

Improving our Schools



Assessing our children's educational needs The Way Forward?

Assessing our children's educational needs: The Way Forward?



Foreword

Our current assessment and recording arrangements for children with special educational needs date from 1980. They include a detailed multi-disciplinary assessment process required by law for children whose needs are greatest. This Record of Needs legislation was welcomed in its day as a significant step forward. Its aim was to ensure that children with the most significant needs had these needs recognised and met.

After 20 years, it is clear that the time is right for a review. I am aware that with the increased emphasis on inclusive education, there are those who feel that it is now appropriate to move on from a recording process designed for a few children to a framework for all children. In addition, I know that many parents have concerns over the effectiveness of the current assessment process. They want to see it improved and strengthened.

The Scottish Parliament's Education, Culture and Sport Committee, during its inquiry into special educational needs, heard a range of concerns about the current assessment process. This consultation paper provides an opportunity to examine these concerns, to extend the debate and to look at how best to provide a high quality education to meet all our children's individual needs.

I welcome your views and comments which will help our review of the assessment and recording system in Scotland.

A handwritten signature in black ink that reads "Nicol Stephen". The signature is written in a cursive style with a long horizontal flourish at the end.

Nicol Stephen
Deputy Minister for Education, Europe and External Affairs

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Introduction

The Scottish Executive's Special Educational Needs Programme of Action, published in May 2000, announced that the National SEN Advisory Forum would review how the current assessment and recording (Record of Needs) process could be improved or updated. This announcement arose from consideration of responses to the Riddell Committee report into the educational provision for children with severe low incidence disabilities. It was clear from the responses that many people thought that there were difficulties with the current arrangements for assessing and recording children with special educational needs. However, suggestions for change were contradictory. Some thought the current system should be strengthened, while others thought the system had outlived its usefulness.

Arguments for and against the Record of Needs system were also heard during evidence submitted to the Education, Culture and Sport Committee's SEN Enquiry which reported on 6 February 2001. The Committee's report recommended that the Forum's review should consider the options of either replacing the system or revising it substantially. This document is the first stage in a formal consultation process to consider what changes are required. Part I of the document looks at the principles underlying the current recording system. Part II considers views on the framework for the way forward.

The document draws on views expressed by parents, professionals and young people during an information gathering exercise conducted by Enable in seven local authority areas to help the Executive in the preparation of this document. Views are used to highlight particular concerns, but are not necessarily representative of wider opinion on the assessment and recording process. This opinion will be tested during the consultation exercise. Necessarily, there is an emphasis in the document on the current assessment and recording arrangements. However, Scottish Ministers have an open mind on these arrangements and whether they need to be changed. Ministers are happy to hear views on innovative alternative proposals.

Consultation will run until 27 July 2001. Responses to the consultation exercise will be important in helping Ministers to decide whether any changes are required to current legislation on assessment and recording. Any specific proposals for change will be the subject of further consultation later this year.

The Scottish Executive is grateful to Enable and to the parents, young people and professionals whose views contributed to the document.

Part I: Legislative Background

The 1980 Act

1. The main legislation governing the education of children with special educational needs in Scotland is the Education (Scotland) Act 1980 (as amended). It covers the rights and duties of parents and education authorities, and its general provisions apply to the education of all children.
2. The Act defines special educational needs in a general sense as “needs caused by a learning difficulty” and then identifies for the purposes of opening a Record of Needs “pronounced, specific or complex special educational needs which are such as require continuing review” (see Annexes A and B for definitions and rights in the 1980 Act). In other words, the general concept of special educational needs can be thought of as referring to the 20% of pupils defined by the 1978 Warnock Report and within that there is a smaller group of pupils, perhaps 2%, who require Records of Needs.
3. The Record of Needs arrangements introduced by the Act were seen as major steps forward in moving from a model previously focused on a child’s disability to one which looked at the needs of the child and how these should be met. These arrangements took forward the main recommendations of the Warnock report.

Recent legislation

4. Since 1980, there have been further significant changes in policy and legislation affecting children. There have been measures that strengthen the rights of children and parents, and the development of inclusive policies within education. For example:
 - In 1991, the UK government adopted the UN Convention on the Rights of the Child, undertaking to bring UK law, policy and practice into line with the Convention’s articles. This undertaking includes giving children the right to participate in any decisions which affect them.
 - Some of the provisions in children's law in Scotland give children a right to participate to an extent in decisions affecting them. Local authorities have a duty to safeguard and promote the welfare of “children in need” by providing appropriate services. In addition, they must provide services for children with or effected by a disability which give them the opportunity to lead lives which are as normal as possible.

