FINANCE COMMITTEE

AGENDA

14th Meeting, 2003 (Session 2)

Tuesday 18 November 2003

The Committee will meet at 10.00 a.m. in Committee Room 1, Committee Chambers to consider the following agenda items:

1. **Education (Additional Support for Learning) (Scotland) Bill:** The Committee will take evidence on the Bill’s Financial Memorandum from—

   Cllr Rev Ewan Aitken, Education Spokesperson; Martin Vallely, Special Education, City of Edinburgh Council; Alan Ross, Social Work, East Lothian Council; and Donald Thomas, Head of Finance and Personnel, Education Resources, South Lanarkshire Council, COSLA

   Hilary Robertson, Director and Susan Aitken, Policy Officer, Scottish NHS Confederation


3. **Items in private:** The Committee will decide whether to consider its draft report into the Draft Budget in private at future meetings.

4. **Nature Conservation (Scotland) Bill (in private):** The Committee will consider its draft report into the Bill’s Financial Memorandum.

5. **Criminal Procedure (Amendment) (Scotland) Bill (in private):** The Committee will consider its draft report into the Bill’s Financial Memorandum.

Susan Duffy
Clerk to the Committee
The papers for this meeting are:

**Agenda item 1**

Additional Support for Learning (Scotland) Bill, Policy Memorandum and Explanatory Notes

- Paper by the Clerk – Written Evidence
  - FI/S2/03/14/1
- SPICe Briefing
  - FI/S2/03/14/2
- PRIVATE PAPER

**Agenda item 2**

- Paper by the Clerk
  - FI/S2/03/14/3
- SCPA 1st Report (Session 2) 2003 (SP Paper 16)
  - FI/S2/03/14/4

**Agenda item 4**

PRIVATE PAPER

**Agenda item 5**

PRIVATE PAPER
1. In order to assist the Committee in its consideration of the Financial Memorandum of the Education (Additional Support for Learning) (Scotland) Bill, written submissions have been received from the following organisations:

   COSLA (please note, this is an interim submission only)
   Scottish Further Education Funding Council

2. The Committee is invited to consider these submissions.

Susan Duffy
November 2003
SUBMISSION FROM COSLA

General

COSLA supports the Executive’s aims to improve provision for children and young people with additional support needs. We share the commitment to offer a positive, inclusive educational experience and the necessary support for all children and young people within a public school education, directed towards achieving their full potential.

In particular, we welcome this opportunity to establish an approach which:

- Takes into account other relevant legislation
- Emphasises forward planning, developmental targets and outcomes
- Supports a common system for planning and target-setting for all pupils, which accommodates rather than duplicates, other assessment and intervention systems.
- Reflects a recognition of the full range of barriers to learning
- Delivers a simple, systematic framework for the identification and support of learning needs, whether those needs arise from factors relating to social, cognitive, linguistic, disability, or family and care circumstances,
- Gives expression to parental involvement, rights and responsibilities in their child’s care and education
- Has regard to the views of children or young persons and seeks to promote their self-reliance
- Encourages partnership and consent in the resolution of concerns and disputes
- Provides and developmental drive to presumption of mainstream and improvement of effective provision across all schools
- Offers a clear and coherent delineation of public school education from private and independent provision
- Provides assured minimum standards for children with the most significant and enduring needs
- Supports innovation and sustainability, taking into account the diversity needs, resources and opportunities within local communities across Scotland within a culture of joint-planning and partnership-working between children, young people, parents, education, health, social work services, Careers and voluntary sector professionals.

In our view the Bill has the potential to deliver these aims and we welcome the earlier consultations, which have informed a number of changes within the Bill. However, we believe that there are a number of important issues, which remain to be addressed to fully realise the Bill’s aims.

Fundamentally, we are concerned that the principles and high order objectives of the Bill may be undermined by points of detail and inconsistency in the provisions of the Bill itself and its relationship with policy priorities, other legislation and regulations.

In particular, we are concerned that the terms of the Bill do not properly:

1. Reflect the aims of For Scotland’s Children – with regard to the development of flexible and integrated services at the point of access
2. Reflect the spirit of the Standard’s in Scotland’s Schools Act with regard to the Education Authority’s responsibilities for service improvement and best value
3. Do justice to the roles and responsibilities of parents as contributors to a child’s education and development to their fullest potential.
We consider that as presented there is a danger that the Co-ordinated Support plan could reproduce or even exacerbate a number of the failings of the Record of Needs system. The test must be that the CSP is necessary to improve the effectiveness of provision for a child or young person in the delivery of specified targets and outcomes. It should not just be a matter of automatic qualification based upon prescribed characteristics. We also think the Bill could make stronger connections with other legislation and developments relating to the integration of children’s services and the framework for community planning, which offer much scope for joint working and budgeting.

We welcome the CSP as a means of ensuring that, wherever required, exceptional measures are taken to allow children with the most significant and enduring needs receive the support they require. However, we submit that it should be a stated aim that Authorities and their partners aim to prevent the necessity for CSPs through the delivery of effective co-ordinated services within the context of inclusive schools and services. In our view, for the majority of children the CSP would be a means to that end – integrated service “first time” without the need for exceptional measures. Overtime therefore, we would expect the need for CSPs to diminish.

Another major area of concern is the ambiguity in the Bill to the position of children outwith the public education system. We fully endorse the view as stated in the policy memorandum that “it is not considered reasonable to expect education authorities to be responsible for children and young persons with additional support needs in independent schools (unless placed there by the authority, in the case of independent special schools)."

