

# **Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended)**

**Code of Practice (Third Edition) 2017**

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# Introduction

## Purpose of the Act

1. The Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) <sup>1</sup> provides the legal framework for identifying and addressing the additional support needs of children and young people who face a barrier, or barriers, to learning. The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out the rights of children, young people and parents within the system. The Act has been subsequently amended by the Education (Additional Support for Learning) (Scotland) Act 2009 (“the 2009 Act”) <sup>2</sup> the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) <sup>3</sup> and the Education (Scotland) Act 2016 (“the 2016 Act”) <sup>4</sup>. (Annex A provides Links to Other Legislation, Policies and Guidance).

## Purpose of the code

2. This is the third edition of the code and replaces all previous versions. This third edition takes account of the amendments in the 2016 Act which extended certain rights to children aged 12 and over <sup>5</sup>. It explains the duties on education authorities and other agencies to support children’s and young people’s learning. It provides guidance on the Act’s provisions as well as on the supporting framework of secondary legislation. The code uses the term “the Act” to include, where appropriate, the secondary legislative provisions made through Regulations and includes features of good practice on how these can be applied. It also sets out arrangements for avoiding and resolving differences between families and education authorities. Annex (F) includes links to the annual reports on information and data about additional support needs and the implementation of the Act.

## Status of the code

3. Education authorities and appropriate agencies, such as NHS Boards <sup>6</sup>, are under a duty to have regard to the code when carrying out their functions under the Act. The code is designed to help them make decisions effectively but cannot be prescriptive about what is required in individual circumstances. Education authorities and appropriate agencies must ensure that their policies, practices and information and advice services take full account of the legal requirements of the Act. The code includes brief case studies and examples of good practice to illustrate some of the processes involved in applying the Act’s main provisions. These do not offer definitive interpretations of the legislation since these are ultimately a matter for the courts.
4. The code is intended to explain the principles of the legislation and to illustrate how the law might apply in certain situations. It is important to an appropriate understanding of this framework that this code of practice is read as a whole. Individual chapters should not be taken out of the context of the whole code or read in isolation from each other and the Act and the related secondary legislation. Chapter 1 provides a summary of the requirements of the Act. There are some issues which the code cannot resolve and which must await the authoritative

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2004/4/contents>

<sup>2</sup> <http://www.legislation.gov.uk/asp/2009/7/contents>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2014/8/contents>

<sup>4</sup> <http://www.legislation.gov.uk/asp/2016/8/contents>

<sup>5</sup> The commencement of amendments from the 2016 Act, to “the Act” will take place in January 2018.

<sup>6</sup> A definition of appropriate agencies can be found on page 13.

interpretation of the courts. The code is not intended to be a substitute for taking appropriate advice on the legal implications of particular situations.

### Other legislation and policy

5. The guidance in this code should be read alongside other legislation and policy where appropriate. For example, Curriculum for Excellence, Getting it right for every child, Developing the Young Workforce and Hall 4<sup>7</sup> and the Universal Health Visiting Pathway<sup>8</sup> have implications for education authorities' and other agencies' support for learning strategies. In particular, Curriculum for Excellence is a curriculum for all and this includes explicitly children and young people with additional support needs. In Curriculum for Excellence every child is entitled to the support they need in order to progress<sup>9</sup>. The Act, with its focus on ensuring that children and young people receive the help they need to benefit from education, supports this inclusive ethos.
6. While the guidance in the code outlines links with other legislation and policy, the main purpose of the code is to explain the principles of the Act and how the law may apply in certain situations. While Curriculum for Excellence *is* a major policy driver in Scottish education it is not a statutory provision. Aspects of the main policy drivers are referred to at points in the code to describe the overall context within which the Act applies but they do not themselves wholly impact directly on the **legislative** provisions of the Act. It should be noted that it is beyond the scope of the code to provide a full account of the extent of the other policies and their impact on the lives of children and families. A summary of other relevant legislation and policy issues is provided at Annex A. Information about useful services and organisations may be found via the Enquire service finder at <http://enquire.org.uk/find-a-service>

### Who should read the code?

7. Education authorities and agencies involved in advising or supporting children and young people with additional support needs and their families, should encourage and support their employees in gaining knowledge of the content of the code and understanding of its application in their day-to-day work.
8. Parents, children and young people may wish to refer to the code for information and advice on exercising their rights. However, specific guidance is also available for them (as well as practitioners) from Enquire<sup>10</sup>, the Scottish advice service for additional support for learning, funded by the Scottish Government.
9. Examples of professionals across agencies who are under a duty to have regard to the code, or others who may find it useful when carrying out duties under other legislation, include:
  - **Multi-agency planners:** policy officers, planners and service managers working in children's services planning networks across education, health, social care, further education and training.
  - **Education:** education directorate, head teachers, teachers, classroom assistants and support staff, educational psychologists staff in schools and nursery provision, including partner providers for pre-school education.

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<sup>7</sup> See policy section in Annex A.

<sup>8</sup> <http://www.gov.scot/Resource/0048/00487884.pdf>

<sup>9</sup> <https://www.education.gov.scot/what-we-do/Embedding%20inclusion,%20equity%20and%20empowerment>

<sup>10</sup> <http://enquire.org.uk/>

- **Early years and childcare:** early years practitioners, early years workers in family centres, practitioners in early learning and childcare establishments and staff delivering out-of-school provision.
- **Health:** health visitors, public health nurses, school nurses, community child health teams, paediatricians, physiotherapists, occupational therapists, speech and language therapists, other allied health professionals, clinical psychologists, and medical practitioners in paediatrics, general practice and child and family psychiatry.
- **Social work:** social workers, residential child care staff, support workers, adoption and foster care service staff and social workers with responsibility for child protection and looked after children
- **Voluntary sector:** staff working in the whole range of children’s services.
- **Other agencies:** professionals in other agencies who may be involved in integrated assessment teams, for example, childcare fieldworkers, youth workers, Children’s Reporters, police, schools/community liaison team, community workers, staff working in Skills Development Scotland (careers services) and in higher and further education.

## Definitions

### Eligible pre-school child

10. Child eligible for pre-school provision who is under school age and has not started primary school. Every three and four year old child is entitled to 600 hours of early learning and child care. A child is also an eligible pre-school child if they are 2 years or over and is or has been since their 2<sup>nd</sup> birthday looked after, the subject of a kinship care order or has or had a guardian appointed under section 7 of the Children (Scotland) Act 1995. “Eligible pre-school child” has the same meaning as in section 47 in part 6 of the 2014 Act. Eligible pre-school children also include 2 year olds, starting from the first term after their second birthday, with a parent in receipt of qualifying benefits; or, the first term after their parent starts receiving qualifying benefits<sup>11</sup>.

### Eligible Child

11. The term “eligible child” is used throughout the Code to refer to a child in school education who has attained the age of 12 but not 16 and who has been assessed as having capacity (sufficient maturity and understanding) to exercise their rights under the Act, and that the education authority (or Tribunal) considers the wellbeing of the child would not be adversely affected by the child exercising their rights.

### Young person

12. A young person<sup>12</sup> is now defined in the Act as a person who is aged 16 years or over, who is a pupil at a school, and has, since attaining the age of 16 years or over, remained a pupil at that or another school. In practice, it is unlikely that a young person will remain in school beyond their later teenage years. The new definition removes the difficulties which have arisen when a young person has remained in school between the age of 18 and 19 years. Throughout the code the term young people is used instead of young persons, for ease of understanding.

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<sup>11</sup> Further information on qualifying benefits, <http://www.earlylearningandchildcare.scot/who-qualifies/>

<sup>12</sup> <http://www.legislation.gov.uk/asp/2016/8/schedule> section 29



## Parent

13. The term “parent” is also defined in the Act as having the same meaning as in the Education (Scotland) Act 1980 (“the 1980 Act”) and includes “guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of, a child or young person.”

## Education authority

14. Education authority is defined in the 1980 Act as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994. In practical terms, the education authority and the local authority are the same entity. In general, the code refers to an education authority when considering a local authority’s education functions and to a local authority in respect of functions other than education ones such as social work services.

15. The Act applies generally to pre-school provision which is under the management of the education authority, and made for eligible pre-school children (see glossary). This provision also can include provision where an education authority have an arrangement with another provider, for example, where the authority have<sup>13</sup> arranged for children to attend a private nursery under a partnership agreement. In certain circumstances, described in chapter 3 below, the education authority have a duty to make provision for certain looked after and certain disabled children under the age of 3 years.<sup>14</sup>

## Disability

16. The meaning of disability, used in the code, is as defined in the Equality Act 2010. This provides that a person has a disability if a person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities.

## Looked After Children

17. The Act refers to looked after children within the meaning of section 17(6) of the Children (Scotland) Act 1995 which covers children looked after at home and children looked after away from home.

18. **Looked after at home:** where the child or young person is subject to a compulsory supervision order made by a Children’s Hearing. The child or young person continues to live in their normal place of residence (i.e. often the family home).

19. **Looked after away from home** (i.e. away from their normal place of residence): where the child or young person is subject to a compulsory supervision order made by a Children’s Hearing with a condition of residence specifying a place other than the family home, or is provided with accommodation under section 25 (voluntary agreement) of the Children (Scotland) Act 1995 or is the subject of a Permanence Order (Part 2 of the Adoption and Children (Scotland) Act 2007)). The child or young person is cared for away from their normal place of residence, e.g. in a foster care placement, residential/children’s unit, a residential school, a secure unit or a kinship placement.

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<sup>13</sup> The Act treats the term “education authority” as a plural term and for the sake of consistency the code adopts this convention

<sup>14</sup> ‘Certain disabled children under the age of 3 years’ refers to a child under school age (unless the child is a prescribed pre-school child), a child that belongs to the authority’s area, and at child that appears to have additional support needs arising from a disability (within the meaning of the Equality Act 2010 which the child has.

20. In addition to the above, a child or young person may be the subject of an Interim Compulsory Supervision Order (ICSO) made by a Children's Hearing or Sheriff. These are short term measures where the child or young person is considered looked after for the duration of the ICSO.
21. A glossary of terms used is provided at the end of the code.

### **References in the code**

22. The code refers to the Act and its associated regulations. References to the Act are in the margin of each page, for example s1(1)(a) refers to Section 1, subsection 1(a). References to the titles of other legislation are also in the margin of each page.

### **Further information**

23. Further information on the code of practice is available from:  
Support and Wellbeing Unit  
Scottish Government  
Victoria Quay  
Edinburgh  
EH6 6QQ  
Email: [ASLCodeofPractice@gov.scot](mailto:ASLCodeofPractice@gov.scot)

## Chapter 1 Summary of the Additional Support for Learning Act

1. This chapter summarises the main provisions of the Act and takes account of the 2009 and 2016 Act amendments, but does not cover all of the Act's provisions. It is not an authoritative interpretation of the legislation, which only the courts can provide.
2. The Act provides the legal framework for supporting children and young people in their school education, and their families. This framework is based on the idea of additional support needs. This broad and inclusive term applies to children or young people who, for whatever reason, require additional support, in the long or short term, in order to help them make the most of their school education and to be included fully in their learning. Children or young people may require additional support for a variety of reasons and may include those who:
  - have motor or sensory impairments
  - have low birth weight
  - are being bullied
  - are children of parents in the Armed Forces
  - are particularly able or talented<sup>15</sup>
  - have experienced a bereavement
  - are affected by imprisonment of a family member
  - are interrupted learners
  - have a learning disability
  - have barriers to learning as a result of a health need, such as fetal alcohol spectrum disorder
  - are looked after by a local authority<sup>16</sup> or who have been adopted
  - have a learning difficulty, such as dyslexia
  - are living with parents who are abusing substances
  - are living with parents who have mental health problems
  - have English as an additional language
  - are not attending school regularly
  - have emotional or social difficulties
  - are on the child protection register
  - are refugees
  - are young carers
3. The **above list is not exhaustive** nor should it be assumed that inclusion in the list inevitably implies that additional support will be necessary. However, the **Act automatically deems that all looked after children and young people have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education.** In addition, education authorities must consider whether each looked after child or young person for whose school education they are responsible requires a co-ordinated support plan. In discharging their responsibilities towards looked after children and young people, authorities are obliged to take steps to consider the educational progress of these children and young people. These steps should include establishing whether looked after children and young people require additional support to enable them to benefit from school education and which of

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<sup>15</sup> Reference: Guidance for addressing the needs of highly able pupils, The University of Glasgow - [http://www.gla.ac.uk/media/media\\_138127\\_en.pdf](http://www.gla.ac.uk/media/media_138127_en.pdf)

<sup>16</sup> Within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)

those with additional support needs meet the requirements for having a co-ordinated support plan (see chapter 5).

### **Duties of education authorities**

4. The Act imposes various duties on education authorities in connection with the provision of school education for children and young people with additional support needs belonging to their area. Some of the main duties are listed below. Education authorities must:

- make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible, subject to certain exceptions
- make arrangements to identify additional support needs
- keep under consideration the additional support needs identified and the adequacy of support provided to meet the needs of each child or young person
- provide appropriate additional support for certain disabled children under school age (in this case, generally children under 3 years of age) belonging to their area who have been brought to the attention of the authority as having additional support needs arising from their disability
- presume that all looked after children and young people have additional support needs unless the authority determine that they do not require additional support to enable them to benefit from school education
- consider whether each looked after child or young person for whose school education the authority is responsible requires a co-ordinated support plan
- publish, review and update, as necessary, specified information about their policy and arrangements in relation to provision for identifying, addressing and keeping under consideration such provision for each child or young person with additional support needs for whose school education the authority are responsible
- provide parents of children with additional support needs (eligible children and young people with additional support needs), for whose school education the education authority are responsible with all of the information they are required to publish under the Act
- ensure that a summary of the information published under the Act is available, on request, from each place in the authority's area where school education is provided, regardless of whether the school is under the management of the education authority
- provide the above summary in any handbook or other publications provided by any school in the authority's area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and on any website maintained by any such school or the authority for that purpose
- assess the capacity and impact on wellbeing of a child over the age of 12 years to be able to exercise their rights in respect of additional support for learning, where a child of this age seeks to exercise any right under the Act
- provide those children or young people, who need one, with a co-ordinated support plan and keep this plan under regular review
- provide independent and free mediation services for those parents and young people who want to use such services and publish information on these services
- have in place arrangements for resolving disputes
- at least 12 months prior to the expected school leaving date, request and take account of information and advice from appropriate agencies likely to make provision for the child or young person when he or she leaves school
- no later than 6 months before the child or young person is expected to leave school provide information to whichever appropriate agency or agencies, as the

authority think appropriate, may be responsible for supporting the young person once he or she leaves school, if the child (where the child has attained the age of 12 and has capacity), the child's parent or young person agrees

### **Powers of education authorities**

5. The Act gives education authorities the **power** to help children and young people belonging to their area who have or may have additional support needs and for whose school education they are **not** responsible. A power is a discretionary function of an education authority which the authority may or may not decide to exercise, whereas duties **must** be carried out. Those who may be supported include children and young people sent to independent schools by their parents and those being educated at home. The support can include, for example, provision of learning and teaching support, resources or advice, as considered below. s5(4)  
s7
6. Parents, eligible children or young people may request the education authority to establish whether they/their child or young person has additional support needs or, if the education authority were responsible for the school education of the child or young person, would require a co-ordinated support plan. The education authority are not required to comply with the request, but if they do, they must provide the eligible child, parent or young person with information and advice about the additional support required.
7. Parents may choose to fulfil their responsibility to educate their child<sup>17</sup> by having them attend an independent or grant-aided school for which they pay. In these circumstances, managers of grant-aided or independent schools may request the home authority – see glossary, to establish whether a child or young person attending their school has additional support needs and would require a co-ordinated support plan, if the education authority were responsible for the school education of the child or young person. The education authority are not required to comply with the request, but if they do, they must provide the managers of the school with information and advice about the additional support required. s30  
1980 Act
8. Education authorities may arrange for children or young people with additional support needs to attend establishments outwith the United Kingdom which make provision wholly or mainly for those with such additional support needs. s25

### **Appropriate agencies**

9. The Act has an impact wider than education and has significant implications for service providers and professionals working in the health service and in the other appropriate agencies as defined below. An appropriate agency must help the education authority in the exercise of any of its functions under this Act, if requested to do so by the education authority, unless the request is incompatible with the agency's own statutory or other duties or unduly prejudices the agency's discharge of its own functions. Under the Act an appropriate agency is:  
  - any other local authority
  - any NHS Boards23
10. The Act also enables the Scottish Ministers to make an order naming other appropriate agencies. In addition to the above, the Scottish Ministers have determined that **Skills Development Scotland, all colleges of further education and all institutions of higher education in Scotland** are appropriate agencies for the purpose of the Act. It should be noted here that voluntary organisations are not appropriate agencies as defined by the Act.

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<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1980/44/section/30>

11. It is expected that in most circumstances an appropriate agency will respond to a request for help from an education authority. However, if, for any of the reasons outlined in paragraph 9 above, the appropriate agency is unable to comply with the request for help, then this is a matter for the education authority to pursue with the particular appropriate agency. It is the education authority which must provide (or arrange for the provision of) services. For example, if the education authority make a request to an NHS Health Board and the request is refused then it would be for the education authority to make arrangements to compel the NHS Board to provide the service or, alternatively, to provide the service itself.

### **Rights of parents, children and young people**

12. The Act introduced new rights for parents and young people in 2004. The 2016 Act extended certain of these rights to eligible children (those who have attained the age of 12 years and who have capacity). Parents and young people have the following rights in full. Eligible children have the same rights except in relation to placing requests and mediation. The rights are to::

- request the education authority to establish whether their child has additional support needs
- receive advice and information about their child's additional support needs
- request, **at any time**, a specific type of assessment and/or examination for the purpose of considering the child's additional support needs as well as when the education authority propose to establish whether a child or young person has additional support needs, or requires a co-ordinated support plan (or where a plan is being reviewed)
- request the use of mediation services (an eligible child does not have the right to request the use of mediation services. Their views must be sought and taken into account as part of the process of mediation.)
- make use of dispute resolution arrangements<sup>18</sup> for matters about additional support needs that are specified in regulations – generally matters not eligible to be considered by the First-Tier Tribunal for Scotland Health and Education Chamber, although the use of these arrangements does not affect the entitlement to refer any matter to the Tribunal
- make a placing request to the education authority requiring them to place the child or young person in a specified school which can include an independent or grant-aided special school if their child has additional support needs (an eligible child does not have the right to make a placing request)
- make a placing request to another education authority for their child to attend a school under the management of that authority (an eligible child does not have the right to make a placing request)
- be informed of the outcome of requests under the Act, reasons why a request is refused and any applicable rights to have a decision reviewed, for example, through mediation or dispute resolution, or referred to the Tribunal or an education authority appeal committee (where it concerns a placing request where there is no related co-ordinated support plan matter and the placing request is not for a special school)
- request the education authority to establish whether their child needs a co-ordinated support plan or to review an existing plan
- receive a copy of the co-ordinated support plan, and any amended plan and be asked for their views and have them taken into account and noted in the co-ordinated support plan

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<sup>18</sup> Dispute resolution is used here to mean specifically the arrangements outlined in The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 and discussed in detail in chapters 4 and 9.

- refer to the Tribunal specified matters relating to co-ordinated support plans, appeals against the refusal of placing requests to special schools and failures by an education authority in relation to their duties regarding school to post-school transitions (an eligible child does not have this right)
- have a supporter with them or an advocate to present their case at any meeting with the school or education authority, in connection with the exercise of the education authority's functions under the Act and at Tribunal hearings
- have access to a free advocacy service in Tribunal proceedings

13. In support of this:

- parents and young people have access to independently provided advocacy and legal representation
- Eligible children have access to a children's service providing advice, advocacy services, legal representation and a service to independently seek their views

### **Children's rights**

14. Eligible Children now have similar rights to parents and young people in relation to additional support for learning within school education (see above). These empower children as participants in Scottish education in their own regard. The extension of these rights to children over 12 years of age in respect of additional support for learning is subject to safeguards.

15. In practice, families will require to consider who will use their rights in the circumstances that rights are being prepared to be used. It is not intended that eligible children and their parents can use their rights on the same issue at the same time, or indeed consequentially (to overturn the earlier effect). It is therefore essential that a decision is taken about whether the eligible child's rights will be used or the parent's rights will be used in each circumstance.

16. In some circumstances, children's parents may be unable to use their rights on behalf of their child. Where a child is an eligible child, the children's service will support those children who wish to use their rights. Looked after children and young carers may be likely to benefit most from this and should be encouraged and supported whenever possible to use their rights.

### **Assessment of capacity and consideration of wellbeing**

17. The safeguards take the form of an assessment of capacity and a consideration of adverse impact on wellbeing of an individual child who has attained 12 years of age. The assessments must take place **each time a child seeks to exercise a right** or have something done in relation to them by an education authority. These assessments require an evidence-based decision to be made in relation to both of these aspects. A child has capacity to exercise their rights in respect of additional support for learning if an education authority is satisfied that the child **has sufficient maturity and understanding** to exercise the particular right. After assessing the child's capacity to exercise a particular right, the education authority is to be satisfied that in doing so there will be no adverse impact to the child's wellbeing.

18. There is a wide range of assessment information which will support those working in schools and education authorities in reaching conclusions as to whether or not a child has capacity and whether there may be adverse impact on wellbeing. Further information can be found in non-statutory guidance: *Extending Children's Rights-Guidance on the assessment of capacity and consideration of wellbeing*.  
[www.gov.scot/ISBN/9781788515177](http://www.gov.scot/ISBN/9781788515177)

## **References to the Tribunal on capacity and wellbeing decisions**

In the circumstances where the child or their parents do not agree with the outcome of these considerations, they may make a reference to the Tribunal. The Tribunal may overturn or confirm the Education authority's decision. Further information on the Tribunal can be found in Chapter 8.

### **Children's Service**

19. Section 31A of the Act requires the Scottish Ministers to secure the provision of a support service to be available and free of charge to eligible children who are considering or wish to exercise their rights, or whose parents are considering or wish to exercise their rights in relation to the child.



## Chapter 2 Additional Support Needs

1. This chapter of the code considers the meaning of the terms “additional support needs” and “additional support” and considers the factors giving rise to the need for additional support.

### Legal definition of additional support needs

#### Additional support needs

1.-(1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.

(1A) Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)).

(1B) But where, in the course of identifying (in accordance with the arrangements made by them under section 6(1)(b)) the particular additional support needs of a child or young person who is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)), an education authority form the view that the child or young person is, or is likely to be, able without the provision of additional support to benefit from school education provided to or to be provided for the child or young person, subsection (1A) ceases to apply.

s1

#### Benefit from school education

2. The Act’s reference to school education links both the 1980 Act and the Standards in Scotland’s Schools etc. Act 2000 (“the 2000 Act”). The 1980 Act provides that school education “means progressive education appropriate to the requirements of pupils, regard being had to the age, ability and aptitude of such pupils, and includes early learning and childcare and the teaching of Gaelic in Gaelic-speaking areas”. It should be noted that this definition does not require pupils to be attending school, in order to be receiving school education. For example, pupils could be receiving school education in hospital or at home when they are unable to attend school because of ill-health. The 1980 Act also places a general duty on education authorities to secure for their area adequate and efficient provision of school education.
3. The 2000 Act requires the education authority to secure that school education is directed to the development of the personality, talents and mental and physical abilities of the child or young person, to their fullest potential. School education includes education provided by education authorities in exercising their duty to provide school education for eligible pre-school children, such as may be provided, for example, in nursery classes.
4. The benefit from school education which children and young people gain will vary according to their individual needs and circumstances. However, all children and young people benefit from school education when they can access a curriculum which supports their learning and personal development; where teaching and support from others meets their wellbeing needs; where they can learn with, and from, their peers and when their learning is supported by the parents in the home and their wider community. A difficulty or particular need in one, or more, of these areas may lead to a requirement for additional support to be put in place, to enable a child or young person to benefit from school education. Through

s1(5)  
1980 Act

s1(2)  
2000 Act

Curriculum for Excellence, all children and young people are entitled to a curriculum that includes a range of features at the different stages<sup>19</sup>.

### **Looked after children and young people**

5. The Act automatically deems that all looked after children and young people (see introduction, paragraph 17) have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education. In practical terms, this means that education authorities must make arrangements to identify the additional support needs, if any, of every looked after child or young person who is, or is about to be, provided with school education. It also applies to children over the age of 2 who are looked after, in kinship care or have a guardian. In addition, education authorities must consider whether each looked after child or young person for whose school education they are responsible requires a co-ordinated support plan. Looked after children under school age and who are not eligible pre-school children, as above, are not eligible for a co-ordinated support plan, since they are not receiving school education. However, when they start receiving school education, at say nursery school, and the authority have determined that they have additional support needs, then the authority must consider whether these children require a co-ordinated support plan.
6. The reason for deeming that looked after children have additional support needs, unless it can be shown that they do not require additional support to benefit from school education, is that there is considerable evidence that looked after children and young people can experience significant difficulties in more than one aspect of wellbeing which may impede their success in school education<sup>20</sup>. Children and young people who are looked after (both at home and away from home) often require individually tailored support to get the best from their school education. Assessing need and providing appropriate support is an important function of the corporate parenting<sup>21</sup> duties and responsibilities of local authorities and their service provider partners.
7. The 2014 Act<sup>22</sup> put corporate parenting on a statutory footing and introduced a new framework of duties and responsibilities for relevant public bodies that are corporate parents. These duties require all corporate parents to collaborate with each other, to promote the wellbeing of looked after children and care leavers in their care and enable them to achieve the best outcomes. In recent years, there has been improvement in attendance, attainment, and positive destinations for looked after young people, but the gap is not closing fast enough between looked after and other young people. (see Getting It Right For Looked After Children And Young People Strategy <http://www.gov.scot/Publications/2015/11/2344/0> ).

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<sup>19</sup> <http://www.education.gov.scot/documents/btc3.pdf>

<sup>20</sup> <http://www.gov.scot/Topics/Statistics/Browse/Children/EducOutcomesLAC>

<sup>21</sup> <http://www.gov.scot/Topics/People/Young-People/protecting/lac/lacimprovingoutcomes/corporate-parenting>

<sup>22</sup> <http://www.legislation.gov.uk/asp/2014/8/contents>

## What is meant by additional support?

### Additional support

1(3) (as amended). In this Act, “additional support means–

- a. in relation to an eligible pre-school child, a child of school age or a young person receiving school education, provision (whether or not educational provision) which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority for the area to which the child or young person belongs,
- b. in relation to a child under school age other than an eligible pre-school child, such provision (whether or not educational provision) as is appropriate in the circumstances.

8. All children and young people need support to help them learn. The main sources of support in pre-school provision and schools are the staff who, through their normal practice, are able to meet a diverse range of needs. All children and young people are entitled to support to enable them to review their learning and plan for next steps, gain access to learning activities which will meet their needs, plan for opportunities for personal achievement and prepare for changes and choices and be supported through changes and choices. With good quality learning and teaching and an appropriate curriculum, most children and young people are able to benefit appropriately from school education without the need for additional support.

9. Some children and young people, and this includes pre-school children receiving school education, require support which is additional to, or otherwise different from, the provision that is generally provided to their peers in order to help them benefit from school education. Section 1(3) of the 2004 Act was amended by the 2009 Act to ensure that additional support is not limited to educational support, but can include multi-agency support from health, social services and voluntary agencies, for example. In addition, as described in chapter 3 below, education authorities have a duty to make provision for the additional support needs of certain looked after children and disabled children under the age of 3 years in certain circumstances and this support, as above, is not limited to educational provision.

s1(3)

10. The Act, as amended, requires that a child’s or young person’s additional support needs are assessed against the provision made for children or young people of the same age in schools (other than special schools<sup>23</sup>) managed by the education authority that are responsible for his/her school education. However, when, as a result of a placing request, a child or young person is educated in a host education authority (that is, an education authority other than the one to which he/she belongs or in which he/she normally resides) then the additional support needs are assessed against the provision in that host education authority.

s1(3)(a)

11. Where no education authority is responsible for the child’s or young person’s education (e.g. the child or young person is home or privately educated), his/her additional support needs are assessed against the provision made for children or

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<sup>23</sup> See glossary for the definition of a special school

young people of the same age in schools, other than special schools, managed by the education authority in which he/she lives.

12. The definition of additional support provided in the Act is a wide, inclusive one and it is not possible to provide an exhaustive list of all possible forms of additional support. Additional support falls into three overlapping, broad headings: approaches to learning and teaching, support from personnel, and provision of resources. Examples are provided below of forms of additional support which are common in our schools, and many more can be given<sup>24</sup>. What is central to all these forms of support is that they have been identified as additional provision required to help individual children and young people benefit from school education, taking account of their particular needs and circumstances. The examples below refer to particular situations but should be understood more widely. They can be used to suggest how the law may apply in analogous situations. However, the examples are illustrative, not comprehensive, and they do not constitute an authoritative or exhaustive interpretation of the legislation.

### **How additional support may be provided**

13. Additional support for children and young people **may be provided in a range of locations** including in school, at home, in hospital, or in a specialist health, social services or voluntary agency facility. Examples of additional support may include:
- a particular approach to learning and teaching: for example, as used with children and young people with autism spectrum disorders, dyslexia or sensory impairments
  - youth work provided through community learning and development
  - attendance shared between school and further education college
  - the deployment of personnel from within the school or education authority: for example, support from a learning support teacher in the school or from a peripatetic teacher of the deaf
  - the deployment of personnel from outwith education: for example, support provided by allied health professionals working in health or social workers from the local authority or staff from the voluntary sector where this support enables the child or young person to benefit from education
  - provision of particular resources, including information and communications technology (ICT) and particular learning and teaching materials.
  - Examples of additional support provided from within education services to children and young people are the following:
    - a support for learning assistant working with a learning disabled child in a nursery
    - class teacher helping a child by following a behaviour management programme drawn up in consultation with a behaviour support teacher
    - tutorial support from a support for learning teacher to help with a reading difficulty
    - use of communication symbols by a child with an autism spectrum disorder
    - designated support staff working with Gypsy/Traveller children on their site to help them improve their literacy and numeracy skills
    - in-class support provided by an English as Additional Language (EAL) teacher for a child whose first language is not English
    - use of an app on a tablet computer to support writing

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<sup>24</sup> The term “significant additional support” is discussed in chapter 5, as one of the criteria for a child or young person requiring a co-ordinated support plan

- a highly able child at the later stages of primary school receiving support to access the secondary mathematics curriculum

Mary is in P6. She comes from a highly mobile Gypsy/Traveller family. Distance learning materials had previously been provided but with limited effect and Mary has fallen behind her peer group in a number of areas. She is now settled in a school, attending regularly and is receiving support from a teacher experienced in working with Gypsy/Traveller children. The teacher advises the support for learning and classroom teachers in the school. Mary receives age appropriate resources and is included with children of her own age.

Anna comes from a bilingual background and is fluent in her first language. She attends a mainstream primary school where she also receives additional language support from a visiting EAL teacher once a week. The teacher works directly with Anna in class and offers advice and support to her class teacher and other teachers and staff who support Anna.

George is in P6 and has completed the mathematics curriculum for primary school. His head teacher contacted the mathematics department in his associated secondary who agreed to provide suitable support from their department. The secondary mathematics teacher liaised with the class and learning support teacher to provide an appropriately challenging mathematics programme for George.

14. Some children and young people will require additional support from agencies from outwith education services if they are to make progress. This support may be provided outwith an educational setting. Some examples are:

- social work support to help a young person with social and emotional needs address his substance misuse
- a communication programme drawn up by a speech and language therapist and teacher for implementation in the classroom
- Promoting positive relationships programme delivered to a group of young people by staff from a voluntary agency
- counselling provided by a voluntary agency for a child who has been bereaved and needs support to help her overcome difficulties in school
- psychiatric support for a child with mental health difficulties
- specialist equipment support from physiotherapy
- a sensory integration programme provided by an occupational therapist
- group or individual career support to engage choices for education, training or employment, in anticipating school leaving.

s5(3)  
s1(3)(b)

Darren is a young carer for his mother who has mental health problems. He attends his local secondary school but has had significant absences because of caring for her. Darren's guidance teacher and his mother's social worker identified the extra burdens on Darren and their effect on his attendance. Darren's guidance teacher and his mother's social worker discussed the reasons for his absences with him. The social worker arranged for a carer to support Darren's mother during the day, enabling him to attend school.

Kyle, aged 11, was placed with foster carers following several periods of serious offending with a group of older boys. As part of his Child's Plan<sup>25</sup>, social work staff began working with Kyle and his mother, who is a lone carer, to address his offending behaviour. Kyle also exhibited behaviour difficulties at school requiring close inter-agency collaboration to ensure an effective programme of support. Kyle benefited from three days in a behavioural support unit and two days in a mainstream school, per week. In mainstream classes, he received additional support through a child support worker employed on a sessional basis within school. This support was co-ordinated through his Child's Plan which incorporated his individualised educational programme.

Susan, aged 14, is a 'school refuser' and is attending a voluntary agency day provision full-time, where she receives education and counselling. Local authority and voluntary agency staff, together with Susan and her parents, have been working together using the Getting it right for every child National Practice Model, in particularly the My World Triangle (see chapter 3) as a framework to assess her needs with a view to considering the development of a Child's Plan. In addition, the authority are considering whether the requirements for preparing a co-ordinated support plan (see chapter 5) have been met and what the future options for Susan are in terms of school and post-school provision (see chapter 6).

15. As well as certain looked after children under the age of 3 years, the Act requires an education authority to provide additional support to certain disabled pre-school children in their area, normally those who are under 3 years of age. This duty applies where such children have been brought to the attention of the education authority as having, or appearing to have, additional support needs arising from a disability within the meaning of the Equality Act 2010, and it is established by the education authority that they do have such needs. In their case, additional support will be provision which is appropriate to their circumstances. For example, support may be provided by educational support services in the form of teachers who visit children at home every fortnight and advise the parents about suitable activities they can carry out to promote their child's development and learning. Additional support may be provided from outwith education, such as from an occupational therapist from social work services or a speech and language therapist from health services. By virtue of the 2009 Act amendments the wider definition of additional support also applies to these children.

### **Factors giving rise to additional support needs**

16. There is a wide range of factors which may lead to some children and young people having a need for additional support. These fall broadly into the four

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<sup>25</sup> As a consequence of the Supreme Court judgment on Named Person provisions, Parts 4 and 5 of the 2014 Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

overlapping themes described below: learning environment, family circumstances, disability or health need, and social and emotional factors.

17. Schools are aware of their responsibilities to provide an effective and efficient education for all children and young people on their roll, including those with additional support needs. All children and young people are entitled to support to enable them to make progress in their learning. They can expect their learning environment to support them to develop their self-awareness, self-worth and to experience personal achievement. However, the educational experiences of some children may not take sufficient account of their individual wellbeing needs and circumstances, to ensure that they derive appropriate benefit from school education.
18. A need for additional support may arise where the **learning environment**<sup>26</sup> is a factor. For example, pupils may experience barriers to their learning, achievement and full participation in the life of the school. These barriers may be created as the result of factors such as the ethos and relationships in the school, inflexible curricular arrangements and approaches to learning and teaching which are inappropriate because they fail to take account of additional support needs. For example, highly able pupils may not be challenged sufficiently or those with specific reading or writing problems may not be receiving the appropriate support to help them make progress overcoming their difficulties.
19. In support of this, schools can monitor and review the learning environment by evaluating the quality of ethos and relationships in the school, the curricular arrangements and the approaches to learning and teaching. Such review can secure a reduction in barriers to learning, improvement in achievement and the full participation of children and young people with additional support needs in the life of the school.
20. **Family circumstances** may give rise to additional support needs; for example, where a child's or young person's home life is disrupted by poverty, homelessness, domestic abuse, parental alcohol or drug misuse or parental mental or physical health problems. Examples of where additional support needs may arise as a result of family circumstances include; where the pupil herself is a young mother, or is helping to care for disabled parents or siblings, or where a child is from a family of Armed Services with a parent being deployed into conflict zones, or where the family is affected by imprisonment. The child or young person may be being looked after by the local authority or have recently left care or be in need of measures to secure their care and protection. In these circumstances support from social work services may be needed to ensure that the child or young person is able to benefit from education.
21. Issues relating to a **disability or health need** may mean that additional support is required, for example, where a child or young person is a disabled child. Additional support is required to meet the needs of a child or young person who has a motor or sensory impairment, specific language difficulty, fetal alcohol spectrum disorder, autism spectrum disorder or has learning difficulties. Children with a low birth weight may have additional support needs. Mental health and wellbeing issues such as anxiety, eating disorders and depression can disrupt learning and may lead to additional support being required, for example from child and adolescent mental health services (CAMHS), or local counselling services to ensure benefit from school education.

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<sup>26</sup> How good is our school? (HGIOS) Fourth Edition <https://education.gov.scot/improvement/frwk2hgios>

22. **Social and emotional** factors may also give rise to a need for additional support. A child being bullied or bullying may need additional support. Bullying behaviour may be a result of prejudice that relates to perceived or actual differences. This can lead to behaviour and language which could manifest into racism, sexism, homophobia, biphobia or transphobia or prejudice and discrimination towards disability or faith. A child who has had Adverse Childhood Experiences may also benefit from additional support to overcome barriers to their learning. A child with behavioural difficulties or at risk of exclusion<sup>27</sup> from school may require additional support to develop positive relationships and behaviours to prevent further escalation of risk of exclusion and other associated risks, including offending behaviour. Additional support could be short-term or could be long-term over a number of years. The factors which may give rise to additional support needs are wide and varied because they relate to the wellbeing and circumstances of individual children and the learning environment they encounter. An individual may have additional support needs arising from more than one of the factors outlined above.
23. The same factor may have different impacts on individual learning. For example, one child or young person may find that difficulties at home have an adverse impact upon his or her learning. Another child in apparently similar circumstances may experience a minimal impact on his or her learning. E.g. A young person in a wheelchair attends a primary school in an older building where she receives support assistant time, due to presence of stairs. She transfers to a newly-built secondary school. The school environment has been designed to be accessible for all. After a period of familiarisation, the young person and/ or their parent feel they no longer require any additional support.
24. A need for additional support does not imply that a child or young person lacks abilities, skills or strengths. For example, bilingual children or young people, whose first language is not English, may already be fluent in one or more other languages with a wide range of achievements, skills and attributes. Any lack of English should be addressed within a learning and teaching programme which takes full account of the individual's abilities and learning needs. Similarly, some deaf children may have support needs which are related primarily to language and communication issues and they may have significant skills and abilities in other areas. Some children with a hearing impairment may be of the view that their hearing aid removes any barriers to learning and any need for additional support in school.
25. The requirement for additional support varies across a spectrum of needs and circumstances. Generally, it is preferable to ensure that support is provided as early as possible, in ways that are well integrated within everyday practice and do not single out the child requiring additional support. Some children, young people and families will find terms such as dyslexia or autism spectrum disorder useful in helping them explain and understand any difficulties being experienced. Others may experience such terms as limiting and stigmatising. Generally, children and young people are keen to be seen as being no different to their peers. Throughout, the requirement should be to view children and young people as individuals and to tailor support, positively and sensitively, to their individual needs and circumstances, considering all aspects of wellbeing.

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<sup>27</sup> **Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions** <http://www.gov.scot/Publications/2017/06/8877>



26. Chapter 3 below describes in more detail the functions and duties on education authorities to identify, assess and make provision for additional support needs.

## Chapter 3 Meeting Additional Support Needs

### Introduction

1. This chapter of the Code sets out guidance on the Act's provisions for identifying and assessing additional support needs and making provision for them. Most children and young people are educated in schools under the management of the education authority for the area to which they belong, the authority in which they reside with their parents, referred to here as the home education authority. However, in certain circumstances a child or young person may not be educated in a school under the management of the home education authority. The implications of these circumstances are considered in detail in chapter 4 below. Where responsibility for the school education of the child or young person rests with an education authority other than the home authority then that authority is referred to here as the host education authority.
2. The guidance in this third edition of the Code is considered against a background of authorities' and agencies' evolving approaches to assessment and provision. In particular, it reflects the values and principles to be found in Curriculum for Excellence within the framework of the national approach Getting it right for every child involving those working with children and young people across all agencies. It also draws on the assessment and planning framework within Getting it right for every child approach and considers the role of agencies outwith education, such as NHS Boards and social work services, in supporting children and young people with additional support needs. The 2009 Act ensured that information and data has been collected and reported on in relation to the provision for children and young people with additional support needs. The collection and reporting of information and data has contributed to monitoring the implementation of the Act. Further information can be found in Annex E: Planning, Reporting and Review of additional support for learning.

### Curriculum for Excellence

3. Curriculum for Excellence aims to achieve a transformation in school education in Scotland by providing a coherent, more flexible curriculum from 3-18. The curriculum comprises the totality of experiences which are planned for children and young people wherever they are being educated. Children and young people are entitled to experience:
  - a **coherent curriculum** from 3 to 18
  - a **broad general education**, including the experiences and outcomes well planned across all the curriculum areas, from early years through to S3
  - a **senior phase** of education after S3 which provides opportunity to obtain qualifications as well as to continue to develop the four capacities<sup>28</sup>
  - opportunities for developing **skills for learning, skills for life and skills for work** with a continuous focus on literacy, numeracy, and health and wellbeing
  - **support** to enable them to gain as much as possible from the opportunities which Curriculum for Excellence can provide
  - support in moving into **positive and sustained destinations** beyond school.
4. All children and young people are entitled to support. This universal support is rooted in the environment in which they learn, along with its related ethos and relationships. All staff have a responsibility to take an approach which promotes and supports fairness for all.

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<sup>28</sup> As successful learners, confident individuals, effective contributors and responsible citizens

## Getting it right for every child

5. Getting it right for every child is the national approach that aims to improve outcomes for all children and young people. It supports the Government's aspiration that:

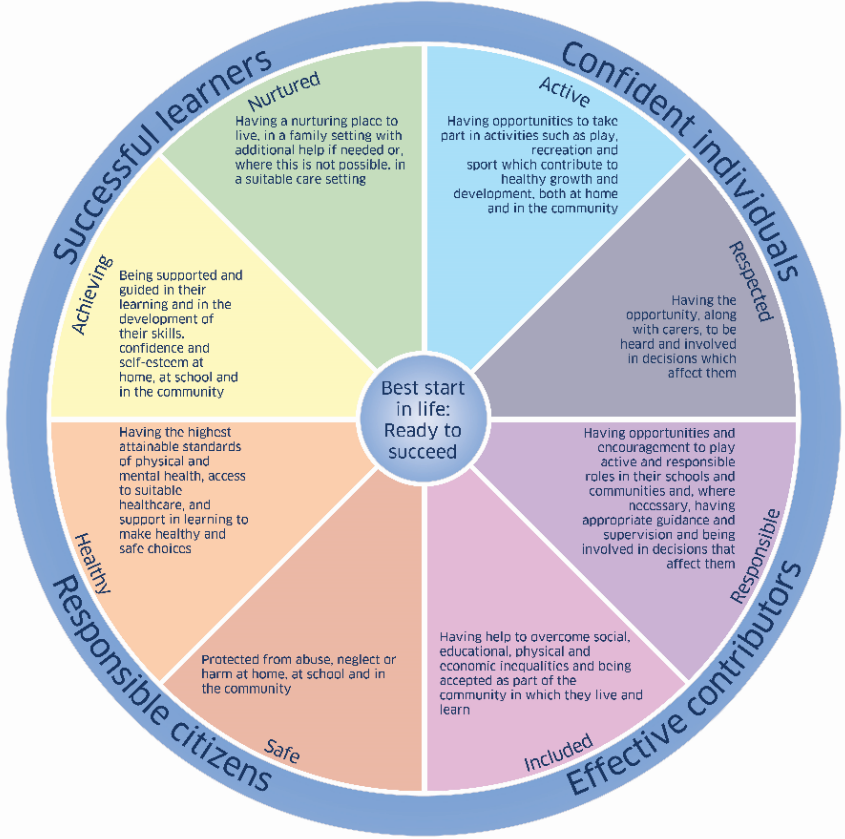
- our children have the best start in life and are ready to succeed
- our young people are successful learners, confident individuals, effective contributors and responsible citizens
- we have improved life chances for children, young people and families at risk.

The Getting it right for every child approach puts the rights and wellbeing of children and young people at the heart of the services that support them. It means services, such as early years services, schools, and the NHS, work with and for children, young people and families to give them the best possible support by offering the right help, at the right time, from the right people.

In summary the **The Getting it right for every child approach**:

- is about **empowering children, young people and parents**. It promotes children's rights and opportunities, and values diversity and family life.
  - is **child-focused**. It ensures the child or young person – and their parents – are at the centre of discussions, promoting informed choice about the help and support available to them.
  - is about the **wellbeing** of a child or young person. It considers how Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included they are so that no aspect of their wellbeing is overlooked.
  - offers **tailored support**. It means meeting the needs of each individual child or young person by taking account of their unique circumstances and by helping them to reach their potential.
  - offers **early support**. It aims to ensure needs are identified as early as possible to avoid bigger concerns or problems developing.
  - builds on the **strengths of the child, their family and community**. It means everyone working in partnership and supporting those who know the child or young person well to identify the right help at the right time.
  - promotes the **same values** across all working relationships. It promotes respect, openness and trust between children, young people, their parents and the people supporting them.
  - requires **joined-up working**. It is about children, young people, parents, and the services they need working together in a coordinated way where that is necessary to serve specific needs and improve children's wellbeing.
  - is available for **all children and young people** because it is impossible to predict if or when a child, young person or parent might want extra support.
6. The diagram below illustrates the Government's aspiration that all children and young people should be successful learners, confident individuals, effective contributors and responsible citizens. A child's wellbeing should be considered as described in the eight indicators: safe, healthy, achieving, nurtured, active, respected, responsible and included. Where needs are noted in any aspect of wellbeing, consideration should be given to the need for a holistic assessment.

The Getting it right for every child practice model within which the Wellbeing Wheel sits, is based on well researched, robust evidence about child development.



## **Values and principles of assessment, planning, action and review**

7. Effective assessment, planning, action and review, consistent with the values and principles of Curriculum for Excellence, Getting it right for every child, the Early Years Framework<sup>29</sup> and the provisions of this Act, involve:
- ensuring that parents, children and young people understand and are supported to help develop the aims of any assessment, the support options offered and the outcomes of any action proposed<sup>30</sup>
  - ensuring that assessment is an ongoing, integrated process of gathering and evaluating information, planning and offering support, and reviewing progress against agreed outcomes, in partnership with the child and parents and the services involved
  - offering the least intrusive and most effective support to promote, support and safeguard the wellbeing of children, young people and families
  - taking into account issues of diversity and equality and ensuring that outcomes do not discriminate against children, young people and their families. This includes not discriminating on grounds of race, disability, health, gender, sexual orientation, language, culture, religion or belief, and age.
  - working in partnership with, and building the capacity of, parents to secure education for their children and to promote their wellbeing.
  - those delivering the functions of the Named Person<sup>31</sup> or Lead Professional seeking, taking account of and noting the views of children, parents and young people and involving them fully in the assessment process and in finding solutions
  - taking a holistic view of children and young people and their circumstances, and what they need to grow and develop and achieve their potential, and where appropriate using a Child's Plan to record and coordinate support

## **Inter-agency co-operation**

8. Those with additional support needs comprise a broad group of children and young people whose needs require to be identified, understood and addressed to ensure that they benefit from school education. Education authorities need to play their part in ensuring that there is effective communication, collaboration and integrated assessment, planning, action and review when other agencies are involved. For example, where a child or young person is looked after away from home, there will already be involvement from social work and health staff as well as, possibly, voluntary agency staff. Also, the Act, as amended, presumes that all looked after children have additional support needs, unless the education authority determine that they do not require additional support to enable them to benefit from school education (paragraph 35 below). Agencies will require to co-operate in order to determine whether particular looked after children have additional support needs. Similarly, where children are within the Children's Hearing system, or need to be protected from harm, the relevant agencies must work together to ensure an integrated assessment of all of the child's or young person's needs. Consideration should be given to developing a Child's Plan accessible to the child

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<sup>29</sup> <http://www.scotland.gov.uk/Resource/Doc/257007/0076309.pdf>

<sup>30</sup> While parental agreement to assessment and action should be sought other than exceptionally, circumstances may arise where an authority will have to take action without parental consent; see chapter 5, paragraph 24.

