

**EDUCATION (ADDITIONAL SUPPORT FOR
LEARNING) (SCOTLAND) ACT 2004**

**REPORT OF THE CONSULTATION ON
THE DRAFT CODE OF PRACTICE,
ASSOCIATED POLICY PAPERS AND DRAFT
REGULATIONS**



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Introduction

1. This document reports on the consultation exercise held between November 2004 and February 2005 on a draft code of practice, policy papers and associated draft regulations to support the implementation of the Education (Additional Support for Learning) (Scotland) Act 2004. It also contains a report (see Annex A) on responses received to an earlier consultation exercise, held between 11 October and 31 December 2004, on draft regulations on the appointment of President, conveners and panel members for the Additional Support Needs Tribunals for Scotland.

2. The Act will establish a new framework for supporting the education of all children and young people who require extra help with their learning. The framework will replace existing legislation, which is narrowly focused on children with special educational needs, with one based on a wider range of children and young people, whatever the reason for their need for additional support. This includes those whose needs arise from the learning environment, family circumstances, disability or health, or social and emotional concerns.

3. Development officers, seconded from education, health and social work services, worked with the Scottish Executive Education Department's Additional Support Needs Division to draw up a draft code of practice last year. A multi-agency Advisory Group also provided input to the draft as it developed. The draft code was launched by the Deputy Minister for Education and Young People at a meeting of implementation officers from local authorities and NHS Boards on 25 November 2004. A series of 14 consultation events were held across Scotland, between November 2004 and February 2005, attended by around 900 people, including parents, and professionals across education, health, social work, and further and higher education.

4. The key aims of the consultation event were to:

- allow participants to discuss and clarify their understanding of the draft code of practice and associated materials
- suggest improvements to the drafts
- enable the Scottish Executive to take account of a range of views before refining the draft materials for presentation to the Scottish Parliament.

5. As well as consulting on the draft code of practice consultation took place on a number of other documents. These were:

- Policy paper on other appropriate agencies to help in the exercise of any function under the Act
- Draft Education (Co-ordinated Support Plan) (Scotland) Regulations 2005
- Draft Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005
- Policy papers on the resolution of disagreements between parents and schools or education authorities
- Policy paper on the publication of information by the education authority.

6. 436 written responses were received. These comprised 173 from schools and School Boards, 53 from local authorities (education and social work), 29 from health organisations, (many of which were composite, multi-disciplinary responses from across NHS Board areas), 40 from voluntary organisations, 17 from the further and higher education sectors, 10 from professional bodies and 114 from individual or other interests. The consultation events and written responses were very positive and provided many helpful suggestions for improving and strengthening the draft. In addition, the development officers and policy officers from the Additional Support Needs Division worked closely with COSLA, ADSW Children and Family sub-Group, Allied Health Professionals and a wide range of other agencies.

7. The development and policy officers spoke with, and made presentations, to a wide variety of groups across education, health and social work services, and the voluntary sector. In the education sector, this included the Association of Directors of Education, Association of Scottish Principal Educational Psychologists, English as an Additional language teachers, heads of schools working with children with visual and hearing impairment, and a range of multi-disciplinary events organised by local authorities. Consultation workshops took place at the national HMIE *Count Us In* conference with around 120 people attending the workshops. A meeting took place with representatives from the armed forces, Service Children's Education.

8. In the health sector, events were organised around the country to consult with Allied Health professionals. Several of these included a range of other health professionals. A meeting also took place with Health Board Chief Executives and Chairs to discuss the Act and the draft Code of Practice. In the social work sector, consultation took place with individual social workers as well as ADSW and the British Agencies for Adoption and Fostering. Parents' groups and the voluntary sector were represented at a range of events where the draft code was discussed. This included seminars in Glasgow and Dundee run by the Govan Law Centre. Development and policy officers attended events organised by Partnership in Autism and Equity. Policy officers spoke to the Cross Party Group on Autism.