In our view the Education Authority’s role should be restricted to children or young persons for whom education authorities provide, or are likely to provide, school education, either directly or indirectly.

COSLA is also concerned about the resourcing implications of the Bill and seeks continuing discussions with the Scottish Executive in this regard. In the context of the above COSLA has a number of specific concerns about:

- the lead-in time for the implementation of the legislation
- the demands that greater integration will place on teachers and other school staff, including the implications for the Teachers’ Agreement.
- the integration of the Co-ordinated Support Plan (CSP) with the Pupils Learning Plan and where it sits with other strategies and plans for supporting children.
- the potential increase in the number of placing requests (to independent special schools) and the compatibility of the grounds for refusal with the need to take account of the child’s best interests with regard the continuity of social care, community presence and health services in conjunction with their school education
- the scope confusion regarding the appropriateness of local authority involvement with parents private arrangements and independent schools
- the contribution of agencies other than the local/education authority (e.g. health authorities)
- the mediation and disputes resolution systems and scope of appeal Tribunals
• post-school transition arrangements that replace the Future Needs Assessment
• monitoring arrangements for the legislation and the associated guidance
• advice and information for parents, children and young people

Background

In its response to the Report of the Advisory Committee into the Education of Children with Severe Low Incidence Disabilities (the Riddell report), COSLA supported the recommendation that the Scottish Executive should review the legislative framework for SEN provision. COSLA also presented evidence to the SEN Inquiry of the Education, Culture and Sport Committee of the Scottish Parliament in 2000, at which it expressed its concerns about the current system. COSLA also contributed to work of the ASL Bill Financial Memorandum Working group and is also represented on an Additional Support Needs Advisory Group, convened by the Scottish Executive, to consider implementation issues.

PART I: PROVISIONS IN THE FINANCIAL MEMORANDUM

COSLA recognises the difficulties of assessing the resource implications of the legislation in an area where cost estimates are subject to considerable uncertainty and margins of error and which will vary considerably between local authorities. In this respect, we have very much appreciated the opportunity to advise the Scottish Executive, through the working group mentioned in the Memorandum, through which COSLA’s comments were taken into account.

We are nonetheless concerned that the costs cited in the Memorandum may be under-estimates and believe that the above-mentioned Financial Memorandum Working Group should be reconvened at the very earliest opportunity to examine in more detail these estimates and the assumptions underlying them and report back to the Scottish Parliament. We also think that the Memorandum should be revised to include a statement indicating that actual expenditure on implementing the legislation will be closely monitored, through a joint COSLA/Scottish Executive working group, against estimated expenditure, with authorities, if necessary, being reimbursed in full.

We also question the notion in the Memorandum (para 79) that the costs of implementation is simply about filling the gaps in existing provision. The legislation cannot be costed in isolation from the presumption of mainstreaming under section 15 of the Standards in Schools (Scotland) Act 2000. The Audit Scotland report Moving to Mainstream estimated that the costs of mainstreaming would be significant, at between £38 (low estimate) and £121 (high) million a year, depending on the number of pupils moving into mainstream schooling. The estimates in the Financial Memorandum are largely limited to the administrative costs and based on the questionable assumption that only a very small proportion of the child population are likely to require CSPs.

It may be possible to address some of these issues in the medium to long term through appropriate workforce strategies and through flexible mechanisms for transferring resources across service sectors to plug particular gaps in provision (e.g. therapy shortfall). It may also be possible to contain the demands parents make on the new system through appropriate statutory guidance or codes of practice (e.g. to ensure that placing requests for independent schools or schools outwith Scotland satisfy a test of best value and take into account social as well as educational needs). The implementation of the Bill in both the lead-up and in the initial
years will nevertheless generate new demands that will require provision of the necessary additional funding on a more immediate basis.

The following provisions in the Bill are likely to have impacts (that are only partly acknowledged in the Memorandum) that will need to be adequately resourced:

**Paras 71-75 ASN Tribunals**

- Parents and young people will have a right of appeal against any part of the Coordinated Support Plan (CSP), including proposed provisions for addressing Additional Support Needs (ASNs). This contrasts with the current Record of Need (RoN), under which proposed provisions cannot be appealed against. The extension of this right will result in significant additional work for EA staff in terms of the likely increase in the volume of appeals and the preparation and servicing of the appeals process. Moreover, if the Tribunal determines provisions without reference to the current arrangements and infrastructure, it may result in significant additional costs in commissioning bespoke services and arrangements for quality assurance and monitoring.

- A significant amount of EA staff time may be spent preparing for and attending Tribunal hearings, particularly if more parents make use of the Tribunals than would have done so under the existing appeals system.

- Although other agencies will be obliged to have regard to any directive of the Tribunal, COSLA is concerned that this may be insufficient to ensure that adequate provision is made by them. Section 19 para 3 indicates that an appropriate agency would be exempted from complying with the Education Authority’s request if the other agency considers that it "is incompatible with its statutory or other duties" or "unduly prejudices the discharge of any of its functions". Thus, the agency may at any point indicate that would not consider it proper to divert resources to comply with the EA’s request. In these circumstances, the responsibility and any additional cost to make provision by special arrangements would appear to fall on the EA, despite not having any direct control over the service in question or any direct means to redress the matter. This additional risk to the authority needs to be taken into account in the Financial Memorandum.

