

Necessary but not sufficient: How to improve the *Additional Support for Learning Bill 2009*

Children in Scotland Parliamentary Briefing
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Key messages for MSPs:

1. The Scottish Government's proposed amendments to the *(Education) Additional Support for Learning Act (Scotland) 2004* are sound, helpful and needed.
2. However, making **only** these amendments will neither solve the problems, nor unlock the potential of this excellent and distinctively Scottish legislation. The Scottish Government's proposed amendments are too narrow and limited to ensure that the good intentions of the ASL Act are understood by its intended beneficiaries and honoured in practice by the relevant authorities.
3. Children in Scotland encourages the Scottish Parliament to include **several other amendments that are as important as those proposed by the Scottish Government**. Doing so will mean that the parental rights created by the ASL Act will have more meaning and value; the Act's duties upon public bodies will be implemented more effectively and consistently (reducing the current 'post code lottery' in ASL services); and more children and young people actually will receive the additional support for learning they need and deserve.

What are the key elements of the Scottish Government's proposed amendments?

The Scottish Government has proposed thirteen significant (albeit largely technical) amendments to resolve problems that have become apparent in the first years of implementation. These include altering the legislation in terms of:

- *'Placing requests'*: to anticipate and resolve conflicts over requests for a child to be placed in a particular school.
- *Mediation and dispute resolution*: by clarifying responsibilities around services to resolve conflicts.
- *Review of Co-ordinated Support Plans*: to make it clear who is responsible for reviewing CSPs.
- *Additional Support Needs Tribunal System procedures*: to allow tribunals to review their own decisions where necessary.

As noted earlier, Children in Scotland agrees with, and supports, these amendments. More recently, the Minister has suggested that a few other possible amendments may be forthcoming. However, we think that the Scottish Government's proposals remain too modest and too narrow to accomplish what is known to be needed (and possible) right now.

Children in Scotland recommends that the Scottish Parliament develop additional amendments that will:

Transform *potential* beneficiaries into *real* beneficiaries of the ASL Act.

- Without much more robust, and easily-understandable information sharing, only the most confident and well-informed mothers/father/carers and pupils will know about their rights under the ASL Act and will request and pursue additional support for learning services and assistance.
- Enquire (the Scottish Government funded helpline, website and national ASL advisory service managed by Children in Scotland) should continue to play a central role in raising awareness and providing basic ASL information.
- However, the major obstacle has been passivity or resistance to 'getting the word out' to parents and pupils by schools and local authorities. The ASL Act's current legal duty upon authorities to provide information should be strengthened legislatively, so that schools and local authorities know that they must become more active in informing parents/carers and pupils fully about their ASL rights and the ASL help to which they are entitled.
- The ASL Act should be amended to explicitly add an inclusive definition of 'parents' that encompasses not only biological mothers and fathers, but also kinship carers, foster parents, legal guardians and the other adults who are *de facto* raising children and young people across Scotland. This is in line with the new UK-wide Gender Equality Duty, as well as good practice.

Fill the gap for parents and pupils between a basic knowledge of the ASL Act and their ability to effectively secure the additional support for learning they really need in their specific circumstances.

- The current ASL Act created the right to support and advocacy, but did not create an accompanying duty upon education authorities to provide (or pay for) *independent* support and advocacy services. Experience with ASL Act implementation has demonstrated the hollowness of a 'right' that cannot be acted upon in meaningful ways. It also has inadvertently reinforced inequality, as well-educated, well-connected and well-heeled individuals can secure support and advocacy that remain beyond the reach of ordinary citizens.
- Specifically, the ASL Act should be amended to separate the right to 'support' from the right to 'advocacy'. In practice, 'support' is about helping parents (broadly defined) and pupils to understand exactly how the ASL Act applies in their particular case and to gain the knowledge, skills and confidence to effectively request and secure the additional support for learning needed. This level of support significantly exceeds Enquire's current remit and there is no other national service in place to help parents and pupils handle specific, complex cases from start to finish. There have been successful local experiences with providing such support in Scotland. What is needed now is an amendment to the ASL Act that couples the right to support with a new duty upon government to provide or fund it. Getting the support side right from the start will avoid conflicts and legal costs.

Ensure that when disagreements arise, children, young people and their parents/carers can obtain a quick and fair resolution.