- The Standards in Scotland's Schools Etc (Scotland) Act 2000 requires education authorities (s.15) to provide education for all children in mainstream schools, except under certain circumstances. It also places a new duty (s.2(1)) on education authorities "to secure that the 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." This duty includes a requirement to have regard to the views of the children or young persons in decisions that affect them significantly.

5. In addition, the SEN and Disability Bill, which is currently progressing through the Westminster parliament, contains provisions which will extend the Disability Discrimination Act 1995 to education services, including those in Scotland. It includes duties on education providers not to discriminate unfairly against children and students with disabilities, to make reasonable adjustments to policies and practice, and to provide appropriate alternatives where adjustments are not possible.

Is change needed?

6. There is pressure for changing the current statutory provision for children with special educational needs. There is the view that, as a result of the changes in policy and legislation outlined above, the existing assessment and recording provisions in the 1980 Act are now out-of-date and ought to be revised substantially or replaced with a new framework. On the other hand, some suggest that there is nothing wrong with the principles underlying the current legislation, but that it should be strengthened and that practice in implementing it should be improved.

Difficulties with the current system

7. Criticisms of the current system for assessing and recording special educational needs include the following:

- the Record is viewed as being non-inclusive because it focuses on a small group of children while there are many others who require support but who do not meet the criteria for a Record;
- some parents and teachers view the Record as a means of obtaining resources and this can lead to conflict with local authorities, especially where inappropriate claims are made for recording;

- some local authorities consider the process of opening and reviewing Records as time-consuming and unnecessarily bureaucratic. Some educational psychologists argue that the process of opening and reviewing Records of Needs diverts them from other important work;
- it is suggested that multi-disciplinary assessment arrangements need to be streamlined to avoid unnecessary duplication and delay;
- there is a wide variation in recording rates across authorities.
- even when a Record has been opened, parents and teachers complain that the statements within it can be too general to be useful.

8. In addition, some local authorities argue that the assessment and recording process has a distorting effect on their ability to plan the use of resources effectively for all children. They argue that the focus on decisions made for individual children undermines a whole-school/whole-authority approach to meeting children's needs. The additional placing request rights which a Record of Needs conveys is seen to conflict with the new duties on authorities to consider a mainstream placement as the first choice for all children.

9. The existing assessment and recording process gives rights to young persons (those who are over school-leaving age but under the age of 18) to contribute their views and have them recorded. They can also appeal against some decisions. However there is no provision to include the views of younger children. This is seen to conflict with more recent legislation requiring authorities to take account of children's views in decisions that significantly affect them.

What degree of change is needed?

10. There are those who point to the above difficulties with the current assessment and recording system and argue that these flaws are so serious that the system ought to be replaced completely with a new one which focuses on entitlement for all rather than on an individual needs-based approach for some. The concept of entitlement would, it is argued, encompass all children, and advantage all those with special educational needs, not just the 1-2% for whom records are presently considered appropriate.

11. However, others argue for a less radical approach to change. They point to the benefits of the current legislation and argue that it has served many parents and children well over the last 20 years and should be strengthened. Among its key benefits are:

- the rights it gives to parents to request that their children be assessed, recorded and reviewed, to be present at medical examinations, to have their views heard and to appeal against some decisions made (see Annex C);
- the additional statutory rights provided by the Record to enable parents to make a placing request to pre-school nurseries and nursery classes, to independent special schools in Scotland and special schools elsewhere;
- the framework provided for multi-agency working, particularly between education and health services; and
- the identification of the future needs of pupils with Records and the support for the transition into adult services.

12. Parents and others argue that, without legislation which focuses directly on children with special educational needs, the rights of parents and children will not be protected.

Questions: Legislative principles

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

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

3. What weaknesses and concerns should be addressed?

13. In order to help focus views on whether the legislative framework should be replaced or amended, it will be helpful to consider key questions about the effective identification, assessment and provision for children with "special educational needs". The following section looks at some key questions.

