



Report of the Consultation on the draft Additional Support for Learning Bill



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Ministerial Foreword

The Education (Additional Support for Learning) (Scotland) Bill has now been introduced to the Scottish Parliament. The Bill aims to modernise and strengthen the system for supporting all children's learning needs now and in the future.

It has been in the process of development for almost three years since the commitment to review the current system for the assessment and recording of children and young people with special educational needs was first given in May 2000. The Bill is a very important piece of legislation because it represents the first look at the whole area of special educational needs since the 1980s and marks the change in culture and attitudes that have taken place in that time.

While the introduction of the concept of 'special educational needs' was a positive move away from the unhelpful labelling of those previously considered to be ineducable, opinions and perceptions, policies and practice have all moved on in ways which the current system fails to account for. We clearly have to move to a more holistic system in education that identifies the educational needs of all Scotland's children whenever they occur. And that system must support those needs and promote a culture that welcomes diversity rather than fears it while ensuring always that we continue to meet the requirements of those with the most complex support needs. We need legislation that is in line with current policies on the development of inclusive education within an inclusive society.

We have responded to the groundswell on the need for change. The Bill represents an opportunity to make a difference and it is important that we get it right. That is why we have consulted widely on what to change and how to change it. That is why we have listened very carefully to the views of a broad range of people, including children and young people, from across Scotland. I am grateful to everyone who took time to share their opinions and to participate in the many consultation events and meetings that were organised. The draft Bill has been changed in significant ways to respond to the issues raised.

This document summarises the responses to the consultation on the draft Bill published in January 2003, and indicates some key changes to the Bill as a result. The paper also gives further insights into the contents of a Co-ordinated Support Plan.

As the Bill progresses through Parliament it will be subject to very close scrutiny. I expect to work with the Education Committee and all other interested parties in taking forward the Bill, and I will continue to listen to ideas for improving it further as it makes its way through Parliament.

Peter Peacock

Introduction

1. This document provides a summary of the responses to the consultation on the draft Education (Additional Support for Learning) (Scotland) Bill. It sets out the changes that have been made to the draft Bill as a result of the consultation, gives an indication of what a Co-ordinated Support Plan might contain and, finally, an outline of what happens next.
2. The Education (Additional Support for Learning) Bill was introduced to the Scottish Parliament in October. The Bill is accompanied by a Policy Memorandum and Explanatory Notes (including a Financial Memorandum). The **Policy Memorandum** explains the policy objectives of the Bill, the options considered, the consultation process and the effect of the Bill on equal opportunities, human rights, island communities, local government and sustainable development. The **Explanatory Notes** provide a section-by-section description of what the Bill does, to help the reader understand the provisions of the Bill. The **Financial Memorandum** sets out the estimated costs which will fall to the Scottish Executive, to local authorities and to other organisations and individuals as a result of the proposals in the Bill.
3. We **recommend** that the Bill is read along with these documents to give a fuller picture of what is being proposed and why. Both the Bill and its accompanying documents should be obtained from the Scottish Parliament website at <http://www.scottish.parliament.uk/bills/index.htm>.

Background

4. This Bill is the result of the commitment given by Scottish Ministers over three years ago to review the existing system for assessing and recording children and young people with special educational needs. The current system is now over twenty years old and no longer reflects the many changes that have taken place not just in policies and legislation but also in practice, attitudes and expectations. The Bill aims to build on and complement developments in Scotland's educational system and the wider agenda to integrate and improve children's services. It should be viewed in the context of the much bigger framework that is being developed to support the education of all children and young people in Scotland. Central to the construction of this framework are the five **National Priorities in Education**, essentially the building blocks for improving school education in Scotland. They address: achievement and attainment; framework for learning; inclusion and equality; values and citizenship; and learning for life.
5. The process of consulting on the proposals for change began in May 2001 with the publication of **Assessing our children's educational needs: The Way**

Forward? (see <http://www.scotland.gov.uk/library3/education/aocen-00.asp>). This sets out the reasons for reviewing the current system, drawing on the views expressed by parents, professionals, young people and the recommendations of the Parliament's Education, Culture and Sport Committee. It also posed various questions for consideration around key areas such as Staged Assessment, Appeals, and Monitoring Progress. The consultation aimed to look at how best to move on from the current system and to establish what changes were required to the current legislation.

6. We received 148 responses from a broad range of consultees. The summary of the responses and our proposals for change were published in February 2002 in **Assessing our children's educational needs: The Way Forward? – The Scottish Executive Response to the Consultation** (see <http://www.scotland.gov.uk/consultations/education/acen-00.asp>). In addition to the written consultation, we held three seminar events in Glasgow, Aberdeen and Edinburgh which were attended by over 300 delegates, including parents, professionals and representatives from voluntary organisations. In addition, four focus groups were held with education, health and social work professionals. A wide range of views were expressed about both the strengths and weaknesses of the current system. These are summarised in the document at <http://www.scotland.gov.uk/library5/education/asnseminarkeypoints.pdf>. These views helped to inform the proposals for a new system which in turn helped develop the draft Bill itself.

7. Also in 2002, the Scottish Executive undertook a **National Debate on Education** (see http://www.scotland.gov.uk/education/nd_homepage.htm) with pupils, parents, teachers, employers and others with an interest in the future of school-age education. More than 20,000 people participated directly in the Debate. One of the questions people were asked under the heading Pupils, Parents and the Community, focused on how we can most effectively meet the needs of those requiring additional support and those who do not. Many of the responses to this question echoed those expressed during the consultation on **The Way Forward?**, such as:
 - better involvement of children and parents in discussions and decisions about their education;
 - better communication between school and home;
 - provision of independent advice or a liaison person;
 - more information for parents;
 - better transition arrangements;
 - need for a planned and co-ordinated approach by all the professionals;
 - need for appropriate and relevant recording methods and for multi-agency assessments.

8. As a result of the National Debate, **first steps for action** were identified and these included **improving communication with parents about education practice and their role in the decision making process** and **improving education for children who need additional support for learning in partnership with their parents**. These very much reflect the policy aims behind the Bill. For the Executive's response to the National Debate see **Educating for Excellence**
<http://www.scotland.gov.uk/library5/education/ndser-00.asp>.
9. The development of the Bill has also been informed by the agenda for better integrated children's services set out in the **For Scotland's Children** report, published in October 2001 (see <http://www.scotland.gov.uk/library3/education/fcsr-00.asp>). The report was commissioned by Scottish Ministers from an Action Team of experts who consulted children, parents and professionals. The report recommended the development of a consistent framework for assessing children's needs and sharing relevant information, which could be used across agencies working with children, not just with reference to education, but also health, social care, and so on. The Executive is currently working with local authorities and health boards on developing such an integrated framework.