- The Financial Memorandum does not acknowledge the potential for increased costs arising from the extended right of appeal, under section 15, on a point of law from the ASL Tribunal to the Court of Session. Nor does the Bill recognise the cost of specialist input to appeals generally, which hitherto has been met by the Scottish Executive.

**Para 76: information dissemination**

- Paragraph 76 refers to the costs of information dissemination about the new system that would be incurred by the Scottish Executive. A similar reference is needed under one of the paragraphs dealing with costs to local authorities (unless para. 90 is meant to include this aspect). Education authorities will incur costs in revising and rewriting information materials for parents, staff and others involved in the new system and spending time at meetings, etc. explaining this to them. Experience has shown that this does not come cheap. Social Work services are also required, under the Children (Scotland) Act, to publish details of the services and provide information about new policy, local guidance and procedures, and so will incur additional costs of their own as a result of the Bill.
Paras 78-83: costs of local authorities

- Integration of children and young people with ASNs into mainstream schooling will make **new demands on teachers, social work and other staff**, which will call for additional training and support. Integration will also impact on **school estates strategies** (access, adaptations, special equipment, etc). The presumption of mainstreaming will also require additional resources in such areas as classroom assistants or social support staff, residential or community-based respite care, home care, befriending and sitter services, etc. Although some of these costs will be attributable to other legislation, as mentioned in the Memorandum, the “imprecise” contribution of the ASL Bill to the costs of implementation is also likely to be significant. It has been estimated, for example, that expenditure on respite care alone for the most complex cases could amount to some £1.2 million. Returns by local authorities to Audit Scotland show that even under the present system, there has been a significant increase of 15 per cent in spending on SEN between 2000-1 and 2002-3, with this increase varying from 25 per cent in a council at one extreme to 1.5 at the other. This pattern trend is likely to continue or even accelerate under the ASL system.

- If ASL is to improve learning outcomes and the CSP is to be more than the Record of Needs under a new name, identification and provision for ASL will need to encompass the **whole child**. This will mean **significant new resource input from social work, health and other services**, which under the existing recording system have played a lesser role. In practice, this will mean that there will be a need for more social workers, who even under the existing SEN system are already in short supply, particularly in children’s services. Recent years have also seen a shift from hospital and residential care of children and young people to care in the community, without a corresponding transfer of resources from the health to the social work sectors. Significantly, the **co-ordination of the planning and provision** for a more diverse populations and a more comprehensive set of needs will fall on education. In most instances, school staff will most properly carry out this role. This will involve considerably greater case management time than the Record of Needs and a significant requirement for training across agencies. COSLA is particularly concerned that insufficient attention has been paid to the funding implications to enable schools to fulfil this role.

- The Memorandum states that this Bill is not responsible **per se** for such increased demands. COSLA, however, believes that the **additional management burden on schools** is a direct consequence of the Bill. In addition, the implications with regards to recent legislation (e.g. presumption of mainstreaming, Direct Payments, Aftercare Bill) cannot be ignored. ASL will legitimise and strengthen the demands for social work and health services. These expectations will not be met without some further resource input. Social work services will be more closely involved in the development of Co-ordinated Support Plans (CSPs) and, indeed, may receive formal requests for service provision as part of the plan production. In such circumstances COSLA is concerned that Social work services are drawn into the appeal process, with the consequent potential for increased costs. Without the required level of funding, the Bill’s provisions will be set up to fail.

- Moreover, the longer-term impacts of advances in medical science that result in higher perinatal survival rates and associated rises in parental expectations about ASL provision should not be under-estimated in planning for future resource provision.
Paras 81-83: Additional support needs and Co-ordinated Support Plans

- The definitions of **Additional Support Needs** (ASN) and of children requiring a Co-ordinated Support Plan (CSP) are wide ranging. Under these definitions, it is inevitable that the CSP will capture a wider range of children and young people than under the existing Record of Needs (RoN) system, such as those with but with serious behavioural or other difficulties. The assumption in the Memorandum is that 50 per cent of children with a RoN will require a CSP, plus another 0.6 to 0.3 per cent of the school population. In COSLA's view this is an underestimate, we envisage that up to 3 per cent of the pupil population may be eligible for a CSP. Ultimately, until the Executive provides greater detail of the criteria for opening a CSP this is a matter for conjecture. However, in COSLA's view unless, for example, it is intended to exclude a large proportion of children attending special schools/classes (where therapy is delivered as an integral part of the provision) there would certainly be no fewer CSPs than RoNs currently being opened. Thus whilst the Executive estimates that the unit cost of preparing the CSP (£880) may not be as high as preparing the Record of Need (£930), the aggregates costs could be a lot higher.

- The CSP, through its link with the appeal process, will be used as lever by parents to secure additional resources, with significant negative impacts on the equity of resource distribution if a plethora of appeals is generated by the Bill. This provision is not available under the existing system, under which part of the Record of Needs dealing with provision cannot be appealed against.

- In addition, as EAs will also have to carry out a CSP appraisal within prescribed time limits (no such limits applied to the drawing up of the RoN) and this will place significant additional pressures on staff compared with the current system. If CSPs are to be completed within the prescribed timescales, allowance will be made in cost estimates for 'peaks and troughs' in the demands on officer time.