Part II: The Way Forward

A: The Record of Needs

14. There are calls to review the definition of special educational needs and to clarify the criteria for opening a Record of Needs. For example, there is a perceived reluctance on the part of many authorities to open a Record of Needs for children with social, emotional and behavioural difficulties, whether they attend a special school or not. Some people would prefer a narrow definition of special educational needs which encompasses only those children with very exceptional needs. Others feel that there should be an extended approach in which “additional support need” is used as the concept rather than “special educational needs”. This would then include all children with particular needs, such as disrupted learners or travellers’ children, and children whose first language is not English.

15. Within this approach, although there would be no Record of Needs all children would be viewed as having an entitlement to appropriate support. Such a model would introduce a school level assessment process which would be more responsive, family friendly, flexible and speedy. Where consensus about provision is not achieved at school level then a conciliation and appeal process (stronger than the current appeal mechanism) would come into play. There would also be a more detailed and effective approach to meeting the individual needs of children through an Individualised Educational Programme.

16. Another related option is to change the criteria for opening a Record of Needs. Currently, an education authority has a duty to open a Record of Needs for a child with “pronounced, specific or complex special educational needs which are such as require continuing review”. However, the criteria for opening a Record could be changed to focus not so much on the child but on what action the school has taken to meet the child’s needs. Where the mainstream school has demonstrated that it has taken all appropriate and reasonable steps to meet the child’s needs but is still unable to do so, then this would trigger the statutory assessment. The authority, taking into account the provision made by the school, the multi-disciplinary assessment of the child, the views of the child and parents, would then decide whether the mainstream school could be reasonably expected to make provision for the child within the resources at its disposal. Where the authority concludes that it could not expect the school to make provision from its own resources then this would lead to the opening of a Record of Needs. Under such a system, all children in special schools would have Records.

17. One advantage of this process is that it allows authorities to make equitable decisions on allocating resources to schools; that is, decisions which ensure that the needs of all pupils in the school are being met, and this includes those with special educational needs. Such an approach also supports the development of inclusion because mainstream schools would require to demonstrate that they had made significant efforts to meet the child's needs before a Record of Needs could be opened.

Questions: Definitions and criteria

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

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

B: Early Identification and Assessment

Pre-school

18. Early identification and assessment are important to lay the foundation for later learning and progress. The HMI publication *Effective Provision for Special Educational Needs (EPSEN)* highlights the contributions that educational services play in promoting development, identification and assessment from the earliest stages. In order to achieve these aims, education authorities must work closely with parents and a wide range of agencies including health and social work services, and voluntary agencies.

19. In many authorities, pre-school joint assessment teams have been very successful in co-ordinating support to children and their families. They have demonstrated good multi-agency working, provided a supportive structure including a keyworker for the family, and provided practical guidance and resources from a range of professionals. The majority of local authorities have also adopted a pre-school to primary 'transition record' piloted by the Scottish Executive, in its entirety or with modifications, with the remainder developing their own record or using a form of transition record alongside other forms of assessment. Work is continuing on the pilot transition record which will help to chart children's progress through their pre-school years and which would pass on to primary school to help inform next steps on learning.

20. Current legislation requires an education authority to make people aware of the importance of the early discovery of special educational needs and the opportunity for assessment. It also requires an authority to establish which children from the age of 2 years may require a Record of Needs. Some parents complain that it can be difficult to have a Record opened for a child prior to entry to primary school. Some professionals argue that it is difficult to reach a conclusion about children's needs, and likely placements, as the children's abilities and needs change quickly at this stage in their lives. Some parents argue that, without a Record, they are not able to challenge a lack of provision or planning.

Question: Pre-school

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

School age

21. There will be some children whose additional learning needs are identified before they start school. There are others whose needs only become apparent during the course of their school career. EPSEN recommends that authorities use a staged approach in identifying and assessing a child's needs at whatever level of schooling the child has reached. The final steps in EPSEN lead on to formal recording by the education authority for children with pronounced, specific or complex needs requiring continuing review. Annex D provides an example of steps for identification and assessment at the primary school stage. EPSEN recommends similar steps at the pre-school and secondary school stages, as well as steps for assessment and review of future needs as the pupil looks beyond school.

22. There is considerable support for this staged approach. Indeed, the Education, Culture and Sport Committee in their report on the SEN Inquiry recommended that any future system for assessing needs should have effective linking with local authorities' staged intervention procedures. However, there are difficulties with the staged approach. There can be a temptation for parents and professionals to move quickly through the stages with the aim of reaching the stage for recording as soon as possible. Removing the Record of Needs process would remove the element of statutory underpinning to the staged approach.