9. Children in Scotland helped arrange consultation with representatives from a number of voluntary organisations working directly with children and young people. Responses were received from the Scottish Network for Able Pupils, Down's Syndrome Scotland, Enable Scotland National Young People's Self Advocacy Group, Fife Council Young Mothers Initiative and Glasgow Princess Royal Trust Young Carers Group.

Scottish Executive Education Department
Additional Support Needs Division
May 2005
0131 244 4637

Summary of the main changes made to draft code of practice as a result of the consultation

General

We have:

- revised the draft code so that it is more directive in terms of what local authorities and appropriate agencies require to do to ensure that their policies are reviewed in light of the Act
- improved the structure of the draft code
- included a broader range of case studies
- inserted good practice guidance into main body of the draft code
- reviewed the policy and legislative section
- provided an expanded contents page, revised glossary and extended resources section.

Additional Support Needs

We have:

- expanded on the factors that may give rise to additional support needs
- provided more detail on the nature of additional support to be provided by education and other appropriate agencies
- specified those who may be appropriate agencies and timescales for complying with requests for help
- acknowledged staged approaches to support assessment and inter-agency working
- included specific reference to the need for integrated assessment and planning, where required
- provided a specific chapter on the co-ordinated support plan
- expanded guidance on applying the criteria for requirement for a co-ordinated support plan
- included more detail on complex and multiple factors from which additional support needs arise
- provided guidance on process and timescales for preparing a plan
- included more information on the role of the co-ordinator and who can be a co-ordinator.

Supporting Children and Families

We have:

- provided separate chapters on *Working with Children and Families* and *Resolving Disagreements*
- expanded the detail on the overall framework for resolving disagreements
- provided guidance on the model of external independent adjudication for resolving disputes.

Consultation responses on the draft code of practice

General

Respondents were asked to consider whether they thought the draft guidance struck an appropriate balance between prescription and flexibility. They were also asked what they thought about the overall **structure** and **format** of the draft code and what their views were on the use of **scenarios**.

“There is a lack of specificity with regard to practice and procedures to be followed.”

“ the guidance is fairly well balanced and the temptation to move to more specific and prescriptive instructions should be resisted.”

(Differing local authority perspectives)

These two responses highlight the challenge involved in achieving a satisfactory balance between prescription and flexibility within a guidance document that has been written in advance of the Act taking effect. The revised draft code attempts to provide guidance that demonstrates clearly where professionals need to review their policies for supporting children’s and young people’s learning in the light of the Act. At the same time, it tries to be flexible enough to allow for the development of good practice in a situation where parents, children and young people, and professionals work together in adapting to a new legislative framework.

Comments on structure and format were generally positive. Many respondents thought the layout clear and detailed with good use of helpful reference notes. There were mixed views on the overall structure, with a common view being that section 3 of the draft (*Supporting Children’s Learning*) was overlong and covered too many topics leading to repetition in a number of areas. A good deal of the draft was considered clear, in particular the section on working with children and families, and mediation services. On the other hand, the text in some areas was thought too wordy. It was suggested that a more detailed contents page and glossary would be helpful. The good practice annexes on communicating with children and young people, involving parents, on partnership working and mediation were welcomed. Some suggested that these should appear in the main body of the code.

“The scenarios are like the Waltons! They should be more like the Simpsons!”
(Comment from consultation event)

Most respondents welcomed the use of scenarios, but there were mixed views on the ones used in the draft. Some thought them very helpful and a good starting point. There was a feeling amongst some that the scenarios were too straightforward when the reality was likely to be more complex. There was a view that there should be a wider range of scenarios and that these should relate more closely to the text of the code.

What has changed?

We have revised the draft code so that it is more directive in terms of what local authorities and appropriate agencies require to do to ensure that their policies are reviewed and implemented in light of the Act. We have changed the structure of the draft code. Section 3 has been broken down into three separate chapters covering what additional support needs are; identifying, assessing and making provision, including planning; and a separate chapter on the co-ordinated support plan. There are also separate chapters now on working with children and families and on resolving disagreements. The revised draft code has an expanded contents page, a revised glossary and extended resources section. Good practice guidance is now included in the main body of the revised draft code.