Consultation on the draft Bill

10. The **draft Education (Additional Support for Learning) (Scotland) Bill** (see <http://www.scotland.gov.uk/consultations/education/deasl-00.asp>) was published for public consultation on 17 January 2003, along with the strategic framework document, **Moving Forward! Additional Support for Learning** (see <http://www.scotland.gov.uk/library5/education/mfas-00.asp>). Over 7000 copies of the draft Bill were distributed for consultation to:
 - all local authorities, Health Boards and Trusts;
 - local authority primary, secondary and special schools;
 - all independent schools;
 - independent special schools and grant-aided schools;
 - Childcare Partnerships and Childcare Development Officers;
 - Parent Teacher Associations;
 - Scottish School Board Association;
 - national voluntary and non-statutory organisations that represent parents and children with special educational needs;
 - other professional and interested bodies.
11. As part of the consultation on the draft Bill, the Executive held 14 seminars throughout February in venues across Scotland. **The purpose of these events was to provide information about the proposals, to facilitate discussion**

with other delegates and officials, and to encourage responses to the draft Bill. The majority of the 1210 attendees found the seminars to be helpful. Many views were expressed. We are grateful to everyone who attended and for being so willing to share their opinions, concerns and suggestions.

12. Smaller focus groups were held with education officers, educational psychologists, health and social work officials, children's organisations and Further Education and Careers Scotland representatives to discuss some of the proposals in greater detail.
13. Children in Scotland were commissioned to carry out consultation with children and young people to get their views on how the proposals will affect them. A total of 105 children and young people contributed either by taking part in consultation sessions run by Children in Scotland or by completing a short questionnaire. There were six groups made up of children and young people with and without disabilities, from Gypsy or Traveller families and those having English as an Additional Language. A report of the views and experiences of the children and young people was produced and has been taken into consideration. Thank you to Children in Scotland for organising the consultation and to all the children and young people for taking part so positively and constructively.
14. The consultation on the draft Bill ended on 28 March 2003. We received 252 written responses from a wide range of people, including parents, voluntary organisations, education authorities, interest groups, and schools. In addition, Peter Peacock, Minister for Education and Young People and Euan Robson, Deputy Minister for Education and Young People, met with small groups of key respondents over the summer, to hear for themselves the different views and aspirations for the Bill. Respondents came from health, social work and education and from various organisations.



CONSULTATION REPORT

Part 1 – Consultation Report

15. The following report **summarises the main issues that were expressed by respondents** to the consultation as a whole. The report is divided into nine key areas:
- Additional Support Needs
 - Assessment and Intervention
 - Parent and Family Involvement and Support
 - Mediation
 - Transition and Future Needs
 - Co-ordinated Support Plans
 - Appeals and Tribunal
 - Placing Requests
 - Transitional Provisions
16. The report aims to give a flavour of the main concerns and recommendations made by all those who responded and to indicate where changes have been made to the draft Bill as a result. **It should be noted that comments in the red text are made by the Scottish Executive and not respondents.** Copies of the actual written responses are available in the Scottish Executive’s library for anyone who is interested in accessing them (contact telephone 0131 244 4565).

Additional Support Needs

“Additional support needs is also better than special needs as some kids who go to mainstream would maybe prefer not to be known as a special needs kid.”
[parent]

“We welcome the inclusion of all children in this process particularly the recognition that particular life or personal circumstances may give rise to barriers for learning.” [NHS Board]

“It has the potential to recognise a much wider group of children and young people who may not necessarily be recognised under current legislation.”
[professional organisation]

“The proposed legislation provides a more comprehensive and supportive framework than the existing legislation.” [national voluntary organisation]

17. The change in terminology from special educational needs (SEN) to additional support needs (ASN) was generally welcomed, as was the duty on education authorities to identify, address and make adequate and efficient provision for all pupils with additional support needs. **Currently education authorities have a duty to identify which children and young people have special educational needs that meet the criteria for a Record of Needs.** The majority of people commented that the new term is more inclusive, less stigmatising and helps avoid negative labelling because it recognises that many children will need additional support at some time or other. It was also seen as positive that account is being taken of the fact that some additional support needs may be transient while others are much longer term.
18. The majority of people welcomed the fact that children who were previously excluded from the special educational needs definition would have their needs recognised and addressed. However, it was suggested that guidance will be needed to clarify the meaning of additional support needs. On the other hand, some voluntary organisations and parents of children with Records of Needs felt that the new definition could dilute the support children with more complex needs currently receive.
19. Some concern was expressed regarding English as an Additional Language being considered as an additional support need. This was felt to be detrimental to bi-lingual children and young people because it gives the impression that bi-lingualism is a condition or impairment rather than something to be celebrated. The point was made that the inclusion of English as an Additional language in the draft Bill indicated that systemic and institutional barriers were being perpetuated. It was suggested that there may be implications regarding the Race Relations Act and, as a result, the Bill should be examined for compliance.
20. **It was never intended that English as an Additional Language should be seen as something not to be valued. English as an Additional Language was given as one of several examples of those who may require additional support such as Gypsy or Traveller children and gifted children but who may not have special educational needs. The intention was to show that the meaning of additional support needs is much wider and more encompassing. Education authorities will have a duty to identify all additional support needs whether that is where a child is not progressing as might be expected or where they are exceeding expectations and need to be stretched.**

Assessment and Intervention

“There is a clear case here for trusting parents and allowing them to choose if their child requires a multi-agency assessment.” [parent]

“Parents already expect ‘formal’ assessments so anything less than that may appear inadequate.” [education authority]

“Plans to draw up a new intervention framework to replace Effective Provision for Special Educational Needs (EPSEN) should ensure assessment and intervention is seen by all as a shared responsibility for education, health and social work.” [voluntary organisation]

21. Many people commented that the move away from the deficit model of assessment to a new system which looks at what the pupil can do rather than what they cannot do was viewed as a positive step. It represents an opportunity to change practices and ways of working for the better. It was also generally welcomed that assessment should be as non-intrusive as possible and that children and young people would not have to undergo formal testing when it was not necessary. It also recognises that there is a lot of good practice regarding assessment and intervention and that this can be built on.
22. However, many felt that there should be a national compulsory framework for assessment and intervention to give coherence and equity across Scotland. Others expressed views that the system should be flexible enough to take account of local circumstances and the work many education authorities have already done in developing local frameworks and joint protocols. The vast majority of respondents called for guidance from the Scottish Executive on what is meant by assessment and to set minimum standards to assist education authorities.

