

## WRITTEN EVIDENCE TO THE SCOTTISH PARLIAMENT'S EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

### *Education (Additional Support for Learning) (Scotland) Bill 2009*

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Children in Scotland welcomes this opportunity to submit Stage 1 written evidence about the Scottish Government's proposed amendments to the landmark *Education (Additional Support for Learning) (Scotland) Act 2004*.

We advocated for the original legislation and remain convinced that – when fully and properly implemented – the *ASL Act* continues to be a powerful vehicle for advancing the well-being and life chances of tens of thousands of children and young people across Scotland. We particularly applaud its: universal approach; broad definition of eligibility; applicability to children from their earliest years until adulthood; and, emphasis on the *rights* of children and their parents combined with the *duties* of education authorities and other relevant public bodies.

In the years since the *ASL Act* came into effect, Children in Scotland has played a variety of roles to promote awareness/understanding, enhance implementation and share good practice. Our work includes managing the Scottish Government-funded national advisory service and national helpline for mothers/fathers/carers, children and young people, as well as professionals on additional support for learning (**Enquire**). We also operate the nation's largest independent education mediation service (**Resolve: ASL**) funded through service level agreements with local authorities. Enquire and Resolve have had contact with thousands of ASL service users and providers.

Beyond these on-going national services, we have engaged in a variety of other ASL-focussed activities. For 18 months, we operated a successful pilot project providing advice and support to parents and pupils with ASL concerns in Grampian and Forth Valley. For the past several years, we have run the Access All Areas project (in partnership with the Scottish Borders Council) in which a broad cross-section of primary and secondary school students are engaged in making their schools more inclusive and welcoming to their peers having ASL needs.

We also have convened a large number of independent training events, seminars and conferences to practitioners around key ASL issues, as well as assisting the Scottish Government in its consultation processes around the *ASL Act*. We have published an ASL newsletter for the Scottish Government – in addition to the many ASL-relevant articles in our monthly magazine. Children in Scotland recently completed and distributed a large (1,200 + respondent) consultation/research report commissioned by North Ayrshire Educational Services – *What North Ayrshire's pupils and parents told us about ASL services*.

Last, but far from least, Children in Scotland's members include most of the voluntary, statutory and private sector groups/individuals with a major stake in the *ASL Act*. We have been in regular two-way communication with them over the past several years about what is happening, what is (and is not) working well and what is needed next.

These activities and relationships shaped the comments and suggestions that follow about the proposed *Education (Additional Support for Learning) (Scotland) Bill 2009*. **Children in Scotland supports the amendments to the current *ASL Act* proposed and explained by the Scottish Government in this *Bill* and in its accompanying background documents.**

We believe that the Scottish Government has offered well thought out, significant and helpful amendments that will improve the ways in which these specific aspects of the *ASL Act* will be defined, addressed and implemented. We also appreciate that the Scottish Government and education authorities have made a major (and often successful) effort to enhance the provision of additional support for learning and to improve the learning experiences of children and young people needing extra help.

**While we support these amendments, Children in Scotland regards the proposed *ASL Bill 2009* as 'necessary, but not sufficient' to create the legal foundation upon which to build a nationwide system of additional support for learning that lives up to the laudable aspirations of the Scottish Government, the Scottish Parliament and all the other public bodies involved in implementing the *ASL Act*.** As noted in our consultation response earlier this year, we believe that there are several other important ways in which the *ASL Act* should be amended at this time.

The original legislation was enacted approximately five years ago and it is now the fourth year in which implementation of the *ASL Act* is taking place. This is the first time that a new *Bill* has been introduced to amend the basic legislation. It is an unprecedented and very welcome opportunity to determine how to make a fine law even better.

A great deal has been learned over these five years about gaps in *ASL* awareness and understanding, gaps in preparation and ability to meet the duties of the *ASL Act* and gaps in the actual progress being made by children and young people having a wide range of needs for additional support for learning. Given the many demands upon MSPs attention, time and energy, it is unlikely that further amendments will be considered again for several years.

Therefore, this chance to get it right should not be limited to a few significant, but relatively narrow, elements of this legislation affecting tens of thousands of Scotland's children. Of course, many needed improvements are matters of implementation best addressed not by legislation, but rather by better guidelines/policies, more resources, more extensive training/CPD for practitioners (within and beyond schools) and better communications/relationships between *ASL* service providers and *ASL* service users.

Some improvements, however, are best advanced through amended legislation. Based upon what we have learned since 2004 from parents, pupils, partners, policymakers and practitioners, Children in Scotland recommends the following six additional changes to the *Education (Additional Support for Learning) (Scotland) Bill 2009*:

**1. Strengthen the duty to provide information about the *ASL Act* by requiring governmental agencies to actively promote easily understood (Plain English), age appropriate, genuinely accessible information to all eligible pupils and their mothers/fathers/carers.** The *ASL Act* still is far from a household name across our nation.