<sup>31</sup> As a consequence of the Supreme Court judgment on Named Person provisions, Parts 4 and 5 of the Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

and parents and others as appropriate and agreed. A Lead Professional will have the role of co-ordinating the action set out in the plan and monitoring the Plan's effectiveness to achieve its specified outcomes. The role of the Lead Professional is set out below. Where Lead Professionals are working with children or young people with additional support needs, in addition to the points set out below, they also have a responsibility to be familiar with the Act and, in particular, to ensure that parents and young people themselves are aware of their rights when they have concerns or disagreements about the provisions being made under the Act.

### **The Lead Professional role<sup>32</sup>**

Where there is a Child's Plan and targeted interventions to support a child or young person and parents, there will be a Lead Professional to co-ordinate that help. The role of the Lead Professional is:

- to make sure that the child or young person and parents understand what is happening at each point so that they can participate in the decisions that affect them
- to be the main point of contact for children, young people, practitioners and family members, bringing help to them and minimising the need for them to tell their story several times
- to promote teamwork between agencies and with the child or young person and family
- to ensure the Child's Plan is implemented and reviewed regularly
- to support other staff who have specific roles or who are carrying out direct work or specialist assessments
- to ensure the child or young person is supported through key transition points, particularly any transfer to a new Lead Professional
- to ensure the information contained in the Child's Plan (is accurate and up-to-date)
- to involve the child's Named Person as appropriate and agreed

### **Co-ordinated support plans**

9. Chapter 5 describes the circumstances under which co-ordinated support plans require to be prepared. A co-ordinated support plan is a statutory plan prepared by the education authority when a child or young person requires significant additional support from the education authority and from at least one other agency from outwith education in order to benefit from school education. The plan sets out the educational objectives to be achieved by each individual who has one, together with the additional support that requires to be co-ordinated to enable him/her to achieve these. An individual child or young person may also benefit from more detailed planning in school (typically in the form of an individualised educational programme). Within the context of Getting it right for every child, a child or young person may require a Child's Plan to address other aspects of his/her wellbeing. Where such planning exists it should incorporate the educational objectives from the co-ordinated support plan.

### **Other agencies**

10. Under the Act, appropriate agencies and education authorities will collaborate to meet children's additional support needs. Interventions delivered by staff from appropriate agencies can make a real difference to both the early and later life chances of our children and their families. The Universal Health Visiting Pathway provides a set of home visits and child health reviews and assessments that helps to identify children's support needs. Where the health visitor is the named

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<sup>32</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/lead-professional>

person they will usually make arrangements for transition to education. Additionally, in line with national guidance from the UK National Screening Committee, NHS Boards introduced Universal Newborn Hearing Screening. In line with guidance set out by Scottish Government in Health for all children 4: Guidance on implementation in Scotland (2005) , all children should be screened by an orthoptist in their pre-school year, between the ages of 4 and 5 years. It is important that NHS Boards have arrangements in place for considering, and where appropriate, sharing information, about children with difficulties in hearing and/or vision which may give rise to additional support needs so far as necessary and proportionate, with education authorities.

### **Duties on appropriate agencies**

11. The Act promotes integrated working across agencies, in assessment, intervention, planning, provision and review. Appropriate agencies have a duty to help an education authority discharge their duties under this Act unless the help asked for:
  - is incompatible with the agency’s statutory or other duties or,
  - unduly prejudices the agency in its discharge of its own functions.
12. For the purposes of the Act, appropriate agencies can be any other local authority, any NHS Board or any other person specified by the Scottish Ministers. Those specified under regulations are Skills Development Scotland, further education colleges and higher education institutions in Scotland
13. As noted in paragraph 11 above, there are two circumstances where an appropriate agency need not discharge its duty to help the education authority. The first refers to a situation where an appropriate agency may be asked to do something which it does not have the power to do. The second refers to circumstances where, if the agency was to provide the help, the agency’s ability to carry out its other duties may be seriously compromised. For example, an education authority may request that a particular child has speech and language therapy. The NHS Board<sup>33</sup> may agree that therapy is required but argue that it has its full complement of therapists all working to capacity and that to release a therapist to provide this service would prevent the Board carrying out its duties with regard to other children.
14. Where a child or young person is attending a school under the management of an education authority outside the child’s or young person’s home area by virtue of a placing request, then it is the host education authority which is responsible for the school education of the child or young person and all the duties under the Act transfer to the host authority. Under the powers in relation to appropriate agencies under the Act, the host education authority could request help from the local authority for the area to which the child or young person belongs. In certain circumstances the host authority can recover costs from the home education authority (see chapter 4 paragraphs 26 and 27).
15. An education authority is under a duty to seek and take account of relevant advice and information from such appropriate agencies and other persons as they think appropriate when establishing whether a child or young person has additional support needs or would require a co-ordinated support plan.

### **Transitions**

16. The Act makes specific provisions to enable children and young people with additional support needs to receive help when they experience changes in school

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<sup>33</sup> <http://www.scotland.gov.uk/Topics/Education/Schools/welfare/partnershipworking>

education<sup>34</sup>. These changes, or transitions, include starting pre-school provision for the first time, transferring to primary school, transferring from primary to secondary school and preparing to leave school. Transitions also include moving from one school to another, for example, as a result of a change of address or through being excluded from school. The legislation requires the authority to seek relevant advice and information from such appropriate agencies and others as the authority consider appropriate. Transitions are considered in detail in chapter 6.

### **Requesting help from an appropriate agency**

- s23(1) 17. Where it appears to an education authority that an appropriate agency could, by doing certain things, help in the exercise of any of their functions under the Act, they may, specifying what these things are, request the help of that agency. In making a request, the education authority should be very specific about the help they are requesting. For example, the education authority should ask an NHS Board to assess a child's or young person's vision or hearing where the child or young person is experiencing learning, behavioural or speech or language difficulties<sup>35</sup>. An appropriate agency must comply with a request under this subsection of the Act unless it considers that the exceptions in section 23(3) of the Act, set out above at paragraph 11 apply.
- s23(1) 18. The Appropriate Agency Request Period and Exceptions Regulations<sup>36</sup> made under the Act, specify that appropriate agencies are expected to respond to requests for help within 10 weeks from the date the request is made by the education authority, subject to certain exceptions stated there (e.g. an assessment or examination cannot take place or any results of these are not available; the child or young person fails to keep an appointment within the 10 weeks; information required from another appropriate agency or person is not available before the expiry of the time limit). However, where the appropriate agency is aware that the 10 week timescale will not be met, it must inform the education authority which made the request of the reasons for failing to comply with the time limit and the new date by which the help will be provided. This new date itself should be as close to the 10 week time limit as possible but must not exceed 16 weeks from the date of the original request.
19. The role of further education colleges and higher education institutions as well as Skills Development Scotland, as with all other appropriate agencies, will be in line with their statutory or other duties. For example, further education colleges or higher education institutions may be requested as an appropriate agency to help with the provision of information and support relating to their provision of assistive technology. Other agencies, for example local authorities or NHS Boards, may be asked to assist with assessment of the child's or young person's need for certain support.
20. Further education colleges, in line with the sector's statutory duties, may offer link courses to children and young people with additional support needs other than at the stage of transition. For example, they may be involved in assisting schools to prepare pupils for the transition from school to appropriate further education courses at college. These courses may include "Skills for Work" or other courses for children under school-leaving age which form part of the links partnership between schools and a particular college. Such link courses should be designed

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<sup>34</sup> The Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005

<sup>35</sup> <http://www.scotland.gov.uk/Resource/Doc/37432/0011167.pdf>

<sup>36</sup> The Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005



to include assessment of the additional support needs of particular individuals that can then support transition planning at a future stage.

21. The help which may be provided by both further education colleges and higher education institutions may include a range of services to support transition from school to post-school provision such as:
  - visits to the college or university
  - early meetings with college learning/student support advisors, or university disability advisers, to discuss the type of support available
  - attendance at link courses or transition courses
  - the opportunity to talk with other students with or without additional support needs.
22. These types of support can be extremely helpful to a young person in the transition to college or university, as they may help reassure students that support will be available to resolve any concerns that they might have. Such help may also help reassure them that the issue of future support is being actively addressed. Further information about the roles and responsibilities of further education colleges or higher education institutions is outlined in a guidance document called *Partnership Matters*<sup>37</sup>.
23. Where it appears to an education authority that a young person may benefit from such support, it would be reasonable for further education colleges or higher education institutions to be asked for help under section 23(1).
24. Skills Development Scotland can:
  - help children and young people become more aware of the world of work
  - develop the career planning and decision-making skills of children and young people
  - assist children and young people to enter appropriate education, training or work.
25. The design and delivery of Skills Development Scotland's products and services are intended to take account of the varied needs of individuals, including those with additional support needs. Its Equalities Action Plan for Modern Apprenticeships in Scotland outlines the challenges to be addressed, and the actions which Skills Development Scotland will undertake with partners specifically to improve the participation of disabled and Black Minority Ethnic (BME) groups and care leavers<sup>38</sup> in Modern Apprenticeships, as well as addressing gender imbalance within the uptake of some occupations.
26. In addition to the support appropriate agencies may provide to individual children and young people, the provisions of the Act could also extend to discussion between the education authority and the appropriate agency to enable them to collaborate effectively.
27. Under the Act, a request for support could be made by an education authority to social work services belonging to another authority. This would be a request to an appropriate agency. The social work service from the same council is not an appropriate agency, but is covered by the Act. The Act requires an education authority to exercise any of their other functions (whether relating to education or not) if they consider that would help them in the exercise of their functions under

s23(1)  
s23(5)

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<sup>37</sup> <http://www.scotland.gov.uk/Publications/2009/05/08155445/0>

<sup>38</sup> In the context of the Skills Development Scotland Equalities Action Plan for Modern Apprenticeships in Scotland, care leaver includes young people still in care and considering their transitions into work.

the Act. This is subject to the exceptions based on compatibility with any of their statutory or other duties or being unduly prejudicial to the discharge by them of any of their functions. See paragraph 13 above for a discussion of these exceptions.

28. It is expected that in most circumstances, appropriate agencies will support an education authority when asked. However, if for either of the reasons outlined in paragraph 11 above, the appropriate agency is unable to comply with the request for help, then this is a matter for the education authority to pursue with the particular appropriate agency. It is the education authority which must provide (or arrange for the provision of) services. For example, if the education authority make a request to an NHS Health Board and the request is refused, then it would be for the education authority to either raise a court action to compel the NHS Board to provide the service or, alternatively, to provide the service itself. The Act does not confer powers on parents to take action against the appropriate agency.
29. There will be circumstances where agencies are working with children or young people but are not defined as “appropriate agencies” within the terms of the Act. For example, the police may be working with young people who offend, or a particular voluntary agency may be involved in providing a care package to a child in a family. Education authorities and such agencies will wish to continue working in partnership with each other using a single plan to co-ordinate action.

### **Assessment, planning, action and review**

30. Local authorities and other agencies use a wide range of approaches to support assessment and action and to promote inter-agency working. In education generally, these approaches reflect a staged approach (most commonly three to six stages). Such approaches are built around discrete stages of intervention which seek to resolve difficulties as early as possible and with the least intrusive course of action.
31. The Act does not prescribe any particular model of assessment or support. The diagrams below show some of the common features to be found in most models of staged assessment and provision and in the approach adopted through Getting it right for every child and the National Practice Model.

### **Meeting additional support needs**

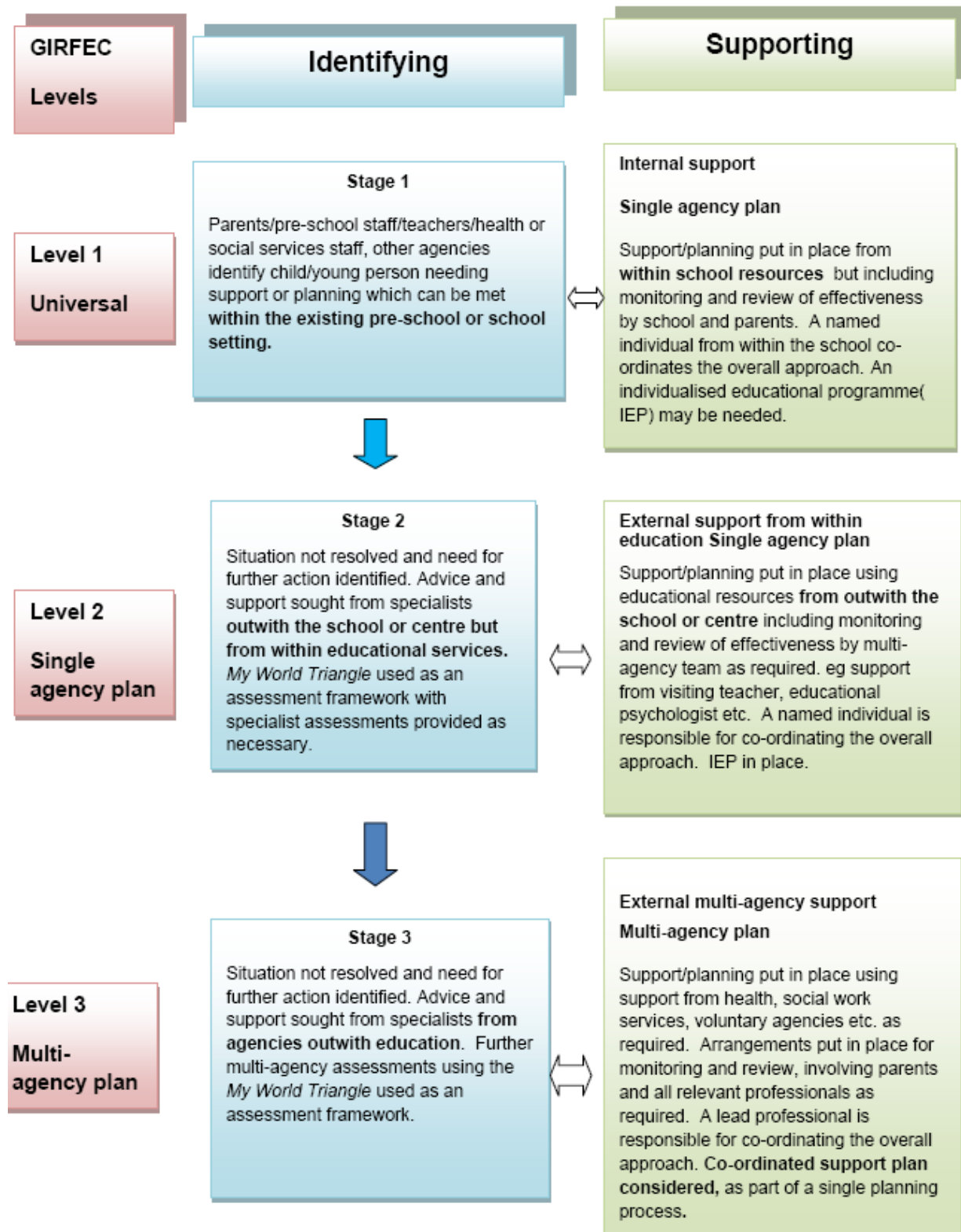
#### **Getting it right for every child**

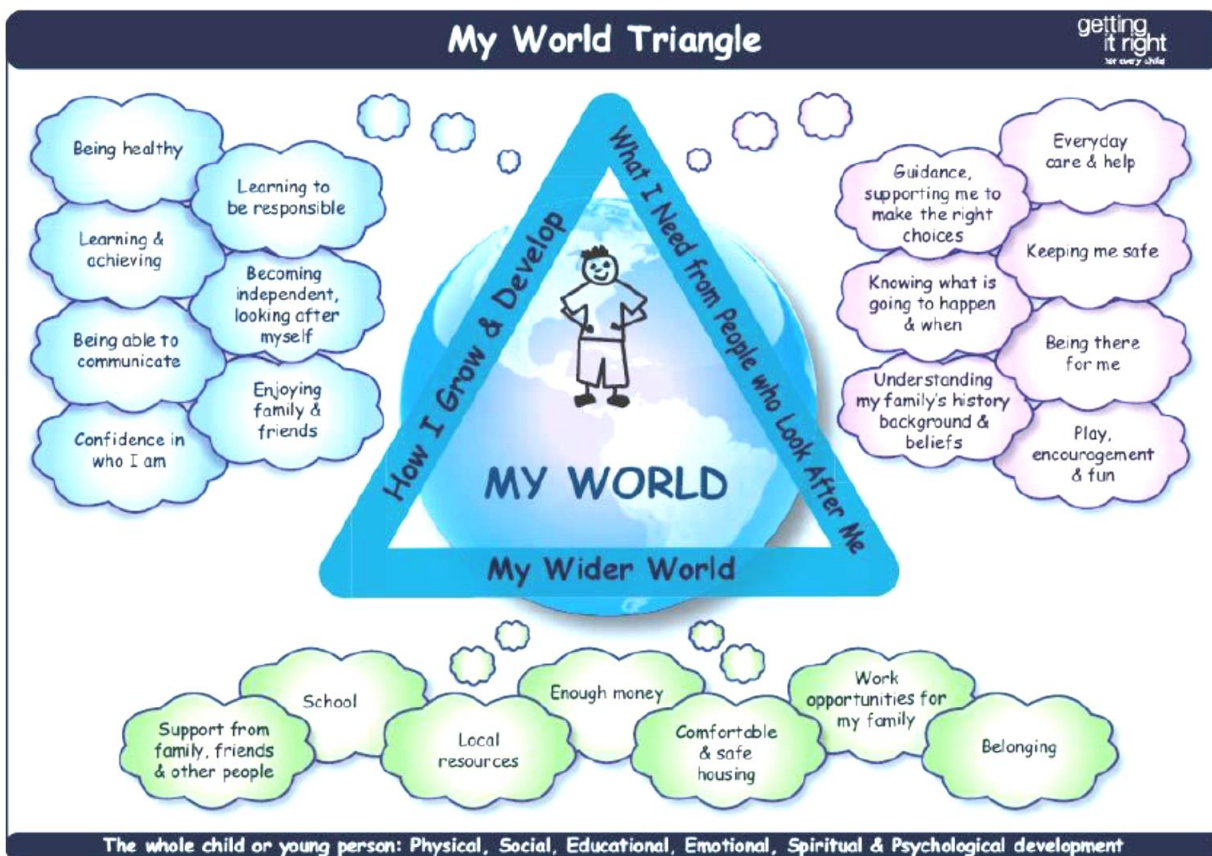
The Getting it right for every child policy provides five questions practitioners need to ask themselves about a child or young person:

- what is getting in the way of this child’s or young person’s well being?
- do I have all the information I need to help this child or young person?
- what can I do now to help this child or young person?
- what can my agency do to help this child or young person?
- what additional help, if any, may be needed from others?

When working in partnership with children or young people the My World Triangle can be used at every stage to think about the whole world of the child or young person and to seek their views. With the agreement of the child and parents as appropriate, it is particularly helpful to use the triangle to gather more information from other sources to identify the strengths and pressures in the child or young person’s world as part of a dynamic process of ongoing assessment. The My World Triangle allows practitioners, in partnership with the child and parents, to consider systematically:

- how the child or young person is growing and developing
- what the child or young person needs from others
- the impact of the wider world on the child or young person.





**Children and young people for whose education the education authority are responsible**

**Identifying additional support needs**

s6(1)

s26(2)

32. The Act requires education authorities to make appropriate arrangements for identifying from among the children and young people whose school education they are responsible, those who have additional support needs, and those who have additional support needs and require a co-ordinated support plan (considered in chapter 5), as well as the particular additional support needs of those identified. The authority have to publish information explaining what these arrangements are (see chapter 9 for more details).

s6(2)

33. Education authorities and schools should be able to identify most children and young people with additional support needs through their arrangements for assessing learning and for monitoring the educational progress of children and young people. Teachers assess learning as part of daily classroom practice. They get to know their learners well and work with children and young people to build up a profile which includes their strengths, needs and progress. They will involve children and young people in planning based on their progress and what they need to learn next. Teachers regularly take stock of their learners' achievements and progress in order to be able to plan ahead and to record and report on progress. In doing so, teachers are able to ensure that action is taken to address any difficulties at the earliest possible point. This approach will contribute to the school identifying children and young people who may have additional support needs and appropriate assessments of needs being carried out. However, the Act makes provision for parents, young people and eligible children to request the education authority to establish whether they or their child has additional support needs or requires a co-ordinated support plan (see below).

s6(5) and (6)

34. There will be circumstances where it comes to the attention of the authority (for example, through a teacher, paediatrician, social worker or therapist) that a child or young person may have additional support needs or require a co-ordinated

support plan. In these circumstances, the authority must establish whether the child or young person has additional support needs, or requires a co-ordinated support plan, unless the authority consider it unreasonable to do so. The authority should inform any person making such a referral of their conclusions where the education authority consider it appropriate to share such information and there is no legal barrier to such sharing. The consent of the parent or young person should be sought before doing this unless to do so would put an individual at risk of significant harm. In the event that this consent is not forthcoming the authority are still under an obligation to ensure that the child's or young person's additional support needs are met in so far as it is within their power to do so and that, where applicable, a co-ordinated support plan is prepared.

35. The Act presumes that all looked after children have additional support needs unless the education authority determine that they do not require additional support to enable them to benefit from school education. In effect this means that each looked after child will be considered to have additional support needs unless he/she is identified as not having them. In addition, if having been identified as having additional support needs they should be considered for a co-ordinated support plan. However, as noted earlier, education authorities should already be considering whether looked after children have additional support needs and require a co-ordinated support plan, as part of the process of reviewing the educational progress of all looked after children and young people (see chapter 1 paragraph 3 and chapter 2 paragraphs 5, 6 and 7).

s1(1A),  
(1B); and  
s6(1A)

### **Assessment**

36. In this code, assessment is seen as an ongoing process of gathering, structuring and making sense of information about a child or young person, and his/her circumstances. The purpose of assessment under the Act ultimately is to help identify the actions required to maximise development and learning. Assessment plays a key role in the authority's arrangements for identifying children and young people who have additional support needs and who, of those, require a co-ordinated support plan. Assessment is a process supported by professionals and parents in most circumstances. It identifies and builds on strengths, whilst taking account of needs and risks. The assessment process also assumes the negotiated sharing of information by relevant persons and agencies.
37. Assessment is a dynamic process with the child or young person at the centre. As a result, it should not be divorced from other aspects of the child's life either at school, home or in the community as illustrated in the My World Triangle above. It will usually include discussion with parents and professionals involved with the child or young person, for example, class teacher, support for learning staff, speech and language therapist, social worker, foster carer or residential worker. It should build on other assessment information already available. It may involve observation in one or more day-to-day situations and/or individual work with the child or young person as required. The education authority should always endeavour to seek and take account of the views of the child or young person, unless there are particular circumstances to prevent this happening, or which make it inappropriate.
38. Where it is required by virtue of the child's or young person's additional support needs, the assessment process should seek effective multi-agency consultation and collaborative working. Following Getting it right for every child practice, usually a Lead Professional and/or Named Person will co-ordinate the work with the child, parents and partner agencies to ensure that the assessment is carried out efficiently and effectively. The duties of the Named Person are set in legislation in the 2014 Act.

s9(2)(c)

s12(2) 39. An education authority must seek and take account of relevant advice and information (including assessments) from such appropriate agencies and such other persons whom they think appropriate in establishing whether a child or young person has additional support needs, or requires a co-ordinated support plan, or in preparing a plan or carrying out a review of a co-ordinated support plan. Those involved from outwith the education authority may be health services. For example, with the consent of parents, or children and young people themselves, an education authority may request an NHS Board to assess the hearing or vision of a child or young person where the authority are seeking to establish whether the child or young person has additional support needs. The education authority must also take account of any relevant advice and information available from sources within the local authority, other than from education. Such a source is most likely to be the local authority's own social work services.

s12(2)(c) 40. The education authority must also take account of any relevant advice and information provided to them by parents on behalf of their child, by the child or the young person. For example, if the parents have privately commissioned an assessment or report on the child or young person, or the child or young person has commissioned the report, then the authority must take that report or advice into consideration if asked to do so. Also, the authority must seek and take account of the views of parents, children and young people themselves. Further information is provided in chapter 7, which considers working with children and families.

#### **Assessment of children's capacity and wellbeing to exercise their rights**

s3A & 3B 41. Children's rights in respect of additional support for learning are subject to safeguards. Following a child's request to exercise a particular right, an education authority is to be satisfied that a child who has attained 12 years of age has the capacity to exercise the right. Before a child, who has attained 12 years of age, exercises their rights, the authority will carry out an assessment of their maturity and understanding to do so. An education authority must also consider whether or not exercising their rights would adversely impact on the child's wellbeing<sup>39</sup>. An education authority in assessing and considering the child's capacity and wellbeing is to be satisfied there has been no significant change in the child's circumstances since the original request for an assessment of additional support needs or whether a co-ordinated support plan is required, was made. An education authority is to notify the child and the child's parents of the intention to assess and consider capacity and wellbeing and notify them of the results. Where, after fulfilling their duties to assess and consider, the education authority is satisfied that the child lacks capacity to exercise a particular right or where doing so would adversely affect the child's wellbeing then the child cannot exercise the right. Equally, the education authority cannot fulfil that right. Further information on children's rights and assessment of capacity and wellbeing is provided in chapter 7, which considers working with children, young people and families. Additional non-statutory guidance in respect of children's rights and assessment of their capacity and wellbeing is available within the *Extending Children's Rights-Guidance on the assessment of capacity and consideration of wellbeing*.

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<sup>39</sup> [www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing](http://www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing)

## Requests for assessment

42. The Act enables parents or young people or eligible children to request an education authority to arrange for a child or young person to have an assessment or examination which includes educational, psychological or medical assessment or examination. This right applies when the authority are proposing to establish whether a child or young person has additional support needs, or requires a co-ordinated support plan, or the authority propose to review an existing plan. In addition, the right to request an assessment applies **at any time** so that where it has been established that the child or young person has additional support needs, then the parent or young person or child may request another assessment if they consider this necessary for any reason. s8(1), (2) and (4); 8A
43. Any such request from the parents, child or young person must be in writing or in any other permanent form which can be referred to in future, such as video or audio recording, and should contain a statement of the reasons for the request. The request can be for an educational, psychological or medical assessment or examination or any other assessment or examination, including any combination of these. In the case of an assessment or examination requested by the education authority from another appropriate agency such as an NHS Board (for example, related to speech and language, hearing or vision) then the other agency must comply with the request unless it considers that the request is incompatible with its own statutory or other duties or unduly prejudices its discharge of its own functions. As provided for in the Appropriate Agency Request Period and Exceptions Regulations<sup>40</sup>, other agencies are obliged to respond to a request for help which could include a request for an assessment, from the education authority within a period of 10 weeks from the date the request is made, unless one of the statutory exceptions applies in the particular circumstances of a specific request made by an education authority of the appropriate agency. s28(1) (a), (b) s8(4) s23(3) and (4)
44. The education authority must comply with the request for assessment unless the request is unreasonable. An unreasonable request is not defined in the Act. However, unreasonableness in this context is an objective test - what a third party might consider unreasonable. It will be for the education authority to consider each individual case on its own facts and circumstances. In some circumstances an education authority will need to consider carefully whether to comply. For example, they may decide not to comply with the request where the reasons for the request are not clear in which case the authority should attempt to establish why the request is being made. Where they are unable to establish the reasons for the request, then they may decide not to comply. They may also decide not to comply with the assessment request where the assessment:
- may not be seen as being relevant given the child's or young person's circumstances
  - may be unnecessary as there has not been a significant change in the child's or young person's circumstances since an earlier assessment was completed
  - may be within an inappropriate timescale e.g. falling within a short time of a previous request
  - may repeat recent assessments already carried out.
45. Parents or young people or eligible children may request other types of assessment beyond education, including psychological and medical assessments and examinations. The Act states that it is for the education authority to consider who is the appropriate "person" to carry out the particular s8(1), (2) and (3); 8A

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<sup>40</sup> The Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005 <http://www.legislation.gov.uk/ssi/2005/264/contents/made>

process of assessment or examination. In this context, “person” does not mean a named individual but rather the type of professional involved such as a psychologist, speech and language therapist or learning support teacher. Education authorities are not required to arrange for examinations or assessments to be carried out by named individuals or organisations requested by the parents or young person or child. The education authority may take into account information from social work services or voluntary organisations which are involved with the child or young person. Where a range of individual assessments are required, the education authority should, in line with Getting it right for every child practice, seek to bring these within one assessment process to avoid duplication and placing the child or young person, and his/her family, under stress. This will involve ensuring that there is a Lead Professional co-ordinating the process when the assessments involve multi-professional staff. The ultimate aim will be to bring the assessments and their conclusions together into the Child’s Plan

s8(4)

46. Psychological assessment will normally include assessment by an educational psychologist employed by the education authority. In cases where other psychologists (e.g. clinical or occupational psychologists) may have relevant knowledge or information about the child or young person, they should be consulted and their advice recorded and considered.
47. The NHS Board for the area in which the child or young person resides will arrange for the provision of assessment or examination, subject to the consent of the child, from the relevant health professional(s) such as, from medical, nursing, speech and language therapy, occupational therapy, physiotherapy, audiologist or orthoptist. Such assessment or examination should take into account relevant information from other professionals as appropriate.
48. Where a child or young person with additional support needs attends a special school in a host education authority which is served by a different NHS Board from the home education authority, then it is the NHS Board for the home education authority which remain responsible for specialist healthcare provision (except for the provision of general school medical service which are provided in the school). This position holds when a child or young person attends an independent special school and for whose school education an education authority are responsible. It is the home NHS Board which is responsible for specialist healthcare services, and for their costs, although these services should be provided by the NHS Board for the area in which the school is situated (or by another NHS Board which is willing to provide the services). This principle holds when a child or young person is normally resident outwith Scotland<sup>41</sup>.
49. A social work assessment may highlight specific issues in the child’s or young person’s life which are impacting on his/her ability to benefit from school education. For example, there could be child protection concerns linked to domestic abuse or parental substance misuse; mental or physical health problems within the family; concerns about a young person’s offending behaviour; or concerns about a child or young person who has experienced bereavement or loss. A social work assessment should be sought when considering a residential placement.
50. Once an assessment request has been made the process should be managed by appropriate staff within the education authority, school or appropriate agencies. The parent or young person or eligible child should be provided with contact details for the person managing the process to enable them to be updated on

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<sup>41</sup> Reference: Guidance from Scottish Executive Health Department to NHS Boards 6 December 2004



progress. The request for assessment should be acknowledged as soon as possible and the response to a request for assessment should be made within 10 weeks<sup>42</sup>. The 10 week period begins when the education authority request the assessment from the appropriate agency. Education authorities should therefore have arrangements in place to make sure that requests are processed without undue delay. In any case where the appropriate agency considers that it cannot meet the timetable, it should notify the education authority.

51. Where an education authority decide not to comply with any request made to them under the Act (see paragraph 44), including a request for assessment, they must inform the person who made the request (the child, young person or parents) in writing, of their decision not to comply and must explain why they are refusing the request. They must also inform the person who made the request about the right to access mediation services provided by the education authority (in the case of young people and parents only) and dispute resolution arrangements and, where appropriate, the Tribunal.

s28(2)

### **Early years: children under the age of 3 years**

52. The Act requires an education authority to provide additional support to certain disabled pre-school children in their area, normally those who are under 3 years of age. This duty applies where such children have been brought to the attention of the education authority as having, or appearing to have, additional support needs arising from a disability within the meaning of the Equality Act 2010, and it is established by the education authority that they do have such needs. For example, if the parent has brought the child to the attention of the education authority, then the authority must establish whether the child has additional support needs arising from a disability under its arrangements for identifying and providing for children with additional support needs.

s5(2),(3)

53. It should be noted that not all disabled children, whether under the age of 3 years or not, will necessarily have additional support needs; for example, those who are disabled by having medical conditions such as diabetes, asthma or HIV may not require additional support to enable them to benefit from school education. However, if the education authority do determine that the child has additional support needs arising from a disability, then they must provide such additional support as is appropriate for the child provided the child's parent or the child or young person as appropriate consents. That support is not confined to educational support but could include support from health, social work or voluntary agencies. As noted in paragraphs 11 to 15 above, appropriate agencies, such as NHS Boards, have a duty to help the education authority discharge their duties under the Act. However, the support provided must have educational aims. In other words, without that support, the child would be in a position where he/she would be unlikely to be able to benefit from school education provided, or about to be provided, by the authority. Where the education authority decide that there are no additional support needs arising from a disability, the authority should inform the parents, in writing, of the decision and the reasons for it.

s5(2)  
s1(3)(b)  
s1(1)

54. Although not required to do so under the Act, the education authority should monitor the number of children under 3 years of age receiving support. The nature of that support should also be monitored in order that plans can be made to ensure their needs are met on transition to pre-school provision.
55. In good practice, and following the principles of the Early Years Framework and Getting it right for every child, there will be effective communication across health

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<sup>42</sup> The Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005

and social work and education services so that the child may already be known to the education authority. For example, the Universal Health Visiting Pathway emphasises the Health Visitor's specific, unique contribution to achieving Hall 4, compliance with the Act and delivery of the Getting it right for every child policy and building on this, highlights their core and wider role through home visiting which focuses on relationship building with the family; and ensuring that families' needs are appropriately assessed and responded to in a person-centred and supportive way.

56. Health professionals, such as health visitors, general practitioners and community paediatricians, can identify children with likely additional support needs arising from a disability early in their lives, often at, or just after, birth. In good practice, the needs of an identified child will often be considered by a community team with relevant representation from health, education, social work and voluntary agencies. The health visitor or family nurse will be identified as the child's Named Person. In partnership with the parents, the team will consider assessment and intervention approaches. This process will also inform the planning of support when the child enters pre-school provision and/or school, if appropriate.
57. The team should aim to ensure a co-ordinated approach to gathering information and avoid parents having to provide information more than once. Such an approach also provides a holistic view of the child within his/her family and community context and enables early assessment of medical, social and/or learning needs to identify appropriate services, for example, for vulnerable children.
58. Outcomes of the process of identification and assessment for very young children and their families are:
  - clarification of the child's needs
  - agreement as to what, how, where, when and by whom support will be provided and monitored
  - a Child's Plan will usually be developed in partnership with parents which details the provision and includes how the parents can contribute to the actions and outcomes in the plan.
  - Where there is a Child's Plan, the identification of a Lead Professional who acts as a single point of reference for the family and other professionals.

59. Phillipa is a one year old child with complex medical needs resulting in significantly delayed development. She has been referred to the education authority by the local NHS Board for consideration of her additional support needs arising from her disability by her health visitor who is her Named Person. A multi-disciplinary community assessment team is co-ordinating a multi-agency support package for Phillipa and her family through a Child's Plan. This includes support from a home visiting teacher. A speech and language therapist is also advising the family on activities to help develop Phillipa's language. It is clear that her needs are complex and enduring and will require significant multi-agency support. It was agreed that in addition to the current additional support, the preparation for a co-ordinated support plan will begin before her third birthday.

**Early years: eligible pre-school children<sup>43</sup>**

60. The Act places a duty on an education authority to make appropriate arrangements for identifying those children for whose school education they are responsible, who may have additional support needs. At the pre-school stage, this

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<sup>43</sup> See glossary for definition of eligible pre-school children

duty will cover a child with additional support needs who is in pre-school provision managed by the education authority or in a partnership nursery under arrangements made by the education authority. It may involve also a child who is about to be provided with school education (including pre-school education), either in a school under the management of the authority, or through arrangements entered into by the authority.

61. Some children in pre-school provision will previously have been identified under the age of 3 years as having additional support needs arising from a disability. However, there will be others in pre-school provision who have a range of additional support needs and this can include those who are highly able or looked after, for example. Early years staff, in partnership with parents, have a key role to play in identifying children who may require additional support.

### **School years**

62. Within Curriculum for Excellence, all children and young people are entitled to support to enable them to achieve. Education authorities are required to identify the additional support needs of each child or young person for whose school education they are responsible. This can be achieved in a range of ways. Any person working with the child, or the young person himself/herself, could draw attention to the fact that difficulties with learning exist. For example, this person might be the parent, class teacher, a member of the school health team, educational psychologist, social worker or any person who has been working with a child or young person. All education authorities (and all schools) should have a clearly set out policy that describes procedures for identifying additional support needs. All education authorities and appropriate agencies should ensure that their processes for identification, assessment, planning, action, monitoring and review take account of the need for multi-agency and collaborative working following the principles of Getting it right for every child.

s6(1)

s6(1)

63. Within a school these processes typically follow the path outlined below (see also the flow chart following paragraph 31) with the aim of identifying and meeting the child's additional support needs at the earliest possible stage, in agreement with parents and the child or young person as appropriate:
- the teacher identifies children or young people who need a greater level of attention or planning than is generally required by the majority of children or young people to ensure that they can make appropriate progress and can overcome, as far as possible, any barriers to learning. Those identified can include children and young people who have abilities in one or more areas of the curriculum and require to be challenged more as well as those who have difficulties in learning or need support for social/emotional reasons. The teacher may adapt approaches to learning and teaching with the aim of securing the educational progress required.
  - where the expected progress is not achieved the teacher consults with, and seeks help from, other **within-school** support, such as learning support staff and typically interventions like in-class support take place or a plan of action, such as an individualised educational programme (IEP), is prepared.
  - if action at this stage does not resolve the issue, the school in consultation with colleagues and with parents seeks information and advice from **educational services outwith** the school, for example, from a visiting teacher or educational psychologist.
  - the teacher and the school incorporate this information and advice into their planning and practice with the child or young person in the school through the **single agency plan**.
  - if action at this stage does not resolve the issue, then support from services from appropriate agencies **outwith education** may be required, such as support from health or social work services. The authority may also look to voluntary agencies for information or advice, or from a voluntary agency under a service level agreement. Where more than one agency is, or should be, involved with the child or young person, then the education authority and agencies should develop an integrated **multi-agency plan** of assessment, sharing information, intervention and review following Getting it right for every child policy. Some children and young people may require a co-ordinated support plan (see chapter 5).
64. There are variations of the above model in operation. Educational services from outwith the school, such as visiting teachers or educational psychologists, may provide advice to the classroom teacher at the early stages when concerns are first expressed and before these services become directly involved in working with the child and family. This may also apply to services from outwith education where collaborative working is a feature of the work of the school, such as is found in some special schools. This overall approach can be very effective. It can lead to a resolution of the issue which avoids the need for formal referrals to these services and provides the class teacher with advice on approaches which may prove successful when similar circumstances arise in the future.

At parents'night Mai Ling's P4 class teacher explained to her parents that while Mai Ling's oral skills were very good, she had difficulties with reading and spelling. These difficulties were beginning to have an adverse impact on her progress in other areas of the curriculum and the class teacher was concerned that Mai Ling might have a form of dyslexia. The parents agreed with the class teacher that the learning support teacher should be asked to assess Mai Ling with a view to determining how best she could be helped in the classroom, whether or not she was dyslexic and what extra support the parents could give her at home.

**Children and young people for whose education the education authority are not responsible: Identifying and assessing additional support needs**

s7(1) and  
(2)  
s9(1)  
s5(4)

65. There will be children and young people belonging to the area of an education authority, but where no education authority are responsible for their school education. These may be children and young people who are attending independent or grant-aided<sup>44</sup> schools as a result of parental choice or who are being educated at home. In these circumstances, the parents, eligible child or young person may ask the education authority to establish whether the child or young person has additional support needs or would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. The education authority **may** comply with the request, but are not obliged to do so.
66. Where an education authority exercise this power they are not required to make any provision for the additional support needs identified, nor are they able to prepare a co-ordinated support plan; they can only prepare these plans for children and young people for whose education they are responsible (see chapter 5). The education authority may indicate what would be in a co-ordinated support plan where they are responsible for the education of the particular child or young person. In reaching a decision to refuse the request, education authorities should consider each case on the basis of its own facts and circumstances. In addition, given that education authorities may not exercise their discretionary powers to identify additional support needs, it is important that managers of grant-aided and independent schools make their own arrangements to identify and provide for children and young people with additional support needs.
67. Where a child or young person is educated outwith his/her home authority as a result of a placing request, then any request for assessment should be directed to the host authority since that authority is responsible for the child's or young person's school education (see chapter 4 paragraph 24).
68. Managers of independent and grant-aided schools may also request the education authority for the area to which the child or young person belongs to establish if the child or young person would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. Again, the education authority may comply with the request but are not obliged to do so. There may be children and young people from outwith Scotland attending these schools, but clearly, such a request could only be made with regard to children and young people whose home education authority is in Scotland.

s7(2)(b)

s28(2)

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<sup>44</sup> See glossary for explanation of grant-aided schools

- 69. Where the education authority refuse to comply with the request, they must inform the person who made the request of their decision and explain their reasons for the decision.
- 70. There may be circumstances where there is no request as such, but it is drawn to the attention of the local authority that a child or young person belonging to their area, but for whose school education they are not responsible, may have additional support needs. For example, the education authority may be aware of a child being educated at home who may have additional support needs. The education authority are not obliged to carry out an assessment but they may, if they wish, establish whether the child has additional support needs by, for example, arranging for an assessment to be carried out by a teacher or educational psychologist. In these circumstances the authority will normally require the agreement of the parents or young person, as appropriate. Where the education authority have concerns about the provision being made by the parents then under the 1980 Act they have powers to make an attendance order where they are not satisfied that the parents are providing efficient education for their child.
- 71. Where the education authority do respond to a request, as above, or decide to assess a child or young person to whom their attention has been drawn, then they must provide the persons making the request with such information and advice about the additional support required by the child or young person as they consider appropriate. In the case of a child, the parents should always be informed about any additional support which the child requires. However, the education authority have the power, but are not obliged, to make provision for the additional support needs so identified.

s7(4)  
s38 1980  
Act

**Making provision**

- 72. The Act requires that the education authority must make adequate and efficient provision for such additional support as is required by **each** child or young person with additional support needs, for whose school education the authority are responsible. In other words, the Act places a duty on the education authority with regard to **individual** children or young people with additional support needs. Over the 5 year period of reporting, education authorities have made provision for increasing numbers of children and young people with additional support needs. In 2011, the number of children and young people identified with additional support needs was 98,523 and by 2015 this had increased to 153,190 children and young people across Scotland. The authority could be held to be in breach of a duty, if it fails to make adequate and efficient provision of additional support for a particular individual with additional support needs. This adds to existing legislation in the 1980 Act which requires that an education authority make adequate and efficient provision of school education for their area.
- 73. The above duties under the Act do not require an authority to do anything outwith their powers or which would result in unreasonable public expenditure. The Act does not define unreasonable public expenditure. Decisions regarding what can be considered adequate and efficient provision and unreasonable public expenditure can only be judged in the light of each child’s or young person’s circumstances. Expenditure may be unreasonable where the cost incurred would be completely out of scale with the benefits to the child or young person or where suitable alternative provision is available at a significantly lower cost. It may be unreasonable where substantial expenditure on new facilities would be completely out of scale to the benefits to the wider community. This could be assessed in light of the authority’s duties to secure best value and service improvement. **Cost should not be the primary consideration in determining what provision is to**

s4(1)  
s4(2)  
s1(1) 1980  
Act

s7(7)  
s5(4)

s4(2)  
s28(2)

**be made.** For example, an education authority will wish to consider whether the expenditure in providing for a particular child or young person may be of benefit to others in the future. Where the education authority refuse to comply with a request on the grounds of the request being outwith their statutory powers, or likely to incur unreasonable expenditure, they must inform the person who made the request of their decision and explain their reasons for the decision. They must also notify the person making the request about mediation services (in the case of parents and young people) and dispute resolution procedures. The person making the request should be informed about the Tribunal, where the matter concerns:

- a request to prepare, or review, a co-ordinated support plan
- the provision of additional support identified in the plan as required by the child or young person
- an appeal against a refusal of a placing request for a special school, special class or unit
- school to post-school transition arrangements
- a decision on capacity or wellbeing of a child

74. The education authority should ensure that the authority's policy on additional support needs explains clearly the procedures used by their authority, and in their schools, to monitor and review the progress being made by children and young people with additional support needs, and the effectiveness of any additional support provided.

s5(1)

75. The Act requires education authorities to take account of the additional support needs of children and young people with such needs, when carrying out any of their functions in connection with the provision of school education. Education authorities will wish to review all their policies relating to the provision of school education to ensure that this general duty is met.

s5(4)

76. The above duties apply to children and young people for whose school education the authority are responsible. However, there are circumstances where an education authority are not responsible for the school education of particular children and young people belonging to their area. These circumstances may include children and young people being educated at home or attending independent schools, or grant-aided schools under arrangements made by their parents. In these circumstances, the authority may provide the additional support required for children and young people belonging to their authority area, but they are not obliged to do so. The education authority will wish to keep appropriate records for planning and monitoring purposes where additional support is provided in such circumstances as well as more generally.

### **Appropriate agencies**

77. As noted in paragraphs 11-15 above, appropriate agencies have a duty to help the education authority discharge their functions under the Act. Paragraph 48 contains advice where a child or young person attends a special school in a host education authority served by a different NHS Board from the one in which the child or young person is normally resident.

### **Early years: children under the age of 3 years**

78. As described above, the education authority have a duty under the Act to provide additional support in certain circumstances to disabled children belonging to their area, who are under 3 years old and are not eligible pre-school children. The nature of that support will depend on the circumstances of the individual child but may include support from a pre-school home visiting teacher and/or attendance at a pre-school centre. This provision need not be educational provision, but could include, for example, provision of speech and language therapy (see paragraph

s5(2);(3)  
s5(4)

53). As noted in paragraphs 11 to 15 and 53 above, appropriate agencies, such as NHS Boards, have a duty to help the education authority discharge their duties under the Act. The authority may make provision for children under the age of 3 years with additional support needs, but are not age 2 years and over and looked after or disabled. However they are not obliged to make such provision.

### **Early years: eligible pre-school children**

s4(1) 79. The authority have a duty to make adequate and efficient provision for such additional support as is required by each child or young person with additional support needs, for whose school education the authority are responsible. This includes eligible pre-school children being educated by the authority in their own provision or, for example, in partnership nurseries. The nature of this support will depend on the circumstances of each individual child but the range of support available will in many cases be the same as, or very similar to, that which is available to children in schools.

### **School years**

80. All children and young people are entitled to receive the support they need to become successful learners, confident individuals, responsible citizens and effective contributors. All staff in schools share a responsibility for identifying the needs of children and young people and working in partnership to put support in place to meet those needs. The needs of almost all children and young people who require additional support will be met through the range of provision available within the school. In some circumstances, support in school will be supplemented by other services or resources (for example, educational psychology or English as an additional language support) provided by the education authority. However, whilst the purpose of additional support is to enable the child or young person to benefit from school education, that support is not restricted to what takes place in a school. Importantly, additional support may also include non-educational provision such as support from, for example, a physiotherapist, clinical psychologist, speech and language therapist, play therapist or social worker where it is required for the purposes of meeting the learner's additional support needs. Additional support may be provided in a hospital, for example, where the child or young person is unable to attend school because of ill-health; or the additional support may be provided in a social work facility where the child or young person is receiving help with social/emotional difficulties. In chapter 2, additional support was referred to under three overlapping broad headings: approaches to learning and teaching, provision of personnel and provision of resources. It is clearly not feasible to list all the forms of support but some of the common ways support can be provided to the child or young person within the school include:

- use of specialist learning and teaching approaches (for example, for children with language and communication difficulties or dyslexia)
- implementation of an individualised educational programme (IEP) incorporating Specific, Measurable, Attainable, Relevant, Timed (SMART) targets
- specific support from a classroom assistant or additional support needs assistant or behaviour co-ordinator



- group work support within the school provided by education and/or social work staff
  - peer support arrangements such as buddying, paired reading and circle time
  - support from a therapist working directly with the child or young person, and/or working through another such as a teacher or parent following the therapist's advice
  - in-class support or individual or small group teaching by a learning support teacher.
81. Where difficulties persist, a progressive process of assessment and support will inform next steps in learning. Consultation with parents and the child or young person, support staff and agencies outwith the school may be necessary. Additional support may be given within or outwith a classroom or mainstream school context. For example, some children may benefit from attending a specialist unit within the school on a full or part-time basis. Others may benefit from provision in a special school or a shared placement between schools. Others may benefit from attending a health, social work or voluntary agency facility.