We have reviewed the use of the scenarios and included a broader range of case studies in the revised draft code. These are deliberately brief to highlight particular points of practice and now include a much wider selection of examples consistent with those suggested by respondents. The scenarios have been moved from the Annex and placed within the revised draft code to align them more closely with the text.

Section 1: Legislative and Policy Context

Section one of the draft code provided an overview of other relevant policy and legislation which should be considered alongside the new Act.

This section of the draft code was broadly welcomed, but many felt it would be better placed elsewhere in the code. Respondents liked the emphasis on safety, achieving and developing skills along with a clear multi-agency focus. Some thought it too long and that it prevented readers from getting to the important section on what are additional support needs.

What has changed?

We have reviewed the policy and legislative overview and moved it to Annex A in the revised draft code.

Section 2: Additional Support Needs - the framework

Respondents were asked if Section 2 of the draft code gave a sufficiently clear explanation of what additional support needs were. They were asked also how helpful they found the description of the factors that may give rise to a need for additional support.

“The new term additional support needs is better due to the images that the word ‘special’ conjures in the imagination.”

(Young carer)

“There was a danger of being labelled.”

(Comment from able pupils group)

The responses broadly welcomed the introduction of the concept of additional support needs. There was a general feeling, shared by young people, that the new legislation would help address the learning needs of a wider range of children and young people than current legislation. Many respondents welcomed the positive inclusion of a child’s emotional needs in considering what additional support they may need. The inclusion of children and young people, such as able pupils, bilingual pupils, young carers, Gipsy/Travellers, teenage parents, etc. was generally welcomed. At the same time, there was concern among some young people that additional support needs might be seen as some kind of unwelcome label. For them the move to a more inclusive framework needed to be matched by a change in attitudes.

Some respondents were critical of the fact that not enough mention was made of existing approaches to meeting needs and sought greater clarification through more extensive examples and scenarios. The inclusion of learning environment as a factor which may give rise to additional support needs drew mixed views. Some thought that this appeared to criticise schools, while others thought that the learning environment factor was an important one which was sometimes overlooked in what may cause a child or young person to have additional support needs.

Response were also invited on a consultation paper on whom Ministers may specify as other appropriate agencies to help education authorities with their duties under the Act. There was general agreement that Careers Scotland should be specified as an appropriate agency. Most respondents thought that further and higher education institutions should also be specified, although there was some concern on the part of higher education about the extent of the help that may be required on certain matters. There were mixed views on whether voluntary organisations should be specified as appropriate agencies. While some voluntary organisations favoured the idea, others thought that placing statutory duties on voluntary agencies did not sit well with their voluntary status. Making them appropriate agencies could compromise their independence and objectivity. Where local authorities commissioned services from voluntary agencies, they already had contracts in place governing what was expected of the services.

The consultation paper suggested that appropriate agencies should have six weeks to comply with a request for help from an education authority, subject to certain

exceptions. From the education side there was general agreement with the time scale, although some thought it tight, while some others thought it too long. Social work respondents noted that, where a child or young person was not already known, 6 weeks was unrealistic. They wanted the code to be flexible whilst recognising the need to avoid drift or unnecessary delay. Almost all health respondents expressed strong reservations about the suggested time scale. There was a feeling that six weeks was unrealistic and would lead to health staff regularly invoking the exceptions on a regular basis, with a consequent risk to relationships with parents and staff. At the same time health respondents agreed the need for timescales. They pointed to work being undertaken in therapy services to develop clearer and more transparent prioritisation systems. The differing views on the timescale for requests for help were matched by similarly divergent views on the timescale for preparing a co-ordinated support plan. Interestingly, education respondents were more inclined to press for a longer timescale in relation to preparing and reviewing a co-ordinated support plan (see below).

What has changed?

We have revised this chapter to expand on the four overlapping themes of learning environment, family circumstances, disability or health need and social and emotional factors. The revised draft code seeks to demonstrate more clearly how these might give rise to additional support needs. We have also provided more detail on the nature of additional support to be provided by education and other appropriate agencies, such as NHS Boards. We have included scenarios to provide examples of situations which respondents suggested should be included within the code, such as Gypsy/Travellers, able pupils and young carers.