23. Some feel that the whole staged approach to identification and assessment should be underpinned by statute. However, it would be difficult to give statutory backing to the whole of a staged process as the early steps or stages need to allow discretion and flexibility. A statutory underpinning to a staged approach could also be difficult to implement. If the criteria for opening a Record of Needs are changed to focus more on what the school can provide then there would be less need for provision being linked to a number of very discrete stages.

Question: Staged assessment

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

Transition points

24. Scottish Executive guidance to authorities recommends that, as a matter of good practice, reviews of progress of the child should take place at least annually. However, there is no obligation on authorities to hold formal reviews of the Record until the future needs assessment stage unless they think it is expedient or are asked to do so by parents. It has been suggested that there should be formal reviews involving multi-agency assessments at key transition points during the child's schooling. These might be:

- between pre- and primary school
- end of P3;
- end of P6 so that P7 can be used to prepare for secondary school;
- middle of S2 to prepare for choosing Scottish Qualifications Authority courses; and
- either in S3 or S4 depending on outcome of review at S2 and whether the pupil intends staying on at school beyond the age of 16.

Future needs

25. The current arrangements for assessment and recording provide for a future needs assessment (FNA) for pupils with a Record between the ages of 14 years and 15 years 3 months so that adequate plans can be made for their transition into adult services. The Beattie Committee Report *Implementing Inclusiveness – Realising Potential* found that the FNA offered a good model for post-school planning. It encompassed early identification of needs, early specialist input and cross-agency planning. However, it also reported that the practice was not always as effective as it should be:

- Parents and young people reported that they did not always have enough information about the options that may be available post-school.
- There was some feeling that preparation for adult services should start at the beginning of the secondary stage and that support should continue until the age of 21 years if necessary.

26. The Committee recommended the development of key worker support for young people who require additional support to make the transition to post school education, training or employment. The key worker would act a single point of contact to support the young people in their contacts with other agencies and advocate on their behalf. Careers service companies in Scotland have been asked to co-ordinate multi-agency Inclusiveness projects to improve assessment and tracking and develop key worker support for vulnerable young people. The Scottish Executive has approved 16 Inclusiveness projects which will be up and running by the end of 2001 with the first 8 projects starting in June and are working to support a further project.

27. The report of the Scottish Executive's Learning Disabilities Review – *The same as you?* also highlighted difficulties with putting the FNA into practice. It found that, while the involvement of other agencies is an essential aspect of assessment, the child and family may have had little previous contact with social services. As part of the FNA, social services must determine if, on leaving school, a young person with a Record is in need of community care services. However, there is no obligation for a social worker to be present at the FNA meeting. Also the FNA recommendations themselves have no legal force once the young person has left school.

28. The Report recommended that a duty be placed on local authorities to identify a responsible person to advise and help the person with learning disabilities and their family to put the FNA into practice. The recommendation suggested that the responsible person could be a Local Area Co-ordinator who could co-ordinate implementation of the Future Needs Assessments. Local Authorities are required to say in their Partnership and Practice Agreements (P.I.P.s) (due at the Scottish Executive at the end of June 2001) how they propose to put Local Area Co-ordinators in place within their Authority. The Executive will review the contents of the P.I.P. agreements once they are submitted.

Questions: Transition points/future needs

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

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

C: Monitoring Progress

29. When used effectively the Record of Needs is an important tool in enabling a child's progress and requirements to be monitored in a structured way throughout the entirety of a pupil's school career. However it is only one possible document a child might have. Others may include a Pre-School to Primary School Transition record, Pupil Progress Report, Personal Learning Plan (currently being piloted in New Community Schools), and an Individualised Educational Programme (IEP).

Individualised Educational Programmes

30. An IEP enables the teacher and others working with the child to set and monitor the achievement of long and short-term targets. It is expected that all children with Records will have an IEP and it can also be used for other children with a wide range of special educational needs. The IEP:

- contains the targets to be achieved by the child/young person;
- enables staff to plan for progression;
- allows staff to monitor the effectiveness of teaching and learning; and
- provides senior management with a tool for monitoring, reviewing and evaluating the effectiveness of provision for special educational needs.