### **Planning: educational plans**

82. Planning for learning is an ongoing process subject to continuous review, through pre-school, school and beyond into lifelong learning. Almost all children and young people who require additional support will have their learning needs met by the day-to-day classroom practice in pre-school and school settings. This practice is subject to the normal self-evaluation and external professional monitoring and quality assurance procedures in place in school education. The information and data collected records the numbers of plans in place. Over the years of reporting on the Act, the total number of plans has increased from 49,787 in 2011 to 60,119 plans. More formal planning arrangements may be required where additional support is needed from other education services and other appropriate agencies. For example, an educational psychologist may be called on to advise on appropriate learning outcomes for a particular child or young person. Non-educational services may be involved in a joint or shared assessment of a child or young person. In such circumstances an integrated plan of action will be appropriate and where this involves the development of a Child's Plan, a Lead Professional will be appointed.
83. In all circumstances, planning should aim to ensure the effective co-ordination of support, including parents and the child or young person, so that it is clear what the intended learning outcomes are and what additional support is required to achieve these. Every opportunity should be taken to ensure that there is an integrated plan of action for a child or young person where a targeted intervention is required to meet a wellbeing need. The aim should be to have a Child's Plan in line with the 2014 Act. Such an integrated plan of action may be made up of different elements; for example, an individualised educational programme may be included as part of a Child's Plan for a looked after child. In this way, the professionals working with the child or young person use the Child's Plan with shared educational objectives. The following paragraphs consider the plans most likely to be used with children and young people who require additional support for learning.

### **Personal learning planning**

84. Personal learning planning helps children, young people and parents to be clear about the goals of learning, including those for personal development, and the experiences and outcomes planned for children and young people through

Curriculum for Excellence. All children and young people should have frequent and regular opportunities to discuss their learning with an adult who knows them well and can act as a mentor, helping them to set appropriate goals for the next stages in learning. Children and young people themselves should be at the centre of this planning, as active participants in their learning and development. The focus of personal learning planning is on supporting dialogue among teachers, parents, children and young people, and ultimately about engaging children and young people in their own learning. The purpose of record keeping and documentation is to support the process of personal learning planning rather than these being ends in themselves. This should be done in whatever way suits learners and the school best. All children with additional support needs should be engaged in personal learning planning and for many this process will be sufficient to address their additional support needs. Further detailed information about personal learning planning and profiling including information on involvement of pupils, gathering evidence, planning for those with additional support needs and reporting on progress can be obtained from the assessment pages of the Parentzone website<sup>45</sup> and from Curriculum for Excellence Briefing Paper 5 Personalised Learning<sup>46</sup>

### **Individualised educational programme**

85. Where children or young people require more detailed planning for learning than can be catered for through personal learning planning, or where substantial adaptation to the arrangements for learning and teaching is being considered, an individualised educational programme may be appropriate. An individualised educational programme describes in detail the nature of a child's or young person's additional support needs, the ways in which these are to be met, the learning outcomes to be achieved, and specifies what additional support is required, including that required from agencies from outwith education. Where appropriate, an education authority should work with health, social work or voluntary agencies to draw up the programme so that objectives and services can be co-ordinated into a plan of action.
86. Many local authorities have a policy which explains the circumstances under which individualised educational programmes are used. Some have developed a template for an individualised educational programme which can be completed electronically and some use different names for individualised educational programmes. Curriculum for Excellence Briefing Paper 13 gives further consideration to good practice on planning for learning using individualised educational programmes<sup>47</sup>. The numbers of IEPs as reported in use have decreased from 42819 in 2011 to 37168 in 2015.

### **Co-ordinated support plans**

87. There is a small number of children and young people with significant additional support needs arising from complex or multiple factors who require support from at least one agency from outwith education. These children may fulfil the statutory requirements for having a co-ordinated support plan, which are described in detail in chapter 5, to ensure that the support for learning is co-ordinated effectively across agencies. The number of co-ordinated support plans overall have been less than might have been expected. In the period of reporting the number of co-ordinated support plans decreased from 3,617 to 2,716. The links between co-ordinated support plans and other educational plans are considered in chapter 5.

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<sup>45</sup> <https://education.gov.scot/parentzone>

<sup>46</sup> <https://education.gov.scot/Documents/cfe-briefing-5.pdf>

<sup>47</sup> <https://education.gov.scot/Documents/cfe-briefing-13.pdf>

## Planning: agencies outwith education

88. There is a range of plans which a child or young person may have. Education authorities and other agencies should seek to ensure that assessment for, and production of, learning plans takes account of any other planning processes within the local authority and across agencies. The ultimate aim is to have one plan in line with Getting it right for every child. Educational objectives should be shared across plans. In particular, education plans should link with the Child's Plan. This will help prevent duplication and facilitate the co-ordination and implementation of support for children and young people. Nevertheless, as explained in chapter 5, co-ordinated support plans are statutory plans and where a child or young person fulfils the requirements for having one, then it must be prepared. Other plans cannot substitute for a co-ordinated support plan. The 2014 Act has established the Child Plan's as a statutory plan also. In the reporting period 2011 to 2015, the number of Child's Plans (in line with Getting it right for every child principles) has increased from 3,351 to 20,235.

s31  
1995 Act

89. Particular issues may arise with statutory care planning. There is a statutory duty on the local authority as "corporate parent" to review the care plans of the children and young people looked after by them. Although a key element of the Child's Plan may focus on the support offered to the child or young person and the desired outcomes for the placement, and related aspects of family contact and support, it should also reflect other aspects of wellbeing including the child's or young person's learning needs. Effective planning is important to ensure that children and young people receive the services they need. *"Children who are looked after should have the same opportunities as all other children for education, including further and higher education, and access to other opportunities for development. They should also, where necessary, receive additional help, encouragement and support to address special needs or compensate for previous deprivation or disadvantage."* (Guidance to the Children (Scotland) Act 1995)
90. Local authorities are required to monitor the educational progress of each child or young person who is looked after. Where children or young people have additional support needs, these should be stated in their Child's Plan. In many cases it will be appropriate for that part of the Child's Plan which covers education to refer to any planning documents used for education, and for these documents to be appended to the Child's Plan, without necessarily completing the education section of the Child's Plan.
91. There is a range of health care plans for different disciplines within health, e.g. medical, nursing, occupational therapy, speech and language therapy, and physiotherapy. Each plan is informed by an assessment process with clear objectives and outcomes. These outcomes are monitored to inform and ensure clinical effectiveness. Plans may be single or multi-disciplinary, or form part of a multi-agency plan as appropriate. Although these plans have their own specific purposes, it is important that they are integrated with, and cross-refer to, education plans for purposes of identifying learning needs and educational objectives.

Louise, aged 6, is the oldest of three children. The school is concerned about her short concentration span, poor communication and aggressive behaviour towards other children. The family receive support from the local family centre and there have been regular multi-agency meetings to co-ordinate support. For the previous six months all three children have been on the child protection register because of concerns of neglect and each now has a Child's Plan. At the most recent review of Louise's Child's Plan it was highlighted that her communication skills remained poor despite an individualised educational programme being in place. A speech and language therapist assessed Louise and advised the school about more appropriate learning and teaching approaches and objectives and helped to develop new appropriate education targets within the Child's Plan. There is one overall action plan which incorporates child protection measures and the steps being taken to address her additional support needs.

### **Monitoring and review**

92. Education authorities must make appropriate arrangements for keeping under consideration the additional support needs of, and the adequacy of additional support provided to, each child and young person with additional support needs for whose school education they are responsible. Education authorities, with appropriate agencies, must monitor the progress of children and young people who have additional support needs to ensure that they are learning effectively and making appropriate progress. Where children and young people are not making progress as expected, their additional support needs should be re-assessed and appropriate support provided. When children and young people are progressing as expected, their additional support needs proving to be of a short duration, then additional support provision will no longer be required and they will benefit from school education through support within universal provision. This should be confirmed following a review of progress made in consultation with the child, young person, parent and where appropriate, partner agencies.
93. Education authorities and other agencies need to have arrangements in place to co-ordinate the planning and review process for children and young people. These arrangements will maximise effective joint and coherent working across agencies and authorities involved and help reduce pressure on the child or young person and their parents, as well as promoting the child's or young person's development to their fullest potential. This is particularly important where the review schedules for plans vary. For example, individualised educational programmes (IEPs) are reviewed regularly by teachers and children and young people as part of the continuous learning and teaching cycle. IEP reviews are called as required, but typically every two months, or each term.
94. The local authority, as a minimum requirement, must review the circumstances of children and young people looked after away from home within six weeks of being placed<sup>48</sup>. Thereafter, reviews must take place within three months of the first review, and subsequently, at intervals of no more than six months. The purpose of these reviews is to prepare a care plan which addresses the immediate and longer term needs of the child or young person with a view to safeguarding and promoting his or her welfare. Where a looked after child or young person also has an individualised educational programme or a co-ordinated support plan, the authority may decide to review these within the care plan review process. Any meetings should fully involve the parents and the child or young person in preparing the plan or plans. A copy of the care plan should go to parents, young

s11(5)

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<sup>48</sup> [The Looked After Children \(Scotland\) Regulations 2009](#)

persons and all those who have contributed to the plan or plans. It should be noted that a copy of the co-ordinated support plan must be given to the eligible child and if the plan is prepared following a request made under sections 6(2), 7(2)(a) or 10(4)), child's parent or the young person.

95. Local authorities and agencies should have arrangements in place to ensure that all appropriate plans are updated and integrated as required into a single planning process. These plans are all working documents. Local arrangements should be in place to decide who convenes multi-agency review meetings and who the Lead Professional will be where there is a Child's Plan. As noted in paragraph 35 above, the Act presumes that all looked after children have additional support needs unless the education authority determine that they do not require additional support to enable them to benefit from education. The local authority should use the reviews to consider whether looked after children or young people have additional support needs.
96. Changes in educational provision such as transfer of school and planning for leaving school require to be considered carefully to ensure that transitions are as smooth and purposeful as possible. Transitions are considered in chapter 6.

## Chapter 4 School Attendance: Rights, Responsibilities and Placing Requests

### Introduction

1. For the purpose of arranging for children to attend schools, local authorities usually divide cities, towns and country areas into school catchment areas and children living in the same catchment area usually attend the same school. Almost all children and young people with additional support needs are educated in their local schools under the management of the education authority responsible for the area to which the child or young person belongs. This is the education authority for the area in which they usually reside with their parents, referred to here as the home education authority. An education authority is required to provide that education in mainstream schools unless certain exceptions apply.

2. Some children with additional support needs may attend schools in the local authority outwith their catchment areas as a result of arrangements made by the authority with the agreement of the parents. For example, children and young people may attend special schools (or special classes or special units)<sup>49</sup> or other schools in that local authority because they are better able than the local school to provide school education to meet the child's or young person's additional support needs. However, such circumstances are presumed to only arise exceptionally. An education authority is required to take account of the views of children, young people and parents where an education authority determine that despite one of the exceptions in section 15(3) of the 2000 Act<sup>50</sup> applying, they still wish to provide education for a child other than in a special school.

3. Section 2(2) of the Standards in Scotland's Schools etc Act 2000 provides that an education authority must have due regard, so far as reasonably practicable, to the views of children and young people in decisions that significantly affect their education, taking account of the child or young person's age and maturity. Education authority professionals therefore should not make decisions that affect a child without taking their views into consideration.

4. This chapter considers the following five circumstances under which a child or young person may not be receiving school education in their local school<sup>51</sup>.

- the parents may be educating the child or young person at home or may have arranged for the child or young person to attend an independent or grant-aided school
- the home education authority may have entered into arrangements with another education authority to have the child or young person educated in a school under the management of that education authority
- the home education authority may have arranged for the child or young person to be educated in an independent or grant-aided special school, or a school in England, Wales or Northern Ireland providing wholly or mainly for children or young people with additional support needs
- the child may be being educated in a school in another education authority area as a result of a successful placing request made by the parent(s) to that education authority. A young person may have made such a placing request in his/her own right

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<sup>49</sup> See glossary

<sup>50</sup> <http://www.legislation.gov.uk/asp/2000/6/crossheading/requirement-for-mainstream-education>

<sup>51</sup> Education authorities have the power to enable children and young people with additional support needs to attend certain establishments outside the United Kingdom (see chapter 9, paragraph 5)

- as a result of a successful placing request to the home education authority, the child may be being educated in a school (other than the catchment area school) in the home education authority area or in an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland making provision wholly or mainly for children or young people with additional support needs. A young person may have made such a placing request in his/her own right

5. Young people can make placing requests on their own behalf unless the education authority are satisfied that they lack the capacity to do so in which case the parents can act on their behalf. Eligible children do not have the right to make placing requests.

6. In considering each of the above circumstances, the focus in this chapter will be on where the responsibility for providing the school education rests when a child or young person is educated at home or in a school outwith his or her catchment area and what procedures are available for the parents or young people to pursue when they have concerns or disputes about the provision available. In particular, the Act provides parents and young people with access to mediation, dispute resolution and the Tribunal in certain circumstances. Eligible children have access to dispute resolution and the Tribunal, but not mediation. While each of these is considered in detail in chapter 8, the following summary is provided here for ease of reference:

- mediation: an education authority must have an independent mediation service in place for disagreements relating to matters concerning the exercise of the authority's functions under the Act (section 15 of the Act). It allows disputing parties to seek to resolve their differences with the assistance of a mediator acting as an impartial third party. Mediation is free of charge to parents and young people. Eligible children do not share the right to request the use of mediation. However, an education authority must seek and take account of the views of children in respect of matters under mediation. This may be supported by the children's views part of the Children's Support Service.
- dispute resolution: the procedure for resolving disputes allows for a formal review of an individual case by an independent third party, external to the education authority, who considers the circumstances leading to the disagreement and makes a report with recommendations for all parties. The referral for dispute resolution is made to the Scottish Ministers and dispute resolution is free of charge to parents and young people and eligible children.
- tribunal: the Tribunal will hear references from parents, and young people on matters relating to co-ordinated support plans, appeals against refusals of placing requests to special schools and school to post-school transitions. Eligible children may make references relating to co-ordinated support plans and transitions, in addition to this, eligible children and parents may make references on matters relating to the authority's capacity and wellbeing assessments). The Tribunal's statutory functions, decisions and dealings with its users and the public are independent of national and local government. There is no charge to parents, children and young people and eligible for making a reference to the Tribunal.

### **An education authority's functions under the Act**

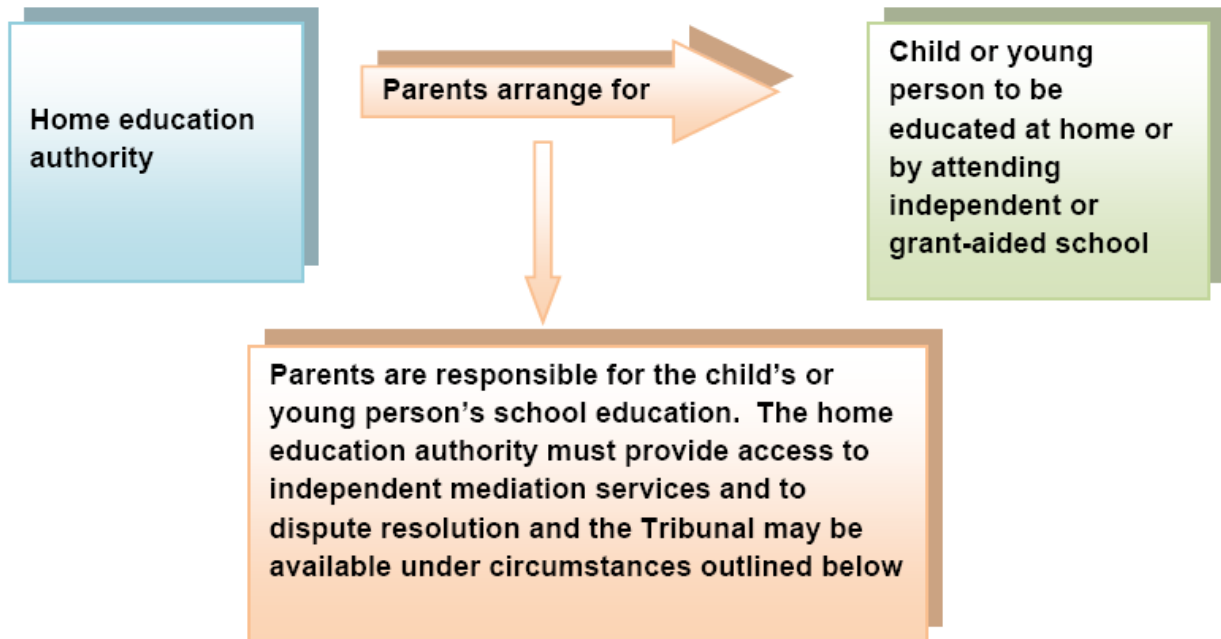
7. A reference to an education authority's functions under the Act is another way of describing their **powers** and duties under the Act. The education authority's powers under the Act are discretionary so the authority may choose to exercise these or not. For example, where parents of a child belonging to the area of an education authority, but for whose education the authority are not responsible, request the authority to establish whether their child has additional support needs, the authority may comply

Sch 2  
para 8

s7(1)  
s6(1)(a)

with the request but need not do so. However, duties are mandatory and must be carried out. For example, each education authority must make arrangements to identify from among those children and young people for whose education they are responsible those who have additional support needs.

### Parents providing education at home or through making arrangements for attendance at an independent or grant-aided school



8. Section 30 of the Education (Scotland) Act 1980 states that “It shall be the duty of the parent of every child of school age to provide efficient education for him suitable to his age, ability and aptitude either by causing him to attend a public school regularly or by other means.” The majority of parents discharge this duty by sending their child to a school managed by the local authority for the area in which they live. However, they may discharge their duties under the 1980 Act by educating their child at home or by making arrangements for him/her to attend an independent or grant-aided school. In those circumstances, the home education authority are not responsible for the child’s education. Usually, the parents would require to meet any costs of their child attending such a school.

9. The Act gives education authorities the following **powers which they may or may not choose to exercise** (see chapter 3 paragraphs 65-69):

- to help children and young people belonging to their area who have additional support needs (e.g. they could provide support to a child being home educated or attending an independent school)
- to respond to requests from parents, managers of grant-aided or independent schools, eligible children or young people themselves to establish whether children or young people have additional support needs and would require a co-ordinated support plan if the education authority were responsible for the school education of the child or young person.

s5(4)

### Mediation

10. Parents of children for whose school education an education authority are not responsible have access to independent mediation services through the home education authority in connection with the exercise by it, or failure to exercise by it, of any of its functions as regards those children. Young people have access in their own right. For example, parents of a child at an independent or grant-aided school, for whose school education the authority are not responsible, may request the home education authority to establish whether the child has additional support needs or

s15  
s7(2)  
and (3)  
s7(7)  
s5(4)



would require a co-ordinated support plan if the home education authority were responsible for the school education of the child or young person. If the education authority decide to exercise their discretion **not to establish either**, or both, of these matters then these can be referred to mediation . Equally, if the education authority have exercised their discretionary power, and have, for example, established that the child has additional support needs, then they are obliged to provide the parents with information and advice about the additional support required. Failure to do so could be referred to mediation and/or to the Scottish Ministers under section 70 of the 1980 Act, as a failure to comply with this duty would be a failure to comply with a duty in education legislation. The education authority are not obliged to provide the support so identified but may exercise their discretionary power to do so. However, where they **have** provided the support and, for example, wish to change it then if the parents disagree with the authority's decision in relation to the provision of support they may refer the matter to mediation. Eligible children do not have a right to request mediation. However they have the right to express their views and have their views taken account of within mediation.

### **Dispute resolution**

s16 11. Parents and young people have access to mediation, dispute resolution and the Tribunal in certain circumstances. Eligible children have access to dispute resolution and the Tribunal, but not mediation. This is irrespective of whether the authority are responsible for a particular child's or young person's school education. However, the matter in dispute must be related to the education authority's exercise of their functions, or failure to exercise their functions, under the Act **and** must be one of the specified matters in the Regulations<sup>52</sup>. For example, parents of a child at an independent or grant-aided school, for whose school education the authority are not responsible, may request the home education authority to establish whether the child has additional support needs. If the education authority decide to exercise their discretion not to establish the matter then it can be referred to dispute resolution. If the home education authority have established that the child has additional support needs but have not provided the parents with the necessary information about the additional support required then the matter cannot be referred for dispute resolution because failure to provide the information is not a specified matter in the Regulations. However, where the authority have exercised their discretionary power to provide additional support and then fail to provide, or make provision for, the additional support then the matter can be referred to dispute resolution because such a failure is one of the specified matters in the Regulations.

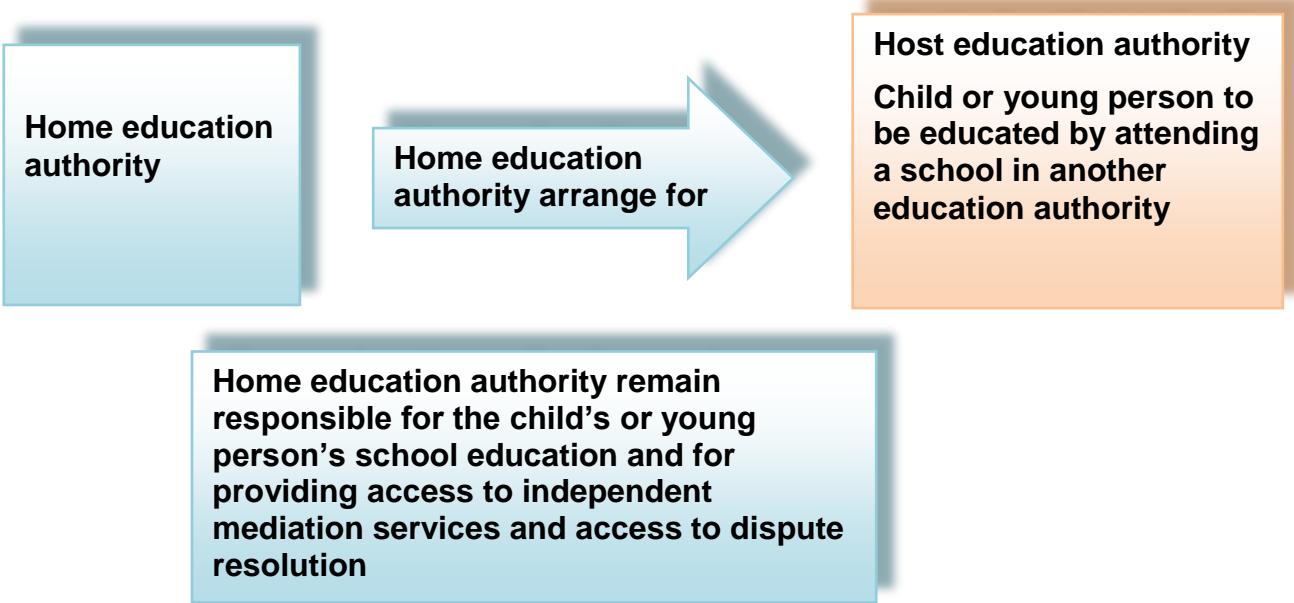
### **Tribunal**

s18(3)  
(da) 12. Parental and young people's appeals against refused placing requests regarding special schools can be referred to the Tribunal. Paragraphs 34-42-below describe the circumstances under which a reference can be made to the Tribunal regarding the refusal of a placing request to the host education authority. Paragraphs 43-53 describe the circumstances under which a reference can be made to the Tribunal regarding the refusal of a placing request to the home education authority.

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<sup>52</sup> The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

The home education authority have entered into arrangements with another education authority to have the child or young person educated in a school under the management of that education authority.



13. The home education authority may enter into arrangements with another education authority to have the child or young person, for whose school education they are responsible, educated in a school under the management of that other education authority, referred to here as the host education authority. Typically this situation arises because these arrangements enable the home education authority to fulfil their duty under the Act to make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible. It may be that the home education authority lacks a specialist provision (e.g. special school provision or teachers with expertise in a particular aspect of providing for additional support needs) which the host education authority can provide. Or, a particular child or young person may be being looked after away from home and placed with foster parents in another local authority and attending a school in that local authority, and that includes, for example, a child or young person placed with foster parents outwith Scotland.

14. In all these circumstances, the home education authority retain responsibility for the child's or young person's school education even though the child or young person is being educated in a school in another education authority. Decisions about additional support needs are made by considering the provision, whether or not educational, which is additional to, or otherwise different from, the educational provision made generally for children or young people in schools (not special schools) under the management of the **home education authority** which are responsible for the child's or young person's education. The home education authority retain responsibility for identifying and keeping under review the additional support required, for preparing and reviewing co-ordinated support plans where these are required, and for providing mediation and dispute resolution. In addition, the home education authority are responsible for providing a psychological service should this be required but there is nothing to prevent the home authority arranging for the host authority to provide this service should that be more appropriate.

s29(3A)

**Mediation**

15. The home education authority are responsible for providing access to independent mediation should this be required. However, the disagreement for which mediation is

requested must relate to the exercise of the home education authority 's functions under the Act. For example, a parent may consider that the additional support being provided for the child in the host education authority is inadequate and may request the home education authority to arrange with the host education authority to improve it. Failure on the part of the home education authority to do this could be referred for mediation.

### **Dispute resolution**

16. As with mediation, dispute resolution is provided by the home education authority. The disagreement must relate to the discharge of the home education authority's functions under the Act and it must be a specified matter as referred to in the Schedule of the Additional Support for Learning (Dispute Resolution) Regulations 2005. In the example, above, since failure to provide, or make arrangements for the provision of, additional support (whether relating to education or not) required is a specified matter, then the parent, eligible child, and young person (where the child or young person has capacity to express a view or make a decision for the purposes of resolving disputes) may access dispute resolution.

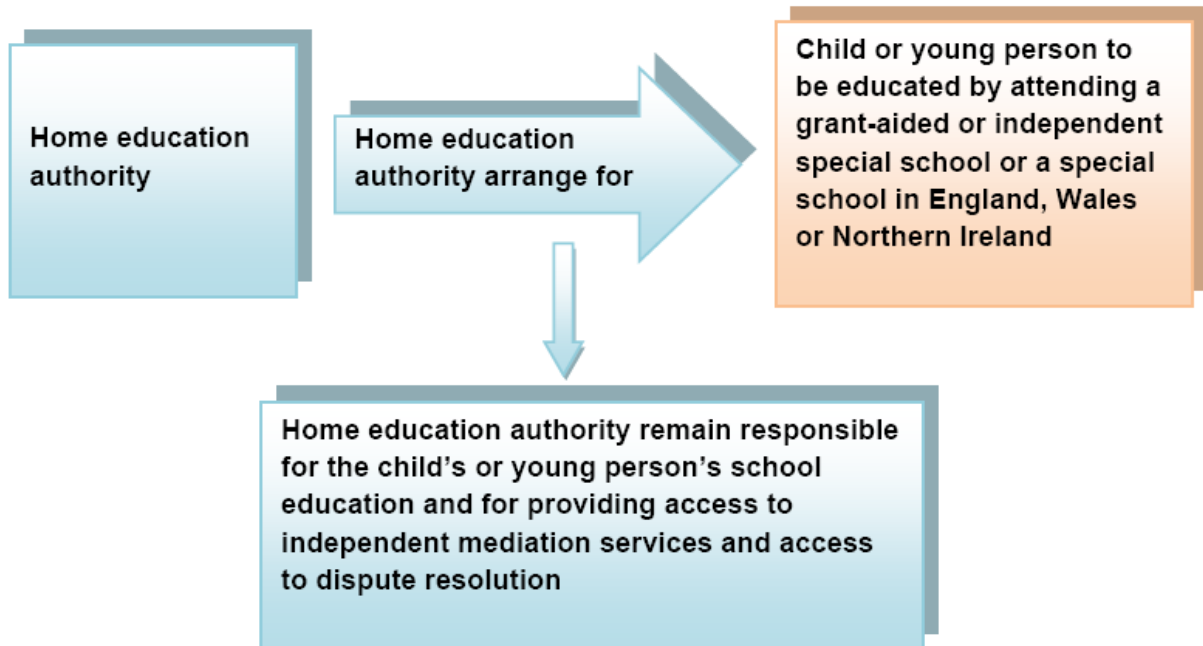
### **Tribunal**

17. References to the Tribunal may be made in respect of the decisions, information and failures of the home education authority that have been specified in section 18 of the 2004 Act. In summary, the Act enables the Tribunal to hear references from parents , children and young people (where the child or young person has capacity to make a reference) on matters relating to co-ordinated support plans, school to post-school transitions. Parents and young people can appeal refusals of placing requests to special schools. References to the Tribunal are considered in more detail in paragraphs 34-42 below and in chapter 8.

### **Child or young person living in England but attending school in Scotland**

18. There may be circumstances where a local education authority in England have entered into arrangements with a Scottish local authority to have a child or young person educated in a school under the management of the Scottish local authority. In this scenario the English local education authority retain responsibility for the education of the child or young person and, therefore, none of the provisions of the Act apply.

**The home education authority in Scotland may have arranged for the child or young person to be educated in a grant-aided or independent special school, or a special school in England, Wales or Northern Ireland.**



19. Alternatively, The home education authority in Scotland may have arranged for the child or young person to be educated in a grant-aided or independent special school, or a special school in England, Wales or Northern Ireland. As in paragraph 14 above the home education authority retain responsibility for the child's or young person's school education and are subject to all of the relevant duties in terms of the Act.

### **Mediation**

20. The home education authority remain responsible for providing mediation services as in paragraph 15 above.

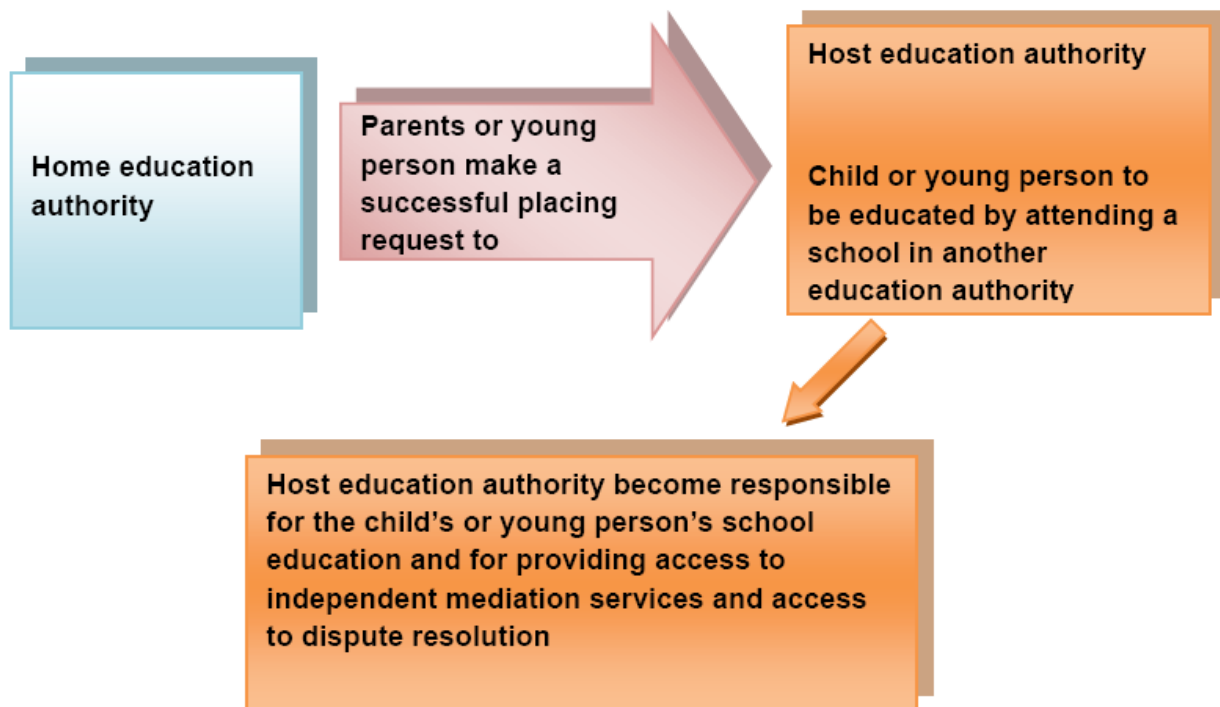
### **Dispute resolution**

21. Likewise, the home education authority retain responsibility for providing dispute resolution as in paragraph 16 above.

### **Tribunal**

22. As in paragraph 17 above, where references to the Tribunal are made these would be in terms of the same decisions, information and failures of the home education authority.

The child or young person is being educated in a school under the management of another education authority as a result of a successful placing request made to that authority by the parents or young person.



### Placing requests to host education authority

23. The Act enables parents to make a placing request for their child to attend a school managed by an education authority, other than the authority for the area in which the child lives. The former is referred to as the host education authority, the latter as the home education authority. Young people with additional support needs have the right to make placing requests on their own behalf. Placing requests may be made whether or not children or young people have co-ordinated support plans. It should be noted that the placing request can be made **to the host education authority** for the child or young person to attend a primary school (including a nursery school), secondary school or special school (including a special class or unit) managed by the host education authority.

24. Where a child or young person is being educated outwith his/her home authority as a result of a successful placing request then responsibility for the child's or young person's school education transfers to the **host authority** who are then responsible for all relevant duties under the Act. For example, where a child or young person requires provision of a psychological service then it would be the service from the host authority that would be involved.

25. Decisions about additional support needs following a successful placing request are made by considering the provision, whether or not educational, which is additional to, or otherwise different from, the educational provision made generally for children or young people of the same age in schools (not special schools) under the management of the host authority which are responsible for the child's or young person's education.

### Recovery of costs

26. The Act also provides that references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act. The provisions of section 23(2) of the 1980 Act on contributions from the home education authority to the host education authority apply as they do within the framework of the 1980 Act. These are where an education authority have provided school education, with or without other services, for any child or young person, belonging to the area of

Sch 2  
Para 2(1)  
2(5) & 8

s29(3)(a)

s1(3)

s29(4)  
Sch 3  
3(4)

another authority, the **host** education authority, may, if a claim is made, recover from the **home** authority such contributions in respect of such provision as may be agreed between the authorities or as the Scottish Ministers may determine. There are two exceptions, however, relating to mediation and dispute resolution (see paragraphs 28, 29 and 30, 31 below).

27. Where the provision relates to additional support needs then it follows from paragraph 25 above that these needs are assessed against the educational provision generally made in schools (other than special schools) for children or young people of the same age in the host authority. It should be noted that following a successful placing request to an education authority there is no obligation on the host authority to provide transport between the child’s home address and the school in question.

**Mediation**

28. Following a successful out-of-area placing request, parents and young people are able to access mediation from the host education authority regarding that education authority’s functions under the Act. Also following the submission of an out-of-area placing request, parents or young people are able to access mediation from the potential host authority regarding the placing request.

s15(1)  
s23(2A) (a)

1980 Act

29. However, where a child or young person is being educated outwith the area in which he or she lives as a result of a successful out-of-area placing request, the host authority cannot recover the cost of providing any mediation services from the authority for the area in which the child lives (the home authority).

**Dispute resolution**

s16(1)

30. Following a successful out-of-area placing request, parents, ,young people and eligible children (are able to access dispute resolution from the host education authority in relation to the specified matters in the Additional Support for Learning (Dispute Resolution) Regulations 2005 regarding the authority’s functions under the Act.

s23(2A) (b)  
1980 Act

31. However, where a child or young person is being educated outwith the area in which he or she lives as a result of a successful out-of-area placing request, the host education authority cannot recover the cost of providing any dispute resolution from the education authority for the area in which the child lives (the home education authority).

**Co-ordinated support plans**

s12(3A)

32. Following a successful out-of-area placing request for a child or young person with a co-ordinated support plan, the new host education authority are under a duty to seek and take account of information and advice from the (home) education authority from which the co-ordinated support plan was transferred as well as from any agencies or persons involved in providing support under the co-ordinated support plan prior to its transfer. This ensures that the new host education authority, and the previous education authority responsible for the school education of the child or young person, are in contact and that the new host education authority has all the information necessary from the previous authority and the agencies previously supporting the child or young person. The aim is to make the transition from one education authority to another as smooth as possible. The Co-ordinated Support Plan Regulations<sup>53</sup> require that the plan be transferred to the host authority within 4 weeks of the child or young person leaving school education in the home authority, or no later than 4 weeks after they have become aware of the change.

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<sup>53</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005

s10(1)  
and(5A)

33. The duty to keep under review any co-ordinated support plan prepared by the original home education authority transfers to the new host education authority following the successful placing request, since the host authority are responsible for the school education of the child or young person. The host authority must then review the co-ordinated support plan as soon as possible after the date of any transfer of the co-ordinated support plan from the home authority to the host authority

**References to the Tribunal**

s18(3)  
(da)

34. Where an education authority decide to refuse a placing request in respect of a place in a Scottish special school then that decision may be referred to the Tribunal. This reference to the Tribunal applies whether or not a co-ordinated support plan is involved. However, a reference to the Tribunal cannot be made in respect of a refusal to grant a placing request regarding placement in pre-school provision where an authority have an arrangement with an independent provider.

35. A decision of an education authority to refuse a placing request may be referred to the Tribunal where:

s18(4)

- a co-ordinated support plan has been prepared (and not discontinued) for the child or young person
- no such plan has been prepared but it has been established by the education authority that the child or young person requires such a plan
- no such plan has been prepared but the education authority have issued their proposal to establish whether a child or young person requires such a plan
- The education authority had decided that the child needed a co-ordinated support plan and was in the process of preparing one.
- the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal.

**Repeat references to the Tribunal**

s18(7)

36. References to the Tribunal on the decision to refuse a placing request can only be made once in each 12 month period unless any co-ordinated support plan has been reviewed in that period, or the Tribunal has ordered a co-ordinated support plan to be amended or prepared.

s18(9)  
to (11)

37. If a placing request had been made within a 12 month period but withdrawn then a further request can be made subject to the Chamber President’s discretion. It is also competent to make a reference to the Tribunal in relation to an education authority decision on child's capacity and wellbeing if it relates to exercising a different right within 12 months.

**The Tribunal, sheriff and education authority appeal committee**

s18(1)  
and  
Sch 2  
7(1A)

38. Appeals regarding refusals of placing requests should be made to the Tribunal rather than to the education authority appeal committee or the sheriff where one of the circumstances listed in paragraph 35 applies.

39. A decision made by an education authority appeal committee to refuse a placing request may be referred to the Tribunal if, before the expiry of the time limit for appeal to the sheriff court (28 days), a co-ordinated support plan is involved or being considered.

40. If, at any time before the education appeal committee or sheriff has made their final decision on a placing request appeal, a co-ordinated support plan has been prepared, it has been established that a plan is being considered or is required or the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal, the appeal is to be transferred to the Tribunal. Any reference transferred back to the sheriff from the

s18(3)(f)  
s18(4)  
Sch 2 7(12)

Tribunal will be treated as if it were an appeal made directly to the sheriff in the first instance thus ensuring the sheriff has the power to deal with such a reference.

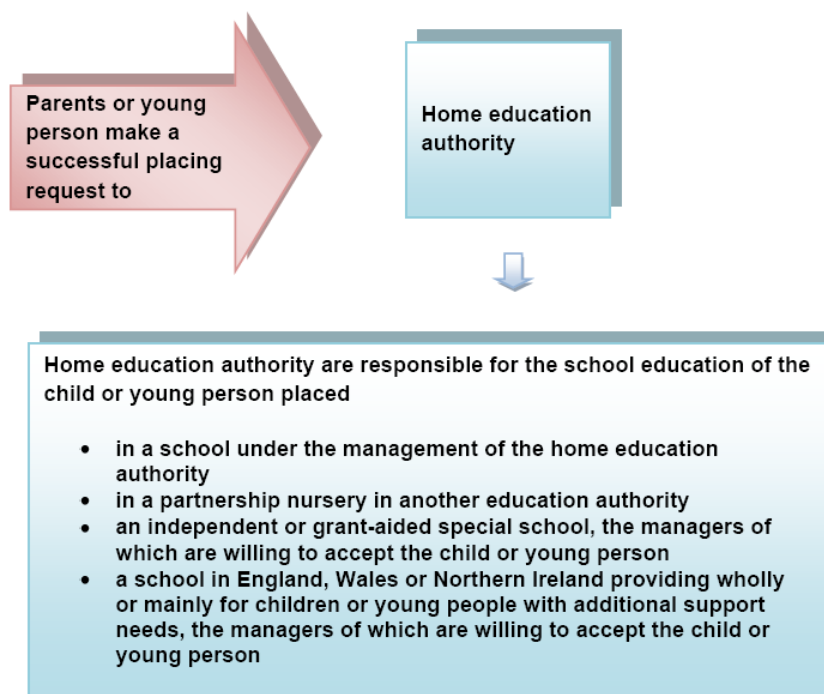
41. While the Tribunal has the discretion to transfer a placing request decision back to the education appeal committee or sheriff where it has been decided that no co-ordinated support plan is required, it is anticipated that in the majority of cases the Tribunal will make a decision on the placing request reference.

s19(5) (ba)  
and (d)

42. Where the placing request is made for the child or young person to attend a **mainstream school** in the host education authority, and none of the circumstances in paragraph 35 apply, then any appeal on the refusal to grant the placing request would be heard by the host education authority's appeal committee and, thereafter, by the sheriff, if there is an appeal against the decision of the education authority appeal committee. That is, there is no reference to the Tribunal in these circumstances.

### **Placing request to the home education authority**

**As a result of a successful placing request to the home education authority, the child or young person is being educated in a school (other than the catchment area school) in the home education authority, in a partnership nursery or in an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland.**



43. The Act enables parents, or young people themselves, to make placing requests for the child or young person to attend a school, other than the catchment area school, in the area of the home education authority. This includes mainstream schools and special schools. In the event of a successful placing request the home education authority may provide transport but are not required to. The grounds for refusing placing requests are set out in the Act.

Sch 2  
para 2(1)  
& 8

44. Parents or young people themselves are able to make placing requests to the home education authority for the child (or young person where appropriate) with additional support needs to attend:

- a school under the management of the home education authority
- an independent or grant-aided special school, the managers of which are willing to accept the child or young person



- pre-school provision (within the categories for eligible pre-school children – generally for 3 and 4 year olds but also for some 2 year olds where the **home education authority** have an arrangement with a private provider, normally referred to as a partnership nursery, in that home or host education authority area<sup>54</sup>
- a school in England, Wales or Northern Ireland providing wholly or mainly for children or young people with additional support needs, the managers of which are willing to accept the child or young person.

45. The grounds for refusing the placing request are set out in the Act. However, if the placing request is successful then the home education authority are responsible for fees and other necessary costs, such as transport, for the child's or young person's attendance at the school.

Sch 2  
Para 2(2)  
and (3)

### Mediation

46. Parents and young people are able to access mediation from the home education authority regarding the education authority's functions under the Act. The views of children in this matter must be sought and taken account of as part of the mediation process.

### Dispute resolution

47. Parents, eligible children and young people are able to access dispute resolution from the home education authority in relation to the specified matters in the Regulations<sup>55</sup> regarding the education authority's functions under the Act.

### References to the Tribunal

48. Where an education authority decide to refuse a placing request in respect of a place in a Scottish special school then that decision may be referred to the Tribunal. Similarly, the decision of an education authority to refuse a placing request in respect of a place in a school in England, Wales and Northern Ireland, which is a school making provision mainly or wholly for children or young people with additional support needs, the managers of which are willing to accept the child or young person, may be referred to the Tribunal. These references to the Tribunal apply whether or not a co-ordinated support plan is involved. However, a reference to the Tribunal cannot be made in respect of a refusal to grant a placing request regarding placement in pre-school provision where an authority have an arrangement with an independent provider (i.e. partnership nursery). In these circumstances any appeal against refusal to grant the placing request would be made to the education authority appeal committee and then sheriff.

s18(3) (da)  
Sch 2 5(1)  
and7(1)

49. When hearing a placing request appeal in respect of a place in a special school, or a school in England, Wales or Northern Ireland, making provision wholly or mainly for children or young persons with additional support needs, whose managers are willing to admit the child, the Tribunal has the power to confirm the decision of the authority or overturn the decision of the authority. It has the power to specify by what date the child or young person should, as a result of a successful placing request, commence attendance at the specified school and make any amendments to any co-ordinated support plan in place.

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<sup>54</sup> This refers to the circumstances where an authority have an arrangement with a private provider for the purposes of section 35 of the 2000 Act

<sup>55</sup> The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (S.S.I. 2005/501)

### **Repeat references to the Tribunal**

50. References to the Tribunal on the decision to refuse a placing request can only be made once in each 12 month period unless any co-ordinated support plan has been reviewed in that period, or the Tribunal has ordered a co-ordinated support plan to be amended or prepared. Similarly, a period of 12 months will have to lapse before another reference can be submitted to the Tribunal regarding a decision to refuse a placing request to a Scottish special school or to a school in England, Wales and Northern Ireland which is a school making provision mainly or wholly for children or young people with additional support needs where any of those circumstances apply.

s18(7)

### **The Tribunal, sheriff and education authority appeal committee**

51. The provisions in paragraphs 35-42 apply.

### **Pre-school children and cross-boundary provision**

52. The duty on local authorities to secure pre-school education applies to all eligible pre-school children in their area. Most eligible pre-school children attend provision in their home education authority. There are cases, however, where parents of pre-school children may request a pre-school place with a partnership provider in a different local authority area. This often occurs when parents travel a distance to work or study and it is more convenient for their child to attend a provision close to their place of work or of study.

53. Parents of children with additional support needs are able to make placing requests, as described in paragraph 43 above, to the home education authority for their child to be placed in pre-school provision (within the categories for eligible pre-school children- generally for 3 and 4 year olds and some 2 year olds) in the host education authority's area where the **home education authority** have an arrangement with a private provider, normally referred to as a partnership nursery, in the area of the host education authority. Where the home education authority do not have such an arrangement, then they may approach the potential host education authority requesting their help for the child to attend a partnership nursery which has entered into an arrangement with the host education authority.

s23(3)

## Chapter 5 Co-ordinated Support Plan

1. Previous chapters have considered the general provision for additional support needs that the Act requires education authorities to make. However, a number of children and young people have additional support needs arising from complex or multiple factors which require a high degree of co-ordination of support from education authorities and other agencies in order that their needs can be met. This support is co-ordinated through the provision of a co-ordinated support plan under the Act. This chapter explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered.

2. The co-ordinated support plan is a statutory document which is subject to regular monitoring and review for those children and young people who have one. It is required to be considered whether or not a Child's Plan is being considered. Education authorities must have arrangements in place to identify from among those children and young people for whose school education they are responsible, those children and young people with additional support needs who require a co-ordinated support plan and the particular additional support needs of the children so identified. **Also, the Act, as amended, assumes that all looked after children and young people have additional support needs unless the authority are able to demonstrate that an individual looked after child or young person does not require additional support in order to benefit from school education. In addition, the Act, as amended, requires education authorities to consider whether each individual looked after child or young person requires a co-ordinated support plan.**

s6(1)  
s6 (1A)

3. The criteria for requiring a plan are as follows:

2 - (1).....a child or young person requires a plan (referred to in this Act as a "co-ordinated support plan") for the provision of additional support if-

- (a) an education authority are responsible for the school education of the child or young person,
- (b) the child or young person has additional support needs arising from-
  - (i) one or more complex factors, or
  - (ii) multiple factors,
- (c) those needs are likely to continue for more than a year, and
- (d) those needs require significant additional support to be provided-
  - (i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
  - (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

s2(1)

### Applying the criteria for a co-ordinated support plan

#### An education authority must be responsible for the school education of the child or young person

4. The first test for determining whether or not a child or young person requires a co-ordinated support plan is that an education authority must be responsible for the school education of the child or young person before one can be prepared. Children and young people for whose school education an authority are not responsible cannot have a co-ordinated support plan (see paragraph 10 below).

s2(1)(a)

#### Early years and pre-school

s5

5. In the early years those children below the age of an eligible pre-school child (normally the age of 3 years, but in some cases at aged 2 see definition on page 8) are not eligible for a co-ordinated support plan, since they are not eligible to receive school education. It follows, therefore, that looked after children below the age of an eligible pre-school child are not eligible for a co-ordinated support plan. Nevertheless, as described in chapter 3, the authority may, in certain circumstances have a duty to provide additional support for learning to certain children, belonging to their area, who have been drawn to their attention as having additional support needs arising from a disability within the terms of section 6(1) the Equality Act 2010, even though a co-ordinated support plan cannot be provided. However, when the eligible pre-school children are in pre-school provision managed by the authority, or in a partnership nursery, then they may have a co-ordinated support plan, provided the other criteria for having one are met.

