministers expect that any revisions to the EPSEN (Effective Provision for Special Educational Needs) model of staged intervention should be broad enough in the early stages to apply not only to children's educational support needs, but also to other needs caused by problems outwith the school. Such a model would involve a number of alternative pathways to be followed as the solutions became apparent. This might involve bringing in social workers or other non-education professionals at an earlier stage in the intervention process than currently occurs.

Where possible, through the staged intervention process, schools should take on responsibility for identifying and providing for pupils with special educational needs and other additional support needs. Only when the need for further, external assessment is identified should the local authority be brought in. Even then, meetings should, as much as possible, involve staff at the school who work with the child. If possible, assessments and meetings should be carried out at the school in a familiar environment for the child and parents.

Consideration will be given to revising the existing Level of Needs matrix, as set out in the Manual of Good Practice, to show to what extent schools will be expected to make provision for children with additional support needs; and how, beyond this, they would ask the education authority for assistance with the assessment and planning process.

The Record of Needs would be replaced with a Co-ordinated Support Plan, which would be provided for children with complex educational needs, which are such as require continuing review. A Plan should normally only be provided where it is clear that the mainstream school or nursery school which the child attends or is expected to attend cannot provide for them within its existing or easily obtainable resources. This means that the Plan would normally only be opened at the end of the staged intervention process.

The Plan would be a more flexible and responsive document than the Record of Needs, but one which still has legal status. It would become a strategic, long-term addition to children's other planning documents (Personal Learning Plans, IEPs, etc.) and would complement these, rather than being a completely separate, free-standing document. It should be adaptable, according to the child's needs and progress, should be written in plain English and should include as much detail as possible about the provision to be made available for the child to help him or her achieve outcomes as specified in the IEP, rather than focussing primarily on his or her deficiencies and weaknesses. The format of the Plan will be drafted to allow for this.

Psychological and health assessments would not be compulsory when opening a Co-ordinated Support Plan. They should be carried out whenever they are thought to be required or whenever parents request them. There may be instances where health assessments are not necessary, e.g. where a child has learning difficulties but no medical requirements, or where the child exercises his or her right to refuse to be assessed.

Co-ordinated Support Plans should also, where possible, consider not just arrangements for education, but also for play and recreation and other aspects of a child's social development.

Timescales for completing the staged assessment and planning processes will be recommended and should normally be met, although they will allow for flexibility in completing stages according to the complexity of each case.

Schools will be required to draw up an IEP for all children with additional support needs at an appropriate point within the staged intervention process. The Scottish Executive will update its guidance on IEPs to clarify at what stage IEPs should be drawn up.

Education authorities and schools will have a duty to keep under regular review and to revise Plans. There is expected to be a requirement to review all Plans at least at the following points: between pre- and primary school, at the end of primary 3, at the end of primary 6, in the middle of secondary 2 and in either secondary 3 or 4. However, more frequent reviews than these are recommended, depending on the child's circumstances. All parents and children should be able to be involved when the Plan or the child's IEP is reviewed.

Whenever the new Co-ordinated Support Plan is implemented, it would be phased in so that, for children with an existing Record, their Record would be replaced with a Plan when it came to be reviewed. Until that time, existing arrangements for opening and reviewing Records of Needs will continue.

A level of confidentiality should be maintained and care should be taken about divulging information. Nonetheless, as long as the parents or the young person agree at the start of the process, the Plan and other relevant reports should automatically be shown to all those professionals involved with the child, including class and learning support teachers. Having details of a child's needs and extra provision arrangements will assist teachers in supporting and teaching that child.

Co-ordinated Support Plans should contain enough information from other assessments to enable professionals to make informed decisions on the basis of the contents of the Plan. To give a full picture, relevant reports should, where possible, be attached to hard copies of the Plan. The IEP would form part of the Plan to avoid the need for duplication of information already contained in the IEP and to help those drawing up the Plan to decide what outcomes they should be focusing on for the child.

Local authorities, NHS Boards and other agencies involved in helping children with additional support needs should have regard to the points for action recommended in 'For Scotland's Children', the Action Plan for Better Integrated Children's Services.

As recommended by 'For Scotland's Children', local authorities should examine with other agencies ways of improving joined-up working and the transfer of information between agencies. All education authorities should ensure that parents are provided with one named contact person who is available to give them information about all aspects of additional support needs. This contact need not be the educational psychologist and might instead be part of a parent partnership service.

