The Committee will meet at 11.00 am in Committee Room 4.

1. **Early Years Inquiry**: The Committee will consider a summary of written evidence and plan its approach to the inquiry and to witness sessions.

2. **Additional Support for Learning**: The Committee will consider the Scottish Executive’s draft code of practice and take evidence from—

   Euan Robson, Deputy Minister for Education and Young People
   Mike Gibson, Head of Additional Support Needs Division
   Robin McKendrick, Team Leader, Additional Support for Learning
   John Bissett, Team Leader, Additional Support Needs

---

The following papers are enclosed for the meeting

**Agenda item 1**
- Early years summary of evidence
- Draft early years approach paper

**Agenda item 2**
- ASL issues at Stage 1
- Comments received on code of practice
- Final comments paper
- Scottish Executive briefing note
EDUCATION COMMITTEE
EARLY YEARS EDUCATION AND CHILDCARE INQUIRY
SUMMARY OF EVIDENCE

1. Fifty submissions were received, around half of them from Local Authorities (12) and other service providers (11). This paper looks at the key themes and examples of current services.

KEY THEMES

2. Nearly half the submissions raised issues about the workforce, ways of teaching or choice of services (each raised in 22 submissions). Around 18 submissions mentioned funding issues, and 16 mentioned support to parents. Around a fifth of submissions expressed concerns about integrated services and the impact on services of recent changes to inspection and regulation.

3. Within these broad areas the most frequently mentioned specific issues were the need to provide support to parents and concerns about the increasing cost of providing early years services. However, in relation to the inquiry remit key points raised are:

4. Response to policy: There is a concern that Scotland needs to develop an equivalent to the devolved areas in the UK Treasury 10 year strategy for childcare and further improve integrated service provision.

5. Support to parents: There is a general recognition of the importance of better support to parents in particular support for vulnerable families/families under stress but also support for better parental leave arrangements.

6. The variety of approaches in child development work and their implications for future policy: The EPPE findings were widely referred to. There was general support for a play based, child centred approach. While there was considerable support for teacher or graduate qualifications, there were also those who thought this was too onerous and worried about its contribution to rising service costs.

7. Flexibility of childcare provision: It was suggested that flexibility is expensive, in that creating the capacity to respond to changing demands entailed extra cost.

8. Availability of choice: There was a particular concern about availability outside office hours and in rural areas. Increasing costs and/or lack of sustainable funding arrangements appear to be putting pressure on private and voluntary sector providers which in turn can result in a lack of choice of type of provision.

9. Provision for low income families: The cost of services was considered a barrier, and generally costs are increasing due to increasing regulation and staff costs. There was general support for universal services with targeted support available within that in a non-stigmatising way.

10. The table overleaf indicates the most frequently raised specific issues, many of them cutting across the themes raised in the inquiry remit.
### Table 1: most frequently raised points in submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number of submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Importance of providing support to parents</td>
<td>13</td>
</tr>
<tr>
<td>whether by better parental leave arrangements [4 submissions] or support for vulnerable families/families under stress [7 submissions]</td>
<td></td>
</tr>
<tr>
<td>2. Cost of providing services is increasing</td>
<td>11</td>
</tr>
<tr>
<td>particularly the effect on the voluntary and private sector from increased regulation and inability to compete with public sector pay.</td>
<td></td>
</tr>
<tr>
<td>3. EPPE findings suggest the teaching approach to take in early years</td>
<td>8</td>
</tr>
<tr>
<td>4. Complexity of effective partnership working and integrated service delivery a concern particularly of local authorities and professional bodies</td>
<td>8</td>
</tr>
<tr>
<td>5. Complex schemes and short term funding result in unsustainable projects and increased administration costs. If projects close, choice is reduced.</td>
<td>8</td>
</tr>
<tr>
<td>6. Cost of services reduces choice for parents</td>
<td>7</td>
</tr>
<tr>
<td>7. Transitions – importance of links between nursery and primary</td>
<td>6</td>
</tr>
<tr>
<td>8. Support for a child centred, play based approach</td>
<td>5</td>
</tr>
<tr>
<td>9. Importance of teacher qualifications</td>
<td>5</td>
</tr>
<tr>
<td>10. Lack of provision outwith office hours restricts choice</td>
<td>5</td>
</tr>
</tbody>
</table>

11. The following considers responses in more detail, looking at submissions under the themes in the inquiry remit. In addition, funding, regulation/inspection and integrated working have been treated separately. Workforce training issues have generally been included under the theme of ‘implications from child development.

12. There was a concern that Scotland did not have the equivalent of the Ten Year Strategy for Childcare, published by the Treasury in December 2004 and that Scotland needs a coherent, integrated early years strategy.\(^{11}\)

---

1 Edinburgh Council, West Lothian Council, EPPE Researchers, One Parent Families Scotland (OPFS), Quarriers, Barnardos, Children in Scotland, CARE Scotland, Church of Scotland, CoSLA, Scottish Childminding Association (SCMA), Scottish Pre-School Play Association (SPPA), UNISON.


3 Aberdeenshire Council, Edinburgh Council, East Dunbartonshire, EPPE researchers, Grace Goodwin, Christine Stephen, Scottish Out of School Care Network (SOSCN), Educational Institute of Scotland.

4 Dumfries and Galloway Council, Edinburgh Council, Moray Council, West Dunbartonshire Council, Association of Directors of Education in Scotland (ADES), Convention of Scottish Local Authorities (CoSLA), SCMA, SPPA.

5 Aberdeenshire Council, West Dunbartonshire Council, Shetland Council, First Nursery, Jeely Piece Club, Children in Scotland, ADES, SCMA.

6 West Lothian Council, OPFS, Barnardos, Children in Scotland, Quarriers, SCMA, SPPA.

7 Dumfries and Galloway Council, Learning and Teaching Scotland, Laura Henderson, Christine Stephen, Barnardos, Children in Scotland.

8 Edinburgh Council, Children in Scotland, Play Scotland, Church of Scotland, CARE Scotland.

9 Edinburgh Council, East Dunbartonshire Council, Marie Pisaneschi, Amanda Nicholls, EIS.

10 Edinburgh Council, OPFS, SOSCN, SCMA, SPPA.
Funding Issues
13. Submissions noted that the funding situation is complex which increases the cost of administering services and weakens sustainability. In addition staff and administration costs are rising. Submissions mentioned the following funding streams:

- SureStart
- Childcare Strategy
- New Opportunities Fund/ ‘the lottery’
- ESf Objective 1
- Changing Children’s Services Fund
- Workforce Development Fund
- Working for Families Fund
- Training Challenge Fund
- National Priorities Action Fund: supporting parents
- Social work ‘section 10’ funding
- Better Neighbourhood Services
- Scottish Rural Community Transport Initiative

14. Two funders provided a summary of their programmes.

15. The New Opportunities Fund Out of School Hours Childcare Programme was intended to complement the childcare strategy. This lottery scheme delivered £25.3m from 1999-2005. In addition £7m targeted disadvantaged areas from 2001. The submission gives links to evaluation documents.

16. The Scottish European Social Fund objective 3 partnership aims to create a flexible labour market and has funded 70 childcare projects in local authorities, voluntary organisations and colleges having provided £9.8m of funding. They include:

- Support for one parent families
- Promotion of men as child carers
- Training in childcare

Structural issues
17. Complex schemes and short term funding were mentioned in around a fifth of submissions as leading to lack of sustainability and increased administration costs. This detracts from direct work with children and, if funding streams end, closure of projects reduces parental choice. The Jeely Piece Club summed up this common view:

'juggling this cocktail of funding strains our administrative capacity to the limit and takes up a great deal of time and energy of our most skilled and experienced staff, which would be better spent devising innovative ways of tackling community needs.'

18. The increased funding in the public sector, although welcome has also increased competition in the private and voluntary sectors. First Nursery state that play groups and toddler groups have closed down as a result of new local authority provision being set up close by. The Scottish Social Services Council noted that Stirling has managed provision so as not to create this kind of competition.

Rising costs

---

11 Scottish Out of School Care Network, Children in Scotland, Scottish Childminding Association, Scottish Pre-school Play Association, CoSLA.
19. A common theme was the impact of recent changes on the private and voluntary sectors. Around a fifth of submissions mentioned the effect of increased salaries due to the local authority pay settlement and increased qualification requirements. Other sectors were facing difficulties due to administrative and financial burdens from increased regulation and competition with the public sector for staff. These issues were raised both by independent sector providers and local authorities.

20. First Nursery noted that ensuring quality and flexible provision creates extra expense and stated that funding levels are simply too low. CoSLA stated that there had not been an increase in allocation for childcare in the last Local Government settlement.

Restrictions in particular funds
21. A number of submissions refer to problems with the criteria for certain funds which prevents best use being made of them by services.

22. The SPPA and East Dunbartonshire Council raised an anomaly between funding part time free nursery places for 33 weeks while most services are provided for 38 or 39 weeks. Shetland Council noted that the Big Lottery does not fund core costs – only additionality and new projects. The Jeely Piece Club found that Childcare Strategy Funding was not suitable for them as it is based on increasing income generation with a view to self-sufficiency. This is not feasible for services working with low income families. Finally, the Working for Families Fund was noted by One Parent Families Scotland (OPFS) as particularly useful, but is only available in particular Local Authority areas.

Suggested changes
23. The SPPA suggested that funding should take into account the need for enhanced qualifications for staff and Shetland asked for reconsideration of funding criteria for workforce development. Children in Scotland asked for funding to increase to 1% GDP as recommended in the 1995 EC Quality Targets in Services for Young Children. First Nursery asked for ringfencing Childcare Partnership budgets, and the Scottish Out of School Care Network (SOSCN) suggested that increased direct subsidy to providers was required.

24. More specific requests for funding particular types of services included:
   - Core, stable funding for umbrella bodies (SPPA)
   - Transport to pre-school, particularly in rural areas (CoSLA) – this is provided in Shetland.
   - Improved parental leave to enable real choice for parents to stay at home.
   - Parenting courses run by voluntary organisations and churches (CARE).
   - More respite care for children with additional support needs (SPPA)
   - More varied Gaelic medium provision.

25. In addition, the Committee was invited by the Big Lottery Fund to make recommendations for the future direction of their fund. A priority suggested in their consultation on future grant programmes is: ‘developing good quality accessible childcare and play provision for children of all ages’.

‘It may be that the findings from the inquiry can inform the development of future Big Lottery fund grant programmes that fund the provision of good quality, accessible childcare.’

14 Dumfries and Galloway Council, East Dunbartonshire Council, Little Acorns Nursery School, Prime Time Nursery, Forbes Nursery, CARE, Scottish Preschool Play Association
15 Barnardos, CARE Scotland, Children in Scotland, Church of Scotland, UNISON.
16 CNSA, Comann Nam Parant, Comunn na Gaidhlig
Implications from child development

26. Learning and Teaching Scotland noted that policy makers have a responsibility to make explicit what is known about how children learn at different stages and that they plan to publish ‘Pedagogy in the Early Years’ May 2005.

27. Many submissions referred to EPPE findings as a basis for suggestions for the teaching content of early years and requirements for staff training. Other approaches mentioned were:

- Peer Early Education Project, PEEP (Shetland Council, West Lothian Council)
- HeadStart (Edinburgh Council)
- Pia Ikonen and Matti Bergstrom, Finnish research on brain development and the importance of outdoor space (Children in Scotland)
- Norway’s ‘nature kindergarten’ (Play Scotland)
- Reggio Emilia (Grace Goodwin)
- Total Immersion Plus methodology for teaching Gaelic through Gaelic medium. (CNSA)

28. In addition, CARE referred in general terms to ‘the Scandinavian model.’

29. HMIE note that although there are some providers with distinctive philosophies of child development and there are some different emphases, the picture is generally one of consistency across services. EPPE findings note the importance of staff having knowledge of both the curriculum and child development, and SERA Early Years Forum suggests that: ‘pre-school practitioners in Scotland should move to define their role in terms of particular pedagogical orientations.’

30. Edinburgh council suggested that the purpose of early years was not just preparation for school. SERA Early Years Forum stressed that the early years should be not just be considered as a policy to prevent future problems, but was important in its own right.

Play

31. There was general support for a child centred, play based approach. SERA Early Years Forum noted that a play based, child led approach was more typical in Scotland than in England and suggested that this implied caution in how one applied the EPPE results to Scotland where the norm is for child initiated activity more than half the time

As yet it remains a matter for debate (or better still empirical observation) whether the status quo in Scotland is even more ‘effective’ than the 50:50 balance suggested in the EPPE study or is a default position adopted over time and one which is ready for challenge.’

32. Three voluntary organisations emphasised that opportunities for outside play were crucial but were threatened as it is only local authority provision which is required to provide outside play space.

Child Centred

33. SERA Early Years Forum reminded that although funding streams and institutional structures may differentiate between different settings, a child’s experience is of a playroom or childminding setting, being cared for by those other than its parents, regardless of institutional labels. The need to take account of the child’s perspective and listen to children was mentioned by Grace Goodwin and Stirling Council. In particular Stirling council referred to children as:

---

17 Aberdeenshire Council, Edinburgh Council, East Dunbartonshire, EPPE researchers, Grace Goodwin, Christine Stephen, Scottish Out of School Care Network (SOSCN), Educational Institute of Scotland.
18 Edinburgh Council, Children in Scotland, Play Scotland, Church of Scotland, CARE Scotland.
19 Barnardos, Children in Scotland, Play Scotland.
‘social actors entitled to impact on decisions affecting them’.

34. SERA Early Years Forum asked for reassurance that the needs of the child were the only legitimate starting point for the curriculum.

Transitions
35. Barnardos and Dumfries and Galloway Council referred to support they provide for transitions to primary. The former through direct work with children and the latter through distribution of material to all primary 1 and pre-school staff.

36. The Scottish Out of School Care Network (SOSCN) and UNISON suggested that the effect on children of transitions between different settings during the day is an area to be considered but SOSCN considered that while consistent experience is helpful, this does not require all day care in a single setting. Children in Scotland referred to the OECD Starting Strong report on the importance of transitions and Learning and Teaching Scotland referred to their 'Progress with Purpose' report (2002) on transitions from pre-school to primary one.

37. A more frequent concern was the different approaches of nursery and primary\(^{20}\) and that primary provision had much to learn from the nursery approach. Dumfries and Galloway Council suggested that guidance on transitions was needed.

38. Learning and Teaching Scotland noted that the Curriculum Framework for 3-5 was also intended as a guide to the early years of primary and that any consideration of curriculum needs to be viewed in the context of the Executive's review of the 3-18 curriculum. Part of the Executive's review includes consideration of improving links between pre-school and early primary. Barnardos suggested that more provision is needed to support transitions for vulnerable children.

Workforce Issues
39. Workforce issues were mentioned by most submissions, in particular the effect of regulation, pay and qualifications on the ability of services to compete. Another key theme was the role of the teacher or graduate staff in the early years setting and as such this links to the theme of implications from child development.

40. Seven projects were mentioned which give support to service providers and staff. For example, advice and training for childminders (Shetland) and training opportunities for early years workers generally (Dumfries and Galloway).

41. The SSSC stated that the importance of well trained, well qualified pre-fives worker in supporting children’s development ‘cannot be overestimated.’ While in general submissions supported a well trained workforce as a requirement of quality provision, there were differences in the level of training that was considered suitable and concerns about the costs of recruiting a well qualified workforce. The results from EPPE were often referred to as justification for a better qualified workforce\(^{21}\).

Teacher role
42. Scottish Executive guidance in 2002 made it optional to have a teacher employed in nurseries. Five submissions stress the importance of teacher qualifications\(^{22}\) often with reference to EPPE. SERA Early Years Forum argued that what may be required was the critical and reflective thinking that students gained during a degree rather than a teaching degree per se. Grace Goodwin suggested that Early Childhood graduates are more aware of current issues than PGCE students.

\(^{20}\) IDEAS, Laura Henderson, SERA Early Years Forum, Children in Scotland.

\(^{21}\) Avrail Williamson, Children in Scotland, Scottish Social Services Council, Scottish Out of School Care Network.

\(^{22}\) Marie Pisaneschi, Amanda Nicholls, Edinburgh Council, East Dunbartonshire Council, EIS.
43. There was a suggestion from Amanda Nichols, primary school board member and Avril Williamson, a nursery teacher, that cost was a factor in deciding not to use teachers in early years. West Lothian council stated that they were retaining teachers in all pre-school provision, East Dunbartonshire retain teachers in local authority provision, but not in private or voluntary sector provision. The Scottish Out of School Care Network suggested that ratios of qualified: unqualified staff in early years settings should be considered.

Childminders

44. Another area where more qualifications were considered necessary were for childminders. The Scottish Childminding Association noted that although childminders have unsupervised care of children 0-3 years, ‘they are not even required to attend basic training prior to registration.’ The Care Commission noted that ‘training for childminders needs to continue’ and also that large numbers of childminders enter and leave the sector each year. Suggested reasons include: low pay or their own children growing up.

SSSC registration

45. At the same time, a number of submissions suggested that current qualification requirements should be relaxed for some staff. CARE suggested that qualifications should remain optional. Childcare should not ‘become professionalized to the point of excluding wider community input.’ Four submissions mentioned a reluctance amongst staff to undertake training, Shetland council suggested that the system should be flexible enough to take into account prior learning, while others suggested a ‘granny clause’ whereby older staff are not under the same requirements as others.

46. There was an implication that a variety of roles and approaches were needed. Avril Williamson suggested that it was the contribution of a variety of professions which created the ‘particular dynamics’ of the early years sector. It suggested that the different professions were ‘interdependent’. Echoing this, West Lothian and Edinburgh councils suggested that early years be more integrated into ITE and the Scottish Childminding Association suggested that ‘integrated training’ would aid a better understanding of different roles.

Content of training

47. Three identical submissions from private sector providers queried the standard of current SVQ childcare qualifications.

Economic impact

48. In addition to the already mentioned concern about the impact of qualification on staff costs, it was also suggested by CoSLA and West Lothian Council that expansion in other policy areas such as increasing the numbers of classroom assistants would reduce the potential labour pool.

Early Years Workforce Review

49. UNISON and Children in Scotland expressed support for the existing Scottish Executive Early Years Workforce Review, Children in Scotland suggested that teachers and nursery workforce issues should be looked at together.

Flexibility, choice and access to services

23 Scottish Social Services Council (SSSC) regulates around 30,000 early education and childcare workers. Registration, which will begin in December 2006, will require workers to hold or be working towards a relevant qualification. Executive intend that 80% of the workforce will be qualified by 2008/09.
24 Forbes Nursery, Prime Time Nursery, Little Acorns Nursery
25 Little Acorns, Forbes and Prime Time Nurseries
50. The evidence included mention of around 90 projects or services with a variety of funding sources, delivery arrangements and availability. Fourteen submissions mentioned projects which provided some kind of extended childcare provision either through provision of ‘extra pre-school hours’ above the statutory 412.5 hours, (e.g Argyll and Bute offer 462.5, North Lanarkshire offer 52 weeks for a fee, West Lothian have a ‘wrap around care service’ at 11 settings) or the development of sitter services to provide childcare outside normal working hours or respite (North Lanarkshire Council). In addition to the pre-school universal entitlement, most submissions mentioned projects providing targeted parental support, either through the voluntary or public sector.

51. Projects to improve accessibility include provision of transport to preschool (Shetland council), mobile crèche, play van (Shetland) and home visiting. Financial accessibility is improved by subsidising fees for low income families (e.g North Lanarkshire Council).

**Flexibility**

52. The Scottish Out of School Care Network suggested that although Working Tax Credit gives flexibility in theory, this requires pre-school providers to respond to demand and local authorities can be slow to offer additional hours. This suggests there is an issue about the ability of providers to respond quickly to shifting demand. West Lothian Council suggests that providing flexibility is expensive, and One Parent Families Scotland consider it requires careful consideration of operational details and long-term sustainable funding. CoSLA referred to the ‘illusion’ that a variety of providers entails greater flexibility. This does not result in a variety of provision being available everywhere.

**Barriers to choice**

53. The main barriers to choice were the expense of running a flexible service\(^{26}\) the affordability to parents, variation in service provision by location and lack of provision outside ‘office hours’.

54. Rural areas were most often mentioned as having little choice\(^{27}\) but One Parent Families Scotland also mentioned lack of choice due to competition in urban areas. Expense was noted in relation to private provision\(^{28}\) provision for children with additional support needs (SPPA) and provision outwith office hours\(^{29}\).

**Specific types of service required.**

55. A number of submissions mentioned particular types of provision which they wished to see expanded.

- Gaelic organisations called for more support for Gaelic medium pre-school education.
- Quarriers noted that there was a waiting list for family centres and a demand for combined family support and childcare delivered in a welcoming, non-stigmatising way.
- The Scottish Preschool Play Association stated that some parents request a voluntary sector place but are offered a local authority one.
- SPPA state that the voluntary sector play groups have dropped from 45,883 in 1997 to 20061 in 2003 and note a trend towards more formal, statutory based provision.

**Quantity of provision**

56. Generally submissions supported increasing the availability of early years provision, although a couple queried whether this was the right approach.

---

\(^{26}\) West Lothian Council, Scottish Out of School Care Network

\(^{27}\) Shetland Council, First Nursery, One Parent Families Scotland, Scottish Preschool Play Association.

\(^{28}\) Quarriers, Scottish Out of School Care Network

57. Generally the age of starting nursery was not questioned, but a student teacher (Laura Henderson) submission did query whether three was too young. East Dunbartonshire Council queried whether 12 ½ hours was enough time to deliver a quality curriculum. Although generally submissions supported expanded provision, the Church of Scotland queried whether babies should be left from 8.30 to 5.30, suggesting more support for workplace childcare and the Scottish Preschool Play Association sounded a note of caution against assuming that more early education was necessarily better:

‘There is concern that providing longer formal pre-school education may be detrimental to a child’s all round welfare. The quantitative concept of learning, that the earlier and longer a child is exposed to it the better will be the outcome, is a fallacy.’

58. However, EPPE research ‘has demonstrated the beneficial effects of high quality provision on children’s intellectual and social/behavioural development.’

59. One Parent Families Scotland and Children in Scotland supported more provision outside normal hours with Children in Scotland referring to universal provision in Sweden, supported an increase of affordable, full time ‘whole day’ places for all 3 and 4 year olds working towards availability of places for children aged one to twelve years. In a similar vein there was support for provision from birth to compulsory school age.

60. Others suggested more modest increases. The Scottish Out of School Care Network suggested that ‘serious questions about to be asked about the need to extend core entitlement to full day provision’ but suggested extension to cover breakfast and lunch. First Nursery suggested that the current part time free provision should cover the two full years prior to starting school, rather than link to birthday.

**Support for parents**

61. *Parenting skills support* was mentioned in relation to 31 projects or services in a variety of settings including voluntary sector, social work family centres, nursery classes, or through outreach work. Provision mentioned included positive parenting programmes, mellow parenting programmes, Peer Early Education Partners (PEEP), sleep counselling, bookstart, baby massage, toy libraries, support for fathers, healthy eating advice and support for parents regarding drugs and alcohol. Support tended to be targeted at ‘vulnerable families’, for example the Cradle Project is aimed at supporting vulnerable families from pregnancy through the first year. However, there were also universal programmes, such as PEEP in West Lothian and Shetland. Some projects encouraged parents to stay with their children in the playroom. For example: Jeely Piece Club and PEEP in West Lothian and Shetland.

62. *Support into work or training*. In addition to parenting skills, a number of projects also focused on encouraging parents to access employment or training – either through extended childcare provision, careers and benefits advice.

63. *Home visiting* was mentioned in relation to six projects or services, either targeted at vulnerable families, rural areas or a standard policy of a home visit before a child starts pre-school.

64. There was general recognition of the importance of providing support to parents and seeing the child as part of a family rather than simply an individual attending early years

---

30 One Parent Families Scotland, Children in Scotland, UNISON
31 Edinburgh Council, West Lothian Council, EPPE Researchers, One Parent Families Scotland (OPFS), Quarriers, Barnardos, Children in Scotland, CARE Scotland, Church of Scotland, CoSLA, Scottish Childminding Association (SCMA), Scottish Pre-School Play Association (SPPA), UNISON.
provision. Much of this was based on findings from research such as EPPE about the importance of services having links with parents for the child’s development.

‘the implications are that working with parents, especially those from more disadvantaged communities on programmes such as positive parenting and improving the quality of the home learning environment can directly impact on child’s outcomes.’

65. The Church of Scotland and CARE stressed that services are not a substitute for responsible parenting and the Scottish Preschool Play Association was concerned that the opportunities for collaboration with parents were actually reducing.

66. There was concern that current policy was driven by an ‘employability’ agenda rather than focusing on supporting families and attaining improved outcomes for children. The Scottish Out of School Care Network suggested that emphasis on working parents would reduce availability for children with disabilities. However, Barnardos suggested that there was no conflict between the policy aims of labour force participation and ensuring a child centred approach and Children in Scotland suggested that ‘policies should respond to increasing maternal employment.’

67. Again the need for universal services was supported – primarily to ensure a ‘non-stigmatising’ approach to parental support and Edinburgh council noted that raising the self esteem of parents was important.

68. Support to parents was generally considered as having potential to be an important preventative measure (EPPE), preventing families moving from ‘stress’ to ‘crisis’ (One Parent Families Scotland) and keeping families together, (UNISON, Barnardos). However, Edinburgh Council mentioned that parents have a right to reject what’s offered.

Specific proposals
69. There were a number of proposals for specific types of parental support:

- Barnardos suggested: there was a need to engage fathers, included a proposal for a project working with substance misusing parents and suggested more support for families affected by disability or mental health problems
- Children in Scotland suggested a legislative framework for parental involvement and representation from pre-school to secondary.
- One Parent Families Scotland suggested that lifeskills at late school stage could help develop parenting skills, especially where some young people have not had positive parental role models.
- CNSA asked for wider implementation of ‘Gaelic in the home’ courses for parents.
- CoSLA suggested that integrated community schools could provide a ‘universal gateway’ for services.

Integrated Services
70. A number of submissions gave examples of integrated service delivery and partnership working. For example, the Dumfries and Galloway council home support project service is managed jointly by the Public Health Nursing Team and childcare social work family support. Fifteen submissions either mentioned work in partnership with health services or provision of a health related service. Examples include support for breastfeeding mothers, oral health programme for pre-school children and nutrition and exercise advice. West Lothian mentioned one of their family centres had an on-site health visitor. Family support

---

32 Quarriers, Scottish Out of School Care Network, Scottish Childminding Association, Scottish Preschool Play Association.
33 Barnados, CoSLA
workers and social work family centres also figure prominently in the support to vulnerable families.

71. Integrated service delivery was generally welcomed but the complexity of effective partnership working and integrated service delivery was a concern particularly of local authorities and ‘professional bodies’\(^\text{34}\) and to a lesser extent of providers.\(^\text{35}\) CoSLA considered that more and better integrated working was needed at both national and local level. Some of the issues which were considered to contribute to current lack of coherence were:

- Continued separation of ‘care’ and ‘education’ (SSSC, SPPA)
- Continual re-organisation of social work and health (Jeely Piece Club)
- Need for voluntary sector to be on an equal footing with the statutory sector (SPPA)
- the work involved in partnership is a considerable burden to the voluntary sector (SPPA)
- Establishment of Child Health Partnerships could contribute to incoherence (Stirling Council)
- Lack of understanding of respective roles (SCMA, SPPA)

**Role of Childcare partnerships**

72. There appears to be a lack of clarity around the role of Childcare Partnerships\(^\text{36}\) Dumfries and Galloway Council welcomed proposed national guidance and First Nursery called for more prescriptive guidance for Local Authorities. UNISON suggested that unions should be represented on Childcare Partnerships and Little Flyers Nursery have been told that they will not be able to get into the childcare partnership in West Lothian and suggest that very few private providers are included.

**Role of New Community Schools**

73. New community schools were considered to have potential to provide integrated services\(^\text{37}\) but there was some concern by the Jeely Piece Club that they had not included the voluntary sector.

**Inspections and regulation**

74. There was a concern notably of professional bodies, unions and private sector providers that services are overburdened by regulation. This was not so much an issue raised by local authorities or voluntary organisations.

75. Three substantially similar submissions from private sector providers suggested that the ‘huge increase in paperwork makes it increasingly difficult to carry on our nursery business.’\(^\text{38}\) SCMA also representing effectively small businesses, noted that ‘childminders are overburdened as the Regulation of Care Scotland Act deals with childminders in the same way as a manager of a large nursery.’ They suggested that this is deterring people from registering. The Care Commission noted that it was unnecessary for childminders to register with both the SSSC and the Care Commission.

76. The SPPA noted that the new regulatory framework had raised expectations requiring groups to develop a lot of new policy. While SPPA had helped with this, they suggested that partnership working with the local authority was akin to further inspection in addition to inspection by HMIE.