In terms of appropriate agencies, regulations will specify Careers Scotland and further and higher education institutions as appropriate agencies. Voluntary agencies will not be specified as appropriate agencies, but the revised draft code of practice acknowledges the fact that they have an important role to play in working with local authorities to support children and young people who have additional support needs.

Regulations will contain a revised timescale of 10 weeks for appropriate agencies to comply with a request for help.

Section 3: Supporting Children's Learning

This section of the draft code looked at the Act's provisions for identifying additional support needs, assessment, planning, making and reviewing provision, and transitions.

“The structure is clear with good signposting. Criteria are clear.”

“This advice is as clear as mud.”

(Contrasting views on section 3 from two education authorities)

Respondents welcomed the inter-agency approach taken by this section and the use of diagrams, in particular, to illustrate application of the criteria for a co-ordinated support plan. Overall, there was a view that the section tried to cover too many issues. It was viewed as unhelpful to combine the general requirement to provide for additional support needs with the detailed process required to determine whether a co-ordinated support plan should be prepared. Many respondents noted that there was insufficient mention within the draft code of the types of staged intervention approaches which were already commonplace within many authorities. Some thought that the draft code was merely formalising existing good practice. Some respondents thought there should be more said about how the code of practice linked with developing work on an Integrated Assessment Framework.

“It would be useful if there was a clear statement of how co-ordinated support plans link with individualised educational programmes and other plans such as care plans, health plans etc”

(Local authority response)

Respondents were almost unanimous in their view that the code needed to provide greater clarity on the functions of the different types of plans and their links to one another. A consistent theme was that duplication should be avoided at all costs and that the child or young person should not be subjected to parallel planning processes. Social work respondents remarked on the need for greater attention to be given to the particular needs of looked after children and young people, especially in view of recent policy initiatives highlighting the extent to which they are not enabled to maximise their educational potential.

“We have used the decision making tree as part of a service development activity relating to the Act and found it helpful. It generated debate and highlighted the need to ensure an evidence basis to decision-making which reinforces the importance of effective assessment, planning and co-ordination at school level”

(Educational psychology service)

While most respondents found the diagram outlining application of the criteria for requirement of a co-ordinated support plan clear, many looked for more detail on terms such as 'significant', 'complex' and 'multiple'. Others thought the advice clear, but made the point that application of such terms required professional judgement. Health service staff wanted greater clarity around whose responsibility it was for identifying and assessing additional support needs. In terms of the co-ordinated

support plan template, respondents asked for more guidance on what should be contained within the plan. Almost all respondents wished to see more said about the role and remit of the co-ordinator.

There was a wide variety of responses on the suggested 12 week timescale for preparation of a co-ordinated support plan. Parents and voluntary groups welcomed the idea, while opinions ranged widely amongst professionals. On the education side many respondents argued for a longer timescale. There was concern that they would not be able to meet the timescale if other appropriate agencies were unable to deliver within the six weeks timescale for complying with requests for help. Similar reservations were expressed by social work respondents who were particularly concerned about current demand and pressure on services. The reservations expressed by health professionals on the six week timescale led to the view that 12 weeks was tight for preparing a co-ordinated support plan. It was thought by health and social work to be more realistic for reviewing one, when a lot of knowledge about the child or young person would already be to hand.

Respondents were generally content with the draft regulations on changes in school education which cover the various transition points in a child's progress through school education. There was a common view that the 12 month timescale for seeking and providing information at time of major changes in a child's education was not flexible enough in relation to children about to enter pre-school education at age three. In general, where time scales were not met, respondents thought that the local authorities and appropriate agencies concerned should give reasons.

What has changed?

We have introduced three new chapters to cover the issues previously covered by section 3 of the earlier draft. The revised draft acknowledges the existence of staged approaches to support assessment and inter-agency working and emphasises the critical importance of collaboration and integrated assessment. It includes a redrafted diagram to highlight the most common features to be found in staged intervention models and makes specific reference to the need for integrated assessment, where required.