6. Education authorities should not wait until children reach the age of entitlement to school education, at the age of 3 years approximately, before commencing the initial assessments to determine whether a co-ordinated support plan will be necessary, if they have grounds to believe that such a plan will be required. For some children who are about to start pre-school provision, such as nursery school, it may, therefore, be necessary to begin the assessment process for deciding whether a co-ordinated support plan should be prepared, or not, for a child of two years of age or, indeed, even earlier. For some children, the assessment process will be informed by information shared after the 27-30 month review, carried out in partnership with parents.

### **School age**

s4(1) 7. The education authority are responsible for the school education of children and young people belonging to their area who attend schools under the management of the authority (referred to here as the home authority). The authority are also responsible for the school education of children and young people attending independent or grant-aided special schools where the authority have made the arrangements for children and young people to attend these schools, for example, to enable the authority to discharge their functions to make adequate and efficient provision for the additional support required. Children and young people may also be placed in independent and grant-aided special schools, and secure units, through the Children's Hearing system. In these cases the education authority are also responsible for the school education of children and young people belonging to their area. In any of these circumstances, the education authority will require to consider whether such individual children and young people require a co-ordinated support plan.

8. A child or young person may attend a school under the management of an education authority other than the education authority for the area to which the child or young person belongs. This former education authority are referred to here as the host education authority; the latter are the home education authority. The home education authority may enter into arrangements with another education authority, and arrange for that child or young person to be educated in a school in that host education authority, in order that the home education authority can discharge their duties under the Act. In such circumstances, the home education authority are responsible for the school education of the child or young person, including being responsible for establishing whether that child or young person requires a co-ordinated support plan, for preparing the plan, as necessary, and for keeping under consideration the adequacy of any plan so prepared.

s10(1) 9. However, where a child or young person is attending a school in an authority other than the home education authority as a result of a placing request, then it is the host

education authority which are responsible for the school education of that child or young person. The host education authority are responsible for ensuring that they fulfil all their duties under the Act, as required, where an education authority are responsible for the school education of a child or young person. These duties include being responsible for establishing whether that child or young person requires a co-ordinated support and for preparing the plan, as necessary.

10. Children and young people who have been placed in independent or grant-aided schools, by their parents or others, or are being educated at home, and for whose school education the authority are not responsible, are not eligible to have a co-ordinated support plan. In these circumstances, parents, eligible children or the young person may ask the education authority to establish whether the child or young person has additional support needs, or would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. The education authority may comply with the request but are not obliged to do so. Managers of independent and grant-aided schools may also request the education authority to establish if the child or young person would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. Again, the education authority may comply with the request but are not obliged to do so.

s7

### **Additional support needs arising from complex and/or multiple factors**

11. To have a co-ordinated support plan a child or young person must have additional support needs arising from one or more complex factors or multiple factors and these needs must be likely to continue for more than a year. It should be noted that while the need for support arising from these factors should be likely to continue for more than a year, the Act does not require that the “significant additional support” provided (see practical examples in Annex C) must last for more than a year.

s2(1)(b)  
and (c)

12. As noted in chapter 2, there is a wide range of factors which may lead to children and young people having additional support needs. The factors may be grouped into broad overlapping themes arising from the learning environment, family circumstances, disability and health issues, and social and emotional factors.

s2(2)(a)

13. The Act states that a factor is a complex factor if it has, or is likely to have, a **significant adverse effect** on the school education of the child or young person. The Act does not define the length of time over which a complex factor has an effect (although the additional support needs arising from one or more complex factors have to be likely to last for more than a year for a child or young person to require a co-ordinated support plan), nor does the Act define the term “significant adverse effect”. However, since a complex factor is one that has a significant adverse effect on the school education of the child or young person, it is likely that it will affect most aspects of learning. Some examples of complex factors grouped according to the above themes could be the following:

- **Learning environment** – where the learning and teaching approaches and/or overall curriculum are significantly different from what the child or young person requires and are thus having a significant adverse effect on his/her school education. This may arise where the child or young person is attending a particular mainstream school and the learning and teaching approaches available there cannot, for whatever reasons, be suitably adapted to take account of the child’s or young person’s learning needs. In this example, a special school may provide a more effective education. Alternatively, a child or young person in an integrated class, enhanced provision, special unit or special school may require to be placed in a mainstream school. Or, the child or young person may have severe dyslexia which is having a significant effect on his/her ability to access the curriculum and,

because the appropriate measures have not been put in place, this is adversely affecting the child's or young person's progress in school.

- **Family circumstances** – where family life is disrupted, perhaps through parental alcohol, drug or domestic abuse or mental health problems, and the child or young person is not receiving the parental support, direction and guidance needed to make the most of school education. Or, where for example, the child is looked after either at home or away from home, or, school attendance is very poor and is adversely affecting educational progress. The family may be under stress from external factors such as poverty, familial imprisonment, or social circumstances which are impacting on the child's or young person's school education.
- **Disability or health** – where the child or young person faces barriers to learning and development from, for example, blindness, or a physical disability such as cerebral palsy, or other condition such as autism spectrum disorder, specific language impairment or developmental co-ordination disorder and requires measures to be put in place if the child or young person is to benefit from school education. In addition, some children or young people with a mental health problem such as, depression or anorexia, may experience significant or frequent disruption to their school education.
- **Social and emotional factors** – children or young people may have social and emotional difficulties, such as bereavement or loss. Under stress, they may exhibit behaviour difficulties which may lead to offending. They may be being bullied, which prevents them attending school regularly, developing positive relationships with school staff and other young people or engaging effectively with their learning.

s2(2)(b)

14. Multiple factors are factors which are not by themselves complex factors but, when taken together, have or are likely to have, a significant adverse effect on the school education of the child or young person. For example, a child may have a mild sensory impairment (disability or health), live in disadvantaged social circumstances where there are parental relationship difficulties, unemployment and low income (family circumstances) and may not be receiving appropriate education (learning environment) which takes account of the sensory impairment. Each of these taken separately may not have a significant adverse effect on the education of the child or young person, but the cumulative effect of these multiple factors is such that the school education of the child or young person is being adversely affected to a significant degree.

15. In all cases, it is how the factors impact on the child's learning and development that is important and it is assessment which determines this. Those well placed to decide whether or not factors are complex or multiple, are those working with the child or young person, as well as the parents, and of course the child or young person. What may be complex, or multiple, factors with a significant adverse effect for one child or young person, may not be for another. It is the effect of the factor(s) on school education that is important, not any diagnostic label alone. Every child or young person should be considered on an individual basis.

*A co-ordinated support plan may not need to last throughout a child or young person's school career*

Adam has a specific language impairment which had led to a co-ordinated support plan being prepared during his pre-school year. He maintained a shared placement between mainstream primary school and a language unit and for the first three years of his primary schooling. During this time his needs required a high degree of co-ordination amongst the professionals involved and he received significant support from a speech and language therapist. In P4 he attended his primary school full time, supported by an outreach teacher and a speech and language therapist. In working with the speech and language therapist, the school staff were able to develop new skills and appropriate strategies within class to meet his needs. At the next review of the co-ordinated support plan, it became clear that significant support from outwith education was no longer necessary and there was no longer a need for a co-ordinated support plan. The co-ordinated support plan was discontinued.

### **Additional support needs likely to continue for more than a year**

16. As noted above, in addition to deciding on whether the criteria of complex or multiple factors are met, professionals involved with the children and young people must determine for how long those additional support needs are likely to last. For a co-ordinated support plan to be required the view must be that these needs are likely to continue for more than a year. Importantly, although the need for additional support must last for more than a year there is no requirement under the Act for the additional support provided to last for more than a year if it is no longer needed.

s2(1)(c)

### **Significant additional support**

17. These additional support needs must also require the provision of significant additional support from an education authority, and (a) the local authority exercising their functions other than education (e.g. social work services) and/or (b) one or more appropriate agency/agencies<sup>56</sup>, within the meaning of the Act and the associated Regulations<sup>57</sup>, if a co-ordinated support plan is to be required. One purpose of the co-ordinated support plan is to ensure that support is co-ordinated effectively when at least one service is required from outwith what the education authority provides as part of its educational functions. It is not unusual for health and social work service staff to be working in specialist provisions supporting children and young people with additional support needs and for questions to arise as to whether their support can be included under (a) and/or (b) above. The position is as follows:

- where the health staff are employed through an NHS Board, whether or not the education authority contribute financially to their costs of working in school education, then they count as belonging to an appropriate agency under the Act and are included under (b) above
- where the health staff are not employed through an NHS Board but are employed directly by the manager of an independent special school or education authority then they do not belong to an appropriate agency under the Act

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<sup>56</sup> These are: any other local authority, any NHS Board, Skills Development Scotland, further education colleges and higher education institutions in Scotland – ref:s2(1)(d)

<sup>57</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 - <http://www.opsi.gov.uk/legislation/scotland/ssi2005/20050518.htm>

- where the social work staff are employed by the local authority for the children and young people for whose school education the education authority are responsible, then as far as the Act is concerned they are included under (a) above
- where the social work staff are not employed through a local authority but are employed directly by the school managers then they are not included under (a) above.

18. The Act does not define what “significant additional support” means, but the issue has been considered in the Tribunal and courts. In particular, the opinion delivered by Lord Nimmo Smith in the Inner House of the Court of Session, in the case of JT is particularly relevant and is binding here<sup>58</sup>. The use of the term “significant” signals that the scale of the support provided, whether it is in terms of approaches to learning and teaching (e.g. adaptation or elaboration of the curriculum) or personnel (e.g. provision of learning support assistant) or resources (e.g. specialist aid to communication or a special hoist), or a combination of these, stands out from the continuum of possible additional support. **Significant additional support may be provided to a child or young person with additional support needs on an individual basis, in a group setting with others or through personnel working under the direction and guidance of those from the appropriate agency.** The issue of significance thus refers to the extent of the provision. Judgments about significance have to be made taking account of the frequency, nature, intensity and duration of the support and the extent to which that support needs to be co-ordinated and is necessary for the achievement of the educational objectives which will be included in the plan. In particular, the support must be of sufficient duration to make it worthwhile preparing a co-ordinated support plan in order to ensure that it is co-ordinated properly.

19. Where a child has several professionals involved from the one appropriate agency, such as from an NHS Board, then the **cumulative effect of these professionals’ involvement may amount to significant additional support from that agency, even although the input from each professional individually is not significant.** For example, a child may receive speech and language therapy and physiotherapy on a regular basis. Taken separately, the additional support from each individual professional may not be significant, but taken together, their contribution may represent significant additional support from the NHS Board as an appropriate agency. A similar argument could apply to additional support provided by the education authority exercising its functions other than education. For example, social work and occupational therapy from the local authority social work services may amount to significant additional support when considered together, but not when considered separately. In considering the significance of the additional support then it is important to consider cumulatively what an appropriate agency is providing.

20. In Annex C a grid is provided with some case study examples which may prove useful in considering the issue of significance. Full-time placement in a special school or unit would count as significant additional support from the education authority, as would provision of personnel full-time to support a child or young person in a mainstream school, and provision of specialist aids to communication. However, judgements about whether children or young people meet the requirements for having a co-ordinated support plan have to be taken on an individual basis, applying all the criteria of the legal test, not just the one criterion of whether the additional support required is significant.

21. Where a child or young person is looked after and living away from home in a special school, then that is certainly significant additional support. Where support is required from social work services to sustain the child’s or young person’s attendance

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<sup>58</sup> <http://www.scotcourts.gov.uk/opinions/2007CSIH52.htm> |



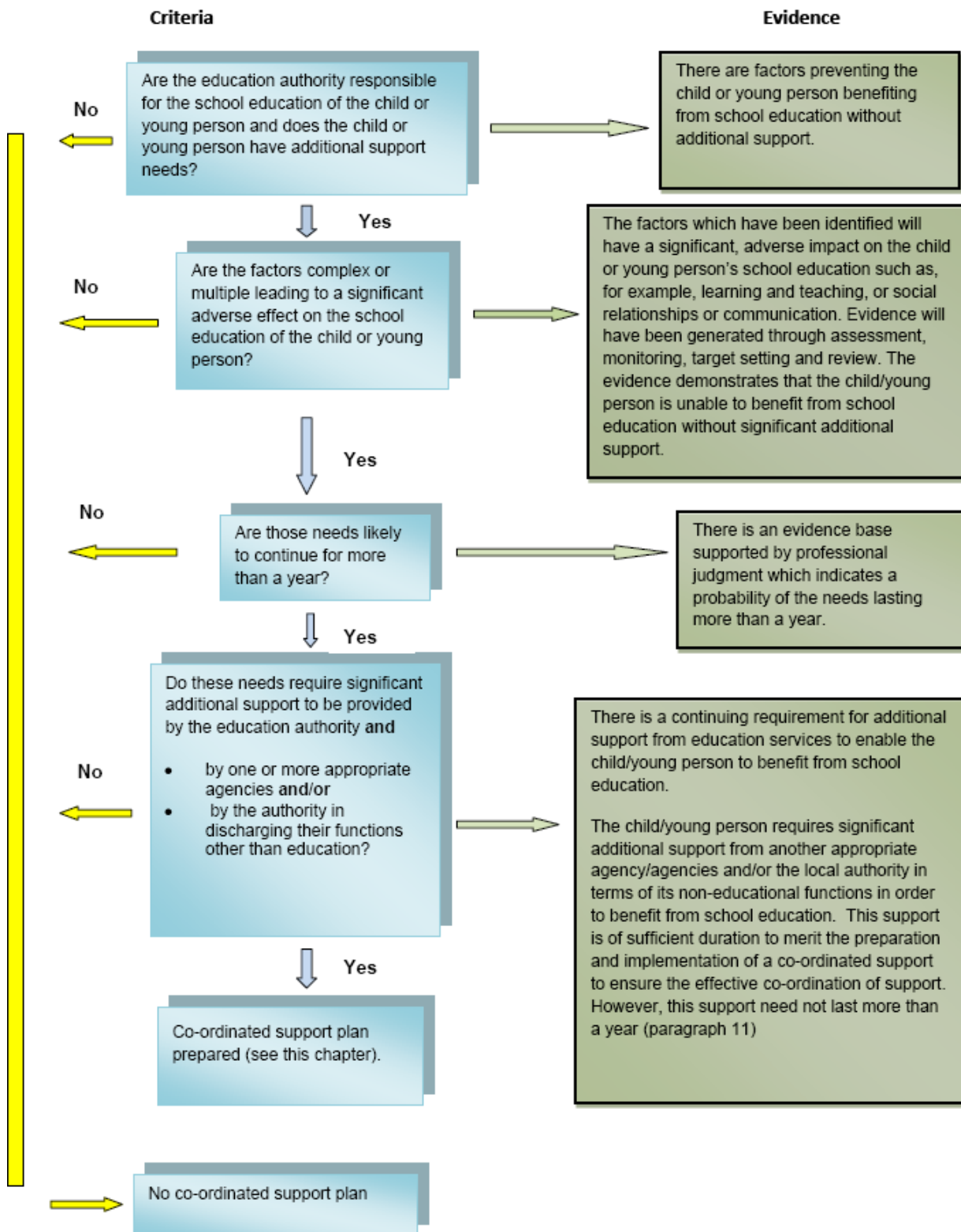
at the school, and hence to enable him or her to achieve their educational objectives (see below), than that is likely to count as significant additional support (from the education authority exercising their functions other than education). In these circumstances, it is likely that the child or young person would require a co-ordinated support plan, provided the other criteria are met. However, it is not possible to generalise as to what should count as significant and consideration has to be given to circumstances in individual cases.

22. The following diagram provides a decision tree to help authorities to decide whether children and young people require a co-ordinated support plan. It should be read in conjunction with the Co-ordinated Support Plan Regulations<sup>59</sup>. This chart should be read as relevant to all appropriate agencies.

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<sup>59</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518) as amended

## Is a co-ordinated support plan required?



### Seeking and taking account of views and providing information

s12(2)

23. When considering whether or not a co-ordinated support plan may be required, or in preparing such a plan, an education authority must seek and take account of relevant advice and information (including assessments) from appropriate agencies and other persons (for example, voluntary organisations) whom they think are appropriate. This advice and information may be, for example, from health services. The education authority must also take account of advice and information available from sources within the authority, other than from education. Such a source is most likely to be the authority's own social work services. They must also take account of

information provided to them by, or on behalf of, the child or young person. For example, if the parents have privately commissioned an assessment or report on the child or young person, or the young person has commissioned the report himself/herself, then the authority must take that report or advice into consideration, if it is provided to them. Also, the authority must seek and take account of the views of children and their parents, and young people themselves, throughout the process.

24. If an education authority identify a child or young person as requiring a co-ordinated support plan, it is expected that the parents would want to, and will, participate in its preparation. Almost all parents are keen to do what is best for their child and work together in co-operation with education authorities. In some cases, parents may be concerned about the assessment process and may not wish to participate. If the parent will not co-operate with the assessment process, the education authority is required to decide whether they have enough information available to prepare a co-ordinated support plan. This is also the case where a child, or a parent on their behalf where the child lacks the capacity to consent, has refused to give consent to a medical assessment or examination. For most children or young people who require a co-ordinated support plan there will be detailed information available. Education authorities **are still obliged to draw up co-ordinated support plans even where parents disagree that one should be prepared or where they refuse to co-operate**. In circumstances where the parents disagree that a co-ordinated support plan is required it is open to them to refer the authority's decision to the Tribunal.

s2(4) Age of  
Legal  
Capacity  
(Scotland)  
Act 1991

25. Where an education authority propose to establish whether any child or young person requires a co-ordinated support plan, they must, before proceeding, inform the parents (or eligible child or young person). They must also inform the managers of independent or grant-aided schools, where they are responding to a request by them to establish whether a child or young person would require a co-ordinated support plan, if the education authority were responsible for the child or young person's school education. When they have reached a view on whether a co-ordinated support plan is required, the authority must also inform these persons about their conclusions and any rights to make a reference to the Tribunal regarding the authority's conclusions.

s11(1), (2)  
and (3)

### Requesting an assessment

26. As described in chapter 3, where an education authority are responsible for the school education of a child or young person, they must meet requests made by a parent, eligible child, or young person to establish whether any child or young person has additional support needs, or requires a co-ordinated support plan, unless the request is unreasonable.

27. Where an education authority are not responsible for the school education of a child or young person, they may meet requests made by the parents, eligible child, young person or managers of an independent or grant-aided school, to establish whether the child or young person would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan.

28. In the circumstances in the previous two paragraphs above, those making the request will be expected to provide sufficient information to explain why they think assessment is required. The education authority must notify the parents or young person or eligible child, or the managers of the independent or grant-aided school (as appropriate), of a decision not to comply with the request. In the case of a child or young person for whose school education they are responsible, before proceeding, the education authority must notify the parents or the young person, of their proposal to establish whether the child or young person requires a co-ordinated support plan. In

s28(2)  
s7

the case of a child or young person for whose school education the education authority are not responsible, then where the education authority decide that a co-ordinated support plan would have been required, if they were responsible for the child's or young person's school education, they must provide the person who made the request with such information and advice about the child's or young person's additional support needs as they consider appropriate.

29. Education authorities should notify the person making the request of either decision as quickly as possible, but certainly no later than 8 weeks from when the request is received (see paragraph 37 below).

30. Where an education authority are responsible for the school education of a child or young person, then their decision not to comply with a request to establish whether a co-ordinated support plan is required, is treated as a decision of the education authority that the child or young person does not require a co-ordinated support plan. In notifying the parents, young person, or eligible child of their decision, they must also notify them of their right to make a reference to the Tribunal. A reference to the Tribunal can only be made where an education authority are responsible for the school education of the child or young person.

31. Where a parent, young person or eligible child has requested that the authority establish whether the child or young person requires a co-ordinated support plan and the authority have not responded to that request within 8 weeks, the Act, as amended, provides that the failure to respond is treated as if it was a decision by the education authority that no co-ordinated support plan is required. In these circumstances, the parent or young person or eligible child can refer to the Tribunal, the authority's deemed refusal to prepare a co-ordinated support plan. This 8 week timescale can be extended to 16 weeks, where the request is made during a school holiday period of 4 weeks or more.

32. Also, where an authority have notified a parent, eligible child or young person that they will establish whether the child or young person requires a co-ordinated support plan, but, after 16 weeks following that notification, the authority have not made a decision on the matter either way, the Act, as amended, enables that failure to be treated as if it were a decision of the education authority that no co-ordinated support plan is required. Decisions of an authority that no co-ordinated support plan is required can be referred to the Tribunal.

33. Where an education authority propose to establish whether a child or young person has additional support needs or requires a co-ordinated support plan, they must also comply with a request for an assessment or examination made by the parent or young person or eligible child, unless the request is unreasonable; as noted earlier, the Act, as amended, allows this request to be made at any time, not just when establishing whether a child or young person has additional support needs or requires a co-ordinated support plan. The parent, young person or eligible child can request that the education authority arrange for the child or young person, referred to in the proposal, to undergo a process of educational, medical, psychological or other type of assessment or examination (or a combination of these), for the purposes of establishing if there is a requirement for a co-ordinated support plan. The managers of independent or grant-aided schools may request an assessment or examination, where an education authority propose to establish whether a child or young person has additional support needs, or a child or young person would require a co-ordinated support plan if the education authority were responsible for the child or young person's school education.

34. Educational assessments are an intrinsic part of day-to-day practice in schools. School staff are involved in the use of a variety of assessment approaches. For

s18(5)  
s28(2)(d)

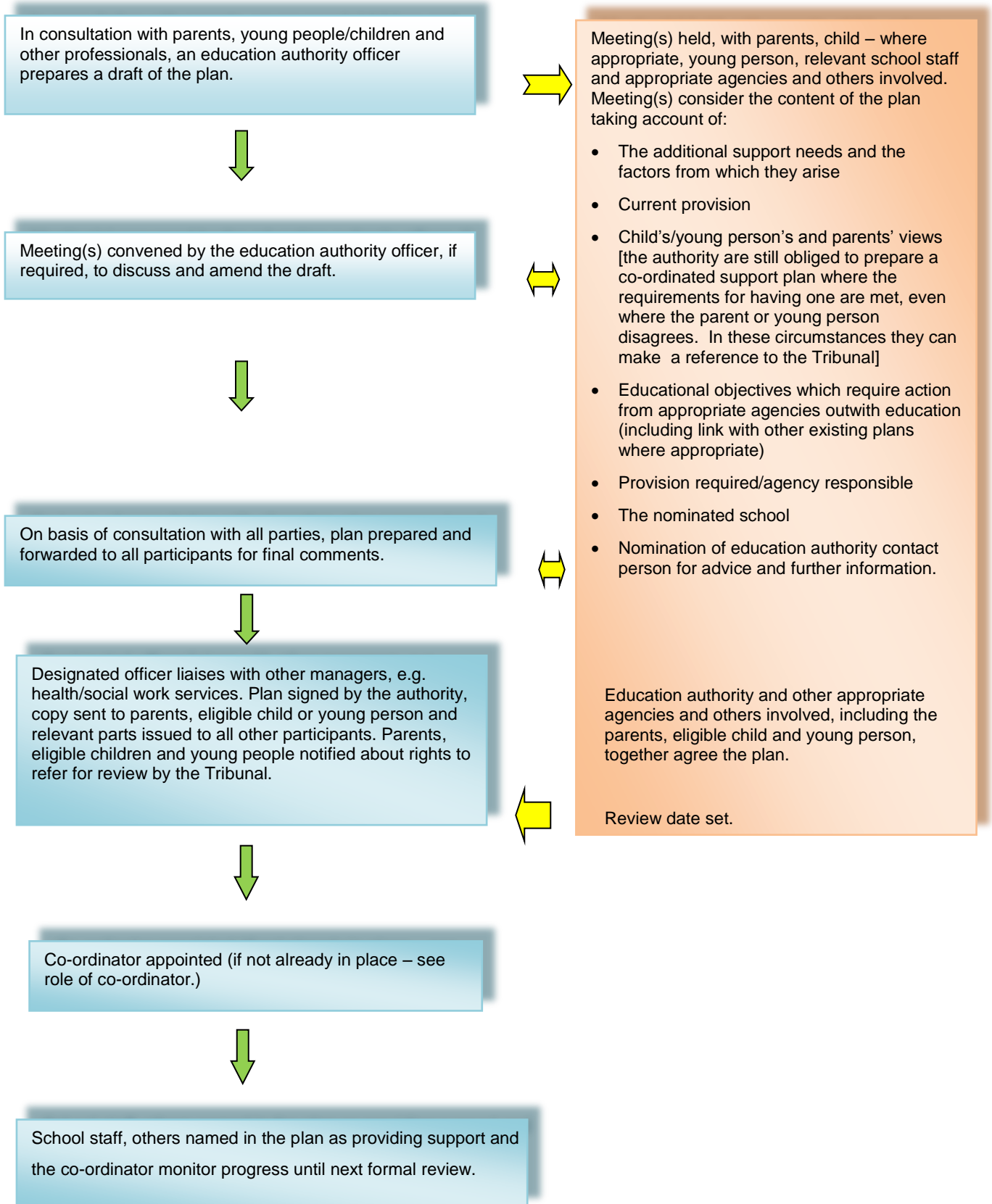
s18(5A)

s18(5B)

s8(1)  
s8A  
s7(2)(b)

example, teachers assessing in health and wellbeing will take account of the wide range of learning experiences of children and young people in developing knowledge and understanding of their mental, emotional, social and physical wellbeing. Education authorities should consider these, when deciding whether a request for any additional or particular assessment or examination, not already contained in the proposal for establishing if there is a requirement for a co-ordinated support plan, is reasonable. They should consider also, any other available assessments (for example, health or social work) and decide whether there is any requirement or need for further detail.

## Preparing a co-ordinated support plan



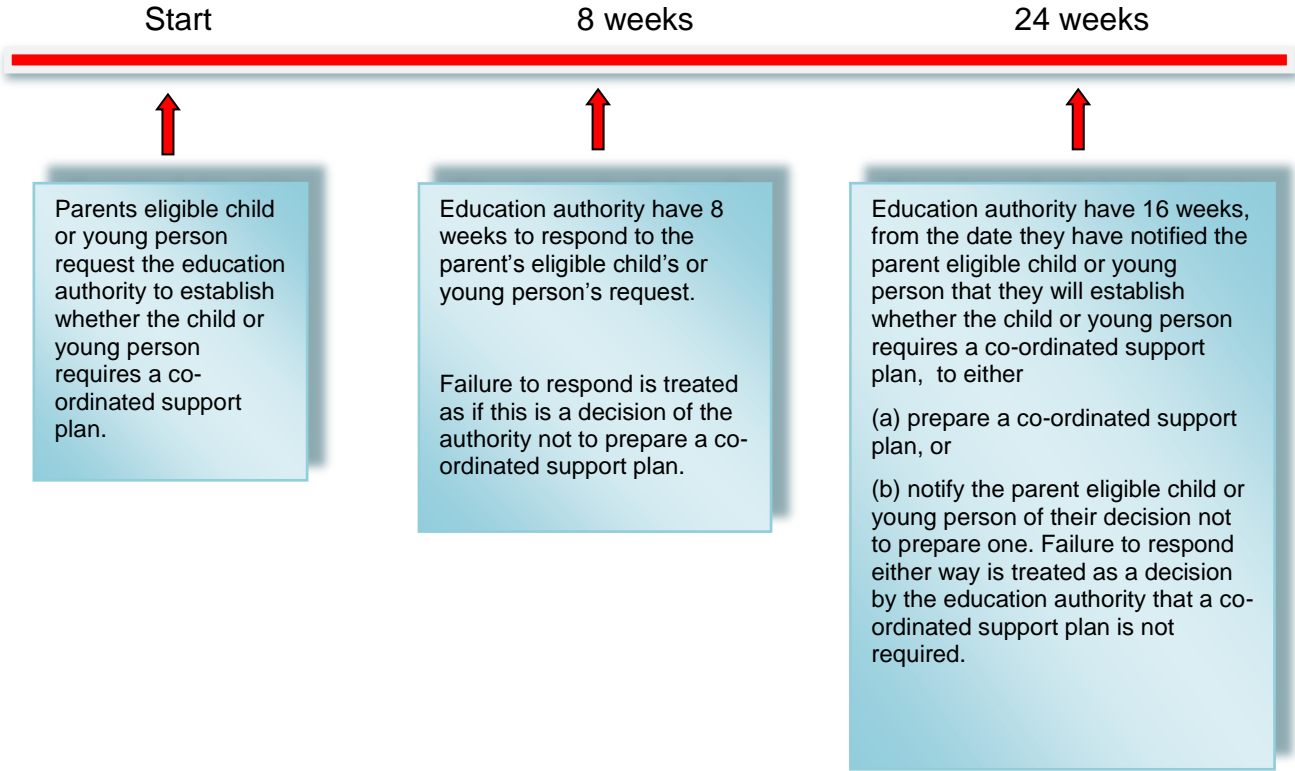
35. The flow diagram above describes the steps which may be taken to draw up a co-ordinated support plan. It is essential that the plan is prepared having sought and taken account of, and recorded on the plan where appropriate, the views of:

- the parents and child (unless the authority are satisfied that the child lacks capacity to express a view)
- the young person
- representatives of those appropriate agencies, and any others, providing support.

36. Education authorities should have clear arrangements for joint working with those appropriate agencies and others involved in supporting children and young people with additional support needs<sup>60</sup>. These should include the arrangements under which support specified in the co-ordinated support plan can be approved and provided by the authority itself and appropriate agencies.

**Timescale for responding to requests and drawing up the plan where one is required**

*Timeline*



<sup>60</sup> <http://www.scotland.gov.uk/Topics/Education/Schools/welfare/partnershipworking>

s18(5A)  
s18(3)(b)

37. Once the parent or young person or eligible child has requested the education authority to establish whether the child or young person requires a co-ordinated support plan, the authority have 8 weeks to respond to the request. At this stage, the education authority do not have to provide the parent or young person with a decision on whether or not they will prepare a co-ordinated support plan. The education authority have simply, within that 8 week period, to inform the parent or young person that they will deal with the request. Failure to respond to the request is treated as if it is a decision of the education authority not to prepare a co-ordinated support plan. In these circumstances, the parent or young person or eligible child can make a reference to the Tribunal, regarding the education authority's decision not to prepare a co-ordinated support plan.

38. An education authority have 16 weeks, from the date they have notified the parent, eligible child or young person that they intend to establish whether or not the child or young person requires a co-ordinated support plan, to inform the parent or young person of their decision either way. The date is the date on which information about the proposal is sent by the education authority. The education authority may ask an appropriate agency for advice. As noted in chapter 3 paragraph 18, the Appropriate Agency Request Period and Exceptions Regulations<sup>61</sup> made under the Act, specify that appropriate agencies are expected to respond to requests for help within 10 weeks from the date the request is made by the education authority, subject to certain exceptions stated there. Within the 16 week timescale education authorities have to:

- seek and take account of the views and information provided
- consider whether the child or young person meets the criteria for having a co-ordinated support plan
- reach a decision
- notify the parents or young person or eligible child of the outcome
- prepare the plan, if it has been established that one is required

39. Where the education authority decide that a co-ordinated plan is required, they must identify the educational objectives to be achieved, the support required and identify and liaise with the appropriate agencies and other persons that will provide the support. They must, within the 16 week timescale, produce a completed co-ordinated support plan as set out in the Co-ordinated Support Plan Regulations<sup>62</sup>.

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<sup>61</sup> The Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005 (SSI 2005/26)

<sup>62</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)



40. An education authority's proposal for establishing whether a co-ordinated support plan is required should also inform parents or young people or eligible children about:

- the agencies, other departments of the authority and other people from whom the education authority propose to seek views, advice and information
- any proposed assessments or examinations
- their right to request particular assessment (s) relevant to the proposal
- their right to provide advice and information relevant to the proposal
- their involvement in the process
- a proposed timescale for the process
- their rights under the Act to make a reference to the Tribunal regarding the education authority's decision about whether or not a co-ordinated support plan is required
- their right to make a placing request if they disagree with the school nominated in any plan prepared. (Eligible children do not have the right to make a placing request)

41. Most children and young people being considered for requiring a co-ordinated support plan will previously be known to the education authority. Consideration for a co-ordinated support plan will have arisen from monitoring the child's or young person's additional support needs and his or her ability to benefit from the school education being provided. In most cases, education authorities would be expected to be able to reach a decision fairly quickly, as to whether a co-ordinated support plan is required. There will be situations where reaching a decision will take longer, for example, where the child or young person has moved to the authority area from outwith Scotland and limited information is available, or where an appropriate agency cannot comply with a request for help quickly.

42. It will be in an education authority's best interests to ensure that the information about the proposal is as detailed as possible and that action is taken promptly to get the process underway, such as through contacting appropriate agencies, or others as appropriate, to seek and prepare to take account of information, advice or help. It is expected that the authority will have reached a decision and notified the parent, eligible child or young person, as soon as possible.

43. The statutory 16 week period ends on the date on which the education authority give the child's parents, young person or eligible child, a copy of the completed co-ordinated support plan. This date is the date a copy of the co-ordinated support plan is sent by the education authority to the parent, young person or eligible child, by post and/or email. In good practice, education authorities will confirm receipt of a co-ordinated support plan with the requester. Alternatively, the statutory 16 week period ends on the date on which the education authority notify the child's parents, young person or eligible child that they do not intend to prepare a co-ordinated support plan.

44. As in paragraph 32 above, if the authority have notified the parents, young person, or eligible child, that they intend to establish whether or not a co-ordinated support is required and after 16 weeks have not made a decision on the matter either way, then that failure will be treated as if the authority have decided that a co-ordinated support plan is not required. Eligible children, parents and young person are able then to refer that decision to the Tribunal (provided the Tribunal assess the child as having capacity to make the reference).

#### **Time limit exceptions**

45. While an education authority will be expected to take all reasonable steps to ensure that the time limit is complied with, there will be circumstances outwith the education authority's control which make compliance impracticable. The Co-ordinated

Support Plan Regulations<sup>63</sup>, therefore, set out the circumstances where it would be considered impracticable for an education authority to meet the usual 16 week timescale. The exceptions cover circumstances relating to both the establishing and preparing phases of the overall process. These include where:

- the child's parent or the young person or an eligible child has made a request for a particular type of assessment or examination and that cannot take place, or the results will not be available, before the end of the 16 week period
- the education authority have asked an appropriate agency or other persons for help and they have not been able to respond in time.

46. When an education authority become aware that the 16 week time limit is unlikely to be met, they must explain to the child's parents or the young person or the eligible child, the reason for the delay and must set a new date for completion of the process. The Regulations require that the new time limit should not exceed the standard 16 weeks by longer than is reasonably necessary in the circumstances, which in any event, must not be more than 24 weeks from the start date (see paragraph 38 above). This is to allow for the individual circumstances surrounding the delay to be taken into consideration and to allow an appropriate new timetable to be set in the light of these.

18(3)(c) 47. A parent, eligible child or young person can make a reference to the Tribunal where, once it has been established that the child or young person does require a co-ordinated support plan, the education authority fail to prepare a plan by the 16 weeks statutory time limit, unless one of the exceptions apply. Education authorities should have regard to this when considering applying any of the time limit exceptions. In some cases, an education authority may have to proceed to reach a decision about the requirement for a co-ordinated support plan, or the actual content of a plan, on the basis of the information available.

#### **What does a co-ordinated support plan contain? (see Annex B for templates)**

s9(2)(a) 48. The Act and associated Co-ordinated Support Plan Regulations<sup>64</sup> set out the form and content for a co-ordinated support plan. The statutory parts of the plan and prescribed decisions, failure or information can be referred to the Tribunal for review. Plans must contain:

- the education authority's conclusions as to the factor or factors from which the additional support needs of the child or young person arise
- the educational objectives intended to be achieved taking account of those factors
- the additional support required to achieve these objectives
- details of those who will provide this support.

The plan must also contain:

- s9(2)(b),  
(c) and  
(d)
- the name of the school the child or young person is to attend
  - the details of the person who will co-ordinate the additional support identified in the plan, or the details of any person nominated by the education authority to carry out the co-ordinator function, if not an education authority official
  - the details of a contact person within the local authority from whom the eligible child, parent or young person can obtain advice and further information, in the case of a plan prepared following a request mentioned in section 6(2), 7(2)(a), or 10(4) for a eligible child and who the authority is satisfied has capacity in relation to advice or further information.

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<sup>63</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

<sup>64</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

49. The plan should be clear and succinct, and refer to needs that will, or are likely to, continue for more than a year. Short-term objectives would continue to be contained within personal learning planning, or an individualised educational programme or other plan. In cases where there is an individualised educational programme or other planning approach in place, the co-ordinated support plan should refer to these, but not duplicate the content of the plans, unless this is required to meet the statutory requirements for the plan. Some may wish to use an individualised educational programme to break down objectives in a co-ordinated support plan into small steps, to guide day-to-day learning and teaching. What is important is that the co-ordinated support plan contains those educational objectives which require the various forms of support to be co-ordinated, if the educational objectives are to be achieved.

50. The co-ordinated support plan also contains other details in addition to those required by the Act and the Co-ordinated Support Plan Regulations<sup>65</sup>. These are:

- specified biographical and contact details of the child or young person
- specified contact details for the parent(s), or those adults who have, or share, responsibility for the care of the child or young person
- a profile - the purpose of this is to build a holistic pen picture of the child or young person. It should focus on the positive aspects of the child's/young person's life, for example, his/her skills and capabilities. It may also include information about the school attended or curriculum, other planning in place, his/her favourite activities, or how he/she likes to learn
- parents' and child's/young person's comments on any aspects of the co-ordinated support plan process as well as the plan itself
- a review timetable.

51. While the co-ordinated support plan details the factors giving rise to the child's or young person's additional support needs, the plan does not contain all the multi-agency reports, including assessment/examination reports that contributed to the education authority reaching these conclusions. How or where this information is kept or shared, is a matter for all the professionals involved to consider, while bearing in mind that some of this information may be sensitive, or could cause distress to the child or young person or other family members. However, it is clearly important that the content of the plan is informed by these reports, so that it takes good account of multi-agency views.

52. A co-ordinated support plan template containing guidance notes can be found at Annex B. It should be noted that the Regulations state that the plan must "...be in the form set out in the Schedule to these Regulations or a form substantially to the same effect...". In other words, education authorities have some scope to change how the co-ordinated support plan is presented, provided the basic outline and purpose of the plan are maintained.

### **The factors giving rise to additional support needs**

53. This part of the plan must state the complex factor or factors, or multiple factors giving rise to additional support needs. In some cases, the factors may be diagnostic terms such as autism spectrum disorder, learning disability or clinical depression. In other cases, the factor or factors may be more descriptive and related directly to the personal circumstances of the child or young person and family.

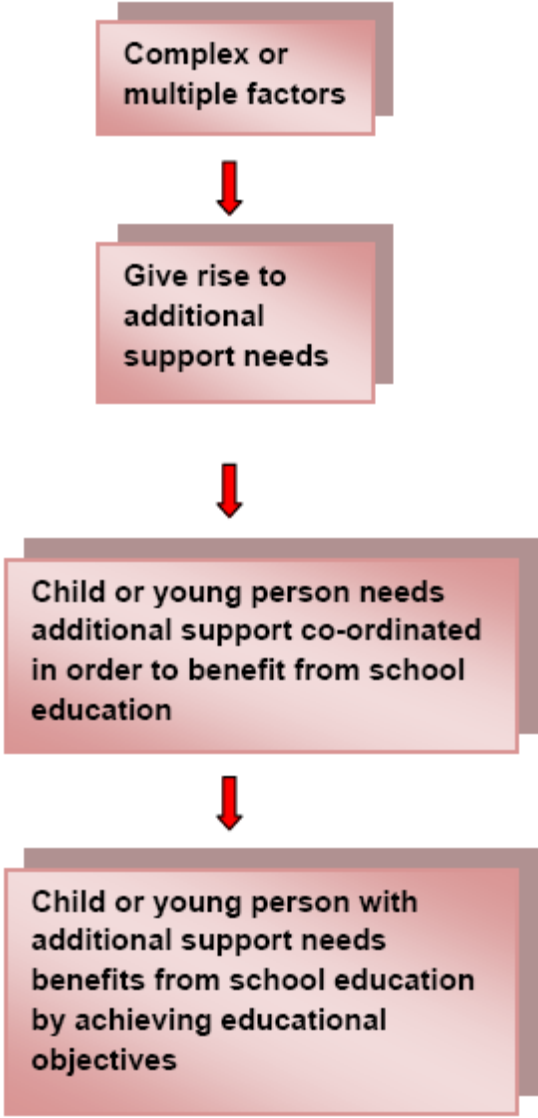
s9(2)  
(a)(i)

54. It should be clear from the assessment information which underpins the co-ordinated support plan, what the complex and/or multiple factors are and how these are influencing the development of the child or young person and his/her ability to

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<sup>65</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

benefit from school education. All the complex and/or multiple factors involved should be stated in the co-ordinated support plan. The factors triggering the requirement for a co-ordinated support plan need to have, or be likely to have, a significant adverse effect on the school education of the child or young person.



**Educational objectives**

s9(3)

55. The co-ordinated support plan is designed to enable children or young people to work towards achieving their educational objectives within the meaning of the Act. School education, within the meaning of the Act, includes, in particular, education directed towards the development of the personality, talents and mental and physical abilities of the child or young person, to their fullest potential. Educational objectives should be set, to secure that the child or young person benefits from the school education provided, or to be provided. The objectives will cover relevant experiences beyond the classroom, including those in the community. They should be viewed in the widest sense as encompassing a holistic view of the child or young person. They should be specific to the child or young person and his or her additional support needs.

56. Educational objectives, for example, may include those required for personal achievement, or for health and wellbeing. For some children or young people, legitimate educational objectives could be, for example, learning to travel independently or learning particular social skills concerned with, say, feeding or dressing. What is important is that the plan contains those educational objectives which require the various forms of support to be co-ordinated, if the educational

objectives are to be achieved. For example, a teacher and speech and language therapist may need to ensure their support is well co-ordinated, if the educational objectives to be achieved are related to improving the communication skills of a child with an autism spectrum disorder; a teacher and residential social worker may need to work together, to ensure that a child looked after away from home is able to complete schoolwork assignments outwith school.

57. The educational objectives in the co-ordinated support plan must take account of the factor or factors giving rise to the child's or young person's additional support needs. The objectives will require the co-ordination of services if they are to be achieved. Children and young people will always be working to achieve other learning outcomes which are not documented in the plan and these will be outcomes which do not depend, for their achievement, on the level of co-ordination of support required by the plan. For example, a particular child with a co-ordinated support plan may have intended learning outcomes set for, say, language and mathematics and, apart from the usual support from the family, the school may feel that these will be achieved without any support from other agencies. These learning objectives will be documented through other school planning arrangements, such as personal learning planning, an individualised educational programme, or another approach used by the school and will not be listed in the co-ordinated support plan.

**58. Decisions about what are appropriate educational objectives to be achieved to enable the child or young person to benefit from school education, should be taken independently of the additional support required to achieve these objectives and should be informed by the assessment information available.**

The starting point should be to establish what it is reasonable to expect the child or young person to achieve over the course of the next year, taking account of the assessment information available. The objectives should be described in terms that are specific enough to enable the education authority, and the other agencies involved in supporting the child or young person, to monitor and review progress over time. However, they should not be so overly specific that they narrow and constrain what should be learned. **When setting an objective, a question that needs to be answered is “How will we know the objective has been achieved?”** Since each co-ordinated support plan has to be reviewed on, at least, an annual basis, then the objectives should be those which can be achieved in a year approximately, or for which progression milestones will be identifiable within the year.

59. Annex C contains some examples of educational objectives. Those drawing up the educational objectives will find it useful to consider as a starting point, the Experiences and Outcomes and Benchmarks<sup>66</sup> in Curriculum for Excellence, because these apply across all schools in Scotland and are relevant for all children and young people as they pursue their school education.

### **The additional support required by the child or young person**

60. The co-ordinated support plan must describe the additional support required to achieve the educational objectives stated. This support should include any short-term support provided so that its impact on the achievement of the educational objectives can be determined. The additional support will cover teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching or forming positive relationships. It will also include any provision made outwith the educational setting but which will contribute to the child or young person achieving his/her educational objectives. The statement of support to be provided should be

s9(2)(a)  
(iii)

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<sup>66</sup> Curriculum for Excellence Benchmarks and Experiences and Outcomes  
<https://education.gov.scot/improvement/curriculum-for-excellence-benchmarks>

clear and specific and, wherever possible, should be quantified. Everyone should understand and be clear about what is being provided and why it is being provided. Statements such as “learning support as necessary” or “speech and language therapy as required” are too vague to be helpful. Statements such as the following provide a clearer idea about what is being provided:

- a named voluntary agency commissioned by social work services to provide group work in school for two hours per week, approximately, for one term
- attendance at a day mental health hospital facility for three afternoons a week, continuing during school holidays.
- speech and language therapist and classroom assistant will provide weekly therapy within a small group setting for six weeks followed by a specific programme being supported within the mainstream curriculum by the teacher and classroom assistant with a review of outcomes at the end of term.

### **The persons by whom the support is provided**

s9(2)(a) (iv)

61. The plan must state the “persons” who should be providing the support. What is meant here are the agencies or professions providing the support, not the actual names of individuals. So, for example, terms such as “visiting teacher of the deaf”, “speech and language therapist”, “social worker”, “clinical psychologist”, and “Skills Development Scotland” are acceptable terms. It is neither desirable, nor necessary, to name, for example, the speech and language therapist, since while personnel may change the additional support provided need not.

### **The nominated school**

s9(2) (b)

62. The plan must state the name and address of the school it is intended that the child or young person will attend. If a child or young person is being educated at home under arrangements made by the education authority, the plan must state this.

### **The details of the person providing advice in the education authority**

s9(2)(d)

63. The plan must state the name, address and telephone number of the person in the education authority responsible for providing advice and further information about the co-ordinated support plan to parents, eligible children and young people.

### **The contact details of the co-ordinator**

s9(2)(c)

64. The plan should state the name, address and telephone number of the person responsible for co-ordinating the provision. The authority can arrange for another person to discharge their co-ordination responsibility and, if so, must provide their nominee’s contact details.

### **Role of co-ordinator**

65. The co-ordinator is the person responsible for monitoring provision to ensure that the services required to deliver the additional support identified in the co-ordinated support plan are in place for the child or young person and for taking action to secure services when necessary. The co-ordinator may be the Lead Professional or Named Person working with the family under the Getting it right for every child approach. Once a plan has been agreed, the co-ordinator should ensure that parents, eligible children, young people and all those involved in providing additional support, know what is required of them under the plan. The Co-ordinated Support Plan Regulations make provision for necessary information sharing between appropriate agencies and other parties to enable each to do their part in delivering the necessary support to meet the needs of the child or young person. The co-ordinator and anyone intending to share personal information about the child, young person or their family must consider how the Regulations and the wider legal framework for information sharing apply in each individual case.

66. The co-ordinator should be aware of the objectives set out in the plan and be closely involved in working with the team who support the child or young person. The co-ordinator should know the procedures to follow if there is a break in the delivery of necessary services, to fulfil educational objectives. For example, if support from external services breaks down due to staff ill health or absence, the co-ordinator must then liaise with the relevant agency to seek to ensure a replacement of services, without undue interruption to the provision of those services.

67. The co-ordinator should note that the Act, as amended, enables parents, eligible children and young persons to make references to the Tribunal, where there is a failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. The Act, as amended, enables the Tribunal to require the education authority to take action to rectify the failure by the authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.

s18(3)(d)  
(iii)

s19(3)

#### *The role of the co-ordinator*

Danny is 10 years old and is looked after away from home and placed with foster carers. He exhibits behaviour difficulties in all situations and requires a high degree of co-ordinated support, for which a co-ordinated support plan is in place. Danny's attendance at school is becoming increasingly erratic and he displays increasingly confrontational behaviour in class, leading to the possibility of exclusion from school. His class teacher asks his co-ordinator and Named Person to find out if there is anything happening in Danny's home-life that may be affecting him. The co-ordinator's enquiries of colleagues in the multi-agency team reveal that the family support package has broken down following the departure of his social worker. The co-ordinator contacts the local social work manager and highlights the current difficult situation, stressing the need for urgent support.

