

Consultation Response



Scottish Government consultation on Consultation on the Education (Additional Support for Learning) (Scotland) Act 2004 – Amendment Bill 2008.

Children in Scotland welcomes the opportunity to respond to the Scottish Government consultation on Consultation on the Education (Additional Support for Learning) (Scotland) Act 2004 – Amendment Bill 2008.

Children in Scotland has collaborated with Enquire and Resolve to produce this response. Enquire is the Scottish Government-funded national advisory service on additional support for learning managed by Children in Scotland. Enquire has contributed themes identified in enquiries to the helpline from parents, support workers and practitioners who have contacted the service following the enactment of the legislation. Resolve: ASL is the national mediation service within Children in Scotland that works with numerous local authorities through service level agreements.

Some of Children in Scotland's 450+ members also attended the Government's ASL consultation events held throughout Scotland. These provided an opportunity for individuals and organisations to comment on the technical and specific questions contained in the consultation document. As invited in the Scottish Government's consultation document, our response will largely focus on issues of general and broad concern that have not -- but could and we believe should -- be addressed as part of the amended ASL legislation.

This submission is made as a constructive contribution to the further and better development of a very positive piece of Scottish legislation. The Scottish Government and local government officials have made a significant effort to address the provision of additional support for learning in Scotland and improve the learning experience for children needing extra help across Scotland. It is the case, however, that more can and should be done to continuously improve the understanding and implementation of this vital Act.

Key points to be addressed in the ASL legislation, regulations and supporting code of practice

- **Amend the Act to include a duty to actively promote easily understandable information about ASL among parents/carers and pupils**
- **Provide an accessibility standard within the duty to publish and promote information**
- **Require relevant bodies to amend initial training and ongoing CPD to ensure staff members working with children and young people in health, education, social work, early years and children's services fully understand their roles and responsibilities in implementing this Act**

- **Make *meaningful* consultation with children and young people by schools and local education authorities an HMIE inspection criterion**
- **Devise and apply a quality-approved standard to mediation services in Scotland based on ASN Mediation Service Provider Group quality standards**
- **Specify that generalist advice and conciliation services, the use of spot purchasing or mediation services from other (potentially inappropriate) sectors, are not in compliance with the duty to provide independent mediation services**
- **Amend the Act to include a duty to inform parents of their right to request mediation before tribunals begin**
- **The right currently contained in the Act, to have a supporter or advocate present should be accompanied by the duty upon relevant public bodies to provide these services**
- **Amend the Act to strengthen the duties to promote and reward compliance with inter-agency working**
- **The responsibility for meeting the costs of inter-agency services outside of the education authority must be resolved in a clear and fair manner (within the context of wider host/home responsibilities for the well-being of children and young people)**
- **Require national government and local government to collect, collate and share comparable data on the provision of additional support for learning in each local authority**

1. Awareness-raising of ASL legislation with practitioners, parents and pupils

1.1 The ASL Act contains the duty to publish information. However, this has not yet resulted in ensuring that all relevant practitioners, parents and pupils are adequately informed about the ASL Act. The duty on local authorities to make information about the ASL Act available to children, young people and their families needs to be tightened and strengthened. More detail on the expected level of awareness raising needs to be incorporated into the text of the Act, for example, by including a new duty to actively promote easily understandable published information. This is particularly important in relation to independent mediation services and dispute resolution as parents, carers and young people are often unaware of local/national services.

1.2 It also should be made explicit in the legislation, regulations and code of practice that parents/carers of young children (birth to school age) – and early years service providers -- are a priority audience for ASL information. Because the Act places primary responsibility upon education authorities (whose normal responsibilities do not include children below pre-school age or non-statutory service providers) special emphasis must be placed in regulations and the code of practice on the fact that the ASL Act applies to all children with additional support needs from birth onwards.

1.3 The information provided by local authorities must be accessible. An accessibility standard that includes plain language, relevant translations and an accessibility plan to address any physical barriers to accessing information needs to be developed and applied to this duty through the code of practice. For example, it is sometimes difficult for parents/carers to speak with the education authority's 'point of contact' and some

published information includes inaccurate and inappropriate contact details. Similarly, the use of technical language, professional jargon and acronyms can keep the intended beneficiaries from understanding and acting upon their (or their children's) rights.

1.4 The question of implementation and enforcement of provisions in the Act needs to be answered in relation to information. What happens if local authorities do not publish or promote the necessary information or publish incomplete information? Rewarding best practice is a supportive means of enforcement that benefits the children in these areas and encourages underperforming local authorities to improve their services.

1.5 It is often assumed that professionals are as well-informed as policy makers with regards to the ASL Act and its implementation. Experience to date has demonstrated that, in fact, they can lack both depth and breadth of knowledge. More emphasis should be put on the ongoing need to provide professionals (including early years practitioners) with access to information and training to successfully and fully implement the Act. The Government needs to work with the relevant bodies to amend initial training to equip staff to meet their legal obligations under the ASL Act. This is particularly, but not exclusively, relevant to teacher training.