Change to draft Bill as a result

Rather than guidance, a **Code of Practice will be issued** (section 22). The key topics to be included in the Code are outlined in the Bill (section 22(2)). The Code of Practice will be developed in collaboration with service users and providers. It will set minimum standards and will aim to promote more and better joint-planning and partnership, and consistency across Scotland.

23. The children and young people who responded expressed a strong feeling that they should have one person to co-ordinate the assessment process, whether it was to identify additional support needs or the requirement for a Co-ordinated Support Plan.
24. One of the main issues to be raised was the removal of the existing compulsory medical, educational and psychological assessments in the Record of Needs system. While many felt it was a positive move, many others expressed the fear that children will not be assessed properly and, as a result, will not receive the right provision. **It should be remembered though that this applies currently only to those children who have, or are thought to require, a Record of Needs (currently around 2.2% of the school population has a Record of Needs). The draft Bill requires education authorities to identify all children who have additional support needs, including those who require a Co-ordinated Support Plan.**
25. It was generally felt that education authorities only having a power to assist in relation to children under 3 was detrimental because it does not take into account earlier and better screening methods and, therefore, the child's need for multi-agency support.
26. Parents and others welcomed the new duty on education authorities to take account of any relevant information and advice provided, such as independent reports and assessments. They also felt that it was essential for parents to have the right to request assessments otherwise the system will be biased and incomplete.

Change to draft Bill as a result

A new section has been added to the Bill giving **parents the right to request a particular type of assessment**, for example, psychological or medical assessments (section 6). This is in addition to parents being able to request that their child is assessed for additional support needs.

27. Other suggestions included making it a duty to develop joint protocols; that a multi-agency approach to assessment should be the norm; that there should be a duty on parents to co-operate in the process; and that there should be a statutory duty on education authorities to ensure that professional expertise is available and provided.
28. The point was made that there are not enough interpreters or interpreters with experience in additional support needs to allow assessments to be conducted in the appropriate language for the child or young person. It was suggested that this should be addressed as a matter of urgency to ensure that these children and young people are correctly assessed.

Parent and Family Involvement and Support

“If parents, children and young people are to be an integral part of the (every) decision making process then they must be afforded the opportunity by which they are empowered to participate as equal partners.” [parent support organisation]

“If parents believe that information has been withheld from them they quickly lose trust in the education authority’s advice and information and conflict quickly follows.” [voluntary organisation]

“It is essential that the views of children and young people are valued and acted upon in order to ensure that educational support is effective in meeting their needs. Children and young people are experts in what works for them and what does not.” [taken from the Children in Scotland Consultation Response from Children and Young People]

“Education is one of, if not the most important part of young people’s lives.” [young person]

29. Parental involvement was recognised as an important issue by all parties throughout the consultation. Views were expressed that communication and ultimately relationships could be improved through parental involvement and partnerships. The proposals to ensure better involvement of parents and children and young people in the process were viewed as very positive on the whole.
30. There was wide support for a contact person to provide advice and information about the system to all parents of children with additional support needs and for the contact person who will be named on a child’s Co-ordinated Support Plan. There were many suggestions as to who would be best placed to do this. These included: teachers who would know the pupil best, local authority staff with awareness of additional support needs, a key-worker or co-ordinator. A one-stop-shop to provide advice and information on additional support needs was also suggested. There was, however, some concern that the named contact person could end up being someone parents had previously been in conflict with and that education authorities may use the contact person as a buffer rather than as a facilitator. Some respondents felt that having a contact person would remove parents’ rights to have direct contact with the professionals making provision for their children. **However, parents do not have formal statutory rights of contact with all agencies within the 1980 Act. Current good practice encourages good communication and the proposals for a contact person do nothing to erode this. Parents would still be able to contact the professionals supporting their child.**

31. There was also general support for parental and child supporters. This was because, unlike the named person in the Record of Needs, the person chosen as a parental supporter can be different for each meeting. This allows parents to select the person they feel most appropriate to attend the meeting with them. However, many parents and others felt that the ability to choose a supporter should be enshrined in the legislation. The supporter was also viewed as particularly welcome for parents who may be less articulate or confident or who have additional support needs themselves. It was also suggested that the parental supporter may be able to act as an advocate in these situations or where parents felt intimidated in meetings with professionals.
32. The duty to publish information regarding arrangements for identifying and providing for additional support needs was also viewed as a very positive step. Some parents commented that this would make a difference to them while others felt that the duty to publish does not go far enough and that there should also be a duty to disseminate the information. However, a parental concern was that education authorities and schools generally do not like giving information or providing choices and there was a danger that they would only pay lip service to this duty. Changes in attitudes and behaviour are needed as is guidance to ensure consistent procedures across Scotland.
33. Pupil involvement was viewed as positive by the majority of respondents, although some raised concerns over meeting the balance between parental views and those of the pupil, particularly if the two were in conflict. The children and young people who were consulted made it clear that all children and young people should be involved in decisions about, and the planning of, the support they receive to allow them to learn. They agreed with the proposal to publish guidance promoting the involvement of children and young people. There was general agreement that involving pupils in meetings from an early age was essential for increasing their confidence and helping prepare for other meetings in the future when making decisions that are more important. People were also very clear that children and young people should not be forced to participate but that if they did want to then every effort should be made to facilitate this. Children and young people felt it was essential to make sure that meetings are accessible, that they are supported and that their views are taken seriously.
34. Suggestions for better involvement included peer supporters and that advocacy could be provided for pupils to ensure that their views were heard. A further suggestion was made that self-advocacy training schemes for young people should be endorsed as these provide young people with skills and empower them to engage with the process of their own education.