- If CSPs are to capture children and young people with social, emotional and behavioural problems, they have a differential impact on the proportion of CSPs required between authorities, in so far as these problems are significantly associated with the incidence of deprivation. Equally, as more children are supported in mainstream schools, the requirement for CSPs will increase, to reflect the need for external services across a wider number of schools for an increasingly diverse spectrum of educational, social, and health needs.

- The proposed **Code of Practice**, setting out minimum standards of provision, may have major resource implications depending on the nature and detail of its content. For example, it may have particularly significant impact among authorities, where, for a variety of reasons, mainstreaming has been less advanced or developed. It will also impact differentially on rural areas, where per capita costs of meeting the required standards may be higher.

- The Code of Practice notwithstanding, there are seven references in the Bill to the power of Scottish Ministers to issue Regulations, which will have their own cost impacts. These cover such matters as the work of Tribunals, information exchange, CSPs. As a result the full impact of the Bill cannot be completely assessed at the present stage.

- Identifying and addressing ASNs of children and young people will also make new demands on other service providers, particularly in health and social work, where staff/funding shortages have been a source of concern even under the present system.
Mainstreaming also impacts on other services, for example, by creating new demands/pressures in such areas as home or respite care for parents of children no longer in residential special schooling. There will also be resourcing implications for the development of ICT and data management systems as supporting information sharing systems are put in place.

- The right of parents to demand a **particular type of assessment** (e.g. medical, psychological) over a request for their child’s ASNs will generate additional work that will have to be resourced; indeed this is likely to mean that the previously calculated savings in the production of CSPs (in comparison to the RoN) will be lost.

- Education authorities anticipate coming under greater pressure from parents to make use of their new powers to identify and address the **ASNs of children outwith the public sector school system** (i.e. at independent schools or being educated at home) and children under 3 or not yet in “prescribed” pre-school education. EAs are also likely to come under pressure from independent schools to offer advice to them on request about the need for a child or young person to be considered for a CSP. The power of EAs to arrange for children and young people with ASNs to attend schools in other parts of the UK or indeed outwith the UK will also have significant resource implications where EAs are brought under pressure to make use of this provision. If the Bill retains provisions which allow education authorities to provide services for other agencies, including private schools, there should be a clear power to charge for these services.

- The **management of the CSP** carries considerable resource implications in terms of planning, working with other agencies, involving parents, recording, monitoring and reviewing.

- Parents and young people will be entitled to **request reviews of the CSPs within one year**, putting extra pressures on staff; although the EA may refuse a request it considers “unreasonable”, additional staff time may be taken up with appeals against their decision.

**Para. 84: transition from school**

- the savings from the ending of the Future Needs Assessment will be offset by the work that has to be done for a larger population of pupils. Even though this may be phased differently, parents and young people will continue to expect their support needs to be assessed at the time of **transition from school** to work, further education or training. Young people will rightly demand a continuing high quality service in this regard.

- Again there is concern about the resourcing implications of sub-section 19 (3), under which other **agencies are exempted** (e.g. further education colleagues) from complying with the EA’s request if this is incompatible with their statutory or other functions. In such a situation the EA could find itself having to divert its own resources to make alternative special provision that other agencies refuse to provide or fund themselves.

**Para 85: mediation**

- Education authorities will be under a new duty to publicise and provide independent mediation services, free at the point of delivery. The £1.85 million for this service being provided in-house by local authorities, as cited in this paragraph, is an under-estimate: COSLA’s estimate of £2 million is based on a smaller cohort of children than that
estimated for ASL. It is not clear if the costs of handling requests for mediation have been taken into account under either of the service cost models presented.

- Demand for mediation (and disputes resolution) is likely to be high especially during the transition period, and particularly so among parents of children with a RoN but not a CSP. The capacity to meet this demand will be especially important for the credibility of the new arrangements and this needs to be resourced accordingly.

- Although the EA is not obliged to grant access to these services to children at independent schools or educated at home, staff time will be taken up handling requests from parents of these children, unless of course the provisions of the Bill are restricted to public education.

*Para 86: dispute resolution*

- the dispute resolution process for children with additional ASNs but not requiring a CSP will create new demands requiring additional work requiring resourcing if Ministers make use of their power to require such provision by EAs. In the early years of implementation in particular, the number of referrals could be quite high.

*Para 87: Named Contact, etc.*

- The Named Contact for parents and young people will have to be appointed at an earlier stage than under the present system; the EA will also have to appoint a CSP Co-ordinator to provide information and advice for children and young people with a CSP. In most instances it is likely that these two roles will be carried out by the school and the local authority respectively, and this will have additional resource implications.

- the right of all children and young people to participate in decision making processes, including those with complex needs, will place significant new demands on staff compared with the present system, under which only parents and young persons (except for young persons with very complex needs) have such a right.

- during the transition to the new system, significant staff time will be taken up reassuring and explaining to parents of children with a record of needs that the level and type of support their children are receiving will continue to be provided, irrespective of whether they require a CSP or not.

- Education authorities will have to provide new information for parents and young people, as required under existing legislation, explaining the new system and involving major rewrites and publication of existing materials (including use of disability formats) and attendance at meetings for parents.

- It is anticipated that the Bill will result in a significant increase in the number requests for accessing pupil records. Currently access to personal is covered by the Data Protection Act, but draft Regulations within Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 wait to be put in force. These, at Regulation 3 define "educational record" as meaning “any record of information”. This will increase significantly the workload of education authority staff in relation to complying with any request.
Paras 88-89: placing requests

- Parents of children with ASNs will be able to make placing requests for independent special schools (or for schools in other parts of the UK and possibly even outwith the UK), compared with only parents of children with a RoN under the present system. The numbers involved could be significant in the first few years as parents put the new system to the test, with cost impacts in terms of both EA officer time and payment of school fees.