The key concepts, eligibility criteria, duties, rights and processes that make the *ASL Act* such a valuable (and distinctively Scottish) law still are not widely known or clearly understood – even by the very children, young people and parents who are its intended beneficiaries.

Enquire's national helpline, publications and website are of great value to, and greatly appreciated by, the people it reaches, but why would people *who do not see themselves as being in the ASL picture* contact Enquire in the first place? Similarly, the legal right to the mediation services provided by Resolve: ASL loses much of its practical meaning if parents remain unaware of this right or don't understand that mediation can be a much quicker and easier way of solving problems with schools than the more publicised ASL Tribunal system.

One of the *ASL Act's* foremost strengths can be found in its potential benefits for children and young people who would not have 'fit' under the old special educational needs definitions and eligibility criteria. Unfortunately, these benefits cannot be reaped by parents and children who have no idea – for whatever reason -- that this source of assistance is available to them.

The *ASL Act* still is not as well understood among teachers and other relevant practitioners as one would have hoped after several years. We think that one key to changing this situation is to better inform the pupils and parents eligible to benefit directly. Increased demand from users will trigger increased awareness and motivate more ASL knowledge among providers.

**2. Couple the existing *right* to 'advocacy' and 'support' in the *ASL Act* with a new *duty* on government to support independent support/advocacy.** Parents and pupils have a right to support/advocacy, as well as to mediation, under Section 11A of the current *ASL Act*. However, unlike the case of mediation, there is no duty upon any governmental agency to provide advocacy services to mothers/fathers/carers or to children and young people (including those officially 'looked after'). This makes 'advocacy' a fairly hollow right for parents and pupils who cannot afford to pay for such services themselves. It also deepens existing inequalities and results in a postcode lottery. This, in turn, makes it more likely that the children and parents most in need of advocacy/support services become the ones least likely to receive them.

Children in Scotland remains disappointed that its successful pilot projects in Grampian and Forth Valley – in which 'advocacy' and 'support' meant providing independent, bespoke information and empowering advice to help parents and pupils better represent their own interests -- were not continued by the Scottish Executive. Our version of 'advocacy' often led to people sorting out their problems with ASL provision in a low-key, simple, local manner (rather than through the legal system). This worked well with mothers/fathers/carers and also could be of great help to children and young people who are not going to have parents as their advocates (e.g., young carers or looked after young people).

The recent decision of the Scottish Government to fund 'advocacy' services that essentially focus on representing people while they negotiate the complexities of the ASL Tribunal system is a very different model. Children in Scotland believes that there is room for both models and that the Government should financially support both versions of 'advocacy'. Until financing independent advocacy/support becomes a duty (as well as a right) within the *ASL Act*, it will remain too *ad hoc* and unreliable to benefit most parents and pupils.

**3. Enhance the clarity of, and require greater support for, the existing duty to consult with children and young people (and their parents).** The current *ASL Act* correctly recognises the right of children and young people -- under Article 12 of the UN Convention on the Rights of the Child – to be involved in age appropriate ways in making key decisions that affect their lives and well-being. Major decisions about the nature and delivery of their education are a prime example of when consultation and participation are most vital.

Consultation with, and involvement of, the intended beneficiaries of the *ASL Act* continue to be honoured more in rhetoric than in reality. Counterfeit consultations are worse than no consultations, as superficial 'tick box' exercises serve primarily to breed cynicism among all parties concerned. The *ASL Act* is not now – but could become – a key driver for meaningful consultation and participation processes across our nation.

Children in Scotland has developed three models of how to make such consultation and participation real through its long-standing project with the Scottish Borders Council (Access All Areas), the participation activities of Enquire and the recent ASL research project in North Ayrshire. There are other examples of good practice. What continues to be missing are national 'carrots and sticks' – i.e., incentives (or rewards) for first-rate consultations and participation efforts and disincentives (or penalties) for failing to meaningfully involve pupils and parents. An amendment to the *ASL Act* could help – for example, by indicating that HMIE inspection criteria of ASL services will reflect and 'count' this legal duty from the *ASL Act*.

**4. Require joined-up training, planning and service delivery for children needing additional support for learning, especially in the early years (from birth to school enrolment).** Two praiseworthy elements of the original *ASL Act* are that it covers all children of all ages -- and that it anticipates the need for education authorities to work closely with other agencies, professions and services.

Two challenges also remain after the first few years of implementation. One is the patchiness and thinness of ASL provision for young children before they become directly involved with education authorities. The other is the extent to which ASL implementation is perceived and treated as an education system policy/priority -- not a more universal one -- by prospective partners from other agencies and professions.

Enquire and Children in Scotland have heard recurring concerns (and dismay) expressed by the mothers/fathers/carers of young children who have found education authorities unprepared to properly meet their child's ASL needs upon entry to a pre-school or primary school. They had assumed communication and coordination between early years service providers and schools that did not, in fact, exist. This makes the transition into, and the initial experiences with, formal schooling more difficult and less positive for everyone than should be the case.