Mediation

“I would give mediation a cautious welcome. I would like to know more about it.” [parent]

“I have concerns about the possibility of a backlog in the tribunal and mediation service, when it is introduced.” [local authority representative]

“Mediation is usually seen as a positive step and relatively successful.” [local authority representative]

“There should be a timescale set for mediation to stop it dragging on.” [parent]

“Mediation must be independent but could be bought in.” [parent]

“I have concerns about mediation being truly independent and the financial implications for education authorities if funding is not provided centrally.” [local authority representative]

35. The majority of respondents commented on the proposal that education authorities will be required to provide mediation services. On the whole, mediation was seen as being a positive and relatively successful way of taking the heat out of disputes and for resolving some disagreements. However, some views were expressed that mediation does not yet have a proven track record and, as a result, there is insufficient evidence to show that it actually works. There was a feeling that resources could be better directed to reducing conflict at a much earlier stage such as, through the development of parent partnership services in all local authority areas and for teachers to be better trained in working with parents. In addition, there was broad support for advocacy or conciliation rather than or in addition to mediation because it was felt that mediation only comes into play once the relationship has broken down.
36. A commonly shared view was that if mediation is to attract public confidence then it must be independent of and not funded by the education authority and be free of charge.

Change to draft Bill as a result

It has now been made clear that **mediation services will be free of charge to parents** (section 16(3)).

37. There was general support for the need for Scottish Executive funding and for guidance on minimum standards of good practice to ensure consistency across Scotland. Concerns were raised by all parties about the lack of trained mediators currently available and the implications this would have, particularly for education authorities. Other comments included the need for clarification on when mediation would be offered, the need for assurances that parents would not be forced to undertake mediation, that non-participation would not affect their appeal rights and the need for timescales to be set to avoid the process becoming too drawn out.

Transitions and Future Needs

“I like the duty to prepare pupils for the future.” [parent]

“Other agencies should be brought on board at the age 14 stage, not six months before the pupil is due to leave school.” [local authority representative]

“I think there should be a uniform system for pupils moving from school to school.” [parent]

38. Some of the main strengths of the proposals regarding transition to post-school were thought to be the focus on building on a young person’s aims and ambitions as well as preparing the pupil for life after school. Also, getting other supporting agencies involved sooner and the fact that a wider group of pupils would be addressed under the new proposals rather than just those with Record of Needs as at present were welcomed. There was also general agreement that there is a need for more and better forward planning in this area and it was welcomed that the draft Bill provides the opportunity to target supporting agencies more appropriately than at present.
39. The main concerns centred round the removal of the Future Needs Assessment as a formal separate process and a possible misunderstanding of the proposed timescale of 6 months for notifying other agencies. For some the Future Needs Assessment report was the most important part of the Record of Needs system while for others it was seen as ineffectual because there is no duty on other agencies regarding the future needs report once the young person leaves school. Many felt that although the Future Needs Assessment would no longer be a statutory process, there should at least be some record of the outcomes or decisions of the meetings. The children and young people who were consulted felt that the Future Needs Assessment process was important for preparing them for leaving school and without it the transition could be more stressful.

40. The majority of respondents made it clear that the proposed 6 month deadline for notifying other agencies about the young person and their post-school needs was not long enough and that at least 12 months would be more realistic. **This may have been partly due to people interpreting this as meaning the process was to start no later than 6 months before the young person left school rather than the process to have been completed by then, as is the intention.** That aside, there was still a feeling that legislation should specify an actual starting point, with some suggestions as early as S1 but certainly no later than age 15.

Change to draft Bill as a result

Provision for future needs has been strengthened. Several new clauses have been added to provide for establishing future needs post-school and planning for that transition. **There will now be a duty on education authorities to get information about the provision other agencies will have to make for the future needs of the young person once they have left school, and plan accordingly to prepare the young person and to support the transition to these other services.** This must be done **at least 12 months** before the young person leaves school (section 10(5)-(8)). This complements the duty in section 11 to provide information to other agencies at least 6 months before the child or young person leaves school, in other words when the leaving date is approaching, so agencies can prepare future support. And a new duty is added to ensure that education authorities inform other agencies when the child or young person actually leaves school, so the future support can be put in place.

41. In addition, there were quite a few suggestions that there should be a key person in place to co-ordinate this process, particularly for those pupils with additional support needs but no Co-ordinated Support Plan. Other suggestions included that the Co-ordinated Support Plan process should be extended post-school in line with the proposed extension of Educational Psychology Services to cover the age 16-25 population.
42. There was a general view that the real difficulties in post-school transition are maintaining the level of support required for the pupil from the other providers such as Health and Social Work Services. Possible solutions included placing a compulsory duty on them to fulfil their obligations post-school, better monitoring by the education authority or Her Majesty's Inspectorate of Education and for the other agencies to be involved in advising, planning and providing support at a much earlier stage.

43. There was some concern voiced regarding the role of Social Work Services in relation to section 13 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty to give opinion as to whether or not the child or young person is a disabled person) if the Future Needs Assessment was discontinued. Some people felt that guidance was needed on this.
44. Views were expressed regarding the need for more attention to be paid to transition from home to nursery and that the rights of under-2s should be better addressed. The pre-school assessment team (pre-SCAT) system was given as an example of good practice in this area. There was also concern expressed regarding transitions from school to school, particularly in the case of looked after children. There were representations made that the system for transferring documentation from school to school or authority to authority should be as simple as possible as this would assist the swift transition of pupils, and ensure their education was maintained.

Co-ordinated Support Plan

“The current system would have run perfectly well if education authorities ‘understood’ and had greater knowledge of the procedures. However, the system was not policed properly and education authorities tried to abuse the system.” [parent]

“The Co-ordinated Support Plan is itself a useful document giving parents and young people important new rights in two key areas.” [national voluntary organisation]

“We doubt that existing resources will cope with the new planning arrangements and believe that increased resources will be needed to improve the way support needs are identified and to help meet these needs.” [professional organisation]

“In essence, I believe this legislation is a move in the right direction to make access to support more straightforward and to make support more co-ordinated and therefore more effective for the child.” [parent]

“We welcome the fact that these plans are outcome-focused and acknowledge that this will allow them to articulate more readily with individualised educational plans which we see as the bedrock of planning for additional support needs.” [local authority]