We have expanded what the code says about the need for appropriate links between plans to avoid duplication and the need for an integrated plan of action whenever more than one agency is involved. As regards looked after children, the redrafted section on planning highlights the statutory duty placed on the local authority as "corporate parent". Greater emphasis is given to the requirement for multi-agency planning in addressing the educational needs of looked after and accommodated children and young people to ensure that they can benefit fully from school education and maximize their potential.

We have included a specific chapter on the co-ordinated support plan. This provides expanded guidance about the criteria on whether a plan is required. It includes more detail on complex and multiple factors and how these may have a significant adverse effect on a child's or young person's education. The process, including timescales for preparing a plan is described in more detail and more guidance is given on

completion of the plan. The revised draft code highlights the importance of a notice of proposal identifying appropriate agencies, and informing parents of their role, as early in the process as possible.

We have included more information on the role of the co-ordinator and who can be a co-ordinator. Greater detail is given on the requirement to keep the plan under review and on the administrative arrangements for keeping and disclosing the plan.

We have taken account of the widely differing views on timescales and the Co-ordinated Support Plan Regulations will set a revised timescale of 16 weeks, (subject to exceptions in consultation draft), for preparing a plan. The time scale for seeking and providing information at the pre-school stage is set by the Changes in School Education Regulations at 6 months.

We have included a short chapter on transitions which covers issues relating to children and young people moving from one stage of school education to another.

Section 4: Supporting Children and Families

This section of the draft code described the Act's provisions on advocacy and supporters, mediation and dispute resolution services. It looked at these in the context of good practice for successful participation of children, young people and their parents in education and learning.

“The statement that children and young people’s opinions should be taken seriously is welcome”

(Secondary School Board)

Respondents generally welcomed this section of the draft code. Many liked the emphasis on involving children and young people and the need to listen to them and take account of their views. Many agreed with the draft code's point that the effective involvement of children and young people and their families can help avoid disagreements arising and the need to invoke formal mediation or dispute resolution procedures. The guidance on supporters and advocates was welcomed. Several respondents emphasised the need to keep procedures as informal as possible and that the use of legal representation should be discouraged. There was a broad welcome for the good practice points in the Annexes to the draft code on communicating with children and young people, involving parents and partnership working. It was suggested that these should be included in the main text.

In general there was support for the dispute resolution model outlined in the consultative policy paper on resolution of disagreements between parents and schools or education authorities. It was important that the code was clear on what issues could be taken to dispute resolution. A number of respondents, including the Council of Tribunals, thought that use of the term “dispute resolution” might be confusing since, in other contexts, it is generally used to cover the whole spectrum of methods to deal with disagreements. The term “external independent adjudication” was suggested as being more appropriate than “dispute resolution” as suggested in the policy paper.

Many respondents stressed the importance of partnership in helping avoid going to external adjudication in the first place. A number of respondents (voluntary sector and local authorities) had concerns over the process being a paper exercise and whether this would be fair on parents or young people who might need support to present a written case to the external adjudicator. In terms of timescales for processing a case, again, there were differing views with alternative suggestions ranging from four to twelve weeks.

What has changed?

We have split the original section 4 of the draft code into two chapters; one on *Working with Children and Families*, and the other on *Resolving Disagreements*. Good practice points have been included in the main revised draft code.

We have included a new diagram setting out how dispute resolution fits within an overall framework for resolving disagreements. In setting out the Act's requirement for arrangements for resolving disputes we have described a model for resolving disputes by external independent adjudication. The revised draft code describes what issues can be taken to adjudication and what cannot. The revised draft code states that, while the adjudication process will be a paper exercise, the adjudicator will be able to ask for further information or clarification as required. Exceptionally, the adjudicator may arrange to meet the parties. The timescale for dispute resolution cases remains at eight weeks, subject to certain exceptions.

Section 5: General Provisions

This section covered a range of miscellaneous provisions in the Act not covered elsewhere in the code, in particular placing requests for children or young people who have additional support needs.