\(^\text{34}\) Dumfries and Galloway Council, Edinburgh Council, Moray Council, West Dunbartonshire Council, Association of Directors of Education in Scotland (ADES), Convention of Scottish Local Authorities (CoSLA), SCMA, SPPA.
\(^\text{35}\) First Nursery, Jeely Piece Club
\(^\text{36}\) Dumfries and Galloway Council, West Dunbartonshire Council, ADES
\(^\text{37}\) Jeely Piece Club, First Nursery, Children in Scotland
\(^\text{38}\) Little Acorns Nursery, Prime Time Nursery, Forbes Nursery
HMIE

77. Being aware of the criticisms of the frequency of inspections, HMIE suggest that following the completion of this round they will consider reducing frequency in order to focus resources where they are most needed.

78. A survey of inspections 1997-2001 found generally good quality provision. Further improvements were required in creating better links with other professions, staff should be clearer about the curriculum, a need, in the voluntary and private sectors to improve certain aspects of it, such as communication and better programmes were needed for physical activity. Around half of current establishments have been inspected and quality has been maintained, although there are still differences in quality between sectors and an overall weakness in assessment and reporting children’s progress.

79. The Assessment is for Learning programme 2002-2006 includes consideration of early intervention and transition from pre-school to primary.

Care Commission

80. The Care Commission describe their main role being to ‘drive up quality without removing flexibility or choice.’ In March 2004 there were 10,638 regulated early years services of which 6,180 were childminders and 4,458 were daycare. C. 2,800 of day care services provide early education. Large proportions of childminders enter and leave the market each year.

81. The Care commission has reduced the amount of paperwork required for registration.

82. In 2003/04, 64% of the 239 complaints about daycare were upheld and 53% of the 98 complaints about childminders were upheld.

83. The Care Commission intends to report on the quality of childminding in 2005/06.

ANNEX 1: ORGANISATIONS RESPONDING BY TYPE

<table>
<thead>
<tr>
<th>Organisation type</th>
<th>Number of submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local authorities</td>
<td>12</td>
</tr>
<tr>
<td>Other funders</td>
<td>3</td>
</tr>
<tr>
<td>Government agencies</td>
<td>4</td>
</tr>
<tr>
<td>Teachers</td>
<td>3</td>
</tr>
<tr>
<td>Academics</td>
<td>3</td>
</tr>
<tr>
<td>Individuals</td>
<td>1</td>
</tr>
<tr>
<td>Nursery/childcare providers (other than local authorities)</td>
<td>11</td>
</tr>
<tr>
<td>voluntary organisations (other than providers)</td>
<td>4</td>
</tr>
<tr>
<td>Religious organisations</td>
<td>2</td>
</tr>
<tr>
<td>Professional associations/Unions</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
</tr>
</tbody>
</table>

Ways of teaching was raised by nearly all types of organisation. Workforce issues, choice and support to parents were also mentioned by a broad range of organisations. Local authorities and service providers raised the largest range of issues in their submissions while academics and teachers concentrated mainly on ways of teaching with teachers also concerned with workforce issues.

Local authorities were most often concerned with workforce issues, followed by funding, ways of teaching and choice. The challenges of integrated service provision were a concern mainly of local authorities and professional associations. Providers were most concerned with issues
of lack of choice/ availability and by funding issues – particularly the impact on the private/voluntary sector of increased costs.

Local Authorities
Aberdeenshire
Argyll and Bute
Dumfries and Galloway
Edinburgh
East Dunbartonshire
Falkirk
Moray
North Lanarkshire
Shetland
Stirling
West Dunbartonshire
West Lothian

Funders (other than local authorities)
Big Lottery fund
Comunn na Gaidhlig
ESF social fund objective 3 partnership

Government agencies
Care Commission
HMIE
Learning and Teaching Scotland
Scottish Social Services Council

Teachers
Laura Henderson (student teacher, write up of group discussion of the inquiry remit)
Marie Pisaneschi and colleagues (group of head teachers, Glasgow)
Avril Williamson, (nursery teacher)

Academics (including individuals, research units, research organisations)
EPPE (Effective Pre-school and primary education project)
Grace Goodwin
Christine Stephen, Scottish Education Research Association, Early Years Forum

Individuals (other than teachers, academics)
Amanda Nicholls, chair, primary school board

Nursery/childcare providers (other than local authorities)
Comann Nam Parant
CNSA
First Nursery
Jeely Piece Club, Castlemilk, est. 1975, surestart funding since 2000
Little Acorns Nursery School – identical to Forbes Nursery submission [49], and Prime Time Nursery
Little Flyers Nursery
Forbes Nursery [substantially identical to Little Acorns Nursery, and Prime Time Nursery]
One Parent Families Scotland
Prime Time Nursery – virtually identical to Forbes Nursery and Little Acorns nursery. Quarriers
Scottish Out of School Care Network

Voluntary Organisations (other than nursery/childcare providers)
Barnardos
Children in Scotland
IDEAS (International Development Education Association of Scotland)
Play Scotland

**Religious organisations**
CARE (Christian Action, Research and Education)
Church of Scotland

**Professional bodies/ unions**
ADES (substantially similar to West Dunbartonshire)
CoSLA
EIS
Scottish Childminding Association
Scottish Pre-school Play Association
UNISON

**Other**
NESTA futurelab (National Endowment for Science, technology and the Arts)
ANNEX 2: DESCRIPTION OF SERVICES
The evidence received included descriptions of a considerable number of services and projects which are listed below.

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Description</th>
<th>Funding (where stated)</th>
<th>Location/ submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Homestart</td>
<td>Volunteer help to parents</td>
<td>Aberdeenshire council</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>2 Capability Scotland support to parents</td>
<td>Intensive individual support to manage children’s behaviour</td>
<td>Aberdeenshire Council</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>3 Link worker scheme</td>
<td>Support children with ASL into mainstream services</td>
<td>Provided by Capability Scotland, funded by Aberdeenshire Council through Childcare Partnership</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>4 Sitter service</td>
<td>Provided in rural areas where group care unavailable or child's needs require home care. Also used for respite care.</td>
<td>Provided by One Parent Families Scotland, funded by Aberdeenshire Council through Childcare Partnership</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>5 Early years speech and language therapists</td>
<td>3 therapists improve communication with children by parents and early years staff</td>
<td>NHS Grampian grant funded by Aberdeenshire Council</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>6 Fraserburgh Families</td>
<td>Advice and support for drug using families</td>
<td>Provided by Children 1st, funded by Aberdeenshire Council</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>7 Family Centres</td>
<td>Help with parenting for ‘vulnerable families’ – group and outreach work</td>
<td>Directly provided by Aberdeenshire Social Work</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>8 Bookstart</td>
<td>Babies given books by health visitors and libraries.</td>
<td>Childcare Partnership</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>9 Books for Blokes</td>
<td>Fathers encouraged to read with children</td>
<td>Provided by Early Intervention Team, Education Service, Aberdeenshire Education services</td>
<td>Aberdeenshire</td>
</tr>
<tr>
<td>10 Surestart Community Learning workers</td>
<td>Develop services and groups for all parents with very young children. e.g baby massage, parents groups, sleep counselling, postnatal depression</td>
<td>Aberdeenshire</td>
<td></td>
</tr>
<tr>
<td>11 Community Childminders</td>
<td>Early intervention measure to prevent referral to</td>
<td>Argyll and Bute</td>
<td></td>
</tr>
<tr>
<td></td>
<td>statutory services. 43 childminders recruited, 272 referrals</td>
<td>Surestart Budget divided equally over 5 SIP areas.</td>
<td>Argyll and Bute</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>12</td>
<td>Playgroups, toy library, bookstart, parent and toddler groups, playgroups, afterschool care</td>
<td>Follow the NCH model of supporting parents</td>
<td>Argyll and Bute</td>
</tr>
<tr>
<td>13</td>
<td>4 Parent support groups</td>
<td>Extra provision where statutory entitlement is not enough. Requires referral by the relevant officer. Supported 46 children in 2002/03, 12 in 2004</td>
<td>Argyll and Bute</td>
</tr>
<tr>
<td>14</td>
<td>Early education</td>
<td>Funded through Childcare Partnership</td>
<td>Argyll and Bute</td>
</tr>
<tr>
<td>15</td>
<td>Area Network Support Teacher</td>
<td>Visit pre-school to identify children with additional support needs.</td>
<td>Funded through Childcare Partnership</td>
</tr>
<tr>
<td>16</td>
<td>2 Childminding development workers</td>
<td>Recruitment, pre-registration training, policy development and on-going support</td>
<td>Partnership with Scottish Childminding Association</td>
</tr>
<tr>
<td>17</td>
<td>Pre-school education</td>
<td>Offer 462.5 hours cf: statutory requirement of 415 hours</td>
<td>Argyll and Bute</td>
</tr>
<tr>
<td>18</td>
<td>Paisley Threads</td>
<td>Includes, childcare while parents attend college, pre-natal drop-in, baby drop-in, fathers’ group. Some parents need support in getting their children to nursery, and budgeting to ensure they’re clothed and fed.</td>
<td>Barnardos</td>
</tr>
<tr>
<td>19</td>
<td>Bo-ness Education and Family Support Service</td>
<td>Includes nursery nurturing scheme, 2 Nurture U – work with 35 children in five local authority nursery classes. Help prepare the children for the transition to school</td>
<td>Barnardos</td>
</tr>
<tr>
<td>20</td>
<td>Children’s trust Fund proposal</td>
<td>Proposal to help drug and alcohol addicted parents into work.</td>
<td>Barnardos</td>
</tr>
<tr>
<td>21</td>
<td>Parenting support</td>
<td>Includes: benefits advice, stress management, sitter services for families with disabled children, baby massage, counselling, anger management, child development, work with fathers</td>
<td>Barnardos</td>
</tr>
<tr>
<td>22</td>
<td>Blackford Brae Community Support Team</td>
<td>Works with classes of nursery children, many with social and emotional difficulties, supporting the transition to Primary 1.</td>
<td>Barnardos</td>
</tr>
<tr>
<td>23</td>
<td>Out of School Hours Childcare Programme</td>
<td>Intended to complement the childcare strategy. Submission gives links to evaluation documents.</td>
<td>Lottery scheme delivered £25.3m from 1999-2005. £7m targeting disadvantaged areas from 2001</td>
</tr>
<tr>
<td>25</td>
<td>Children's services centres</td>
<td>contributing to the costs of accommodation</td>
<td>Sure Start</td>
</tr>
<tr>
<td>26</td>
<td>Home Support Project Service</td>
<td>Jointly managed by Public Health Nursing Team and Childcare social Work Family support.</td>
<td>Sure Start</td>
</tr>
<tr>
<td>27</td>
<td>Cradle Project</td>
<td>Partnership between health and council core services to support vulnerable families from pregnancy, through the first year.</td>
<td>Sure Start, Health and council core funding</td>
</tr>
<tr>
<td>28</td>
<td>Pre-school education</td>
<td>Support transitions to P1, staff development, distributed ‘Activity based learning in the early years’ to all P1 and pre-school centres, use transfer documentation. Appointed development officer to improve outdoor play.</td>
<td>Core funding</td>
</tr>
<tr>
<td>29</td>
<td>Workforce training</td>
<td>Promote SVQ 2, 3, and 4 and HNC qualifications</td>
<td>Workforce development fund</td>
</tr>
<tr>
<td>30</td>
<td>Support to childcare providers</td>
<td>Appointed Childcare Support and Development Team (6 posts) and development of grant schemes.</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Support for vulnerable families</td>
<td>Reserved childcare places Financial support to voluntary sector crèche Develop social inclusion grant scheme Mellow Parenting Programmes Sleep Counselling Baby Massage Training STEPS (Steps to Excellence for Personal Success) personal development programme for parents.</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Parenting Audit</td>
<td>Multi agency group created to develop comprehensive parenting services, and an audit commissioned from Aberlour.</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Parents’ Initiative Co-</td>
<td>Advice for parenting projects</td>
<td>National priorities action fund: Falkirk council</td>
</tr>
<tr>
<td></td>
<td>Program</td>
<td>Description</td>
<td>Funding</td>
</tr>
<tr>
<td>---</td>
<td>---------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>34</td>
<td>Positive Parenting and Mellow Parenting programmes</td>
<td>Provided for children in nursery, primary and secondary</td>
<td>Integrated Learning Communities Fund, provided by family support workers</td>
</tr>
<tr>
<td>35</td>
<td>Working with fathers</td>
<td>Joint project with local authority, One Parent Families Scotland and Barnardos</td>
<td>Falkirk council</td>
</tr>
<tr>
<td>36</td>
<td>Nurture Group</td>
<td>Working in nursery and primary with children with emotional and social developmental delay, and directly involving parents</td>
<td>Falkirk council</td>
</tr>
<tr>
<td>37</td>
<td>Family Learning Workers</td>
<td>Supporting parents supporting their child's learning and play</td>
<td>Part funded by council</td>
</tr>
<tr>
<td>38</td>
<td>CLASP</td>
<td>Positive parenting and baby massage</td>
<td>Surestart</td>
</tr>
<tr>
<td>39</td>
<td>3 family centres: Maddiston, Bo'ness, Langlees</td>
<td>Include parenting groups, healthy eating classes, individual and group support programmes</td>
<td>Partnership with voluntary sector</td>
</tr>
<tr>
<td>40</td>
<td>Jeely Piece Club</td>
<td>Est. 1975, take a community perspective and work with children and their parents together where possible. Nursery sessions birth to 5 yrs, parents help staff in the playroom, fortnightly staff/parents meeting, programme of speakers/discussions on child development, training opportunities, personal development programmes, parenting classes.</td>
<td>Surestart, Partnership with council nursery in Castlemilk Family Learning Centre, Social work s.10 funding Better neighbourhood services fund Childcare strategy fund</td>
</tr>
<tr>
<td>41</td>
<td>Mobile creche</td>
<td>Available in rural areas with pockets of unemployment</td>
<td>Moray Council</td>
</tr>
<tr>
<td>42</td>
<td>Breakfast Care</td>
<td></td>
<td>Moray Council</td>
</tr>
<tr>
<td>43</td>
<td>Pre-school education</td>
<td>Some partners providing extended service to meet needs of working parents</td>
<td>Moray Council</td>
</tr>
<tr>
<td>44</td>
<td>Childcare for vulnerable families</td>
<td>40 FTE childcare places to enable parents to access training or work</td>
<td>North Lanarkshire council</td>
</tr>
<tr>
<td>45</td>
<td>Sitter Service</td>
<td>Available to all families, but particularly at lone</td>
<td>Childcare Partnership funding</td>
</tr>
<tr>
<td>No.</td>
<td>Service Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>---------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Subsidised places</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Larkfield Family Centre, Nursery from 0 – 5 yrs, learning and support services to parents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Quarriers Family Resource Centre, Family support, groups for children and parents, nursery for 0-3 yrs. Support to fathers, group work, drop-in, access to other services, provision of individual support in the family home.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Quarriers Childcare Project, Flexible childcare to be available all day, all year, in an area with high levels of deprivation, to support parents’ access to work.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>SPPA, support to playgroups, Support to parents in 17 local authorities in developing play groups including support with business planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>6 Local Support Networks, To support children from pre-school to age 20 who are experiencing difficulties in their lives.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Pre-school Home Visiting Service, For parents of children with special needs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Pre-school Transport Scheme, Shetland wide scheme to support families having difficulty accessing pre-school provision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Bruce Family Centre, 3 parents groups and respite care. Supported by Health Visitors, Community Development, Shetland Youth Information Service. Outreach work ‘play van’ in rural areas.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Health visitors and family support workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Islesburgh Trust, Sunday afternoon childcare for children with additional needs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Peers Early Education Partnership Project (PEEP), Delivered through local nursery, involves parents in their children’s learning.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Firth and Mossbank Family, In an area of high deprivation, services include:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centre</td>
<td>Description</td>
<td>Funding</td>
<td>Location</td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td>---------</td>
<td>----------</td>
</tr>
<tr>
<td>59 Shetland Preschool Play Ltd.</td>
<td>Community nursery, breakfast club, out of school club</td>
<td>Opportunities Fund, SureStart</td>
<td>Shetland</td>
</tr>
<tr>
<td>60 Training for parents</td>
<td>Provide resources e.g play library, resources for children with additional support needs</td>
<td>SureStart and service level agreement with Shetland council</td>
<td>Shetland</td>
</tr>
<tr>
<td>61 Book start, bookstart plus and ‘Treasure Boxes’</td>
<td>Provided at local library</td>
<td>‘treasure boxes’ funded by SureStart</td>
<td>Shetland</td>
</tr>
<tr>
<td>62 Play at Home booklets</td>
<td>Multi-agency funding</td>
<td>Shetland</td>
<td></td>
</tr>
<tr>
<td>63 Oral health programme</td>
<td>Led by NHS Scotland, established across all Shetland</td>
<td>Education service</td>
<td>Shetland</td>
</tr>
<tr>
<td>65 Islesburgh One Stop Childcare</td>
<td>Encourage healthy snacks and raise awareness of parents</td>
<td>Education service</td>
<td>Shetland</td>
</tr>
<tr>
<td>66 Childcare Voucher Scheme (pilot)</td>
<td>Education service starting to implement this programme and will evaluate it.</td>
<td>Scottish Rural Community Transport Initiative, funding from the local community, New Opportunities Fund, Childcare Strategy</td>
<td>Shetland</td>
</tr>
<tr>
<td>67 Support to childminders</td>
<td>Provide start up costs and access to free or low cost training, support through Childcare Development Officer</td>
<td>Sheltand Childcare Partnership</td>
<td>Shetland</td>
</tr>
<tr>
<td>68 Support to children with Additional support needs</td>
<td>Staff funding</td>
<td>Sure Start through education service</td>
<td>Shetland</td>
</tr>
<tr>
<td>69 Community day care nursery</td>
<td>Partnership with: RAF Saxaford, Shetland Childcare Partnership and the local community.</td>
<td>Parental fees, Childcare Strategy, RAF Benevolent Fund and local community support.</td>
<td>Unst, Shetland</td>
</tr>
<tr>
<td>70 Extended day care/ respite</td>
<td>Respite and care for children ‘in need’ under 3 yrs</td>
<td>Sure Start</td>
<td>West Dunbartonshire</td>
</tr>
<tr>
<td>71 Mobile creche</td>
<td>to allow parents to access support services</td>
<td>Sure Start</td>
<td>West</td>
</tr>
<tr>
<td></td>
<td>Services for children with additional support needs</td>
<td>Including: home visiting, play sessions, support from educational psychologist</td>
<td>Sure Start</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>72</td>
<td>Family Support Strategy</td>
<td>partnership of education, health boards, voluntary sector and social work. Includes outreach work supporting vulnerable families</td>
<td>Sure Start</td>
</tr>
<tr>
<td>73</td>
<td>Breastfeeding Friendly</td>
<td>Education and health board, to support mothers breastfeeding</td>
<td>Sure Start</td>
</tr>
<tr>
<td>74</td>
<td>Pupil and Family support project</td>
<td>Support to parents and children in transition to P1</td>
<td>Better Neighbourhood Services</td>
</tr>
<tr>
<td>75</td>
<td>Subsidised fees</td>
<td>Childcare charges discounted for low income families</td>
<td>Sure Start</td>
</tr>
<tr>
<td>76</td>
<td>Extended provision</td>
<td>Commissioning arrangements to provide services beyond the statutory pre-school requirement.</td>
<td>Childcare strategy</td>
</tr>
<tr>
<td>77</td>
<td>2 Flexible childcare/sitter services</td>
<td>To allow parents with irregular working patterns to access childcare</td>
<td>Childcare strategy</td>
</tr>
<tr>
<td>79</td>
<td>Right of access</td>
<td>Routinely by all pre-school before children start.</td>
<td>Sure Start</td>
</tr>
<tr>
<td>80</td>
<td>Parent support</td>
<td>Diet, baby massage, behaviour management, self-esteem for parents, career advice</td>
<td>Sure Start</td>
</tr>
<tr>
<td>81</td>
<td>Early Years Services Group</td>
<td>Multi-agency team considers applications from professionals for additional support. Can allocate time in family centres, family support workers or wrap around care.</td>
<td>Sure Start</td>
</tr>
<tr>
<td>82</td>
<td>Onsite health visitor,</td>
<td>At Whitdale, early years centre – runs groups and provides advice on diet, nutrition, exercise, oral health, addiction.</td>
<td>Sure Start</td>
</tr>
<tr>
<td>83</td>
<td>Parent Support project workers</td>
<td>Knightsbridge early years centre, in one of the council’s most deprived areas. Provides play opportunities, gives support and parenting advice in an informal setting. mutual support by parents</td>
<td>Sure Start</td>
</tr>
<tr>
<td>Service</td>
<td>Description</td>
<td>West Lothian</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------------</td>
<td></td>
</tr>
<tr>
<td>Community Nursery Nurses</td>
<td>Support families with additional needs – e.g. disability. Partnership with health professionals, liaison with education service on transition to P1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-school Home Teaching Service</td>
<td>For children with additional needs and their parents. Individualised education programmes developed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jigsaw Development Centre</td>
<td>For children aged 0-3 with complex additional needs. Partnership between health, social policy and education staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Steps</td>
<td>Voluntary playgroup for 2-3 year olds with additional needs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wraparound Care Service</td>
<td>In 11 establishments, managed by education service, provides full day year round service except Christmas fortnight.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Years Centres</td>
<td>Three currently, two more planned. Provide PEEP, wrap-around care and family support. One also has lottery funded indoor/outdoor play area.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EDUCATION COMMITTEE

EARLY YEARS INQUIRY: APPROACH PAPER

INTRODUCTION

1. Based on the written evidence received, this paper suggests potential themes, witnesses and visits for the Committee’s inquiry on early years. A separate paper summarises the evidence received. It is suggested that formal oral evidence is taken at five meetings during the autumn in addition to three visits, research on the views of parents and a 'round table' with private sector providers.

2. The remit of the inquiry is:

To examine progress by the Scottish Executive to deliver effective early years education and childcare in the light of Partnership Agreement commitments and forthcoming policy announcements. In particular:

- support for parenting
- the variety of approaches in child development work and their implications for future policy
- flexibility of childcare provision
- availability of choice
- provision for low income families

3. Key themes from the evidence in relation to the remit were:

- **Support for parenting:** There was general recognition of the importance of better support for parents whether by support for vulnerable families/families under stress or improved parental leave arrangements.

- **Implications from child development:** The EPPE findings were widely referred to. While there was considerable support for teacher or graduate qualifications there were also concerns about the practicalities of qualification based registration requirements of the Scottish Social Services Council.

- **Flexibility:** It was suggested that creating the capacity to respond to changing demand entailed extra cost.

- **Availability of Choice:** There was a particular concern about availability in rural areas and outside office hours.

- **Provision for Low Income Families** The cost of services was considered a barrier. There was general support for universal services with targeted support available within that.

- **Funding structures** The evidence noted that the funding situation is complex and costs are increasing which can weaken sustainability of projects. The Committee has agreed to appoint an adviser to assist with scoping the current situation and considering the cost implications of any recommendations.
4. In order to address the above themes, the following programme of meetings is suggested.

**Meeting 1: Overview: voluntary sector and academic perspectives**

**Panel 1**
- SERA early years network. Their evidence, from Christine Stephen, discusses pedagogy and the debate about staff qualifications and training from a research perspective.

**Panel 2**
- Children in Scotland – Bronwen Cohen, their director, has compared provision in Scotland and Sweden and in addition to giving a voluntary sector perspective, their evidence also covers broader policy issues.
- Barnardos – the combination of national policy issues and local service provision could provide an interesting perspective.

**Meeting 2: Public authorities**

**Panel 1**
- UNISON. Petition 523 on behalf of UNISON called for the Scottish Parliament to urge the Scottish Executive to initiate a national inquiry into early years education and childcare with a view to producing a report and recommendations on the way forward.

**Panel 2**
A panel of local authorities has been suggested to give an indication of different local approaches:
- Shetland Council - approach of a rural council
- Edinburgh Council - contrast of an urban council
- Stirling Council - their evidence mentioned its approach to integrated service provision
- Argyll and Bute Council - their evidence discussed its provision of extra free pre-school hours and its ‘community childminding scheme.’ They also state in their evidence that capacity exceeds demand.

**Meeting 3: Early education and the role of the teacher**

**Panel 1**
This panel will enable exploration of how the curriculum reflects current thinking in child development and how it is delivered in pre-school settings.
- Learning and Teaching Scotland
- HMIE
Panel 2

The role of the teacher was a key issue raised in evidence. Evidence from SSSC and EIS should allow discussion of the mix of skills and approach required from pre-school staff.

- Scottish Social Services Council.
- EIS

The Committee may wish to consider whether in addition to these witnesses they would like to visit a nursery class.

Meeting 4: Partnership working and integrated service delivery

Evidence from the private sector, voluntary playgroups and health should enable issues of partnership working and integrated service delivery to be explored, in addition to the impact on other services of the increase in local authority pre-school education.

Panel 1

- Scottish Child Minders Association
- Scottish Preschool Play Association

Panel 2

- Community Practitioners and Health Visitors Association or Royal College of Nursing.
- Association of Directors of Social Work

Meeting 5: Ministers

Panel 1

- Care Commission – it may be useful to get an overview of registration and inspection issues and to discuss claims that the system places too heavy a bureaucratic burden on small businesses.

Panel 2

As integrated services in the early years includes health as well as education and social work it is suggested that the committee invite both the education and health ministers to give evidence.

- Minister for Education
- Minister for Health and Community Care

The evidence session would be followed by a discussion of key themes for the report

Meeting 6

Discussion of draft report

Meeting 7
Discussion of final report.

VISITS PROGRAMME

5. Three visits are suggested, aimed particularly at exploring approaches of support to parents in the voluntary and public sector, and public sector provision of ‘wrap-around’ care.

   a. **Jeely Piece Club, Glasgow:** Running since 1975 and taking a community perspective to their work, the Jeely Piece Club works with parents and children together in an area of high deprivation. They run a nursery for 0-5 years, parents help staff in the play room and a variety of parent support is provided, including discussions on child development. It is funded from a variety of sources including SureStart, Childcare Strategy and social work department.

   b. **West Lothian Early Years Centres.** There are currently three centres, with another two planned, providing wrap-around care, family support and PEEP. Peer Early Education Partnership aims to work with parents and children to raise child attainment. The visit might also be an opportunity to discuss with local authority staff their approach to the pre-school curriculum and their other services, such as home visiting, support for children with additional support needs, approach to partnership working and integrated service delivery.

   c. **International visit.** Sweden or Finland are proposed as an international visit which would provide a useful international ‘benchmark’ against which to consider developments in Scotland. The approach to universal childcare, early education and parental leave in Sweden was referred to in several submissions. Alternatively Finland does consistently well in international surveys of educational attainment and might provide an interesting alternative to Sweden.

VIEWS OF PARENTS

6. The Committee has no evidence of the views of parents. It is suggested that this gap could be filled by:

   a. Exploring the possibility of running a number of focus groups. For example this could include parents in rural / urban areas, parents using parent support services, parents using a variety of childcare to enable them to work, parents of children with additional support needs. A proposal could be developed by SPICe for an external research contract.

   b. Consideration by SPICe of the existing literature on the views of parents

ROUND TABLE

7. The private providers who submitted evidence voiced concern over the effects of regulation and increasing staff costs on their businesses. It is suggested that a ‘round table’ event with these and other private providers would be a useful opportunity to explore these issues in more depth.
8. The private nurseries which submitted evidence are Little Acorn, Edinburgh; Little Flyers, Broxburn, First Nursery, Borders; Forbes Nursery and Prime Time Nursery). The Scottish Independent Nurseries Association would also be invited.

**ACTION**

9. The Committee is invited to **DISCUSS** and **AGREE** the proposed approach to its early years inquiry (see paragraphs 5 – 8).

10. The Committee is asked to **AGREE** whether a proposal for an international visit (see paragraph 5) should be developed, if so whether Finland or Sweden would be preferable. The Committee is asked delegate approval to the Convener to develop a costed proposal to take to the Conveners’ Group, the Parliamentary Bureau and the SPCB before the summer recess.

11. The Committee is asked whether it would **AGREE** to the establishment a focus group (see paragraph 6) and if so, to delegate to the Convener the detail of developing the proposal and taking it to the Conveners’ Group before the summer recess.
Introduction
The Education Committee were the lead committee in the scrutiny of the Education (Additional Support for Learning) Scotland Act 2004 (the Act).

The Act creates a new framework of provision for children and young people who require some additional support for learning.

The Code of Practice explains the new duties and provides guidance on the Act’s provisions.

The draft Code of Practice was laid before the Parliament on 12 May 2005.

This paper refers to the Committee’s recommendations in the Stage 1 Report on Education (Additional Support for Learning) (Scotland) Bill, which have relevance to the Code of Practice. It is intended to summarise the key points raised by the Committee, and indicate where and how these are covered in the Code of Practice.

Please note that the draft Code of Practice refers to regulations which have not been laid before the Parliament at the time of writing.

