

Written Evidence from Children in Scotland to the Scottish Parliament's Education Committee on the Education (Additional Support for Learning) (Scotland) Bill

Children in Scotland welcome the opportunity to comment on the provisions of the Education (Additional Support for Learning) (Scotland) Bill.

Basis for this response

This response is based on consultations Children in Scotland carried out with a wide range of parents and professionals across Scotland at the draft Bill stage. Consultation events in rural and urban areas were attended by parents of children with disabilities and special educational needs (SEN) and a cross section of professionals from both the statutory and voluntary sectors, including teachers and learning support teachers. Discussions also took place with members of the Special Needs Advisory Group (SNAG) and members of Children in Scotland's Policy Committee.

The Bill in Principle

Children in Scotland welcomes the Bill as the first major revision of special educational needs legislation since the Education (Scotland) Act 1980. The system for assessing, recording and providing for those children and young people with special educational needs has long required revision and Children in Scotland has been supportive of a number of the changes proposed by the Scottish Executive in both *Assessing our Children's Needs: The Way Forward?* and the draft Bill. Particularly welcome in the Bill as introduced is the inclusion of a Code of Practice that will set minimum standards across Scotland for the provision of additional support to school pupils.

Consultation on the Bill

Taking into account previous consultations on *The Way Forward?* and a lengthy consultation on the provisions in the draft Bill Children in Scotland believes that the consultation process has been comprehensive. The provisions in the draft Bill provoked strong reaction in some quarters and raised many concerns particularly among parents and specifically among parents of children and young people with a Record of Needs (RON). Children in Scotland welcomed the Executives decision to revisit the original consultation over the summer and the inclusion in the Bill of a number of the points made as a result of that.

Continuing Concerns

Children in Scotland has a number of concerns on the provisions in the Bill as introduced.

Co-ordinated Support Plan (CSP)

Children in Scotland has supported the phasing out of the Record of Needs (RON) and its replacement with a system that is flexible and ensures that the

child or young person receives the support that they require. The individualised nature of the CSP is welcome but there are a number of issues which may prevent those who need co-ordinated support receiving a CSP. Parents and professionals involved in the Children in Scotland consultation thought that the threshold for the CSP was set to high.

Children in Scotland appreciates that there will be a duty on education authorities to provide adequate and efficient provision for all children and young people with additional support needs. It has been argued that regardless of whether a child or young person has a CSP or not they will receive the services they need. Unfortunately this will not be the case. Parents, young people's and children's views often conflict with those of services providers on what support is required. The Scottish Executive have recognised this by proposing new Tribunals, mediation and a dispute resolution service. However, parents of children and young people with additional support needs but no CSP will, it is presumed only be able to appeal against an authorities failure to comply with the new duty under section 70 of the Education (Scotland) Act 1980. This is an unsatisfactory route and not one that many parents will be willing to take. It is essential, where conflict arises, that parents, children and young people are able to challenge an authorities decision. The threshold for opening a CSP should be lowered so that all pupils with complex needs receive the legal protection that a CSP offers.

Children in Scotland believes that the decision to open a CSP should not be based on where the support is provided from but that the support needs *co-ordinated*. If a child or young person, whose needs are sufficiently complex, receives support from within an education authority it is unlikely that all of that support will be provided by the school. Other departments will be called upon to provide support but will not be school based and may have different administrative structures and different lines of accountability. In this case co-ordinated support will be required. There is no mention in the Bill (and only one mention in the Policy Memorandum) of Individualised Educational Programmes (IEP) and the role of Personal Learning Plans (PLP). It is not clear how they will be applied to those children and young people not eligible for a CSP but who have additional support needs. The Executive have estimated that around 10,000 of the 17, 000 children and young people with a RON will receive a CSP. There is at present no clarity on how the needs of the 7,000 not eligible for a CSP, and those in the wider additional support needs category, will have their needs recorded and support provided. Furthermore, teachers have expressed concern that IEP's are not designed for the recording of special or additional support needs and that PLP's are in an early stage of development. This is a concern.