45. The proposals for the replacement of the current Record of Needs with a Co-ordinated Support Plan possibly provoked the strongest reactions. Views ranged from the belief that the Record of Needs system would have worked if it had been monitored more effectively, to comments that the process is cumbersome and confusing and, therefore, incredibly stressful for all involved. There was also a difference of opinion about potential numbers of Co-ordinated Support Plans. While education authorities were of the opinion that there would be more Co-ordinated Support Plans than Records, parents on the whole took the opposite view.
46. This echoed the views about the actual definition of who would be eligible for a Co-ordinated Support Plan. Some felt that the definition was too narrow and restrictive and would exclude too many children and young people. Others felt that it was broadly acceptable but would require clarification and guidance and that the exclusion of under-3s should be reconsidered. It also became apparent that one of the main parental concerns was whether children with Records would get Co-ordinated Support Plans. Parents were particularly worried that the legal rights afforded to them by the present system will be taken away. A further concern was that there will be no means of documenting the additional support needs of children and young people who do not get Co-ordinated Support Plans.
47. While there is no proposal to introduce a separate record of additional support needs, these would as a matter of good practice, be noted in other appropriate planning mechanisms such as Personal Learning Plans and Individualised Educational Programmes. Education authorities will be expected to take steps to identify all additional support needs and to ensure that appropriate action is taken to address them and this will include those children and young people whether or not they currently have Records.
48. One of the main benefits identified was that the proposed Co-ordinated Support Plan would be a working document that helps to ensure a multi-agency approach to the provision of support for those with the most complex needs. There was some concern again though about the onus of delivery of support falling to the education authority alone rather than being a shared responsibility. There were several calls for guidance from the Scottish Executive on eligibility for Co-ordinated Support Plans, for ensuring effective multi-agency involvement and for appropriate record keeping for all children. Some suggestions were made that the Bill should clarify what Co-ordinated Support Plans will actually mean for parents and children because without their support the whole system will fail.

49. Some people felt that the suggested format of the Co-ordinated Support Plan is too similar to the existing Record of Needs and, as an alternative, all children should just have a Personal Learning Plan with extra plans added as appropriate. The part of the Co-ordinated Support Plan that raised the most objections was the non-appealable Progress Report for recording any minor changes in circumstances, progress and provision. Parents in particular were worried that the provision could be changed in the Progress Report and they would not be able to challenge it. Recommendations were made for either the right of appeal to be extended to the Progress Report or for its purpose to be reconsidered.

As a result

There will no longer be an annex as described in the draft Bill consultation narrative. However, there may be an annex, which for information, would simply record the progress the child or young person is making towards achieving the planned learning outcomes. This could, for example, be used in the classroom to plan lessons or to inform reviews.

50. The proposal for statutory timescales to be set for drawing up a Co-ordinated Support Plan and for reviewing it were seen as positive. Most people who responded felt that the proposed timescales of 3 months and 12 months respectively were realistic and achievable. However, education authorities wanted it to be acknowledged that there may be occasions where, despite every effort, these could not be met.
51. There was also broad agreement that the Co-ordinated Support Plan should be shared in its entirety with all those involved in supporting the child or young person as opposed to the proposal that the other agencies should only get the information relevant to them. This would help to ensure that the Co-ordinated Support Plan meets the aim of being a working document of use to all involved.
52. The issue of resources, or lack of them, was another key theme particularly in relation to the delivery of support. Many expressed fears that budgets are already over-stretched and that there are severe shortages of therapy staff and social workers in particular. However, others commented that existing resources could be better used and targeted. In addition, while the benefits of having a named contact person to co-ordinate the process were recognised, there were doubts about the impact such a role could have on existing workloads especially for Support for Learning staff.

Change to draft Bill as a result

There is a **new duty on education authorities to specifically co-ordinate the support to be provided** as set out in the Co-ordinated Support Plan (section 9(5)(d) and (6)-(7)). **The individual who will manage the day to day implementation is to be named in the Co-ordinated Support Plan, but this can be delegated to an individual outside education** if they are more appropriate for the young person, such as a health worker or social worker who may have involvement with the wider family (section 7(2)).

Appeals and Tribunal

“I am concerned over the time taken to go through the appeals procedure ... I think that three months would be reasonable.” [parent]

“I like that the tribunal is independent from the education authority.” [parent]

53. The proposed establishment of an Additional Support Needs Tribunal was broadly welcomed as it should provide a quick and efficient appeal route that is independent of education authorities. Parents particularly welcomed the ability to appeal against the provision detailed in the Co-ordinated Support Plan but disagreed with the proposal that the Progress Report could not be appealed. The main areas that were commented on included:
- how effective the Tribunal system would be;
 - what powers the Tribunal would have;
 - the expertise of members;
 - no right of appeal for those without Co-ordinated Support Plans;
 - the lack of legal aid.
54. Many parents and voluntary organisations felt that the Tribunal’s remit should not be restricted to issues relating to Co-ordinated Support Plans alone. Their concern was that a two-tier system was being created whereby parents of children with additional support needs but no Co-ordinated Support Plan would not be able to appeal to the Tribunal and would have no right of appeal against the provision specified by the education authority to meet their child’s needs. They would only be able to use local complaint procedures or appeal to an Education Appeal Committee regarding placing requests and exclusions or, as a last resort, pursue more formal legal remedies. As a result, many people felt that if the Tribunal’s function was not to be widened to include additional support needs then the current inadequacies of the education appeals system must be addressed.

Change to draft Bill as a result

A new clause has been introduced to the Bill **enabling Ministers to require education authorities to provide dispute resolution, as well as mediation, to further facilitate resolution for parents who will not have access to the formal appeal routes** (section 17). This new process of dispute resolution is still to be developed but will particularly aim to address concerns of parents whose child does not have a Co-ordinated Support Plan, but who does have additional support needs.