Further detail on the implementation of the Act can be found at the Scottish Executive’s website:  [http://www.scotland.gov.uk/Topics/Education/School-Education/19094/17176](http://www.scotland.gov.uk/Topics/Education/School-Education/19094/17176)

Code of Practice and Directions
Many witnesses felt that the Code of Practice would be vital in clarifying many areas of the legislation. Also, that in terms of resources, the code would be crucial in accurately assessing the financial impact of the Act.

The Committee noted that the successful implementation of the Executive’s strategy would depend largely on the Code of Practice, and stated that it was crucial there should be widespread consultation before it is issued (Stage 1 Report para 178).

Consultation on the Code of Practice, and other regulations and policy issues was launched by the Scottish Executive on 29 November 2004. The consultation closed on 25 February 2005.

The Ministerial Foreword refers to the Code being drawn up in consultation with parents, children and young people and those working in education, health and social services and the voluntary sector.
On the recommendation of the Subordinate Legislation Committee, the Education Committee recommended that in order to permit effective Parliamentary scrutiny, the Code should be exercisable by statutory instrument under affirmative procedure (Stage 1 Report para 178).

Taking account of this recommendation, an amendment was made at Stage 2 by the Deputy Minister, to ensure that the Code of Practice would be laid before the Parliament before it is published.

The Committee recommended that the Code of Practice should include guidance for agencies outside the education authority which would define their roles and responsibilities within the system (Stage 1 Report para 179).

The Introduction of the Code of Practice describes the purpose and status of the Code, and who should read it.

The Code explains the new duties on education authorities and other agencies under the Act. It provides guidance on provisions as well as on the supporting framework of secondary legislation.

Education authorities and appropriate agencies are under a duty to have regard to the Code when carrying out their functions under the Act. Reference is made to other appropriate agencies through the Code.

**Definition of Additional Support Needs (ASN)**

The Committee heard a range of concerns about the definition of additional support needs.

The Committee asked the Executive to reconsider the wording of Section 1(1), specifically that the definition of children with ASN would depend on them being ‘unable to benefit from school education’ (Stage 1 Report para 41).

At Stage 2, there was no amendment lodged relating to this, but the Convenor did raise the issue with the Deputy Minister who agreed to consider the matter but would not commit to lodging an amendment (Official Report Education Committee 11 February 04 col 871).

Chapter 2 of the Code of Practice (paras 2 and 3) refers to ‘Benefit from school education’. It is stated that benefit from school education will vary according to individual need and circumstance. Benefit from school education is defined as where pupils:

‘…can access a curriculum which supports their learning and personal development; where teaching and support from others meet their needs; where they can learn with, and from, their peers
and when their learning is supported by the parents in the home and their wider community. A difficulty or particular need in one, or more, of these areas may lead to a requirement for additional support to be put in place to enable a child or young person to benefit from school education.’

The Committee asked the Executive to develop national standards and a code of practice in terms of teaching English as an additional language, as it was argued in evidence that bilingual pupils could be inappropriately placed in low achieving groups (Stage 1 Report para 46).

The Code of Practice describes what can give rise to ASN (Chapter 2 paras 11-18). In paragraph 18 it states that the need for additional support does not imply that a child or young person lacks ability. For pupils whose first language is not English, it is recognised that they may have:

‘a fully developed home language and wide range of achievements, skills and attributes. Any lack of English should be addressed within a learning and teaching programme which takes full account of the individual's abilities and learning needs.’

There is no reference made to developing national standards or a code of practice for teaching English as an additional language.

The Committee welcomed the broad definition of ASN, but stated that it was ‘vital that the Code of Practice provides sufficient clarity for the people who have to work within the system’ (Stage 1 Report para 49).

Chapter 2 of the Code of Practice covers the legal definition of additional support needs, benefit from school education, what is meant by additional support and what gives rise to additional support needs. Additional support needs are broadly defined as falling between four overlapping themes. These are:

- Learning environment – for example, inflexible curricular arrangements.
- Family circumstances - for example, a disruption in home life due to parental drug misuse.
- Disability or health needs – for example, pupils with a motor or sensory impairment, or attention deficit hyperactivity disorder.
- Social and emotional factors – for example, a pupil who is being bullied, or a pupil with behavioural difficulties.

Additional support is defined as support that is additional to the educational provision that is generally provided to all pupils. Examples given in the Code include: the deployment of personnel from within the school and education authority, as well as other agencies, such as teachers and staff from health and social services; and particular approaches to learning and teaching such as those used with children with autistic spectrum disorders or dyslexia.
Criteria of eligibility for a CSP (Co-ordinated Support Plan)
Witnesses expressed their concern to the Committee about eligibility for a CSP, stating that it was too vague and open to interpretation, and that further clarity should be provided in Code of Practice (Stage 1 Report para 56). The Committee also recognised that some parents may perceive a CSP as a 'passport to services' (Stage 1 Report para 62).

The Committee recommended that the eligibility criteria for a CSP must be clear in the Code of Practice (Stage 1 Report para 64).

Chapter 4 of the Code of Practice deals with CSPs. The legal definition of what is required for a CSP is set out in Section 2(1) and (2) of the Act. The criteria of eligibility for a CSP are:

- That an education authority is responsible for the school education of the child or young person.
- The child or young person has additional support needs arising from one or more complex, or multiple factors.
- The needs are likely to continue for more than a year.
- The needs require significant additional support to be provided by any other function of the education authority, such as social work, as well as education, or by another appropriate agency, such as a health board.

The Code of Practice explains the criteria in more detail.

Education authorities have a duty to prepare a CSP for children whose school education they are responsible. Those below the prescribed pre-school age of 3 are not eligible for a CSP. However, in certain circumstances the authority may have a duty to provide additional support to disabled children who have been referred by an NHS board, even though a CSP cannot be provided at this stage.

Education authorities are also responsible for any children or young people attending independent or grant-aided schools under arrangements made by them. Where a child or young person is attending a school under the management of an education authority outside the child’s home area, perhaps as a result of a placing request, then it is the host authority which is responsible for the education of the child or young person. This includes establishing whether a child needs a CSP and preparing it. However, the home authority has a duty to keep under consideration the adequacy of any co-ordinated support for any child belonging to their area.

Children who have been placed at an independent or grant-aided school by their parents, or are being educated at home, and for whose school education the authority are not responsible for, are not eligible for a CSP.

It is stated that a factor is a complex factor if it is likely to have a 'significant adverse effect' on the child’s school education, as defined in Section 2(2)(a)
of the Act. The complex factors are grouped into the same themes as where additional support needs might arise, but examples are given in the Code indicating where there is likely to be a significant adverse effect on the child’s education. A summary of the examples given are:

- Learning environment – where the learning and teaching approaches are significantly at odds with what the child requires, with the result that it has a significant adverse affect on the child’s education. This could arise where a child is in mainstream education, but would receive more effective education in a special school.
- Family circumstances – where family life is disrupted with the result that the child does not receive the parental support, guidance or direction to get the most out of school education.
- Disability or ill-health – impairments such as blindness, or a physical disability such as cerebral palsy, and conditions such as autism. There may also be mental health problems such as depression or attention deficit hyperactivity disorder.
- Social and emotional factors – such as behavioural difficulties or being bullied, which result in the child not attending school regularly or not engaging effectively with the curriculum.

The Code explains that multiple factors are not by themselves complex factors, but when taken together are likely to have a significant adverse effect on a child’s school education.

According to the Code, it is how the factors impact on a child’s learning and development that is important, not any diagnostic label. Those working with children, parents and the child themselves will be well placed to decide whether or not factors are complex or multiple. Further, what may have a significant adverse effect for one child, may not for another - each child should be considered on an individual basis.

Once professionals have made a decision on whether factors are complex or multiple, they must also decide on whether such factors are likely to continue for more than a year.

The Act does not define ‘significant additional support’ in terms of the support which might be required from an appropriate agency, as well as the education department of a local authority. According to the Code of Practice, judgments about the significance of support required would have to take account of the frequency, nature and intensity of the support, and the extent to which the support is necessary to achieve the objectives which would be included in the CSP.

Examples of what might constitute significant additional support are:
- Full-time placement in a special school or unit.
- Provision of personnel to support a child in full-time mainstream school.
- Provision of specialist aids to communication.

Examples of what might not constitute significant additional support are:
• Help from a support for learning teacher for in-class support.
• Therapy from a speech and language therapist on a weekly basis.
• Involvement of a social worker.

Again, it is stated that what should count as significant additional support will need to be considered on an individual basis.

The Committee recommended that the eligibility criteria must be clear in the guidance for parents (Stage 1 Report para 64).


The guide provides some examples of the type of additional support needs some children may have, such as help with reading and writing or to access the school and its facilities. Children may have additional support needs as result of being bullied, having learning difficulties, are blind, or particularly gifted.

In terms of setting out the eligibility criteria for a CSP, the guide states:

‘This will co-ordinate the support for those with additional support needs, arising from complex or multiple factors, who need a range of support from different services. Co-ordination of the services is required where the education authority needs help from others both within the local authority itself, such as social work, or from outside agencies, such as health.’

It does not go into the same level of detail as the Code of Practice, although it is stated that another leaflet will be produced explaining to parents how the changes may affect their children.

The Committee recommended that parents are given assurances that appropriate service provision will be made for all children and young people irrespective of whether or not they eligible for a CSP (Stage 1 Report para 64).

The Guide for Parents (Scottish Executive 2004) states that under the Act, education authorities will have a new duty to provide adequate and efficient provision for ‘each child and young person’ who has additional support needs, for whose education the authority is responsible for.

For parents who currently have a child with a Record of Needs, the guide states that such children will be assumed to have additional support needs and will be considered to see whether they need a CSP. Further that:

‘There will be a duty on education authorities to ensure that the provision made for those with a Record of Needs is not reduced
before the consideration for a Co-ordinated Support Plan has taken place, unless there is a significant change in the needs of the child or young person.'

To ensure uniformity of practice across Scotland, the Committee recommended that the Scottish Executive should monitor the application of CSPs and report regularly to the Scottish Parliament, and that the Code clearly sets out what is expected in practice (Stage 1 Report para 63).

While there are references to the monitoring and review of CPS at the education authority level, there are no references to the monitoring of CSPs across Scotland in the Code of Practice, except for in the Ministerial Foreword:

‘We will monitor the implementation of the Act carefully and we shall review the Code as necessary, in the light of experience of its implementation’.

However, the implementation strategy for the new system explains that HMIE will have role in monitoring it (see below in ‘Integrated working and joint responsibility’).

**Integrated working and joint responsibility**
Witnesses expressed concern regarding the duties on other agencies, and the Committee felt that there is a need for reassurance that these duties will be fulfilled (Stage 1 Report para 70).

The Committee went on to seek reassurance from the Minister on how he will ensure that education authorities and other agencies will comply with their duties under the Act, and whether he would consider bringing measures forward to strengthen this duty (Stage 1 Report para 71).

This issue was raised during Stage 2 and Stage 3 of the Bill, although no amendment was made.

The Code of Practice explains the duties on other appropriate agencies under the Act (Chapter 3, paras 4 – 20). It states, as in the Act, that appropriate agencies have a duty to help education authorities with the discharge of their duties under the Act, unless it is incompatible with the agency’s duties, or unduly prejudices the agency in the discharge of its own functions.

The appropriate agencies are specified in the Act as any other local authority, NHS Board, or any other specified by Scottish Ministers. Consultation Paper 03, sought views on which other agencies to include. The Code of Practice states that Careers Scotland, Further Education Colleges and Higher Education Institutions are specified under regulation.

The Code provides examples of the instances in which an education authority may make a request to an appropriate agency. These include, establishing whether a child has additional support needs or may require a CSP and
obtaining information from an agency who may be involved with the young person on leaving school.

According to the Code, under ‘The Other Appropriate Agency Regulations’, agencies would have to respond within 10 weeks of receiving a request, subject to certain exceptions.

| The Committee also highlighted the need to ensure that agencies must work together, irrespective of whether there is a CSP in use (Stage 2 Report para 72). |

The Code in general emphasises an ethos of collaboration between education authorities and other agencies, particularly in terms of assessment and intervention.

| The Committee sought clarification from the Executive on the role of HMIE in ensuring that the education authorities deliver the appropriate services (Stage 1 Report para 73). |

During the Stage 3 debate, the Deputy Minister stated that the new system under the Act would be monitored by HMIE. This is to include monitoring of transition from the current to the new system, mediation and dispute resolution arrangements, and the number of cases referred to tribunal. (Official Report Scottish Parliament 1 April 2004 col 7464-65)

The Implementation Strategy (Scottish Executive March 2004), also refers to HMIE and its role in the longer-term monitoring of the new ASN framework, and the short term monitoring of transition to the new system.

IEPs and PLPs (Individualised Educational Programmes and Personal Learning Plans)
The Committee heard evidence from a number of witnesses who expressed concerns about the relationship between PLPs, IEPs and CSPs and sought further clarity on how they would work together. There was also concern about the planning and resourcing of IEPs and PLPs.

The Committee also heard evidence from the Minister who indicated that the relationship would be explained in the Code of Practice, with the intention that IEPs and PLPs would not be bureaucratic.

| The Committee welcomed the clarification of the relationship in the Code of Practice and asked for further information about how to ensure that adequate and appropriate support is provided for children not eligible for a CSP (Stage 1 Report para 91). |

Chapter 3 (paras 68-72) of the Code of Practice details the relationship between IEPs, PLPs and CSPs. It explains the general ethos of planning for learning, and that many pupils who require additional support will have their needs met in the day-to-day classroom practice. More formal planning
arrangements may be required where other agencies are required to provide additional support.

PLPs help pupils and parents be clear about goals for learning. They provide an opportunity for teachers, parents and pupils to engage in the process together. The Code states that all pupils with additional support needs should be engaged in personal learning planning and that for many this will be sufficient in meeting their needs.

IEPs are appropriate where more detailed planning for learning is required, for example, where a substantial adaptation to the curriculum is required, or where there needs to be consultation with another agency. IEPs will describe the nature of the additional support needs, how these are to be met, the learning outcomes to be achieved, and what additional support may be required from education or other agency.

Chapter 4 (para 53) explains how PLPs and IEPs will fit in with CSPs. CSPs will set broad educational objectives as opposed to the specific learning objectives recorded in the PLP or IEP. Examples of educational objectives relate to personal and social development, such as learning to travel independently or particular social skills. Children with a CSP will be working to achieve learning outcomes, but these will not depend on the level of co-ordination of support required by the plan. The Code of Practice explains:

‘…a particular child with a co-ordinated support plan may have intended learning outcomes set for, say, language and mathematics and, apart from the usual support from the family, the school may feel that these will be achieved without any support from other agencies. These learning objectives will be documented through other school planning arrangements such as personal learning planning, an individualised educational programme, or another approach used by the school and will not be listed in the co-ordinated support plan.’

The Code of Practice also indicates where further information may be sought on PLPs and IEPs.

**Reasonable cost**
The Bill as introduced made a provision that an education authority did not have to provide a service if ‘it was not practicable at a reasonable cost’. The Committee heard concerns that the provision could be used as a ‘get out clause’ by authorities. However, COSLA expressed to the Committee that the term was standard practice, and suggested that the Code of Practice could clarify the provision to ensure consistent provision throughout Scotland.

The Committee heard evidence from the Minister that there is a general presumption that no local authority can act unreasonably.

While accepting this assurance, the Committee recommended that the Executive confirm that the use of ‘practicable at a reasonable cost’ is
consistent within the Standards in Scotland’s Schools etc. Act 2000 and also asked the Executive to consider alternative definitions, as suggested by some of the witnesses (Stage 1 Report para 100).

The wording of this section of the Bill was amended at Stage 2 by the Deputy Minister to ‘unreasonable public expenditure being incurred’. He stated that the amendment reflected the wording using in the Education (Scotland) Act 1980 and in the Standards in Scotland’s Schools etc. Act 2000, and that ‘emphasis is now placed on public expenditure that would be unreasonable’ (Official Report Education Committee Stage 2 11 February 2004 Col 889-890).

The Deputy Minister went on to say that cost should not be the primary consideration in determining provision, and stressed that it should not be seen as way for authorities to escape their duties under the Act. Furthermore, that HMIE would have the power to inspect on the general discharge of duties.

While it was not specifically recommended by the Committee, the Code of Practice does explain the exception of unreasonable public expenditure (Chapter 3 para 59). It recognises that the Act does not define unreasonable public expenditure, but that this would be a matter for the education authority to judge based on a child’s or young person’s circumstances. Examples of what might be ‘unreasonable expenditure’ are given, such as where the cost incurred would be completely out of scale with the benefits to the child, or where suitable provision is available at a significantly lower cost. However, it is also stated that cost should not be the primary consideration in determining provision, indeed provision for a particular child may have benefits to others in the future.

Assessments and the rights of parents to request assessments
While the Act removes provision for compulsory assessment, it gives parents the right to request an assessment. The Committee heard evidence that some parents may have difficulty in requesting assessments without proper information. Some local authorities expressed concern that they may be inundated with requests, and could risk upsetting people if they find the requests to be unreasonable.

While the Committee supported the end of compulsory assessments, it recognised the concerns of parents that there could be gaps in the assessment procedure.

The Committee sought clarification from the Executive on the rights of an education authority to refuse to conduct an assessment and that the Code of Practice should clearly identify reasons for a request to be refused (Stage 1 Report para 111).

Chapter 3 (para 34) of the Code of Practice states that education authorities may refuse a request for an assessment if it is unreasonable. While ‘unreasonable’ is not defined in the Act, the Code states that in this case it is what an objective third party might consider unreasonable. It recognises that there will be certain circumstances where an authority will need to consider
carefully whether to comply. Examples are given of when an authority decide not to comply, such as, it may not be in the best interests of the child, or it may be unnecessary as there is already sufficient information available.

The Committee also called for the rights of parents to appeal this decision to be included in the Bill (Stage 1 Report para 111).

An amendment was made at Stage 2 to widen the scope for how requests can be made by parents, for example in writing, audio or video recording. Further, that when an education authority decide not to comply with a request that they inform the person of that decision, giving reasons and provide information about mediation services, procedures for dispute resolution and if appropriate the right to refer the decision to a Tribunal (Section 28 of the Act).

The Code of Practice explains what an education authority must do if it decides not to comply with a request (Chapter 3 para 40). While it is stated that education authorities must inform parents of mediation and dispute resolution, it does not state that where a CSP is an issue that a decision can be referred to a Tribunal.

The Committee sought clarification on the right of education authorities to decide how assessments are to be conducted (Stage 1 Report para 111).

The Code of Practice (Chapter 3 para 35) states that it is for the education authority to consider who is the appropriate person to carry out the particular process of assessment or examination. Education authorities are not required to arrange for assessments to be carried out by named individuals or organisations requested by parents. Where a range of assessments are required the education authority should try to bring these within one assessment process to avoid duplication and avoid putting the child and family under any stress.

The Committee expressed concern about how the process of identification of a child’s need for assessment would operate in practice and recommended that the need for early identification and assessment of certain specific conditions and the need for timely investigation of complex needs be recognised in the Bill or Code of Practice (Stage 1 Report para 112).

The Code of Practice (Chapter 3 para 2) states that education authorities should review their approaches to assessment and intervention in light of the Act’s provisions. The Code also refers to values and principals of assessment and intervention in terms of an integrated assessment framework for professionals working with children across a range of different agencies. This includes: ensuring that assessment is an ongoing and integrated process of planning, and taking account of the views of the child, parents and professionals.

The Code emphasises the need for education authorities to ensure effective communication, collaboration and integrated assessment and other provision
when other agencies are involved. It is recognised that in education staged approaches to intervention are already in use which seek to resolve difficulties as early as possible, and with the least intrusive course of action (Chapter 3 paras 21 and 22). While there is no prescriptive model of intervention, the Code provides a diagram of common features found in most staged intervention models (p28).

The Committee expressed a concern that where assessment and identification is required it should be followed through with assessment by the appropriate professionals, which may require a multi-agency approach. A further concern was that some children may not receive the appropriate diagnosis because the correct assessment was not carried out, and that this should be carefully dealt with in the Code of Practice (Stage 1 Report para 113).

The Committee also called on the Executive to make provision for assessment to be reviewed on an ongoing basis for all children with additional support needs (Stage 1 Report para 114).

The Code of Practice (Chapter 3, paras 27-31) describes procedure for assessments as part of an ongoing process of gathering and making sense of information about a child or young person. It is a dynamic process which should involve collaborative working with relevant agencies. The education authority must take account of the views of other agencies/professionals and of the parents and child themselves. Also, if the parents have privately commissioned an assessment then the education authority should consider this if requested to do so by the parents.

The Committee called on the Executive to provide advocacy services for parents to ensure that they appropriately supported throughout the process (Stage 1 Report para 115).

An amendment was made at Stage 3 by the Deputy Minister, making provision to allow parents and young people to take a supporter or advocate with them to meetings regarding in relation to the functions of an education authority under the Act, to support them or make representations on their behalf. The education authority must comply with the request unless it is unreasonable. Education authorities are not required to provide or pay for a supporter or advocate.

Chapter 6 of the Code of Practice (paras 25-32) explains this provision of the Act in more detail.

Pupils outwith the education system
The Act introduces a power for education authorities to assist in the identification and support of children being educated at home or in independent schools. Witnesses expressed concerns about the limitations of this provision, and the Deputy Minister stated that the matter would be considered further.
The Committee called on the Executive to clarify the circumstances in which a local authority might reasonably withhold the use of these powers, and how this might relate to children in private education, children who being educated at home and in nurseries (Stage 1 Report para 121).

Chapter 3 (paras 53-57) relates to the children and young people for whom the education authority are not responsible for. Education authorities may comply with the request, but are not obliged to. The Code states that in reaching a decision to refuse the request education authorities should consider each case on the basis of its own facts and circumstances. Where the education authority refuse to comply with a request they must inform the person who made the request, and explain the decision. At the same time they must also pass on information about mediation and dispute resolution.

Rights of the Child

The Committee acknowledged that further detail on the rights for children to take part in various decision making processes would be in the Code of Practice (Stage 1 Report para 122).

Chapter 6 provides detail on working with children and families. Under the Act, education authorities have a duty to seek and take account of the views of children and young people, as the authority considers appropriate. The authority have some discretion in whether they seek the views of such children or young people, as it is not the intention to over formalise dialogue every time they are considering whether a child or young person has additional support needs.

There are certain instances when the authority must take account of the views of children and young people, such as establishing whether a CSP is required. The Code gives advice on how to ensure a child or young person is able to express their views and how to take account of their views.

Mediation

Witnesses expressed concerns about mediators employed by the local authority giving rise to a potential conflict of interest, and stressed the need for the independence of such services. The need for minimum standards of mediation for consistency across Scotland was also highlighted.

The Committee accepted assurance from the Minister that a mediation service could be provided by a local authority that is independent of the education department, and that this would be reinforced in the Code of Practice.

The Committee recommended that strong guidance in the Code of Practice could highlight good practice in terms of mediation and to establish credibility in the process (Stage 1 Report para 145).
The Code of Practice (Chapter 7 paras 3-14) explains the aims and benefits of mediation in some detail. This includes for example: that mediation is an option for resolving a disagreement, with the mediator acting as a third party; that mediation can be used at any time in the life of a disagreement; and recognising that mediation may not be appropriate in all cases.

In terms of offering independent mediation services, the Code states that objectivity and impartiality are the key principles, irrespective of how the services are employed. All parties concerned should be satisfied that the mediator is truly independent.

Annex C of the Code provides detail on the features of mediation, performance issues and further sources of information on mediation.

**Tribunals and dispute resolution**
Witnsses expressed many concerns with regards to the Additional Support Needs Tribunals. These included: the link between CSPs and tribunals, which might lead people to associate CSPs with resource allocation; no formal recourse for parents whose children have additional support needs where a CSP is not a factor; legal aid not being available during the tribunal process; and the extent of the jurisdiction of the tribunals.

The Minister suggested in evidence that the Code of Practice could set out the expectations of tribunals.

For those who would be excluded from legal recourse to the tribunal, the Committee recommended that provision for dispute resolution should be clarified in the Code of Practice (Stage 1 Report para 162).

The Code of Practice refers to the Dispute Resolution Regulations (Chapter 7 paras 15-28). The regulations prescribe which disputes relating to particular functions of the authority under the Act, will be subject to dispute resolution and the timescales for the process. The procedure allows for formal review of an individual case by an independent third party.

Essentially, dispute resolution is a procedure for parents of children with additional support needs who do not have a CSP, and who would therefore be unable to access the Additional Support Needs Tribunal.

Parents may have disagreements about the assessment of additional support needs or the level of provision. However, the Code states that it can also include cases where the authority fails to implement the requirements of a CSP.

The Code advises that dispute resolution does not cover matters which can be taken through statutory review routes, such as the Additional Support Needs Tribunal. It also does not cover issues relating to broader strategy or policy matters.
The process for dispute resolution requires education authorities to acknowledge any requests from parents. Where the request is valid, Ministers will appoint an external adjudicator to consider the case. The education authority should review the case, and prepare papers to forward on to the adjudicator. The education authority must also inform parents of how they can present their case to the adjudicator and what support is available to help them do this.

According to the Code, the external independent adjudicator has the role to review, objectively and independently, all the issues relating to the case and make recommendations to both parties on the best way forward to ensure that the child’s learning is supported with reference to the terms of the Act. It is envisaged that the adjudication process will be a paper exercise, although it is possible that the adjudicator may request further information, and in some circumstances request to meet the parties.

The Code states that it is expected that both parties will accept the outcome of the process, although education authorities will not have a legal duty to implement the recommendations.

Timescale for dispute resolution ‘should not normally take more than 8 weeks’, although in some cases it may take longer. Education authorities are advised in the Code to record the number of cases and outcomes for monitoring.

The Committee recommended that education authorities should be advised not to use lawyers routinely and that this should be in the Code of Practice (Stage 1 Report para 165).

Chapter 7 (para 30) of the Code of Practice states the aims of the Tribunals, one of which is to ‘discourage formal, litigious encounters between parents and education authorities by providing a forum for constructive dialogue’.

Transitions
In terms of transitions, the Committee heard concerns from witnesses regarding the length of time planning for transition, the extent agencies have to act on information from education authorities, and whether education authorities will know which services to enlist.

Acknowledging that some witnesses had misinterpreted the planning for transitions under the Act, the Committee suggested that this should be included in the Code of Practice (Stage 1 Report para 173).

Chapter 5 of the Code of Practice provides advice on the transitions pupils will experience at various stages in their school education, and when they leave school.

The Code advises that education authorities should have arrangements in place to ensure that changes in school education are as smooth as possible for children and young people. Reference is made to the ‘Changes in School
Education Regulations’, which specify the action an education authority must take at various stages of transition, and the timescales for obtaining and passing on information to appropriate agencies.

A list of good practice includes: ensuring that transition planning is embedded within the education authority’s policies and procedures for additional support needs; that the views of the child or young person, and parents should be taken into account; and that other agencies including health, social work, Careers Scotland, Further Education Colleges and Institutions of Higher Education are involved where required.

For pupils preparing to leave school education, the Code advises that education authorities should be able to address the requirements of a pupil with additional support needs through the school’s routine vocational guidance arrangements and the careers service.

Examples of effective transition to adulthood strategies are given. These include, providing relevant information to the young person on choices of training or work placements or involving a key worker to support the transition process.

Nicki Georghiou
SPiCe
18 May 2005
EDUCATION COMMITTEE

Additional Support for Learning Code of Practice

Introduction

1. In advance of the laying of the Additional Support for Learning Code of Practice, the clerks contacted individuals and organisations who either submitted written evidence or gave oral evidence to the Committee at Stage 1 of the Additional Support for Learning (Scotland) Bill asking whether they wished to make comment on the draft code of practice. A note of opportunity to comment was also placed on the Committee’s website.

2. In response, comments were received from the following organisations and individuals are these are attached as an annex to this paper. It is stressed that these comments refer to the draft code of practice not that which was laid before Parliament on 12 May 2005.

   - Barnado’s Scotland
   - Children in Scotland
   - Church of Scotland Committee on Education
   - COSLA
   - Dorothy McDonald
   - Enquire
   - Equity in Education
   - Independent Special Education Advice
   - National Autistic Society Scotland
   - Philip Kunzlik
   - Skill Scotland: National Bureau for Students with Disabilities

3. A summary of the issues raised by the Committee at Stage 1 is provided elsewhere in the papers for this meeting.

4. Stakeholders were alerted to laying of the code of practice before Parliament on 12 May 2005. Any comments on this version of the code have been sent directly to members.

Action

5. The Committee may wish to NOTE the points raised in the submissions on the draft code of practice and DISCUSS them with the Deputy Minister.
Introduction
Barnardo’s Scotland welcomes the opportunity to provide written evidence to the Education Committee on the Code of Practice for the Education (Additional Support for Learning) (Scotland) Act 2004.