As an interim measure, the social work manager arranges for Danny to receive support from a children's service worker who has a base at the school. The worker is able to work on a one to one basis with Danny with the aim of calming him down sufficiently, to return to his mainstream class. The school also increases the level of in class support from a classroom assistant. The co-ordinator has arranged to meet with the social work manager in a month's time to review the situation.

68. In addition, the co-ordinator should:

- maintain regular contact with the child or young person and his/her family
- be familiar with the school within which the child's or young person's needs are met
- have a working knowledge of relevant service policies and practices
- have experience of working with children and young people with additional support needs
- have experience of compiling and implementing educational support plans (e.g. individualised educational programmes) or health and care plans
- understand the roles and ways of working of other agencies so that partnership working is seen as core business
- working alongside the child and parents, engage the child's Named Person as appropriate.

#### **Who can be a co-ordinator?**

69. The education authority will appoint a co-ordinator, and this person could be from any agency contributing to the plan, but need not be. The choice of co-ordinator will

depend on the nature of the additional support needs and the provision to be put in place for the child or young person. The Act does not require the education authority to have the parent's, child or young person's agreement to the person appointed as co-ordinator. However, it would be difficult to envisage how a co-ordinator could fulfil his/her role without having the confidence of the parent, child or young person. Education authorities should seek and take account of the views of the parent, child and young person when considering appointment of the co-ordinator. The co-ordinator may change in the light of circumstances, for example, at transition from one stage of education to another. Where practicable, changes should be kept to a minimum. Where the co-ordinator does change, the co-ordinated support plan must be amended and details circulated. The parent, eligible child or young person should receive a copy of the updated plan.

70. There are several stages in the preparation of a co-ordinated support plan. These include the discussion which results in the decision to prepare a co-ordinated support plan, the drawing up of the plan, the authorisation of the plan and the co-ordination to ensure the services are available. The co-ordinator could be appointed at any of these stages, depending on the procedures in the local authority. Throughout, the parent, young person or eligible child should be kept fully informed as to the name and contact details for the person responsible for drawing up the plan (see flowchart following paragraph 34).

**Review of the co-ordinated support plan**

s10(2)

71. The Act requires that the education authority responsible for the school education of child or young person, must keep under consideration the adequacy of each co-ordinated support plan and must formally review each plan at least every 12 months, making appropriate amendments, as necessary. The education authority must have completed the review within 12 weeks of the expiry date, which is the anniversary of the date on which the plan was prepared, unless any of the various exceptions apply as prescribed in the Co-ordinated Support Plan Regulations<sup>67</sup>. A failure to carry out the review and to meet statutory timescales can be referred to the Tribunal.

72. Education authorities should ensure that an appropriate review schedule is in place for each plan and that the appropriate agencies, and parents, eligible child or young person, receive sufficient advance notice of review meetings as appropriate. Paragraphs 8 and 9 of this chapter describe the requirements where a child or young person is receiving school education, in an education authority other than the one for the area to which the child or young person belongs.

73. Authorities may carry out a review earlier than 12 months, if they feel it necessary or expedient to do so, because of a significant change in the child's or young person's circumstances since the plan was prepared, or last reviewed. Alternatively, a child's parents, the eligible child or the young person may request a review before 12 months have elapsed and authorities must meet this request, unless the request is unreasonable. An education authority has 4 weeks to respond to a request from a parent, the eligible child or young person, to review a co-ordinated support plan (or 12 weeks where the request is made during a school holiday period of 4 weeks or more). Education authorities should give clear guidance to schools and their staff in this regard. Where, an education authority refuse a request under the Act, they must inform the person who made the request and provide reasons for their decision. They must also inform the person of the right to refer this refusal to the Tribunal.

s10(4)  
s18(3)  
(d) (iv)

s11(1),  
(2) and (3)

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<sup>67</sup> Regulation 7 - The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)



74. Before proceeding with any review, the education authority must notify the child's parents, the eligible child (where the review arises as a result of a request mentioned in section 6(2), 7(2)(a) or 10(4)) or the young person of their proposal and ask them for their views. Parents should be notified about what is likely to happen during the review, such as consideration of:

- how far the educational objectives have been met
- the child's or young person's additional support needs
- the setting of new educational objectives, the support required and the agencies responsible for providing it.

75. The parents, eligible child and young person should also be informed of their right to request an assessment, if they feel that what the authority is proposing does not include a particular assessment which they may feel is necessary. For example, a particular child may be receiving support from a physiotherapist and speech and language therapist. The parents may feel that an assessment by an occupational therapist and a clinical psychologist would be helpful and they could request the education authority to arrange this.

s8(1)(a) (ii)  
and (b)

76. Monitoring and review arrangements should be agreed amongst the professionals working with the child or family. A person who has regular contact with the child may be identified by the team to help the family to get the most out of the process. The co-ordinated support plan co-ordinator or contact person also has a role to play.

77. Following a review, the education authority must notify the child's parents, eligible child the young person, of the outcome and of their rights to make a reference to the Tribunal. If the plan has been amended as a result of the review (or subsequent to a requirement made by the Tribunal), the education authority must give a copy of the amended plan to the child's parents, the eligible child (where the proposal arises as a result of a request under section 6(2), 7(2)(a) or 10(4)), or the young person as appropriate. The authority must then ensure that:

s11(5)

- the additional support they have to provide, as recorded in the plan, is provided, insofar as they have the power to do this
- the additional support others have to provide, as recorded in the plan, is provided, insofar as they have the power to do this
- the support above is co-ordinated
- all providing the support are informed about what the amended plan contains and the implications of this for them.

78. The Act, as amended, provides the Chamber President with the power to monitor the implementation of Tribunal decisions. Following a decision of the Tribunal that requires an education authority to do anything, the Chamber President may require the authority to provide him/her with information about the authority's implementation of the Tribunal decision. This includes information about whether an authority has amended a co-ordinated support plan, as required by the Tribunal and carried out the action in paragraph 77 above.

79. The Act also provides the Chamber President with the power to refer the matter to the Scottish Ministers, where the Chamber President is satisfied that the authority are not complying with the Tribunal decision. The Chamber President may issue directions to the Tribunal in connection with the exercise by the Chamber President of that power. The Scottish Ministers, in turn, have the power to direct an education authority (or authorities) regarding the exercise of their functions under the Act. Authorities must comply with such a direction. For example, if an authority has failed to amend a co-ordinated support plan following the decision of the Tribunal, then it can be directed to do so by the Scottish Ministers.

Sch 1  
11A

Sch 1  
11A and  
12

s27(9),  
(10)  
and (11)

80. The arrangements described in paragraphs 74 and 77 for notifying parents, eligible children, and the young person about reviews and their outcomes, apply also to the managers of independent or grant-aided schools, where an authority have responded to their request to establish whether a child or young person would require a co-ordinated support plan, if the education authority were responsible for the child or young person's school education.

### **Custody, Transfer, Disclosure, Discontinuance, Preservation and Destruction of the co-ordinated support plan**

81. Specific provisions for the custody, transfer, disclosure and discontinuance of co-ordinated support plans are contained in the Co-ordinated Support Plan Regulations<sup>68</sup>. In the case of a co-ordinated support plan for a child or young person, requirements in the Act to notify the eligible child or young person or obtain his or her consent are satisfied by notifying or obtaining the consent of the eligible child, or his or her parents, where the education authority considers the young person lacks capacity, or the child is assessed as not having capacity to consent.

#### **Custody of the co-ordinated support plan**

82. The education authority must keep a copy of a co-ordinated support plan, which they prepared, in a place the authority consider appropriate. This would normally be in the appropriate department at the authority's headquarters. The Act provides for an eligible child, the child's parents or the young person to receive a copy of the plan. However, they must also be told where they can inspect, free of charge, the authority's copy during normal business hours.

83. A copy of a co-ordinated support plan must also be kept at the school attended by the child or young person. How it is kept is a matter for the school to decide, bearing in mind that it is a confidential document and should not be disclosed to anyone other than those authorised to see it, or have copies of, or extracts from, it. The co-ordinated support plan will inform classroom planning and practice for the individual child or young person and forms part of the child's or young person's Pupil Progress Record.

#### **Transfer of the co-ordinated support plan**

84. When a child or young person with a co-ordinated support plan transfers, without any immediate intention of returning, from a school under the management of one education authority, to a school under the management of another education authority, the education authority which prepared the co-ordinated support plan must<sup>69</sup> transfer it to the new education authority. This transfer must take place within 4 weeks from either the date of departure notified on which the child or young person will be moving or, if the child or young person has already left the area, from the date the original education authority become aware the move has taken place. This duty applies whether the transfer is a result of a successful placing request, or where the child's parents (and child) or young person have moved to reside in the area of another local authority.

85. As soon as the plan is received, the new education authority must treat the plan as if they had prepared it and use it as the basis to provide for the child's or young person's additional support needs under the Act. As soon as reasonably practicable, the new education authority must notify the parents or, as appropriate, the young person of the transfer of the plan and inform them that, in future, responsibility for the co-ordinated support plan and for providing for the additional support needs of the

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<sup>68</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

<sup>69</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

child or young person rests with the new education authority. The new education authority must also inform the parents, eligible child or young person about the co-ordinator (Lead Professional or Named Person) within, or appointed by, the new education authority and the person within the new authority, from whom the parent or young person can obtain advice and further information. Where the child or young person lacks the capacity to understand this information, then his/her parents should be provided with it. In addition, any persons mentioned in the plan as providing support to the child or young person, should be notified that the plan has been transferred to the new education authority and they must be provided with the same information provided to the parents, eligible child or young person, as above.

86. The Act, as amended, requires that where a child or young person with a co-ordinated support plan transfers to a school in the new authority, as a result of a placing request, or simply because the parents have changed their home address, then the new authority are under a duty to seek and take account of information and advice from the education authority from which the co-ordinated support plan was transferred, as well as from any agencies or persons involved in providing support under the co-ordinated support plan, prior to its transfer. This ensures that the new authority and the previous authority responsible for the school education of the child or young person are in contact and that the new authority have all the information necessary from the previous authority and the agencies previously supporting the child or young person. This should aim to make the transition from one authority to another as smooth as possible.

s12(3A)

87. Where the transfer of the co-ordinated support plan has arisen because the child's parents (and child) or young person have moved to reside in the area of another local authority, then that local authority may, in good practice, wish to review the plan as soon as practicable, taking account of the provision in section 10 of the Act and in the Regulations. However, the position is different if the transfer of the plan has resulted from a successful out-of-area placing request. In these circumstances, the new host education authority **are under a duty to review the plan**. The Act, as amended, requires the new host authority to carry out a review of the co-ordinated support plan, as soon as practicable after the date of any transfer of the co-ordinated support plan from the home authority to the host authority. Once the host authority have received the plan from the home education authority, they must notify the child's parents, young person (or the young person's parents, if he/she lacks the capacity to understand the information) or eligible child, that they propose to review the plan. This notification must take place as soon as reasonably practicable, after they have received the plan from the home education authority. The host education authority then have 12 weeks from that date to conduct the review, unless it is not possible to meet this timescale as a result of the circumstances described in the Co-ordinated Support Plan Regulations<sup>70</sup>.

s10(1)  
s10(5A)

88. When a child or young person who has had a co-ordinated support plan in Scotland subsequently moves to England, Wales or Northern Ireland, the education authority which prepared the plan, can disclose the plan, or extracts from it, to the relevant authority for that area, where the original authority considers it necessary to do so, in the interests of the child or young person, to whom the plan relates. Any disclosure must be in accordance with the law on data protection, human rights, confidentiality and any other relevant law.

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<sup>70</sup> Regulation 7 - The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

## **Disclosure of the co-ordinated support plan**

89. The co-ordinated support plan is a confidential document, but for it to be effective, and by its very nature, the plan or information in it will require to be shared with a range of people. While consideration must be given to the effect sharing certain information may have for the child or young person and their family, the co-ordinated support plan should not be a document that is locked away and rarely referred to. As a strategic planning document, it should be used and referred to on a regular basis.

90. When education authorities prepare or amend a co-ordinated support plan they must tell the people involved in providing additional support for the child or young person, about matters in the plan as they consider appropriate.

91. However, there will be certain persons who would require to have a copy of the actual plan, or extracts from it depending on different circumstances. The child's or young person's teacher will need a copy of the plan to help inform planning and monitoring of progress. The appropriate agencies and other persons providing support to help meet the educational objectives, may only require to have the part of the co-ordinated support plan containing that information. Education authorities will have to make these decisions based on the individual circumstances of the child or young person.

92. In addition to those providing additional support to the child or young person, the Co-ordinated Support Plan Regulations<sup>71</sup> set out those persons to whom education authorities can disclose a co-ordinated support plan, or extracts from it, without seeking the consent of the eligible child, the child's parents or the young person.

These include:

- those people the education authority think it necessary in the interests of the child or young person
- the person who will act as the co-ordinated support plan co-ordinator, Lead Professional and/or Named Person where that is not an education authority officer
- HM Inspectors
- the Principal Reporter.

Any disclosure of information must be in accordance with the law on data protection, human rights, confidentiality and other relevant law.

93. In terms of good practice, however, it is recommended that education authorities notify parents, young people or eligible children of their intention to share the plan or extracts and their reasons for disclosure. In making decisions about who should receive a copy of, or extracts from a co-ordinated support plan, education authorities must have regard to not only the Regulations but to the wider legislative framework that covers sharing information, such as the Data Protection Act 1998. Different legislation may apply, depending on the individual circumstances of the child or young person, such as whether or not they have social work or health needs.

94. In all other circumstances, education authorities must not disclose a co-ordinated support plan or extracts from it, without first seeking the consent of the parents, eligible child or young person. Education authorities should reserve the right to request the return of any copies or extracts of co-ordinated support plans.

## **Discontinuance, preservation and destruction of the co-ordinated support plan**

95. Where a co-ordinated support plan is to be discontinued following a review, or where the education authority are no longer responsible for the child's or young

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<sup>71</sup> The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

person's school education, the discontinued plan must be preserved for a period of 5 years from the date of discontinuance. This date must be noted on the plan.

96. If the plan is to be discontinued following a review, the education authority must inform the eligible child, parents or young person of their decision. The education authority must not discontinue the plan before the expiry of the 2 month period parents and young people have, in which to refer the decision to the Tribunal.

97. At the end of the 5 year period, the co-ordinated support plan must be destroyed. The education authority should notify the parents, eligible child or young person that this has happened, as soon as reasonable practicable. It may be, that after 5 years the whereabouts of the parents or young person are not known. If that is the case, the education authority should take reasonable steps to obtain contact details.

98. Where the Tribunal overturns the education authority's decision to prepare, or continue, a co-ordinated support plan, the education authority must notify the eligible child, child's parents or the young person as appropriate, when the plan will be discontinued and ask them to let the authority know within 21 days, whether they want it to be preserved for a period of 5 years or not. If the answer is yes, then the plan must be preserved. If the answer is no, or there is no response, the education authority must destroy the plan and let the eligible child, or parents of the child or young person, know this has happened.

99. During the period that the co-ordinated support plan is preserved, the arrangements for disclosure described in paragraph 89-94 above continue to apply.

## **Getting it right for every child and the co-ordinated support plan**

### **The Getting it right for every child approach**

100. Where support is asked for or offered and it is established that a child has wellbeing needs which require support from a range of services, or from more specialist services, it is important that the planning and delivery of that support is well organised and coordinated. Getting it right for every child provides a consistent approach to planning support through a single planning framework, called a Child's Plan. A Child's Plan may be offered to a child who requires extra support that is not generally available to address needs and improve their wellbeing.

101. A Child's Plan is based on working with children and parents to offer tailored, coordinated support that meets the wellbeing needs of an individual child, by taking account of their unique circumstances to help them reach their potential. Clear action planning to address children's wellbeing needs, helps parents and practitioners understand the child's needs and how those needs can be met and supports better outcomes for the child.

102. Overall responsibility for delivering a Child's Plan sits with an organisation such as a health board, local authority or independent school. But a single person - Lead Professional - will ensure the Child's Plan is managed properly.

103. Where necessary Getting it right for every child integrates and co-ordinates plans developed by different agencies. It looks to practitioners to work in accordance with legislation and guidance but also expects agencies and practitioners to draw on the skills and knowledge of others as necessary and to think in a broad, holistic way<sup>72</sup>. For example, a care plan for a child looked after by the local authority, a health care plan, or an individualised educational programme should be incorporated within the Child's Plan where the child's or young person's circumstances require this. An individual child or young person may have an action plan which incorporates the educational objectives in the co-ordinated support plan, but which goes beyond these to address

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<sup>72</sup> <http://www.scotland.gov.uk/Topics/Education/Schools/welfare/partnershipworking>

other aspects the child's or young person's wellbeing. This means that a review of the Child's Plan avoids multiple meetings to review separate plans.

104. A Child's Plan will be unique to each child but in agreement with the child and parents will usually include and record:

- reasons for the plan
- partners to the plan
- the views of the child or young person and their parents or carers
- a summary of the child or young person's needs
- what is to be done to improve a child or young person's circumstances
- details of action to be taken
- resources to be provided
- timescales for action and for change
- contingency plans
- arrangements for reviewing the plan
- Lead Professional arrangements where they are appropriate
- details of any compulsory measures if required.

### **Links with the co-ordinated support plan**

105. The co-ordinated support plan is an educational plan which involves, and notes the commitments by, other agencies in providing significant additional support to enable the child or young person to benefit from education. It needs to be included along with the Child's Plan (or be readily extractable from the Child's Plan) as a stand alone document. The date of the co-ordinated support plan is based on the date it is sent to parents, eligible children and young person where appropriate. Education authorities must be able to produce this stand alone document, to demonstrate adherence to legally specified processes and timescales and also because copies have to be made available to a range of people including parents, children, young people, HM Inspectors of education, the Tribunal and those whom the authority think should see the plan.

106. Clearly there are significant similarities between the contents of the Child's Plan and the co-ordinated support plan. However, one important difference is that the co-ordinated support plan is concerned with the additional support a child or young person requires in order to benefit from education. The Child's Plan, however, potentially covers a wider range of issues related to promoting a child's or young person's wellbeing and it will, therefore, refer to matters not contained in the co-ordinated support plan such as, for example, issues relating to compulsory care measures or child protection. However, it is important that the process of developing the co-ordinated support plan is integrated fully with the planning and review of the Child's Plan so that, for example, the annual review of the co-ordinated support plan dovetails with the review of the Child's Plan and so that assessment is carried out in a holistic way, as illustrated by the National Practice Model in Chapter 3. As noted in paragraph 65, the co-ordinator may be the Lead Professional or Named Person working with the family under the Getting it right for every child approach.

## Chapter 6 Transitions

1. School education is organised in such a way that all children and young people experience transitions as they move through the various stages of schooling. These transitions include entry to pre-school provision, transfer to primary school and through the different stages of primary and secondary school and, in particular, to post-school provision. Within almost all schools, children and young people will encounter changes and transition from each stage to stage. Whatever the form of change and transition, all children and young people are entitled to support to enable them to gain as much as possible from the opportunities which Curriculum for Excellence can provide and also support in moving into positive and sustained destinations beyond school. Some may experience changes in their school education at other times with a transfer to another school or a break in their school education. Early or timely planning is required to ensure continuity and progression between stages or breaks in education as well as effective collaboration and liaison between schools. This chapter considers the requirements on education authorities and others under the Act in relation to transitions.

2. Some changes in school education may involve irregular transition experiences through, for example, exclusions and permanent school closures. Where these involve a child or young person with additional support needs, the education authority and other agencies should take account of the way these changes affect the provision of the additional support required by the child or young person. For some children and young people, including looked after children, transition may be a time of difficulty.

### **Planning for changes in school education**

3. Education authorities should have appropriate arrangements in place to ensure that changes in school education for all children and young people can be as smooth as possible. School staff have responsibility for ensuring all children and young people develop the skills for personal planning. All children and young people should experience activities in the context of the curriculum, learning and achievement which will prepare them for transitions within and beyond school education. For example, children and young people can learn about planning for choices and changes by participating in reviews about their additional support needs. Effective planning helps to promote shared understanding and close communication among all relevant persons and above all helps to ensure that any required action is co-ordinated appropriately. An education authority's routine arrangements should enable schools to provide sufficient support for almost all children and young people faced with changes in school education. For almost all children and young people, strong collaborative work across stages and schools will support good transition arrangements. For example, in the transition from primary to secondary, staff working in supporting children will liaise across schools to get to know children and inform and prepare them for their next stage in education. For some children a more formal review process may be required between schools. In some circumstances, education authorities will require to involve other agencies to ensure that the transition process is effective for certain children and young people with additional support needs. In particular, the duties of appropriate agencies in helping the education authority to fulfil their duties under the Act are explained in chapter 3.

4. The Act is supported by the Changes in School Education Regulations which are referred to here<sup>73</sup>. The Regulations specify the action that the education authority must take at various transition points in a child's or young person's school career.

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<sup>73</sup> The Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005

5. There will be some circumstances where transition planning is taking place alongside a parental placing request for a particular school and this can, potentially, lead to difficulties in meeting the timescales for transition planning and/or resolving any placing request difficulties. The timescales for transition planning set out in the Act refer **to the latest times** by which a particular stage of the transition planning process should have been completed. For example, for a child with additional support needs transferring from primary to secondary school, to whom the transition arrangements apply, then **no later than 12 months before** the child is due to start secondary school the education authority must seek and take account of information and advice from appropriate agencies or others. However, in many cases it will be better to start this process earlier than 12 months before the expected transfer date to allow all those involved sufficient time for planning and this should help to avoid difficulties over timing with transition arrangements. Similarly, with planning for post-school placements, it will often be better to start the transition planning much earlier than the latest timescale required by the Act, perhaps even in the early years of secondary school, so that there is sufficient time for post-school planning.

6. Transition planning needs to be co-ordinated by one person and when there is multi-agency involvement then a Lead Professional or Named Person should be involved.

7. It should be noted that in setting out below the duties and arrangements for transitions, the education authority have some discretion about the particular children or young people to whom these duties apply under the Act. The reason for this is that it would be burdensome and unnecessary to apply these duties and arrangements to **every** child and young person with additional support needs given that some additional support needs may be transitory and/or relatively minor. It will be for those working with the child to take into account the views of the parents and child, and the particular circumstances, to decide whether the duties described below apply; young people have the same rights as parents under the Act. Education authorities will wish to consider for each child or young person with additional support needs whether the transitional duties should apply. It is anticipated that the transitional duties will certainly apply to all those children and young people with additional support needs where one, or more, of the following circumstances apply. They:

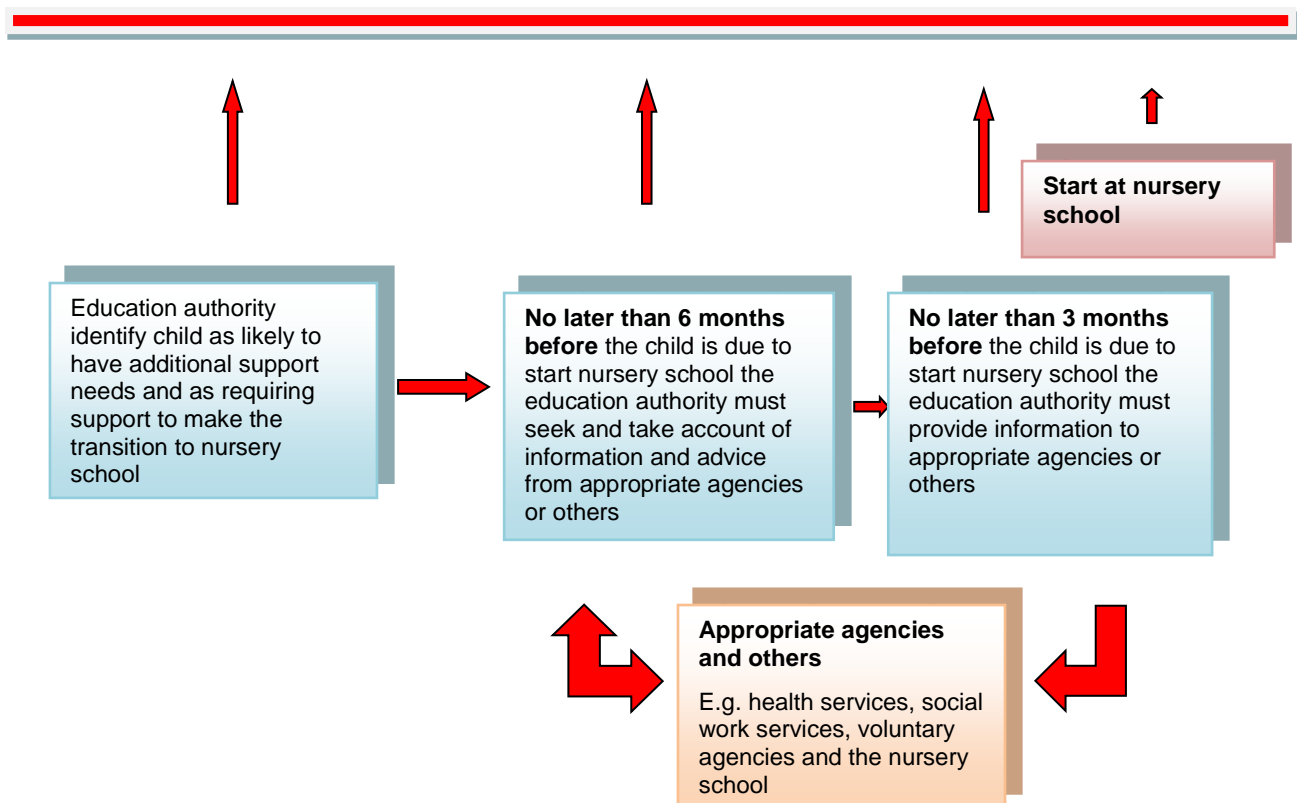
- have a co-ordinated support plan
- are in a specialist placement such as an enhanced provision, a special unit or a special school
- have additional support needs arising from a disability within the meaning of the Equality Act 2010
- are otherwise at risk of not making a successful transition such as looked after children and young carers.

Reg 3  
(2)(a)



## Starting nursery school

### Timeline



8. Before they start receiving school education in pre-school or early learning and childcare provision, some children will have been identified as being likely to require additional support to enable them to benefit from school education. This school education may be provided in a school under the management of an education authority or, where an education authority have entered into arrangements with an establishment to provide school education, in a partnership nursery. In these circumstances, the Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005<sup>74</sup> require that the education authority must seek and take account of relevant advice and information from appropriate agencies and other persons before the child is expected to begin receiving school education. The appropriate agency most likely to be involved is an NHS Health Board, for example through a health visitor as the child's Named Person. Advice should also be sought from the authority's own social work services, if necessary, and from the pre-school provision or nursery school to which the child will transfer.

Reg 3 (1) and (2)

9. The education authority should take the above steps **no later than 6 months** before the child is due to start at the pre-school provision; they may do it earlier if they wish. However, if they only become aware of the circumstances less than 6 months before the child is due to start at the pre-school provision then they should take action as soon as possible.

10. The requirement to seek relevant information and advice applies to such agencies and other persons as the authority consider appropriate (see paragraph 8 above). That is, the authority have discretion about whether or not to engage with an appropriate agency regarding a particular child. Where the education authority seek advice and information from appropriate agencies or other persons then the Regulations require the education authority also to seek and take account of the views

Reg 3 (2) and (4)

<sup>74</sup> <http://www.legislation.gov.uk/ssi/2005/265/contents/made>

of the child (unless the child lacks the capacity to express a view) and the child's parent before starting school. The education authority have the discretion about whether or not to seek the views of a particular child and clearly it may be considered that a very young child lacks the capacity to provide an informed view and should, therefore, not be asked for one. Advice on working with children and families is considered in more detail in chapter 7.

Reg 3  
(3)

11. The advice and information is relevant where it is likely to assist the education authority in:

- establishing the child's additional support needs
- determining the provision of additional support required
- considering the adequacy of the additional support provided.

12. No later than 3 months before the child is due to commence at pre-school provision the education authority must inform these agencies about:

- the date education is due to commence
- the child's additional support needs
- the additional support provided to the child during the 3 months immediately prior to providing the information to the appropriate agency.

Reg 4

13. As above, if they only become aware of the circumstances less than 3 months before the child is due to start at the pre-school provision then the education authority should take action as soon as possible.

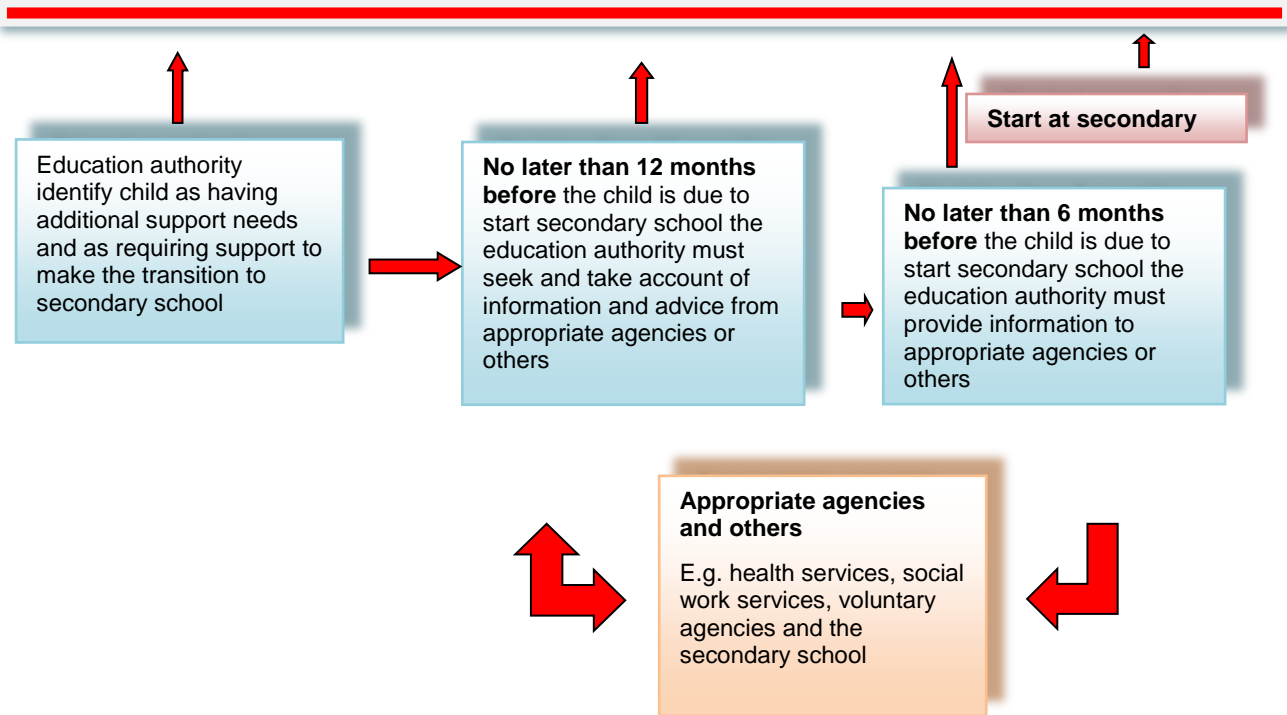
Reg 4 (4)

14. The education authority must seek the consent of the child's parents before passing on information, unless to do so would result in a significant risk of harm to an individual. Copies of any information passed on to an appropriate agency should be sent to the parents at the same time as it is sent to the appropriate agency, unless to do so would result in a significant risk of harm to an individual.

**Any disclosure of information must be in accordance with the law on data protection, human rights, confidentiality and other relevant law.**

**Pre-school to primary school; primary school to secondary school**

**Timeline: primary to secondary school**



15. The above duties in paragraphs 8 -14 apply also to children with additional support needs transferring from **pre-school provision to primary school and from primary school to secondary school. The timeline above for primary school to secondary school applies equally to these other transition and to the ones described in paragraph 16.** However, the timescales are different. The duty to seek and take account of relevant information and advice from appropriate agencies or other persons should be completed **no later than 12 months** before<sup>75</sup> the change of school is anticipated, not 6 months as above. The advice and information is relevant where it meets the criteria set out in paragraph 11. The duty to provide information should be completed **no later than 6 months** before the anticipated change of school, not 3 months as above, and the information to be provided is as set out in paragraph 12. As above, if the education authority cannot meet these timescales because they were not made aware of the proposed change in school education in time then they should take steps to fulfil the requirements as soon as possible.

16. Where an education authority transfer a child with additional support needs to another school under their management, or where there are arrangements proposed for the child to transfer to a school in another local authority, then the above duties also apply, whether or not a placing request is involved. Where a placing request is involved, an appropriate agency involved would be the local authority managing the school to which the child was due to transfer.

17. As above, where the education authority seek advice and information from other appropriate agencies or other persons then the Regulations require the authority also to seek and take account of the views of the child (if the child is able to express a view) and the child's parent before starting the new provision. The education authority must also seek the consent of the child's parents before passing on information to an appropriate agency, unless to do so would result in a significant risk of harm to an individual. Copies of any information passed on to an appropriate agency should be sent to the parents at the same time as it is sent to the appropriate agency. Eligible children and young people have the same rights as parents under the arrangements for transitions, in particular with regard to giving consent for the sharing of information regarding their additional support needs.

Any disclosure of information must be in accordance with the law on data protection, human rights, confidentiality and other relevant of law.

### **Co-ordinated support plan**

18. There are particular requirements applying to children and young people with co-ordinated support plans who transfer from a school in one authority to a school in another authority either as a result of a placing request or because of a change of residence. These are referred to in chapter 5, paragraphs 84-88.

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<sup>75</sup> Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005, reg 3

## Good practice

19. Education authorities should take account of the following principles of good practice whenever a child or young person with additional support needs is approaching a transition point in their school education<sup>76</sup>:

- transition planning should be embedded within the education authority's policies and procedures for additional support needs and the more universal policies and procedures for support for children and young people
- other agencies, such as health and social work services, Skills Development Scotland (Careers), further education colleges and institutions of higher education should also be involved in transition planning where required
- the child's or young person's views should be sought and taken into account when discussing changes in school education
- parents should be part of the planning process, and their views should be sought, and taken account of, and they should receive support, as required, during the transition process
- early consultation should take place with the school or post-school provision, which the child or young person will be attending
- schools should plan to ensure that the necessary support is in place for children and young people who have additional support needs to help them through the transition phase to their new school or provision
- professionals from all agencies working with the child, young person and family should plan in good time for transition to future services
- transition should be co-ordinated by a relevant person known to the child or young person and their family
- where a child or young person has a co-ordinated support plan then any anticipated change in the statutory co-ordinator should be discussed with the child or young person, and parents, as far in advance of the change as possible.

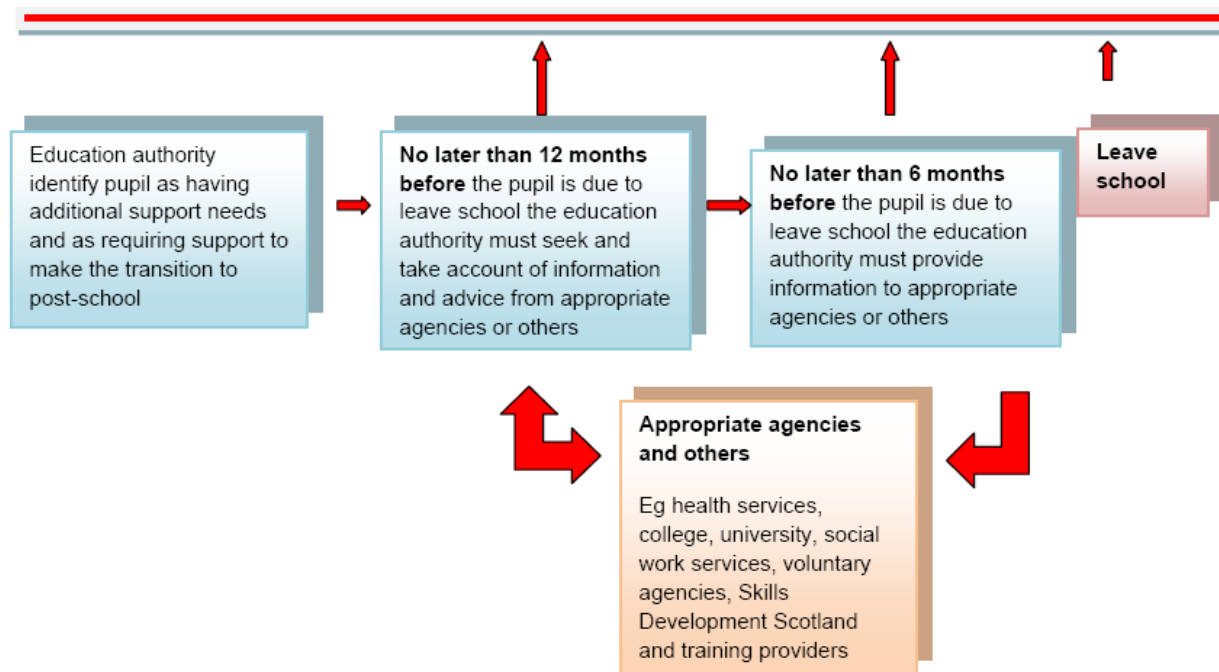
Sarah had a straightforward primary school experience and untroubled family life until the start of P7 when her mother died unexpectedly. Sarah's schoolwork suffered and she became withdrawn. Her father became concerned about how she would cope with transferring to secondary school. Relevant staff in the secondary school, who prior to transfer routinely visited all P7 classes of associated primary schools, were made aware of the situation. In addition to the transition planning which was already underway, advice was sought from the secondary school about what further support was available to Sarah on transfer. The secondary school pastoral staff arranged that Sarah would be in a form class along with some of her close friends when she transferred and agreed to pay particular attention to her over the initial stages of the transition.

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<sup>76</sup> How good is our school? (HGIOS) Fourth Edition <https://education.gov.scot/improvement/frwk2hgios>

## Preparing for adulthood

### Timeline



20. All young people are entitled to a senior phase of education which provides them with opportunities to obtain qualifications and reinforce their broader learning and achievements through a range of experiences including enhancing skills for life and skills for work. Education authorities and schools should be able to address the requirements of almost all young people with additional support needs, through the school's arrangements for support and planning for choices and change with health and wellbeing. Through its Partnership Agreement with each secondary school, Skills Development Scotland provides a universal service to all pupils and targeted support to those identified as requiring it. Preparation for adulthood should involve explicit recognition of the strengths, abilities, wishes and needs of each young person as well as identification of relevant support strategies which may be required. It is essential that there is good communication between the school leaver and parents and all supporting agencies. Information should be shared promptly and effectively, with the parents' or young person's consent. All young people should be asked for their consent unless it has been established that they lack capacity to grant or deny it.

21. Within their senior phase, young people with additional support needs should engage personally in the transition planning process to help them to prepare their plans for the next stage in their education, training or employment. For example:

- some young people may need to develop independence skills so that they manage money more effectively, learn to travel independently to placements, check a bus timetable and ask for information
- some may need help to organise how they will manage their new educational arrangements and/or their work commitments and/or relevant aspects of their self-directed support
- others with significant disabilities will need community-based services involving social work, health and the voluntary sector when they leave and may need to experience some of these services in preparation for leaving.
- Whatever prospective school leavers require to learn in order to make the transition successful should, in good practice, be planned for carefully and in a timely manner.

Zahir is following an HNC programme in information systems. He has Asperger's Syndrome. He attended a secondary school where he received 1:1 support and successfully achieved National Qualifications at National 4 level. A year prior to leaving school he applied to attend a further education college. A transition programme was agreed by Zahir, his parents, teachers, social worker and college learning support staff. Short and long term targets were agreed for a structured transition period and regular meetings were held with all relevant parties. As a result the school was able to help Zahir to make a successful transition to college and the college was able to prepare a learning programme and support arrangements appropriate for his learning needs.

22. Effective transition can involve a range of strategies<sup>77</sup>. The school should ensure that the prospective leaver has sufficient information and understanding, within his/her programme of learning, on which to base decisions about the relevant choices of training or work placements, college or higher education courses and other day supports and services. This process of transitional planning should start at an early point in his/her secondary schooling, for example, prior to the end of their broad general education and their undertaking National Qualifications. Opportunities to sample options should be made available through visits or work experience relevant to the pupil's aspirations and interests in order that he/she can be involved in making fully informed choices. A phased entry to college, training placement or workplace, for one or two days a week, while continuing at school for the remainder of the week would be an appropriate approach to making this transitional step less daunting for the young person than an abrupt change to full-time attendance at a new provision.

### **Opportunities for All**

23. Many of those at risk of becoming disaffected, of underachieving and of leaving school with few, or any, qualifications will have additional support needs and will benefit from the transitional arrangements required by the Act. Opportunities for All<sup>78</sup><sup>79</sup> builds on the More Choices More Chances<sup>80</sup> strategy which recognised that encouraging all young people to stay in learning post-16 is the best way of ensuring their long-term employability and contribution to society. 16+ Learning Choices<sup>81</sup> the model for post-school transition planning to further learning, training and employment, is integral to the delivery of the Opportunities for All commitment and the senior phase of Curriculum for Excellence. The three key elements of the model are clear that:

- the right learning provision must be in place - a range of options, including staying on at school, entering further or higher education, participating in the national training programmes, or taking part in personal achievement opportunities offered through community learning and development, must be available to each young person, or a flexible programme sharing several of these elements
- the right financial support must be available to ensure that young people make choices based on the most appropriate learning for them, rather than on the amount of money offered
- the right information, advice and guidance must be available early enough to make sure that young people know what opportunities are on offer, how those fit with

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<sup>77</sup> Principles of Good Transitions 3: <https://scottishtransitions.org.uk/summary-download/>

<sup>78</sup> Reference: <http://www.gov.scot/Resource/0040/00408815.pdf>

<sup>79</sup> Reference: <http://www.gov.scot/Resource/0045/00456919.pdf>

<sup>80</sup> Reference: <http://www.gov.scot/Publications/2006/06/13100205/0>

<sup>81</sup> Reference: <http://www.gov.scot/Topics/Education/skills-strategy/progress/sg/economicimprovement/16PlusLearningChoices>

their own needs and ambitions, and how they will be able to progress through and beyond these opportunities to sustain positive life outcomes.

### **More Choices, More Chances and Opportunities for All**

The Scottish Government's 2006 More Choices, More Chances, strategy to reduce the proportion of young people not in education, employment and training, recognise the importance of effective school to post-school transition. These include : identifying every young person<sup>82</sup> (in school; not attending/excluded from school; in specialist provision) before they reach the stage where they will be progressing beyond schooling, at a time most appropriate to their needs, and ensuring they receive the information, advice and guidance they need to secure an appropriate opportunity to progress post-16 where the young person has additional support needs, using the statutory measures in the Additional Support for Learning Act, and the advice in the code of practice, to ensure the arrangements for school to post-school transition are planned well in advance; that these arrangements are clear and well understood by all involved making an offer, well in advance of a young person's intention to progress beyond secondary schooling, of a programme of learning - which could include staying on at school as all or part of the programme offered to them- taking into account their individual learning and support needs and appropriate financial support ensuring there is sufficient, appropriate provision to meet the needs of all young people in the local area; in particular, identifying and filling gaps between what young people want and the currently available programmes and measures of support supporting the transitional planning and providing continued support to monitor and sustain positive progressions, including early warning systems to prevent drop-out.

### **Opportunities for All**

The Scottish Government's Opportunities for All commitment builds on this strategy by ensuring local authorities work with local and national partners, using Participation Measure<sup>83</sup> data to ensure that young people who are not in education, employment or training are identified, supported to plan for, and access, offers of further learning, training and employment.

### **Developing the Young Workforce**

24. Developing the Young Workforce (DYW) is a programme that aims to better prepare young people from 15 - 24 years for the world of work. It builds on Curriculum for Excellence by encouraging collaborative partnership working between education and employers to enrich learning through developing skills for work by employers sharing their skills, knowledge and experience . DYW also aims to expand the range of vocational qualifications including the introduction of the Foundation Apprenticeships and also changing the extent to which that vocational offer is valued by young people, parents and employers.

25. A range of support and guidance has been developed to support DYW including guidance on school/employer partnerships<sup>84</sup>, the work place standards<sup>85</sup> and the career education standard. The career education standard<sup>86</sup> ( 3 -18) states a range of entitlements for children and young people.

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<sup>82</sup> In this quotation the term "young person" refers to pupils of secondary school age rather than the definition used in the Act.

<sup>83</sup> <https://www.skillsdevelopmentscotland.co.uk/news-events/2016/august/latest-participation-measure-statistics-published/>

<sup>84</sup> <http://www.gov.scot/Publications/2015/09/9403>

<sup>85</sup> [https://www.education.gov.scot/Documents/DYW\\_WorkPlacementStandard0915.pdf](https://www.education.gov.scot/Documents/DYW_WorkPlacementStandard0915.pdf)

<sup>86</sup> <https://www.education.gov.scot/Documents/dyw2-career-education-standard-0915.pdf>

26. All involved in career education should provide advice, guidance and opportunities that contribute to:

- eradicating discrimination; and
- promoting mutual respect and equality of opportunity across genders, social background, disabilities, ethnicities, sexual orientation and religions.

27. The DYW recommendations are clear that there are barriers that exist requiring specific action. These are identified as:

- Gender stereotyping in education, and gender segregation in a significant number of the occupations and careers young people pursue;
- Young people from Scotland's black and minority ethnic communities embark on a narrower range of pathways than young people from the population as a whole and are more likely to experience unemployment;
- Young people with additional support needs, including those with disabilities are much more likely to experience difficult transitions through education and to be unemployed after they leave education
- young care leavers as a group experience some of the poorest educational and employment outcomes of any group of young people in society.

28. Within the continuing programme of Developing the Young Workforce there are specific key performance indicators linked to addressing these issues<sup>87</sup>.

29. There is a wide range of support for young people to reduce barriers faced by different groups and ensure a wider participation from under-represented groups. This includes Careers Advice and Guidance Advisers, and the Skills Development Scotland website My World of Work. In making the transition to the world of work and learning beyond school, young people with additional support needs, will be supported through clearer pathways into apprenticeships, coaching and mentoring support.

30. Young people with additional support needs and parents can access further information through webpages linked to organisations such as Scottish Transitions Forum and Enquire<sup>88</sup>.

31. For most pupils with additional support needs, where there is a Child's Plan in place, the transition process is helped by the involvement of a Lead Professional to co-ordinate planning. This might be a teacher, careers adviser, social worker, community education worker or someone from another agency. The Lead Professional can then assist the child or young person to make a smooth transition to employment, training, further or higher education, or other services. Where a pupil has a co-ordinated support plan, their co-ordinator, or Lead Professional or Named Person should take the lead in ensuring that all relevant agencies are brought together to plan for transition to post-school and plan for the transfer of the lead person to someone who will effect that transfer.

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<sup>87</sup> <http://www.gov.scot/Publications/2014/12/7750/10>

<sup>88</sup> [www.enquire.org.uk](http://www.enquire.org.uk)



Carrie, a 14 year old girl, has a co-ordinated support plan within her Child's Plan and attends a special school. She requires 1:1 support to engage with those around her. She has a complex needs with a learning disability, visual impairment, epilepsy and is a wheelchair user who requires regular postural changes. Carrie receives nutrition via a gastrostomy. She enjoys a sensory programme and particularly likes the music and drama class. The priorities for Carrie and her family at the transition planning review, at which her co-ordinated support plan was also reviewed, at the end of S3 were to ensure that once she leaves the education system she has the opportunity to continue her personal development through meaningful day activities/supports and therapies. Carrie will not be seeking employment. Her social worker took on the role of the Lead Professional to co-ordinate the planning for transition. It was agreed that:

- Carrie should stay on at school until end of S6.
- A social worker from the Children and Families team will complete a full assessment report for Carrie in the next 6 months as this information has not been updated for some time. This will require liaison with Carrie's parents and a range of allied health professionals through her updated Child's Plan.
- The appropriate social worker from the adult learning disabilities team will be invited to the next review.
- Carrie will be introduced to opportunities to take part in community activities once every two weeks within her school timetable.
- Her speech and language therapist will work on a personal communication passport for Carrie over the next 6 months.
- Her paediatric consultant will be asked to clarify arrangements with Carrie's family for transferring support with gastrostomy care, neurology and orthopaedics to adult healthcare within the next 6 months.
- The educational objectives in her co-ordinated support plan would be updated over the following month to take account of the arrangements for transition planning and changes made to her Child's Plan.