Education Authorities Duties

The duty to make adequate and efficient provision for children and young people's needs is welcome, notwithstanding concerns outlined above on CSP's. Children in Scotland is however concerned at the inclusion in Section 3 (2)(b) that education authorities do not have to do anything which is *not practicable at a reasonable cost*. There is a recognition that public funds are

not finite. Nevertheless the inclusion of this subsection not only adds to the perception that authorities ‘hold all the cards’ in the relationships with parents but also fails to recognise that the provision of services to children and young people with additional support needs should be based on need and not cost. Children in Scotland’s first preference would be that this subsection should be removed. If the Committee were not in favour of this, consideration should be given to using similar wording as that contained in Section 15 of the Standards in Scotland School etc Act 2000 that refers to “unreasonable public expenditure being incurred that would not ordinarily be incurred”. It could also stipulate on the face of the Bill that this would only be the case in exceptional circumstances.

Assessment

The right to request an individual type of assessment is welcome. Although educational, medical and psychological assessments are given as examples there is no mention of care assessments provided by social work. Children in Scotland believes that it would be helpful if care assessments were mentioned on the face of the Bill.

Right of Appeal for Children with Capacity

Although the Bill gives a right of appeal to parents and young people with capacity there is no right of appeal for children over the age of 12 and under 16 who have capacity. Currently such children can appeal school exclusions under the Standards in Scotland’s Schools etc Act 2000. It is not enough to suggest that appealable issues under this Bill will be too complex to allow such children to appeal and that Tribunals will only have to have regard to their views. With adequate support children with capacity are able to make decisions about their own lives and how best their needs can be met. While such a provision may not be used in a high number of cases it is vital that is contained within the legislation so that parents do not automatically have a ‘gatekeeper’ role.

The Additional Support Needs Tribunal

Children in Scotland welcomes the establishment of the Additional Support Needs Tribunals and appreciates the intention that this should be informal and user friendly. There are two issues that require attention in relation to the Tribunals. Legal aid will be available before a Tribunal and after a Tribunal hearing. There is no provision in the Bill for legal aid to be available for representation at a Tribunal hearing. The Executive has said that education authorities will be discouraged from sending legal representatives to Tribunal hearings. It is important that the Code of Practice gives clear guidance on this issue. Evidence from the Parents Autism Campaign for Education (PACE) in England suggests that parents there are spending increasing amounts on legal representation at Tribunals. The PACE Tribunal Report¹ found that 58% of those surveyed who went to a Tribunal “spent above £2,000 on legal fees, with £6,000 on legal fees being common”. The report also states that these figures do not include the amount parents paid for expert witnesses and independent reports. Children in Scotland are also concerned that the

¹ PACE Tribunal Report (2003)

Tribunal will only have jurisdiction over services provided by the education authority. There is no clear legal duty on other agencies to comply with a Tribunal decision. The jurisdiction of the Tribunal should be widened to include duties on other statutory agencies to comply with a decision.

Transition and Future Needs

In consultation with children and young people Children in Scotland found that the issue of transition – particularly from secondary school to employment or further education – was one of the most crucial. The duty on the education authority to get information at least 12 months before about the provision other agencies will make for future needs is welcome. The Code of Practice must stipulate that planning for transition should be based on the individual young person. There are some young people who will require a longer lead in to the transition than the minimum 12 months. While parents and young people are to give their consent to the provision of information by the education authority, they are not otherwise given a role in the planning process. It is essential that the parents and young person are fully involved in this process at the earliest stage.. The process does not have a fixed outcome, such as the production of a transition plan. It seems that there is no duty upon any agency receiving information about a young person due to leave school to take any action upon receiving the information.

Mediation

The provision of free and independent mediation is welcome. Children in Scotland has continuing concerns – however - that by allowing the local authority to buy in mediation services they will not be viewed as independent. The employment of in-house mediators by a local authority may prejudice the *perception* of the independence of the service, and may deter parents from using the service, particularly in cases where mistrust of the local authority has become entrenched.

Advocacy

During the consultation period Children in Scotland was made aware of advocacy projects that worked extremely well with parents and children guiding them through the often complicated and difficult process of negotiation with authorities on the provision of services. In some cases parents felt that there was no need for their child to have a RON because of the positive relationship they had with the local authority. This relationship was attributed to the support they received from a trained advocate with a good knowledge of the way that the system worked. Given that the proposed changes contained in the Bill will introduce new mechanisms for appeal and dispute resolution and throw up the possibility that some children and young people with a RON will not have a CSP there is a real need that a system is in place where parents can be supported at the earliest stage and conflict avoided. Children in Scotland suggests that the role of the supporter in the Bill is strengthened and extended to an independent right to advocacy for parents and children where this is necessary.

For clarification or expansion on any of these points contact Eddie Follan, Policy Manager Tel: 0131 222 2437 E: efollan@childreninscotland.org.uk