Comments on this section were light. There were mixed views on how clear the material on placing requests might be to parents and young people. Respondents were generally content with the proposals in the consultation paper on publication by education authorities of information relating to their functions and duties under the Act. This must be done within 3 months after the Act has been commenced.

What has changed?

This section is relatively unchanged. We have included reference to Placing Request Regulations which are being consulted on separately from Wednesday 11 May 2005. These will cover reserved places, deemed refusals of requests and transfer of reference to the Additional Support Needs Tribunal. The Regulations will be included in the package which will contain the finalised version of the code of practice when it is published later this year. The revised draft code now includes a diagram describing the overall placing request process.

The regulations on publishing information will be considered by Parliament alongside the revised draft code of practice.

Next steps

The revised draft code of practice was laid before the Scottish Parliament on Thursday 12 May for a period of 40 days. Scottish Ministers must take account of any comments by the Parliament before publishing the final code.

Five sets of **regulations** are being considered alongside the revised draft code covering:

- agencies specified by Ministers as having a duty to help education authorities
- arrangements for co-ordinated support plans, including timescale for completion
- requirement to seek advice and transfer information when pupils face changes in school education, in particular at the transition to post-school services
- resolution of disagreements between parents/young people and education authorities
- requirement on education authorities to publish information on additional support needs.

The regulations will rest before Parliament for 21 days.

Further consultation commenced on Wednesday 11 May on three other issues:

- transitional arrangements for pupils with a Record of Needs
- Tribunal rules and procedures
- placing requests for children and young people who have additional support needs.

It is intended to place regulations on these issues before the Scottish Parliament in September.

Other implementation issues

The Scottish Executive has commissioned multi-agency training materials to help local authorities and appropriate agencies to prepare their staff for implementation of the Act. It is intended that the training materials will be available when the final code of practice is published **in late August/early September**.

The Scottish Executive is working with *Enquire*, the national information and advice service, which is developing a new parents' guide to additional support needs and reviewing their information materials for young people.

Work is proceeding to set up the Additional Support Needs Tribunals for Scotland. Arrangements are in hand to recruit the President, conveners and panel members. The Act cannot be commenced until the Tribunals and the code of practice are in place. Further information on implementation of the Act is available at:

<http://www.scotland.gov.uk/Topics/Education/School-Education/19094/17176>

Report of consultation on draft regulations for appointment of President, conveners and panel members for the Additional Support Needs Tribunals

Introduction

The consultation on the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members) Regulations 2005 ("**the draft regulations**") ran from 11 October until 31 Dec 2004. In that period, 39 responses were received; subsequently, 3 late responses were also considered. Local authorities (education and social work) made 22 responses (including CoSLA), NHS Boards made 8 responses, voluntary organisations and parents made 9 responses and 3 other responses were received.

Around half of all respondents indicated that they were content or had no comments to make. In particular, the Scottish Committee of the Council on Tribunals responded indicating that they were content. A few respondents merely sought clarification rather than expressing any particular views.

Following the consultation, amendments were made to the draft regulations and the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005 (SSI 2005/155) ("**the regulations**") were laid at the Scottish Parliament on 17 March 2005. The regulations were discussed by the Education Committee of the Scottish Parliament on 20 April 2005 and came into force on 3 May 2005.

The principal change made was to clarify the qualifications required for members at paragraph 4 of the draft regulations. As a result of this, the title was amended to include "and Disqualification".

General

It was clear from the responses that there was some confusion about the nature and working of the tribunal and to the role of President and conveners. These misunderstandings led to some comments not being directly relevant.

President and conveners

In respect of the legal qualifications of President and conveners, some respondents:

- questioned whether a seven-year qualification was necessary
- suggested that legal experience should be wholly or mainly in Scotland
- suggested that legal knowledge should encompass education law, in particular current legislation governing special educational needs and disability.

A few respondents questioned whether it was necessary for the conveners to be legally qualified at all, stating that they considered this would lead to a far more legalistic framework than the Education Appeal Committees that considered Records of Needs.

Additionally, some respondents considered that the President and conveners should have subject-specific knowledge or experience, including: a relevant knowledge of children's services; and relevant experience in determining matters of child welfare and education (although this could instead appear in the person specification).

