

Additional Support for Learning Bill 2009: Stage 3 amendments

**Children in Scotland Parliamentary Briefing (REVISED)
May 2009**

Key messages for MSPs:

- 1. The Scottish Parliament should pass the ASL Bill 2009.** Overall, it represents a step forward by correcting several imperfections in the original ASL Act and by clarifying the intent of the Scottish Parliament in the aftermath of court decisions. The Bill has been improved by most of the amendments agreed thus far.
- 2. The negative impacts of Section 5C of the Bill – listing specific groups of children and young people for preferential consideration – should be reduced by passing Amendments 1, 2, 3, 3A and 3B.** Section 5C represents a big step *backwards* from the inclusive ethos and intent of the ASL Act 2004, which promised equal consideration for **all** children and young people needing additional support for learning “**for whatever reason.**” These amendments will improve this Bill.
- 3. The Scottish Parliament should require sufficient data about ASL provision and sufficient *evidence about ASL outcomes* to ensure transparency and accountability in the implementation of this law.** No provision of the 2004 Act, the 2009 Bill or the current amendments will *fully* accomplish this vital task.

Recommendations on Stage 3 amendments

In addition to agreeing with the amendments clarifying or improving language without changing the intention . . .

Children in Scotland SUPPORTS:

✓ **Amendment 18 (Advocacy services)**

This amendment partially corrects a weakness in the original ASL Act. Young people or parents would have access to advocacy services (free of charge) when appearing before the Tribunal – not just a theoretical ‘right’ to such advocacy. This is one way of beginning to level the playing field at Tribunal proceedings for those without the financial resources to hire an advocate.

However, *advocacy* in this narrow sense is not the same as intensive parental *support*. This amendment does not overcome the other weakness of the original ASL Act – namely, its failure to link its theoretical ‘right to support’ for parents and young people with a duty upon any level of government to pay for such support. This is one of the consequences of only debating ASL Bill amendments having *de minimis cost* implications.

✓ **Amendment 21 (Named information sources)**

There should be both a recommended list from Scottish Ministers of national sources (e.g. Enquire) of information, assistance, support and advocacy and a recommended, non-duplicative list of such sources (including local and regional ones) offered by local authorities. The latter duty is in the original ASL Act. Parents and young people benefit from being aware of multiple sources of help from which they can choose.

✓ **Amendment 13 (Views of the child)**

This amendment -- encouraged by Scotland’s Commissioner for Children and Young People and brought forward by the Minister – corrects a weakness in the original ASL Act. Consulting with a child or young person about a decision important to her/his life is in keeping with the UN Convention of the Rights of the Child, as well as several Scottish laws and policies (including Section 2(2) of the Standards in Scotland’s Schools Act 2000). Such consultations must be accomplished in a manner appropriate to each child’s maturity/capacity.

Children in Scotland SUPPORTS:

✓ Amendments 1, 2, 3, 3A & 3B (Listed groups in 5C)

While we fully support much better implementation of the ASL Act in relation to all of the specific groups of children and young people listed within Section 5C, the whole idea of designating certain groups for special consideration is very likely to cause more harm than good. That is why we originally opposed this entire section when it was considered at Stage 2.

The original ASL Act's crowning achievement was its explicit recognition that far more children and young people than those covered by previous legislation need, deserve and have a right to additional support for learning (short or long term) "for whatever reason". It built upon the solid foundation of the Standards in Schools Act 2000, especially S.1 and S.2(1)

The basic principles of inclusivity and equality of both Acts would be undermined by Section 5C. It would inevitably -- albeit unintentionally -- create a pecking order of 'first among equals' within Scotland's population of children and young people who need additional support for learning. Section 5C also is a step backwards by *de facto* turning the Coordinated Support Plan into the primary 'passport' to services (i.e., into a reincarnation of the former Record of Needs system). The original ASL Act was right to move beyond the old system.

Recreating an ASL hierarchy of 'worthiness' -- in which only certain groups of children having CSPs really 'count' when decisions are made about who gets what ASL services -- would be a bad idea in principle at any time. During a recession, however, it is likely to mean that children from non-designated groups -- and those without CSPs -- are likely to be served last and least. Such an outcome would be wholly against the spirit and intent of the original ASL Act.

However, given that entirely eliminating Section 5C is not an option at Stage 3 (for procedural reasons), Amendments 1, 2, 3, 3A, and 3B deserve support, as they will mitigate the problems from Section 5C.

Context

We welcome the ASL Bill and strongly encourage the Scottish Parliament to pass it at Stage 3. We congratulate the Scottish Government for taking legislative action to effectively address a variety of unwelcome, unintended consequences of the original 2004 Act – and for being willing to bring forward a variety of additional amendments and the promise of helpful Ministerial actions during the course of the Bill’s consideration.

We also congratulate the opposition parties in the Parliament for raising important issues and continuing to move forward in support of this Bill despite temptations to oppose it. The original Additional Support for Learning Act 2004 – which has enjoyed strong cross-party support -- remains one of the great achievements of the Scottish Parliament’s first decade.

Whilst applauding the improvements contained within the current Bill, we remain disappointed about the absence of equally important amendments that should have been considered and agreed.

The first years of putting the ASL Act into practice show that its intended benefits have not yet been fully achieved throughout Scotland. Some of the changes needed to keep the promises made in the original ASL legislation require additional funding from either national or local sources. The absence of a financial resolution meant that MSPs have not been permitted to formally consider any amendments having more than negligible cost implications.

For example, this financial barrier eliminated the possibility of any fundamental correction of the ASL Act’s weakness in terms of requiring systematic data and evidence gathering. Effectively monitoring implementation of the ASL Act across Scotland cannot occur without a national standard and nationwide consistency in data collection, analysis and reporting. Similarly, there is no chance of implementing ‘evidence-based policy and practice’ in the absence of adequate evidence.

It takes money to find out whether the money already invested in additional support for learning really is producing the *outcomes* for children and young people that everyone wants to see delivered. Spending money in that area actually ends up saving money.

Conclusion

Tens of thousands of children and young people with ASL needs are being helped right now by thousands of dedicated, highly competent professionals in schools and local authorities across Scotland. They also benefit from the help provided by many family members and community groups.

The ASL Act 2004 was aspirational and visionary legislation that made real the important principle established in S.2(1) of the Standards in Scotland's Schools Act 2000 that: . . . *it shall be the duty of the authority 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.*

By affirming the right to additional support for learning to **all** children and young people throughout Scotland who need extra help, the ASL Act created a high standard and a model for other nations. Its universal approach to education rights – and commitment to social justice -- remain its great strengths.

That inclusive ASL vision remains exactly right. Delivering on its promises continues to be the fundamental challenge of the ASL Act.

Passing the ASL Bill 2009 will increase the likelihood of improved ASL implementation. Although far from perfect, the Additional Support for Learning Bill 2009 still offers MSPs the opportunity to make a terrific piece of Scottish legislation even better.

MSPs and parliamentary staff members with questions or requests for additional information are welcome to contact: Dr Jonathan Sher, Director of Research, Policy and Programmes at 0131 222 2418 or jsher@childreninscotland.org.uk

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