

Policy Briefing

Education (Additional Support for Learning) (Scotland) Bill.

The Education (Additional Support for Learning) (Scotland) Bill was introduced to the Scottish Parliament on 29th October 2003. The Bill is the first major revision of special educational needs legislation since the Education (Scotland) Act 1980. It is the culmination of considerable debate, from the Riddell Advisory Committee reviewing provision for children with severe low incidence disabilities (1999) to the Inquiry into Special Needs Education undertaken by the Scottish Parliament's Education, Culture and Sport Committee (2001). During 2001, the Scottish Executive consulted on changes to the system (*Assessing Our Children's Educational Needs. The Way Forward?*) and published its response in turn in 2002. A consultation on a draft Bill was held early in 2003. This briefing provides information for Children in Scotland members and those who were involved in the original consultation on the draft Bill

Headline Issues

1. A new Co-ordinated Support Plan (CSP) will replace the Record of Needs (RON). The threshold for receiving a CSP is set in such a way that a number of children and young people currently receiving a RON will not qualify for a CSP.
2. Education authorities do not have to do anything unless "which they do not otherwise have the power to do" or "is not practicable at a reasonable cost".
3. The new Additional Support Needs Tribunals will only have jurisdiction over the education authority. Other agencies will only have to have regard to any directions of the Tribunals.
4. Legal Aid provision is available for those who qualify pre-Tribunal and post Tribunal. No legal aid is available for representation during a Tribunal.
5. There is no right of appeal for children over the age of 12 who have capacity.
6. Although other agencies must provide information to the education authority 12 months before a young person leaves school the education authority has a duty to prepare for this transition 6 months prior to leaving.
7. No provision has been made in the Bill for the supporter role to be strengthened and independent advocacy provided for children, young people and parents where required.

MAJOR PROPOSALS OF THE BILL

- **The concept of 'special educational needs' will be replaced by the concept of 'additional support needs'**. Children or young people will have additional support needs if they are (or are likely to be) unable to benefit from school education provided (or to be provided), without the provision of additional support. (S. 1)
- **Education authorities will have duties:**
 - **to make adequate and efficient provision for children and young people's additional support needs**, subject to the authorities' powers and what is practicable at a reasonable cost (S. 3).
 - **to identify and address the additional support needs of pupils**, for whose school education the authorities are responsible and powers to do so for other children (S. 3 and 4).
 - **to seek and take account of relevant advice and information from appropriate agencies and people**, including the child, the child's parent or a young person, when considering additional support needs, CSPs or undertaking a review (S. 9).
 - **to publish information on local policies, arrangements and provision** for children and young people with additional support needs and explain children's, young people's and parents' roles, responsibilities and rights. A minimum information standard will be set.
 - **to get information about the provision other agencies will have to make for the future needs of the young person once they have left school**. They must plan to prepare the young person and to support the transition to these other services. This must be done at least 12 months before the young person leaves school. (S. 10)
 - **to specifically co-ordinate the support to be provided as set out in the CSP**. (S.9) There will be a named individual who will manage the day to day implementation of the CSP. This can be delegated to an individual outside education if this is more appropriate.
 - **Education authorities may ask other agencies (e.g. local authorities, health boards or trusts) for help**. These agencies must provide this help, unless the request is incompatible with their own statutory or other duties or unduly prejudices carrying out their functions. (S. 19)
- **There will be no more Records of Needs but a new type of individualised plan, the Co-ordinate Support Plan (CSP)**. CSPs will be available to children or young people who have additional support needs arising from (i) one or more complex factors or (ii) multiple factors, which are likely to continue for more than one year. Further, those needs must require significant additional support to be provided by agencies outwith education.

A 'complex' factor is defined as one that has (or is likely to have) a significant adverse effect on school education; multiple factors may not by themselves be complex factors but together have (or are likely to have) a significant adverse effect. (S. 2)

- A CSP must contain:
 - the factor or factors from which the additional support needs arise
 - the educational objectives to be achieved
 - the additional support required to achieve those objectives
 - those who will provide the support
 - a nominated school
 - the name and contact details of an authority official, from whom a child's parent or young person can obtain information and advice.