- It is to everyone's advantage – and in the best interests of the children and young people – to find and be able to access the fastest, simplest and most amicable way of solving problems around ASL services.
- It is good that an ASL Tribunal was created, but the Tribunal should be viewed as the *last resort* for a small number of pupils with ASL needs who are eligible, *not as the first course of action*. Mediation should be more visible, supported, monitored and used to address disagreements.
- From operating Resolve: ASL for the past few years, it has become clear to Children in Scotland that: a) the original ASL Act was right to couple the right to mediation with the legal duty to provide or fund it; b) there should be an amendment that strengthens right to, and duty upon government to fund, independent, ASL-specific mediation services. This should include adopting the national quality standards recently produced by the ASN Mediation Providers Group.

- There also should be an amendment coupling the existing right to advocacy with a new duty for government to finance independent ASL advocacy on behalf of children, young people and parents/carers to pursue action leading toward the ASL Tribunal. Such advocacy is important, especially when support and mediation have been tried, but have not succeeded.

Improve consultation with children and young people, as well as with their mothers/fathers/carers.

- Under the provisions of the *Standards in Scotland's Schools Act 2000* and the *UN Convention on the Rights of the Child*, pupils have the right to be involved in major decisions about their own education and wellbeing. The lack of consistent, meaningful consultation with, and participation of, parents and pupils was noted in the recent HMIE review of the ASL Act.
- Children in Scotland's major consultation/research project (commissioned by North Ayrshire Educational Services) elicited responses from nearly 1300 parents and pupils in this one authority area. The resulting publication – *What North Ayrshire's Pupils and Parents Told Us About Additional Support for Learning* -- revealed that the major source of discontent was in communication and engagement with service providers and officials (rather than with the quality of ASL services).
- The ASL Act would become even better with the addition of an amendment placing a new duty upon government to consult routinely and meaningfully with (and actively encourage participation in decision making by) parents and pupils around ASL policy and practice. 'Meaningful' is the key word here. It should be noted that superficial, 'tick box' consultation and involvement of parents and pupils tend to breed only cynicism.

Make real the ASL rights of all young children and school leavers.

- The Scottish Parliament created the original ASL Act as *education* legislation (not as a *children's* act), which meant that control over implementation has been vested in education authorities. Not surprisingly, such authorities tend to be most comfortable and competent in dealing with the children and young people within the education system. Those outwith their system – because they are too young to be enrolled in authority-operated pre-schools or because they are school leavers (or in secure accommodation or travellers or home schooled) – tend to be overlooked. However, the ASL Act was intended to apply to (and have benefits for) **all** children and young people in Scotland who need additional support for learning.

- There is widespread acknowledgement of the great importance of early development and early intervention (recently enshrined in the Scottish Government/CoSLA *Early Years Framework*). Yet, ASL provision from birth to primary school age is too often inappropriate or inadequate for young children needing additional support for early learning (if not absent altogether). No one benefits from children arriving at primary school far behind their peers – or having had their particular needs unrecognised and unaddressed throughout early childhood.
- One or more amendments to the ASL Act are needed to make explicit the ASL rights of young children and their parents, as well as to create new duties upon government to ensure that these rights are known and acted upon effectively across Scotland. This should include a duty for education authorities (especially primary schools) to communicate with all early years providers serving children with ASL needs so that what *has* been learnt and done about a child’s progress, learning and on-going ASL needs is not lost. Good planning for the transition into education authority schools depends upon effective planning before children arrive at the gate.
- The fact that some young children participate in non-public childcare, nurseries, pre-schools or other early years services (since equivalent public provision does not exist in some areas) should **not** deprive them or their parents of their ASL rights or relieve governments of their ASL duties.
- Similarly, at the other end of the education spectrum, *the ASL Act should be amended to better meet the transition needs of young people with ASL needs when they leave school*. Specifically, the Act should be amended to strengthen the duty upon education authorities to plan adequately (and early enough) for young people who will be leaving school before the age of 18. It also should make explicit the duty of government to help young people aged 18 or older in meeting their additional support for learning needs if they continue to be enrolled in school or in further or higher education programmes.

Collect better data about ASL provision, with which to make evidence-based decisions.

- Data on ASL eligibility, access, provision and outcomes are patchy and inadequate. The transition to new data systems has not been smooth.
- For all of the current rhetoric about ‘evidence-based’ policy-making and implementation, there appears to be remarkably little evidence (systematic data) upon which to make policy or change practice in the ASL arena. The ASL Act should be amended to place new duties upon government for the collection, analysis and reporting of ASL data.

Context

The ASL Act is an excellent and important piece of legislation that has already done much good by giving priority to the provision of additional support for learning. Tens of thousands of children and young people with ASL needs are being helped right now by thousands of dedicated, highly competent professionals, as well as by many family members and community groups.

The original ASL Act is an aspirational and visionary piece of legislation. By extending rights to, and eligibility for, additional support for learning to all children and young people anywhere in Scotland who need extra help with their learning, it created a high standard that has not yet been fully met.