Barnardo’s Scotland manages 60 services, of which many support children, young people and families directly affected by the Act. This includes 2 schools, 6 services specifically supporting children and young people in school settings, 6 disability services and numerous other services supporting children and young people receiving education.

Barnardo’s Scotland has provided comments on early drafts of the Code of Practice and associated documents and is represented on the Advisory Group for the implementation of the Act. As a result we are aware that the Scottish Executive has already made numerous amendments to the original consultation document although, because of time constraints, we have not actually seen the latest version of the document to be considered by the Education Committee. Consequently, our comments at this stage are tempered in the knowledge that this current document may already have taken account of the points made.

We have been happy to play an active role in the extensive consultation carried out by the Scottish Executive and we commend the approach taken to include a wide range of views and efforts to be responsive to the points previously raised.

Overall General Comments

1. Barnardo’s Scotland generally welcomes the Code of Practice as it supports the policy objectives regarding inclusive education. It is important that the Code of Practice helps address the big issues within the inclusion agenda:
   a. The perceived tension between education achievement and full inclusion of all pupils
   b. The need to allocate scarce resources to those most in need (and the resultant linkage between Additional Support Needs and Co-ordinated Support Plans)
   c. The need to pull resources from different sources to ensure that all relevant agencies contribute as necessary to maximise the potential for all children and young people

2. The issue of resources for implementation underpins the capacity to act on the new duties and powers. This is relevant both in terms of additional finances available (regardless of the inter-dependence with other funding streams) and in terms of
workforce shortages (in social work, health and education). Having sufficient resources to satisfy the inclusion agenda will be a major challenge.

3. The full implementation of the Act requires a step change in approach to all children and young people including those with Additional Support Needs. The high aspirations of the Act require marketing on a scale that demands to be led at Ministerial level. The significance of the Act is extremely high, yet the awareness of it within relevant professions is limited and almost non existence within the general public. This needs to be addressed through a public relations marketing strategy.

Specific Comments

Link between Additional Support Needs and Co-ordinated Support Plan
It is clear that it is the policy intention to have Additional Support Needs where appropriate and that this should be at whatever intensity is required. However, there is still a risk that the Co-ordinated Support Plan will be seen as the preferred route to ensuring that intensive support is provided. To avoid this, it would be helpful if there was a clear statement that intensive supports can be provided through additional support needs and that this does not necessarily require a Co-ordinated Support Plan.

Voluntary Sector and ‘Appropriate Agency’
The draft Code of Practice rightly noted that the voluntary sector is wide-ranging and may play different roles within the context of the provision of additional support needs. There is huge variation within the voluntary sector in terms of size, tasks undertaken and standards of practice. The relationship with the local authority could also vary enormously and for all of these reasons it has been decided not to have the voluntary sector as a named ‘appropriate agency’. Barnardo’s Scotland interprets this as a protective measure to ensure that unrealistic expectations are not placed on services provided through the voluntary agencies. To this extent we welcome the decision, however, we would hope that this does not result in a diminishing of the value placed on the role that the voluntary sector can contribute to the inclusive education agenda.

Looked After Children and Young People
Barnardo’s Scotland experience is that ‘out of authority placements’ can be a cause of difficulty when it comes to the provision of appropriate education for young people. We deal with a number of situations where local authorities are in dispute regarding the additional costs for children placed in their area. The Act does help clarify this as it is the placing authority that has the financial responsibility. This will lead to increased charging practice for the provision of education amongst local authorities and it would be helpful if there was guidance on the framework for this to be facilitated – otherwise we anticipate similar disputes as those that arise at present.

Barnardo’s Scotland suggests that particular attention should be paid with respect to the role of foster carers. In our experience, where young people are looked after, foster parents can be
the most important support in a young person's life. They are regarded as a 'relevant person' within the Children's hearing context – a role in its own right, separate from the local authority. It is worth noting that there may be a difference between emergency/temporary foster parents and permanent/long-term foster parents. Where they are the latter, they should have all of the rights within the Act as do parents.

**Views of children and young people**

Barnardo's Scotland welcomes the emphasis on taking account of the views of children and young people as it is consistent with the Children's Scotland Act 1995. Experience tells us that this requirement needs to be carefully monitored if it is to be realised and this should be borne in mind when the monitoring arrangements are put into place.

**Legislative context**

The summary of legislation and policies contained in the consultation draft was very helpful and sets the context for the introduction of the Act. Barnardo’s Scotland does not have any further suggestions regarding the scope of legislation and policy initiatives included. However, it may be worth considering the relative priority of each of these and highlighting those that are particularly relevant. For instance, Integrated Children’s Services is critical to the delivery of the changes, as is Integrated Community Schools and equally significant is the Framework for Children and Young People's Mental Health in Scotland.

**Scenarios**

The consultation draft document provided several scenarios that illustrated how the Act would impact on specific situations. In our view, the scenarios could have benefited from some additional examples where the underlying issues are behavioural. The wide definition of Additional Support Needs will include a wide variety of children and young people where there is concern regarding their behaviour and it would be helpful to have this illustrated through the scenarios. Barnardo’s Scotland provided 2 additional examples for consideration for inclusion in the draft Code of Practice. These are appended at Annex A as they are useful illustrations of practice that will hopefully be promoted through the implementation of the Act.

**Oral Evidence**

Barnardo’s Scotland would be happy to draw further from the extensive practice in providing additional support and to arrange for either a visit to services or for young people or parents to present oral evidence to the Education Committee.
ANNEX A
Case Studies - please note that pseudonyms have been used to preserve confidentiality.

Frank
Frank is in his second year at a mainstream high school. His mother and father are separated. His mother has drug and alcohol related difficulties and as a result he is unable to live with her. His contact with his mother is inconsistent and unreliable. He has no contact with his father and there is no extended family that can look after him.

Frank has been looked after and accommodated by the local authority for over two years. His experiences have left him feeling rejected and unwanted. These feelings have underpinned disruptive and challenging behaviour both in school and in his care placement. His behaviour in school has resulted in a number of exclusions and a reduced school timetable which in turn has put additional pressure onto his foster care placement. He has had three foster placements within the two year period of being accommodated which have reinforced his feelings of being rejected.

Frank's additional support needs arise from social and emotional factors affecting both his behaviour and ability to learn. He seemed to have little motivation for school or for learning.

Frank has a care plan which involves his class teachers, social worker, educational psychologist and a project worker from a voluntary organisation working together to provide a flexible range of support. His plan includes additional support in some mainstream classes, access to an alternative curriculum through an ASDAN programme as well as individual support focusing on building self esteem and developing alternative coping strategies at times of distress. There are close links made with his foster carers but attempts to engage with his mother have proved difficult.

This plan has seen Frank re-engage in education and has helped maintain both his mainstream school placement and his current foster placement.

Peter
Peter was 7 years old, and lived at home with his father and mother. When Peter was 3 years old his mother had a stroke, which resulted in loss of mobility in her left side and loss of speech.

Prior to referral by the school to a voluntary agency he had been assessed as having ADHD and behavioural problems which were having an adverse effect on his education and was forcing the school to consider an application for special education. His father was reluctant for Peter to be prescribed Ritalin, fearing some long-term side effects. However, after discussion with the school, in order to assist his learning, he agreed to a trial period of Ritalin.

The agency's Support Teacher worked in class, providing Peter and his class teacher with practical assistance to help him manage his ADHD.
Respite was provided by a Support Worker who introduced Peter to activities and clubs in the community, which his father then supported him in attending.

The agency's social worker co-worked with the Community Psychiatric Nurse on a behaviour management programme (1, 2, 3 Magic) with the family, who were then able to apply some of the strategies in the home. As his mother was unable to communicate verbally with him, number cards were substituted.

The social worker also referred his mother to an agency called KEY.comm, who assessed her and provided a voice output communication aid. This enabled communication between Peter and his mother. Peter was very interested in computers and enjoyed using his mother’s communication aid. This helped him to build a more positive relationship, as Peter previously would not respond to her attempts to manage him.

At the final review, it was agreed that while Peter had made considerable progress and he no longer required intensive support in school, he and his family would benefit from some continued support. He was therefore referred to “Young Carers” and the SW dept for Share the Care/Befriender. With this support Peter has continued his good progress in mainstream education.
CHILDREN IN SCOTLAND

Comments on the Education (Additional Support for Learning) (Scotland) Act 2004 Code of Practice for the Education Committee of the Scottish Parliament

Children in Scotland welcomes the opportunity to make comments on the Code of Practice for the Education (Additional Support for Learning) (Scotland) Act 2004. These comments are based on Children in Scotland’s involvement in the Scottish Executive consultation events and are informed by many of the views of the parents and professionals who attended.

The Committee should note specific points are based on the first draft which was widely circulated during the consultation process.

General Comments

Children in Scotland fully support the idea of a Code of Practice to accompany the Act. As the Act passed through the legislative process it was argued that a Code would be a more useful method of ensuring that a reasonably consistent approach was taken not only to the implementation of the Act but also for the delivery of services to children and young people who require additional support for learning. Concern had been expressed that provision of services is patchy in different local authority areas. Children in Scotland accept that a Code alone will not ensure that every local authority offers children, young people and parents the same level of service. However it should ensure that each area has a minimum standard of service on offer. The wide ranging consultation undertaken by the Executive should be recognised. Having been involved in all of these events it was clear that a large number of professionals and parents were able to have their say on the development of the Code.
Purpose of the Code of Practice

The Code should provide guidance to all of those who have duties under the Act. A key concern that emerged from consultation with practitioners was that it should be an accessible document that could be used by them to inform their practice. It was important for teachers, health professionals and others that they were able to use the Code selectively and refer to it regularly.

Children in Scotland recognises that in the development of any Code of Practice a balance must be struck between issuing guidance that is overly prescriptive and interferes with local practice and issuing guidance that is ambivalent and ineffective. The Committee should consider whether the final Code has achieved this. Although many authorities are undertaking awareness raising and training sessions on the provisions of the Act and the implications for practice it is inevitable that the Code will be the primary source of information and guidance for professionals. Therefore the Code should give clear guidance in areas such as the identification of additional support needs, keeping those needs under review and transitions, particularly the transition from school to employment, training or further and higher education.

Children in Scotland believes that the Code of Practice will be primarily used by practitioners and authorities. Nevertheless consideration should also be given to how accessible the Code is to parents. There are parent’s guides being produced on the provisions of the Act and these should be helpful. This does not mean, however, that the Code should not be accessible enough that parents cannot refer to any of its elements that apply to them or their child or young person.

Key Issues
Resolving disputes

The Committee will be aware that the Act has different mechanisms for resolving disputes between agencies and parents and young people. These will be reflected in the Code. However it is important for practitioners, parents and young people that clear guidance is given on resolving any dispute at the informal school level. A successful framework for supporting children and young people who require additional support for learning will best be achieved if parents and young people do not have to pursue formal appeal routes or mechanisms. It is therefore essential that those working directly with children, young people and their parents have clear and concise guidance on the best ways to avoid this happening.

Ensuring clarity in planning

The Co-ordinated Support Plan (CSP) will be the main strategic planning document for children and young people with multiple and complex additional support needs who require significant support provided by the education authority and appropriate agencies outwith the education authority. The Scottish Executive has estimated that around 50 per cent of children and young people who currently have a Record of Needs will require a CSP. During the consultation process it was made clear that planning for a large number of children and young people will take place through an Individualised Educational Programme (IEP). It is essential then that the Code gives clear guidance on the use of IEP’s. Evidence suggests that IEP’s are used differently in different local authority areas. It would be difficult for the Code to prescribe how they should be used. However the Code should make clear how IEP’s ‘fit’ with other planning documents and give guidance on how to avoid confusion and duplication. Children in Scotland would support a staged
intervention process where all children and young people in education have a Personal Learning Plan (PLP), those who require additional support will require more careful planning, carried out through an IEP, and those who require co-ordinated support receive a CSP. It is disappointing that the Integrated Assessment Framework (IAF) being developed by the Executive has not yet been completed. It would simplify the planning processes, and aid clarity, if the IAF was available for implementation of the Act.

The role of the CSP Co-ordinator

The Executive’s intention is that the co-ordinator of the CSP can come from any agency involved with the child or young person and that a decision should be taken as to who the most appropriate person is. In effect this means that the person co-ordinating the plan could be from education, health or social work. Children in Scotland support this position particularly as it may be more appropriate that very young children have more input from health or social work. It is likely however that the majority of CSP’s will be co-ordinated by a professional from education. The draft Code did not contain enough information on who this would be and was not specific enough on what the co-ordinators role would be. A key concern of many participants at the consultation events on the draft Code was that if the decision on who should co-ordinate CSP’s was left to local areas the task would be left with frontline staff. Participants felt that in some areas where there may be a lot of children and young people with CSP’s the role of co-ordinator should be distinct, given the complexities of co-ordinating provision from a wide range of providers. Children in Scotland would ask that the Committee consider this issue.

‘Appropriate Agencies’

The Act places duties on other agencies to assist the Education authority in
its functions. In the main this will apply to health and social work. During the consultation on the draft Code and associated documents concern was expressed that where a decision to open a CSP is based on support to the child or young person from an appropriate agency the role of voluntary sector agencies needed to be considered. Section 19 (2) of the Act identifies health and any other local authority as appropriate agencies for this purpose. Ministers may also, by regulation, identify other appropriate agencies.

There was much discussion at the consultation events on whether particular voluntary sector agencies who provide a range of support to children and young people with additional support needs should be identified as appropriate agencies through regulations. Children in Scotland recognises the difficulty in placing statutory duties on voluntary sector organisations but would ask that the role of these agencies in providing support to children and young people is given acknowledgment in the Code and taken into consideration when eligibility for a CSP is being assessed.

*Right to refuse an assessment*

The draft Code made no mention of the fact that children and young people with capacity can refuse a medical assessment. Children and Scotland would ask that this is highlighted in any final Code.

*Resolving differences*

The Committee will be aware that the Act has different mechanisms for resolving disputes between agencies and parents and young people. These will be reflected in the Code. However it is important for practitioners that clear guidance is given on resolving any dispute at the informal school level. A successful framework for supporting children and young people who
require additional support for learning will best be achieved if parents and young people do not have to pursue formal appeal routes or mechanisms. It is therefore essential that those working directly with children, young people and their parents have clear and concise guidance on the best ways to avoid this happening.

_Monitoring and Evaluation_

It is essential that any Code gives clear guidance on monitoring and evaluation. Where planning mechanisms, such as the CSP, are in place monitoring and evaluation should be simpler. Children in Scotland believe that close monitoring and evaluation of provision to those children and young people who receive support under the general duty in Section 3 (1) b of the Act is essential. This is particularly important given that many more children and young people will have identified additional support needs.

Children in Scotland would be happy to expand on any of the points in this paper or any other aspect of the Code of Practice the Committee wish to discuss.
The Church of Scotland Committee on Education welcomes the opportunity to comment on these draft documents relating to the implementation of the Education (Additional Support for Learning) (Scotland) Act 2004.

Code of Practice

General

We welcome the inclusion of scenarios in Appendix A and the intention to refer throughout the documents to these examples of good practice. However, we are concerned that there is no example given of the complex difficulties experienced by young people with dyslexia and ADHD, which are by far the most common reasons for additional support in schools.

We would also draw attention to the inclusion of examples of good practice from Church of Scotland (voluntary sector) which are attached to this response, which we would suggest worthy of inclusion in the final guidance.

We would be happy to discuss further any amendments that may be required in order to produce scenarios to reflect the work of the voluntary sector.

Section 1 : Legislative and Policy Context

This provides a very helpful digest of relevant legislation and current guidance. But this will require to be updated regularly. For example, there will need to be reference to any legislation and guidance that are published following the forthcoming consultation on Parental Involvement.

Section 2 : Additional Support Needs – The Framework
These sections are clear. Links to scenarios would be helpful to illustrate legal definitions as would links to Personalised Learning Plans.

However, we would suggest that under the rights of parents, reference should be made to general rights to information and again this guidance will need to be updated in light of legislation on parental involvement.

**Section 3 : Supporting Children's Learning**

The values and principles of assessment in this section should apply to all forms of assessment for all young people, regardless of whether they have additional support needs or not.

The criteria for a CSP are clear and are appropriate for 2 year olds in order for 3 year olds with additional support needs to take full advantage of pre-school provision.

Charts 1 & 2 should be on facing pages of the final document.

Information for parents – a certain level of information must be available for all parents.

CSP meetings are very formal and outwith the experience of many parents and carers. Due consideration should be given to holding pre-meetings for parents to give them information about the format and content of the meeting in order to give them the confidence to participate fully in the CSP meeting. This should be done by the key worker and is not the same as a supporter helping parents to prepare for the meeting.

Transition to Secondary – delays in granting placing requests have the potential to delay and disrupt transition measures. However, this should not be used to discourage parents from making placing requests to the local authority school of their choice. It is instead, a reason for making earlier decisions about placing requests in the case of young people with additional support needs.

**Section 4 : Supporting Children and Families**

The guidance on both taking the views of children and young people and supporting parents is bases on current good practice. However, this level of good practice should be evident for all young people and parents regardless of whether additional support needs apply.

Mediation services must be made available at times when parents and carers are available not only to suit the ‘working hours’ of professionals.

Placing requests – see earlier comments about transition processes.

**03 – Other Appropriate Agencies**
The voluntary sector is vitally important in the provision of services for children and families. They have a proven track record of providing innovative and cutting edge services. However, this contribution is not always recognised by statutory services.

It is important that the scenarios used in the final documentation include reference to the voluntary sector.

Examples from Church of Scotland projects are attached as Appendix A.

04 – Co-ordinated Support Plan Regulations

The time limits are appropriate, except when the school summer holidays fall during the twelve week period. Other school holidays should not invoke this exception.

Timescales and resources should be detailed on the CSP as part of the Learning Plan. This will allow for greater articulation between a CSP and a IEP.

05 – Changes in School Education Regulations

Three or four year olds, with complex or multiple needs are most likely to be already known to health and social work agencies. Therefore, it is helpful that those agencies are required to involve education staff in planning for transition to pre-school staff in planning for transition to a pre-school place 12 months in advance.

06 – Disputes resolution

We are generally content with the proposed dispute resolution model and that it is a paper exercise. However, parents and carers must be assisted in providing relevant and appropriate written submissions.

We would support the first option that proposes that HMIe oversee the selection and training of the pool of adjudicators and that they monitor the effectiveness of the process.

07 – Publication of information

School handbooks and at least one school newsletter per year should be required to give details of where all other published information relating to ASL can be accessed.

Schools should also have copies of all locally relevant information available for parents, carers and young people.
Appendix A

Examples of good practice from Church of Scotland services for children and families.

The Sunflower Garden Project, Edinburgh
SFG Project works for children affected by drug use in their families. Our support for children and their families is varied and involves group work with children, individual support, parenting work/groups and infant massage work. The needs of the children who are referred to our project are complex and often the effects of parental drug use can extend to all areas of the child's life. Many of the children who we support have moved houses/schools several times or been homeless and in temporary accommodation. Children's attendance at school may be poor. As well as these practical implications for children there is often great emotional strain on children who may worry about what is going on at home or about keeping their parents drug use a secret.

Our 1:1 support with children involves providing a safe space for children where they can talk about their worries of living with parental drug use and work through difficult issues through art and play. However, our work allows the child to talk about concerns about all aspects of their lives including school. We have found that children then have some way to release their worries allowing more space for learning and concentration in school. Furthermore, if the child is having particular difficulties at school we would meet with the child's teacher, in order to agree to an approach in working with the child and to make them aware of why the child may be finding school difficult.

Example
Helen lives with her mother who has a drug problem for most of her life. Since Helen was 3 she has lived in 7 different houses and being homeless and in temporary accommodation on several occasions. Consequently, Helen has also moved school lots of times. Helen's attendance at the school that she is in at the moment is poor. She says she does not like going to school as she feels bullied and left out.

She keeps thinking about her old school and the friends that she left behind there. Helen spends a lot of her free time caring and being there for her mum and does not leave the house after school or go to any activities. Helen felt isolated and had no one to share her concerns with.

Helen received support from our project to talk about what has happening at home and at school. We met with Helen, her mum and the school and talked about how Helen could be supported. The school recognised Helen's vulnerability and arranged for her to get extra support in her future transition to high school. The school were then also able to help Helen join other after school activities. In our 1:1 sessions we also help Helen with confidence and self esteem issue that may be affecting Helen's ability to make friends at school.
Ballikinrain Include Me In Services
Developing educational programmes which work and motivate children and young people being looked after and accommodated at Ballikinrain School is integral to school policy and development. In order to achieve this, the following challenges have to be constantly tackled:

- Developing a Policy of Inclusiveness
- Keeping the staff team motivated within an ethos of change.
- Develop a learning environment within the school
- Working with other agencies
- Developing a flexible child centred approach
- Ensuring continuity of care and education
- PSD programmes to be at the heart of Curriculum Planning.

Working with other agencies
When supporting our students so that they are able to make positive progress we must strive to engage and work with other agencies, particularly the different local authority social work and education colleagues. This approach allows us to:

- Work together for whole family success
- Develop programmes that deal with each young person as a “whole child” with all his or her relationships and involvement with his or her community.

The ability and willingness to engage with other agencies in a pro-active way is essential; this has a direct impact on the quality of education and care we can provide for our young people.

Community Support Team
The school has established a Community Support Team. The team aims to ensure that young people are returned home to live in their communities as soon as it is practical and safe to do so. This is achieved by pro-actively engaging with local authority social work departments and education departments in order to identify the range of supports necessary for the young person and his family during the transition period.

The Community Support Team will when appropriate provide a worker to support the young person in his return to community based education. The support may take the form of outreach work supporting the young person in his classes as well as family contact and support.

The Family Support Team
The Family Support Team provides well-planned and targeted support to the young peoples’ families when there is an identified need. Family relationships, parenting skills, setting boundaries, drug and alcohol abuse, surviving abuse, understanding and controlling anger, assertiveness skills, have been issues that the family support team has developed experience and skills in.
Joint Working

Joint working as discussed in this paper meets and exceeds many of the objectives of the Scottish Executive in the following way:

- Joined up working
- Services that meets whole needs
- Services designed with young people in mind
- Value for money
- Innovative child services that delivers new options within government policy
- Social inclusion
- Corporate parenting
- Improved educational attainment
Introduction

1. The Committee will be aware from earlier evidence submitted that COSLA welcomed the principles of the Education (Additional Support for Learning) (Scotland) Act. The Scottish Executive’s decision to prepare a Code of Practice to assist with the practical implementation of the Act, given the complexity of the legislation and the differing interpretations that could be placed on various sections, has similarly been welcomed as an operational necessity.

COSLA has worked with the Executive during the drafting and consultative phases of the preparation of the Code to help ensure that the resultant document is as comprehensive and helpful to all parties involved as possible. That exercise has been constructive, and, it is felt the revised document has been improved significantly since the original draft was circulated for consultation at the end of 2004. It is not proposed to reiterate old arguments in this submission but rather to focus on a few key issues it is felt should be brought to the Committee’s attentions. (There remain, however, a number of areas where COSLA believes the Code would benefit from additional amendment/clarification. These tend to be of a technical nature but are identified, for completeness, in the annex to this submission. As indicated above, liaison with the Executive has been constructive during the consultation process; lines of communication continue to be open and these points of detail are being raised with civil servants.)

General

2. COSLA recognises that the Code must, of necessity, be somewhat of a ‘catch all’ document, given that it is for use by all parties with an interest in the legislation. As the umbrella organisation representing 31 of Scotland’s local councils, while COSLA’s views are made from the local authority perspective, they have been prepared in light of a number of general principles which affect all parties and include:

- the Code should be specific enough to assist decision makers to reach speedy decisions
- the Code should include references to other current and proposed relevant legislation/policies with which local authorities are required to comply

Specific Points

3. The Committee is asked to note that the following comments—essentially relating to the aspirations raised by the legislation, the code and resource issues—have been based on a draft of the Code made available to COSLA on 29 April in the knowledge that amendments were continuing to be made as the Executive finalised its drafting process. Page and paragraph references relate to that version and may differ from the version submitted to the Committee.) If the version of the Code submitted differs from the draft considered by COSLA, it is hoped that there will be an opportunity to submit further comments if considered necessary.

(a) Resources.
The availability of the necessary resources: – either directly provided by a local authority, or through Health Boards to implement the Act effectively – continues to cause concern. A commitment from the Minister that the resource implications for local authorities and other bodies will be monitored and appropriate action taken if necessary would be welcome. The inclusion of a reference in the Code to the statutory duty imposed on other agencies by Section 23 (3) of the Act would also be helpful in clarifying the legal position.

(b) Pre-eminence of the Legislation - Raising of Aspirations

Status of Code: While the inclusion of references to the range of other material and policy aspirations (annex A) are helpful in that they ensure the reader is aware of relevant policies etc, it is felt that the pre-eminence of the legislation – and its limitations – is not properly placed in context. It should be made explicit that it is the application of the Act which determines what happens. Given the importance of the Code, it is suggested an appropriate reference be included.

This point is underscored in parts of paragraph 3 of the Introduction’ section (‘Status of the Code’). It is stated that ‘education authorities and …………….. are under a duty to have regard to the Code when carrying out their functions under the Act. They must not ignore it’ This contrasts with paragraph 5 which simply indicates that authorities are ‘under a duty to have regard to the Code’. While it is a matter of interpretation, if there is an inference intended in paragraph 3 that the suggestions included in the Code are peremptory, this may raise unjustified expectations on the part of users. Irrespective of the intention, for consistency only one phrase – preferably the latter – should be used.

Tribunal Proceedings: The point is illustrated again in paragraphs relating to tribunal proceedings. COSLA is sympathetic to the policy aspirations of the legislation relating to tribunals. However, in the section dealing with Additional Support Needs Tribunals (paragraph 33, page 87) amongst the aims set out are to be ‘user-friendly through informal and flexible proceedings and being accessible to users’. These proceedings will be of a judicial nature and may be reviewed by the Court of Session. In these circumstances, it is considered wrong to raise an expectation that the proceedings at Tribunals will not be demanding for all the participants and will turn essentially on the facts of each case and the applicable law as contained in the 2004 Act and other relevant legislation.

Schedule 1 of the Act also requires that Rules of Procedure be drafted in terms of paragraph 7. In addition, the President of the Additional Support Needs Tribunals, once appointed, may also give directions as to the practice and procedure to be followed by Tribunals in terms of paragraph 12 of Schedule 1. It would be unhelpful if the Code attempted to pre-empt this further guidance which may have a different emphasis.

Although all involved will wish to ‘discourage formal, litigious encounters between parents and the education authorities by providing a forum for constructive dialogue’ (para 33, page 87), it must be borne in mind that the issues at stake are likely to be keenly felt, may have significant resource implications and parties may wish to present their cases in a relatively formal way. These issues should be dealt with by the adoption of appropriate case management of individual appeals once the system is established. If the Code tries to curtail the way in which parents bring and present cases, and how authorities might respond, it is felt this would be outwith the scope of the legislation and likely to raise human rights issues if prosecuted too narrowly.
TECHNICAL AMENDMENTS

Definitions

Page 8, para 9 - Disability

The definition of disability in the Disability Discrimination Act 1995 should be in the plural ie ‘a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

Page 13, para 7 – Parent

The definition of parent is incorrect. The correct wording is as per Section 135(1) of the Education (Scotland) Act 1980

‘parent’ includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995 in relation to, or has care of a child or young person.

Page 49 – ‘Officer’

Clarification of the use of the term ‘officer’ in relation to the preparation of a CSP is sought. How would this be defined?

OTHER MATTERS

Responsibility for School Education

There is concern that the term "responsibility for school education" remains ambiguous and could be an issue in relation to placing requests. The notion of belonging to an area holds.

In the Education, (Additional Support for Learning) Scotland Act - Section 1(3), "additional support" means-

*in relation to a prescribed pre-school child, a child of school age or a young person receiving school education, provision which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority for the area to which the child or young person belongs.*

This means that where a pupil is ordinarily resident in Authority A but schooled in Authority B, the test will not be what is provided for in Authority B, but what he would have received had he been schooled in Authority A.

However, Section 29(3) In the Act which defines responsibility for school education states:-
references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education-

(a) in a school under the management of the education authority, or
(b) in pursuance of arrangements made or entered into by the authority.

This suggests that, regardless of how the child reached a particular school, eg by placing request, the responsibility would be on the receiving school/authority. It is appreciated that this issue will remain unclear until such time as it is tested in court appreciate. As it stands at the moment, there is a lack of clarity on the matter in the Code which it is hoped can be resolved before the document is finalised.

For Whatever Reason

Page 19, para 14 makes reference to a pupil having a disability as a basis of having additional support needs. The Disability Discrimination Act 1995 places two principal duties on education authorities.

i. to make reasonable adjustments; and
ii. to ensure that the disabled pupil is not treated any less favourably

There is a risk of blurring the DDA and ASL Acts which are two different statutes. When education came within the reach of the DDA in 1995, it was made clear that there was a distinction between a reasonable adjustment under that Act and issues regarding the child's special educational needs. A reasonable adjustment for a visually impaired child would be to move the child to the front of the class in sight of the blackboard etc. Is this an additional support? Clarification would be helpful.