Regulations can further specify the plans' details, timescales for preparation and review, and other procedures. (S. 7)

- At the written request of a child's parent or a young person, education authorities must establish whether a child or young person has additional support needs, or requires a CSP (unless the request is unreasonable). If considered unreasonable, the authorities must inform the person making the request and the reasons for this. (S. 4, Note also the authorities' general duty to identify and address needs S. 3 and 4)
- Before proceeding to establish whether a CSP is needed (or a CSP is reviewed), the child's parent, a young person or the manager of an independent/ grant-aided school must be informed. They must also be informed of the outcome and rights to appeal. Copies of the plans must be given to the child's parent or the young person and ensure that additional support is provided 'so far as they have the power to do so'. (S.9)
- A CSP must be reviewed at least annually. Consideration must be given to whether a CSP is still required and any amendments. A child's parent or young person can make a written request for an earlier review, which must be undertaken unless the authorities consider the request to be unreasonable. (S. 8)
- **The formal Future Needs Assessment process has been removed.** Instead, in addition to a duty on education authorities to ask for information from other agencies at least 12 months before a young person leaves school, they must also provide information to other agencies at least 6 months before the leaving date. (S.11)
- **Education authorities will have the duty to make arrangements for providing independent mediation services which will be free of charge.** (S. 16)
- **The Bill establishes a new route of appeal: the Additional Support Needs Tribunals for Scotland** (S. 12-15, Schedule 1). A child's parents or young people will be able to appeal against an education authority's decision on whether or not to prepare, review or discontinue a CSP and against a CSP's contents. This includes the educational outcomes and provision. The Tribunal will be able to order the education authority to open, discontinue, amend the contents, or review a CSP. The tribunal will only have jurisdiction over education authorities.

Appeals against Tribunal decisions will be only on points of law, to the Court of Session. (S. 15) Legal aid will be available to those who qualify before and after a Tribunal but will not be available for representation at the Tribunal. Legal aid will also be available, for those eligible, for the Court of Session.

Parents of children and young people who do not have a CSP but does have additional support needs will have access to dispute resolution outside of the formal appeals route. Plans for this process have still to be developed.

- **All parents of children with additional support needs will have the right to make placing requests to independent special schools.** Education authorities must comply unless the children or young people do not have the appropriate needs for the school or the authorities can meet those needs within their own schools or by other arrangements. Appeals will continue to be heard at the Education Authority Appeals Committee except where they are also appealing a decision not to prepare a CSP. In this case the placing request appeal will also be heard by the Tribunal
- **A Code of Practice will be issued and set out minimum standards.** The aim is that the Code promotes more and better joint planning and partnership, and consistency across Scotland. (S.22)

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Further Discussion of Headline Issues

1. Children and young people will only receive a CSP if they receive significant additional support from agencies outwith education. Concern has been expressed that a large number of children who have needs sufficiently complex will not be eligible for a CSP. Although there is a duty to provide for all children and young people the Bill does not set out how this will be done. There is no mention of Personal Learning Plans or Individualised Educational Programmes on the face of the Bill.
2. During the consultation at the draft Bill stage many agencies argued that section which allows education authorities to not do anything for children and young people with additional support needs which “is not practical at reasonable cost” could result in children and young people with the most complex needs losing out on services.
3. The Additional Support Needs Tribunal will only have jurisdiction over services provided by the education authority. Other agencies – such as health and social work – will have to have regard to the decision of the Tribunal but will have no **clear** legal duty to comply with Tribunal decisions. This could create difficulties where services need to be co-ordinated to ensure that the child or young person’s additional support needs are met.
4. Legal aid will be available for those who qualify before a Tribunal hearing and in the period after the hearing. There will be no legal aid available for representation at a hearing although a parent will be able to take a supporter. Care should be taken to ensure that the process remains a level playing field and that those unable to afford legal representation are not at a hearing where an authority is represented legally and the appellant is not.
5. Although the Bill gives a right of appeal to parents and young people with capacity there is no right of appeal for those children over the age of 12 with capacity. Currently such children can appeal school exclusions under the Standards in Scotland’s Schools Act etc 2000. In the previous consultation individuals and organizations saw no reason why a legally competent child under the age of 16 should not be able to appeal the relevant aspects of their educational provision.
6. The Bill strengthens the provision related to transition – particularly for those leaving school - by placing a duty on education authorities to get information from relevant agencies who will be involved with the young person after leaving school a minimum of 12 months before that date. The timescale for the education authority to plan the transition remains at a minimum of 6 months. There is a case for the whole process to be initiated at a minimum of 12 months although flexibility is required depending on the needs of the individual child or young person.
7. Children, parents and young people will be able to take a supporter to meetings that affect them. In the initial consultation period parents and professional were in favour of parents children and young people having access to independent advocacy services. This would strengthen the support available and ensure that the needs of the child and young person are fully met.