It was suggested that regulations should acknowledge the importance of an approach that is based on sound childcare or education legislation. Some knowledge of children and young people with additional support needs should be included in the qualifications, training and experience of conveners.

Restricting President and conveners to Scottish lawyers

The Scottish Executive considered, but decided not to accept, the suggestion that the legal qualification for President and conveners be restricted to those qualified in Scottish law. The President and conveners only need to understand the specific area of Scots law over which the tribunal has jurisdiction. Such persons need to be able to quickly grasp these aspects of law but this is something which can be tested during the recruitment process. We consider that it is unnecessarily restrictive to rule out lawyers from other jurisdictions in the regulations.

Members

The section setting out the qualifications, training and experience for members attracted the most comment. Comments divided into two broad categories: those seeking to widen the criteria and others seeking to narrow them down.

Suggestions for broadening the criteria came from a variety of sources and included:

- knowledge and experience should be broadened to that of children and young people generally rather than restricted to those with additional support needs
- membership should be open to those who qualify as conveners
- membership should not be restricted to those with knowledge or experience of working with children and young persons with additional support needs but should be recruited from the widest possible cross-section of society and in particular from young people
- membership should be open to those who give information and advice to parents but do not have direct experience of children and young people themselves because of their knowledge about education provision
- members should also be drawn from people with relevant knowledge and experience of working in education services, health and social work agencies who work directly with both children and young people with additional support needs and also with their families
- parents should be eligible to be members.

Suggestions for restricting the criteria largely came from education authorities and included restricting membership to those with:

- knowledge of the school system and local authority complex within which education and other services are delivered
- possession of a properly accredited qualification
- service in a recognised post at a particular level
- a specified length of experience, current or several years
- demonstrable knowledge
- significant experience of management or in provision of education in a school
- relevant and/or significant experience of working within the additional support for learning field in a local authority context.

Who qualifies to be a member?

The Scottish Executive's intention remains that a member of the tribunal must have firsthand experience of dealing with children with additional support needs and knowledge that puts that experience in a broader policy or practice context. This knowledge and experience must be relevant to education. Experience could be gained, for example, as a parent, social worker, teacher, speech and language therapist, voluntary worker, running a holiday club: anyone who deals with children with additional support needs directly in a setting where such needs are manifested. Working on a telephone helpline, providing advice in a citizens advice bureau, working in a management capacity in a school does not count as relevant experience in this context.

Knowledge means information gained other than through experience above. For example, any training or formal qualifications relevant to additional support needs, policy work in a voluntary, teaching, health or social work setting, or providing information or advice to parents or professionals could count as knowledge.

The Scottish Executive has amended draft regulations to remove the phrase "working with" children to put beyond doubt that parental experience is valid experience for consideration for tribunal membership. We have also clarified for the Education Committee that disqualification of persons eligible for appointment as convener from being appointed as a member is to prevent tribunal hearings being dominated by legally qualified individuals which could lead to excessive formality.

Other comments

Some respondents were anxious that **conflicts of interest** must be avoided. The Scottish Executive agrees and the President, conveners and members will be required, under the terms of appointment, to disclose any conflicts of interest to the tribunal administration so that they do not take any part in any case in which such a conflict exists.

It was suggested that all appointments should go through the **enhanced disclosure procedure** through Disclosure Scotland. This is a matter for the appointment process. We have yet to determine the level of vetting required but the Scottish Executive agrees with the need for thorough screening of candidates for these important and sensitive posts.

A number of concerns were expressed in relation to **training** for the tribunal. There were calls for a thorough induction for tribunal members and conveners, in particular in relation to contemporary issues regarding this status, responsibilities and rights of children. The Scottish Executive agrees with the importance of induction and ongoing training and will ensure that tribunal members have training covering appropriate issues from the legislative background to handling evidence from children.

Next steps

Consultation on the tribunal rules of procedure runs from 11 May to 3 Aug 2005. This will pick up a number of points made in response to the draft regulations.

Further information about development of the tribunal is available on the website: www.asntscotland.gov.uk