### **Looked after children and young people and leaving care support**

#### **32. The Support and Assistance of Young People Leaving Care (Scotland)**

Regulations 2003<sup>89</sup> set out particular duties placed on local authorities to provide advice, guidance and assistance to children and young people who are looked after or to young people who have ceased to be looked after on, or at any time after their sixteenth birthday.

33. The 2003 Regulations were amended as of 1 April 2015 by the Support and Assistance of Young People Leaving Care (Scotland) Amendment Regulations 2015<sup>90</sup> to update and expand the framework within which these services are to be delivered by, extending the eligibility of aftercare services as set out in the Children and Young People (Scotland) Act 2014. There is a duty on local authorities to provide this support up to the age of 19 and a duty to assess any eligible needs up to their 26<sup>th</sup> birthday, or beyond at their own discretion.

34. The Children and Young People (Scotland) Act 2014 also enables an eligible young person who ceases to be looked after on or after the 16th birthday to request Continuing Care under section 67 of the 2014 Act inserting a new section 26A into the Children Scotland Act 1995. A young person in Continuing Care will not be 'looked after' but the Act requires that the same supports are provided to the young person as when they were 'looked after'.

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<sup>89</sup> <http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030608.htm>

<sup>90</sup> <http://www.legislation.gov.uk/ssi/2015/62/contents/made>

35. As well as stressing the need for education and social work staff to work closely together to ensure that children and young people achieve their maximum potential whilst within the education system, local authorities are also encouraged to work closely with Skills Development Scotland and their Careers Advisors to support children and young people in making their choices for education, training or employment.

36. The 2014 Act put the duties of corporate parenting on a statutory footing. It is the duty of every corporate parent:

- to be alert to matters which could adversely affect the wellbeing of children and young people;
- to assess the needs of those children and young people for support and services it provides;
- to promote the interests of those children and young people;
- to seek to provide those children and young people with opportunities to:
- participate in activities designed to advance their wellbeing
- to take such action as it considers appropriate to help those children and young people to access those opportunities and to make use of services, and access the support which it provides
- to take any other action it considers appropriate to improve the way in which it carries out its functions in relation to those children and young people.

#### **Duties on education authorities and others under the Act: school to post-school transition**

37. The Act requires education authorities to take specific action to help prospective school leavers with additional support needs to make the transition from school to post-school life successfully. It places a duty on the education authority to request information from an appropriate agency or agencies, if any, which are likely to be involved with the prospective school leaver on leaving school. The information relates to the provision likely to be made for the leaver by the appropriate agency or agencies. The education authority must also take account of that information, the purpose of this being to help the leaver make the transition successfully, for example, through the types of activities described in paragraph 21. The appropriate agencies, all in Scotland, which may be involved are:

- any NHS Board
- any other local authority
- Skills Development Scotland
- any further education college
- any institution of higher education.

38. The duties apply to prospective school leavers with additional support needs for whose school education the authority are responsible, but the duties **do not apply to all leavers** with additional support needs. The Act gives the education authority discretion about which appropriate agency (if any) requires to be approached to provide information. The authority should seek information from an appropriate agency or agencies whose help will assist the school leaver with additional support needs in the move to post-school provision. Although voluntary organisations and training providers are not appropriate agencies as defined in the Act they should also be involved in transitional arrangements where they may be making provision for young people when they have left school. **As noted in paragraph 7, it is anticipated that education authorities will carry out their duties to plan the post-school transitions of those leaving school who:**

s12(6)

- **have a co-ordinated support plan**
- **are in a specialist placement such as a specialist unit or a special school**
- **have additional support needs arising from a disability within the meaning of the Equality Act 2010**
- **are otherwise at risk of not making a successful transition such as looked after children and young carers.**

s12(6)  
(c)(ii)

39. The education authority must seek and take account of the views of the leaver unless it has been clearly demonstrated that he/she lacks the capacity to provide one (or the young person's parent where the young person lacks the capacity to express his/her views). Although the Act does not require that information should only be sought with the consent of the parent or the young person (or the young person's parent where the young person is not able to give consent) in good practice education authorities working in partnership with parents and young people should aim to secure consent where appropriate. Any disclosure of information must be in accordance with the law on data protection, human rights, confidentiality and other relevant law.

40. A situation could arise where the child wishes information sought from another appropriate agency, or agencies, and the child's parents do not (or vice versa). The education authority should, in deciding what course of action to take under the circumstances, consider the best interests of the child or young person as well as the child's or young person's capacity to express a view, and act accordingly.

s13(2)(b)  
(i)  
s12(6)(c)  
(i)

41. As noted in paragraph 37, the purpose of obtaining such information from an appropriate agency, or agencies, is to enable the education authority to consider the adequacy and appropriateness of additional support provided by the education authority and other services in the period up to the child or young person progressing beyond school; ultimately this is to support the process of ensuring a good match between his/her needs and options for subsequent support. These options include provision which may be made by an appropriate agency, or agencies, as well as any provision which the local authority make for the child or young person on leaving school; this provision includes, for example, that made by social services or housing.

s12(5)

42. This process of seeking and taking account of information from an appropriate agency, or agencies, and the other requirements referred to above, must be completed no later than 12 months before the date a prospective school leaver with additional support needs is expected to cease receiving school education. However, this means that the process will require to be started well in advance of the 12 month period to be carried out effectively for the benefit of the leaver. There will be circumstances, where the education authority have less than 12 months to carry out these functions in which case they should be carried out as soon as reasonably practical after they become aware of the fact that the child or young person is to cease receiving school education.

43. The Act also requires the education authority to pass on information to appropriate agencies (if any), no later than 6 months before the leaver is expected to progress beyond school. Where an authority find that a pupil is expected to leave school within 6 months, then it must pass that information on to appropriate agencies as soon as is reasonably practicable after they become aware of the fact. This information includes: the leaver's expected date of progression beyond school, any provision the local authority may make when the pupil leaves school for example, through social work or housing and any other information that the authority thinks will help appropriate agencies to make provision.

s13(1) &  
(2)

s13(5)

44. However, any information can only be provided with the consent of the parent or child who has attained the age of 12 (who the authority is satisfied has capacity to give consent) or the young person or the young person's parent where the young person is not able to give consent.

45. The Act, as amended, places education authorities under a duty to seek and take account of the child's views (unless the authority are satisfied that the child lacks capacity to express a view) in relation to any information to be provided to an appropriate agency or agencies under the Act regarding the child leaving school

s13(4A)

### **Monitoring and review**

46. Education authorities should ensure that the arrangements required for transition to post-school are clear so that the leaver, and all those involved, know exactly what is happening, when it is happening, and who is responsible. The effectiveness of the action required should be monitored by a lead person and reviewed if there is a change of circumstances, or if the eligible child or young person requests a change. Where the school leaver has a co-ordinated support plan the education authority have a duty to review any co-ordinated support plan at least every 12 months. Such a review should help inform action to be taken prior to a child or young person, with a co-ordinated support plan, progressing beyond school. All relevant information in the co-ordinated support plan should be incorporated into the transition planning process.

### **Tribunal**

47. The Act, as amended, allows the Tribunal to consider references in relation to an authority's failure to comply with any of its duties in terms of post school transitions under sections 12(5) and (6) and 13 of the 2004 Act and described in paragraphs 37-44 above. The exception to this would be where the parents or young person have not given permission for the education authority to provide information to an appropriate agency or agencies. A reference to the Tribunal can only be made where an education authority have responsibility for a child's or young person's school education so once the leaver has left school a reference cannot be made to the Tribunal.

s18(3)(g)  
s18(1)

### **Mediation and dispute resolution**

48. The Act also enables parents and young people to use the arrangements in place for mediation and dispute resolution where they have concerns about how an authority has carried out their arrangements for all transitions (see chapter 8). However, once the leaver has left school then the education authority no longer have any functions to exercise under the Act in respect of the leaver and so the arrangements for mediation and dispute resolution do not apply in these circumstances.

Stuart is in a stable long term foster placement. At Stuart's transitional review meeting at the end of S3, it was agreed in discussion with Stuart and his foster parents that he would like to pursue a career in gardening and landscaping. Stuart was still developing his skills in literacy and numeracy, particularly in the use and handling of money. It was agreed with Stuart and his foster parents that he should:

- stay on at school beyond 16 on a part-time basis to continue developing his literacy skills.
- consider attending college part-time to pursue his horticultural studies and to continue to develop his numeracy skills.
- have extended work experience with the council landscaping department in conjunction with his college course.
- continue to have support from the transitions social worker in relation to co-ordinating the community activities for Stuart, linking with the college facilities for sport and leisure.

With his permission it was agreed that the college would be sent information about Stuart's progress in school, his interest in pursuing a course at college and the transitional arrangements being put in place. The college will be asked about the arrangements which may be made for Stuart in college and about what provision should be made in school to prepare Stuart for attending college and having a successful transition.

## Chapter 7 Working with Children and Families

1. This chapter of the code describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions regarding supporters and advocacy.

2. All children and young people should have the opportunity to make their views known about decisions which affect them. They should have the opportunity to express their opinions and have these opinions taken seriously. They should be encouraged to contribute to decision-making processes, the setting of educational objectives, the preparation of learning plans, reviews and transition planning. They need to know that what they have to say will be respected, listened to and, where appropriate, acted on.

3. Parents must also be encouraged and have the opportunity to be involved fully in discussions and decisions about their child's learning<sup>91</sup>. Most parents want what is best for their children and have unique knowledge and experience to contribute to understanding and meeting their child's additional support needs. They, therefore, have a key role to play in their child's education and account must be taken of their views and the perspective they bring.

4. Professionals need to involve parents and take account of their views on their child's development and education at the earliest opportunity. Partnership with parents is, therefore, central to ensuring that children and young people with additional support needs benefit fully from school education. The Act serves to strengthen further the involvement of children, young people and their parents in working with authorities to reach decisions which are best for children's and young people's learning. The 2016 Act has extended children's rights in respect of additional support for learning subject to safeguards about capacity and wellbeing.

### Views of children and young people

2000  
Act  
s2(2)

5. The 2000 Act places a duty upon education authorities, where they are responsible for the school education of a child or young person, to secure that the education is directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. In so doing, the authority must, so far as is reasonably practicable, have regard to the views of children and young people (if there is a wish to express them) in decisions that significantly affect their education.

s12(2)  
and (3)

6. The Act builds on the above duty by placing a duty on the education authority to seek and take account of views of children and young people as the authority consider appropriate under specific circumstances. These circumstances include where the authority are seeking to establish whether the child or young person has additional support needs and when they are determining what additional support the child or young person may require. The authority have some discretion in whether they seek the views of such children or young people. The purpose of this provision is, primarily, to avoid over-formalising the dialogue between professionals, teachers especially, and children and young people by requiring the authority to take account of, and record, children's and young people's views every time they are considering whether children or young people have additional support needs. Within Curriculum for Excellence, all children should be encouraged to take part in personal learning planning processes and in discussing, monitoring and evaluating their learning. It is expected that, except under exceptional circumstances, children and young people who have additional support needs should have the opportunity to discuss their needs and the support to

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<sup>91</sup> <http://www.gov.scot/Resource/Doc/148166/0039411.pdf>

be provided to meet those needs. Tools which can support this include, The Children and Young People's Commissioner for Scotland's resource, The 7 Golden Rules for Participation, this a set of principles that anyone working with children and young people can use to support children and young people to actively participate in decision making. <https://www.cypcs.org.uk/education/golden-rules>

s12(1),(2)  
and (3)

7. In addition to the general good practice in involving children and young people in making decisions about their school education, under the Act an education authority must seek, and take account of the views of children and young people (unless the child or young person is not able to provide a view; then the views of the parents are sought) when they are:

- establishing whether a co-ordinated support plan is required
- preparing a co-ordinated support plan
- reviewing whether the child or young person still requires a co-ordinated support plan.

8. In the circumstances where an education authority has not been able to secure the child's view through their usual means, in certain circumstances, they may use the children's views service which has been established as part of the Children's Service to establish the child's view independently of all other parties. The service will seek the view on behalf of the authority and provide any view established to the authority to support the relevant process.

### **Expressing views**

9. In order to express views, children and young people need to have experience of being asked for their views, being listened to, making some choices and having some influence over what they do. Schools and early years settings should create a climate where seeking children's views and encouraging participation in decision-making are part of everyday activities. Children and young people can expect their learning environment to support them to understand that adults in their school community have a responsibility to look after them, listen to their concerns and involve others where necessary. It should be noted that the Act does not require the education authority to have parental consent before seeking and taking account of children's views. Even where the parents do not wish their child's views to be sought the education authority are still under a duty to seek and take account of the child's views; where a child is concerned, education authorities are to seek and take account of the views of both the child and the parent unless they are satisfied that the child lacks the capacity to express a view. In that event, the views of the parent only are to be sought. In the case of a young person, if the education authority are satisfied that the young person lacks the capacity to express a view, then it is only to seek and take account of the views of the young person's parent.

10. Some children and young people with additional support needs will be able to express themselves clearly and directly. All they may need are the opportunities and the encouragement to do so. Others may need support with communication or to gain confidence to express their views. Very few will be unable to express a view at all. The Children's Support Service which is required to be provided by Scottish Ministers, includes an independent service which can seek the views of children where it has not been possible to get those views through usual mechanisms. In those circumstances an education authority, other agency or the Tribunal can ask to have the child's views sought and taken account of within the processes associated with rights, duties and functions under the Education (Additional Support for Learning) Act.

11. The education authority may have to make specific arrangements to seek out the views of some children and young people such as, for example, children with complex

communication support needs. They may need to make arrangements for those who require an interpreter; or whose first language is not English; or who have behavioural difficulties and are unwilling to co-operate. But it is just as important and relevant for these children and young people to have their views listened to as it is for those who can more easily express views. A range of approaches will need to be considered to determine their views including, for example, the use of alternative or augmentative communication systems, including signing, the use of interpreters, and engaging the views of others such as family members, foster carers, social workers and other professionals who know the child or young person.

12. As indicated above at paragraph 8, in certain circumstances, the Children's Views service may have a role to play in gathering the views of a child on behalf of a service. This includes the circumstances where a child requires to be supported to give a view, particularly where this required a reasonable adjustment or alternative form of communication to be used.

Jamie is 13 years old and has depression. A meeting was convened to discuss his additional support needs but he made it clear that he would not attend. He agreed with his guidance teacher that a video could be made of them discussing what additional support he would find helpful.

### **Communication with children and young people**

13. Good communication with children and young people is essential in order to enable them to influence decisions about their learning. This applies equally to education generally and at specific points related to matters concerning co-ordinated support plans. There are many reasons why a child or young person may have difficulty in expressing his/her views. For example, communication with young children requires a range of different strategies which could include play, art, and the use of mobile, audio and video technology. Education authorities should take account of the good practice points at the end of this chapter.

14. Representatives of appropriate agencies may be able to provide guidance and support to children and young people to help them express their views. They may also be able to provide guidance and support to other people involved in meetings to help them access the best method of communication. For example, a speech and language therapist may offer guidance on the best communication approach to use to ensure that the child or young person understands the discussion and on how best to facilitate and support his/her response.

15. When noting views, particularly where the child or young person has communication support needs, it is helpful to consider two factors. Firstly, what the child or young person actually expressed, whether through speech, in writing, audio recording, sign or other form of communication such as facial expression or body posture. Secondly, what interpretation was made of the child's or young person's view and by whom. Both should be noted.

### **Taking account of views**

16. Having sought the child's or young person's views, and recorded what these are, education authorities need to consider what weight to give to them. Taking account of these views does not mean education authorities have to accept and implement everything. At the same time, once sought and expressed, these views should not be disregarded and due weight should be given with consideration of the following:

- the child's or young person's capacity to understand the information on which his/her views were based
- the ability of the child or young person to express his/her own views
- the child's or young person's understanding of the range of options



- how well the people reporting the child's or young person's views know him/her.
17. It is important that a balance is struck between what a child or young person may want and what is realistic and appropriate. Where an education authority are unable to act on a child's or young person's views, reasons for this should be provided to them as appropriate.

### **Rights of children who have capacity**

18. Children who have attained the age of 12 years and who have capacity have had their rights extended within additional support for learning (eligible child). The decision an education authority or Tribunal has to reach in relation to the capacity of a child aged 12 years and over is whether the child has sufficient maturity and understanding. Importantly, there is not a single decision on the child's capacity which applies to all of the rights within the Act. It relates to the particular right which the child is proposing to use, at the time they are proposing to use it. Therefore the child's maturity and understanding to use their rights should be assessed for the particular right they are seeking to exercise at a given time. The decision about the child's capacity in relation to the use of one right should not be used to reach a conclusion in relation to any other right. The assessment of the child's capacity will involve responding to the following questions about particular rights:

- Does the child have sufficient maturity and understanding to carry out an action (i.e. use the right)?
- In relation to making a decision, does the child have sufficient maturity and understanding to:
  - make the decision,
  - communicate the decision,
  - understand the decision and its implications for themselves, and
  - retain the memory of the decision?
- In respect of rights relating to advice and information, or a co-ordinated support plan, does the child have sufficient maturity and understanding to understand the information, advice or co-ordinated support plan?
- In relation to rights to express their view does the child have sufficient maturity and understanding to express the view?

A child or young person should not be treated as lacking capacity because of a communication need which can be overcome by human, electronic or mechanical aid (whether of an interpretive nature or otherwise).

19. When carrying out an assessment of a child's maturity and understanding the education authority may wish to take into account the following factors, although those working and living with the child may use any evidence they consider appropriate to establish maturity and understanding. :

- the child's age and stage of learning: to exercise their rights, a child will have attained 12 years of age whether at primary or secondary stages
- sufficient maturity: a child's maturity may be evidenced by progress within health and wellbeing within Curriculum for Excellence and its key features of healthy living and relationships, and in approaches to personal planning, assessing risk and decision making
- a child's level of achievement can be used to provide robust and credible evidence of their level of understanding, for example, children who have achieved across Second level and who are working towards Third level experiences and outcomes

across literacy and numeracy will generally be considered to have sufficient understanding to exercise their rights;

- support from an adult who knows the child well. The assessment of the teacher (whether in primary, secondary or special school) who knows the child well, and will be based on a wide variety of sources of evidence including observing day-to-day learning, learning conversations and/or planned periodic holistic assessment.

20. Taking such factors into account, in almost all instances the class teacher, pastoral care staff or support teacher will have a view on the child's maturity and understanding to exercise a particular right in context. In a few instances the assessment could be supported through the advice and guidance of education authority officials such as an educational psychologist.

21. As well as an education authority being satisfied about a child's capacity to exercise their rights a further safeguard is provided for in the Act . An education authority is to be satisfied that in exercising their rights, children will not experience any adverse impact on their wellbeing. The child's wellbeing is as described with reference to the indicators in Getting it right for every child and focuses on the extent to which the child is or would be Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included. The impact on child's wellbeing will be considered in terms of the indicators.

22. When considering adverse impact on a child's wellbeing when exercising their rights, an education authority can take into account the following factors:

- the impact on child's health and wellbeing as part of Curriculum for Excellence (where their progress is assessed as the child is developing the knowledge and understanding skills, attributes and capabilities which they need for mental, emotional, social and physical wellbeing now and in the future);
- in considering any adverse impact on the indicators of wellbeing, a variety of assessment tools can be helpful including, for example:

- the Getting it Right for Every Child interactive guide

<http://www.gov.scot/Resource/0044/00446438.pdf>

- National Guidance on Child Protection
- <http://www.gov.scot/Publications/2014/05/3052/0> support from an adult who knows the child well. The assessment of the teacher who knows the child will be based on a wide variety of sources of evidence including observing day-to-day learning, learning conversations and/or planned periodic holistic assessment.

23. Taking such factors into account, in almost all instances the class teacher, pastoral care staff or support teacher will be able to consider any adverse impact of a child exercising their rights. Teachers will want to discuss with the child to consider whether there would be any adverse impact of them exercising particular rights. In a few instances, the assessment could be supported through the advice and guidance of education authority officials such as an educational psychologist and through other agencies involved in supporting wellbeing. Particularly where there is not a clear conclusion. For instance for a child on the child protection register a range of assessment tools can be used to judge impact on wellbeing. Further non-statutory guidance in respect of children's rights, assessment of capacity and wellbeing can be found in *Extending Children's Rights- Guidance on the assessment of capacity and consideration of wellbeing*.

24. Following an assessment of capacity and wellbeing the child and their parents must be informed of the conclusions of these considerations. In the circumstances

where the child or their parent does not agree with the outcome of these considerations they may refer this to the Tribunal for consideration.

### **The role of parents**

s12(2)

25. The Act allows parents to speak and act for their child, or young person, where the child or young person lacks capacity to express a view. Nevertheless, it is important to continue to support the child's or young person's participation in decision-making, at an appropriate level, at the same time as seeking the views of their parents.

26. Those who are closest to the child or young person can often give an informed view on whether or not he/she can understand a particular matter. These could include parents, foster carers, teachers, allied health professionals or social workers. A speech and language therapy assessment of comprehension should inform this process where there are differences in opinion or significant uncertainty about comprehension. The education authority should consider all these views when being called on to make a decision about capacity. It is best to reach such decisions by consensus recording clearly why such a view was reached and how it was arrived at. Where a parent, child or young person disagrees with the authority's decision this should be recorded.

27. An education authority will also need to take note of the arrangements for decision-making under the Adults with Incapacity (Scotland) Act 2000 and any persons with legal powers in respect of an adult for whom the authority is providing school education. An adult under this legislation is someone aged 16 and over.

### **Good practice in communicating with children and young people**

#### **A child or young person may benefit from:**

- being given enough time to prepare and to go over the ideas and material to be discussed
- being given information in a form which is readily understood
- a teacher or other supporter to help understand the meaning of key terms and concepts
- a supportive communication facilitator to tease out the full meaning of all of the issues
- specialised or new vocabulary (perhaps in sign or symbol form) in order to discuss a particular topic
- support to go over ideas, perhaps on several occasions
- help to understand outcomes and agreements.

#### **Issues related to communication and language:**

- if spoken English is not the child's or young person's first language, consider using an interpreter, preferably not a family member to avoid any conflict of interests
- consider using a facilitator for those with language or speech difficulties
- use appropriate alternative or augmentative communication systems such as visual aids and/or sign language for deaf and/or communication impaired children or young people
- take account of any cultural preferences
- take time to explain what decision has to be made, why it's important and how the child or young person can influence it.
- Where appropriate consider the use of tools such as the Autism toolbox<sup>92</sup> and Dyslexia Toolkit<sup>93</sup> or Communication Passport<sup>94</sup>.

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<sup>92</sup> <http://www.autismtoolbox.co.uk/>

<sup>93</sup> <http://addressingdyslexia.org/>

<sup>94</sup> <http://mycommpass.com/mycommpassdownlo.html>

## Supporting parents

28. All professionals, schools, education authorities and appropriate agencies should seek actively to involve parents in their work with children. They should recognise and value parent's unique contribution, take their views into consideration and regard them as vital partners in their children's learning. Professionals must take responsibility for encouraging good relationships with families based on trust, openness and effective communication. Education staff and other professionals must work together to ensure that they give clear, honest and consistent messages to parents. For example, parents may need to be given support and information to help them understand their rights and those of their child; or, where appropriate, given an explanation of one purpose of a co-ordinated support plan as being a tool for co-ordinating support rather than a key to accessing services; or provided with explanations of the types of support provided by allied health professionals<sup>95</sup>. The Act serves to strengthen further the involvement of children, young people and their parents in working with authorities to reach decisions which are best for children's and young people's learning. This can be best achieved by strong relationships, good communication and when parents share an understanding of the framework, planning arrangements and systems of support available.

29. In good practice, authorities and other agencies will ensure that parents are fully aware of the processes for assessing and providing for children's additional support needs, understand the planning approaches and are familiar with the support services available from the school, the education authority and from other agencies, including voluntary organisations. Wherever possible, a partnership approach should be extended to include older children and young people.

s26  
s31 30. Access to information and advice is central. The Act requires education authorities to publish information about certain specified matters as noted in chapter 9 paragraph 27. They should ensure, in discharging their statutory information duties, that they use accessible language and take account of the eligible child's, young person's and parent's rights to information and advice about the authority's provision for additional support needs. Some young people and parents may need information presented in permanent forms other than writing such as by using audio or video technology<sup>96</sup>. The authority should have a named contact person for additional support needs who can provide parents with information on the availability of supporters and advocates. Education authorities should also be aware of the valuable role the voluntary sector has in supporting parents and should aim to establish links and support effective working, wherever possible.

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<sup>95</sup> <http://www.scotland.gov.uk/Topics/Education/Schools/welfare/partnershipworking>

<sup>96</sup> <https://www.sclde.org.uk/publications/scottish-good-practice-guidelines-for-supporting-parents-with-learning-disabilities/>

### *Working with children and families*

Naomi, aged 6, lives with her father John and 4 older brothers and sisters. She sees her mum only very occasionally as she lives in England. Naomi has additional support needs arising from a number of factors: she finds it difficult to concentrate for long periods in class and she gets extra support to help keep her on task. She is in a nurture class in school and also attends a small communication group run by the speech and language therapist. The family has a social worker.

The school has regular meetings with John to discuss her progress and her targets in her IEP. Due to the difficult family circumstances, John has been asked when and where he would like meetings to take place, whether he wants written as well as spoken accounts of Naomi's progress, and whether he wants to bring a friend or relative with him to meetings. The school have taken time to explain about Naomi's additional support needs and how they, the local authority and speech and language therapist are supporting Naomi. John has been asked what help he thinks Naomi needs and what type of help he and others can give her at home. Suggestions for what he can do at home are discussed and included in Naomi's IEP. He has been given the contact details for Enquire as somewhere he can go for independent advice. He has also been informed that there is a free local advocacy service which can help him prepare and support him in getting his points across at meetings. At the beginning of each meeting, John is asked for his views on Naomi's progress and asked if he has any questions or concerns. His views are taken into account and reflected in any future targets and plans for Naomi. At times, the school and other professionals disagree with him but a compromise is reached which respects his views and understanding of Naomi's needs. This is explained clearly to John to ensure that he understands not only why any decision is taken but also what he can do, if he still disagrees with it. He is made fully aware of rights under the Additional Support for Learning Act.

As well the IEP meetings, the Deputy Head in the school calls John every fortnight to let him know how Naomi is getting on, and makes a point of mentioning good progress as well as any issues that are being addressed. He is invited in for an informal coffee morning with other parents every month. There is home/school diary which keeps him informed of Naomi's daily progress. Arrangements are also made to ensure that Naomi's mum is updated on her progress.

### **Supporters and advocacy**

31. Supporters and advocates can help by making sure that a parent's, eligible child's or young person's view is understood, put across and taken account of in discussions where parents or young people feel unable or less confident to do so themselves.

32. The Act provides young people, eligible children and parents with the right to have a supporter or advocate present at any discussions or meetings with an education authority in regard to the authority's functions under the Act. Education authorities should, as a matter of good practice, make parents, eligible children and young people aware of this right and how they can find out how to access such services.

33. The education authority must comply with the wish to have a supporter or advocate present unless the wish is unreasonable. Judgements about what an education authority may view to be unreasonable will depend very much on the particular circumstances being considered. An education authority may consider it unreasonable to include a supporter or advocate in discussions where the supporter or advocate is unable to represent the parent or young person appropriately. In such circumstances, the education authority should provide the parent or young person with

s14

their reasons for taking this view and for deciding that a particular supporter or advocate should not be present during discussions.

34. An eligible child does have a right to have a supporter present at discussions or an advocate to conduct discussions on their behalf. This request can be made only if the education authority is satisfied that the wishes of the child are not unreasonable and the child has capacity to participate in discussions or make representations.

### **Supporters**

35. A supporter can be anyone the parent, or young person or eligible child wants to nominate. A supporter could be a relative, friend, befriender or voluntary organisation worker or other person. The supporter could also be a professional working with the family provided there is no conflict of interest with that professional's duty under the Act or his/her responsibilities as an employee. A supporter can attend discussions with the parent, young person or eligible child. The supporter may assist in a number of different ways, including:

- acting as a sounding board for the parent in preparing for the meeting
- taking notes so that the parent or young person can participate more fully in the discussions
- suggesting points for further clarification, questions to ask or giving advice to the parent during the meeting.

### **Advocates**

36. The Act allows for a parent, eligible child or young person to appoint a person to conduct all or part of any discussion with the education authority or make written or other representation to the authority on their behalf. This person, known as an advocate, can come from a range of backgrounds, including:

- someone who has acted, or is already acting, as a supporter to the parent or young person – the parent or young person may wish the supporter to speak on his or her behalf
- a person not trained in advocacy but who is aware of education and other legislation and/or the needs of the child or young person who has additional support needs
- a voluntary organisation which need not be an advocacy organisation

37. A formal advocacy service or agency, with trained advocates, possibly operating to its own guidelines or code of practice. This could include the advocacy element of the Children's Support Service. The main objectives of an advocate should be to speak up on behalf of the parent, eligible child, or young person and to represent the parent or young person at discussions<sup>97</sup>.

38. Education authorities do not have a duty to provide or pay for a supporter or advocate. They should include, in their information for parents, details about the right to have an advocate or a supporter involved and how parents, eligible children or young people can find out what services are available in their area.

### **The Tribunal**

39. The Act, as amended, requires the Scottish Ministers to make an advocacy service available on request and free of charge to support parents and young people in Tribunal proceedings. By advocacy service in this context the Act means "a service whereby another person conducts discussions with or makes representations to the Tribunal or any other persons involved in the proceedings" on behalf of the parent or young person. The service becomes available when a parent or young person is

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<sup>97</sup> Scottish Independent Advocacy Alliance provides information on the role of advocacy <https://www.siaa.org.uk/>

considering making a reference to the Tribunal. It is expected that there would be discussions or meetings between the parent(s), or young person and the advocate prior to appearing before the Tribunal. The service<sup>98</sup> is also available to support parents or young persons in formulating their application and in related discussions with local authorities as well as to provide support at the actual Tribunal hearing.

40. As a matter of good practice, education authorities should inform parents, children and young people about the advocacy service when they become aware that a parent, child or young person is considering making a reference to the Tribunal. They should also refer to the service in the information they publish about additional support needs under the Act.

41. Parents will be able to obtain information about how to access the advocacy service from the Tribunal secretariat and from the Scottish Advice Service for Additional Support for Learning- Enquire<sup>99</sup>.

42. For eligible children the same services, advocacy and legal representation are available in relation to the Tribunal. However, these are delivered by a different provider than the young person and parents services to prevent conflict of interest arising. Children and eligible children can also seek advice and information from Enquire the national advice and information service about their rights and sources of support.

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<sup>98</sup> <http://www.legislation.gov.uk/asp/2004/4/section/14A>

<sup>99</sup> <http://www.enquire.org.uk/>

## **Good practice in communicating with parents**

43. Education authorities should take account of the following good practice points when working with parents.

Professionals should:

- acknowledge and draw on parental knowledge and expertise in relation to their child
- consider the child's strengths as well as additional support needs
- recognise the personal and emotional investment of parents and be aware of their feelings
- ensure that parents understand procedures, are aware of how to access support and are given documents to be discussed well in advance of meetings
- respect the validity of differing perspectives and seek constructive ways of reconciling different viewpoints
- cater for the differing needs parents may have, such as those arising from a disability, or communication and linguistic barriers.

Information should be:

- clear and understandable and avoid jargon
- provided easily in accessible formats
- readily available and provided automatically without a charge and without a fuss.

Communication works well when:

- people have the interpreters they need
- someone in authority takes responsibility for keeping parents up-to-date
- people are told what has been happening between meetings
- any information provided by parents is acknowledged
- formal references to statutory procedures are avoided.

Effective working relationships develop when:

- contact with parents is sensitive, positive, helpful and regular
- parents feel included and are encouraged to contribute to discussions
- positive, clear and easily understood language is used
- parents are involved and processes and roles are explained from the beginning
- parents are told what to expect and the next steps
- times of meeting take account of parents' availability.

Meetings work best when:

- parents are asked what times and places suit them best, taking account of any access need or family responsibilities
- notes from meetings, and any papers to be considered, are sent out in good time
- parents are invited to add points to the agenda, at the same time as everyone else
- people attending are aware of their roles and the roles of others and they understand the child's or young person's additional support needs
- there are no hidden issues, and no last minute surprises
- decisions are made when parents are at the meeting, or agreed with them before meeting takes place, not after the meeting has closed, unless further consultation takes place with them
- ample time is given to allow people time to raise concerns, so that decisions are not rushed.

Identifying the way forward works well when:

- all views are taken on board – including those of the child or young person
- people are interested in learning from each other
- people show an interest in general family priorities and take them on board
- services are identified in agreement with the family and are responsive to



individual needs.

Accountability and involvement:

- who is responsible for what is clearly defined and understood
- parents concerns are responded to quickly
- decisions are open to scrutiny
- parents have a clear point of contact who can answer questions, make decisions and ensure that agreed actions are taken
- people do what they agreed within the timescale committed to – if a decision is likely to take time, parents are told and given some idea of when a decision is likely.

## Chapter 8 Resolving Disagreements

1. Use of the good practice guidance in chapter 7 can help to avoid disagreements or prevent them from escalating into more serious disputes. This chapter considers provisions under the Act for resolving disputes where these do arise. The Act makes provision both for mediation services and arrangements for external independent adjudication (dispute resolution) to resolve disputes. It also provides parents and young people and eligible children with rights to refer particular matters to the Tribunal.

### Resolving disagreements through the school and local authority

2. Under the Scottish Schools (Parental Involvement) Act 2006 all education authorities are required to have a strategy setting out their policies for parental involvement. They should consider how that strategy links with policies relating to meeting children's and young people's additional support needs<sup>100</sup>. They must have a complaints procedure in place to deal with complaints relating to how the education authority carry out their functions under the 2006 Act. As the guidance to the 2006 Act makes clear it is expected that most complaints will be handled at a local level without recourse to formal procedures. The same position holds for disagreements about how the education authority are discharging their functions under the Act, as amended. It is expected that most disagreements will be resolved at school and education authority level with only a small number going to formal review procedures. Education authorities and schools should have clear in-house procedures in place for resolving disagreements under the Act and with named contacts at each stage. The diagram following paragraph 54 outlines how the Act's provisions sit within an overall framework for avoiding and resolving disagreements.

3. The following paragraphs consider each of the three approaches: mediation, dispute resolution and the Tribunal. Previous chapters of the code have discussed these approaches in some detail and reference will be made to these earlier discussions, where appropriate, to avoid repetition here. This purpose of this chapter is to draw together the various approaches for resolving disagreements and illustrate their similarities, differences and links.

### Mediation

#### Mediation services

s15(1) Every education authority must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and-

- (a) the parents of any children,
- (b) any young persons, or
- (c) in relation to any young persons who lack capacity to express a view or make a decision for those purposes, their parents, concerning the exercise by the authority of any of their functions under this Act in relation to the children or young persons.

s15(1)

#### Aims and benefits

4. The Act, as amended, requires every education authority to have independent mediation services in place for resolving disagreements relating to matters concerning the exercise of any of the authority's functions under the Act in relation to children and young people. Those accessing the mediation services may belong to the area of the authority but they need not. Under the circumstances described in paragraph 15 below

<sup>100</sup> <http://www.scotland.gov.uk/Publications/2006/09/08094112/0>

parents and young people are able to access the mediation services of an education authority other than the one to which they belong.

5. Mediation provides an option for avoiding, resolving or narrowing the area of disagreement between the authority and parents or young people. It allows disputing parties to seek to resolve their differences with the assistance of a mediator acting as an impartial third party.

6. Mediation services can help families and authorities to build or rebuild a positive relationship, leading to co-operation in making arrangements for the child or young person. They can help avoid conflicts that arise out of misunderstandings or lack of shared information by helping parents, teachers, education authority officials and others involved to communicate directly with one another. The overriding principle is that the disputing parties come to a shared agreement themselves on how to resolve their disagreement.

7. Mediation can be used at any time in the life of a disagreement between an education authority and parents or a young person. The process can be used more than once as it can be useful for resolving parts of a disagreement, as well as the whole of a disagreement. It can improve strained relationships among individuals who have experienced conflict in the past and it can prevent the escalation of disagreements.

8. Mediation may not be appropriate in all cases. For example, mediation is voluntary and the parents or young person may not wish to engage in it. In addition, the provision of mediation under the Act is not the appropriate route for parents who have disagreements with the school about issues other than additional support needs. In such situations parents should follow normal school and authority complaints procedures.

9. The education authority should make it clear to parents and young people that taking a disagreement to mediation in no way affects their entitlement to refer any competent matter to other appropriate formal or statutory review routes. For example, the parents or young person may wish to make a reference to the Tribunal in respect of relevant matters concerning a co-ordinated support plan and their ability to do this is not affected by whether or not they have engaged in mediation.

10. The education authority's mediation services must be available, free of charge, to parents or young people. If the young person lacks the capacity to express a view or make a decision, then parents can pursue mediation on behalf of the young person.

## Independent services

s15(2) Mediation services are independent...if the person providing the services has no involvement in the exercise by or on behalf of the authority of their functions relating to education or any of their other functions (apart from this section).

s15(2)

11. The Act, as amended, requires education authorities to provide mediation services which are completely independent of the local authority. That is, the local authority cannot choose to offer as mediators local authority employees or anyone else involved in conducting any other work on behalf of the authority. It is most likely that the authority may choose to contract with a mediator or a mediation provider using a service level agreement or to employ a freelance mediator on a case-by-case basis. When giving thought to engaging an independent mediation service provider, relevant information and guidance is available from the Scottish Mediation Network<sup>101</sup>.

12. Objectivity and impartiality are key principles for whichever option is chosen. All parties concerned need to be satisfied that the mediator is truly independent. All parties should be assured that mediators are appropriately trained, engaged in continuing professional development and operate to recognised standards such as are in accordance with the Additional Support Needs (ASN) Scottish mediation service providers quality standards, which are available from the Scottish Mediation Network. Appropriate disclosure checks should be carried out on all mediators.

s14(1) 13. The Act gives parents and young people the right to have a supporter or advocate present at any discussions or meetings with the education authority. This should apply equally to mediation sessions although it is important that mediation remains as a joint problem-solving process rather than an adversarial forum. It is not envisaged that the parties would bring legal representation to mediation. All participants, including the child, need to feel confident that their views and concerns will receive equal respect. The purpose of mediation is to achieve a solution to a difference of views and it is not about apportioning blame.

s15(1) 14. Parents of children for whose school education an authority are not responsible have access to an education authority's mediation services. This applies to, for example, parents who are educating their child at home or who have placed their child in an independent school. Young people have access to mediation in their own right. However eligible children do not have the right to request mediation. Within mediation, their views should be expressed and taken account of by mediators. **Mediation is available only where the disagreement relates to the authority's exercise of their functions under the Act** (see chapter 4 paragraph 10 for an example). Parents would not be able to use the mediation services to resolve a disagreement which did not involve the education authority's functions under the Act, such as a disagreement with the independent school itself over the provision to meet additional support needs.

15. Following a successful out-of-area placing request, parents or a young person are able to access mediation from the host authority regarding that authority's functions under the Act. Also following the submission of an out-of-area placing request, a parent or young person is able to access mediation from the potential host authority regarding the placing request.

s15(1)

Sch 2 2

16. The Act requires education authorities to publish information on the independent mediation arrangements they have in place within their area. This information should be kept up-to-date and under review and be widely available for authority staff and parents and young people. There should also be administrative support for arranging mediation meetings at a neutral venue with all the relevant people.

s26(2)(e)

<sup>101</sup> [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)

Arrangements should be made for recording outcomes and providing a copy of these to the parents or the young person.

Mrs Campbell's son, Alex has had a succession of supply teachers this term and she is concerned that his work is suffering due to the lack of continuity. She spoke to the current supply teacher who was not able to reassure her. The school had already issued information on resolving disagreements to which she referred. Mrs Campbell met with the head teacher in the first instance who listened to her concerns. The head teacher provided Mrs Campbell with some examples of Alex's work which showed that he was making suitable progress with his learning. Mrs Campbell was happy with this outcome.

Mr and Mrs Jacks have a son Paul, aged 14, who has been diagnosed with Asperger's Syndrome. The transition from his local mainstream primary school to secondary school proved very difficult. Increasingly frustrated by what they saw as the school's inability to meet Paul's needs, his parents withdrew him from school and educated him themselves at home.

Although the home education programme was working out very well, his parents felt that Paul was socially isolated from his peers and would benefit from returning to school. Agreement with the home education authority over a suitable school proved difficult and over time the positions of both parties had become increasingly entrenched, with a lot of distrust and negative feelings building up. Both parties agreed to explore further discussions with the help of an independent mediator. Following discussion, both parties agreed that Paul's home education programme would continue, and that an additional support needs teacher from Paul's local school with autism specific training would begin some outreach support work with a view to helping Paul work towards attending his local school. Initially this was on a part-time basis, until if, and when, Paul and his parents were comfortable with this step.

Lorna is 8 years old. She has significant physical disabilities and learning difficulties, and attends her local primary school with the support of a classroom assistant. Her mother, Cathy, was generally pleased with the placement but became anxious about the increasing gap between Lorna's learning and that of her peers.

Cathy began speaking to the class teacher daily about Lorna's progress. The teacher found this difficult to manage. In an effort to support her staff, the head teacher asked Cathy to stop the daily meetings. Cathy took offence at this and complained about the head teacher's attitude to various people in the education authority including the Director of Education.

Both sides agreed to explore the issues in a mediation session. With the help of the mediator they were able to reach an acceptable outcome. Cathy's need for communication about Lorna's progress would be met by the use of a daily home-school diary. The classroom assistant would take responsibility for this with guidance from the teacher. Cathy and the teacher would meet up once a month for one hour and if Cathy had any problems she wished to discuss she could telephone the head teacher. Everyone agreed that they would meet again to review these arrangements after 6 months.

17. The education authority should have clear procedures in place to evaluate and monitor arrangements for their mediation services. Further detail on the features of mediation services, performance issues and sources of information are referred to in Annex D.

### **Dispute resolution**

18. The Act, as amended, enables the Scottish Ministers to require education authorities to put in place procedures to resolve disputes which arise between the authority and any parents, eligible children or young people regarding the authority's exercise of any of their functions under the Act, as prescribed in Regulations<sup>102</sup>. The procedures must be free of charge. Parents, eligible children and young people, cannot be compelled to use any dispute resolution procedure put in place. Also the use of dispute resolution does not affect their entitlement to make a reference to the Tribunal, or any other statutory review system, where appropriate.

s16(3)(a)  
(ii)

19. The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005, prescribe which disputes, relating to particular functions of the authority under the Act, will be capable of reference to dispute resolution and timescales for the process.

20. In the context of the Act, the procedure for resolving disputes allows for a formal **review of an individual case by an independent third party**, external to the local authority, who considers the circumstances leading to the disagreement, and makes a report with recommendations for all parties.

### **What does it cover?**

21. The service is for disagreements about the way the authority are exercising their functions under the Act, as prescribed in the Regulations, as these relate to the education of individual children or young people.

22. Disagreements may be about:

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<sup>102</sup> The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

- whether or not the child or young person has additional support needs
- in the case of a child or young person with additional support needs, the accuracy of the description of these needs
- the refusal of the education authority to respond to a request from the parent, child or young person to establish whether a child or young person, for whose education they are responsible, has additional support needs
- the refusal of an education authority to respond to an assessment request from the parents, child or young person
- the person carrying out an assessment or examination or the method of carrying it out
- the failure of the authority to provide, or make arrangements for the provision of, the additional support required by the child or young person, whether educational provision or not
- the failure of the education authority to request help from an appropriate agency<sup>103</sup>.

23. As with mediation services, under the Act, as amended, access to an education authority's dispute resolution arrangements are not restricted to parents of children, young people or eligible children belonging to the area of the authority. In particular, following a successful out-of-area placing request, parents and a young person are able to access dispute resolution from the host authority in relation to the specified matters in the Regulations regarding the authority's exercise of their functions under the Act, as amended.

### **What does it not cover?**

24. The Act, as amended, enables a reference to be made to the Tribunal where there is an alleged failure to provide or make arrangements for the provision of the additional support identified in the co-ordinated support plan.

25. Dispute resolution also does not cover disagreements relating to the refusal of a placing request made under Schedule 2 of the Act. Such a disagreement can be taken to the education authority appeals committee and subsequently to a sheriff. Or, a reference could be made to the Tribunal if a co-ordinated support plan is involved, or where an education authority have refused a placing request to a special school in Scotland (or to a similar type of school in England, Wales or Northern Ireland – see chapter 4) or where the dispute concerns failures of the education authority regarding the provision made under the Act for a child or young person to transfer from school to post-school provision. Education authority appeal committees will continue to deal with issues concerning exclusions.

26. In addition, dispute resolution is not for issues relating to broader strategy or policy matters (for example, an education authority's overall policy for allocating support for learning staff to schools) or about allegations of misconduct or, for example, school closures. It is also not intended to be for personal disputes between parents and any member of staff at the school or education authority. All such matters should continue to follow established local authority complaint procedures.

### **Information on dispute resolution**

27. Information should be readily available to parents and young people.

s26(2) (e)

### **Process of dispute resolution**

28. All requests for dispute resolution by parents or young people are to be made to the Scottish Ministers. An advocate, supporter or member of a voluntary organisation

s16(2)

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<sup>103</sup> These are: any other local authority, any NHS Board, Skills Development Scotland, all colleges of further education and all institutions of higher education in Scotland

may help the parent, eligible child, or young person to complete the application. Within 5 working days of receipt of the referral, Scottish Ministers will refer the application to the relevant education authority for consideration. Within a period of 10 working days<sup>104</sup> from the date of receipt of such an application, the authority must either accept the application and write to Scottish Ministers for nomination by them of an individual to act as an independent adjudicator or send the applicant notice of their decision not to proceed with the application and their reasons for that decision. Where the request relates to a matter covered by the Dispute Resolution Regulations, the Scottish Ministers will nominate an external adjudicator to consider the case and will advise the education authority and parent, eligible child or young person accordingly. There is a statutory 60 day timescale for carrying out the process of dispute resolution, as in paragraph 32 below.

29. The education authority should review the case with a view to establishing that all appropriate steps have been taken to resolve the disagreement. They should prepare all appropriate papers for forwarding to the adjudicator and the applicant<sup>105</sup>. In addition, they should inform parents, eligible children or young people about how they can present their case to the adjudicator and what support is available to help them do this.

30. The role of the external independent adjudicator is to review, objectively and independently, all the information relating to the case, and make recommendations for both parties on the best way forward to ensure that the child's or young person's learning is supported with reference to the terms of the Act. The adjudication process is a paper exercise. However, the independent adjudicator will be able to ask for further information or clarification if required. Exceptionally, the adjudicator may arrange to meet the parties, for example, if the adjudicator is concerned that one party, or both parties, may have been disadvantaged by the way the case has been presented.

31. The expectation is that both parties will accept the outcome of the process. Education authorities do not have a legal duty to implement the recommendations of the adjudicator. However, it is expected that generally the authority will do so provided these recommendations are not incompatible with their statutory or other duties or would unduly prejudice the discharge by the education authority of any of its functions. Recommendations, therefore, should be accepted in all but exceptional circumstances. The education authority should give reasons for their decision to accept or reject the adjudicator's recommendations. Where recommendations are not accepted, parents, or the young person, may refer the matter to the Scottish Ministers under section 70 of the Education (Scotland) Act 1980 if they believe that the education authority have failed to carry out a statutory duty imposed on them by education legislation (see paragraph 53 below).

### **Timescales**

32. The process of dispute resolution must not normally take more than 60 working days from the time an education authority have confirmed acceptance of an application to the parent receiving the independent adjudicator's report and the education authority's decision. A working day means any day which is not a Saturday, Sunday, a day from 27 December to 31 December inclusive, a day in July, or a day specified as a bank holiday in Scotland. The independent adjudicator will encourage the parties to meet the timescales in the Regulations for the exchange of information about each party's case and their comments on the other party's proposals to resolve the areas of disagreement.