Benefit from School Education

There is still a lack of clarity as to what is meant in order to ‘benefit from school education’. It is defined in the glossary as follows:-

Benefit from education - is to receive advantage from having access to education and for pupils to progress towards achieving their fullest educational potential

Page 17, para 9 of the Code makes reference to a child being supported for example by the Social Work Department. This carries implications, as it would make the child a possible candidate for a CSP. However, the test is that the child is:-

unable without the provision of additional support to benefit from school education provided

Is there a requirement that school X has to show that the child has benefited from school education?

Transition from Record of Needs

An indication of Ministers’ plans to regulate the transition of those who have a Record of Needs at the commencement date would be helpful. It is recognised that the Code focuses on the new legislation, but there requires to be some greater acknowledgement of the practice issues around the signing-off re the Record of Needs to ensure that authorities are complying with their duties under Section 30(4) which stipulates:-
Until the appropriate date, the education authority must ensure that the provision made by
them in pursuance of section 4(1)(a) for the additional support required by the child or
young person is no less than the provision which was, immediately before the
commencement date, made for the child or young person under section 62(3) (duty of
education authority to provide for special educational needs of recorded children and
young persons) of the 1980 Act.

It suggests some form of quasi-legal agreement that an authority will require reaching
agreement with the parent as to what constitutes 'provision'.
Additional Support For Learning Act 2004  
Response to Consultation on Draft Code of Practice  
Dorothy McDonald, Parent

I found the task of responding to the variety of consultation papers quite daunting and difficult. Although the Code is not aimed primarily at parents, its implementation will have a significant impact on parents. Therefore it is important that the Code is easy to read and can be easily understood by parents and professionals alike. It is not easy to read. In addition, there appears to be significant flexibility regarding implementation of this Act. Whilst I understand the need for a flexible approach to take account of local circumstances, I think that a more prescriptive approach to implementation of legislation is preferable, otherwise there will be considerable “re-inventing of the wheel” locally. The draft Code as presented is, in my view, flawed in several respects.

**General**

The overall structure is fair, however, given the complexity of the items contained in Section 1 (The legislative and policy context), I think this section should be contained in an appendix at the end of the document, rather than at the beginning, where it could be confusing and off-putting.

The examples given in Annexe A are extremely simplistic and do not address the type of controversial situations for which readers are likely to turn to a Code of Practice for advice. We think the use of “real life” examples is beneficial, but that they must reflect more accurately the types of situations that are likely to arise under the new system. Also the examples would be better contained in the body of the document, rather than within a separate annexe, so that each time a feature of “good practice” is highlighted in the text, it can be illustrated by one or more examples. This again, would make the document more accessible, and useful both to parents and teachers.

**Section 2- Definition of Additional Support Needs**

Paragraph 1 states that a pupil has additional support needs where they are likely to be “unable without the provision of additional support to benefit from school education...” Yet Paragraph 2, quoting the Standards in Scotland's Schools Act, states that “school 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”. The latter paragraph implies that all children should be able to benefit from school education, the provision of support being implicit, whereas the first paragraph assumes the opposite. This is confusing.

Paragraph 3 details the factors giving rise to the need for additional support- ie the barriers to learning. The first three factors listed (family circumstances, disability/health needs, and children needing protection) relate to specific individual circumstances of each child. The fourth factor relates to the learning environment in the school. The implication is that in the former circumstances children are likely to experience barriers to learning, regardless of which
school they attend, but in the latter, children will experience barriers to learning because of the school they attend, and were they to attend a different school, they might not require additional support there.

I think it is unhelpful to mix the two approaches. The inclusion of learning environment, as a factor giving rise to additional support needs is incompatible with other legislation (e.g. SEN and Disability Act 2001, and Education (DSPER) Act 2002) both of which presume that schools will remove the barriers to learning. Every school should have an ethos and learning environment that is conducive to meeting the needs of every child within its catchment area.

Section 3- Identification and Assessment
Q1. This whole section is confusing. It might be better to have the paragraph about identification first then have a definition of “assessment” that is universally recognised and applied by all agencies. The diagrams are confusing.

Q2. It is not clear what a CSP will actually do for a child, or who would be responsible for co-ordinating the CSP. This is a major omission, and one which is crucial to the implementation of this Act. The charts are confusing and it is not clear who would have responsibility for additional support where a co-ordinated support plan is not provided. There are many pupils who have significant needs that require significant additional resources from within a school but who do not require the input of other agencies, and who would therefore not be entitled to a CSP. It is unclear where the lines of responsibility lie.

Section 4- Supporting Families, Resolving Disputes
The proposals for supporting families, provision of information and resolving disputes appear quite complicated and confusing. For example, it is unclear whether the person responsible for co-ordinating CSPs is the same as the named contact person for additional support needs within an authority.

I fear that for many parents, the new system will appear confusing and impenetrable. I fear the Code of Practice, as currently drafted, will not make communication of the provisions of the Act any easier.

The proposed model of dispute resolution being a “paper exercise” is not helpful, and mitigates against parents who do not always keep paper records. A system of arbitration, whereby both parties can present their case to an independent arbiter is more acceptable.

Paragraph 31 is offensive and un-necessary. It should be taken for granted that everyone will be expected to behave in a reasonable manner in discussions. The capacity of an individual to be “frequently obstructive and use inappropriate language” in meetings is not limited to advocates and supporters, but can in fact apply to professionals and parents too. To single out advocates and supporters in this way is unhelpful and offensive.
Conclusion
The most important purpose of a Code of Practice is to clarify the provisions of the Act, in language that is accurate, concise, universal, straightforward and clear to all parties who will read it. In order to do this the differences between elements that are prescriptive and those that are intended to be flexible must be made very obvious to a lay reader. All terms and definitions used should be universally understood. Roles and responsibilities (e.g. CSP Coordinator) should similarly be universally understood, in order that the same provisions are applied consistently across Scotland. In my opinion the Code needs significant re-drafting in order to meet these criteria.

Dorothy McDonald
Enquire, the Scottish advice service for additional support for learning, submitted a written response to the draft Code of Practice, draft Policy papers and draft Associated Regulations consultation in February 2005.

This response was based on the experience of the Enquire team in dealing with issues of concern to parents, carers, children and young people and practitioners working in the field of additional support needs.

Enquire gave detailed feedback, and raised a number of concerns about the draft Code at this time.

Some of Enquire’s key concerns about the draft Code are summarised below.

1. Setting standards
The Code of Practice in draft form was guidance rather than a Code, and failed to set standards for services, particularly for children and young people with additional support needs (ASN) who would not qualify for a co-ordinated support plan. Enquire feels that the Code of Practice should be able to act as a checklist of standards for all those involved in the education of children and young people with ASN, without infringing on the freedom of practitioners to make professional judgements.

2. Involving parents, carers and children and young people
Enquire felt that the draft Code did not reflect the types of involvement that the parents and carers who use the Enquire helpline have in the education of their children and young people. It also did not reflect the underlying principle that, as far as is reasonable, children should be educated in accordance with the wishes of their parents (Education (Scotland) 1980 Act). The draft Code of Practice did not set adequate standards for consultation with children and young people; minimum requirements for communication to take place were described only in terms of good practice.

3. Accessibility
The structure of the draft Code was confusing, and the text was dense and not clearly laid out. Enquire is concerned that important information in the document will be lost to users if the Code of Practice is not user-friendly.
THE EQUITY GROUP

ASL CONSULTATION – DISPUTE RESOLUTION

The Equity Group appreciates the Scottish Executive’s efforts to consult on its Code of Practice around the ASL Act. Having previously submitted a response to this consultation relating to the Act as a whole, this paper addresses the Dispute Resolution consultation (Additional Support Needs 06) specifically.

Throughout the course of the ASL Bill, the Equity Group argued strongly for a ‘single point of entry’ complaints system for all disputes and complaints relating to education. We believe that, in common with other public services, there should be one system for dealing with issues which arise between those who use the service (children and their parents) and those who provide it (local authorities, schools, teachers). Such a system is, we believe, the most equitable for all and represents a modern approach to resolving disputes.

In preparing this response, we have consulted with a leading figure in the Institute of Arbiters (recently involved in a Short Life Working Group for the Justice Minister to develop a model for a new complaints procedure for the Scottish police force) and taken advice on current best practice relating to dispute resolution.

The following quote comes from this source:

“A modern complaints system should be accessible, transparent, and fair. It should be clear to the public so they understand it. It should offer choice to those seeking to complain, offer a range of modes of redress, offer information, allow those affected to select which representation they require and meet any special needs. Further, once complaints have been received, a modern complaints system should allow complaints to be assessed early, categorised and then allocated promptly for appropriate responses. There should then be an element of independence within the responses, ideally initially and at point of final review. Finally, there should be clear routes by which learning points can be identified and fed through to strategy and policy.”

Cont page 2/...
Based on this advice, we emphasise again that we believe the various mechanisms currently being proposed for resolving disputes within the education system (local authority committees, tribunals, adjudication), militate against current best practice emerging in other areas of public service and in the private sector. We once again strongly recommend that the Executive re-assesses its plans and adopts a modern, open door process for the handling of disputes and complaints, with the Public Service Ombudsman overseeing and supporting the system.

An accessible complaints system, able to respond openly and flexibly to all disputes including those concerning the education of children who need additional support to learn, provides a foundation for trust and transparency in the relationship between families and the education system, and can make an important contribution to organisational learning and quality improvement. In the absence of such a system, families will understandably want to move their issues up the 'scale' as early as possible.

In the consultation documentation, the Executive asks some specific questions regarding the process it proposes. Taking into account our comments above, we have sought to answer these specific questions below.

1. THE DISPUTE RESOLUTION MODEL

In the model proposed there are a number of issues which require to be addressed:

1.1 We believe the emphasis on local early dispute resolution is unhelpful and has the potential to create further hurdles in resolving an issue where there is a clash of personalities or particularly unequal power balance between those involved. Early dispute resolution should, of course, be the aim.

1.2 The two steps identified in Annex A (informal discussion with school staff & involvement of Education Officers and Education Authority) should not be formal parts of a dispute resolution system: while they represent best practice in terms of the communication that should happen in any case between families and schools/local authorities they could also be used as hurdles and delaying tactics where a school or local authority wishes to exert control rather than resolve issues.

1.3 The Public Service Ombudsman should have oversight of the dispute resolution system and be the final arbiter. The Ombudsman should be the final point of appeal if the young person or family are unhappy.

cont. page 3/..................
with the decision of the Adjudicator and/or the school or local authority are not following the direction of the
Adjudicator.

2. EXTERNAL INDEPENDENT ADJUDICATORS AND HOW THE PROCESS SHOULD OPERATE

2.1 We do not believe HMIE is an appropriate body to fulfil the role outlined. While they unquestionably
have a great deal of experience in education, they do not have relevant experience in dispute resolution. We
believe that recruitment, selection and training should be provided by a professional body working in the area
of dispute resolution, so that all adjudicators come to their decisions in a reasoned, transparent and
independent manner. Similarly, administration of the system is a demanding task which has to be
undertaken by an agency with the necessary organisational skills and professional robustness. We would be
wary of this responsibility being passed to a voluntary organisation, where the roles of 'advice giver' and
administrator of a disputes system have the potential to be confused and confusing.

2.2 Adjudication is not a legally defined system of dispute resolution and therefore the system to be
implemented in this case requires to be closely defined, ie exactly how investigations will be carried out; how
findings will be reported and promulgated; the timescales that must be adhered to.

2.3 The system proposed does not give a 'final' decision. This means that the entire process can be
followed, with no satisfactory resolution at the end. This is bad for everyone involved. We believe the
findings of the adjudicator should be binding on the school/local authority (as is usual in a
consumer/ombudsman model).

2.4 At any time in the process, the young person/family should have the option of moving directly to
requesting a final decision by the Ombudsman.

3. TIMEFRAME OF EIGHT WEEKS

3.1 The timeframe of eight weeks is, we believe, the maximum possible. There is no room for extended
timescales where resolving issues around the education of young people is involved.

3.2 However, it needs to be clear exactly when this period runs from and who can initiate the process. It
is important that this process is clear and straightforward, and can be triggered easily, otherwise the 'start
point' of the eight weeks will be impossible to identify. In our view, the eight weeks should start when the
complaint is 'logged' – as in the flow chart shown in the consultation.

Eileen Prior
Communications Officer, Equity Group
29 March 2005
INDEPENDENT SPECIAL EDUCATION ADVICE

Introduction

I.S.E.A. (Scotland) is a registered charity which aims to

- Help ensure that children and young people with Special Educational Needs (Additional Support Needs) receive the services and provision to which they are legally entitled.
- Help ensure that the views of parents/carers and children/young people are taken fully into account when the child/young person is being identified as having SEN (ASN) and decisions are made about provision and placements.
- Provide a mechanism by which parents/carers and young people can actively, meaningfully and effectively participate in the wider debate on legislation and policy.

The draft Code of Practice states, under “Who should read the Code”, “Parents and young people will wish to refer to the Code for information and advice on exercising their rights.” Our response, in particular to the draft Code of Practice, is from a parent perspective.

Section 1 - Legislative and Policy Context

We feel this section is very helpful and useful for the intended readers of the Code. However we would like to suggest that a reference, possibly in the form of an appendix listing, for example, Code of Practice/Guidelines to Local Authorities in relation to some of the Acts mentioned would be valuable i.e. Standards in Schools Act 2000, Disability Discrimination Act 1995 etc.

Section 2

1. What are additional support needs?

1. (3A) Prescribed pre-school – many parents will not understand the meaning of “prescribed” and therefore a definition would be helpful to parents.

3. Additional Support Needs

This sub section is not helpful from a parent’s point of view. Many parents will read this and the scenarios in annex a and feel their child/young person does not fit into the limited range of factors that may lead to additional support needs. The six scenarios are not good examples. We see four descriptions of children with learning difficulties, one with social and emotional difficulties and misuse of drugs and alcohol, and a child from an asylum seeker’s family. It would be much more helpful if a list was in this sub section or attached to the annex with a rider that this was not an exhaustive list. This list needs to be one which a parent or young person can identify with such as a young carer, child whose family are in the armed forces, child who is constantly absent due to illness, a gifted child etc.

No 11. Under the Act education authorities must:

No 12. The Act gives parents the right to:

If sub sections 11 and 12 are a definitive summary we feel they are misleading and incomplete.
Section 3 - Supporting Children’s Learning

This section is very ambiguous. We are particularly unhappy with the definition of assessment and no reference being made to examination. The diagram at No. 12 would make most parents exasperated, seeing this as a stalling method as it does not allude to guidance on period of time for each stage.

No.16. The criteria for a co-ordinated support plan gives no particular guidance in relation to “(d) those needs require significant additional support to be provided ---- “

There should be a definition of the word “Significant” - how is this quantified or is it open to interpretation? Also is it the identified significant additional support a child/young person requires or is the test to meet this part of the criteria based on what the education authority or other agencies can realistically provide? This needs to be clarified.

Complex and multiple factors

No 20. The examples given for complex factors, are all to do with children with disabilities. So once more, many parents/young people will feel they will not come under complex. The reverse will also be that many children who have been diagnosed as being on the range of autistic spectrum disorder will feel they qualify as complex but realistically this is not always the case as the spectrum is vast.

No 21. Is a complete opt out - the Bill team must give a definitive interpretation of complex and multiple factors. It is unrealistic to leave this judgement up to the individual parent and the education authority. We would envisage this will lead to a very adversarial debate.

No 29. Needs to state that a parent has a right to request not just an assessment but they have a right to request an examination as stated on page 22 of the draft Code of Practice? It also need to be stated clearly that if parents are requesting assessment and/or examination they need to put this in writing and give reasons why, as previously stated in other publications.

No 30. The wording in this sub section could be interpreted as meaning only a medical examination.

No 33. It would be helpful for a definition of informal and formal.

We feel the Diagram on page 35 should include a CSP meeting is convened prior to draft CSP this would alleviate possible latter conflict on the content of the CSP.

We feel strongly that an estimated timetable should be inserted from the request for a CSP to the finalised documentation being produced.

No 41. There needs to be an explanation of “It does not require them to do anything which they do not otherwise have power to do “?

No 45. We feel this section is misleading, particularly with regards to placing requests, where costs are and have been secondary in any decision making.

No 46 & No 47 There needs to be some guidance as to when an authority should review and/or monitor a child/young person with additional support needs who does not have a CSP.

No 48. We would like to see a definition or explanation of formal review.
No 50. This should be clear on how a parent can request an earlier review, what action should be taken and state time scales the authority have to comply within.

No 77. This section needs to include who the request should be sent to i.e. school or local authority. The word unreasonable should be clarified and there needs to be a general time frame by which actions should be taken.

Section 4 Supporting Children and Families

No 6. We believe that the duty to take children’s and young people’s view into account should also include where the authority is establishing if the child/young person has additional support needs.

No 7 States “ The authority have some discretion whether they seek the views of children or young people when they are establishing whether children or young people have additional support needs and when determining the provision they require” this needs to be clarified within the Code of Practice i.e. lack of capacity etc.

No 25 Definition or guidance on unreasonable.

No 31 This section should be entirely removed as we are firmly of the belief that an authority should not be dictating to parents or young people who is a suitable advocate or supporter. However if this section is to remain then a further section should include the rights of parents and young people to request that any professional involved whether an employee of the authority or other provider employee can be replaced due to them being obstructive, using inappropriate language or forcing their own view on others.

Mediation

It needs to be made clear who can request mediation as No 34 refers to parents or young people belonging to the area of the authority. Does this include parents or young people who the authority is not responsible for?

No 41 refers to parents whose child /young person has a co-ordinated support plan, why just this group of parents?

This section on mediation does not explain how to access mediation, time scales and if the decisions are binding or not?

It also needs to state that discussion at mediation will not therefore be disclosed at tribunals etc.

Dispute resolution

This section needs to clearly state how it can be accessed, what are the time scales, and what information parents need to present their case. We do not agree that dispute resolution service should be a paper exercise as this could put the child/young person’s case at a disadvantage.

Additional Support Needs Tribunals

This section needs to clearly state how a parent or young person accesses the tribunal systems etc.

There does not seem to be any mention of parents or young people referring to the Tribunals were an authority has not complied with the contents of the co-ordinated support plan.
Placing requests

There is no mention in the Code of Practice about the duty for an education authority to comply with placing requests.

Refusal of a request involving a school not under the management of an education authority

No 12 Bullet point 2 The word respective has been missed out before the word cost. This can give a different perspective to part of this reason for refusing a placing request.

Decisions on a placing requests

There needs to be some guidance on acceptable time limits as to how long an authority should have in coming to its decision on a placing request.

Appeal Routes

No 17 The statement regarding CSP needs to be clearer.

Appeal Committee

No 18 This needs to clearly state this is the appeal route for children and young people who do not have a CSP

Requests under the Act

No 26. This section is too vague and needs to have guidance to time limitations placed on authorities to respond to such requests. We do not agree that if a request is in connection with a child or young person not in the public education system there is no requirement on the authority to inform the person making the request and provide details as to the reason why the request has been refused.

Summary

Draft Code of Practice
And
Accompanying documentation.

As we have stated we have looked at the documentation from a parent’s point of view and, as the code of practice clearly states “Parents and young people will wish to refer to the Code for information and advice on exercising their rights”. We have grave misgivings about the code of practice and the accompanying documents fulfilling their functions for the following reasons.

The draft Code of Practice is very ambiguous, does not clarify or deal definitively with some of the most fundamental aspects of the Act. It is confusing and totally disjointed and appears that each section has been written by different authors who have failed to encapsulate the common thread linking one section to another.
It pays little attention to parents whose children are home educated or in independent or grant aided schools and does not even allude to parents whose children are excluded from school or how children’s hearings have a bearing on the legislation.

The expectation that parents and young people should require a complete library of Acts, guidelines and regulations in order to interpret the Code of Practice is ridiculous.

We would refer the Bill team, Scottish Executive and MSPs to circular 4/96 written as an integral part of a package of guidance in relation to the 1980 Act and subsequent amendments to the Act. Although not a legal guide, this circular (4/96) was at least a comprehensive, logical and informative document which enabled parents to understand and accelerate their child’s/young persons case, at the same time clearly specifying rights and appeals systems.
1. The National Autistic Society Scotland is one of the leading charities for people with autistic spectrum disorders. It has a membership of over 1,000 and a network of 9 branches across Scotland. The National Autistic Society Scotland is part of a UK-wide organisation, the National Autistic Society (NAS). The NAS is in a unique position to comment on issues affecting people with autistic spectrum disorders because it has offices in 3 nations of the United Kingdom with members across the whole of the UK. The NAS has a membership of over 12,000, and a network of 60 branches. The NAS exists to champion the rights and interests of all people with autism and to ensure that they and their families receive quality services, appropriate to their needs. There are approximately 530,000 people with autistic spectrum disorders in the UK.

2. The NAS welcomes the opportunity to comment on the draft Code of Practice for the Education (Additional Support for Learning) (Scotland) Act 2004. The NAS has closely followed the progress of the new legislation over several years and has influenced some aspects of the Act.

3. Moreover, the NAS has welcomed the opportunity to be involved in the development of the draft Code of Practice. While we had specific concerns about the Additional Support for Learning Bill as it was going through Parliament, we have felt that being involved in the drafting of the Code of Practice has helped ensure that some of these concerns have been dealt with in the draft Code. Our submission to the Education Committee details additional comments regarding the draft Code and its associated draft policy papers and draft regulations which we have already expressed to the Scottish Executive through their public consultation process.

What are Autistic Spectrum Disorders?

4. Autistic spectrum disorders (ASD) are a lifelong developmental disability that affects the way a person communicates and relates to people around them. People with ASD experience difficulties with social interaction, social communication and imagination – known as the ‘triad of impairments’\(^1\). The autistic spectrum includes Asperger syndrome.

5. ASD is a ‘hidden’ disability. It is a spectrum condition which affects people in different ways: some people have average or above average IQ levels; some have an accompanying learning disability, or other disability or medical condition such as epilepsy; some have little or no eye contact which can make them appear aloof, disinterested and even disrespectful; some take things literally and therefore have difficulties in understanding metaphors and jokes; some find it difficult to hold a two-way conversation; some have difficulties in understanding tone of voice, intonation, and facial expressions; because of impairment in imagination, many people with ASD learn by rote and therefore their language skills can appear overly formal and stilted; some have special interests which may become obsessive e.g. trains or videos; some are unable to foresee the consequences of their actions; some become anxious, upset and sometimes aggressive when their routine changes unexpectedly; and some have no sense of danger and can be a risk to themselves.

Draft Code of Practice:

Section 1: Legislative and Policy Context

6. On a minor point, the NAS believes that reference to the Review of Therapy Services should make clear that the review relates to therapy services for children with ASD and learning disabilities rather than for children in general. The review found that increased demand for therapy services have come from

Section 3: Supporting Children’s Learning

8. The NAS are delighted to see that our calls for ASD as an example of a ‘complex’ factor in the draft Code’s explanation of the criteria for qualifying for a Co-ordinated Support Plan (CSP) has been listened to.

9. While some children with autism may have associated learning disabilities, children with Asperger syndrome tend to have average or above average IQ levels, which can mask the difficulties they have in social interaction, communication, use of imagination and understanding. Often children with Asperger syndrome who are able to cope academically are wrongly perceived to have less severe needs and so do not receive the support they might need within the school or from other agencies. For example, a child with Asperger syndrome may excel in maths because maths has set rules and is logical, but the child may struggle with metaphors and jokes used by the teacher and classmates or not understand how to answer an open question or be unable to cope with change if they have to use a different classroom for a lesson as a one-off. As a result, the NAS believes that by including ASD as an example of a ‘complex’ factor sends out the right message that children with ‘hidden’ disabilities can be considered for a CSP.

10. With regard to assessment requests, the draft Code states that parents and young people can request a certain type of assessment including educational, psychological or medical assessment or examination. However, the NAS believes that this might be misleading in that parents or young people may not be aware that they can request a combination of assessments or examinations.

11. The NAS is concerned that some children with ASD may not have their additional support needs (ASN) fully recognised if the ‘wrong’ type of assessment is requested or a particular assessment is not requested. ASD is a ‘hidden’ disability and not every child has a diagnosis. A child with, e.g. Asperger syndrome may have a high IQ level and so the parent or education authority may only request a psychological assessment when a combination of assessments is more appropriate to fully ascertain the child’s ASN. Also, multi-professional assessments can help ascertain other difficulties the child may have which may not appear obvious e.g. a child with classic autism may also have an accompanying learning disability as well as dyspraxia. We believe the Code should specify that parents, young people and professionals are all made aware that they can request a combination of assessments or examinations.

12. In addition, the NAS believes that when it comes to monitoring and reviewing the CSP, professionals should be consistent in how they carry this out within education authorities and across authorities. As a result, how CSPs should be monitored and reviewed should be laid out in the Code. A flowchart may help illustrate this. For example, in England and Wales, according to the SEN Code of Practice, parents can ask for who they want to be present at the review which can include, for example, an independent speech and language therapist. They also need to have copies of reports from all attending the meeting two weeks prior to the meeting. We believe that the Code should also provide such information.

Section 4 - Supporting Children and Families

13. The NAS has concerns about paragraph 58 with regard to tribunals and dispute resolution. It states that the ‘outcome’ of previous dispute resolution may be relevant to a tribunal. However, we believe that the outcome of dispute resolution should not have a bearing on a tribunal hearing as the former is not a legal process and the outcome is not legally binding. We believe that the system in Scotland should follow the system in England and Wales where the outcome of dispute resolution has no bearing at tribunal. We also believe that by adopting such a system in Scotland will promote trust in the system for parents.

---

Annex A

14. The NAS has heard concerns from many parents who have read the draft Code about there being no scenarios relating to ASD to illustrate particular points in the Code. The NAS would welcome it if an example of ASD was included. We note the examples illustrating how Amy and Paul’s additional support needs has come about as a result of their disability and that both children have cerebral palsy. Perhaps one of the examples could be replaced with an example involving a child with ASD.

Annex F

15. The NAS welcomes the fact that the draft Code includes information on the benefits and features of mediation which includes a case study of ‘Paul’, a 14 year old with Asperger syndrome and home education. Home education is a significant issue for some parents of children with ASD who are concerned about the lack of input their child has from agencies when they are home educated. Often parents choose to home educate their child with ASD because of a lack of appropriate services to meet their child’s needs so for them, it is not about choice but of necessity. This does not mean they want to opt-out completely from services from statutory agencies. As a result, the NAS would like to see the Code make further reference to home education.

16. We also believe that the Code should recognise the use of home-based provision used before a child enters education and/or is used in addition to formal school education. The use of home-based programmes e.g. based on the Options or Applied Behavioural Analysis approaches such as Lovaas or approaches aimed at improving communication, self-care and early learning such as Picture Exchange Communication or the NAS’s EarlyBird programme, have been recognised by the Department of Education and Skills (England) in their publication Autistic Spectrum Disorders: Good Practice Guidelines. The guidelines state that LEAs (local education authorities) and professionals should be aware of relevant literature and how the different approaches work in practice. This will involve home visits to observe the child. As well as this, it states that the ‘LEA is willing to consider provision of home-based programmes for children and name them on statements of SEN’.

17. The NAS believes that the Code should promote a better understanding of home-based programmes amongst professionals, and state that home-based programmes should be included in a CSP if it is appropriate for a child.

Associated draft papers and draft regulation:

Other Appropriate Agencies to Help in Exercise of Functions Under the Act

18. The NAS welcomed the consultation on ‘other appropriate agencies’. With regard to the criteria for qualifying for a CSP, the consultation suggests that the voluntary sector should be included as an appropriate agency for the purposes of providing additional support outwith that provided by the education authority.

19. The voluntary sector has a significant role to play in providing services to meet the needs of children and young people, including children with ASD. We welcome the recognition the Executive has given to the work of the voluntary sector, however, we believe that the terms of involving the voluntary sector will need to be strictly laid down.

20. Due to time-limited funding and having to fundraise for new services and the continuation of existing services, the voluntary sector may not be able to meet a request of an education authority to make provisions for a child being considered for a CSP. Similarly, the voluntary sector may only be able to provide a service for a short period of time or withdraw a service due to funding constraints. We would suggest that the voluntary sector should be included as an appropriate agency but that the Code should state that the voluntary sector ‘may’ be approached by education authorities to help them exercise their functions under the Act but that the voluntary sector can refuse a request as it has no statutory duty to provide a particular service.

21. Where this will work well is if a voluntary sector-run school is named in the CSP as an appropriate placement and the education authority has agreed to fund the placement and the school is willing to take in the child or young person.

22. The difficulty is with regard to holding the voluntary sector to account. The sector is not obliged to provide a particular service and does not have the guaranteed resources to provide particular services over time. This distinction needs to be built into the Code if the voluntary sector is to be included. Equally, the Code will need to look at what happens if the voluntary sector fails to comply with a request if it has agreed to do so.