In particular, it sought to reach out to children and young people (as well as their parents) who face obstacles to success in school for reasons (short or long term) that go far beyond those captured under the old definition of 'special education needs'. The Scottish vision of 'additional support for learning' still covers physical conditions and behavioural difficulties, but also includes a range of other personal obstacles to success in school –including limited English, being a young carer, bullying, depression, living in secure accommodation, interrupted schooling for Gypsy and traveller children, substance abuse or family problems. The ASL Act covers **any** circumstance that impedes a child from succeeding at school.

That laudable intention remains the great strength of the ASL Act. The vision was and remains exactly right. Delivering on that promise to help **all** children who need additional support for learning (whatever their reasons or circumstances) continues to be the great challenge for the ASL Act.

To date, the number of children officially receiving services and support under the ASL Act has risen modestly (from 5.1% to 5.6% of all students - an increase of approximately 2000 pupils nationwide). This is far below the number of new beneficiaries originally anticipated.

Nonetheless, if all that has been learned since implementation began is reflected in an amended ASL Act, in the forthcoming revised Code of Practice – and, of course, in what actually happens day-by-day across our nation – then tens of thousands more children and young people stand to benefit greatly. If they benefit, then so will Scottish society and Scotland's economy.

While a revised Code of Practice will aid implementation, the changes proposed by Children in Scotland are fundamental to the success of Scotland's unique vision of additional support for learning. Such improvements to the ASL Act are best addressed through legislative change. In particular, creating statutory duties for relevant actors will send the strongest possible message about the priority that should be given to transforming the words on paper into actions that help parents and pupils on a daily basis.

Anticipated outcomes

What would happen as a result of turning this briefing's recommendations into amendments to the ASL Act? The following major outcomes are likely to occur:

Many more parents and pupils will understand their rights under the ASL Act - and they will know how to access the additional support for learning required to succeed in school.

The number of pupils actually receiving additional support for learning will increase significantly – and the levels of education attainment and academic achievement will rise accordingly.

Much of the current frustration, disappointment and conflict around ASL provision will be eliminated – and the conflicts that do remain are more likely to be satisfactorily settled more quickly, less expensively and without having to resort to the courts or the ASL Tribunal. All parents/carers across the nation would be able to access their right to support, advocacy and mediation in a fair and equal manner.

Communication among parents, pupils and professionals will improve – and better decisions will be made because the intended beneficiaries will be more involved and respected in the ASL Act's implementation process.

The ASL Act will become more valuable to young children and to older students, whether or not they are part of the formal state education system – and transitions into, and from, school will be much improved.

The evidence base and data systems about additional support for learning will be more comprehensive and useful – which, in turn, will enable smarter policy decisions and wiser resource allocations.

Conclusion

Some of the changes recommended in this Briefing will require investment from the Government in Scotland. Several will generate financial savings for the public purse. ALL will improve the educational experiences of the most vulnerable children and young people in Scotland and, thereby, improve their outcomes and generate considerable societal rewards.

Children in Scotland encourages the Scottish Parliament to seize this historic opportunity to learn from the initial years of ASL implementation and to reflect that knowledge in a set of amendments that will honour the ASL Act's original excellent intentions. By increasing the likelihood of widespread improvements in ASL implementation, MSPs have a great opportunity to make a terrific piece of Scottish legislation even better.

Further information

The Scottish Government's proposed amendments, and consultation responses from a range of organizations and individuals:

<http://www.scotland.gov.uk/Topics/Education/Schools/welfare/ASL>

The Scottish Parliament's Education, Lifelong Learning and Culture Committee's

Stage 1 report on the new Bill: <http://www.scottish.parliament.uk/s3/committees/ellc/reports-09/edr09-02.htm>

Enquire is the Scottish advice and information service for additional support for learning. More information – tailored for parents/carers, professionals, children and young people – can be found on its website: www.enquire.org.uk

Learning and Teaching Scotland has information on inclusive education in Scotland:

<http://www.ltscotland.org.uk/inclusionandequality/additionalsupportforlearning/>

HM Inspectorate for Education 2007 report on the implementation of the ASL Act:

<http://www.hmie.gov.uk/documents/publication/aslr.pdf>

Resolve: ASL is the nation's largest education mediation service. It is operated by Children in Scotland. See: http://www.childreninscotland.org.uk/html/serv_res.htm

If you have any questions about this Briefing, or would like to share your views and experience, please contact Dr Jonathan Sher, Director of Policy, Research and Programmes on (0131) 222 2418 or jsher@childreninscotland.org.uk

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 470 members, including 90% of Scottish Local Authorities, 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 Europe.