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<sup>104</sup> The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005, regulation 4

<sup>105</sup> The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005, regulation 7



## Processing the application for dispute resolution

33. The Scottish Ministers will keep a record of all applications for dispute resolution and will contact an education authority directly if, after 10 working days, the Scottish Ministers have not received a request from the authority for the nomination of an independent adjudicator. However, it is not intended to amend the Regulations to reflect these simple steps in the process. It is considered proportionate for the Scottish Ministers to contact the authority to establish whether, in their view, the application is competent and the authority, therefore, is in breach of the statutory 10 working day timescale, or the application is, in the education authority's view, not competent and the authority have written to the parent, eligible child or young person to advise them of this.

Mr and Mrs Smith had been in a long running and acrimonious dispute with their education authority on the education of their son, Mark, aged 13 years. As a result of the suggestion of an education officer, Mr and Mrs Smith made an application for dispute resolution. The education officer explained to the parents how the process of dispute resolution worked and helped them to express their concerns in terms of the Dispute Resolution Regulations. The parents, in their application, specified that, in their view, the education authority were failing "to provide, or make arrangements for the provision of, the additional support" required by Mark.

In order to present their arguments and evidence to the independent adjudicator, each of the parties had to clarify their views of Mark's additional support needs and how well they were being met. Each, also, had to consider how they thought the dispute should be resolved. Mark gave his own views through using the children's views service. While he reported enjoying practical subjects and debating in school, he covered up his difficulties in comprehension, writing and spelling by misbehaving and sometimes truanting.

In reviewing the evidence, Marion, the independent adjudicator, established that, while both parties agreed that Mark had a form of dyslexia, they did not agree on the nature and impact of his learning difficulties. There was no detailed up-to-date assessment evidence specifying the precise nature of Mark's learning difficulties, and the targets set in his personal learning plan were not sufficiently comprehensive or precise. Marion noted that Mark was anxious about the way in which the dispute was drawing attention to him.

In Marion's report, she reviewed the cases presented. Her recommendations as to how the dispute should be resolved included that:

- Mark should have a specialist assessment to establish the precise nature of his learning difficulties and advice on overcoming them
- the education authority should prepare a clearly delineated individualised educational programme, agreed and regularly reviewed by all parties and Mark himself
- Mark should work with a mentor to understand his learning needs and his own part in addressing them.

The education authority accepted the recommendations and appointed John, an educational psychologist who had not previously been involved in the dispute, to co-ordinate the implementation of the recommendations. Through John's intervention Mr and Mrs Smith and staff in the school began to work together to Mark's benefit.

## The Tribunal

34. The Act, as amended, enables the Tribunal to hear references from parents, eligible children and young people on matters relating to:

- co-ordinated support plans
- appeals concerning refusals of placing requests (only in relation to special schools and/or where co-ordinated support plans are involved)
- school to post-school transitions.

s18

In addition to the above, following an assessment of capacity and wellbeing by the education authority, in the circumstances where the child or their parent does not agree with the outcome of these considerations, they may refer this to the Tribunal for consideration.

35. A reference can only be made in relation to a child or young person for whom an education authority are responsible. So, for example, parents who have placed their child in an independent school, and where an education authority have no responsibilities for the child's education, are not able to make a reference to the Tribunal.

36. The Tribunal's statutory functions, decisions and dealings with its users and the public are independent of national and local government. The aims of the Tribunal are:

- to provide independent and expert adjudication, operating impartially, efficiently and effectively, in accordance with the Act
- to be user-friendly through informal and flexible proceedings and to be accessible to users
- to facilitate an appropriate opportunity for parties to be heard on the issues where no agreement has been reached
- to try to ensure that the only hearings which proceed are those where parties are otherwise unable to agree a solution to the matter in dispute
- to make decisions which, within the framework of the Act, reflect best practice in relation to providing for additional support needs.

37. In exercising its powers in relation to a reference made to it, the Tribunal must take account of the Code of Practice. When considering the facts of a case, the Tribunal will take account of the extent to which the education authority (and other bodies) have had regard to the code prior to the hearing. When determining the content of a decision, the Tribunal will be informed by the code. The Tribunal decision may require an education authority to take action within a timescale set by the Tribunal.

38. The Act, as amended, provides the Chamber President of the Tribunal with the power to monitor the implementation of Tribunal decisions. Following a decision of the Tribunal that requires an education authority to do anything, the Chamber President of the Tribunal may require the authority to provide him/her with information about the authority's implementation of the Tribunal decision. This includes information about any decisions relating to co-ordinated support plans, placing requests (in relation to special schools and/or where co-ordinated support plans are involved) or school to post-school transitions. The Chamber President may comment on the implementation of decisions and on this power in the Annual Report presented to the Scottish Ministers.

39. The Tribunal Rules provide the Chamber President with the power to refer the matter to the Scottish Ministers where the Chamber President is satisfied that the authority or relevant responsible body are not complying with the Tribunal decision. The Tribunal Rules provide the Chamber President with the power to refer the matters to the Scottish Ministers. Scottish Ministers, may use their appropriate powers of direction. For example, if an education authority have failed to amend a co-

s19(7)

Sch 1  
11A

Sch1 11A  
s27(9)  
(10) and  
(11)

ordinated support plan following the decision of the Tribunal then it can be directed to do so by the Scottish Ministers.

### **Co-ordinated support plan**

40. The Act and associated procedural rules make provision for parents, eligible children and young people to make references to the Tribunal in the following circumstances. Any parent, eligible child or young person, or where the child or young person lacks capacity, the parent, may refer to the Tribunal the following decisions or failures of an education authority including:

- a decision to prepare a co-ordinated support plan
- a decision not to prepare a co-ordinated support plan
- a decision to continue a co-ordinated support plan following a review
- a decision to discontinue a co-ordinated support plan following a review
- a failure to meet the timescales for preparing the co-ordinated support plan
- a decision not to comply with a request to establish whether a child or young person has additional support needs requiring a co-ordinated support plan.

41. In addition, they may make a reference to the Tribunal, where a co-ordinated support plan exists, regarding:

- the information contained in the co-ordinated support plan by virtue of section 9(2)(a) of the Act
- the failure of the authority to review the co-ordinated support plan by the expiry date (ie 12 months from the date it was prepared) or within the timescale set by regulations
- the decision of the authority to refuse a request from a parent or young person to review the co-ordinated support plan
- the failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives.

42. On the last point above, the Act, as amended, gives the Tribunal the power to require the education authority to rectify its failure to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve his/her educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.

s19(3)

43. The Act, as amended, also allows a reference to the Tribunal where there are certain procedural failures (described in paragraphs 31 and 32 of chapter 5) of an authority:

- failure to respond to a request to establish whether a co-ordinated support is required
- where they have said they intend to establish that one is required but have failed to respond in the time specified in Regulations.

### **Placing requests**

44. References to the Tribunal regarding placing requests are considered in detail in chapter 4.

### **School to post-school transitions**

45. The circumstances under which a reference can be made to the Tribunal concerning school to post-school transitions are considered in chapter 6 paragraph 47.

s18

## **Parental, eligible children's and young people's rights to make a reference**

46. The relevant education authority are responsible for informing eligible children, young people and parents of their right to make a reference to the Tribunal, whenever the authority make a decision in relation to any of the matters listed above. Education authorities should explain this right to make a reference in any relevant documentation such as, for example, that which accompanies a co-ordinated support plan. The education authority should also make it clear to parents that they may bring a supporter or advocate to the Tribunal hearing as well as to other discussions with the authority (subject to any restrictions in the Tribunal rules of procedure). They should also advise them of the requirements on the Scottish Ministers to provide a free advocacy service to support them at Tribunal proceedings (chapter 7 paragraphs 39-42).

47. The Chamber President of the Tribunal has produced detailed guidance for parents, education authorities and others on how to make a reference and on how the Tribunal operates. Details can be found on the Tribunal website<sup>106</sup>. The Code of Practice does not address these aspects.

### **Tribunal and dispute resolution**

48. The Act and Regulations relating to dispute resolution broadly cover matters which are outside the Tribunal's remit. These are principally cases in which the child or young person has additional support needs but does not require a co-ordinated support plan. Dispute resolution arrangements are not intended for matters which are within the jurisdiction of the Tribunal.

1st(3)(b) 49. However, the use of dispute resolution procedures does not in any way affect the parents', eligible child's or young person's entitlement to take a matter to the Tribunal. Where a child's or young person's circumstances change such that they fall within the remit of the Tribunal, previous discussions held as part of the process of dispute resolution are to be treated in confidence unless otherwise agreed. However, the outcome of previous dispute resolution may be relevant to the Tribunal and may be brought to the attention of the Tribunal.

### **Tribunal and mediation**

s15(3)(b) 50. The use of mediation procedures does not in any way affect the parents' entitlement to take a matter to the Tribunal. Conversely, the making of a reference to the Tribunal does not in any way affect their entitlement to use mediation services. The education authority should make this clear to parents when the possibility of mediation is raised by parents or the authority.

51. Discussions held as part of mediation should be treated in confidence unless otherwise agreed. This means they are not to be disclosed by education authorities in the papers for, or in the course of, the Tribunal's proceedings.

### **Tribunal rules and regulations**

Sch 1  
12 52. The Tribunals (Scotland) Act 2014 provides for the Tribunal to be governed by rules of procedure separate from the Code of Practice. The qualifications, training and experience required by the Chamber President, legal and ordinary members of the Tribunal are set out in the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 and The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017. Procedural matters are detailed in the Tribunal rules of procedure. The Chamber President has powers under the Act to make directions about the practice and procedure to be followed by the Tribunal in relation to any matter. The Chamber

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<sup>106</sup> <http://www.scotcourts.gov.uk/the-courts/the-tribunals/about-scottish-tribunals>

President's Annual Report to the Scottish Ministers provides information about the performance of the Tribunal during that particular year.

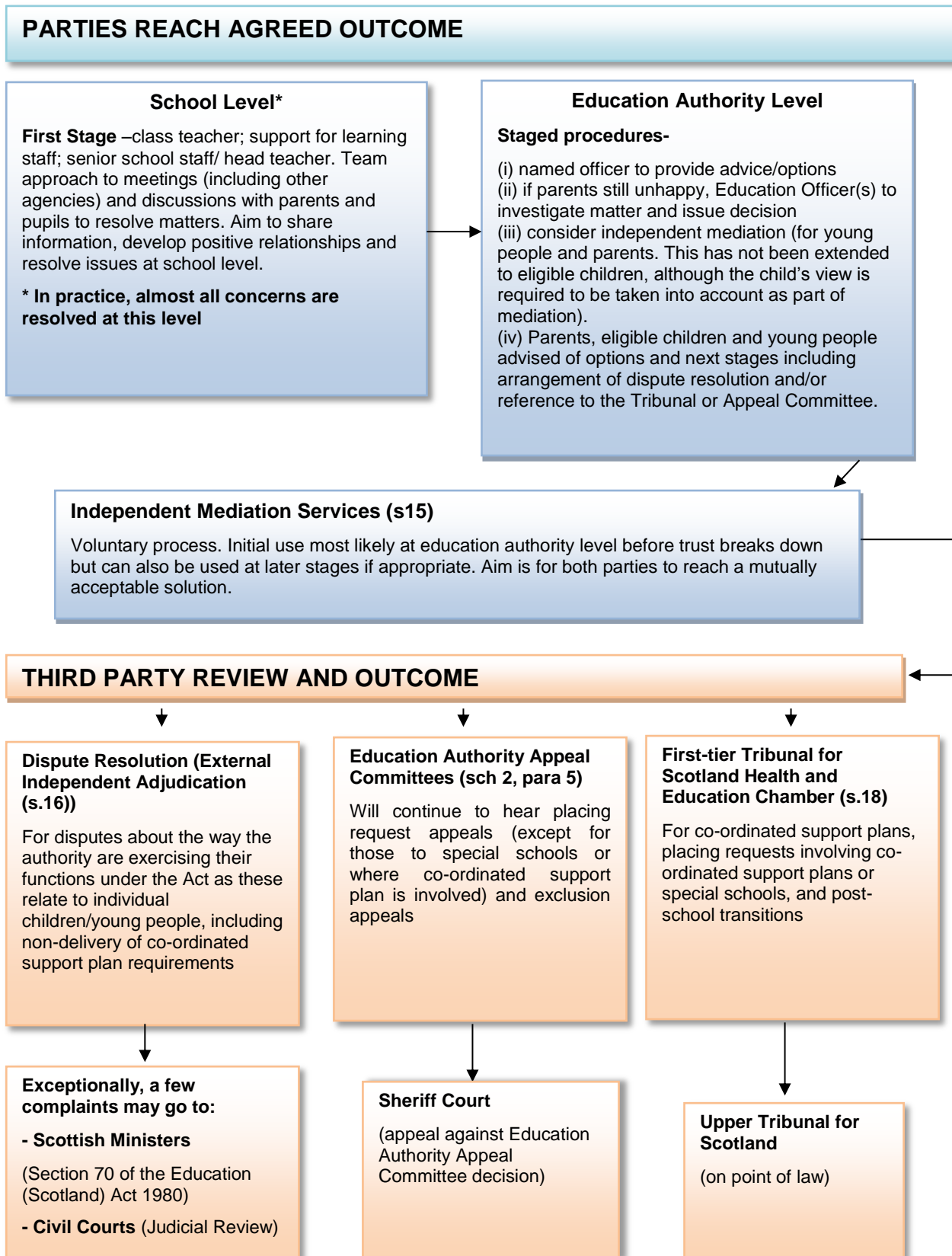
### **Further recourse**

53. Application of good practice and the arrangements described above should be sufficient to resolve, or determine, almost all cases of disagreement between parents, eligible children, young people and education authorities. Exceptionally, there may be a few cases where any interested person or otherwise will seek recourse elsewhere in certain circumstances. This includes the right to refer alleged failings to carry out a statutory education duty to Scottish Ministers under section 70 of the Education (Scotland) Act 1980. Section 70 gives a discretionary power for Scottish Ministers to intervene where they are satisfied that an education authority or others have failed to discharge any duty imposed on them by education legislation. In considering any complaint under section 70 Scottish Ministers will wish to consider whether other more local forms of resolving disagreement have been tried. However, the Ministers will not seek to intervene in relation to confidential discussions which take place in mediation or dispute resolution procedures under the Act or take account of such discussions in reaching any decision under section 70 of the 1980 Act except, where all parties agree to this being made available to the Ministers. A matter which can be referred to the Additional Support Needs Tribunals cannot be referred to Scottish Ministers under section 70 of the 1980 Act.

### **Monitoring**

54. Education authorities should record the number of cases referred to mediation, dispute resolution and the Tribunal. They should note their outcomes for monitoring purposes. Further information is available in the Scottish Executive procedural guidance on provision for resolving disputes. In 2011, 35 requests were made for independent advocacy, 87 cases using mediation, 18 referrals to the independent adjudication service, 13 Section 70 complaints to Scottish Ministers and 73 referrals to the Tribunal. In 2015, 75 requests were made for independent advocacy, 156 cases using mediation, 4 referrals to the independent adjudication service, 2 Section 70 complaints to Scottish Ministers and 78 referrals to the Tribunal.

# Framework for Resolving Disagreements



## Chapter 9 General Provisions

1. This chapter considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the code.

### Placing Requests

2. The system relating to placing requests where the child has additional support needs is set out in schedule 2 to the Act. Whilst the scheme set out in schedule 2 broadly replicates that which operates where the child does not have additional support needs (which is contained in sections 28A to G of the Education (Scotland) Act 1980) there are some notable differences. The more important of these differences are highlighted below and have been discussed in detail in chapter 4. Young people with additional support needs have the same placing request rights as parents of children with additional support needs unless the education authority are satisfied that they lack the capacity in which case the parents can act on their behalf. For ease of reference the following refers to parents but young people also have these rights in their own name.

3. Parents of a child with additional support needs can make a placing request:

- to the home education authority for their child to attend a school, outwith their catchment area, managed by the home education authority
- to another education authority for their child to attend a school managed by that other education authority
- to the home education authority for their child to attend an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and the school makes provision wholly or mainly for children or young people with additional support needs
- to the home education authority for their child to be placed in pre-school provision (within the categories for eligible pre-school children, generally for 3 and 4 year olds, but also some 2 year olds), normally referred to as a partnership nursery, in that home or a host education authority area.

4. School means any school, including a nursery school and a partnership provider where an authority have entered into arrangements for other persons to provide pre-school education. **Under the Act parents are not able to make a placing request for an independent or grant-aided school which is not a special school.**

### Outwith the United Kingdom

5. The Act does give the power to an education authority to make such arrangements as they consider appropriate to enable a child or young person with additional support needs to attend an establishment, whether or not a school, outwith the United Kingdom. The establishment has to make provision, wholly or mainly, for children or young people with additional support needs. However, there is no duty upon an education authority to comply with a request for a child to attend such an establishment. Education authorities have discretion as to what arrangements they consider appropriate and the power allows an education authority to meet wholly or partly the fees payable, or the

s25

travelling, maintenance and other expenses in respect of the child's or young person's attendance at the establishment. They can also meet similar expenses for the parents or some other person, where they consider it to the advantage of the child or young person that one or other of the parents or some other person was present during the time the child or young person is attending the establishment.

### **Costs of placement**

6. When a child or young person with additional support needs attends a school, which is not an education authority school, as a result of a placing request, the education authority must meet the fees and other necessary costs of the placement. Where a child or young person attends a school under the management of a host education authority as a result of a placing request (the host authority is not the education authority in which the child or young person lives – that is the home education authority), then the host education authority may recover certain costs from the home education authority, as described in paragraphs 26 and 27, chapter 4.

### **Timing of placing requests**

7. Parents of children with additional support needs can make a placing request at any stage of a child's education. The authority should notify them of that right where a child is due to start at one of its schools, or where the authority propose that the child should, for any reason, be moved to a new or different school. An education authority should invite parents to take part in consultations leading to the school placement for children with additional support needs. They should also provide parents with the opportunity to visit the school or schools proposed.

### **Rights of young people**

8. Young people have the same rights to make placing requests on their own behalf as parents have for their children. However, eligible children do not have the placing request rights of young people and parents. Where the education authority are satisfied that a young person lacks the capacity to make a request then the young person's parents have the right to make a placing request for the young person.

### **Grounds for refusing placing requests**

9. An education authority must comply with a placing request unless one or more of the exceptions contained in paragraph 3 of schedule 2 to the Act apply. For example, an education authority may refuse a placing request if the specified school is a special school (or special class or special unit) and for the authority to place a child there would cause it to be in breach of its duty to provide mainstream education<sup>107</sup>.

10. A request may be refused if to comply with it involves significant expenditure on extending or otherwise altering the accommodation or facilities at the school. In refusing a request under these grounds, an education authority would have to act reasonably in assessing what amounts to significant expenditure. For a complete list of all the potential grounds of refusal, users of

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<sup>107</sup> Under section 15, Standards in Scotland's Schools etc. Act 2000



the code should have regard to the provisions in paragraph 3 of schedule 2 of the Act.

### **Refusal of a request involving a school not under the management of an education authority**

11. Additionally, an education authority do not have to comply with a placing request for an independent or grant-aided special school in Scotland (or a school in England, Wales or Northern Ireland making provision for children, or young people, with additional support needs) where, for example, all of the following apply:

Sch 2  
3(1)(f)

- the authority are able to make alternative provision for the child's or young person's additional support needs (which may or may not be in one of their schools) other than in the specified school (i.e. the school for which the placing request is made)
- it is not reasonable to place the child or young person in the specified school, having regard to both the respective suitability and cost of the provision for his /her additional support needs there and in the school which he/she would otherwise attend and in which a place has been offered.

12. As noted in paragraph 14 below, even where the education authority conclude that the grounds in paragraph 3(1)(f) of schedule 2 to the Act apply, they are still able to place the child or young person in the school requested. In weighing up their decision an education authority will wish to consider carefully whether, for example, any high quality provision made in the specified school can offset the additional costs of attendance there.

13. There are also other grounds for refusing such a request, for example, as described in paragraph 9 above or where the school in question is not suited to the age, ability or aptitude of the child.

Sch 2  
3(1)(b)

### **Power to accept a placing request**

14. Schedule 2 gives an education authority the power to accept a placing request notwithstanding the fact that the grounds for refusal provided for in schedule 2, paragraphs 3(1)(a) – (e) exist.

### **Reserved places**

15. An education authority can also refuse a placing request, in certain circumstances, in respect of a child who is resident outwith the catchment area of the specified school. This is where accepting the placing request would prevent the authority retaining places (known as "reserved places") at certain schools for incomers to the area served by the school.

### **Appeals on refusal to grant a placing request**

16. An education authority must inform parents in writing of their decision on a placing request. Parents or young people can then proceed to appeal where a placing request has been refused. In complying with a successful placing request, an education authority should update, where appropriate, the nomination of the school in a child's, or young person's, co-ordinated support plan.

17. An education authority will be deemed to have refused a placing request made in accordance with schedule 2 paragraph 2 of the Act if:

- they have not informed the parent or young person in writing of their decision by 30 April on a request made on or before 15 March for a school placement at the start of the school year in the following August or
- in the case of any other placing request, on the expiry of the period of 2 months immediately following receipt by the authority of the placing request.

### **Appeal routes**

18. Parents of a child with additional support needs can refer a decision by an authority to refuse a placing request to the education authority appeal committee, set up under the 1980 Act. However, the Act, as amended, makes specific provision for appeals against refusals to grant the placing request in which there is an issue relating to the co-ordinated support plan and/or a special school. These issues are considered in chapter 4 but are summarised here. The decision of an authority to refuse a placing request may be referred to the Tribunal where:

- the request is in respect of a special school in Scotland managed by an education authority
- the request is in respect of an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland, making provision wholly or mainly for children or young persons with additional support needs, in all cases whose managers are willing to accept the child or young person
- a co-ordinated support plan has been prepared (and has not been discontinued)
- the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal
- no such plan has been prepared but it has been established by the education authority that the child or young person requires such a plan
- the education authority have advised the parents or young person that they intend to establish whether a co-ordinated support plan is required.

19. In the last four circumstances in paragraph 18 above, there may be an appeal against the education authority's decision to refuse a placing request. Where an appeal against that refusal has yet to be determined, either by the education authority appeal committee or by the sheriff, then it will be transferred to, and considered by, the Tribunal.

### **Education authority appeal committee**

20. An appeal committee, set up, under section 28D of the 1980 Act, can confirm or refuse to confirm an authority's decision to refuse a placing request. Where they refuse to confirm the authority's decision, the appeal committee must require the authority to place a child in the public school specified in the request, or, as appropriate, require the authority to meet the fees and other necessary costs of a child's attendance at the specified special school which could be an independent or grant-aided special school, a school in England, Wales or Northern Ireland which caters for children and young people with additional support needs or a school where education is provided by the education authority under arrangements made under section 35 of the 2000 Act (that is, where the education authority have entered into arrangements with a

provider of pre-school education). The authority must comply with a decision of the appeal committee. Where an appeal committee uphold an authority's decision to refuse the placing request, they must notify the parents of their right to make an appeal to a sheriff or to the Tribunal, as appropriate, as in paragraph 24 below.

21. If any of the last four circumstances in paragraph 18 apply before the education authority appeal committee have made their final determination, the appeal should automatically be transferred to the Tribunal. If the education authority appeal committee have made their decision and within 28 days of that decision, one of the last four circumstances apply, the correct route of appeal would be to the Tribunal rather than the sheriff. The appeal committee are not required to take any further action until the Tribunal's decision on the co-ordinated support plan is made. However, if the appeal has been made to the sheriff and it has not been disposed of then the sheriff must transfer the appeal to the Tribunal.

s18(3)(f)  
Sch 2 7(8)  
and (9)

22. While the Tribunal has the discretion to transfer a placing request decision back to the education appeal committee or sheriff, where it has been decided that no co-ordinated support plan is required, it is anticipated that in the majority of cases the Tribunal will make a decision on the placing request reference.

s19(5) (ba)  
and (d)

23. An appeal committee will be deemed<sup>108</sup> to have confirmed the decision of the education authority if they have:

- failed to hold a hearing within 2 months immediately following receipt by them of the reference
- failed, within the period of 14 days immediately following an adjournment of a hearing, to fix a date for a resumed hearing of the reference
- failed to notify the parents or young person who made the reference and the education authority of their decision and the reasons for it within the period of 14 days immediately following the conclusion of the hearing.

### **Appeals to the sheriff from the appeal committee**

24. A parent who has made a reference to an appeal committee may appeal to the sheriff against the decision of the appeal committee on that reference. In such a case, the education authority, not the appeal committee, may be a party to the appeal to the sheriff. An appeal must be made by way of summary application and lodged within 28 days from the date of receipt of the appeal committee's decision. The sheriff may hear an appeal, in the event of a late application, if the parents can show good cause for the delay in submitting the appeal.

25. The sheriff can confirm or refuse to confirm the authority's decision to refuse a placing request. Where the sheriff refuses to confirm the authority's decision, the sheriff must require the authority to place the child in the specified public school requested or to meet the fees and other necessary costs of a child's attendance at the specified special school in England, Wales or Northern Ireland as appropriate. The authority must comply with a decision of the sheriff.

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<sup>108</sup> As determined by The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005

The sheriff has the power to make an order as to the expenses of an appeal to the sheriff as she or he sees fit. The judgement of a sheriff on an appeal is final.

26. The circumstances under which appeals are transferred from the education authority appeal committee or the sheriff to the Tribunal, and from the Tribunal to education authority appeal committee or sheriff, are considered in chapter 4 paragraphs 38-42.

### **Publishing information**

27. The Act, as amended, requires an education authority to publish information about a range of specified matters relating to additional support needs. Those specified matters include information about:

- the authority's policy in relation to provision for additional support needs
- the authority's arrangements for identifying children and young people with additional support needs and those who may require a co-ordinated support plan together with the particular additional support needs of those so identified
- the role of parents, children and young people in any of these arrangements
- the arrangements for monitoring and reviewing the additional support needs of, and the adequacy of additional support provided for, each child and young people with additional support needs
- arrangements for independent mediation services, including details of the service and how to access it
- procedures for dispute resolution, including details of the service and how to access it
- the officer(s) in the authority from whom parents of children having additional support needs, eligible children, or young people who have these needs, can obtain further information and advice
- information about any NHS Board in their area or part of the area from whom parents of children having additional support needs, or young people who have these needs, can obtain further information and advice
- such other recognised agencies or organisations that can provide further support, information and advice to parents and young people that it considers appropriate, including information about support and advocacy
- any other persons specified in an order made by the Scottish Ministers from whom parents and young people can obtain further advice, information and support in relation to the provision for additional support needs, including information about support and advocacy.

28. Education authorities should also include information on practice for:

- the management of reviews
- arrangements for support for learning
- how parents or young people can make requests for assessment
- the types of support available.

29. The authority should also publish information about its arrangements for resolving disagreements between the authority and parents of children belonging to the area of the authority, or children and young people belonging to the area of the authority, in respect of any of the authority's functions under the Act. This information should set these arrangements in the overall context of the arrangements which a particular authority has for preventing disagreements

s26(2)

arising, and resolving them when they do arise. All of this information should be provided in a range of easily accessible formats.

30. The Regulations amend the Act and require that education authorities must also publish information about any NHS Board in their area or part of the area and such other recognised agencies or organisations that can provide further support, information and advice to parents and young people that it considers appropriate and where this information is already known to the education authority or is easily obtainable. This could be contact details for the speech and language therapy service, for social work services or for local and national voluntary organisations, including support and advocacy services under section 14 of the Act.

s26(2)(g)  
and (h)

### **Availability of information**

31. The Regulations also state that the information should be available on request in alternative forms such as on audio tape, in Braille or through video recording so that sign language, such as British Sign Language can be used to provide information. Voluntary organisations are often in a good position to provide advice about developing, publishing and disseminating information in accessible formats.

32. Education authorities must also keep that information under review and revise and publish that revised information as necessary or appropriate.

33. The Act, as amended, requires education authorities to provide all parents of all children with additional support needs, all such eligible children and young persons with capacity to understand, for whose school education the authority are responsible, with all the information authorities are required to publish as noted in paragraph 27 above. Where the authority are satisfied that the child or young person lacks capacity to understand the information then the information should be made available to the young person's parent. It is for each individual authority to decide how to meet this requirement but having the information set out in one handbook, website, an app or available on a pen drive may be ways to meet this requirement effectively and efficiently.

s26(1)(d)

34. Authorities are under a duty to ensure that a summary of the information published under section 26 of the 2004 Act is available, readily and free of charge, from each place in the authority's area where school education is provided, regardless of whether the school is under the management of the education authority. School in this context includes nursery schools and other pre-school education providers.

s26(1)(e)

35. The Act, as amended, requires education authorities to provide this summary in any handbook or other publications provided by any school in the authority's area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and on any website maintained by any such school or the authority for that purpose.

s26(1)(e)

36. The Act, as amended, enables the Scottish Ministers to make an order specifying certain persons from which parents, eligible children and young people can obtain advice, further information and support in relation to the provision for additional support needs, including support and advocacy services as referred to in section 14 of the 2004 Act and places education authorities

s26(2)(i)

under a duty to publish information as to those persons. In broad terms, the Act allows the Scottish Ministers to name national bodies providing these services and information about these bodies would then have to be included in the information published by the authorities. The Additional Support for Learning (Sources of Information) (Scotland) Order 2016 specifies ‘Children in Scotland: Working for Children and Their Families, trading as Enquire’, ‘The Scottish Independent Advocacy Alliance Limited’ and Govan Law Centre Trust.

### **Requests under the Act**

s28 37. The Act uses the word “request” in a number of different provisions and the term has been specifically defined in section 28. This provision allows authorities to be clear as to the reasons for the requests being made. A “request” is one which is in writing, or another form which can be used for future reference, for example, where the request has been recorded in audio or video format. The reasons for making the request must be given. Where, an education authority refuse a request under the Act, they must inform the person who made the request and provide reasons for their decision. They must also provide details of their arrangements for mediation and/or dispute resolution procedures except where the request is from the managers of an independent or grant-aided school in relation to a child or young person being provided with education there.

38. Where the request is a placing request, the education authority must inform the person who made the request of their right to either refer the decision to an appeal committee or to the Tribunal where appropriate.

39. When education authorities are replying to, or informing, parents, eligible children or young people, they must do so in writing which could include e-mail if the parents, eligible children or young person agree, or another form as the parents or young person may require which can be used for future reference. Where a parent, eligible child or young person has made a “request” in a particular form such as e-mail then the education authority should reply similarly or at least in a form that meets any particular known needs or preference of the parent, eligible child or young person.

### **Collection of data on additional support needs**

s27A 40. The Additional Support for Learning (Collection of Data) Regulations 2017 requires the Scottish Ministers to collect from education authorities, and to publish annually, specified information about additional support needs. That includes information about:

- the number of children and young people with additional support needs for whose school education the authority are responsible
- the principal factors giving rise to the additional support needs of these children and young people
- the types of support they are provided with, and;
- the cost of providing that support

41. Annex (F) includes links to each of the Annual Reports to Parliament monitoring the implementation of the Act.

## **Annex A Links to Other Legislation, Policies and Guidance**

The Act should be read alongside other legislation and policy supporting children and young people in Scotland. Some of the main aspects of these are set out below.

Legislation in the Scotland takes account of international conventions such as United Nations Convention on the Rights of the Child (UNCRC) and UN Convention on the Rights of Persons with Disabilities (UNCRPD).

### **International conventions and goals**

The United Nations Convention on the Rights of the Child (UNCRC) applies to everyone under 18. It recognises that all children and young people have rights. There are 42 articles that describe specific rights, 4 of which are described as the underpinning principles: non-discrimination (article 2); commitment to the best interests of the child (article 3); the right to life, survival and development (article 6); and respect for the views of the child (article 12). The UNCRC is reflected in legislation relating to children and young people, e.g. the Children (Scotland) Act 1995 and the Scottish Government has made clear its ongoing commitment to the UNCRC and to promoting and supporting the rights of all children in Scotland as a key strand of our activity to improve outcomes for all.

Part 1 of the Children and Young People (Scotland) Act 2014 imposed duties relating to the UNCRC on the Scottish Ministers and certain public authorities. The Scottish Government's **A Fairer Scotland for Disabled People** is our delivery plan to 2021 for the UNCRPD. This is an opportunity to articulate and illustrate the barriers which prevent disabled people from enjoying their human rights, and to work together to develop practical solutions. The Scottish Government appeared before the UN Committee in August 2017 as part of the UK examination.

Article 24 of UNCRPD recognises the rights of persons with disabilities to education and commits states to ensure an inclusive education system at all levels.

### **Legislation**

#### **Equality issues**

The Equality Act 2010 prohibits discrimination and harassment based on certain specified protected characteristics. It further places duties on public authorities to challenge discrimination, advance equality of opportunity and foster good relations for a range of protected characteristics. These protected characteristics are defined in the Equality Act as race, sex, disability, sexual orientation, religion or belief, age, gender reassignment, pregnancy and maternity, and marriage and civil partnership. The provisions of the Act for schools do not apply in relation to age and marriage and civil partnership.

Scottish Government has published Equality Outcomes and Mainstreaming Report 2015<sup>109</sup> which includes an Education section commenting on strengths and areas for improvement in tackling inequalities.

**The Human Rights Act 1998** incorporates many of provisions of the European Convention on Human Rights into Scots law. It supports the requirement for local authorities and other bodies not to discriminate on grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in securing the enjoyment of any of the [rights set out in the ECHR](#). The right to education is set out in Article 2 of the First Protocol to the Convention.

**The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002** places a duty on education authorities, managers of grant-aided schools and the owners of independent schools to prepare a strategy to increase, over time, the physical accessibility of the school environment and the accessibility of the curriculum for pupils with disabilities and prospective pupils with disabilities. This is supported by guidance, <http://www.scotland.gov.uk/Publications/2014/05/5493/0>

**The Children (Scotland) Act 1995** regulates parental responsibilities and parental rights and establishes the responsibilities of service providers in matters affecting children's care and welfare. Local authorities must provide services designed to minimise the impact of disabilities on children and to allow them to lead lives which are fulfilling. Children's views must be sought and taken account of in key decisions that affect them.

### **School education**

Under the **Education (Scotland) Act 1980** education authorities must provide adequate and efficient school education for children of school age within their area. **The Standards in Scotland's Schools etc. Act 2000** places education authorities under a duty to secure that the education provided is directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

Education authorities should provide education to school age pupils in a mainstream setting unless certain exceptions apply. Education authorities must make special arrangements for pupils who are unable, or where it would be unreasonable to expect them, to attend school through prolonged ill-health.

Education legislation gives certain rights to parents and young people rather than to children in their own right. However, the 2000 Act recognises that children should have the right to express views on issues that affect them. Chapter 7 of the code describes where children's views should be taken into account under the Act.

The Act also sits alongside legislation which recognises that children with legal capacity are able to make some decisions on their own behalf. For example, a child over 12 may consent to any medical procedure or treatment and instruct a solicitor in relation to civil matters, so long as he or she is considered capable of understanding the nature and possible consequences.

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<sup>109</sup> <http://www.gov.scot/Publications/2015/04/7781>



Young people (young persons in legislation) have similar rights to parents regarding school education. They may also express their views on, and take decisions about, their school education.

**The Education (Scotland) Act 2016** provides additional responsibilities on Scottish Ministers and local authorities to have regard to the need to reduce inequalities of outcomes arising out of socio-economic disadvantage, when exercising their functions relating to school education. The Act also extends certain rights to certain children (referred to as “eligible children” in this Code), in relation to any support needs they may have in order to make the most of their learning while at school. The 2016 Act also amends section 70 of the Education (Scotland) Act 1980 to ensure that there is a clear process for parents to make complaints to the Scottish Ministers with regard to the carrying out of educational duties by local authorities. The Act also requires that matters which can be considered by the Additional Support Needs Tribunals for Scotland cannot be considered by Scottish Ministers under a section 70 complaint. Parents, under the 1980 Act, must ensure that their children of school age receive adequate education suitable for the age, ability and aptitude of their child, either by sending their child to a school managed by the education authority, or by other means, for example, an independent school or home education.

Parents have a responsibility to safeguard and promote their child’s health, development and welfare. This also applies to anyone over 16 who has care or control of a child under the age of 16. In addition, parents can provide their children who are under 18 years of age, with appropriate direction and guidance. They should maintain personal relations and direct contact with their son or daughter on a regular basis, if they do not live with their child. Parents also have a responsibility and a right to act as their child’s legal representative. Where a person takes a major decision in fulfilling a parental responsibility or right under the 1995 Act they must have regard to the views of the child, taking account of the child’s age and maturity and whether the child wishes to express a view.

**The Scottish Schools (Parental Involvement) Act 2006** places duties on Scottish Ministers, local authorities and head teachers in relation to the provision of information to, and the involvement of, parents in their child’s education. The Act aims to make it easier for parents to become involved in their own child’s education and in their child’s school more generally.

<http://www.gov.scot/Publications/2006/09/08094112/0>

**The Education (School and Placing Information) (Scotland) Regulations 2012** set out a range of information that must be provided by local authorities, including information relating to placing requests and information that needs to be contained in School Handbooks.

<http://www.gov.scot/Publications/2012/09/8694>

### **Other legislation**

**The Children and Young People (Scotland) Act 2014 (“the 2014 Act”)** enshrines elements of the Getting it right for every child approach in law: ensuring there is a single planning approach for children who need additional support from services; providing a single point of contact for every child; and fostering a holistic understanding of well-being. It also creates new duties in

relation to the UN Convention on the Rights of the Child and strengthen the Children's Commissioner role; and gives all 16-year olds in care the right to stay in care until the age of 21 (from 2015); extend the support available to young people leaving care up to the age of 26; and support the parenting role of kinship carers.

Duties under Part 1 of the 2014 Act require specified public authorities, including all local authorities and health boards, to report every 3 years on the steps they have taken to secure better or further effect of the United Nations Convention on the Rights of the Child (UNCRC), an international treaty, which sets out the rights that all children have. The first reports under these new duties are due in 2020.

The 2014 Act also extends the powers of Scotland's Commissioner for Children and Young People, so that this office will be able to undertake investigations in relation to individual children and young people.

**The Public Bodies (Joint Working) (Scotland) Act 2014** ("the Public Bodies Act") provides for the integration of certain local authority and health services, with the aim of improving their quality and consistency, and, ultimately, the wellbeing of service users. Every local authority and its relevant health board has, under the provisions of the Public Bodies Act, prepared and agreed an integration scheme wherein certain functions have been delegated to an Integration Authority. The Integration Authority may be a separate integration joint board, the local authority or health board may take on this role. The functions delegated must, in every area, relate to local adult health and social care services. The legislation also enables some or all children's acute and community health and social care services to be delegated where agreed locally. **The Further and Higher Education (Scotland) Act 1992** requires that adequate and efficient provision of further and higher education is made in Scotland. Due regard should be given to the requirements of those over school age who have a learning difficulty or disability, which may affect their education. In preparing young people for leaving school, teachers should be aware of legislation covering further and higher education. Under the **Further and Higher Education (Scotland) Act 2005**, the educational and related needs of students and prospective students of further education colleges and higher education institutions must be regarded.

**The Adoption and Children (Scotland) Act 2007** provides the legislative framework for adoption and permanence for children in Scotland who can no longer live with their natural parents. The Act restates the duty of a local authority to provide an adoption service for placing children with adopters and assessing adopters and widens the range of people who are able to adopt. The Act introduces a court order for accommodating children who cannot live with their natural parents (a "permanence order") and also improves access to a broader range of support services for people affected by adoption, including members of adoptive and original families.

**Social Care (Self-directed Support) (Scotland) 2013 Act** The Social Care (Self-directed Support) (Scotland) 2013 Act enables adults and children and young people to choose how their support is provided, and gives them as much control as they want of their individual budget. The Act requires authorities to explain the nature and effect of four options available for accessing Self-

directed Support and to signpost other sources of information and additional support. This requires the authority to provide information about other persons or organisations outwith the authority who can provide assistance or information about the options and how to manage the options and provide information where it considers it appropriate to do so. To provide information about organisations and individuals who can provide independent advocacy services, i.e. services that can advocate on the person's behalf in relation to the assessment and the selection of the various options provided under the 2013 Act.

**Carers (Scotland) Act 2016** This Act makes provision in relation to the planning and provision of support for unpaid carers, information and advice for carers and to facilitate carer involvement in certain services. It defines a young carer and places a duty on a responsible authority to offer a "young carer statement"<sup>110</sup>. This young carer statement will be prepared by the responsible authority and sets out a young carer's identified personal outcomes, any identified needs and support to be provided by the responsible local authority to the young carer to meet those needs.

### **Communication Equipment**

Legislation was passed by the Scottish Parliament in March 2016 and gained Royal Assent on 6 April 2016- **Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016** gives children and adults (across all care groups), who have lost their voice, or who are at risk of losing their voice or who have difficulty speaking, a statutory right to the provision of communication equipment and support in using that equipment.

<http://www.legislation.gov.uk/asp/2016/14/section/33/enacted>

The legislative duty has not yet commenced, although specialist augmentative and alternative communication provision is being, and continues to be, delivered across Scotland by the NHS, often in collaboration with Education, and third sector, as appropriate to the needs of the individual.

**British Sign Language (Scotland) Act 2015** The Act promotes the use of British Sign Language including by making provision for the preparation and publication of national plans in relation to British Sign Language and by requiring certain authorities to prepare and publish their own British Sign Language plans in connection with the exercise of their functions; and to provide for the manner in which such plans are to be prepared and for their review and updating.

### **Policy**

The Act complements Scottish Ministers' high expectations and aspirations for all of Scotland's children and young people. These expectations and aspirations apply across agency, service and professional boundaries. Ministers' aspiration for all children and young people in Scotland is that they should be successful learners, confident individuals, responsible citizens and effective contributors to society and at work. Ministers believe that children and young people should be:

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<sup>110</sup> The young carer statement will come into force 1 April 2018.

Healthy ... experiencing the highest standards of physical and mental health, and supported to make healthy safe choices

Achieving ... receiving support and guidance in their learning - boosting their skills, confidence and self-esteem

Nurtured ... having a nurturing and stimulating place to live and grow

Active ... offered opportunities to take part in a wide range of activities - helping them to build a fulfilling and happy future

Respected ... to be given a voice and involved in the decisions that affect their well-being

Responsible ... taking an active role within their schools and communities

Included ... receiving help and guidance to overcome social, educational, physical and economic inequalities; accepted as full members of the communities in which they live and learn

to be safe ... protected from abuse, neglect or harm.

The Scottish Government has a wide range of policies which supports the development and well-being of Scotland's children and young people. The broad definition of additional support needs means that application of the Act's provisions requires effective interaction across policies in a number of areas. The following paragraphs describe some of these policy areas.

**Getting it right for every child** Getting it right for every child is the national approach in Scotland that puts the rights and wellbeing of children and young people at the heart of services that support them and provides a framework within which services can offer the right help, at the right time, from the right people.

The Getting it right for every child approach has been national policy in Scotland since 2010. In order to ensure consistency of implementation and to increase the pace of implementation nationally, elements of the approach (notably around the assessment of wellbeing, provision of a Named Person and the Child's Plan) were included in the Children and Young People (Scotland) Bill, which subsequently became the Children and Young People (Scotland) Act 2014. The Getting it right for every child provisions in the 2014 Act are still to commence.

## **Education**

**Curriculum for Excellence** Curriculum for Excellence, enables all young people in Scotland to gain the knowledge and skills for learning, skills for life and skills for work which will help them become successful learners, confident individuals, responsible citizens and effective contributors. Under Curriculum for Excellence, there are two main phases of learning for children and young people: the Broad General Education (BGE) and Senior Phase. The BGE spans five levels and runs from age 3 to the end of S3. It provides children with breadth and depth of learning experiences, so they can develop to be flexible and adaptable young people with a wide range of knowledge and skills. The Senior Phase provides young people with opportunities for greater specialisation and depth. Young people have the opportunity to build up a

portfolio of qualifications over the three years of the Senior Phase whilst continuing to develop skills for learning, life and work across the four capacities.

**Early Years Framework** The Scottish Government is committed to ensuring that all our children get the best possible start in life, and the expansion of early learning and childcare (ELC) to 1140 hours per year by 2020 is one of the most important and transformative changes we are making during this Parliamentary session. **A Blueprint for 2020** set out our vision for an expansion that will almost double the entitlement of funded ELC to 1140 hours per year by 2020 for all three and four year olds and eligible two year olds. In March 2017, the Blueprint Action Plan was published, setting out 31 key steps we will take in 2017-18 to progress delivery on this key commitment. Expanded provision must be accessible and delivered in a way that ensures equality of access for all eligible children, which is why the action plan includes a commitment to provide a new inclusion fund, that will enable staff in early learning and childcare settings to support children with disabilities and additional support needs. Funded providers of ELC will be able to access funding for specialist training and equipment, with a total of £2 million available over the next four years.

**Delivering Excellence and Equity in Scottish Education: A Delivery Plan for Scotland** Scottish Government is committed to raising attainment and making demonstrable progress in closing the gap in attainment between our least and most disadvantaged young people. This Delivery Plan outlines the steps the Scottish Government will take to achieve these improvements, building on the work contained in the National Improvement Framework.

**National Improvement Framework** The National Improvement Framework aims to provide better information about how well children and young people are doing in education.

That information will help teachers, as well as parents, councils and the Scottish Government, understand which learning and teaching approaches are working well, and where further improvements need to be made.

Assessing children's progress

To make sure everyone understands how well a child is doing, from the beginning of their education through to leaving school, it is important to look at a range of different information, such as:

- their development in the early years
- reading, writing, talking and listening skills (literacy)
- the ability to work with numbers (numeracy)
- their health and wellbeing
- national qualifications and awards
- what they do when they leave school

Assessment already forms part of everyday learning, and teachers draw on their professional knowledge and understanding of the child, using a wide range of assessment information. Ongoing classroom assessment is, and will continue to be, a central part of everyday learning and teaching. Teachers will continue

to draw on the full range of assessment activity when considering children's progress and planning the next steps in their learning. Teachers' professional judgement is informed by benchmarks for literacy and numeracy and from 24<sup>th</sup> August 2017 the Scottish National Standardised Assessments (SNSA) have been made available to all schools. The assessments will provide an excellent source of evidence for teachers to use when assessing children's progress. It is important that teachers know how well pupils are progressing, in order to ensure they are developing and moving forward in their learning.

### **Parents, Families and Communities**

Parental, family and community engagement is a key component within the Scottish Government's vision for the future governance of Scottish education as set out in "Education Governance: Next Steps - Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children": <http://www.gov.scot/Publications/2017/06/2941>

**Improving educational outcomes for children and young people from travelling cultures** Guidance for schools, including early learning and childcare settings, and local authorities has been produced on supporting Traveller children and young people and their families to engage in school education to improve their life outcomes. This guidance is expected to publish by the Scottish Government before the end of 2017.

### **Health**

The Scottish Government document "**Ready to Act - A transformational plan for children and young people, their parents, carers and families who require support from allied health professionals (AHPs) in Scotland**", was published in January 2016. The plan is underpinned by the Getting it right for every child principles with a focus on wellbeing outcomes and effective relationships to achieve these collaboratively with partners across health, education, social care and the 3rd sector. <http://www.gov.scot/Publications/2016/01/1324>.

**Health for All Children (Hall 4) guidance** was issued to NHS Boards in 2005 following the review of child health screening, surveillance and health promotion activity by the Royal College of Paediatrics and Child Health. The guidance sets out the core programme of screening, surveillance and health promotion contacts which every child should receive and recommends tiered levels of support according to assessed need.

**The Universal Health Visiting Pathway for Scotland** was published in October 2015 <http://www.gov.scot/Publications/2015/10/9697>. It presents a core home visiting programme to be offered to all families by health visitors as a minimum standard. It consists of 11 home visits to all families, three of which include a formal review of the family and child's health by the health visitor (13-15 months, 27-30 months and 4-5 years). It covers the antenatal to pre-school period and provides an opportunity for health visitors, children and their parents to build a strong relationship, in which health visitors can appropriately support families including acting as a gateway to other services. This early engagement will provide health visitors with a sound foundation for their role as the named person for children under 5 years of age.