It is intended, as good practice, that authorities and agencies should in future consider having one framework education plan, which incorporates all the similar elements of Personal Learning Plans, IEPs, Co-ordinated Support Plans, Future Needs Assessments, etc. This is expected to be taken forward through the recommendation in

'For Scotland's Children' that the development of a modular information and assessment format for use by all agencies working with children should be commissioned. This would mean that all children have an education plan, but some children would have extra sections added to it (e.g. an IEP section) as necessary.

Local authorities should also consider setting up a database, with restricted access, which enables copies of all Plans and, where possible, associated reports to be available to all relevant agencies (psychologists, education officers, social workers, health professionals, therapists, Careers Scotland, head teachers and other teachers, etc.) and to be updated quickly as necessary. If the child moves to another area, this would allow the information to be passed on quickly and easily to the child's new local authority and teachers. Such a database could potentially include all children's plans, not just those covering education.

Pre-School - Early Identification and Intervention

Local authorities and health services should work together to ensure that pre-school joint assessment teams are extended to all communities, as well as liaising with nursery schools and childcare providers, to enable early identification and assessment of children with special educational or other additional support needs so that adequate provision is in place for them before they start school. Staged intervention processes in pre-school education and for children under three years old need to be better developed and would be similar to those within primary and secondary schools. For children under three years old, the pre-school joint assessment team key worker (normally a health visitor at this early stage) would be the person initiating the staged intervention process for a child where necessary.

The Future Needs Assessment and Post-School

All children who are likely to have significant difficulties in the transition from school (normally those who have reached a certain level in the staged intervention process) should have the opportunity to undergo a multi-agency Future Needs Assessment. However, the Scottish Executive will consider how the Future Needs Assessment can be made more flexible and ensure that it meets the needs of the individual child, in line with the other proposals in this publication.

Those who would be entitled to an assessment will be defined in legislation and this will be considered further in discussions with interested parties. The child or parent may advise, after consultation, that they do not want an assessment; a young person's view here overrides that of their parents if there is disagreement. There should no longer be a requirement, as currently exists under section 13 of the Disabled Persons Act 1986 for a social worker to assess whether the child has a disability in cases where it is evident in advance that they do not.

As recommended by the Beattie Committee, key workers should be available to help young people who may require additional support to make the transition to post-school education, training or employment. Part of the Future Needs Assessment is expected in future to involve discussion about whether the young person should have a key worker and, if so, arranging a referral.

The key worker will act as a point of contact to provide information and support young people in their contacts with other agencies. Pilot inclusiveness projects are now being carried out throughout Scotland, where different models of key worker provision are being tested out. The Scottish Executive has provided £15.1 million to establish key worker support and to improve assessment and tracking of young people.

Supporting Families

Education authorities should already inform parents of children with additional support needs and, where possible, young people and children about:

1. the assessment and planning process;
2. provision available (including independent provision and, where appropriate, arrangements they have in place to secure provision in other local authority areas);
3. their rights of appeal;
4. relevant sources of information (i.e. by providing contact details for helplines (e.g. Enquire) and support groups).

However, the Scottish Executive plans to place a duty on education authorities to ensure that this information is provided. The information should be easily available and might be provided as part of a parent partnership service. Education authorities should ensure that schools are better informed about assessment, planning and provision for children who need additional support and can, therefore, provide information directly to parents in most cases. These changes will be linked to the review of communication with parents (not just those who have children with additional support needs), which will be carried out by the Scottish Executive.

For parents and children whose first language is not English, or who hearing or visually impaired, or for those who have difficulty reading, education authorities should make arrangements to ensure that they can understand the assessment and planning process, provision and support available, and their rights. These arrangements might include provision of information leaflets in languages other than English or in Braille, or it might involve professionals taking extra time, where necessary, to explain processes to parents.

Education authorities must also ensure that such parents and children are provided with any additional resources they need, such as an interpreter or signer, to help them to communicate with professionals in meetings. This will ensure that they can fully participate and be involved in the planning process and in reviews.