(A Manual of Good Practice in Special Educational Needs. SOEID, 1999)

31. The IEP is generally seen as a useful working document. It is more accessible than the Record as it is written in tangible, concrete terms. It can be reviewed frequently and re-written easily as needed. Parents also find IEPs helpful for tracking their child's progress and can be involved in supporting the programme of work. It has been suggested that the IEP should be more firmly embedded in the statutory assessment and recording process. It could form a strand of the staged process described above. On the other hand, there are concerns that if IEPs were set in a legal framework it would lead to more bureaucracy, reduced targets and work against its current flexibility. One option might be to make the planning process part of a legal framework but not the content. The planning process could include steps like setting up an IEP, reviewing it, and ensuring pupil and parental involvement.

32. Children with special educational needs may also experience assessments and have plans opened by services from other agencies, for example health and social care plans. Parents complain about a lack of continuity. Information is not shared effectively between staff working in schools and also between agencies. Many parents would like to see an acknowledgement of the family's wider needs and better overlap between the work of different agencies. This raises a question as to whether there is a need to rationalise the links between care, health, personal, educational plans and Records. It has been suggested that there should be a "passport" or single plan for a child which would be held by the child but could be shared with health, education and social work staff as necessary.

Question: Monitoring progress

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

D: Involving Parents

33. In its meetings with parents Enable found that most parents supported the principles of the existing legislative arrangements for assessment and recording. They are keen to safeguard a process which helps to identify and meet their child's needs and which gives them some rights to challenge decisions if they are unhappy. They also want a process which brings different agencies together to meet the needs of their child. However, dissatisfaction has been expressed at several levels with current practice.

Information and advice

34. Much of parents' dissatisfaction stems from lack of information and support, and from feeling excluded. They want information not just about how assessment and recording works but about wider aspects of the education system, including teaching and provision of therapy, in order to make sense of what is being offered. Parents express frustration at professional jargon and feel confused by the whole process. This hinders them from making the best contribution to the overall assessment, especially in the early stages.

35. It has been suggested that parents of children with special educational needs from gaelic or black and minority ethnic backgrounds have even poorer access to adequate information about policies and procedures and to support groups. There are very few bilingual psychologists, or other bilingual staff, and over-stretched interpreting services. There is limited availability of translated material. Individual documents such as Records and assessment reports are unlikely to be translated. These parents also complain that professionals have stereotypical low expectations of both them and their children. Their experience is that service providers "treat them all the same" and fail to appreciate or respond to the diversity within ethnic groups and the need for equality of treatment.

36. It has been suggested that a support system is needed to guide parents through the maze and help prepare them for meetings and involvement with the school and the education authority. At present, under the Record of Needs process a parent or young person can have the support of a Named Person. The function of the Named Person will vary from case to case and can involve offering advice about special educational needs, acting in an advocacy role or as a friend or counsellor.

Question: Information and advice

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

Appeals

37. A key feature of the current legislation is that it provides parents with a statutory right of appeal about certain aspects of the assessment and recording process. (See Annex C). However, at present, parents and young persons have no right of appeal in relation to the provision made by the authority (Part V of the Record). Parents are often concerned about the level of additional learning support or therapy provision and these cannot be appealed against. It has been suggested that children and parents should be able to appeal against any part of a Record, including Part V.

38. On the other hand, authorities are often cautious about quantifying resources, especially in relation to medical therapies, over which they have no control, and where clinical judgement may suggest that provision should vary over time. Some authorities may also view the extension of the appeals procedures as being likely to lead to more confrontations with parents.

39. Many parents have stated that they do not feel well-enough informed about the right to appeal, despite the fact that education authorities must provide them with information during the assessment and recording process. Others find the process intimidating, confusing and inaccessible. It is reported that parents in rural areas sometimes feel inhibited by a local appeals process in a small community and would welcome a more independent, external system.

40. Where there is continuing disagreement between parents and authorities, mediation and conciliation could be used before considering a formal appeal. This could be embedded in the authority's procedures or it could involve an independent agency. Pilot mediation projects are currently being tested in five local authority areas by ENQUIRE, the national advice service for special educational needs in Scotland.

41. Once appeals have been lodged it can take some considerable time before a decision is reached. There is a widespread call to simplify and streamline the process. The Education, Culture and Sport Committee SEN Inquiry report has suggested that an independent tribunal system be considered, as exists in England and Wales.