- A significant factor in many placing requests for independent special schools lies in the enhanced access to health and social support services, thus placing the financial burden on the EA instead of with the health boards. Provision should be made for resource transfer to the EA to meet such shortfalls.

- Placing requests for independent special schools are also a function of such factors as geographical proximity, parental aspirations, and the supply of support services from other agencies (e.g. therapy). If the intention of the Bill is that the costs of meeting ASNs should be proportionate to the agencies supplying them, then this proportionality principle should be reflected in the Bill.

- Since it is intended that the new legislation should reflect educational, social and health needs, all of these should be taken into account with regard to placing requests. Thus for example, the presumption of mainstream should apply where the proposed placement in a local authority special school would allow a child to be supported in his/her family and local community. In other words, in considering an appeal for an independent special school and local authority, EA Appeal Committee and the Tribunal should be persuaded that there are overwhelming benefits which merit removing a child from schooling and care as close as possible to the child’s family and community.

- At the time when the proposals for revising the assessment arrangements were first considered it was envisaged that there would also be major changes to the organisational status and funding regime of Grant Aided Special Schools. In the event, the Grant Aided status has been maintained largely unaltered for the foreseeable future. In these circumstances, the conditions surrounding placing requests in these establishments should be more clearly targeted. The Scottish Executive should agree with COSLA and other relevant interests that the criteria for admission to a Grant Aided school should properly reflect their status as national facilities for the children with the most complex needs. This should include a requirement on Grant Aided schools to demonstrate an active commitment to work with local authorities to enable children to return to local authority provisions wherever practicable, at appropriate points in a child’s development.

- The proposed system of dealing with placing requests via more than one route (through EA appeal committees for parents of children with ASNs but not CSPs, and through the Tribunal for parents of children with CSPs who are appealing against the nominated school) is likely to be a source of confusion and perplexity to parents and staff alike. Considerable officer time could be taken up getting to grips with and explaining the complexity of the system to parents and school staff.

All of the above issues require continuing discussion between COSLA and the Scottish Executive, by reconvening, as suggested above, ASL Bill Financial Memorandum Working Group and through ongoing monitoring through a joint COSLA/SE working group.
PART II: PROVISIONS IN THE BILL

Section 1: Additional support needs

- COSLA very much supports the concept of additional support needs (ASN) as providing a much broader basis for identifying and addressing the support needs of a wider range of children and young people, including those with social, emotional and behavioural difficulties significantly affecting their learning.

- We are nonetheless concerned about the focus of the Bill on an approach which seems to place undue reliance on individualised interventions (by the EA or parents) to give children the support they require. We would much prefer to see the Bill take forward some of the principles that underpin the School Standards (Scotland) Act and related developments, such as community schooling, where the focus is on making schools responsive to the support needs of all of their pupils—through appropriate organisational and staff development, curricular flexibility, partnership with parents, inter-agency co-operation—as to render interventionist approaches less intrusive or necessary.

- We think that the Bill as it stands could be making much stronger connections with legislation and other developments relating to the integration of children’s services, as well as with the wider framework of inter-agency co-operation through community planning. There is a need to ensure that the Bill is seen as part of a wider agenda for promoting social inclusion and a holistic approach to child development and support. There is scope for building on the lessons from the Joint Futures Framework and working towards a fully integrated approach to provision, including single assessments.

- There is also a danger that the Bill as it stands will create a three-tier system of children and young persons without ASN, those with ASN but not a Co-ordinated Support Plan (CSP), and those with a CSP. The Bill could perpetuate the existing system under which individuals with particular needs are come to be seen as distinctively different from the rest of the school population, by youngsters becoming “labelling” as they are processed under the proposed system. If the support needs of children and young people were to be met addressed a single assessment framework and through adequate resources for school and pre-school education, then the opening of a separate CSP would be rendered less necessary and the labelling and bureaucracy surrounding this would diminish.

- Clarity is required as to what counts as an “additional” support need. All children and young people in the educational system have support needs of one form or another. “Additional” support will also be relative to provision already in place. Clear guidance on this concept will be required if inequities of provision are to be avoided. Clarification of the term “different” is also required. For example, arguably any provision within the independent sector could fulfil this definition. More particularly it could be taken to include Gaelic medium education, education in minority languages and faith schools, it would also include (perhaps intentionally) special provision with regard to music, dance etc.

- The threshold against which ASL is required - to ensure that education is directed the development of pupils’ “fullest potential” - is taken, under sub-section 1(2) of the Bill, from sub-section 2(1) of the Standards in Scotland’s Schools Act 2000. This may prove to be a high threshold for EAs to reach, and there therefore a need for clear guidance on how the Courts may set interpret this provision, given its potential cost implications.
Sections 2: Co-ordinated Support Plans

- As recommended in *For Scotland’s Children*, there is a need for a **single assessment framework** for all children; a plethora of separate plans for children is not only bureaucratic and confusing but also at odds with a holistic approach to child development (and with best value). The CSP should link up with other plans for children and young people (e.g. at risk, looked-after, chronically ill, etc) requiring support. There should also be scope within the Bill for the identification of ASN and the preparation of CSPs to be well integrated with Personal Learning Plans and Individualised Education Programmes. The roll-out of Integrated Community Schools and developments such as Health Promoting Schools should also be expected to enhance a unified one-door approach.