55. While most people welcomed the emphasis on the Tribunal system having to be family friendly, there were concerns that care must be taken to ensure that it does not become as adversarial as the court system. A few comments were also made in support of the current system where appeals are investigated by Her Majesty's Inspectorate of Education. In addition, there was some criticism of the Tribunal systems in England and Wales and concern that the Scottish system would simply replicate them.
56. Most people raised the issue of the Tribunal only having jurisdiction over education authorities. Education authorities felt that they would be put in a difficult position in trying to ensure provision from other agencies who could not deliver because their resources were already over stretched. Many felt that Tribunal decisions should therefore involve and be binding on all the agencies that are supporting the child or young person. There was a call for guidance from the Scottish Executive on the types of cases the Tribunal would consider and to clarify how decisions relating to resource issues may be arrived at. It was also recommended that the workings of the Tribunal should be closely monitored to ensure consistency in the process and in decision making. In addition, there were some suggestions that the Tribunal should be able to set precedents with regard to resource allocation, so that the Tribunal may challenge the policy of individual education authorities.
57. Many felt that panel members must undergo compulsory training in additional support needs. Also that lay members should be parents as well as professionals and that they should have specific expertise in the additional support needs relating to the case being considered.
58. Several of the voluntary and non-statutory organisations felt that a child with capacity should be able to appeal to the Tribunal and that they should have the right to instruct a solicitor in matters that affect them directly under sections 2(4A) and 2(4B) of the Age of Legal Capacity (Scotland) Act 1991. It was felt to be anomalous that a child could make a legal challenge by way of judicial review but would be denied access to the more accessible forms of dispute

resolution such as mediation and the Tribunal. There are, however, statutory responsibilities already placed on parents, so they are responsible for safeguarding their child's health, development and welfare. They are also responsible for acting as their child's representative. In the proposed system, children's views should be taken into account by the education authority and by their parents. The involvement of children and young people will be encouraged and the **Code of Practice** will detail how this can be done successfully.

59. Perhaps the main area of concern though was the matter of legal aid. Many respondents felt that education authorities would be inclined to bring legal representation or would at least have had the opportunity to consult their legal teams beforehand. There was a view that if there is no legal aid available then parents will be automatically disadvantaged. Legal aid will be available, to those who are eligible, to seek legal advice both before and after the Tribunal hearing. However, the aim of the Tribunal is to be **informal, family-friendly and as non-threatening** as possible, along similar lines to the Children's Hearing system. The **Code of Practice** will outline how the Tribunal works, what parents can expect to happen at the hearing and how to prepare for it. In addition, they will be able to take someone of their choice to support and advise them as appropriate. **Legal representation will not be encouraged for either party.**

Placing Requests

"Guidance should be produced to make it easier for parents to understand placing requests." [parent]

"Concern that opening placing requests up to independent special schools runs contrary to the mainstreaming legislation." [local authority representative]

60. There were mixed views about the advantages of opening up the right to make placing requests to independent special schools to parents of children with additional support needs. Some people felt it was equitable and in line with the concept of broadening the system from special educational needs to additional support needs. The view was held by others that the ability to make a placing request to an independent special school runs contrary to the legislation on mainstreaming and the inclusion agenda as a whole. However, others felt that it was acceptable to have the option to make a placing request to an independent special school if it was felt that the school would be able to offer specialist support to the pupil not available elsewhere. Representatives from independent special schools were worried that once this comes into force schools may be overwhelmed by the demand for places.

61. There was some concern that appeals on placing requests for pupils who do not have a Co-ordinated Support Plan will still be routed through Education Authority Appeal Committees rather than being heard by the new Tribunal. Parents were uneasy about Education Authority Appeal Committees which on the whole were perceived as biased and one sided. Another view was that these Committees would not be able to cope with the potential increase in placing request appeals.

Change to draft Bill as a result

If parents are appealing to the Tribunal the decision by the education authority not to prepare a Co-ordinated Support Plan, and, at the same time, wish to appeal a placing request, then the appeal on the placing request will also be referred to the Tribunal (sections 13 and 14).

62. It was suggested that to aid parents to understand and use the appeal routes available to them, guidance explaining the system and procedures should be produced. In particular, it was suggested that the different appeal routes should be clearly set out.

Transitional Provisions

63. There was particular concern regarding the transition from the current system to the new system. Parents of pupils who currently have a Record of Needs were concerned as to whether their son or daughter would receive a Co-ordinated Support Plan under the new arrangements. It was suggested that guidance on the changeover from the current system to the new system should be produced, to ensure that the transitional arrangements are understood.
64. There were differing views as to how many pupils would receive Co-ordinated Support Plans. Some parents thought that fewer pupils would get Co-ordinated Support Plans than currently have Records. However, education authorities thought that more pupils would get Co-ordinated Support Plans than those who currently have Records.
65. It was suggested that there should be a realistic, staggered timescale for the introduction of the new system to allow for training and to ensure that appropriate staff, for example Tribunal staff, are recruited and trained. Other suggestions included that the old and new systems should continue to run in tandem for a while, that education authorities should not be required to review all existing Records at once and that perhaps all Records should be transferred to Co-ordinated Support Plans automatically.



2

CHANGES MADE TO THE
DRAFT BILL AS A RESULT OF
THE CONSULTATION

Part 2 – Changes made to the draft Bill

66. The main purpose of the consultation was to gather opinions and ideas to help with the ongoing process of developing and refining the draft version of the Bill. Everyone who contributed has played an important part in this. A lot has been happening since January and the draft has undergone some change in that time. There have been several key changes made as a direct result of the comments, ideas, concerns and suggestions received and these have already been incorporated in the summary of the consultation. Other changes were made as part of the process to refine the draft. The most significant changes made to date are listed below, including those already outlined in the report section. It is important to note that further changes can be made as the Bill makes its progress through Parliament.

Key changes:

- A new section has been added to the Bill giving **parents the right to request a particular type of assessment**, for example psychological or medical assessments (section 6). This is in addition to parents being able to request that their child is assessed for additional support needs.
- There is a **new duty on education authorities to specifically co-ordinate the support to be provided** as set out in the Co-ordinated Support Plan (section 9(5)(d) and (6)-(7)). **The individual who will manage the day to day implementation is to be named in the Co-ordinated Support Plan, but this can be delegated to an individual outside education** if they are more appropriate for the young person, such as a health worker or social worker who may have involvement with the wider family (section 7(2)).
- Provision for future needs has been strengthened. Several new clauses have been added to provide for establishing future needs post-school and planning for that transition. **There will now be a duty on education authorities to get information about the provision other agencies will have to make for the future needs of the young person once they have left school, and plan accordingly to prepare the young person and to support the transition to these other services.** This must be done **at least 12 months** before the young person leaves school (section 10(5)-(8)). This complements the duty in section 11 to provide information to other agencies at least 6 months before the child leaves school, in other words when the leaving date is approaching, so agencies can prepare future support. And a new duty is added to ensure that education authorities inform other agencies when the child or young person actually leaves school, so the future support can be put in place.