Questions: Appeals

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

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

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

E: Process

42. There a number of other aspects of the current assessment and recording procedures which have raised concerns.

Time-scales

43. The formal recording process calls for educational, psychological and medical assessments. It can sometimes take a considerable time before the whole process is complete and this is a concern to parents who feel that, in the meantime, their child is not receiving the help needed. Some point out that the assessment and recording process sets timescales within which they have to respond but does not set any timescales for the authority. There are calls to bring in a more defined timescale with time limits for both parents and authorities at different points in the process. The Education, Culture and Sport Committee has recommended starting assessment at the earliest possible stage with shorter time limits for the completion of the assessment process.

Question: Timescales

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

Children's views

44. The Standards in Scotland's Schools etc Act 2000 states that an authority shall have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of children or young persons in decisions that significantly affect them, taking account of their age and maturity. The existing arrangements for assessment and recording are not seen as "child-friendly". Children complain that they do not feel involved and that their views are either not asked for or heeded, where they are. Options that might be available are rarely explained to them. Most experience decisions being made for them by parents or professionals. Also, children may not wish to participate in the assessments but they do not have the right to refuse. There is no part of the Record which allows their views to be noted. However, some children have found the assessment and recording process a positive experience. This is especially the case when they have been involved in the process and believe that resources are put in place as a consequence of the Record.

Question: Children's views

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

Sharing information

45. The Record is a confidential document held by the authority. The content may only be disclosed in certain circumstances. Parents have a copy and one must be supplied on request to the Named Person (as named in the Record), an officer of the Scottish Ministers, or the Reporter. In other cases, authorities have discretion to disclose parts of the Record to certain parties on receipt of a written request. This includes teachers - although it is reported that sometimes teachers have no access to the Record - and other staff involved, for example staff of social work services or medical agencies. However, the authority is not allowed to disclose Part VII, the views of the parent or young person.

46. Parents have expressed surprise and frustration that classroom teachers, in particular, and other staff working with their child, do not automatically have access to their child's Record, according to the legislation. They are concerned that information is not shared across agencies more easily. Some staff who submit assessment reports do not see the final Record, if one is opened, and in some cases do not know the outcome of any statutory assessment process.

47. Some parents complain that the content of some Records is vague or poorly written. The medical section comprises only a small part of the Record and medical reports are often summarised. In some instances a full medical report or therapy assessment attached to the Record would be helpful. On the other hand, questions have been raised about whether a medical assessment is required in all cases, especially where a child has specific learning difficulties, e.g. dyslexia. One suggestion was that all educational, medical and other assessments should be attached to the Record so that this fuller information remains available if needed. Some authorities already do this.

Questions: Sharing information

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

Good practice

48. Guidance on the identification, assessment, recording and review of special educational needs is provided by the Scottish Executive Education Department. This guidance is set out in a number of documents including Circular 4/96 on Assessment and Recording, the Manual of Good Practice and Effective Provision for Special Educational Needs (EPSSEN).

49. This guidance has been welcomed and is well-used. However, there are some who feel that the existing guidance is ambiguous in places and that it would be helpful if there were clearer criteria and procedures. These would help to achieve a better quality and consistency of practice across authorities.

50. It has been suggested that Scotland needs a Code of Practice to draw together the various pieces of guidance and to set down national standards for policy and practice. This would include arrangements for effective monitoring of performance and outcomes. It would provide for greater transparency about decision-making, reassurance that the correct steps have been followed and ensure a more consistent quality of practice across the country. On the other hand, there are those who are concerned that a Code would lead to greater bureaucracy, reduction to minimum standards only, and an unnecessarily rigid approach in practice.

Questions: Good practice

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

F: Views and Comments

This document has highlighted a number of concerns that parents, children and professionals have expressed about the current assessment and recording arrangements. If you would like to express your views on these and any other related issues, you can do so in a number of ways:

By e-mail to: senforum@scotland.gsi.gov.uk

Alternatively, you can send written comments to:

Pupil Support and Inclusion Division
Area 3A (North)
Victoria Quay
EDINBURGH
EH6 6QQ

Contact: John Bissett
Tel: 0131 244 0947
Fax: 0131 244 9743

Responses should be submitted by 27 July 2001.

Note: In order to help inform debate on the questions covered by this consultative document, the Department intends to follow its normal practice of making available to the public, on request, copies of the responses received. The Department will assume, therefore, that responses can be made publicly available in this way. If respondents indicate that they wish all, or part, of their reply excluded from this arrangement, its confidentiality will be observed.