- We have a major concern about the definition of who will require a CSP. Sub-section 2 (1) (c) will capture any child or young person who requires support from an agency, in addition to educational support, regardless of whether such support may be ordinarily available or readily accessed. Such a definition would embrace a significantly greater proportion of the population of children and young people than have a Record of Need, with the potential to generate even more bureaucracy and confusion than under the current system. (as well as carrying significant resource implications). Nor does it seem to sit well with the principle of minimum intervention, as a result of co-ordinated inter-agency support being developed to a level at which only a very small and ever diminishing proportion should require a CSP. It is also of particular concern that this sub-section is a significant change from the wording in the consultation draft of the Bill, and that this change was not referred to in the Report of the consultation (at Chapter 2, pages 29-32). There is therefore an urgent requirement for clarification on this matter and if necessary, a reworking of the financial assumptions underlying the Bill.

- There should be an early opportunity for local authorities to contribute to discussions about the meaning and application of the concepts “complex factor” and “multiple factors”, which are open to a range of possible interpretations. All parties will be keen to know in more detail how these concepts differ from the difficulties of children and young people with needs that are “pronounced,” “severe” or “complex” as to require a Record of Needs under the existing legislation.

Section 3: General functions of EA in relation to ASN

- The reference, in sub-section 3(2)(b), to EAs not being required to make adequate and efficient provision of additional support if it “is not practicable at a reasonable cost” – should be clarified, through the Code of Practice. This provision could be further underpinned by a cross reference to the duty of local authorities to secure best value, under the Local Government in Scotland Act 2002.

Section 4: Children and young person for whom EA are responsible

- No comment

Section 5: Other children and young persons

- The explicit statements about the scope of the Authority's duties with regard to the co-ordinated support plans for children outwith the public system are welcome. However, the Bill’s explicit references to such children and to independent schools are likely to raise
expectations and lead to considerable *additional demands on EAs*, especially where there is a significant independent school population and/or parents who are seeking public funding for private or home education programmes. Assessing a child’s needs in such circumstances is likely to be complex, time-consuming and liable in many instances to ambiguity that will result in a demand for additional support that is difficult to reconcile. This will lead to additional cost and to unnecessary conflict and dispute with parents and independent schools.

- The application of the concept of ASN, which is by definition rooted in the public school system, to private/independent arrangements is ethically, conceptually and operationally problematic. Where parents choose to make their own arrangements to discharge their legal responsibilities for their child’s education, their privacy and choice should obviously be respected, and on the basis that parents are aware of the implications of opting out of the public schooling system in view of the variety of factors (class size, ethos, curriculum, staff qualifications, etc) involved, however, under what criteria the should local authority determine that the *different* or *additional* arrangements in an independent school, in comparison with its own schools, be such as to determine that an individual child had additional needs? If it were feasible to define such criteria, then the resource implications of properly assessing the provision and the child would be substantial and subject to dispute. As the definition of ASN normally refers to provision available in the public schooling system, it is recommended that the Bill be amended to reflect this approach. (This could be achieved through *amending sub-section 1(3)* by inserting “public” after “benefit from” in line 3; section 5 would then fall).

**Section 6: Assessments and examinations**

- COSLA welcomes the ending of the formal “assessment” of SEN in favour of a more informal, holistic and staged approach concerned with all of the support needs of children and young people. One-off “assessments” are not the appropriate way of determining these needs. Assessments should be ongoing and relate to the changing educational and social situations of children as they move through the educational system.

- The removal of compulsory medical and educational assessments is welcomed; the staged intervention approaches now widely in use have generally worked well in providing support for learning, and it is to be hoped that such approaches will be carried over into the implementation of the Bill at an early stage.

- Clear guidance is needed as to what counts as “reasonable” when the EA turns down a request for assessments to reduce the risk that this will lead to decisions being referred for judicial review.

- The Bill repeals the definition in s 135(1) *Education (Scotland) Act* 1980 of psychological examination. In addition the recent Judicial Review of an authorities failure to open a Record of Needs considered the use of a consultative model by the Council’s Psychological Service as opposed to the traditional direct ‘face to face’ assessment of the child. s 22 (2)(a-i) of the Code of Practice makes no reference to the nature and form that a psychological assessment could take and this should be clarified. In addition, no acknowledgement is made of the right of the pupil not to undertake any assessment if they are regarded as ‘Gillick Competent’ and this should be clarified as it may significantly affect access by the child to additional supports.
Section 7-9: Duty to prepare CSP

- COSLA attaches great importance to the involvement of parents and young people in the drawing up of the CSP but is concerned that the Bill makes no reference to the rights of the child, which seems to be out of keeping with human/children’s rights legislation. Account especially needs to be taken of situations in which the wishes of the child conflict with those of the parents, particularly on such an issue as the nomination of the school to be attended.

Sections 9, 10 and 11

- Reference is made in these and other sections of the requirement that other agencies must comply with requests for information etc. However, allowing any such agency to refuse to comply will place the education authority in a position of some vulnerability and open to legal challenge. It would assist if the Bill provided for a forum within which other agencies external to education were held to account and that any such disputes between the education authority and any external agency could be resolved. s 19(4) should therefore be revised by the insertion of “an approach by the education authority or otherwise” between the words “that” and “where” in the first line would be of assistance.