2. Consulting children and young people

2.1 The duty to consult children and young people included in the Act reflects Article 12 of the UN Convention on the Rights of the Child. This was warmly welcomed in 2004 but has not been given enough weight by schools and local authorities. Children in Scotland is aware of, and has been involved in, two best practice examples: Access All Areas, conducted with the Scottish Borders; 'What I Think Matters' in North Ayrshire. The Government should provide an incentive to fulfil this duty to hear and heed children and young people in **meaningful** ways and/or make this legal duty an HMIE inspection criterion.

3. Mediation

3.1 Mediation has been used successfully in many situations since the introduction of the ASL Act and is becoming embedded into good practice in resolving disagreements in some local authorities. The benefits of using mediation for all the parties involved include: speedier resolution; lower costs to parties, financially and emotionally; better access for the child to be involved; the opportunity to repair parent-school relationships; enhanced communication and practical robust solutions in the child's best interest. Given these benefits, it makes sense for local authorities and schools – as well as parents -- to promote and make full use of their rights to make use of the mediation process. Local authorities and schools will therefore be better placed to work with parents to reach a satisfactory solution in the best interests of the child in an expeditious manner.

3.2 There are, however, a few local authorities who have not engaged with independent mediation providers; thereby leaving parents unable to access their legal rights within the Act in some parts of Scotland. These authorities may provide generalist advice and conciliation services, use spot purchasing and/or mediation services from other (potentially inappropriate) sectors. These provisions are and should be treated as inadequate substitutes for an independent ASL specific mediation service. This is

symptomatic of a wider lack of differentiation between staff roles in parent liaison, complaints, dispute resolution and even mediation. Mediation must be clearly independent for parents/carers/young people to be able to exercise their rights and to trust the process.

3.3 While the Act has introduced the duty to provide mediation, there is no system to monitor mediation services. Local authorities need to be confident in purchasing quality and appropriate mediation services and are seeking guidance in the form of national endorsement of mediation service providers. If authorities are confident in their providers, then they will be more likely to inform the parents and young people regarding their rights and options and also more likely to enter into the process when and if necessary. A commitment to high quality services through a quality approved standard would improve service provision and ensure that local authorities do not use inappropriate and under qualified mediation services. For example, using housing mediators (who have no experience of working with children and young people's issues and little experience with the ASL Act) should not be condoned. An example of the appropriate standards for additional support needs mediation have been produced by the national ASN Mediation Service Providers Group that could as a benchmark by the central and local government.

3.4 A duty to inform and offer mediation, particularly before tribunals begin, could act as further encouragement to resolve disagreements at earlier stage and reinforce the importance of accessing mediation as early as possible. This benefits parents and local authorities financially and emotionally and reduces the length of the dispute in the best interests of the child. Parents must be made aware at every opportunity of all possible avenues of resolution.

4. Tribunal

4.1 The tribunal system has proven to be a costly, lengthy and difficult system to use and access. Parents can find the system a difficult one for a number of reasons including;

- The system itself is inaccessible for laymen
- The use of professional bodies such as legal representatives or those who have been trained in law, combined with the complexity of the processes make tribunals an intimidating experience that is not in the spirit of the ASL Act
- Inability to pay for this representation can put parents at a disadvantage (perceived or otherwise), and acts as a barrier to their involvement
- The timeframe is incompatible with the needs and time perceptions of children

5. Support for parents

5.1 The Act gives parents the right to have a supporter or an advocate present but there is no duty included in the legislation to provide those services. In effect, this makes the right to have a supporter or an advocate present extremely difficult to access, as service provision in this area is very sparse in Scotland. These services are unlikely to develop, grow and meet the needs of parents unless they receive adequate financial support through appropriate funding streams. The right to have a supporter or

advocate present should therefore be accompanied by the duty upon relevant public bodies to provide or pay for these services. High quality support to parents/carers should make the processes contained within the Act less daunting and would hopefully lead to resolutions that focus on the best interests of the child.

Children in Scotland operated two government-funded, but operationally independent parent support services during the first year of the ASL Act's implementation. These personalised, case-by-case services in the Grampian and Forth Valley regions filled the significant gap between the basic advice and signposting provided by Enquire and the dispute resolution processes in the Act. Parents/carers – as well as children and young people themselves -- want, need and appreciate independent assistance to help them better understand how the general terms of the ASL Act could apply in their specific circumstances; and, how to present their views, ideas and wishes in a manner that will be heard and respected by professionals/practitioners.

5.2 Parents report that they feel they cannot complain about the level of provision if their child does not have a formal learning or support plan such as an IEP or CSP. The Government needs to consider why CSPs are viewed as a passport to services and monitor the number of complaints that are raised with local authorities regarding provision.