- A lot of concerns were raised about the lack of appeal rights for parents whose children will not have Co-ordinated Support Plans. They will have access to mediation but will not be able to appeal to the tribunal when they are unhappy with provision or identification of additional support needs for example. As a result, a new clause has been introduced to the Bill **enabling Scottish Ministers to require education authorities to provide dispute resolution, as well as mediation, to further facilitate resolution for parents who will not have access to the formal appeal routes** (section 17). This new process of dispute resolution is still to be developed but will particularly aim to address concerns of parents whose child does not have a Co-ordinated Support Plan, but who does have additional support needs.
- Instead of issuing guidance as previously proposed, now a **Code of Practice will be issued** (section 22) and the **key topics to be included in the Code are set out** in section 22(2). The Code of Practice will be developed in collaboration with service users and providers. It will set minimum standards and will aim to promote more and better joint-planning and partnership, and consistency across Scotland.
- If parents are appealing to the tribunal the decision by the education authority not to prepare a Co-ordinated Support Plan, and, at the same time, wish to appeal a placing request, then the appeal on the placing request will also be referred to the tribunal (sections 13 and 14).
- It has been made clear that mediation services will be free of charge to parents (section 16(3)).
- If an education authority decides not to comply with a request to review a Co-ordinated Support Plan **they must inform the person who made the request and give their reasons for refusing** (section 8).
- When parents (and others) request that their child is assessed for additional support needs or for a Co-ordinated Support Plan **they should give their reasons**. This will better help education authorities consider if the request is reasonable or not. If it is established that the child does have additional support needs then **the education authority must inform the person who made the request of the outcome** (sections 4 and 5).
- **It will now be possible to set different “appropriate agencies” for various parts of the Bill**. This will allow voluntary sector provision, such as working with individual children on anger management and social skills or the provision of respite services, to be included in the criteria for a Co-ordinated Support Plan. This could also be used to bring Careers Scotland and Further and Higher Education providers into future needs planning (section 18(2)(e)).

- The Progress Report annex to the Co-ordinated Support Plan will no longer record minor changes in circumstances or diagnosis, targets or provision as described in the consultation narrative. Instead it will simply be a working record of the progress that the child is making to help inform reviews.
- It has been clarified in the Bill that the education authority must also consider the other non-education functions of the local authority in the same way it will consider the functions of other agencies such as health.
- The Bill introduces a new definition of “special school” which removes the connection with Records of Needs (as at present) or Co-ordinated Support Plans in the future (section 23(1)).
- There are two sections that bring in certain provisions from the Education (Scotland) Act 1980. This has been done to bring all the provision directly relating to additional support for learning together in this Bill. One section allows Scottish Ministers to make regulations about standards and requirements relating to the conduct of special schools (section 19). The other section allows education authorities to make arrangements as appropriate to enable a child with additional support needs to attend a school outwith the United Kingdom (section 20).
- The education authority has a duty to consult children with additional support needs (section 10). However, this formal consultation would be unmanageable if it was to be with every child, regardless of the extent of additional support needs, and on every matter relating to teaching and learning. A new subsection has been added therefore, and the Code of Practice will clarify how children should be consulted.
- There have been several additions to Schedule 1 which deals with the new tribunal. There is a new paragraph about the circumstances where the re-appointment of a member would not be appropriate (paragraph 5(2)) and one about Scottish Ministers’ power to remove members from office (paragraph 6). Details of what can be included in the rules for the practice and procedures of tribunals is set out in paragraph 11. For example, the rules may include how appeals to a tribunal are made or allowing hearings to be held in private. A further new paragraph has been added about the payment of allowances for those attending a hearing or preparing a report (paragraph 17).
- To clarify the position on mainstreaming and consideration of placing requests, a new paragraph has been added to section 3 of Schedule 2. Education authorities must comply with all placing requests unless certain circumstances apply. The new paragraph makes it clear that such

circumstances include those in section 15(1) of the Standards in Scotland's Schools etc Act 2000. This is commonly referred to as the "presumption of mainstreaming" (paragraph 3(1)(g)).

- A new schedule has been added which sets out all the modifications that will need to be made to other legislation, such as the Education (Scotland) Act 1980, as a result of the Bill (Schedule 3).



3

ADDITIONAL SUPPORT NEEDS AND THE CO-ORDINATED SUPPORT PLAN

Part 3 – Additional Support Needs and the Co-ordinated Support Plan

67. During the consultation on the draft Bill, it was evident that while most people welcomed the widening of special educational needs to additional support needs, many people were uncertain as to the types of conditions, circumstances or disabilities that would fall within this new term. People also wanted to know more about the criteria for a Co-ordinated Support Plan, which children would be eligible for a Co-ordinated Support Plan and, of course, what the Plan would actually look like. This section provides some examples and some explanations to help clarify matters. Of course, more detailed information and advice about additional support needs, identifying them, assessment and Co-ordinated Support Plans will be included in the proposed Code of Practice.

Additional Support Needs

68. Set out on page 37 are some of the many and varied circumstances that may impact on a child or young person's learning and give rise to the need for additional support. It should be noted that these examples are there to give a flavour and are not exhaustive. Neither will the circumstances outlined impact in the same way, or indeed at all, on different children. The effect any circumstance has on an individual's ability to benefit from school education is unique to them, as will be the support required to help them. For some, additional support will only be needed for weeks or months, while for others it will be for much longer, or indeed throughout their school years.

Criteria for a Co-ordinated Support Plan

69. In terms of section 2(1) of the Bill, a child or young person will require a Co-ordinated Support Plan if he or she has additional support needs arising from one or more **complex** factors, or **multiple** factors, which are likely to **continue for more than a year**, and those needs require significant additional support to be provided by **one or more appropriate agencies, including the support other than education from the authority**. The majority of people wanted clarification of what is actually meant by "complex" and "multiple".
70. A **complex factor** is one that affects **most aspects of learning**. It may be a long-term educational, medical or other factor. For example, a complex factor could arise from severe learning difficulties, a sensory impairment such as blindness, or a physical disability such as cerebral palsy or other conditions such as Attention Deficit Hyperactivity Disorder (ADHD), dyslexia or Autistic Spectrum Disorder. **More than one complex factor may be present**.