Sections 12-14 and schedule 1: ASN Appeal Tribunals

- While not opposed to the setting up of the Tribunal, COSLA is concerned that this may unwittingly send out the message that adversarial approaches carry more weight than effective home-school partnership working to ensure that children get the best possible support in and out of school. There is also a danger that appeals to the Tribunal will be artificially increased if parents perceive this as a more favourable route than education authority appeal committees. It would be expected that in normal circumstances, the needs for substantial inter-agency support would be evident in advance of a placing request. Unless there was a significant change in circumstances giving rise to explicit reasons why a CSP should have become appropriate, the normal channel of appeal should be followed through to a conclusion.

- Notwithstanding the intention to make the Tribunals “family friendly,” there are concerns that parents who can afford to pay for legal representation will take better advantage of the system than parents who cannot. The possible provision of support or advocacy from voluntary organisations will help to mitigate this concern, but only if such provision does not result in a two-tier system of support for the “haves” and “have nots”.

- At least one of the members appointed to the Tribunal should be a representative of a local authority with the relevant knowledge and experience.

Section 16: Mediation Services

- COSLA supports the principle of mediation but believes that this service must not only be independent but also be perceived to be independent if it is to have the acceptance and confidence of all concerned. Consideration should therefore be given to the relative benefits of the mediation service being run on a national compared with a local basis, with reference to such issues as consistency of approach across Scotland, economies of scale, sensitivity to local needs circumstances, etc.
We see mediation as an informal process at its initial stages and as involving a formal independent mediator only in a limited number of cases. The Bill or the associated Code of Practice should make it clear that formal mediation should be made available only if there is evidence, in each case, that informal approaches - based on principles of partnership with parents - have failed.

The section should be strengthened as to ensure that mediation encompasses the effective management of tensions that may occur between the support needs of children/young people and their parents/carers.

Many of the organisations currently offering mediation also employ solicitors to act on behalf of their clients. Local authorities would rightly be concerned lest there is any conflict in relation to these twin roles. Accordingly, an accredited system of national approved mediators should be introduced.

Section 17: Disputes resolution

While not opposed to the setting up of arrangements for the resolution of disputes, COSLA is concerned that this will send out a message that adversarial approaches are more effective than home-school partnership working to ensure that children and young people get the best possible support with their education. The regulations should make it clear that referrals will only apply where all concerned can show that partnership approaches and mediation have failed. If the processes for handling concerns by parents, children and young people alike are properly in place at the earliest possible stages, then the need for dispute resolution procedures should be minimal.

As with the mediation service, careful consideration should be given to the relative benefits of disputes resolution being a national compared with an EA responsibility, with reference to such issues as consistency of approach, economies of scale, sensitivity to local circumstances, etc.

Disputes between parents or young people and the education authority can arise over many issues, just those involving ASL, and ministers should therefore make use of their powers to extend the disputes resolution procedure (and the mediation service) to all such disputes.

Section 18 and schedule 2: Placing requests

We recognise that there will be circumstances where the support required is not available at EA schools and that provision at an independent special school would be more appropriate. However, the provision allowing parents of any child with ASN to request places at independent special schools goes against the grain of existing legislation, with its presumption in favour of mainstreaming. In particular, the Bill should make clear that educational considerations need to be informed by the presumption that normally a child will benefit from the a mainstream setting and from day-to-day care in a family and his/her local community. Any decision to grant a placing request for a residential school should be based on the overwhelming benefit of such a decision, in light of the child’s educational, health and social care needs. This could be achieved by amending paragraph 3(1)(d) of Schedule 2 (placing requests) as follows: in line 2, insert “of the severity or type” after “additional support needs” and “level of” after “or”. This would ensure that the provision is to be proportionate to the child's needs and thus support the efficient delivery of education
and consistency with the spirit of the presumption of mainstreaming. This principle should be extended to the child’s needs in the round.

Section 19: Other agencies

- We are disappointed that other agencies (e.g. health boards) are allowed to refuse to comply with a request from the EA, under the Bill, if compliance is “incompatible with” or “unduly prejudices” the carrying out of their duties or other functions. This goes against the grain of the Local Government in Scotland Act, which requires agencies like health boards to “assist” councils in carrying out their duty of community planning and could get in the way of the power of the council to advance well being. The Bill should be used an as opportunity to strengthen joint working with health boards and other agencies. Subsections 19 (3) (a) and 19 (3) (b) send out the wrong signals and should be deleted.

Sections 20 Power to prescribe standards for special schools

Ministers already have powers to prescribe standards, etc. under sections 2 and 70 of the Education (Scotland)Act 1980 and s.13 of the Standards in Scotland’s Schools Act 2000, as well as under those already being sought under the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. So this section has an element of overkill.

Section 21 Attendance at establishments outwith the UK

- Clarification is required as to whether the provisions in the Bill relating to placing requests and appeals apply to this section.

Section 22: Publication of information for parents

- The Bill and supporting information for parents about this should make clear the connection between support for ASN and the role and responsibilities of parents to provide active support both during and beyond the school day. They should get across the key messages that support for ASN lies not only with the EA and other agencies but also with parents through effective partnership with the school and the other support services. We are concerned about the suggestion in the Guide for Parents on the Bill that Ministers believe the Bill will “ensure that staff working in education, social and health services work with parents, and not against them”. This comment conveys a distorted, adversarial view of the relationship between parents and the educational system that does not do justice to the professionalism and commitment of staff and the positive relationships with parents that prevail in the vast majority of circumstances.