Part of the solution can be obtained through revisions to existing codes of practice and other non-legislative means. However, we also recommend an amendment to the *ASL Act* that makes explicit the duties placed upon education authorities to become familiar with children in the birth-to-school-entry years within their local authority area who have ASL needs. Alternatively (or in addition to the education authority's duty), there could be an amendment creating a duty on service providers engaged with young children in such areas as health, social work, early years services and children's services to inform the relevant education authority about the ASL needs and history of children well before they reach school age.

Joined-up initial education and continuing professional development for people providing early years services is an effective way to promote good communications, integrated services and smooth transitions into school for young children having additional support needs. Children in Scotland activities and publications on the children's sector workforce – including the Scottish Pedagogue model – may be helpful (see our recent publication, *Working it out*). Again, however, the *ASL Act* currently offers neither 'carrots' nor 'sticks' to help ensure that good practice across the relevant fields/agencies/professions actually will occur.

We would hope that the forthcoming *Early Years Framework* from the Scottish Government and COSLA – and the continuing governmental efforts around *Getting it right for every child* -- would dovetail nicely with these suggested changes to the *ASL Act*.

However, the *Act* itself should be more explicit about who has the responsibility for identifying, meeting and/or coordinating multi-agency ASL services for very young children. It is not good enough to create an entitlement to early years ASL assistance without being explicit about how (and by whom) that entitlement will be given meaning and substance in practice.

**5. Strengthen the right to, and the duty to provide, ASL mediation services.** 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 the development of practical robust solutions in the child's best interest.

There are, however, a few local authorities that have not engaged with appropriate, independent mediation providers. This leaves parents and pupils in these areas unable to access their legal rights within the *Act*. These authorities may provide generalist advice and conciliation services, use spot purchasing and/or mediation services from other sectors. These provisions are, and should be treated as, inadequate substitutes for an independent ASL-specific mediation service. Mediation must be clearly independent for parents/carers/young people to be able to exercise their ASL rights and to trust the process.

While the *Act* introduced the duty to provide mediation, there is no system to inspect, approve or monitor ASL mediation services. A commitment to first-rate ASL mediation through a quality standard would improve service provision and ensure that local authorities do not use inappropriate and under-qualified mediation services. Appropriate standards recently have been produced by the national ASN Mediation Service Providers Group. These national standards could and should be used as a benchmark by national and local government.

Amending the current *ASL Act* by adding a duty to offer mediation *before engaging with the ASL Tribunal system* could act as further encouragement to resolve disagreements at an earlier stage and in a quicker, less difficult manner.

**6. Create a duty upon education authorities to plan adequately for the transitions of young school leavers having ASL needs.** The original *ASL Act* intended to cover all young people until they successfully complete their education or reached adulthood. And yet, young people below the age of 18 are not always covered in practice.

For many young people, who have mild ASL needs and who have been relatively successful in school, there is a fairly clear path from school into employment or into further/higher education. Similarly, many young people, who are in special schools or covered by disability legislation, have a reasonable idea about their prospects after the end of schooling.

Nonetheless, there also is a significant group of young people with moderate ASL needs who do not fit into either of the aforementioned populations. Some are looked after children who are 'aging out' of that system, or runaways, or young people with substance misuse problems, or young carers or others for whom the education authority has no real plans or options to offer after S4. They may still have a need and appetite for more learning and skill development, but they no longer fit comfortably within their school community.

Consequently, some students in mainstream secondary schools who are not studying for their Highers after S4 have been 'encouraged' to consider that their time in school is over – and thus, their *de facto* eligibility under the *ASL Act* has ended. This is happening at the age of 15 or 16, not at the age of 18 (as the *ASL Act* intended). These are young people who still have ASL needs, but who are facing dismal choices and few chances.

Some schools have crafted creative and sensible solutions for such students. For instance, a secondary school may keep some of these 15 to 17 year-old ASL students on their roll (and thus, continue their *ASL Act* rights and protection), but make arrangements allowing them to spend much of their time at further education colleges or in community-based training programmes. However, appropriate ASL assistance should not be a postcode lottery.

The suggestion here is not to burden education authorities with duties to young people beyond the age of 18 or to ask them to guarantee successful lives for students once their schooling has been completed. Rather, our recommendation is much more modest. We think that the *ASL Act* should be amended to make it clear that: 1) the duty of education authorities toward young people having ASL needs cannot be terminated unilaterally before these young people reach the age of 18; and, 2) education authorities have an affirmative obligation to develop a transition plan with, and for, 16/17 year-old students having ASL needs who are not already successfully pursuing a recognised positive pathway to post-school life. The *Act* should give such young people a reasonable chance of moving toward a positive future as adults.

All six of Children in Scotland's proposed additional amendments to the *ASL Bill 2009* share the fundamental goal of making a landmark piece of Scottish legislation even stronger and more likely to live up to its original intent and aspirations. All six suggested improvements are based upon the lessons learned from the initial years of development and implementation. Given that ASL legislation is unlikely to have the benefit of the Scottish Parliament's close attention and careful amendments for several more years, it makes sense to take full advantage of this rare opportunity.

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