The pathway is based on several underlying principles: promoting, supporting and safeguarding the wellbeing of children, Person-centeredness, Building strong relationships from pregnancy, Offering support during the early weeks and planning future contacts with families and focusing on family strengths, while assessing and respectfully responding to their needs.

**Family Nurse Partnership** The FNP is a preventive programme and has the potential to transform the life chances of the most disadvantaged children and families in our society, helping to improve social mobility and break the cycle of intergenerational disadvantage. It lasts from early pregnancy until the child reaches two, and is aimed at young, first time mothers. The Family Nurse Partnership Programme is being expanded to reach all to reach all eligible first time mothers by the end of 2018. <https://beta.gov.scot/policies/maternal-and-child-health/family-nurse-partnership/>

**The refocused school nurse role in Scotland** As part of the Chief Nursing Officer's Transforming Nursing, Midwifery and Health Professions Programme, a refocused school nurse role was developed to target children and families identified by health visitors as requiring additional support and who had been allocated an "additional" Health Plan Indicator (HPI) at their four-year review.

It is anticipated that a robust system of assessment in the first five years of life will significantly improve identification of children, young people and families who would benefit from additional support and resource.

Additional support will also be provided for children and families with behavioural and developmental concerns and/or complex needs, all looked-after children (LAC), and those who have (or may be at risk from) factors associated with Adverse Childhood Experiences in relation to nine priority pathway areas: emotional health and wellbeing, substance misuse, child protection, domestic abuse, looked after children, homelessness, youth justice, young carers and transitions.

Partnership-working, particularly with parents/carers, as well as professionals, will be central to the refocused role. Work has been undertaken to refocus school nursing education pathways, educational preparation and continuing professional development activity to ensure provision responds to future service and population requirements. The Scottish Government will work with NHS Boards in implementing this refreshed role.

**Mental Health Strategy** The Scottish Government published a new Mental Health Strategy in March 2017, and see it as the centrepiece for this Government's focus on improving Mental Health. <http://www.gov.scot/Publications/2017/03/1750>

Our Vision, as contained in the Strategy is of a Scotland where people can get the right help at the right time, expect recovery, and fully enjoy their rights, free from discrimination and stigma.

### **Children and families**

The Scottish Government continues to work closely with the Child Protection Committees set up throughout the country to improve the protections offered to children and young people in our communities. These Child Protection Committees (CPCs) are responsible for the delivery of effective child protection measures in their area.

The Scottish Government launched a Child Protection Improvement Programme (CPIP) in 2016 to deliver improvements in child protection. As part of CPIP an independently chaired review was commissioned of the formal child protection systems. The Systems Review report and a report on phase 1 of CPIP was published in March 2017. The Scottish Government accepted all the recommendations and actions set out in both reports and is working to implement them. Progress is also being made in the implementation of the Getting it right for every child approach for children's services, as it applies to children who are at risk of significant harm.

**Children's Hearings (Scotland) Act 2011** The Children's Hearings system has undergone a period of change following the Children's Hearings (Scotland) Act 2011. The Act has strengthened and modernised the Children's Hearings system and brought into one place most of the children's hearings related legislation. **Educational outcomes for looked after children**

The Scottish Government's aim is that there should be no difference between the outcomes for children and young people who have been looked after and their peers who have not, particularly in relation to educational achievement. Whilst progress has been made in the last few years, the gap in educational attainment for looked after children has historically been lower<sup>111</sup>.

**The Looked After Children and Young People: We Can and Must Do Better**<sup>112</sup> (Scottish Executive 2007) sets out a framework for action, most of which was completed during 2008. The key publications are:

**These Are Our Bairns**<sup>113</sup> – guidance for community planning partnerships on how to be a good corporate parent, which sets out the responsibilities of all members of the extended corporate family and how they can measure their success.

**The We Can and Must Do Better Training Materials** – a comprehensive revision of the Learning With Care materials, comprising of an award-winning interactive DVD-ROM, The national evaluation of educational outcomes of Looked After children pilots, with an accompanying practical guide for practitioners. This was later updated and developed into an online training resource<sup>114</sup>.

**Core Tasks for Designated Managers in Educational and Residential Establishments**<sup>115</sup>, which up-dates the previous Learning With Care provisions. The Resource Pack for Care Leavers is a DVD for local authorities to customise, to provide accessible advice to young people leaving care.

HM Inspectors of education published a self evaluation toolkit in 2009 – **How Good is Our Corporate Parenting**<sup>116</sup> – which will support councils and other providers in assessing the services they provide to looked after children and young people and care leavers.

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<sup>111</sup> <http://www.gov.scot/Topics/Statistics/Browse/Children/EducOutcomesLAC>

<sup>112</sup> <http://www.gov.scot/Publications/2007/01/15084446/0>

<sup>113</sup> <http://www.gov.scot/Publications/2008/08/29115839/0>

<sup>114</sup> <http://www.wecanandmustdobetter.org/>

<sup>115</sup> <http://www.gov.scot/Publications/2008/09/09143710/0>

<sup>116</sup> <http://dera.ioe.ac.uk/241/1/ischgjoep.pdf>



**The Looked After Children Regulations 2009** sets out the responsibilities placed on local authorities, for preparing and reviewing care plans, which addresses the immediate and longer term needs of the child or young person, with a view to safeguarding and promoting his or her welfare. Where a looked after child or young person also has an individualised educational programme or a co-ordinated support plan, the authority may decide to review these within the care plan review process. Any meetings should fully involve the parents and the child or young person in preparing the plan or plans. A copy of the care plan should go to parents, young persons and all those who have contributed to the plan or plans. It should be noted that a copy of the co-ordinated support must be given to the child (where the child has attained the age of 12 years and if the plan is prepared following a request made under sections 6(2), 7(2)(a) or 10(4)), child's parent or the young person.

### **Corporate Parenting**

Part 9 of the 2014 Act put the concept of corporate parenting onto a statutory footing in Scotland from 1 April 2015. It establishes a framework of duties and responsibilities for relevant public bodies, requiring them to be systemic and proactive in their efforts to meet the needs of looked after children and care leavers. Statutory Guidance on Part 9<sup>117</sup> published by the Scottish Government, specifies that corporate parenting refers to an organisation's performance of actions necessary to uphold the rights and secure the wellbeing of a looked after child or care leaver, and through which their physical, emotional, spiritual, social and educational development is promoted, from infancy through to adulthood. Corporate parenting is about certain organisations listening to the needs, fears and wishes of children and young people, and being proactive and determined in their collective efforts to meet them. These organisations include post -16 education institutions and Skills Development Scotland. The Act requires all corporate parents to prepare, publish and review their Corporate Parents Plan, detailing how they will meet their duties.

### **Getting It Right For Looked After Children And Young People Strategy**

This strategy published in 2015 is built on the principles of Getting it right for every child and reaffirms the Scottish Government's commitment to improve outcomes for looked after children, and lays out its vision for the future. It aims to consolidate the aims that have become well understood within the sector over recent years, reaffirms ambitions and builds on work underway. The strategy reflects the things that young people, practitioners and carers have said are important, and rests on the best available evidence. This approach is based on the United Nations Convention on the Rights of the Child (UNCRC) - which makes clear what children can expect from Scottish Government and what its responsibilities are towards them.

The UNCRC particularly sets out children's rights to care and protection where they are looked after or adopted, and their right to have their views heard. At the heart of the strategy is the importance of relationships for Scotland's looked after children and young people. For children and young people, the quality of relationships with carers, their birth families, social workers, other trusted adults,

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<sup>117</sup> <http://www.gov.scot/Publications/2015/08/5260>

and corporate parenting is fundamental to their ability to develop and thrive. The priorities and activities outlined in this strategy reflect this.

Further information is at this webpage

<http://www.gov.scot/Publications/2015/11/2344>

### **Youth Justice**

The national youth justice strategy Preventing Offending: Getting it right for children and young people was published in June 2015

<http://www.gov.scot/Publications/2015/06/2244> .This builds on the significant impact of shift to prevention in 2008, which has seen numbers of children and young people in the justice system reduce substantially. This focus on early intervention laid the foundations for a whole system approach (WSA) to offending by young people, which was rolled out in 2011, and remains underpinned by Getting it right for every child (GIRFEC).

**Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions** is a refreshed version of the previous guidance on managing school exclusions, which was published in March 2011. This refreshed guidance will give a stronger focus on approaches that can be used to prevent the need for exclusion.

<http://www.gov.scot/Publications/2017/06/8877>

### **Post school education services**

The Scottish Government is firmly committed to ensuring that all students with a disability, long term medical condition or additional support needs, are supported as they study in further and higher education. This is through institutional support provided to each institution, and also through support directly to students.

Colleges, specifically, have access to ring-fenced funding, via the Scottish Funding Council (SFC), to provide specialised support for individual students with specific educational support needs on mainstream courses – at a total of £50 million. SFC also provide colleges with funding which supports bespoke provision (commonly referred to as DPG18).

Support is also available to students through the Additional Support Needs for Learning Allowance, a non-income assessed payment. This fund provides additional funding for students who, by virtue of their disability, are obliged to incur additional personal expenditure arising from their attendance at college. For example, colleges can use this fund to pay for taxi transportation or specific equipment for a student, which would not normally be covered by the mainstream travel and study costs.

In addition, all colleges and universities have a duty under the Equality Act 2010 to make 'reasonable adjustments' to ensure that students with disabilities which affect their studies are not placed at a disadvantage. This is an anticipatory duty which requires education providers to continually review and anticipate the general needs of disabled people, rather than simply waiting until an individual requests a particular adjustment.

### **Learning Disabilities and Autism**

The keys to life the learning disabilities policy

<http://www.gov.scot/Publications/2013/06/1123> and The Scottish Strategy for Autism <http://www.gov.scot/Publications/2011/11/01120340/0> call for an inclusive approach to services for children, young people and adults with learning disabilities and autism. These policies recognise how the transition phase between child and adult services is crucial, and the need for partnership between Education and Integrated Joint Boards in planning services. That is why the Scottish Government supports the Scottish Transitions Forum in highlighting the Principle of Good Transitions 3 as a framework to support the transition into young adulthood. The Forum consists of over 750 members, and aims to improve the experience of children and young adults (14 to 25 years), as they make the transition to adult life. The principles document, which contains seven principles, provides a framework to inform, structure and encourage the continual improvement of support for young people with additional needs, between the ages of 14 and 25. It clearly demonstrates how to ensure good transitions, and is the standard all services are expected to work towards attaining.

## Annex B Co-ordinated Support Plan Template

1. The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005<sup>118</sup> (Scottish Statutory Instrument 2005 No. 518), set out as below, what the co-ordinated support plan must contain, and they set out in the Schedule, a template or form for the co-ordinated support plan.

The plan

3. —(1) Every plan must—

(a) be in the form set out in the Schedule to these Regulations or a form substantially to the same effect;

(b) contain information on—

(i) the name, address, contact telephone number, date of birth, gender, preferred language or form of communication, school currently attended and date of entry to that school of the child or young person to whom the plan relates;

(ii) the name, address, contact telephone number and relationship to the child or young person to whom the plan relates of each parent and that parent's preferred language or form of communication;

(iii) a profile of the skills and capabilities of, and any other relevant information relating to the child or young person;

(iv) any views on the plan expressed by the child or young person and by a parent of the child or, where applicable, the young person;

(v) the review timetable for the plan in accordance with the provisions of section 10 of the Act; and

(c) be dated and signed by a duly authorised officer of the education authority.

(2) Every plan continued following review under section 10 of the Act must contain such amendments of the information specified in paragraph (1)(b) as the authority consider necessary or appropriate in consequence of the review of the plan and retain such other information from the then current plan as the authority consider relevant to the future provision of additional support for the child or young person.

2. Regulation 3(1)(a) allows education authorities a measure of flexibility over the appearance of the co-ordinated support plan when it states “..or a form substantially to the same effect.”. In other words, provided the contents of the plan contain the information required under Regulation 3, education authorities are free to alter, for example, the text font used in terms of type of font, weight of font (**bold** or normal), or whether block or lower case letters are used (although extensive use of block capitals is not recommended). They are free too, to alter the size of the boxes used to contain information and are free to alter the orientation of the document, between landscape or portrait. **What is important, is that the plan is presented in a way that makes it easy for those using it to access the information it contains.**

3. The template which follows, switches orientation between portrait and landscape, in order to accommodate the comments made within each section.

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<sup>118</sup> <http://www.opsi.gov.uk/legislation/scotland/ssi2005/20050518.htm>

## Co-ordinated support plan template

Here insert the Unique Pupil Identifier (UPI) for the child or young person

### Schedule

Official use:

Date of first co-ordinated support plan/subsequent amended versions

Confidential

Set out name of authority

### Co-ordinated support plan

for [insert forename(s) and family name of child/young person]

The address where the child resides the majority of the time and where a parent or recognised carer for the child also lives

Home Address:

Contact Telephone Number:

Date of Birth:

Gender:

Preferred language/communication method

the child's language of preference/method of communication used to make himself/herself understood i.e. signing, lip-speaking, by using communication aids or symbols, audio equipment, Braille

School currently attended:

Date of Entry to Current School:

**Parental Details:**

Details of the child's parent(s) and/or those adults who have or share responsibility for their care, such as foster carers, a relative or social work services should be recorded here. The template only contains 2 boxes but additional boxes can be added as required

Surname:	Forename(s):
Relationship to child/young person:	
Address (if different from child's/young person's)	
Contact Telephone Number:	
Preferred language/communication method: [as above]	

Surname:	Forename(s):
Relationship to child/young person:	
Address (if different from child's/young person's)	
Contact Telephone Number:	
Preferred language/communication method: [as above]	

**Profile**

(here set out a summary of the child's/young person's skills and capabilities and any other relevant information)

The purpose of the profile is to build up a holistic pen-picture of the child or young person. It should focus on the positive aspects of the child's/young person's life, for example his/her skills and capabilities. It may also include information about the type of placement or curricular guidelines he/she follows, the other plans he/she has as well as the activities he/she likes to do or how he/she likes to learn. The person responsible for drawing up the co-ordinated support plan will have to summarise information provided by the child or young person, their parents and the other people who know/work with the child or young person. The result should be a summary that encapsulates the child or young person.

**Factors giving rise to additional support needs**

(here set out the factors which give rise to the child's/young person's additional support needs)

The complex or multiple factor or factors may be diagnostic labels such as autistic spectrum disorders, learning disability or clinical depression. In other cases the factor or factors may be more descriptive and related directly to the personal circumstances of the child or young person or family. All factors should be included. (The four broad themes described in chapter 2 are factors relating to the learning environment, family circumstances, disability or health need, or social and emotional factors.)

While these will be the education authority's conclusions, they will be based on the multi-agency assessment information, including that provided by the parents or young person, which underpins the plan.

Educational Objectives	Additional Support Required	Persons providing the additional support
<p>(here set out the educational objectives that require co-ordination of support for the child/young person, taking account of the factors giving rise to additional support needs)</p> <div data-bbox="192 523 719 1078" style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>Educational objectives should be viewed in the widest sense as encompassing a holistic view of the child or young person. Objectives can include, for example, those required for personal and social development or to improve communication skills (see chapter 5 of the Code for more details).</p> <p>The objectives should be specific and should be set for a year approximately but this could be longer depending on the individual circumstances of the child or young person.</p> </div>	<p>(here set out the additional support required by the child/young person to achieve each of the educational objectives)</p> <div data-bbox="790 523 1317 959" style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>This will include teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching to be used.</p> <p>The statement of the support to be provided should be clear and specific and, wherever possible, should be quantified.</p> </div>	<p>(here specify the persons/professions by whom the additional support shall be provided)</p> <div data-bbox="1469 523 1995 959" style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>These will be the agencies or professions providing the support i.e. 'speech and language therapist', 'social worker', 'but <u>not</u> the actual names of the individuals.</p> </div>



**Nominated school**

this should be the name and address of the school it is intended that the child or young person will attend

Name of School:

Address:

Telephone Number:

**Child's/young person's comments**

(here set out the views of the child or young person on the Plan)

The views, if any, of the child or young person on any aspects of the co-ordinated support plan process as well as the plan itself should be recorded here. Children and young people should be enabled to complete these themselves or they could provide the education authority with written or verbal comments to be inserted. Alternative forms of communication can be used, such as a CD-ROM or the use of signs or symbols. Children and young people should be encouraged to consider areas such as their involvement in the process, including the drafting of the plan, and whether their views have been adequately taken into account.

If there are not any comments from the child or young person then the reason for this should be stated here.

**Co-ordinated support plan review timetable**

Date Co-ordinated Support Plan made/amended:

(delete as applicable)

Date by which review must begin:

(on the expiry of 12 months from the date the Plan was made/amended)

Date by which review must be completed:

(within 12 weeks of the date on which the review began)

**Education authority contact points****Additional Support Provision Co-ordinator**

This person is responsible, on behalf of the education authority, for co-ordinating the additional support required by the child/young person as detailed in this co-ordinated support plan.

Surname:

Forename(s):

Contact Address:

Contact Telephone Number:

Work Position/Title:

**Parental Advice and Information Officer on the Co-ordinated Support Plan**

The parent of a child with a Co-ordinated Support Plan or a young person with a co-ordinated support plan may obtain advice and further information from the following person:

Surname:

Forename(s):

Contact Address:

Contact Telephone Number:

Work Position/Title

In accordance with section 11 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act") and the Education (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 ("the Regulations"), this Co-ordinated Support Plan is made/amended (delete as applicable) by [insert name of education authority] on [insert date] in respect of [insert name of child or young person].

Name:

Work Position/Title:

Signed (authorised officer of the authority)

## Annex C Decisions about whether the additional support required is significant

1. Chapter 5 of the code of practice describes in detail the circumstances under which co-ordinated support plans have to be prepared. In particular, section 2 of the Act sets out the following requirements to be met, for a co-ordinated support plan to be prepared. In practice, there can be particular difficulties in deciding when significant additional support (see (d) below) requires to be provided. Chapter 5 discusses the issue of significance in detail. The purpose of the case studies below is to consider in practical terms, how the issue of significance may be considered. For the purposes of Annex C, it is assumed that all the case studies fulfil the requirements (a), (b) and (c) below. What then is being considered is whether (d) holds, in which case a co-ordinated support plan is required. If (d) does not hold, then a co-ordinated support plan is not required.

...a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if-

- (a) an education authority are responsible for the school education of the child or young person,
- (b) the child or young person has additional support needs arising from-
  - (i) one or more complex factors, or
  - (ii) multiple factors,
- (c) those needs are likely to continue for more than a year, and
- (d) those needs require significant additional support to be provided-
  - (i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
  - (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

In considering the examples below it should be noted that:

- the education authority decide on whether support from the appropriate agency or agencies is significant, not the appropriate agency or agencies, although clearly those involved will discuss this
- significance itself relates to the dimensions of the support provided not to the effect of that support on the child or young person
- the support from the appropriate agency or agencies is required to help the child benefit from school education, and achieve his or her educational objectives, and the question to be answered in these examples, is whether or not that support is significant and, therefore, triggers the preparation of a co-ordinated support plan.
- In the grids below the term **agency(ies)** is used to mean (a) **appropriate agencies** as defined in the Act (appropriate agencies can be any other local authority, any NHS Board, Skills Development Scotland, further education colleges and higher education institutions in Scotland) **and** (b) those parts of an education authority which carry out functions relating to the provision of additional support but which are not functions relating to the provision of school education (e.g. housing, social work services,...)

### Extracts from chapter 5 – paragraphs 18 and 19

18. The Act does not define what “significant additional support” means but the issue has been considered in the Tribunal and courts. In particular, the opinion delivered by Lord Nimmo Smith in the Inner House of the Court of Session in the case of JT is particularly relevant and is binding here<sup>119</sup>. The use of the term “significant” signals that the scale of the support provided, whether it is in terms of approaches to learning and teaching (e.g. adaptation or elaboration of the curriculum), or personnel (e.g. provision of learning support assistant), or resources (e.g. specialist aid to communication or a special hoist), or a combination of these, stands out from the continuum of possible additional support. **Significant additional support may be provided to a child or young person with additional support needs on an individual basis, in a group setting with others, or through personnel working under the direction and guidance of those from the appropriate agency.** The issue of significance thus refers to the extent of the provision. Judgments about significance have to be made taking account of the frequency, nature, intensity and duration of the support and the extent to which that support needs to be co-ordinated and is necessary for the achievement of the educational objectives, which will be included in the plan. In particular, the support must be of sufficient duration to make it worthwhile preparing a co-ordinated support plan, in order to ensure that it is co-ordinated properly.

19. Where a child has several professionals involved from the one appropriate agency, such as from an NHS Board, then the **cumulative effect of these professionals’ involvement may amount to significant additional support from that agency, even although the input from each professional individually is not significant.** For example, a child may receive speech and language therapy and physiotherapy on a regular basis. Taken separately the additional support from each individual professional may not be significant, but **taken together** their contribution may represent significant additional support from the NHS Board, as an appropriate agency. A similar argument could apply to additional support provided by the education authority, exercising its functions other than education. For example, social work and occupational therapy from the local authority social work services, may amount to significant additional support, when considered together but not when considered separately. In considering the significance of the additional support, then it is important to consider cumulatively what an appropriate agency is providing.

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<sup>119</sup> <http://www.scotcourts.gov.uk/opinions/2007CSIH52.html>

### Case study 1: A child at P3 in primary school

John, in P3, finds it very hard to settle to work and to concentrate in class. His relationships with other pupils are poor, his self esteem is very low and he reacts regularly to frustrations by kicking or hitting out. He is very demanding of his primary teacher's attention. John is on the child protection register with a Child's Plan and his educational psychologist is concerned about John's attachment difficulties. His headteacher is his Named Person. John attends a day psychiatric facility attached to the local children's hospital for 3 days each week, returning to his primary school for the remaining 2 days. In the hospital, he attends classes with a small group of other pupils in the morning and carries out a range of therapeutically-based activities with health personnel in the afternoons. He has been in the facility for 1 month.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
NHS Board Psychiatrist Nurses Psychotherapists	3 days per week while in mental health facility.	Individual work aimed at helping John to develop and put in practice strategies for dealing with frustration.  Play therapy and art therapy to explore family relationships	1-1 direct work with the John on issues relating to self esteem, confidence and resilience as well as family relationships	Likely for 4 months after which progress will be reviewed	Yes because it is necessary that what is learned in the facility transfers over to regular day school and home	See comments

Local authority exercising a function other than education: Social worker	Meet with John in facility 1x3weeks	Discussion Liaison with health personnel	1-1 with John Family meetings 1xmonth	To be reviewed in 4 months with other multi-agency staff	Social work support by itself not necessary significant in terms of the Act but involvement has to be co-ordinated with other agencies	
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### Comments

The educational objectives requiring co-ordinated input across health and education (the class in the facility and his regular primary class) are that, at the end of the 4 month period in the facility, John will:

- demonstrate that he is better able to settle to work, concentrate and complete set tasks within the time allocated
- recognise when he is becoming frustrated or upset and put into practice agreed strategies for dealing with these emotions and so avoid disrupting the class
- be more independent and able to rely on his own resources, without being over-demanding of teacher attention
- demonstrate that his peer relationships have improved
- evidence some insight and understanding into his own family relationships

**Does John require a co-ordinated support plan?** The support being provided by the appropriate agency is certainly significant, but what will determine whether a plan is required in this case, will be the outcomes achieved at the end of the 4 month period. If John has achieved his educational objectives then he is likely to be in a position where he does not require significant additional support from the NHS Board, to enable him to benefit from education. Therefore, there will be no need for any significant support to be co-ordinated and, therefore, no need for a co-ordinated support plan. However, if any or all of the objectives are not achieved and it is decided that: his additional support needs are going to continue for more than a year; and that the NHS Board is still going to have to provide significant additional support (either in the form of continued placement in the facility and/or through outreach services) to help him achieve his objectives; then a co-ordinated support plan will be required.

## Case study 2: A looked after child at S3 in secondary

Following a decision from the Children’s Hearing, which made a compulsory supervision order, Robin in S3 is looked after at home. He is involved in group work through social work services, as identified in his Child’s Plan, to help him reflect on his poor school attendance and its causes. The school is part of the multi-agency group, which is supporting the plan. Robin is able to engage with the curriculum but does have learning support because of reading and spelling difficulties, which the school is finding difficult to support him with because of poor attendance.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
Local authority exercising a function other than education: Social work	Fortnightly	Local authority social worker who is able to work with Robin and the family and who can liaise with the school. Group work to be carried out on premises of a voluntary agency (Scotland’s children)	Group work 2 hours per fortnight involving social activities and discussion	Compulsory supervision order will last at least one year. For a 3 month period.	If the social work support achieves its outcome in terms of improving Robin’s attendance then this will help the development of his literacy skills.	No

### Comments

Support from the social worker is not significant in terms of the meaning of the Act, because it is lasting only 3 months and takes place in a setting where a high degree of involvement or co-ordination from the school is not necessary. There will be liaison between the school and social work agency, but the overall support provided by social work services, is not such as to trigger the requirement for a co-ordinated support plan.

### Case study 3: A child in second year at secondary who is looked after away from home

Joanna has additional support needs arising from her family circumstances. She is subject to a Compulsory Supervision Order because of offending behaviour and substance misuse. She has been known to social work services since she was in P1, because of parental drug abuse which led to her neglect. She has a Child's Plan and the Lead Professional is her social worker. Subsequent foster placements did not work out well and in S2, she was placed in a residential school situated in a small town. She lives with residential child care staff in a house in the community, with three other young people, attends a special school on a daily basis and has part-time attendance at the local secondary school, to have the opportunity of experiencing subjects her own school is unable to offer.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
Local authority exercising a function other than education: Social work	Support is ongoing because the local authority social worker is responsible for placement in the school and for ensuring that Joanna benefits from it Joanna is seen weekly for the 4 week settling in period and thereafter once every 6 weeks	Local authority social worker who is able to work with Joanna and the family and who can liaise with the school and residential child care staff. Specialist teaching and child care support provided through the placement Social worker, residential care, schools and Joanna agree on educational objectives	There is regular contact with Joanna's family, Joanna herself, the schools and child care staff Joanna seen 1/week for 4 weeks to discuss her family story and thereafter every 6 weeks	Compulsory supervision order will last at least one year	Social work support is necessary to maintain the placement and to ensure that Joanna benefits from it in the broadest sense in terms of her overall wellbeing, but also in terms of her opportunity to achieve educationally	Yes



## Comments

Support from the local authority social work services is significant, since they are responsible for the placement and for ensuring that, within the Child's Plan prepared for Joanna, there is appropriate co-ordination through the co-ordinated support plan, to ensure that Joanna achieves her educational objectives. Educational objectives requiring co-ordinated input from local authority social worker, residential care staff and school staff are that Joanna will:

- be able to demonstrate insight into the reasons underlying her behaviour and describe what the consequences of failing to improve it will be for herself and her family
- learn about the effects of substance misuse and what she can do to stop it
- develop skills in sustaining relationships with peers and her family
- evidence an overall improvement in her behaviour
- take a measure of responsibility for improving her literacy and numeracy skills
- develop her own skills in looking after herself and understand the importance of healthy nutrition and physical exercise
- co-operate with staff in the secondary school

#### Case study 4: A pre-school child preparing to transfer to primary school

Stuart is in his final six months of his nursery school placement. He has delayed speech and language development and has significant difficulties with social communication. His speech and language therapist is working through his Child's Plan with the staff, parents and Stuart to help him interact more effectively with his peers. An occupational therapist is working individually with Stuart to help him improve his fine motor co-ordination, which is poorer than that of his peers, and to help him learn to manage his toileting and dressing more effectively.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
NHS Board Speech and language therapist	Weekly	Speech and language therapist who can advise staff and parents on appropriate strategies to use to promote speech and language development and to assess and monitor progress	Group work on a 6 weekly block followed by consolidation break. Pattern continued throughout the year. Advice to staff and parents following sessions	To last a year	If Stuart is to benefit from education he needs support to improve his communication, fine motor and social skills. This support needs to be co-ordinated. The support from the NHS Board in terms of speech and language therapy and occupational therapy is significant in terms of the Act	Yes

Occupational therapist	2x per term	Occupational therapist who can advise staff on the development of Stuart's fine motor skills and self help skills, suggest strategies for others to use and can help to assess progress made	Advice to staff and parents 2x per term	To last a year		
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**Comments**

Overall, the support provided by the appropriate agency, the NHS Board, is significant. The professionals involved will provide support to help Stuart improve his language and communication skills (speech and language therapist); advise the teacher on strategies to use in the classroom (speech and language therapist and occupational therapist); and assess and monitor Stuart's progress to ensure that educational objectives are being achieved.

Educational objectives requiring co-ordinated input between local authority and NHS Board are for Stuart to learn to:

- talk about immediate experiences and activities with the therapist and in the classroom
- increase understanding and use of pronouns, prepositions and vocabulary of emotions in group and class
- relay spoken messages to others in school
- toilet himself independently
- dress himself independently after PE
- improve gross and fine motor skills

### Case study 5: A child at primary 7 attending primary school

Alec in P7 has been known to speech and language therapy services since he was in nursery school. He has a long history of language and communication difficulties which have impacted quite severely on the development of his literacy skills particularly. He did have a co-ordinated support plan until he was in P5, but this was discontinued when the speech and language therapy input was reduced, because it was felt that it did not need to be maintained at that level. However, his progress is still monitored by speech and language therapy who maintain contact with the school and parents.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
NHS Board Speech and language therapy	Once a term	Speech and language therapist Main input now is on monitoring progress, advising staff and contributing to his individualised educational programme	Contribute to review once a term	Over a year	Support is helping Alec achieve his educational objectives but is not significant	No

#### Comments

Alec does not require further direct support from a speech and language therapist because school staff, parents, and Alec himself, are aware of the support strategies required. The speech and language therapist continues to advise the staff, parents and Alec, the ultimate aim being to withdraw involvement at the end of P7

### Case Study 6: a child at primary 2 attending his local school

Mark attends his small local primary school in an isolated island community. He has additional support needs stemming from health/disability factors. He is physically disabled and while he uses a wheelchair, he has some functional movement in his legs and with aids he can stand and walk short distances. He has difficulty with eating, drinking and swallowing and requires a feeding programme, co-ordinated by a speech and language therapist who also requires to advise on language development. He also requires support from an occupational therapist to develop his motor skills and from a physiotherapist to help with maintaining his posture and developing his walking abilities. For his Child's Plan his headteacher is the Named Person and she is the Lead Professional to co-ordinate. Since the school is isolated it is not possible for the therapists to have any prolonged direct contact with Mark. Specialist programmes have to be delivered by the school staff namely his class teacher and full-time learning support assistant, acting on the advice of the therapists, and with the co-operation of Mark's parents.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
NHS Board Speech and language therapist	3x/year	Assessment of Mark's feeding skills and of his language development. Preparation of a feeding programme and language programme Reviewed and updated 3x/year	No direct therapy provided by any of the Allied Health Professionals(AHP). Programmes delivered individually by trained fulltime learning support	1 year initially but very likely to continue beyond this	Yes – without the co-ordinated AHP support the educational objectives would not be achieved	Yes

Occupational therapist	3x/year	Assessment of Mark's fine motor skills and preparation of a programme to improve them. Reviewed and updated 3x/year				
Physio-therapist	3x/year	Assessment of his functional movement and preparation of a programme to improve them. Reviewed and updated 3x/year Advice on suitable physical activities for Mark as part of his school's PE programme				

### Comments

Mark is not able to receive any significant amount of direct therapy because of where he lives, and so his additional support needs have to be met by education staff, working in collaboration with the AHPs. Parents and staff ensure that there is continuity between the programmes used in school and at home. Overall, the support provided by the appropriate agency, the NHS Board, is significant. The professionals involved provide support to help Mark improve his feeding, language and communication skills (speech and language therapist); his fine motor skills (occupational therapist), his functional movement skills (physiotherapist); advise the teacher and learning support assistant, providing training where necessary, on the programmes to use in the classroom (all AHPs); and assess and monitor Mark's progress to ensure that educational objectives are being achieved (all AHPs). Educational objectives, requiring co-ordinated input between local authority and NHS Board are for Mark to:

- improve his self-help skills by becoming more independent with feeding
- develop his communication and language by using symbols
- improve fine motor skills, including writing
- learn to use his walking frame to walk longer distances on his own
- learn new skills through his individualised programme for physical education

### Case Study 7: Decision to discontinue a co-ordinated support plan:

Taylor is in P7 at a special school. She has a diagnosis of autism spectrum disorder. The review of her third co-ordinated support plan has just been completed. Based on her current progress and the support she receives, the decision to discontinue the plan has been agreed in consultation with her parents. Taylor has made good progress in Art and Craft this session and has produced some good work. She enjoys exploring a wide variety of instruments in music, and is demonstrating a greater degree of flexibility when choosing. Taylor is working hard on her individual sports schedule to improve her swimming technique on her front and her back. She appears happy and confident in the water and is making steady progress. Taylor is becoming more spontaneous with her spoken language. She successfully uses her Picture Exchange Communication System to choose a snack in a variety of settings. She can shop and pay for her own shopping with the use of a pictorial strip. She is now fully independent with toileting during the day. Taylor's parents are very supportive and have an effective partnership with staff at the special school.

<b>Agencies involved in addition to education</b>	<b>Frequency</b> <i>How often is the support provided?</i>	<b>Nature</b> <i>Type, personnel, approaches, individualisation and differentiation, specialist resources</i>	<b>Intensity</b> <i>Degree of involvement: 1-1, small group, large group</i>	<b>Duration</b> <i>How long for? Weeks, terms, years?</i>	<b>Test</b> <i>Support significant and necessary to meet educational objectives? Objectives require service co-ordination?</i>	<b>Co-ordinated support plan required?</b>
Social Work	1/week of 2hrs enabling	Group work to develop social interaction skills and extend social opportunities Focus on developing and/or adapting the learning environment	Participation in a social group Ongoing access to support at transition and/or crisis points	Likely to continue until the end of the school session at which time it will be reviewed To continue until June 2018 at which time it will be reviewed	The support is designed to create opportunities for Taylor outwith her school day There is no co-ordination of agency input required	No

Speech and Language therapy	Indirect intervention	Specialist training for parents and teacher				
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**Comments**

After three years of having a co-ordinated support plan with direct agency input, Taylor's additional support is now being delivered principally and appropriately by education staff, based in the special school. Current input from other agencies does not require co-ordination in terms of her educational objectives. Agency input is currently reviewed, as part of Taylor's individualised educational programme. No issues or concerns have been expressed by Taylor's parents, largely due to their trust and confidence in the work of school, local authority and health staff, that has developed over the course of Taylor's school career and, in particular, during the preceding three years



## Annex D Features of Mediation

The following features of mediation and performance evaluation have been provided by a range of mediation service providers.

### Features

It is voluntary. It is important that the parties come to the table in good faith, with a will to settle the dispute. The dispute will only be resolved in mediation if the parties voluntarily decide on a way forward, which is mutually acceptable.

It is confidential. This means that issues and ideas for resolution of the conflict can be discussed during the mediation, without fear of them being used against the parties in the future, if no agreement is reached.

Mediations are easily arranged. Usually it only takes a few phone calls for a session to be set up at a neutral venue. It is essential that all the people who have decision making responsibility about the dispute, are available.

Mediations tend to be informal. The mediator is trained to make the meetings as accessible as possible for everyone involved.

It is balanced. Everyone has a fair chance to be heard. Mediation provides an opportunity for all the parties to say what is important to them, and to hear the other party's perspectives.

The parties control the agenda and outcomes. The mediation approach is problem-solving rather than adversarial, so creative options for settlement are often the result. In mediation, the parties speak for themselves and make their own decisions.

### Monitoring and evaluation arrangements

Education managers with responsibility for mediation should ensure that evaluation takes place and that the findings are used to improve services. School personnel, authority officials, parents, young people, and mediators are all both stakeholders and informants — they provide information and, to differing degrees, use evaluation information to make decisions about future courses of action.

### Performance

A qualitative evaluation process may be more appropriate for mediation. Some performance issues that are critical to the varying purposes of mediation evaluation are listed below:

<b>Performance Areas</b>	<b>Key Performance Issues</b>
Service Efficiency	Cost to participants Time from referral to resolution
Service Effectiveness	Outcomes of mediation Participant satisfaction with mediated outcomes Durability of mediated outcomes Impact on relationship between participants
Mediation Process	Impartiality of the service Appropriateness and usefulness Preparation process and materials Fairness (opportunity to tell story, feeling understood, respectful treatment, control over outcomes)
Mediator Performance	Skills of the mediator Knowledge of the mediator Impartiality of the mediator

In the five years of annual reporting the number of uses of mediation are as follows:  
2011 87 cases, 2012 73 cases, 2013 86 cases, 2014 134 cases and 2015 156 cases.

## **Annex E Planning, Reporting and Review of additional support for learning**

### **Annual Reports to Parliament 2012-2016**

In addition Scottish Ministers have a duty to report to the Scottish Parliament in each of the 5 years after the commencement of the Additional Support for Learning Amended Act on what progress has been made in each of those years to ensure that sufficient information relating to children and young people with additional support needs is available to effectively monitor the implementation of this Act.

There have been five annual reviews published which can be found the following links

Report to Parliament - February 2012

<http://www.scotland.gov.uk/Publications/2012/02/7679>

Report to Parliament - February 2013

<http://www.scotland.gov.uk/Publications/2013/02/7808>

Report to Parliament - April 2014

<http://www.scotland.gov.uk/Resource/0044/00448013.pdf>

Report to Parliament - April 2015

<http://www.gov.scot/Publications/2015/04/5650>

Report to Parliament - May 2016

<http://www.gov.scot/Resource/0049/00497314.pdf>

### **Country Policy Review and Analysis (CPRA) with European Agency for Special Needs and Inclusive Education - Scotland**

The goal of the CPRA work is to aid country reflection regarding the development of policy for inclusive education. It aims to act as a tool for stimulating discussion in the country concerned. Its central focus is to analyse the available information about current country policy for inclusive education; the CPRA work does not in any way address the actual implementation of the policy being considered. Scotland was involved in the piloting of country review and its review is found at the following link.

<https://www.european-agency.org/sites/default/files/agency-projects/CPRA/UK-Scotland%20Analysis.pdf>

## Glossary of Terms

**Action plan** - a co-ordinated, structured plan which sets out timescales, responsibilities and services required to meet a child's assessed needs (personal learning planning, IEP, CSP and Child's Plan).

**Additional support** - provision which is additional to, or otherwise different from, the educational provision made generally by an education authority for children or young people of the same age in schools (other than special schools), under the management of the education authority responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority for the area to which the child or young person belongs.

**Appropriate agency** – an agency, or any person, specified in the Act, or by regulation, as having duties under the Act. Other agencies, whether statutory or voluntary, may work with local authorities to support a child's or young person's learning without being under a statutory duty.

**Assessment** – an ongoing process of gathering, structuring and taking a holistic approach to making sense of information about a child or young person, and their circumstances, in order to inform decisions about the actions necessary to maximise children's potential and improve their well-being.

**Advocate** – someone who, with the agreement of a parent, or young person, may conduct discussions on their behalf, or support them in representing their views and interests to appropriate agencies.

**Carer** – includes parents and other people with parental responsibilities. The term could also include public foster carers, formal kinship carers (relatives and friends who are caring for looked after children), informal kinship carers (relatives and friends who may be caring informally for a child with parental agreement, and private foster carers (who are not close relatives, care for children with parental agreement, and must be approved as private carers after 28 days) (See also parent).

**Child's plan**<sup>120</sup> – A Child's Plan is based on working with children and parents to offer tailored, coordinated support that meets the wellbeing needs of an individual child by taking account of their unique circumstances to help them reach their potential. Clear action planning to address children's wellbeing needs helps parents and practitioners understand the child's needs and how those needs can be met, and support better outcomes for the child. Overall responsibility for delivering a Child's Plan sits with an organisation such as a health board, local authority or independent school. But a single person - Lead Professional - will ensure the Child's Plan is managed properly.

**Co-ordinator** - person responsible for ensuring, so far as possible, that the services required to deliver the additional support identified in the CSP, are in place for the child or young person and for taking action to secure services when necessary.(See also Lead Professional).

**Complex factor** – in the context of a CSP, one which has or is likely to have, a significant adverse effect on the school education of the child or young person. Complex may have different meanings in terms of other professional assessment procedures.

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<sup>120</sup> As a consequence of the Supreme Court judgment on Named Person provisions, Parts 4 and 5 of the 2014 Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

**Co-ordinated Support Plan (CSP)** – a statutory plan to help identification and ensure provision of services for children or young people, whose additional support needs arise from complex, or multiple factors, which have a significant adverse effect on their school education and are likely to last at least a year, and which require support to be provided by an education authority and at least one other non education service or agency.

**Dispute resolution** – the involvement, under regulations supporting the Act, of an independent, external adjudicator to review a disagreement between parents, or a young person, and an education authority, over the exercise by the authority of any of its duties or functions under the Act, and to make recommendations for parties aimed at resolving the dispute.

**Disability** – the code uses the definition of disability, set out in the Equality Act 2010, as being a physical or mental impairment, which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities.

**Duty** – where the law requires an education authority or appropriate agency to do something.

**Early Intervention** – identifying and meeting a child's needs early in the life of a child, the spectrum of complexity or the life of a crisis, in order to prevent escalation or deterioration in a child's difficulties.

**Education authority** – In legal terms, education authority and local authority are both defined as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994. The code refers to an education authority when considering a local authority's educational functions; and to a local authority when referring to functions other than educational ones, such as social work services.

**Eligible pre-school child** – child eligible for pre-school provision who is under school age and has not started primary school. Every three and four year old child is entitled to 600 hours of early learning and child care per year. A child is also an eligible pre-school child if the child is 2 years or over and is, or has been, since their 2<sup>nd</sup> birthday looked after. Eligible pre-school child has the same meaning as in part 6 of the 2014 Act.

Eligible pre-school children also include 2 year olds, starting from the first term after their second birthday, with a parent in receipt of qualifying benefits; or, the first term after their parent starts receiving qualifying benefits.

#### **Eligible Child –**

The term “eligible child” is used throughout the Code to refer to a child in school education who has attained the age of 12 but not 16 and who has been assessed as having capacity (sufficient maturity and understanding) to exercise their rights under the Act, and that the education authority (or Tribunal) considers the wellbeing of the child would not be adversely affected by the child exercising their rights.

**Grant Aided School** – a school in receipt of grant funding from the Scottish Government. At present there are eight such schools. Jordanhill School, and seven Grant Aided Special Schools (GASS) – Corseford, Craighalbert Centre, Donaldson's, East Park School, Harmeny, Royal Blind School and Stanmore.

**Holistic** – a holistic view is one which addresses the whole child and his/her circumstances, rather than focusing on specific isolated aspects. A holistic approach is one that considers the whole range of needs that influence a child's healthy development and well-being.

**Home education authority** - the authority for the area in which the child or young person lives.

**Host education authority** - an authority other than the authority for the area in which the child or young person lives.

**Independent school** – a school at which full time education is provided for children or young people of school age (whether or not such education is also provided for children or young people over that age), not being a public school or grant- aided school.

**Individualised Educational Programme (IEP)** – written document which outlines the steps to be taken to help children and young people who additional support needs to achieve specified learning outcomes.

**Integrated Assessment Framework** - a common means for all agencies and professionals to assess children's needs, and to share information about them. Now integrated into the broader Getting it right for every child Assessment, Analysis and Recording practice model that seeks to ensure that assessment leads to an integrated plan (where necessary) leading to improved outcomes.

**Lead Professional** – where a Child's Plan has been developed , a Lead Professional should be identified. The role is to co-ordinate action, ensure the plan is produced, monitored and reviewed, ensure the child and family views are taken into account, and to ensure the child is supported through key transition points.

**Looked after child or young person** – The Children (Scotland) Act 1995 has a statutory definition of a looked after child, which covers children looked after at home and children looked after away from home.

**Looked after at home:** where the child or young person is subject to a compulsory supervision order made by a Children's Hearing. The child or young person continues to live in their normal place of residence (i.e. often the family home).

**Looked after away from home** (i.e. away from their normal place of residence): where the child or young person is subject to a compulsory supervision order with a condition of residence made by a Children's Hearing under the Children's Hearings (Scotland) Act 2011, or is provided with accommodation under section 25 of the Children (Scotland) Act 1995; or is the subject of a Permanence Order made under section 80 of the Adoption and Children (Scotland) Act 2007. The child or young person is cared for away from their normal place of residence, e.g. in a foster care placement, residential/children's unit, a residential school, a secure unit or a kinship placement.

In addition to the above, a child or young person may be the subject of a Interim Compulsory Supervision Order (ICSO), made by a Children's Hearing or Sheriff. These are short term measures where the child or young person is considered Looked after for the duration of the ICSO.

**Mediation** – a voluntary process whereby an independent third party seeks to enable both parties to a disagreement, to reach an agreed resolution of their differences.

**Multi-disciplinary** - where more than one professional from different disciplines within the same agency work together ( e.g. speech therapist and health visitor).

**Multi- agency** - where professionals from different agencies work together (e.g. teachers and health or social workers).

**Multiple factors** - in the context of a CSP, these are factors which are not by themselves complex but which, when taken together, have or are likely to have a significant adverse effect on a child's or young person's school education.

**Named Person**<sup>121</sup> – Person in universal services who can facilitate the offer of early support and to make sure that the child is offered the right help to promote, support or safeguard their wellbeing .

**Parent** – has the same meaning as section 135(1) in the Education (Scotland) Act, as amended, and includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995), in relation to, or has care of a child or young person. (See also carer)

**Personal learning planning** – process by which children, young people and parents are involved in discussions with school about the goals of learning, including those for personal development. Its focus is on supporting dialogue and ultimately about engaging children and young people in their own learning.

**Placing request** – written request made to education authority for their child to attend a particular school.

**Power** – where the law allows an education authority do something, but there is no duty to do so.

**Pre-school provision** – Act refers to pre-school provision (generally for three and four year olds and also for some two year olds (as within the categories of eligible pre-school children)) under the management of an education authority. It also covers circumstances where the education authority have an arrangement for the purposes of section 35 of the 2000 Act with a private provider, normally referred to as partnership nurseries. In certain circumstances, an education authority has a duty under the Act, to make provision for disabled children under the age of three years.

**School** - within the Act, the term ‘school’ has the same meaning as in the 1980 Act and means a primary, secondary or special school, and includes nursery schools and independent and grant-aided schools.

**School age** – generally from the age of 5 to 16 years.

**Special school** – a school, or any class or other unit forming part of a public school which is not itself a special school, the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young people selected for attendance at the school, class or (as the case may be) unit by reason of those needs.

**Specified school** – a school identified in a placing request by a parent, or, as appropriate, a young person, which the parent wishes his or her son or daughter to attend, or the young person wishes to attend.

**Supporter** - someone chosen by the parent or young person to be present at any discussions with the authority, for the purpose of supporting them in the course of those discussions.

**Targeted services** – action by services designed to help specific children and young people for particular needs i.e. social work, the Reporter, police, a whole range of voluntary sector provision.

**Transitions** - refers to changes in education, for example, starting nursery school, moving from primary to secondary school, leaving school and transferring schools within or outwith an education authority’s area.

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<sup>121</sup> As a consequence of the Supreme Court judgment on Named Person provisions, Parts 4 and 5 of the 2014 Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

**Universal Services** – services which all children and young people have access to throughout their childhood i.e. health and education provision.

**Well-being** – The areas of a child’s life or circumstances that, when optimised will give them the best start in life, and make them ready to succeed. They are Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

**Young carer** - A child or young person aged under 18, or who is 18 and still at school, who provides or intends to provide care for another individual. **Young person** – A young person<sup>122</sup> is now defined in the Act as a person who is aged 16 years or over, who is a pupil at a school, and has, since attaining the age of 16 years or over, remained a pupil at that or another school. In practice, it is unlikely that a young person will remain in school beyond their later teenage years. The new definition removes the difficulties which have arisen when a young person has remained in school between the age of 18 and 19 years. Throughout the code the term young people is used instead of young persons, for ease of understanding.

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<sup>122</sup> <http://www.legislation.gov.uk/asp/2016/8/schedule> section 29





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