Further copies of this document are available from the above address. It can also be downloaded from the publications section on the Scottish Executive website (www.scotland.gov.uk). It can be made available in different formats and languages on request.

Summary of questions

Legislative principles

1. Is there still a need for separate legislation to ensure the provision of additional support when required? If not, what would need to be done to ensure that children's individual educational needs are given appropriate consideration?
2. What functions/strengths of the Record of Needs should be retained and built on?
3. What weaknesses and concerns should be addressed?

Definition/criteria

4. Should the concept of special educational needs be re-defined and, if so, how?
5. Should the criteria for opening a Record of Needs be changed to focus more on the provision being made by the school and, if so, how?

Pre-school

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

Staged assessment

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

Transition points/future needs

8. What arrangements should there be for review in the case of children with significant special educational needs? Should there be a statutory requirement to have these needs reviewed at key transition points through a Record of Needs process, or other system?
9. Should there continue to be a statutory underpinning to the Future Needs Assessment? If so, should this be available to pupils with "additional support needs"?

Monitoring progress

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

Information and advice

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

Appeals

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

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

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

Timescales

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

Children's views

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

Sharing information

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

Good Practice

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

Annex A

Definition of Special Educational Needs

1. The legal definition of special educational needs is set out in section 1(5)(d) of the Education (Scotland) Act 1980.

2. In interpreting the provisions of the 1980 Act:

“Children and young persons have **special educational needs** if they have a learning difficulty which calls for provision for special educational needs to be made for them.

Learning difficulty is said to be present if children and young persons:

a) have significantly greater difficulty in learning than the majority of those of their age; or

b) suffer from a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for those of their age in schools managed by their education authority; or

c) who are under the age of 5 years old and, if provision for special educational needs were not made for them, are or would be likely, when over that age, to have a learning difficulty as defined above.”

3. The 1980 Act does not give any further clarification of the test to be applied in deciding whether or not a child has special educational needs. In the Department’s guidance to education authorities (Circular 4/96), it is suggested that, as a rule of thumb, it should be assumed that children or young persons have “a learning difficulty” if additional arrangements need to be made to enable them properly to access the curriculum.

4. The legislation states that children and young persons are not regarded as having a learning difficulty solely because the language in which they are taught is different from that which has, at any time, been spoken in their home.

5. The needs of very able children and young persons are not specifically referred to in the legislation. Giftedness is not therefore, of itself, regarded as giving rise to special educational needs as defined in the 1980 Act. However, the more able may nevertheless experience learning difficulties of a temporary or continuing nature which give rise to special educational needs.

Annex B

Record of Needs

Sections 60-65 of the Education (Scotland) Act 1980

Section 60 Duty of an education authority to disseminate information as to importance of early discovery of special educational needs and the opportunity for assessment.

Section 61 In order for an education authority to determine if a child has enduring, pronounced, specific or complex special educational needs they must observe and assess the child. Section 61 states that this must include educational, psychological and medical assessments.

Section 62 On the basis of the various assessments and views gathered, the education authority has to decide if a child has pronounced, specific or complex special educational needs which require continuing review and thus whether a Record should be opened. They must write to parents or young persons informing them of the decision and of their right to appeal under section 63.

Section 63 covers the decisions which can be appealed against to the appeal committee.

Section 64 covers appeals which need to be remitted to the Scottish Ministers by the appeal committee.

Section 65 covers appeals to the sheriff about school placements.(see Annex C for information on the appeals process)

Section 65A provision for review of the Record

Section 65B future needs assessment.

Section 65C power to continue Record if child remains at school after he or she ceases to be of school age

Section 65D outlines what can be prescribed in regulations issued by the Scottish Ministers including the form of the Record; the content; procedures regarding keeping, discontinuation, destruction and transfer; and to whom it can be disclosed

Section 65E covers additional rights in relation to placing requests

[Section 65F](#) gives Scottish Ministers the power to make regulations in relation to standards in schools catering for recorded pupils

[Section 65G](#) gives education authorities the power to make arrangements for children with a Record to attend educational establishments outwith the United Kingdom.

Annex C

Appeals process

Parents can appeal to the appeal committee of the education authority against certain decisions as laid out in the following table.