23. With regard to the duty to seek and take account of views, advice and information, the voluntary sector could play a key role here. Many voluntary sector organisations have built up a wealth of knowledge and information e.g. on ASD or other disabilities and can make a valuable contribution towards ascertaining the needs of a child. However, this will be dependent on individual voluntary sector organisations having the staff and time to do this. Many will probably have pre-prepared materials which can be sent out e.g. factsheets, examples of best practice, information on further contacts, etc. The NAS’s Information Centre (which has one of the largest collections of autism resources in the world) and the recent launch of our on-line service, PARIS (Public Autism Resource and Information Service) (which can be accessed from www.info.autism.org.uk) are just some examples of what the NAS can offer in terms of advice and information.

Draft Education (Changes in School Education) (Scotland) Regulations 2005

24. With regard to draft regulations on changes in school education, we believe that included in this should be time limits for the change in school name when the child transfers from primary to secondary school. This will help ensure that parents will have sufficient time to make an appeal with regard to the school named on the CSP. Since 2002 in England and Wales, the time limit for when this change should happen is February 15th which in practice seems to give parents enough time to appeal and have a judgement on choice of school named in the statement before school starts in the autumn. We believe a similar date should be set for Scotland.

Dispute Resolution

25. The NAS had concerns about the introduction of dispute resolution as the Bill was going through Parliament because we felt that there would be too many tiers for disagreement resolution and we preferred that tribunals be widened to hear ASN cases. However, given that dispute resolution is on the face of the Act, we see no reason for this system not to be widened to hear CSP cases as well as ASN cases.

26. Some parents may prefer to resolve a case at this level rather than go to tribunal, which currently happens in England and Wales. There are various circumstances that lead to disagreements and they require different ways to resolve them: some may prefer mediation, while others may feel only a tribunal hearing will resolve the situation. We believe that parental access to disagreement resolution should not be limited to particular routes and the fact that the Act does not specifically state that dispute resolution can only hear ASN cases, means there is an opportunity for CSP cases to be heard using this process.

Publication of Information by the Local Education Authority

27. The NAS welcomes the consultation on the publication of information by the education authority. We would like to see the regulations state that information should be published in a wide range of formats, including on education authorities websites.
Conclusion

28. The NAS have welcomed the opportunity to be involved in the development of the draft Code of Practice prior to the publication of the Scottish Executive public consultation. We hope that our comments on the draft Code will be addressed in the final Code, in particular, our concerns about the draft Code not clarifying that more than one assessment or examination can be requested.

29. In addition, we hope that the various agencies and professionals involved in implementing the Act at local level will use the Code in a positive and holistic way to inform the implementation of the new provisions. The NAS believes that the Scottish Executive’s plans for HMIE inspections for services for children with ASD will also send out an important signal to local agencies with regard to their responsibilities to children and young people with ASD.

The NAS is prepared to follow up this submission in person.

For further information, please contact:

Shabnum Mustapha
Policy and Campaigns Officer - Scotland
The National Autistic Society Scotland
Central Chambers, First Floor
109 Hope Street
Glasgow, G2 6LL

T. 0141 221 8090
F: 0141 221 8118
E. shabnum.mustapha@nas.org.uk
PHILIP KUNZLIK

Additional Support for Learning – Code of Practice

As a “concerned parent”, I would like to draw your attention to two issues relating to the draft code of practice on which the Scottish Executive has recently consulted:

1. Internally within the Scottish Executive, the ASL Act has been commended as an example of an Act that does not over-legislate, and as one in which much good effect has been made of supporting structures such as the code of practice and the encouragement of good practice. Nevertheless, to anyone who followed the passage of the then ASL Bill through its committee stages, it was very apparent that the education committee was extremely dependent on the assurances of Ministers and officials that the code of practice would “deliver” on a number of issues that were of concern to the committee. In many respects, the committee was left whistling in the dark. This was recognised by the deputy Minister who stated:

“I am conscious of the unease that members have expressed whenever we have referred to the fact that the code will deal with matters that we do not wish to be included in the bill. Members want to be assured that the code will be framed correctly and that it will be a useful means of promoting the good practice that the bill intends.” (Official Report, 8th meeting 2004, column 1085

As far as I am aware, neither the education committee nor the parliament will be able to scrutinise the code of conduct to the same extent that it could the bill. This worries me, as it implies that important elements of the legislation can bypass the system, including elected members, when it is likely to be precisely those elements of the legislation that determines its practical effect.

I do not pretend to think that this implies an intentional democratic deficit, but its nature does worry me. To that extent, I would encourage the education committee to take all the steps it can to ensure that the code of practice fully addresses the matters it raised during the passage of the bill and on which the deputy Minister gave the above assurance.

2. As a respondent to the consultation on the draft code of practice, I was left feeling that the deputy Minister’s assurances (above) had been undermined by the draft code. In particular it failed to convey the intent of Ministers as made clear to you during the committee stages of the bill. I am not so presumptuous to think that you will be sufficiently concerned with my views as to wish to read my response in full, so I have not enclosed a copy of it with this letter. However, I have lodged a copy of it with the clerk to the education committee so that it is available to you should you so desire. It seeks to give clear reference to the intent of Ministers and to draw attention to matters on which the education committee expressed specific concern. In particular my consultation response highlights the following “missing” elements in the code of practice:

(i) That a major policy driver behind the Act is to move from a producer view of how services are organised, with a system built around providers, to a user-led view of how services ought to be provided, with particular attention to be paid to the rights and needs of individuals in a universal system of education;

(ii) That the parliament’s education committee visited and revisited the issue of clauses that would permit education authorities and other statutory agencies to opt-out of their duties under the Act. The committee seemed to be concerned that these clauses would be seen as opt-outs. My consultation response provides a number of examples whereby very strong statements were made by Ministers that these were not opt-out clauses, clearly
reflecting their intent behind the legislation. There are sections in the code of practice where the intent of Ministers could be made resoundingly clear in this respect. Yet when reading the draft code of practice it is clear that no emphasis has been placed on this;

(iii) I believe that the support needs of a child must be defined by its need *per se* and not solely by an agency’s abilities to service that need. How else can un-met need be quantified? When this was discussed in committee it was considered inappropriate for such explicit phrasing in the Act as it was implicit in the Act and that agencies would not operate in that way. However, that view ignored evidence supplied to the committee on an earlier occasion, by the National Association of Paediatric Occupational Therapists, who made clear that in some very important cases a child is not even assessed unless the health authority can provide the follow-up treatment that is required. The requirement to assess thoroughly a child’s need and not simply an agency’s ability to service it could and should be made explicit in the code of practice;

(iv) As Individualised Educational Programmes (IEPs) are considered to be central to the needs of many children previously eligible for a Record of Needs who will not be eligible for a Coordinated Support Plan (CSP), it is alarming that the draft Code says virtually nothing about them despite an agreed view of the education committee that the code of practice was central to the issues of standards in IEPs;

(v) Virtually no information is imparted about the detail that a CSP is expected to contain. The guidance available to complete the former Record of Needs template demonstrates that it is the explanatory paragraphs on such detail that allows judgement to be made on the template itself. That judgement cannot be made for the CSP template because there is no detail specified. Despite the fact that the CSP is one of the Executive’s “big ideas” under the ASL Act, even when it consulted on the code of practice, respondents had no basis on which to judge the adequacy of the template because of the complete lack of detail on guidance for its completion;

(vi) The Ministers’ views and the strongly-held view of the education committee on the need for early and effective planning for transition to post-school life is largely ignored by the code of practice, which seems simply to restate the relevant clause in the Act.

“Chapter and verse” (*i.e.*, citation of Ministers *etc*) on (i) to (vi) above is given in my consultation response, along with other matters of concern. I can commend it to anyone left with the energy, enthusiasm or time to look at it (or their researchers)!

Yours Sincerely

Philip Kunzlik
Before addressing specific points, there are a couple of general issues that need to be addressed. The Stage 1, 2 & 3 deliberations of the Parliament’s Education Committee are liberally sprinkled with references to the roles of HMIE and Section 70 procedures. Yet it is not clear whether the role of HMIE is one solely of reaction through its periodic inspections of schools and education authorities, or whether there is also a pro-active role that it can play with regard to issues that parents may wish to raise outside the period of inspection. Some guidance on this would be helpful in the Code of Practice. In regard to Section 70 procedures, there should similarly be guidance on their intent and means of access to them. Ministers made a lot of reference to these in relation to issues regarding the ASL Act, particularly with regard to children and young people who are ineligible for CSPs.

On more specific points:

Reference: Additional Support Needs – 02

INTRODUCTION

Purpose of the Code – paragraph 2

The Scottish Parliament’s Education Committee commented a number of times in the Committee stage of the draft Bill that it considered the intent of the Code of Practice to be rather more than simply a guidance document, and this intent was also reflected by Ministers’ comments. However, this does not seem to have happened in production of the Code of Practice – the draft Code of Practice seems to be more like a simple guidance document akin to the role played by Circular 4/96 under the now defunct special needs legislation. I think this can be largely remediated without large-scale changes to the draft. For example, in this Section, the draft could include reference to an additional purpose of the Code, which is to make clear the policy intent of Ministers and their expectations of practices that will follow from it. Indeed, the Deputy Minister specifically alluded to this purpose:

“I am conscious of the unease that members have expressed whenever we have referred to the fact that the code will deal with matters that we do not wish to be included in the bill. Members want to be assured that the code will be framed correctly and that it will be a useful means of promoting the good practice that the bill intends.” (Official Report, 8th meeting 2004, column 1085)

Status of the Code – paragraph 3

Whereas it is true that the Code does not offer definitive interpretations of the legislation, if it is to be anything more than simple guidance then it must refer to the intent of Ministers. A final line to this paragraph could read:
Nevertheless, where appropriate it seeks to state the intent of Ministers when putting forward the legislation.

SECTION 1: LEGISLATIVE AND POLICY CONTEXT

The Framework - paragraphs – 1 to 4

In evidence to the Parliament’s Education Committee, the Minister stated the following:

“I wish first to describe where the bill sits in our overall thinking. One of the big developments that is taking place in Scottish education is that we are moving from a producer view of how we organise services and a system that is built around providers to a user-led view of how services ought to be provided. That manifests itself in a number of ways but, in particular, increasing attention is being paid to the rights and needs of individuals in a universal system of education. … In the past, that philosophy was based solely on the need for local authorities to provide adequate and efficient education—a kind of systems view of how education should be provided. The act changed that position. While local authorities still have to provide adequate and efficient education, the act made it clear that every child in Scotland had a right to be educated to meet their full potential—it was very much a statement about individuals within the system.” (Official Report, 14th meeting 2003, column 549)

As the Minister’s intent is clearly to reflect a major policy driver to move from a provider-led system to a user-led system in which increasing attention is paid to the rights and needs of individuals, and that every child in Scotland had the right to be educated to meet their full potential, then this should be clearly stated under Section 1 – the framework.

SECTION 2: ADDITIONAL SUPPORT NEEDS – THE FRAMEWORK

Summary of duties on education authorities and the rights of parents

Under the first bullet list on page 22, an additional bullet point should indicate that education authorities must take account of information provided by parents when assessing a child’s needs, for example, additional reports provided by private assessments.

SECTION 3: SUPPORTING CHILDREN'S LEARNING

Values and principles of assessment – paragraph 1

The fifth bullet point argues that professionals should adopt the least intrusive and most effective course of action affecting the lives of children, young people and families. This needs to be reworded as the most effective course of action may not be the least intrusive, and this could easily lead to dispute between parents and education authorities. I suggest the following:

Adopt the most effective course of action affecting the lives of children, young people and families while seeking to minimise intrusion into their lives as a result of that course of action.
Duties on other appropriate agencies - paragraph 7

The Parliament’s Education Committee visited and revisited the issue of clauses that would permit education authorities and other statutory agencies to opt-out of their duties under the Act. This section is one in which the intent of Ministers could be made resoundingly clear. As stated by the Minister:

“Health authorities and others should be under no illusions but that they have a duty to ensure that the measures set out in CSPs are taken to help young persons. The bill states explicitly that that must be done.” (Official Report, 14th meeting 2003, column 566)

“If a health authority does not do what it is required to do regarding the identification of needs, it will be failing in its statutory duty. A health authority will have a duty to support a local authority in meeting the requirements of a CSP.” (Official Report, 14th meeting 2003, column 567)

and the Deputy Minister:

“Other agencies must be held accountable for the provision that they are required to make. As members may recall, Peter Peacock made it clear to the Parliament that ministers have sufficient powers to direct agencies to support children and that those powers will be used if other agencies fail to support children and young people as required by a CSP. In addition, the code of practice will foster co-operation among agencies.” (Official Report, 6th meeting 2004, column 972)

“We are not seeking escape hatches in section (19)(3) to allow other agencies to walk away from their duties and responsibilities … Let it be clear that the agencies have a duty to help, and that that will be backed up in the regulations to which I referred earlier, which will set time limits within which that help must be delivered.” (Official Report, 8th meeting 2004, column 1077)

I see no reason why this very clear language (of Ministers) should not be used in the Code of Practice rather than the less incisive wording “Appropriate agencies must comply with request for help under this Act”. This would be a simple means to reflect clearly the intent of Ministers, particularly as Kenneth MacIntosh MSP, stated in Committee on 10 March 2004:

“When we took evidence early in the process from people who work in the health service, it was clear that they were simply not aware of the bill’s implications to anything like the degree that people who work in schools and education are. That compounded my anxiety that people who work in the health service do not regard the bill as fundamental to their job and to meeting the needs of children to whom they have a duty. The very process of introducing the bill, debating it and taking evidence has fuelled my anxiety.

I appreciate that section 19 tries to address such anxieties, but all of us have expressed fears about whether it does so with enough force to ensure that health authorities in particular waken up to their duties and do not try to avoid them, which I am sure that many will try to do if they do not regard them as a primary responsibility.”
Duties on other appropriate agencies - paragraph 8

This is a hugely important clause, as it makes clear that it should not be parents or young people that face the burden of resolving disputes between the education authority and other statutory agencies. As Ministers have made clear in the context of the ASL Tribunal, the Tribunal cannot direct statutory agencies other than the education authority because this is “education” legislation rather than, say, “health” legislation. So it is quite fitting that the education authority should have the right and responsibility to seek to determine in the courts whether any agency is validly relying on the “exception”.

This is so important that any attempt under the consultation procedures by others to amend this paragraph should be firmly resisted as the Minister has clearly indicated that the “exception” clause in the legislation is not an opt-out clause.

Identifying additional support needs – paragraphs 9-12

There needs to be an additional paragraph in this section. It is explicit in the Act that a child’s needs are identified. It is equally true that, according to the policy drivers of the legislation of moving from a provider-led to a child-centred approach, the support needs of a child must be defined by its need _per se_ and not by the agencies’ abilities to service that need. When the Parliament’s Education Committee discussed this, the inclusion of such an explicit statement in the ASL Act was rejected as it was considered to be implicit in the legislation, and that agencies were considered by some to be unlikely to operate in that way. However, even if such an explicit statement was excluded from the ASL Act on such grounds, there is no reason whatsoever to not include one in the Code of Practice – it would certainly clarify the Ministers’ intent. Furthermore, although some members of the Education Committee felt that agencies would be unlikely to operate in this way, in doing so they inadvertently ignored evidence that had been presented to them during their Stage 1 deliberations that this can, and indeed does, happen.

I refer to the evidence of the National Association of Paediatric Occupational therapists (NAPOT) given at the Committee meeting on 19 November 2003. Ms Byrne of the Committee asked Felicity McElderry of NAPOT to elaborate on her views on more complex assessment needs and the guidance on that issue that she thought was required in the Code of Practice. Ms McElderry was referring to children who have been overlooked in the past, such as those who have developmental co-ordination disorder. As well as their motor needs, those children often have associated language needs and difficulties with aspects of perception, and they frequently run into problems with self-esteem and psychological functioning. In fact, NAPOT had just produced a research report on developmental coordination disorder (http://www.cot.co.uk/members/publications/DCD/Factsheet.pdf) in which the following was observed:
Children with DCD are ‘Doubly Disadvantaged’. In addition to being given low priority, children and young people with DCD are at significant risk of becoming socially excluded in adult life. A long term study has shown that 80% of the children diagnosed with DCD at age seven were, by age 22, unemployed, had broken the law, were alcohol or drug misusers or had mental health difficulties (in comparison to 13% of the comparison group without DCD).

Occupational therapists play a key role in the assessment, diagnosis, treatment and management of children with DCD. Without an occupational therapist, parents could do more harm than good, trying to help their child

Children with DCD deserve to have the same opportunity as other children to attain their potential and develop the occupational skills necessary for the successful performance of roles and responsibilities in their adult life.

Early intervention to diagnose these children correctly and offer them, their families and the other professionals working with them, support and advice is crucial in preventing the known poor psychosocial outcomes.

However, the alarming reality is also that:

- Occupational therapists throughout the UK are struggling to meet the needs of this group of children as they manage large caseloads and high referral rates. 42% of occupational therapy services do not assess children unless they can provide the follow up treatment they require, while 51% carry out assessments but are not then able to provide the level of treatment the children require. (My underlining)

So, according to NAPOT’s research 42% of occupational therapy services DO NOT assess a child’s needs UNLESS they can service them. I assume that this is not the intent of Ministers.

Planning processes - paragraph 14

There is rather little said in the Code of Practice about Individualised Educational Programmes (or Plans) – IEPs In fact this short paragraph says most of what the Code has to say about IEPs.

However, the words below are what the Education Committee thought about IEPs and the Code of Practice:

“The Convener: I have one small point. We have some evidence that IEPs, which have been seen as a desirable way forward in many respects, are of variable quality—there are good examples but also pretty awful ones. Perhaps in that context we should make the observation that the issue of standards must be tackled.

Rhona Brankin: Absolutely. The code of practice is central. “(Official Report, 2nd meeting 2004, column709)

Given that IEPs are considered to be central to the needs of many children previously eligible for a Record of Needs who will not be eligible for a CSP, and the agreed view of the Education Committee on the issue of standards and the role of the Code of Practice in establishing them, it is thoroughly alarming that the draft Code says virtually nothing about
them. This needs to be addressed seriously and in depth in the Code of Practice. It is simply not good enough to say so little about so important a part of the process for many children.

**Planning processes - paragraph 15**

In a letter to the Parliament’s Education Committee, the Minister is quoted as stating:

“A major strength of the Bill is the explicit duty on education authorities to provide for all children and young people with additional support needs ... regardless of whether they have a CSP or not.” (Official Report, 2nd meeting 2004, column 668)

These words would sit well as a reminder at the conclusion of paragraph 15, particularly as it was the Education Committee that requested specific clarification on this point to which the Minister’s letter responded. If it needed clarifying to the Education Committee, then it is important to include such a clear statement in the Code of Practice as well.

**Who needs a CSP? - paragraph 23**

The latter half of this paragraph is clear to me; if a child requires support from an education authority exercising its function of education and one other function of the local authority in which it acts as the legal entity, e.g. social work, then the child fulfils one of the three-pronged criteria as to eligibility for a CSP. Unfortunately, at the Aberdeen consultation meeting on the draft Code of Practice run by Children in Scotland, at least one of the SEED team stated explicitly that this was not the case, and that if an education authority was providing support in both education and one other of its functions, then a child would NOT be eligible for a CSP. Perhaps paragraph 23 should be made more explicit!

**Requesting an assessment - paragraphs 28 & 29**

Some balance is required to these paragraphs. After all, the parents’ right is to be able to request specific assessments, but most of this explains how an education authority can refuse the request. The Deputy Minister made clear:

“Education authorities will be under a duty to make adequate and efficient provision for the additional support needs of each child. They will, therefore, be obliged to investigate thoroughly the needs of the child using the arrangements under section 4, which we have discussed. The education authority can refuse a request for a certain type of assessment only if the request is unreasonable. The education authority would have to have very clear grounds for stating that the request was unreasonable; for example, the request would have to be vexatious or a duplication of another request. In reaching a decision, the authority will have to consider the reasons that parents give for such requests.” (Official Report, 7th meeting 2004, column 1016)
The necessary balance could be easily added by replacing paragraphs 28 and 29 with the following modified versions:

28. “Education authorities are under a duty to make adequate and efficient provision for the additional support needs of each child for whom it has responsibility, and must meet requests to establish whether any child or young person has additional support needs or requires a co-ordinated support plan. They are, therefore, obliged to investigate thoroughly the needs of the child.

29. The Act also gives parents the rights to request a particular form of assessment. The education authority can only refuse a request for a certain type of assessment if it is unreasonable. Unreasonableness in this context is an objective test – what an informed third party might consider unreasonable. The education authority would have to have very clear grounds for stating that the request was unreasonable; for example, the request would have to be vexatious or a duplication of another request, or not in the best interests of the child. In reaching a decision, the authority will have to consider the reasons that parents give for such requests. If one is refused, the authority would have to give parent the reasons behind its decision.”

What does a CSP contain? - paragraph 36

This paragraph states rather blandly that the CSP will contain:

“… the educational objectives, the additional support required to meet these objectives, and who will provide this support.”

Again, the Ministers’ intent could be made clearer in this respect. The Deputy Minister has stated quite explicitly:

“The intention behind the bill is for CSPs to specify resources; where possible, specification should be linked to education objectives … There is therefore a clear incentive, because of that appeal route, for the education authority to be as clear as possible when describing the additional support that is required.” (Official Report, 6th meeting 2004, column965).

So, according to the Ministerial statement to the Education Committee, it is the intention behind the Act to specify resources in the CSP and for the description of the additional support that is required to be made as clear as possible. This should be similarly expressed in the Code of Practice.

What does a CSP contain? - paragraph 39

For a child with a CSP, a co-ordinator has responsibility for monitoring the provision of services. This implies that un-met need will be recorded and reported. A statement to that effect would make that requirement more explicit (In fact this is a general comment on the implementation of the Act itself; the Scottish Executive seems to think that HMIE and references to section 70 complaints will be sufficient to illustrate the degree of un-met need under the Act. I don’t think so, and neither to the parents with whom I have discussed this Act. Somewhere along the line in the Code of Practice, there needs to be an explicit
statement as to the requirement to monitor provision and un-met need whether a child is eligible for a CSP or not).

**Making provision - paragraph 41**

This paragraph introduces the clause about unreasonable expenditure. It and its succeeding paragraphs, including paragraph 45 under the succeeding heading (Unreasonable expenditure) fail to emphasise the very strong intent of Ministers that the “unreasonable expenditure” clause must not be considered an opt-out clause, and should certainly not be used as such, and are anticipated to be exceptional events. This intent should be referred to explicitly in the Code of Practice.

As spoken by the Minister:

“‘The provision [i.e., unreasonable expenditure] to which you refer was not put in the bill to try to create an [opt]out—I want to be very clear about that. … There is a general presumption that no local authority can act unreasonably. It would be illegal for a local authority to do so in any circumstances. We do not believe that the provision to which you refer will change that general presumption. I am always open to considering particular forms of words to try to make our intentions clear. However, our intention is clearly not to introduce a get-out clause.’” (Official Report, 14\textsuperscript{th} meeting 2003, column 568/9)

and the Deputy Minister:

“‘… unreasonable expenditure could never be expected to occur on anything other than an exceptional basis. … The vast majority of provision to meet the additional support needs of children and young people will incur what will and must be regarded as reasonable expenditure, because section 3 imposes a duty on education authorities to take account of additional support needs when they make provision for school education in general. … It is most likely that only in occasional cases would provision be considered out of the ordinary in the context of what would normally be provided for additional support needs. Such expenditure might be deemed unreasonable. However, if the child's circumstances were such that the expenditure was justified, the expenditure could not be unreasonable. … It is worth noting that in cases in which the expenditure was considered unreasonable, the education authority would have to justify its conclusion. … The situation would therefore be unlikely to occur other than exceptionally. … The consideration that provision might incur unreasonable expenditure must be balanced with the consideration of education authorities' duties towards children and young people in general and to individual children and young people with additional support needs in particular; one does not carry more weight than the other and a child's exceptional circumstances might well justify what could otherwise be considered unreasonable expenditure.’” (Official Report, 5\textsuperscript{th} meeting 2004, column 891/2)

There is no reason, again, why explicit statements about the intent of Ministers as stated to the Education Committee should be excluded from the Code of Practice. These are fundamental to the intent behind the ASL Act. Indeed in relation to the discussions of the foregoing quotations, the Deputy Minister assured the Parliament’s Education Committee that:

“This confirm that points will be taken away from this discussion for the code of practice, which is being developed.” (Official Report, 5\textsuperscript{th} meeting 2004, column 905). Unfortunately, this seems to have been missed.
SCHOOL YEARS

Transitions - paragraph 84

Under the second bullet point of this paragraph relating to the transition to secondary schools, transition planning should also take account of the wishes of parents and pupils. After all, the ASL Act is supposed to promote choice as well as the dogmatic adherence to mainstreaming that the Standards in Scotland’s Schools Act is responsible for. (The subsequent bullet point about parental and pupil participation should remain, as participation is not synonymous with choice).

PREPARING FOR ADULTHOOD

Identification and assessment - paragraph 85

The draft Code of Practice states here that to help children and young people with additional support needs to make the transition from school to post-school life, the duty to request information from appropriate agencies likely to be involved with the child or young person on leaving school must be completed no later than 12 months before he or she is expected to leave school.

But Ministers expect more than this minimum. The Deputy Minister made clear that:

“As the bill stands, an education authority must have completed such arrangements no later than 12 months before the leaving date. Indeed, I would expect planning to begin much earlier in cases in which the young person's post-school destination is entirely clear. Good practice should ensure that that happens. We might consider putting that in the code of practice if it is necessary but, as I have said, we expect authorities to comply. … When a young person is still undecided about his or her destination, I would expect the education authority to offer to the young person every assistance in making an informed decision. … the code of practice will encourage education authorities to start that planning as early as possible for children with the most extensive needs. Indeed, we will make the appropriate references in the code itself.” (Official Report, 7th meeting, column 988/9)
Moreover, the Parliament’s Education Committee had a unified view of the importance of the S2/S3 transition with regard to starting the planning process for transition. This was summarised as:

“Rhona Brankin: We should say that it is essential to have in the code of practice the fact that the transition between S2 and S3 is critical for all youngsters with additional support needs and that, for some of them, it might be appropriate for that point to be the start of the [planning] process [for transition to post-school life].”

This should all be reflected clearly in the Code of Practice, as it makes clear the expectation of Ministers, and the concerns of the Education Committee.

SECTION 4: SUPPORTING CHILDREN AND FAMILIES

Taking account of views - paragraph 12

This paragraph basically states that taking account of views does not mean the education authority has to accept and implement everything. That is understandable in so far as it goes, but surely, if having asked for a child’s or young person’s view, an education authority disappoints the expectation of the child in its response, then the authority should be obliged to explain to the child or young person precisely why it took the view that it did, and this should be done in terms that can easily be understood by the child or young person.

MEDIATION

Other issues – paragraphs 43 & 44

There should be an expectation stated here that additional support established as a result of mediation, should stay in place until the needs of the child or young person change. If such additional support is removed arbitrarily, then the process of mediation will lose credibility, and drive parents away from informal process of resolution.

SECTION 5: GENERAL PROVISIONS

Refusal of placing requests - paragraph 10

The pronouncement that “an education authority may refuse a request if the specified school is a special school, and for the authority to place a child there, would cause it to be in breach of its duty to provide mainstream education” clearly reflects the dogma introduced by the 2000 Standards in Scotland’s Schools Act. However, the Code of Practice needs to clarify for parents that duty. In particular as explicit reference is made to section 15(1) of the 2000 Act, similar explicit reference should also be made to section 15(3) of that Act outlining the circumstances under which that duty does not apply. The Code of Practice is not solely for professionals who are assumed to have familiarity with the various Acts – some interested readers might actually be parents.
ANNEX A

SCENARIOS TO ILLUSTRATE PARTICULAR POINTS

It is appropriate and necessary for most of these particular case studies to be presented. However, others are needed as those currently presented generally reflect the straightforward cases – you put a square peg in a square hole (except why doesn’t Paul get a CSP and what is a Personal Communication Passport in Kalim’s case?). What are seriously lacking are examples of less clear-cut cases.

- If an education authority is buying-in services, does it then become the provider under the legislation, or is the provision still considered to made by another agency? This would impact on the appeal routes open to a child if it were so decided.
- If the only “other” agency required to support a child successfully manages to opt-out of providing a service through the “fulfilment of other duties” clause in the Act, does the child then become ineligible for a CSP – there seems little point in having one in that circumstance? If so, does it then lose the appeal route to a Tribunal that it would have had if the service had been provided?
- A child may not get a CSP even if it is eligible for one in the case of an excellent education authority with excellent existing integration of services from other agencies (this scenario has been alluded to by Ministers and the Education Committee). How is this circumstance determined? Could the Tribunal rule that a CSP was unnecessary in this type of case? If it did and a CSP was considered to be unnecessary for these reasons, would the child still be considered eligible for the Tribunal appeal route or would it have to make do with dispute resolution if things went wrong?