71. **Multiple factors** are a combination of two or more factors be they educational, medical, social, emotional, behavioural or other factors, but which are not by themselves complex factors. However, in combination these may have the same effect as a complex factor. For example, a child's additional support needs may arise from multiple factors such as being bullied, poor self-esteem and living with parents who have addiction and low income problems. In general, factors may be expressed by the child or young person through poor anger management, a history of poor progress, psychological or mental health problems, or may be external such as circumstances within the child or young person's family.
72. **However, what may be complex or multiple factors for one child may not be for another. It is the effect of the factor(s) and not the factor(s) or diagnosis label alone. An important aim of the new system proposed in the Bill is that it is child-centred. It focuses on the individual child, not the label of a diagnosis or social or other circumstances. In all cases it is how these factors impact on that child's learning that is important. Every child or young person is an individual.**

Circumstances that may impact on a child's learning and give rise to Additional Support Needs

(Note: not all these circumstances will necessarily be barriers to learning.)



The content of a Co-ordinated Support Plan

73. Many people commented during the consultation, that they would like to have more details of the format and content of the Co-ordinated Support Plan. The Bill sets out what will be contained in the Co-ordinated Support Plan but the detailed form and content will be laid out in regulations. Careful consideration will be given to what the plans will look like, to make sure that they contain all relevant information and are laid out in a coherent and accessible format. Comments made during the passage of the Bill will be considered in the drafting of the regulations which will be done once the Bill is enacted. There will then be a further period of consultation on the regulations themselves, which will allow a further opportunity for observation and comment. Further information and guidance on Co-ordinated Support Plans will be included in the **Code of Practice**. What follows is a description of the information that **must** be in the Plan as prescribed in section 7 of the Bill plus an indication of some of the other information that may be in it.

- The reasons for the individual's additional support needs must be detailed in the Co-ordinated Support Plan. In addition to describing the difficulties the child or young person faces, there may be a description of the positive features of the child or young person's life, including his or her skills and capabilities noted in the plan.
- Details of the planned learning outcomes (educational objectives) to be achieved that will ensure that the individual benefits from school education must be included, for example what needs to be learned.
- Details of the additional support required to achieve the planned learning outcomes and who will provide that support must be included for example, details of anger management sessions from a social worker or physiotherapy from a physiotherapist.
- The school the individual is to attend must be noted.
- The details of the nominated person who will co-ordinate the plan must be recorded. This is the person who will manage the day-to-day implementation. While the education authority will be responsible for the co-ordination of the plan, the co-ordinator role can be delegated to an individual in another agency if they are more appropriate for the child or young person.
- Contact information for a named officer, from whom information and advice may be sought, must be detailed.
- As might be expected, the Co-ordinated Support Plan is likely to contain biographical details of the child or young person to whom it refers and may include contact details (for example, address and telephone number) for the child or young person and his or her parent or carer.

- Everyone involved in drawing up the Co-ordinated Support Plan may need to sign the plan to acknowledge their input and involvement. There may also be details included on the timescale for review of the plan, (these timescales will be set out in regulations) and for the transfer or discontinuance of it.
- There may be an annex to the Co-ordinated Support Plan which will simply record the progress the child or young person is making towards achieving the planned learning outcomes. This could, for example, be used in the classroom to plan lessons or to inform reviews. This is different to what was proposed in the draft Bill narrative. The annex will no longer record minor changes in circumstances and diagnosis or to the provision required to support the child or young person's additional support needs.



4

WHAT HAPPENS NEXT?

Part 4 – What happens next?

74. After introduction into the Scottish Parliament, the Bill passes through three Parliamentary Stages. A lead Committee will be assigned to scrutinise the proposals in the Bill. The Committee may invite individuals and organisations wishing to submit their views to give evidence. Other Committees in Parliament can also comment on the Bill to the lead Committee. The lead Committee will then report to the full Parliament on the general principles of the Bill and the adequacy of the consultation process. There will be a debate on this in the Parliament. This is Stage 1. If the Parliament agrees the principles of the Bill, Stage 2 proceeds with the lead Committee considering separately each and every section and schedule of the Bill. Amendments to any part of the Bill can be put forward by Members of the Scottish Parliament (MSPs) and the Committee votes on whether to accept these or not. There is then another debate in the Parliament, Stage 3, when amendments can also be made, and the Parliament then votes to pass the Bill. If passed, the Bill becomes an Act once it receives Royal Assent.
75. However, that is not the end of the matter. The legislation has to be put into practice. It must be commenced (and different parts can be commenced at different times) and other secondary legislation must be considered by Parliament. The secondary legislation is the various regulations, orders and rules that the Bill provides for Scottish Ministers to make. These will set out in more detail matters relating to the Co-ordinated Support Plan, the tribunal, and transitions when a child moves schools, for example.
76. Many of the responses to the consultation were concerned with the implementation, with how the proposed system would work in practice. As a first step, an Additional Support for Learning Advisory group comprising key stakeholders has been established. This group, and its sub-groups, will advise on the operational implications of the proposals and help in the production of the secondary legislation, a Code of Practice and guidance.
77. If you have any questions about the Bill, then you can contact Enquire, the National Special Educational Needs information and advice service as detailed below:

Enquire	Helpline 0845 123 2303
Children in Scotland	Fax 0131 228 9852
5 Shandwick Place	Textphone 0131 222 2439
EDINBURGH	Typetalk 0800 959 598
EH2 4RG	E-mail:
	Enquire.SENinfo@childreninscotland.org.uk
	http://www.childreninscotland.org.uk/enquire.htm

78. If you want to comment on the Bill you can contact your MSP (you can find out who your MSP is and their contact details at <http://www.scottish.parliament.uk/msps/index.htm>). Interested parties may wish to express their views directly to the lead Committee in the Parliament. If the Education Committee is selected as the lead Committee, comments should be e-mailed to martin.verity@scottish.parliament.uk.

79. Comments can also be accepted in writing, these should be addressed to:

Clerk to the Committee
Education Committee
Room 2.7, Committee Chambers
The Scottish Parliament
EDINBURGH
EH99 1SP

80. If you require a copy of the Bill and the documents that accompany it, these should be obtained from the Parliament (see <http://www.scottish.parliament.uk/bills/index.htm>).

81. If you require further copies of this consultation report, they can be obtained at (<http://www.scotland.gov.uk>) or by contacting:

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This report will be available in alternative formats and community languages, please make your request to Elaine Lane, as above.



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