6. Independent Advocacy for Looked After Children

6.1 Looked After Children with additional support needs are in a vulnerable position in relation to the provisions of the ASL Act as the local authority fulfils the dual role of service provider and parent. Independent advocates therefore have a necessary role to play in promoting, supporting and representing children and their views, when requesting or contesting additional support provisions. It is important to note that independent advocates put forward children and young people's views without reference to, or judgements on, 'their best interest'. This is different to the role played by professionals and parents who act in their own determination of a child's 'best interest'¹.

7. Interagency working

7.1 The Act needs to strengthen the duties and reward compliance with inter-agency working. The accountability and responsibility for meeting these duties needs to be meaningfully shared - particularly in relation to health, social work, mental health and education.

7.2 The responsibility for meeting the costs of services outside of the education authority must be teased out in the wider host/home discussions. The worry is that by making a host fully responsible for the funding of all services relating to the additional support needs of the child, local authorities will be discouraged from accepting placements. It may be best to share this responsibility but simplicity of the funding agreement is key if children are not to experience unacceptable delays in receiving that support and education.

¹ 'Advocacy for Children and Young People in Scotland' Advocacy Safeguards Agency

8. Non-compliance with the Act

8.1 Implementing the ASL Act fully and successfully is a long-term goal that needs ongoing and constructive support from all sectors. However, non-compliance denies parents and children their rights under the law and must be taken seriously. The support and encouragement of rewarding good practice that is apparent in the ASL field will encourage other authorities in a positive way but the government must also explore punitive 'last resort' measures for persistent non-compliance.

8.2 Repercussions within the law, including fines and compensation should be considered as a last resort measure for persistent non-compliance with the law.

9. Keeping track of progress

9.1 The Government must have accurate and useful baseline data if it is to monitor the local implementation of the Act. Comparable statistics are an essential part of understanding the impact of the Act in each local authority. The following statistics should be compiled locally and held centrally;

- The number of children and young people with identified additional support needs.
- The number of children and young people for whom a request to determine whether they have additional support needs has been turned down
- The number of children and young people with additional support needs in mainstream schools
- The number of children and young people with additional support needs in special schools
- The number of parents contesting local government decisions in relation to their child's additional support needs
- The number of parents making use of mediation services

Questions posed by the consultation

Question 1

In practice the ASNTS would seem a fairer way to consider placing requests where a CSP is involved or being considered, as it is wholly independent of the local authority. Clarification would be needed as to whether the ASNTS replaces the Education Appeals Committee system wholly for all situations where a CSP is involved and whether/how their decision could be appealed.

Question 2

Problems - what would happen to a placing request appeal if a decision is made that a CSP is not appropriate after a placing request appeal has been referred to the ASNTS. Would the decision go back to Education Appeals Committee? This would be complicated for parents and they may be unhappy about a placing request decision being turned back over to education authority officials.

Question 3

Yes.

Question 5

Yes.

Question 6

This is straightforward unless the need for mediation/dispute resolution relates to home authorities responsibility to 'oversee' child's CSP.

Q7 See answer above.

Question 8

Yes, it would simplify the process. However would this be straightforward for a local authority where different processes/criteria have been developed - which in practice it has.

It seems logical that the host authority becomes solely responsible for a CSP when they become responsible for a child's education. However, is immediate review of the CSP necessary? When a child *moves* authority, the new authority assumes responsibility immediately and *may* review CSP immediately but doesn't have to – it could be the same in this situation? Also, the review is dependent on the home authority transferring the CSP to the host authority and there is a need to place a requirement on the home authority to transfer it within a certain timescale. The Act should be flexible enough to allow professionals to co-ordinate the CSP review with, for example, a care plan review or rapid assessment arrangements for Looked After or Gypsy/Traveller children. Also, are there any risks for Looked After Children if their home local authority and 'corporate parent' is no longer responsible for their CSP?

Q9: Yes but see answer above.

Q10: Yes to both questions.

Question 13

What would happen if a parent told their story to the press after a Tribunal imposed a reporting restriction? Would they be in breach of the restriction and committing a criminal offence? If so, how can we make sure parents understand the restrictions and the implications of breaching them?

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies, services and other provisions are of the highest possible quality and are able to meet the needs

of a diverse society. Children in Scotland represents over 450 members, including all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People; the National Children's Voluntary Forum; the National Early Years Forum, the Rural Advisory Group and the Additional Support Needs Network. Children in Scotland hosts Enquire, the national advice service for additional support for learning.

Enquire is the national advice and information service on additional support for learning. Enquire provides an independent additional support for learning helpline, an outreach service, events, publications for a range of different audiences and a children and young people's service that includes an interactive website. Enquire is managed by Children in Scotland and funded by the Scottish Government.

Resolve:ASL is the National Mediation Service for Local Authorities in Scotland. Based within Children in Scotland, Resolve:ASL is a service offering local authorities a fully independent means to resolve disputes with parent/carers of children and young people with additional support needs.

For further information please contact Dr Jonathan Sher, the Director of Policy, Research and Practice Development at Children in Scotland on jsheer@childreninscotland.org.uk