The right to be accompanied in meetings should be available to parents whenever a need for assessment is identified by any party – the child need not necessarily be being considered for a Co-ordinated Support Plan. Education authorities must let parents know that they can have a person to accompany them in meetings and act as an advocate, and should offer advice (linked to the duty to inform parents about sources of support) as to where to find a suitable person. This person (currently known as a Named Person) could support parents at any meeting with the school or local authority about provision for their child and should preferably have relevant experience relating to children with additional support needs.

Children's and Young People's Participation

Legislation already requires children's views to be listened to and taken into consideration in matters that relate to them. Schools and authorities should aim to involve children in all meetings about them and should listen to their views throughout the staged intervention and planning processes. Their views should, wherever possible, be included in the Co-ordinated Support Plan.

Education authorities should have in place arrangements to support children. A teacher or other professional should discuss the provision and the planning process with the child and represent his or her views at meetings if they are unable or unwilling to represent themselves and if the child wishes for this. 'For Scotland's Children' recommends that all children should have a 'named individual', who would act as their first point of contact and co-ordinate any assessments within the school. This person could be a teacher within a school or a key worker or health visitor at pre-school level and could potentially perform a support role for the child. In meetings, children should be encouraged, but not

pressured, to speak, and they should be introduced to the professionals at each meeting and told who they are and why they are there.

Whether or not children participate in meetings should not depend upon their age, but on their ability and willingness to participate. For example, if properly explained, many early primary school children would be able to participate in meetings and have their concerns heard and answered. Meanwhile, other older children, e.g. many with autism, would be very uncomfortable communicating their views in a meeting.

As in section 2(4) of the Legal Capacity (Scotland) Act 1991, if a child is capable of understanding the planning process, then, following discussion, they have the right to refuse a health assessment.

Mediation and Appeals

Education authorities and other agencies, such as NHS Boards, etc., should aim to involve parents (as long as parents wish to be involved) in all discussions relating to their child and take their views on board. Scottish Ministers believe that education authorities should establish good working relations with parents, schools and other agencies. Therefore, education authorities will be required to have in place arrangements for mediation, involving independent mediators, to aim to resolve disputes between parents and the authority and/or school regarding a child who has additional support needs. Authorities, especially smaller ones, could group together to provide mediation services. The Scottish Executive is currently considering models of mediation which could be used and further discussions will be needed to ensure that any models proposed are ones which can work well throughout Scotland.

Both parties should, as good practice, attempt to resolve problems through mediation. This will help in resolving many disagreements relatively informally without the need to resort to more formal appeals processes. As a result, parents will be given longer to lodge an appeal in order to allow for mediation to take place first. When a dispute goes to mediation because of the conclusions of an assessment

(psychological or health), the education authority should have regard to any independent assessment submitted by the child's parents.

Both parents and children will have the right to appeal against any part of the Co-ordinated Support Plan, including the provision for the child which is specified and an education authority's decision on whether or not to draw up or discontinue a Plan. It is expected that they will also be able to appeal if an education authority refuses unreasonably a parental request to carry out a formal assessment.

The Scottish Executive expects to establish an expert Tribunal, funded by the Executive but independent in status, to hear appeals on issues related to children with additional support needs (those special educational needs appeals currently dealt with by Education Appeal Committees, Scottish Ministers and the Sheriff Court, as well as additional appeals against provision and refusals to carry out a statutory assessment). Primary legislation will be required in order to set up the Tribunal. Each Tribunal panel would consist of an experienced, legally qualified Chair and two lay people with appropriate knowledge and expertise in additional support needs issues.

The Tribunal would be open, accessible and user-friendly for parents and children. It would also be expected to be efficient and to deal with appeals more quickly than either Scottish Ministers or the Sheriff Court are currently able to. Parents or children could obtain legal representation for hearings if they wish, although this should not be necessary as hearings would be conducted as informally as possible. More often parents would be accompanied by someone with experience relating to children with special educational or additional support needs who could offer support (currently this person is known as a Named Person).

Parents and children whose first language is not English or who are hearing impaired or have other communication difficulties would also be able to have an interpreter, signer or other support. This will therefore make the prospect of lodging an appeal much less daunting for many parents.

Contact Details

If you would like further copies of this document or wish to express your views regarding any of the changes proposed in this document, you can contact the Scottish Executive Education Department at the following address:

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Alternatively copies of this document can be found on the Scottish Executive website at <http://www.scotland.gov.uk> – under publications. It can be made available in different formats and languages on request.

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