ANNEX D

GOOD PRACTICE POINTS ON INVOLVING PARENTS

Meetings work best when:

As adults, all participants sit on full-sized chairs and are not forced to sit in infants’ chairs in classrooms.

Parents are not simply told that the authority “is doing the best it can within the available resources” (this is a meaningless statement).

Reference – Additional Support Needs 03

OTHER APPROPRIATE AGENCIES TO HELP IN EXERCISE OF FUNCTIONS UNDER THE ACT

Time limits for complying with requests - paragraph 16
A six weeks limit should ordinarily be reasonable, especially in cases where early intervention is necessary: a child should not have to wait unnecessarily, and other agencies should have a time-limit incentive like this in order to raise the priority of children’s support needs in their organisation.

**Time limit exception – paragraph 17**

One wants to be fair on all parties, so the thinking behind bullet point 1 is understandable, but frankly, as written, it lends an opt-out clause to the case which an agency could drive a cart and horses through (and will, if NHS Grampian services are anything to go by).

**Reference – Additional Support Needs 04**

**DRAFT REGULATION (CSP)(SCOTLAND) REGULATIONS 2005**

**Time limits**

Throughout discussions of the legislation in its Committee stages, numerous references were made to the need for non-bureaucratic, soft-touch processes. If the Executive thinks that it has achieved that in its legislation, then there should be no earthly reason why a 12 weeks limit is not attainable. Again, there is a real necessity to ensure that the support needs of individuals takes a high priority in the authorities’ eyes, and what is effectively a 3 months period for the preparation or review of a CSP provides a good incentive for the authorities’ to keep their eyes on the ball and not to frustrate parents through endless prevarication – a timely and responsive system has been called for, the legislation was passed and it would be remiss now for the Executive to take the view that the authorities are not capable of acting in a timely and responsive manner.

In a similar vein, a 4 weeks period should be more than sufficient to transfer a CSP between authorities.

**Discontinuation, preservation and destruction of the CSP**

If parents are to respond to queries about preserving CSPs after they have been discontinued, then a 21-day period seems sufficient. However, authorities must ensure that
parents receive notification of that. When my child’s first Record of Needs was opened, I lost the opportunity to provide comment because I did not do so in the required period. However, the education authority had misaddressed the letter of notification, having previously misaddressed correspondence and reassuring me that it would not happen again. There needs to be some acknowledgement of the receipt of notification if deadlines are being imposed – perhaps through the use of registered mail.

The coordinated support plan template

It is difficult to comment on the CSP template because so little information is imparted about the detail that it is expected to contain. The guidance on completing the Record of Needs template in Circular 4/96 demonstrates that it is the explanatory paragraphs on such detail that allows judgement to be made on the template itself. That judgement cannot be made for the CSP template because there is no detail specified. Throughout the Committee stages, the Education Committee was frequently whistling in the dark because Ministers made constant reference to the as then undefined Code of Practice – the Committee had to take much on trust. We are very much in the same position now regarding the CSP template. This is one of the Executive’s “big ideas” under the ASL Act, yet even when it is consulting on the much-heralded Code of Practice, respondents have no basis on which to judge the adequacy of the CSP template because of the complete lack of detail on guidance for its completion.

On the basis of what is presented, I can make the following comments:

Reiterating an observation from earlier in my response, the Deputy Minister has stated quite explicitly:

“The intention behind the bill is for CSPs to specify resources; where possible, specification should be linked to education objectives. … There is therefore a clear incentive, because of that appeal route, for the education authority to be as clear as possible when describing the additional support that is required.” (Official Report, 6th meeting 2004, column965).

So, according to the Deputy Minister, resources need to be specified in the CSP and there is a need for absolute clarity in specifying the additional support that is required.

Additionally, it would facilitate the monitoring of provision if an additional column could be added to the CSP indicating at the time of review what support was actually provided. In this way, the recording and reporting of un-met need would be simplified.

Reference – Additional Support Needs 06

DISPUTE RESOLUTION

How will dispute resolution arrangements operate? - paragraph 21
This paragraph states that before a case can be considered for dispute resolution, ALL informal steps at school and authority level AS WELL AS MEDIATION should be exhausted. This is tantamount to making mediation mandatory for dispute resolution. Surely this was never the intent of Ministers. It contradicts everything that was said about mediation being non-mandatory in regard to Tribunal cases, and that if mediation was not entered into that it would not prejudice the Tribunal process. So why should it be applied in this way to the dispute resolution process? It simply will not work if it is mandatory (it goes against the whole philosophy behind mediation), but it will serve to frustrate parents if it is clear that both they and the authority have entrenched positions. If that is the case then the sooner an independent adjudication can be made the better.

How will dispute resolution arrangements operate? - paragraph 22

Whereas the Executive is to be commended for recognising the need ultimately for an independent and impartial “referee”, unfortunately the proposal for adjudication in normal circumstances to be solely a paper exercise is an anathema. One doesn’t have to be a disaffected malcontent seeking a disproportionate share of resources\(^4\) to simply want to be heard. Ordinary people who may not be the world’s greatest self-advocates may also want to be heard, and to have genuine cause as well. Why can’t they have the opportunity to put their case verbally if they wish, perhaps to be able to challenge some of the contentions of an authority? Instead of paper exercise there should be an inquisitorial process in which the adjudicator would be expected to seek information and clarification rather than simply to have the right to ask for it.

By way of an additional illustration, a child who is the recipient of a CSP may have an issue with the education authority’s provision, but not the requisite “other” agency’s provision. The problem may be, say, access to small-group teaching. The parents of that child will ultimately have the right to a Tribunal hearing, with full access rights to it and to be heard at it. The same scenario in the case of a child who is not eligible for a CSP results in a paper exercise, where parents do not have the right of full access. But there is no essential difference in the circumstances of the child. Given the multi-tier nature of the ASL Act, one has to acknowledge this anomaly, but at least if parents had the right to meet with the adjudicator, then it might be easier to live with.

How will dispute resolution arrangements operate? - paragraph 23

Again, as section 70 is quoted once more, it simply serves to illustrate the need to provide guidance on accessing the section 70 procedure.

\(^4\) This is in reference to Aberdeen City Council’s and COSLA’s view of appellants under the former Record of Needs appeal procedures. In various consultation responses and evidence to Committees that they gave, it is apparently only articulate parents who appeal, and they do so in order to “play the system” or to “jump the queue” for resources. It is never anything to do with the fact that an authority may, Heaven forbid, provide insufficient additional support!
Who would provide the External Independent Adjudication?

Ideally it would be HMIE itself. I suspect an education authority would not wish to see a representative of ISEA (Scotland) as an adjudicator, in the same way that a parent may not wish to see former education department official as an adjudicator. Given that the HMIE route is probably a non-starter in the Executive’s eyes then I suspect one is looking at the voluntary sector and ex-teachers.

Reference – Additional Support Needs 07

PUBLICATION OF INFORMATION BY THE LOCAL EDUCATION AUTHORITY

Additional information is required on the outcome of an authority’s monitoring of provision, particularly with reference to quantifying un-met need.

Additional information is required on accessing section 70 procedures in relation to the failure of an authority to fulfil its duty under the ASL Act.
Skill Scotland welcomes this opportunity to provide initial comments on the draft Code of Practice which accompanies the Education (Additional Support for Learning) (Scotland) Act. Due to Skill Scotland’s remit, these comments focus on the aspects of the Code of Practice that deal with a young person’s preparation for adulthood.

More clarity around decision-making
It is essential that the ASL Code of Practice is flexible enough to enable appropriate support that suits each child or young person. However, it is also essential that the Code provides clarity around key aspects of decision-making and ensures consistent good practice across Scotland.

Skill Scotland is concerned that paragraphs 85-95 of the Code, which deal with preparing for adulthood, do not provide clear decision-making principles that bring clarity and consistency to transition planning. The Code outlines the legislative duties on schools and provides some helpful examples of transition support, but it does not guide schools around identifying what kinds of support or information-sharing the young person may need. For example, the Code does not:

- Indicate the range of needs that a school should consider when planning support for a child or young person as they prepare for adulthood – i.e. this must include aspects such as social work support, health, care needs, housing etc, as well as educational, training or employment options
- Specify the kinds of information that schools should consider requesting from other agencies for transition planning e.g. needs assessment arrangements, detail around moving to adult services
- Specify the kinds of information that schools should consider passing on to other agencies at the transition e.g. the type of equipment used in class, preferred ways of communicating
- Outline the type and range of agencies who may be involved in transition planning.
Young person’s views are central

Young people’s own views about their post-school life must be central to all transition planning. However, the Code only sets out the minimum duties to consult young people which are in the Act itself. Instead, the Code should be amended to emphasise that full involvement of the young person is an essential characteristic of good decision-making around what transition support is needed.

Value of early planning should be emphasised

The Deputy Minister for Education and Young People stated in evidence at Stage Two of the ASL bill, that:

‘…..it is right to say that planning should begin as early as possible; as I have said, that is only good practice. In some cases, that planning might begin two years before the young person leaves school…..the code of practice will encourage education authorities to start that planning as early as possible for children with the most extensive needs. Indeed, we will make the appropriate references in the code itself.’

There should be much clearer reference in the Code to the necessity of early planning around the transition from school. In particular, the Code should state that young people who have a CSP are likely to benefit from a longer transition planning process.

Appropriate agencies should be fully included

The Code is to be given due regard by ‘appropriate agencies’, as well as by education authorities. Universities, colleges and Careers Scotland are all likely to be named as appropriate agencies under the Act, but there is hardly any mention of their role within the Code. This may be because the proposed regulations to include these agencies have not yet been passed through the Scottish Parliament (although such regulations have been planned for some time). Skill Scotland encourages the Committee to consider if the redrafted Code needs any amendment to guide the decision-making and provision of these agencies.

Skill Scotland is concerned that the Code of Practice gives scant reference to the role of Careers Scotland in providing transition support, despite the fact that Careers Scotland has a key role to play in Scottish Executive Beattie policies to smooth the transition from school for young people. The Code should clarify the role of Careers Scotland in transition planning for young people with additional support needs, both those with and without a CSP.

More and better scenarios

Skill Scotland views the inclusion of carefully-chosen scenarios as critical to the success of the Code of Practice. The examples in the Post-16 Education Disability Discrimination Act Code of Practice have provided considerable clarity to the Act’s provisions and have been central in making it a useful document for education providers and students alike.

For this reason, Skill Scotland strongly suggests that there should be more scenarios in the Code and that these should be embedded in the text, rather than placed in a separate Annex.

5 Scottish Parliament Education Committee Wednesday 3rd March 2004, Col 989
Each scenario should be chosen to provide guidance on a specific issue or decision-making principle. In particular, the scenario about Kalim (page 72) is too vague to be helpful and needs more detail about the way that transition planning was approached.

Summary of points

- The Code should guide schools around identifying what kinds of support or information-sharing the young person may need as they prepare for adulthood.
- The Code should be amended to emphasise that full involvement of the young person in transition planning.
- There should be much clearer reference in the Code to the necessity of early planning around the transition from school, particularly for those who have a CSP.
- Skill Scotland encourages the Committee to consider if the redrafted Code needs any amendment to guide the decision-making and provision of named appropriate agencies.
- The Code should clarify the role of Careers Scotland in transition planning for young people with additional support needs.
- There should be more scenarios in the Code, each scenario being chosen to provide guidance on a specific issue or decision-making principle.

Skill Scotland
May 2005
EDUCATION COMMITTEE

Additional Support for Learning Code of Practice as laid – further submissions

Introduction

1. When the draft Additional Support for Learning Code of Practice was laid on 12 May 2005, the clerks contacted individuals and organisations who either submitted written evidence or gave oral evidence to the Committee at Stage 1 of the Additional Support for Learning (Scotland) Bill asking whether they wished to make final comments on the draft code as laid.

2. In response, comments were received from the following organisations and individuals and these are attached as an annex to this paper. Lord James Douglas-Hamilton MSP wrote to the Minister on a number of points, following representations made to him, and his letter is also included here. These comments refer to the draft code of practice as laid before Parliament on 12 May 2005.

- Graeme King, Falkirk Council Psychological Service
- Lord James Douglas-Hamilton MSP
- Philip Kunzlik
- Alan Haughey
- John Proctor, Secretary, Association of Scottish Principal Educational Psychologists (ASPEP)
- Skill Scotland
- Stuart Aitken, Sense Scotland
- Eileen Prior, Equity Group
- Kenneth Corsar, Director Scotland, National Deaf Children’s Society (NDCS)

3. A summary of the issues raised by the above is as follows:

General
- Children with autism currently benefiting from home education programmes. (Lord James)
- Opportunities for “opt-outs” (Philip Kunzlik)
- Commitments in Ministerial Foreword (Sense Scotland)
- Importance of professional support (Philip Kunzlik)
- Structure, layout and terminology used in code (Sense Scotland and Philip Kunzlik)
- Education authorities and grant-aided schools (Sense Scotland)
- Support needs of the deaf child (NDCS)

Chapter 2 – Additional Support Needs
- Support needs of the deaf child (NDCS)
- Partnership working (Equity Group)

Chapter 3 – Meeting Additional Support needs
Children with autistic spectrum disorder and transitional planning (Lord James)
Multiple assessments for children with autism or dyslexia (Lord James)
Roles of further Education Colleges and Higher Education Institutions (Skill Scotland)
Presumption of mainstreaming (Equity Group)
Inclusion of audiologists within list of professionals (NDCS)
Newborn Hearing Screening programme (NDCS)

Chapter 4 – Co-ordinated Support Plans
Definition of “significant services” and status of social work (Lord James and Sense Scotland)
Centrally driven, centrally resourced model vs. school-based planning and resource model (Alan Haughey)
Child deficit model (Alan Haughey)
Impact on role of educational psychology profession (Alan Haughey)
Linkage of CSPs to resources and central role of local authorities (ASPEP)
Inclusion of dyslexia as a complex factor (ASPEP)
Criteria for CSP (Sense Scotland)
Resources and roles of local authority staff (Sense Scotland)
Flowchart for CSP preparation (Sense Scotland)

Chapter 5 – transitions
Access to careers services for children with additional support needs but without a CSP (Graeme King)

Chapter 6 – Working with children and families
Good practice guidelines (Sense Scotland)
Children’s capacity (Sense Scotland)

Chapter 7 – Resolving disagreements
Need for parents to make verbal representations (Lord James and Philip Kunzlik)
Role of tribunals regarding non-delivery of CSPs (Lord James)
Clarification of entitlement to make a referral to tribunals (Lord James)
Powers of external adjudicators (Lord James)
Role of tribunals regarding “other appropriate agencies” (Philip Kunzlik)

Action
The Committee may wish to NOTE the points raised in the submissions on the draft code of practice and DISCUSS them with the Deputy Minister.

Martin Verity
Clerk to the Committee
COMMENT FROM GRAEME KING

I refer to Chapter 5 section 15 page 70

The sentence:

"Most children and young people with additional support needs will not require appropriate agencies to be approached for information."

should be removed.

If this sentence remains, the effect of the code will be that only those children and young people with additional support needs who also have a co-ordinated support plan will have anything additional to routine vocational guidance arrangements and access to the careers service at the transition from secondary school to post school.
COMMENT FROM LORD JAMES DOUGLAS-HAMILTON (COPY OF LETTER TO SCOTTISH EXECUTIVE)

Dear Peter,

I am writing to you in order to raise a number of points in relation to the revised Code of Practice for the Additional Support for Learning Act 2004. I have received a number of representations from bodies providing advice to parents of children with additional support needs. I believe that their arguments are valid and that they merit consideration by you and your department before the revised Code comes before the Education Committee.

My nine points are as follows:

1. First, I wish to raise a sensitive matter relating in particular to children with Autistic Spectrum Disorder, in relation to Transitional Planning.

   On Page 22 under Paragraph 8 is a sentence which goes far beyond the Act, and is to the potential disadvantage of autistic children. This section starts ‘the authority will not make such a request (that is for information from an appropriate agency) for every child with Additional Support Needs, but only for those whom they think require such involvement’.

   This is introducing a substantial element of risk, because those with Autism may not have a Coordinated Support Plan. Hence their future provision may not be adequately planned.

   The same may apply to other conditions such as Dyslexia. Therefore I recommend that that section be amended, to take account of those who may fall through the net, as is the case with some of those with Autism or Dyslexia.

2. I wish to raise an issue on Page 29 Paragraph 35 relating to Assessment. The second section states ‘the request can be for an educational, psychological or medical assessment or examination or any other assessment or examination which the parents wish for’.

   It will be helpful if there can be more clarity, for example for those with Autism or Dyslexia, that multiple assessments can be requested.

3. My third point is in relation to a matter not covered fully by the Code but which is mentioned on Pages 22, 39, 44, 87 and 104, namely Home Education.

   The point here is that some children with Autism are currently benefiting from Home Education programmes in addition to formal education.
The Code should recognise this reality, and make it clear that the Coordinated Support Plan can include this information within it. Surely this should be for the Code and should not simply be left to the parents.

There is a precedent for this under a Labour government in Britain, namely that Local Education Authorities in England can have home based programmes for children with Statements of Needs.

Surely children with Autism should benefit in Scotland as much as they do in England.

4. My fourth point relates to Page 43 of the Code where the criteria for the requirement for a Coordinated Support Plan are listed.

My point is that in order for a child or young person to qualify for a Coordinated Support Plan they must satisfy the four criteria listed on Page 43 of the Code. The final criterion, namely that 'those [additional support] needs require significant additional support to be provided' raises the following issue:

If the test to qualify for a Coordinated Support Plan on the fourth criterion is that a child must require significant additional support to be in receipt of the significant services, a danger exists that some children who require certain services but who, because of a lack of resources in their area are not in receipt of them, may not necessarily qualify for a Coordinated Support Plan.

Although Page 49, sections 16 and 17 mention the services provided, I believe that it will be helpful if the Executive undertakes to define whether a child or young person be in receipt of the 'significant service' or require the services in order to meet the final criteria.

5. There is a further point in relation to the criteria for Coordinated Support Plans on which I feel that clarification would be beneficial. Page 49 Paragraph 18 states that 'involvement from a social worker is unlikely to count as

'significant' in these terms'. One of the criteria for a Coordinated Support Plan as stated on Page 43 is that the child or young person require significant additional support to be provided 'by the education authority in exercise of any of their other functions as well as in the exercise of their functions relating to education'. During the debate on the draft Bill social work was discussed in relation to meeting this particular requirement for the Coordinated Support Plan. I believe that it will be helpful to explain the status of social work and whether such involvement could be 'significant'. This must be clarified.

6. In relation to dispute resolution, Page 90 of the Code states that 'the adjudication process is a paper exercise'. I believe that this provision
could have the effect of disadvantaging parents in the dispute resolution process. Local Authority staff will tend to be more adept at making written statements supporting their decision on a child/young person, while parents who lack experience of this process may find that they have difficulty arguing their case succinctly and concisely.

It is possible that as a result of this, a disproportionate number of children's cases will fall. Where a parent is able to represent their case verbally, with or without support or representation, they may feel that they have had a better opportunity to present their case. In other words, the possibility of making verbal representations may be in the public interest, as well as in the interests of many concerned.

7. A further point in relation to dispute resolution occurs on Page 85. A revision appears to have been made of the draft Code originally put out to consultation. The sentence 'for disputes about the way the authority are exercising their functions under the Additional Support for Learning Act as these relate to individual children/young people, including non-delivery of Coordinated Support Plan requirements'.

Here it may be much more appropriate for the resolution of differences regarding the non delivery of Coordinated Support Plan requirements to be dealt with by Tribunals rather than under dispute resolution. This is the view of ISEA.

8. Page 88, Paragraph 15 states that the Act does not affect entitlement to make a referral to the additional support needs tribunals. Under Paragraph 18, Page 89, however, the Code states that the dispute resolution service is for the parents whose child has additional support needs 'but who does not have a Coordinated Support Plan and therefore, cannot access the additional support needs tribunals'. I believe that this section may require clarification for the benefit of parents, so that they know what their full entitlement is.

9. My final point Page 89 Paragraph 24. This section states that 'where a request is valid Ministers will appoint an external adjudicator to consider the case'. Does this mean that the External Adjudicator will have authority to validate such a request?

I will be grateful if you would consider these points in advance of the meeting of the Education Committee on Wednesday 25th May. I am sending a copy of this letter to the Clerk of the Education Committee, so that it can be circulated to members, and to Euan Robson.
COMMENT FROM PHILIP KUNZLIK

ASL Code of practice as laid before the Scottish Parliament

Although the code of practice, as laid before the Scottish Parliament, has been largely re-drafted since I wrote to the Education Committee about the original draft (my letter of 20 March 2005), there remain several points of real concern. I make no apology for reiterating them here; my comments were (are) intended to present constructively a means by which parents of children currently recorded as having special educational needs could be taken onboard with the legislation instead of being alienated by it. I do hope that members of the Committee will consider seriously the points that I have raised. I know it cannot debate amendments to the code of practice, but I do understand that it can offer a view on it which the Executive must take account of. That being the case, I want to draw attention to the following:

- In the rulings of Tribunal, or adjudication of disputes, any outcome will have to be determined with regard to the code of practice. That is clear. What is not said, is that if recourse is then made to the courts, as appropriate, then the outcomes will be determined by a formal legal interpretation of the ASL Act and that such an interpretation will almost certainly have to pay regard to the intent of ministers when they brought forward the legislation.

Using as an example the contentious issue of “opt-outs” from the legislation that were discussed at length during the committee stages of the bill, the code of practice seems in many places simply to repeat the legislation itself – almost inviting authorities to use the conditional clauses as opt-outs. This was far from the intent of ministers, and some very plain language could have been used in the code of practice to reaffirm that, yet that opportunity has been squandered. Paradoxically, in contrast to the assurances that ministers gave to the Education Committee, we now have a code of practice that seems to emphasise the conditions under which opt-outs can be taken. It serves to reinforce the principles by which something need not be done instead of reaffirming the very strong statements and intent of ministers when they brought forward the legislation.

If it is appropriate for the ministers to give the very strong reassurances to the Education Committee (as recorded in the Official Reports), then surely it is appropriate for them to be incorporated in the code of practice as well. Not only would that make the intent of ministers clearer to the target audience of the code, but it would help guide the adjudicators and Tribunals in their decisions too. It would also bring the intent of ministers to the fore in cases that did proceed to the courts, rather than having them buried away in the dark recesses of the Official Reports where they are
accessible only to those who know they exist. In fact, it may even reduce the number of disputes proceeding to one of the formal procedures, because education authorities and other appropriate agencies would have been given very clear guidance on the ministers’ intent by their inclusion in the code. Indeed, the minister seemed to agree:

*The provision [i.e., unreasonable expenditure] to which you refer was not put in the bill to try to create an [opt]out—I want to be very clear about that. … There is a general presumption that no local authority can act unreasonably. It would be illegal for a local authority to do so in any circumstances. We do not believe that the provision to which you refer will change that general presumption. I am always open to considering particular forms of words to try to make our intentions clear. However, our intention is clearly not to introduce a get-out clause.”* (Official Report, 14th meeting 2003, column 568/9)

So why is this “intent” so widely neglected in the code of practice?

- Ministers made an overarching statement to the education committee about the policy drivers behind the ASL Act:

  “*One of the big developments that is taking place in Scottish education is that we are moving from a producer view of how we organise services and a system that is built around providers to a user-led view of how services ought to be provided.*”

This is of great significance in that it underpins the philosophy behind the Act and, in its own way, provides further insight into the intent of ministers. Why then is it not included in the ministerial foreword to the code of practice? Why should the Education Committee be given a clear exposition of this and not the stakeholders?

- Although a matter of interpretation, I find it bizarre to say the least that weekly speech and language therapy is considered to be an insignificant additional resource in terms of the eligibility criteria for a co-ordinated support plan (CSP). If such additional support is insignificant, why is it that 25-plus children in Aberdeen City who have a Record of Needs’ requirement for speech and language support, have not had their needs serviced in the past couple of years? If they cannot access such support with its requirement stated on a statutory planning mechanism, what chance have they of receiving it when there is no requirement for a statutory planning mechanism to state it?

Equally bizarre is the assertion that a child receiving therapeutic support by others under the guidance of a professional therapist is not significant in terms of the requirement for a CSP. Bitter personal experience has convinced me that it is precisely the children at the margins of professional support that need the greatest co-ordination of any such support. They are, quite simply, close to the lowest in the pecking order of the therapists’ priorities (only beaten by those children whose needs are neglected
entirely) and those whose support is most ephemeral. To advise, as the code does, that therapeutic inputs need to be of the order of weekly speech and language therapy support and twice weekly occupational therapy support to be deemed a “significant additional resource” quite simply beggars belief, and it is hugely cynical coming so late in the day – this was not in the draft code of practice and had never been signaled previously to the Education Committee or to MSPs. I do not believe it was the Education Committee’s understanding (or that of MSPs who voted through the Act) that the significance of health service support would be trivialised in this way. It seems simply to be a device to raise the eligibility bar for a coordinate support plan to reduce even further the number of statutory support plans that are necessary for children currently covered by a Record of Needs. This is cynical in the extreme and seems almost designed to alienate parents precisely at the time the Executive needs parental “buy-in” to the legislation.

In a more insidious sense, because of the difficulties faced by recruiting and retaining therapists in the northeast of Scotland, local education authorities and NHS Grampian are exploring ways in which the service a child needs can be delivered other than by a professional therapist. However, if a child needs direct intervention by a therapist but is only given ancillary support, it seems it will be faced with a double whammy as the code of practice indicates that a CSP would then be unnecessary when, in reality, it is even more essential for that child.

As drafted, the code gives an incentive to providers to downgrade the support needs of children to avoid having to prepare a CSP. Coupled to the failure of the Executive to make clear in the code of practice that a child’s needs must be assessed independently of an agency’s ability to support the need, this will mean that only those parents that can afford independent specialist assessments of their children will have the necessary information available to support their case regarding their child’s legitimate support needs. I thought this was precisely the kind of social exclusion that this legislation was supposed to avoid.

Moreover, the Executive seems also to contradict its own guidance in the code of practice. In the case outlined in chapter 4 (Co-ordinated Support Plan) paragraph 52, of a child with a CSP, we read that:

“.. a teacher and speech and language therapist may need to ensure their support is well coordinated if the educational objectives to be achieved are related to improving the communication skills of a child with an autistic spectrum disorder”.

Yet given the details of that case as stated, and given the guidance in chapter 4, paragraph 18, the child in question would not be eligible for a

---

1 At the Aberdeen-hosted Children in Scotland consultation event on the draft code of conduct, a NHS Grampian speech and language therapist told the table that I was on that frequently she would not feel able to specify the actual support needs of a child because she could not fully provide such support, but she would be happy to specify what [lesser] support she could provide.
CSP in the first place. Which bit of the code are practitioners and parents supposed to believe?

Finally, we are led to the dispute resolution procedure by which children who are ineligible for a CSP will be taken. I can find no reference in any of the Official Reports or consultation documents that leads one to expect that the dispute resolution procedure would rule on the interventions of “other appropriate agencies” (specifically the health service, and particularly in the matter of speech and language therapy support, occupational therapy support or physiotherapy support). Nor have I seen any requirement in the person specification for adjudicators to have the requisite knowledge of the roles and benefits of such interventions. Nor have I seen anything that states the adjudicator will have the power to remind other appropriate agencies of their duties under the ASL Act. This can only imply that such a role was not envisaged because such cases were originally expected to fall under the CSP mechanism.

- The dispute resolution procedure maintains the stance that appeared in the draft code that it should ordinarily be a paper exercise although it does now indicate that, exceptionally, direct parental representation will be permitted. A right of representation should not be exceptional and, given the rights of representation that parents of CSP holders have, it is discriminatory. Is this the system that is built around a user-led view of how services ought to be provided, to which the minister aspired, above?

Even if the presumption of representation continues to be rejected, then under what exceptional circumstances, precisely, will representation be permitted?

- I understand that the Executive is a corporate member of the Plain English Campaign and that it seeks to use plain English in all kinds of communication. In that respect, the code of practice needs a lot of extra work; large elements of it will be fairly impenetrable to several sections of its intended audience. It would be extremely useful for it to be assessed for the Plain English Campaign’s “Crystal Mark” accreditation.