Parents can appeal against	Time limit	Send to	Who deals with it	What they can do next
decision to open or continue Record	28 days	Appeal Committee	The Scottish Ministers	
decision to close or not to open Record	28 days	Appeal Committee	The Scottish Ministers	
Part 3B (summary of impairments)	28 days	Appeal Committee	The Scottish Ministers	
Part 4 (statement of special educational needs)	28 days	Appeal Committee	The Scottish Ministers	
Part 6 (school placement)	28 days	Appeal Committee	Appeal Committee	appeal to Sheriff
refusal of a placing request	28 days	Appeal Committee	Appeal Committee	appeal to Sheriff

Young persons (over school age but not yet 18 years old) have broadly similar rights of appeal. An appeal against the school nominated in the Record can only be made if the parent or young person has first made a placing request to an alternative establishment. Appeals must be lodged with the appeal committee within 28 days of receiving notification of the decision against which the parents or young persons wish to appeal. As noted above, some appeals are referred by the appeal committee to the Scottish Ministers. It is the appeal committee's responsibility to inform parents and young persons of decisions in relation to appeals and of their further right to appeal to the sheriff, where appropriate. Sheriffs can only hear appeals in relation to school placement.

Annex D

EPSEN APPROACH TO ASSESSMENT AND RECORDING

The Steps in identifying and assessing pupils' special educational needs at the primary stage

STEP 1 Identification of difficulties in learning: Through the procedures normally used in the classroom, the class teacher assesses individuals' learning difficulties. Where relevant, reference is made to pre-school reports and to information given by parents. The teacher takes action to overcome the learning difficulties within a defined period, generally by adjusting the class programme. The teacher reassesses, making a record of the problems faced by individuals, and their learning strengths.

STEP 2 Referral to learning support co-ordinator: The class teacher consults with the learning support co-ordinator and together they plan, record and implement courses of action for those pupils who have continuing difficulties. Parents are informed and consulted. Additional assistance may be given to the individual by promoted staff, another teacher, or the learning support specialist attached to or on the staff of the school. Arrangements are made to review progress. At this point, the school has set up learning support arrangements which assist the majority of the pupils with special educational needs to make progress. Their progress and the nature of provision are monitored and necessary adjustments are made.

STEP 3 Referral to support services outwith the school: Where a pupil's special educational needs are not being met within the resources of the school, the learning support co-ordinator and class teacher consult with the headteacher. Where it is decided that further assistance is required, the headteacher may first seek advice from an adviser or learning support specialist from outwith the school. The next step is to seek parents' permission to refer the child to the psychological service. In good practice referral is in writing and specifies (a) the individual's strengths, and any needs which have been identified; (b) the parents' views; (c) actions taken by the school; and (d) indications of the assistance required.

STEP 4 Consideration of the pupil's needs by the educational psychologist: The educational psychologist meets the parents and assesses the pupil in the school and in other contexts as required. A course of action is recommended in writing with, where appropriate, advice on the content of the curriculum and learning and teaching strategies. Other members of support services may also assess the pupil at this stage and make recommendations. Where action is some form of educational programme, arrangements are made for review and evaluation, in consultation with parents and school staff. No further steps are required for many pupils but the support services and school, in consultation with parents, continue the process of monitoring progress and adjusting provision in line with needs.

STEP 5 Consideration is given to opening a Record of Needs: The headteacher, parents and, normally, the educational psychologist consider whether a Record of Needs should be opened. If there is agreement, the directorate is informed and statutory procedures are initiated. School staff prepare a report on their view of the child's strengths and needs.

STEP 6 Medical examination and psychological assessment: The child is assessed. Parents have the right to be present at the medical examination and should be invited to discussions with the educational psychologist. The medical officer and the psychologist prepare reports. Staff in school, meantime, continue to give the pupil assistance.

STEP 7 Meeting to discuss opening of Record of Needs: The professionals, including representatives of school staff, meet with parents to discuss assessments. If the decision is that a Record of Needs should be opened, then the pupil's special educational needs are defined and the provision required to meet these needs is specified. Learning and teaching targets should be set and the date of the review agreed. The drafted terms are sent to the directorate for consideration and action. School staff prepare or update their individualised educational programme for the pupil.

STEP 8 Opening the Record of Needs: The Record is drafted and a copy is sent to parents for approval. Once approved it is 'opened' and copies are sent to parents, school and psychological service. Parents may appeal against the decisions to open or not to open a Record, against the terms of the Record and against proposed placement.