There are other weaknesses in the code of practice, many reflected in my earlier letter. I think the Committee needs seriously to question whether the many assurances given by ministers during the committee stages of the bill have been borne out in the code. As a close observer of the Committees’ discussions during that period, I do not think they have been sufficiently reflected in the code. In addition, I believe that by setting the CSP eligibility criteria as high as it has, and so late in the day, the Executive has sailed very close to the wind regarding the openness and transparency with which it has revealed its intentions to the Committee, and MSPs in general. Indeed, I find it very difficult to believe that the figure touted by the Executive to the Education Committee that the expected number of CSPs would be approximately 50% of the number of Records of Needs anticipated such severe eligibility criteria. If
so, surely the number would be far below 50%. Finally, as Mr MacIntosh MSP, stated in Committee on 10 March 2004:

“*When we took evidence early in the process from people who work in the health service, it was clear that they were simply not aware of the bill's implications to anything like the degree that people who work in schools and education are. That compounded my anxiety that people who work in the health service do not regard the bill as fundamental to their job and to meeting the needs of children to whom they have a duty. The very process of introducing the bill, debating it and taking evidence has fuelled my anxiety.*

*I appreciate that section 19 tries to address such anxieties, but all of us have expressed fears about whether it does so with enough force to ensure that health authorities in particular waken up to their duties and do not try to avoid them, which I am sure that many will try to do if they do not regard them as a primary responsibility.*"

Unfortunately, given the height at which the CSP eligibility criteria has been set, and the lack of absolute clarity regarding the intent of ministers in the code, I fear that Mr MacIntosh’s prescient observations will come true.
COMMENT FROM ALAN HAUGHEY

I will be quite clear at the outset that I have always been unhappy with the base legislation on which this Draft Code of Practice is founded. The reasons for this are:

1. The legislation is anti-inclusive in its nature by predicking support on the individual child using a child deficit model. This is a model which has been discredited in all modern research as a dysfunctional means of allocating resources to support children and young people. The original focus of the legislation was meant to be the identification and removal/circumventing of the barriers to learning which children encountered. This has been lost with the focus now well and truly on the deficits which the child has and which need 'repaired'.

2. The model ignores the issue of equity of resourcing for all children's needs. It was hoped that the Code of Practice would give some balance to the problems inherent in the model utilised in the legislation. This is not the case. We now have after many years of debate and time spent in consultation a carbon copy of the model of Statement of Needs in England, Wales and Northern Ireland used over the last 10 years. Is this the best Scotland and its devolved Parliament can manage, to copy an old discredited and dysfunctional English model?

Specifically:

1. The template for CSP gives a strong lead re- the local authority (also reflected in the main document text re-CSPs) i.e. a strong centrally controlled model (at local authority level). Taken together with a requirement to quantify the support being offered for a youngster, we are left with a centrally driven centrally resourced model of support for children with identified deficits. There is very little to encourage a school-based planning and resource model, linking the identification of barriers to learning to the assessment and planning at school level supported by outside agencies i.e. a model of good current Scottish practice.

2. Changes in the re-draft of the section on CSPs are very unhelpful and place an unwarranted and unjustified emphasis on the child deficit model. They depict 'severe dyslexia' as an acceptable, agreed entity which justifies consideration for a CSP. Including such an exemplar at this late stage makes a mockery of the consultation process. The amendment of the section on CSPs does three things:

   a) defines severe dyslexia as a complex factor
   b) indicates that one complex factor is required for a CSP
   c) indicates that the ASNs require to be only those met by the LA( OR not AND in the d(i) /(ii) portion).

The result of these combined statements? How many parents with "severe dyslexic" children will:
• demand a CSP (their needs will probably be there for more than one year);
• require the number of hours of a LST (or others - OT, SaLT) specified within the CSP.

I cannot see an argument that will hold water against this current draft which would achieve any other outcome. I am sure any Tribunal will uphold that view.

How many CSPs will this generate? We are talking of percentages well in excess of the 1-2% previously indicated for CSPs.

If the above scenario does come about, what will happen to the Educational Psychology profession in Scotland? We will have a centrally defined legal document which must specify the quantity and kind of support being offered from the LA. Does this remind you of anything?

We will have a repeat of the English situation where EPs are chasing demands to open Statements of Need and servicing Tribunals with their time while parents argue over the minutiae of the number of hours/minutes of support they believe their children require. It will destroy most of the current good work going on in the profession in Scotland which is focussed on increasing the capacity of schools (and others) to include and meet the needs of all children, including the most vulnerable.

This new draft of the Code of Practice will become a lawyers' (and private psychologists') charter.
COMMENT FROM JOHN PROCTOR

I should like on behalf of the Association of Scottish Principal Educational Psychologists to voice major concerns regarding recent amendments to the Code of Practice such as the strengthened linkage of the Co-ordinated Support Plan to resources which will result in our going down the "statementing" path that has been so unsuccessful in the English system. In so doing, CSPs will be viewed as the "gold standard" with regard to securing resources and the original principle of ensuring that children's and young people's needs are met through integrated and effective services will be largely overshadowed. We are also concerned by the increased emphasis on the Authority role in the CSP and the shifting of decisions away from schools as this was one of the major weaknesses of the Record of Needs. Finally, the inclusion of dyslexia as a complex factor is a retreat from the former position adopted. Our Association is extremely disappointed by this change in emphasis and wish this to be noted by the parliament.
COMMENT FROM SKILL SCOTLAND

Additional Support for Learning Code of Practice

Skill Scotland provided initial comments based on the first draft Code of Practice. This paper includes an additional comment that arises from the amended Code of Practice that has been laid before the Scottish Parliament.

Paragraphs 11-15

A new aspect to the Code of Practice, not part of the original draft that was issued for consultation, is to make differentiations between the anticipated roles of Further Education Colleges (FECs) and Higher Education Institutions (HEIs) as ‘appropriate agencies’. The Code states that whilst FECs may be expected to provide different kinds of support for young people as requested, it is expected that HEIs will be asked only to provide information (unless they have had a previous relationship with a young person).

Skill Scotland is very disappointed that such an unnecessary restriction on the role of HEIs should be included in the Code. Other types of support are often very helpful for young disabled people, such as visits to the university, early meetings with university Disability Advisers to discuss the types of support available, summer week transition courses, the opportunity to talk with current disabled students, and so on. Support of this kind can be very important – it can raise young disabled people’s aspirations; it can encourage them that help will be available and resolve any concerns that they have; it can mean that their transition to university is smoother; and that the process of getting future coordinated support is in place.

The Code states that it is only where HEIs have a previous relationship with a young person that it may be anticipated that they will provide additional types of support, other than information. However, it is precisely when a young person has had no previous relationship with an HEI, that they would most benefit from other kinds of additional support.

Skill Scotland does not suggest that every HEI will have to give intensive support to all young disabled people in their transition from school to university. The Act already states that HEIs do not have a duty to provide any help that unduly prejudices their other functions or that is incompatible with their other duties. In addition, most young disabled people are likely only to require information from the HEI. However, for some young disabled people, other kinds of support from an HEI will make a significant difference to their transition from school.

Skill Scotland therefore recommends that paragraph 15 be removed from the Code. Requests by education authorities for help from HEIs for young people with additional support needs making the transition from school should be restricted only by the limitations already in the Act, and by the needs of the young person.

Skill Scotland
May 2005
COMMENT FROM SENSE SCOTLAND

Introduction
Sense Scotland is a leader in the field of support services for people who are marginalised because of challenging behaviour, health care issues and the complexity of their support needs. We have been greatly encouraged by the Executive’s commitment to consulting widely throughout the passage of the Act and on the Code of Practice.

Context for our comments on the revised draft Code
This paper supersedes the paper sent to the Committee on 29 April 2005.

Declaration of interest
Sense Scotland participated at several stages of the consultation process responding to both the Executive and giving written and oral evidence to the Scottish Parliament Education Committee.

Date Executive Activity Sense Scotland Involvement
June 2004 Consultation events across Scotland Facilitated at 4 events
August 2004 Preparation of draft Code Commissioned by the Executive to draft Section 4: Supporting Children & Families
Sep 2004 2 day Executive meeting prior to publication of draft Code Participated.
Nov 2004 Executive event to launch draft Code for consultation Attended launch
Jan-Feb 2005 Consultation events across Scotland Facilitated at 7 events
25 Feb 2005 Consultation ended Responded to consultation
April 2005 Executive meeting to re-draft Code Participated

General comments

Ministerial Foreword
We welcome the joint statement by both Minister for Education and Young People and Minister for Health and Community Care. It would be helpful if the foreword would reflect more strongly:

- A commitment to inter-agency partnership working, drawing attention to the expectation that other agencies will deliver on their duty to the education authority and that only in exceptional circumstances will additional support needs not be identified, assessed and provided for.
- An expectation that the various dispute procedures (mediation, dispute resolution and Tribunals) are measures of last resort.

Structure of the Code
The revised draft Code is much improved on the earlier version and describes more clearly and in greater detail the various processes and decision-making steps to be taken.

The Scottish Parliament Education Committee
May 2005
Sense Scotland Page 2 of 7 May 2005

Visual layout
Inclusion of sidebar text that refers to the legislative and policy context has helped substantially to draw readers’ attention to critical content. It will help the reader if the different flow charts are presented in a more consistent format. Currently:
- Pages 26, 45 and 53 on occasion refer to specific paragraphs in the revised draft Code text but do not refer to relevant Sections of the Act.
- Page 85 (Dispute Resolution) refers to both relevant sections of the Act and relevant external processes.
- Page 121 (Placing Request) refers to relevant paragraphs in Schedule 2. Of these the flow chart format used for Dispute Resolutions and Placing Requests are helpful to the reader cross-referring between the Code, Act and flow chart.

Use of scenarios
The revised draft Code uses scenarios or case studies well, helping to illustrate processes and decision-making events. We appreciate that it is not possible to illustrate each and every single process through scenarios and the ones used are helpful to the reader. Because of the limited number of case studies used it is important that they are accurate and are in keeping with other aspects of the Act and the Code. With this in mind we suggest amending three of the case studies:
- Case study Darren [page 17, para 9, text box]: given the wider context of involving and consulting children and young people represented elsewhere in the Code, and in the Act, the scenario could note that consultation involved Darren and his mother. The Code should avoid introducing examples of poor practice in the process of spotlighting areas of good practice.
- Case study Kyle [page 17, para 9, text box]: the scenario appears to meet the criteria for a co-ordinated support plan, which is described later in the Code. The scenario does not refer to the need for a CSP. Instead Kyle’s support is incorporated into his care planning which includes his IEP. At the very least it would be helpful to say why a CSP is not needed.
- Case study Mai Ling [page 34, para 52, box text]: uses disabling language – ‘might be dyslexic’. We suggest amending to ‘might have a form of dyslexia’ or equivalent. It would be helpful to include a scenario / case study to illustrate parental involvement, possibly with involvement of the child or young person. We suggest this for two reasons:
  - First, the only substantive scenarios to highlight parental involvement are those in “Dispute Resolution and Mediation”. We have argued throughout that any recourse to mediation, dispute resolution or Tribunal represents a failure as money that could have been spent on resources is spent on resolving disagreements.
Second, the revised draft Code includes in the main text good practice principles for working with parents and with children and young people, a welcome development and one we argued strongly for. A scenario to illustrate some of these principles in practice would send a clear message on real partnership working.

Specific comments

Additional support needs and provision
The revised draft Code offers a comprehensive and useful account of additional support needs, of factors that might give rise to them and of the range of support provided to meet these needs.

The Scottish Parliament Education Committee
May 2005
Sense Scotland Page 3 of 7 May 2005

Use of the term learning and teaching
The words ‘learning’ and ‘teaching’ are used inappropriately in places. If used in combination (‘teaching and learning’ or ‘learning and teaching’) the phrase should be restricted to occasions when an interaction takes place between a child or young person and teacher. It is acceptable to use the phrase as in:

- Learning and Teaching Scotland (referring to the organisation of that name)
- A particular approach to learning and teaching such as those used with children and young people with autistic spectrum disorders, dyslexia or sensory impairments (page 16, para 7).
- Ensure that learning and teaching takes place with the minimum of disruption – as both the child’s chances of learning and the teacher’s input should be free of disruption (page 108, Better Behaviour – Better Learning).

It is questionable whether the phrase is being applied correctly in:

- The factors which have been identified will have a significant, adverse impact on the child or young person’s school education such as, for example, learning and teaching, or social relationships or communication (page 45, para 8 flow chart).
- Any lack of English should be addressed within a learning and teaching programme which takes full account of the individual’s abilities and learning needs. (page 20, para 18). The reference to ‘teaching programme’ is correct, a reference to a learning programme is not, and is in any case redundant used in this context. It is not acceptable to say:
- These barriers may be created as the result of … inappropriate approaches to learning and teaching” (page 19, para 12), which suggests that children learn inappropriately.
- For example, a child…may not be receiving appropriate learning and teaching (page 48, para 12), children may be taught but not learned.
Education authorities and grant-aided schools
We have a number of concerns in relation to the duties and powers of education authorities in relation to a child attending a grant-aided school. At the root of these concerns is a key principle around which the Act was designed: placing the child at the centre of services rather than on the system of delivery. The paragraphs affected are:
page 13, para.7
page 34, para. 53-56
page35-6, para. 60-63
page 39-40, para. 76-9
page 44-5,para. 5-7
page 89, para. 20
We believe it is inconsistent that:
. if a child attends a grant-aided school (in part supported by the Executive and in part by the child’s home authority) there is no duty, on either the school or authority, to provide a CSP. Children attending grant-aided schools are those likely to be most in need of inter-agency working.
. if a child attends a school run by a different education authority the host authority has to provide the CSP but monitored by the home authority
The Code should clarify whether an education authority has a power or a duty in relation to children and young people belonging to the authority but who attend grant-aided
The Scottish Parliament Education Committee
May 2005
Sense Scotland Page 4 of 7 May 2005
schools to comply with requests:
. to establish if a child has additional support needs
. to establish if a child would require a co-ordinated support plan
A parent may decide that a child will be educated in an independent school or home educated and in such cases the authority has a power rather than a duty to comply with requests. A parent may also choose to send a child to a grant-aided school and to pay for that placement. We expect that the authority has a power rather than a duty to comply.
Where, however, the education authority is involved in making a placement decision that a child should attend a grant-aided school, we would expect the authority would have a duty rather than a power to comply with such requests. Without such a duty it would appear that a child or young person would have a CSP if educated in an out-of authority placement provided by a different education authority. But the same child would not have a CSP if educated in a grant-aided school.

Term ‘special school’
The Act continues to refer to ‘special schools’ despite a number of representations made that suggested it was time to change the outdated
terminology. We understand that the Act cannot be changed at this time but it is important to note that the terminology is not keeping up with the many changes in the ways that provision is now being offered to children and young people.

Co-ordinated support plan

Criteria for a CSP
The revised draft Code provides helpful detail on the criteria for opening and reviewing a CSP. The final sentence of page 49, para 15 provides a useful plain English description that will help distinguish education functions from other functions of a local authority.
The revised draft Code is clearer about the relationship between the many planning frameworks operated by local authority and health board. Clarification is still needed on the criteria for opening a CSP when other plans are also available, in particular a Looked After Children plan.

Quantify provision in the CSP
We believe that the revised draft Code is helpful in requiring education authorities to be specific when writing CSPs and, where possible, to quantify staffing arrangements, and any resources provided. Such requirements will help allay parental concerns about the current system in which statements like 'speech and language therapy as required' are too vague. We are aware that the need to specify provision will give concern to education authorities and to other agencies with a duty to education authorities but both the Act and the revised draft Code balances the requirement to be specific and to quantify resources with the test of reasonableness and appropriateness, and exemptions in regulations.

Roles of the co-ordinator and ‘officer of the authority’
The revised draft Code is much clearer about the role of the co-ordinator. Successful implementation of the Act and the Code will depend on people working together and for children with CSPs, the co-ordinator will play a vital role. To work best the roles of coordinator and officer of the authority should be as follows:
• The co-ordinator should know the child and the team first, the system second.
• The officer of the authority (from whom a parent or young person can obtain advice
The Scottish Parliament Education Committee
May 2005
Sense Scotland Page 5 of 7 May 2005 and further information) should know the system first, the child and the team second.
The co-ordinator

We very much welcome the description given for the co-ordinator’s role. The main text of the Code clarifies that the education authority has responsibility for ensuring that services required are in place for the child or young person. However, the Glossary entry for ‘coordinator’ gives over corporate responsibility to the co-ordinator. Corporate responsibility should lie with the education authority not with individual staff. We suggest amending the glossary entry for co-ordinator along the lines of:

“person responsible for monitoring that the services required to deliver the additional support identified in the co-ordinated support plan are in place for the child or young person and for taking action to secure services when necessary.”

Significant additional support [page 49, para 18]

We find it odd that weekly input from a speech and language therapist (SaLT) to an individual child would not constitute ‘significant additional support’ and that a child receiving this level of support would not require a CSP. Given the identified shortage of SaLTs this level of input would be considered substantial in most authorities and health boards. If, however, the reference in the paragraph is to SaLT input to a whole class or school, then the paragraph should make that clear.

Flow chart for CSP preparation [page 53]

The top box of the flow chart appears to discourage inter-agency working arrangements among those who work directly with the child. At this point a new player emerges, one who is likely never to have met the child, have no knowledge of what has been working, will require the parents to ‘tell their story’ again – and that person will draft the CSP. The Officer of the authority could become, in effect, a direct replacement for the much criticised Part V of the Record of Needs. Immediately the CSP will become resource driven; good inter-agency working arrangements will be swept away as the officer of the authority drafts the plan, and approves it with managers of other agencies. This model is emerging in a few local authorities. It is not an efficient use of resources, is ineffective in targeting services appropriately, removes from the loop of decision-making those who know the child, leads to endless paperwork copied back and forth between agencies, and leads to a feeling of no involvement both by parents and those working with the child.

Our recommendation is that inter-agency planning and decision-making remains as far as possible within the team supporting the child, that the co-ordinator is appointed earlier – he or she will almost certainly already have known the child for some time. The coordinator should be the hub who liaises with the officer of the authority. Crucially, this approach will only work if the role of the co-ordinator is as detailed in the revised Code.
Co-ordinator appointed from outwith education [page 56 para. 44]

Bullet point 2 suggests that the plan should only note the details of someone appointed as co-ordinator if that person is not an education authority official. This is not our reading of the Act [s11(5)(d)]

Supporting children and families

Good practice on involving parents and children and young people

We very much welcome that the revised draft Code includes good practice guidance on involving parents, children and young people in the main body of the text. These principles

The Scottish Parliament Education Committee
May 2005
Sense Scotland Page 6 of 7 May 2005

should be included in the main body because:

- Getting parental involvement right in the first place helps to keep decision-making local, focused on the child and is an effective use of scarce resources. In contrast, any referral to formal processes – mediation, dispute resolution or tribunal – diverts resources with less money for provide services. Teaching staff and education authority officials do not routinely involve parents. Placing guidelines on involvement and participation in the main text strengthens and clarifies that all practitioners need to take them seriously.

- For the Act and the Code to really make a difference to children, resources need to be directed to them as far as possible and not to administrative processes. We are aware that the Executive has allocated additional resources to authorities and other agencies to implement the Act and this is welcome. A substantial proportion of these resources will be spent on mediation, dispute resolution and setting up ASN Tribunals. This represents little in the way of increasing resources to meet additional support needs. A commitment to involving people and working together effectively can help to ensure that the numbers of mediation, dispute resolution and Tribunal events remains static.

The child’s capacity [page 76, para. 20]

It is best to achieve a consensus about a child’s capacity through partnership working rather than to rely on an SaLT test of comprehension.

Good practice points on preventing and resolving disagreements [page 94, para. 44]

The good practice points noted earlier will help avoid disagreements.
CSP template

The CSP template is useful though we are unclear about the status of UPI (Universal Pupil Indicator) as the policy framework is not yet in place.

Miscellaneous

Annex A Links to other legislation, policies and guidance [page 103-111]

Children (Scotland) Act 1995 should include reference to “Children’s views must be sought and taken account of in key decisions that affect them. [S6]

Reference should be made to Regulation of Care (Scotland) Act 2001, to include “to Views of children using services should be taken into account.”

Supporters and advocates

The Code should reflect the Act’s provision for a parent or young person to have more than one supporter or advocate. The following may be an appropriate addition: “There is no limit on the number of supporters or advocates a parent or young person can have. Education authorities should be prepared to respond positively and flexibly to parents and young people who choose to have more than one supporter or advocate and to find effective ways of communicating and corresponding with them.”

Education authorities should also have to show why a supporter or advocate is refused: “Where an education authority considers a request for a supporter or advocate to be unreasonable, the parent or young person may ask it to provide its reasons for The Scottish Parliament Education Committee Sense Scotland Response to Revised Draft Code of Practice for the Education (Additional Support for Learning) (Scotland) Act 2004 – Supporting children’s learning

May 2005

Sense Scotland Page 7 of 7 May 2005 refusal. These must show grounds for the request to be unreasonable. The parent or young person can also engage in mediation or dispute resolution.”

Advocacy is not about taking over responsibility but is to support the parent or young person to express his or her views. The main objectives of advocacy should therefore include to:

. Support the parent or young person to express his or her own views and wishes, and to make decisions.

. Support the parent or young person to make informed choices about the education and support required.

It will be good practice for the education authority to establish with the parent or young person how to keep the advocate or supporter informed of matters being discussed or actions being taken. The Code should include a note of this.

Other points

Page reference Revise Page 19, para 12 “Schools are well aware…” avoid colloquialisms especially if it could be construed as criticism.
Page 27, para. 24 A young person can make such a request on their own behalf.
Mixes singular and plural.
Page 38, para. 69 “Take a look at…” – consider? outline?
Page 57, para. 48 Insert ‘plan’ after ‘Co-ordinated support’
Page 71, para. 16 Insert ‘of’ into ‘course action’
Page 77, 21 ‘Information in a form they can understand’ refers to ‘child or young person’
Mixes singular and plural.
Dr Stuart Aitken, 18th May 2005
Senior Consultant, Sense Scotland
COMMENTS FROM THE EQUITY GROUP

The Equity Group has taken a keen interest and been actively involved in the Act as it has developed, and in the Code of Practice, which we believe to be a document of critical importance.

We are therefore extremely disappointed in the very limited time given to review the revised draft of the Code and to comment upon it, particularly since this draft contains substantially and important differences from first, which as a result have not previously been consulted upon. We feel this represents a guillotining of discussion on this important matter.

Our specific comments on the revised Draft are as follows:

1. Presumption of Mainstream

With reference to Chapter 3 paragraph 67 and Chapter 4, paragraphs 11 and 16:

(a) this part of the Code goes against the spirit of the Act as it implies that the child has to fit the school rather than the school adjust to meet the needs of each child.

(b) this is significant because it allows schools and local authorities to require a child to have a CSP because the local authority is not able or willing to adapt the learning environment. This incapacity or unwillingness can then be used as grounds for exclusion of the child from mainstream school.
(c) there is no objective test in the Code of 'cannot be suitably adapted'. By whom with this be decided? In the DDA, the requirements to adapt access and other arrangements is clearly defined and monitored by the DDA.

(d) it fundamentally contradicts the whole thrust of anti-discrimination legislation and the public duty to promote equality.

(e) it makes a nonsense of the concept of ASL. If the learning environment is defined as a cause of additional support needs, then the least flexible and least competent schools by definition will have the highest number of children with ASL, and ASL becomes a function of the system rather than an individual child's circumstance. Our recommendation is that these subparagraph are deleted. We refer the Committee to the following

*Written answer given on 26 January 2005 in response to Rosemary Byrne's (SSP) question asking the Scottish Executive what its strategy is to promote inclusion of children and young people with autistic spectrum disorders (ASD) in mainstream schools. Peter Peacock replied that local authorities have a duty to educate all children and young people, including those with ASD in mainstream schools.*

2. Obligation to Prepare a CSP

At the time of consultation on the Bill, the Equity Group was given assurances that there would be no obligation on Local Authorities to prepare a CSP where all parties are satisfied that the current support, targets and communication were working well. This assurance has been disregarded in the Code.
3. Partnership Working

Chapter 2 of the Code is fundamentally a very positive piece of work which is focused on partnership, inclusion and involvement of families in the process of supporting a child in education. It reaffirms the Scottish Parliament’s stance on the positive impact involvement of families has on good educational outcomes.

However, the tone and content of Chapter 4 (specifically paras 20, 47, 69, 70, 32) displays nothing of the positivity of Chapter 2. The tone is domineering and counter to the notion of partnership: it gives Local Authorities carte blanche to disregard its parent partner where it wishes. We do not believe this proposed one-sided partnership does credit to the wishes of Parliament.
COMMENT FROM KENNETH CORSAR

Thank you for the chance to make a final comment on the draft ASL Code of Practice.

The document is very comprehensive and, although lengthy, easy to read and comprehend.

My one reservation is that it does not fully recognise the very special support needs of the deaf child although clearly the document as a whole will encompass those needs. Some specific reference, however, would be worthwhile in recognition of these needs, especially in view of the very full submission made to the original consultation by NDCS (National Deaf Children's Society). A few examples will help illustrate the point :-

1) at para 18, page 20, reference could be made to the deaf child (as well as to the bilingual child) whose support needs may refer to language and communication difficulties rather than to learning difficulties. The fact that BSL has been recognised by the Scottish Parliament as an official language serves to reinforce this point.

2) at paragraph 37 the inclusion in the list of professionals should include the audiologist whose work is crucial to the well-being and development of the deaf child.

3) it is disappointing that, in paras 41-46 covering children under three, no specific reference is made to the Newborn Hearing Screening Programme, a significant advance in the early identification and support of deaf children, although the paras. do fairly describe the multi-disciplinary support process that will be necessary after identification of the deaf child through NHSP and the subsequent detailed audiological assessment. It is disappointing that the scenario submitted by NDCS to cover this process has not been used to illustrate the point.

I do hope that you can give some consideration to these points which could make an excellent document even more relevant to the needs of deaf children.
The Education (Additional Support for Learning) Scotland Act 2004 is planned to commence in late 2005. The Act will strengthen the arrangements for supporting children and young people who require additional help to benefit from education.

It will replace current references in law to ‘special educational needs’ and introduce a new framework built around the broader concept of additional support needs. This framework will apply to any child or young person who, for whatever reason, requires additional support, long term or short term, in order to learn and to work to their full potential. A child may require additional support for a variety of reasons. These may include those who are being bullied, are particularly gifted, have experienced a bereavement, or are not attending school regularly, as well as those who have behavioural or learning difficulties, or specific disabilities such as deafness or blindness. The Act has implications for professionals working in education, health, social work and a range of other agencies.

The Act (supported by associated regulations):

- places a new duty on education authorities to establish procedures for identifying and meeting the needs of every child who requires additional support to benefit from education and for whose school education they are responsible
- requires other appropriate agencies, such as NHS Boards, social services, Careers Scotland, and further and higher education institutions, to help education authorities meet their duties
- introduces arrangements for drawing up of a co-ordinated support plan for children or young people whose needs are long-lasting, arise from complex or multiple factors having a significant adverse effect on their education, and who require a range of support from services outwith education
- provides for new mediation and dispute resolution services to help avoid and resolve disagreements between parents or young people and local authorities
- establishes Additional Support Needs Tribunals to hear references from parents and young people in relation to co-ordinated support plans.

The Act will be supported by a Code of Practice which will provide guidance to all those who have duties under the Act.

The draft code before Parliament was drawn up on the basis of extensive consultation with a broad range of interests, including parents, children and young people, and professionals across education, health, social work, further and higher education, and the voluntary sector. A series of 14 consultation events were held
between November 2004 and February 2005 to discuss a first draft. Around 900 people attended. In addition, the Executive received 435 written responses. The initial draft, which was well received, has been revised in the light of suggestions received during the consultation events and from the written responses.

The revised draft includes:

- expanded sections on factors that may give rise to additional support needs and what is meant by additional support
- more detail on links between educational and other agency plans
- further guidance on applying the criteria for a co-ordinated support plan
- information on role of co-ordinator
- more detail on arrangements for supporting families, including mediation and dispute resolution services
- revised case studies and good practice guidance.

The draft code was drawn up with the help of a multi-agency advisory group and development officers on secondment from education, health and social work. The development officers worked closely with professionals and parents from a wide range of groups, such as COSLA, ADSW, allied health professionals and voluntary groups supporting children and young people.

Five sets of regulations are being considered alongside the draft code covering:

- agencies specified by Ministers as having a duty to help education authorities
- arrangements, including timescale, for preparing co-ordinated support plans
- requirement to seek advice and transfer information when pupils face changes in school education, in particular at the transition to post-school services
- resolution of disagreements between parents or young people and education authorities
- requirement on education authorities to publish information on additional support needs.

The draft Code of Practice will rest before Parliament for 40 days (regulations for 21 days). Scottish Ministers must take account of any comments by the Parliament before publishing the code. It is hoped to publish the code in late August/early September.

Further consultation commenced on 11 May on three other issues: transitional arrangements for pupils with a Record of Needs; Tribunal rules and procedures; and placing requests for children and young people who have additional support needs.

Work is proceeding to set up the Additional Support Needs Tribunals. The Act cannot be commenced until the Tribunals and the Code of Practice are in place. Further information on implementation of the Act is available at: http://www.scotland.gov.uk/Topics/Education/School-Education/19094/17176

Further information: John Bissett, (0131 244 4637)
Scottish Executive Education Department
Additional Support Needs Division