Section 23: Code of practice and directions

- The Code of Practice should introduce a measure of consistency in provision for ASN; major limitation of the existing legislation on SEN is that it has led to significant variation between EAs in the proportions and sorts of children and young people assessed as having SENs and in recording practices. At the same time, the Code of Practice should be no more prescriptive or intrusive than is absolutely necessary. It is important that authorities can properly reflect a diversity of legitimate views and approaches and develop services in light of local circumstances. Development of the Code should also take into very careful account the different starting points from which EAs have to implement the new system and the different contexts in which they work; one-size-fits-all approaches
should be avoided. COSLA very looks forward to working with the Scottish Executive in the development of the Code.

- The Code should set out in the clearest possible terms the **roles and responsibilities of other agencies** in assisting the EA in ASN provision, including the circumstances, under sub-section 23 (2) (d), in which they could be required to give additional support.

- The Code or associated guidance should make it crystal clear that that concept of ASN extends to all children and young people in public education who have or are likely to have difficulties affecting their learning that are significantly different from other youngsters. This should include such groups as children with social and emotional difficulties, care responsibilities, long-term illnesses, and language difficulties, as well as “looked-after children and “gifted pupils. SMART criteria should also set out the conditions or circumstances under which these difficulties are such as to require additional support and, if necessary, a CSP.

- The Code should also include provision for the **monitoring and review of the legislation**, including such issues as expenditure incurred by local authorities and other agencies, shortfalls in provision, and referrals to mediation, disputes resolution, appeal committees and the ASN Tribunal.

**Section 28: Commencement**

A significant amount of planning will have to be undertaken to prepare for implementation of the legislation, including ensuring that the transition from the recording system to the new system proceeds smoothly and that staff, other agencies and parents are well prepared. It does not look as if the time needed to prepare CSPs will be any less than the time taken up by the Record of Needs; time saved from the straight transfer of information from the RoN may be offset by the time taken up with parents of children with a RoN who will not be eligible for a CSP. Sufficient time (and resources) will be therefore needed to ensure that this work is done properly. The commencement date should be determined only after due consultation with COSLA. A **timescale of at least two-years in the lead-up to implementation would seem realistic**.

COSLA
SUBMISSION FROM THE SCOTTISH FURTHER EDUCATION FUNDING COUNCIL

Thank you for your letter of 3 November 2003 inviting comment on the financial implications of the Bill for the further education sector.

Apart from consequential amendments to the Further and Higher Education (Scotland) Act 1992, the Bill does not contain any direct references to further education colleges.

Paragraphs 91 to 98 of the explanatory financial memorandum estimate the Bill’s financial implications on bodies other than local authorities. The general theme of that analysis appears to be that other bodies (including further education colleges) will find that the advice and services they currently provide will probably alter, but will not change in total. Indeed, given that the Bill does not directly address further education, this is what we would expect. Consequently, we do not believe that enacting the provisions of the Bill will have material cost implications for FE colleges. (In that regard, the actual amounts quoted in paragraph 96, table 1 and table 2 are irrelevant since what is important is whether there will be any significant change in costs.) We understand that the Scottish Executive will define colleges’ changed role under the eventual Act through subordinate legislation.

Of course, there is always the possibility that new legislation might alter perceptions about what services public bodies should be providing. If the new Act indirectly increases the demand for certain FE college services, colleges, this Council and the Scottish Executive might have to consider the need for further resources and/or changing existing priorities.

Roger McClure
Chief Executive
SUBMISSION FROM CAREERS SCOTLAND

At present around 2.1% of young people have a Record of Needs. A total estimate therefore of the number of young people between the ages of 14-19 being Careers Scotland clients would give a figure of 7,107.

Careers Scotland begins to work with these young people and their parents/carers prior to the first FNA and will continue to provide additional support for some time afterwards. Given the diversity of individual’s additional needs the time spent with each client will vary but we estimate this to be 13 hours per client per year. This figure is based on case studies of a wide number of clients.

Table (1) indicates the activities presently carried out with recorded pupils and the time and therefore cost to Careers Scotland to work with these young people. We estimate the total cost of a Careers Scotland member of staff is £33 per hour. (This includes all overhead costs)

The estimated cost to Careers Scotland in working with 7,107 recorded young people a year would make a total cost of £3,048,903 a year.

Savings in the new arrangements would amount to this figure minus the time saved from preparing and attending FNA meetings which has been estimated at 3 hours per client per year. The new figure of 10 hours per client per year would give a total of £2,345,310 representing a saving of £703,593. (See table 2)

However, as the Bill will widen the scope of young people requiring additional support, Careers Scotland would wish to extend good practice to these young people whose needs will continue beyond transition from school if the sufficient level of resources were available. It is estimated that already 20% of young people or 67,693 young people from 14-19 years of age have special educational needs and the scope will widen under the Bill. Given that 7,107 young people are already being supported intensely this makes an additional 60,586 young people. This is a conservative estimate as we would envisage that more than 20% young people may require additional support.

Additional cost would be incurred through extra liaison with teaching staff and other agencies, gathering background information, contact with parents, additional group work and other interventions. Table (3) gives a breakdown of these activities and estimates that if we were to offer a more in depth service to a wider number of pupils, we estimate that this would involve 5 hours per client per year which would result in a total of £9,996,690.

Conclusion

In conclusion, the additional cost to Careers Scotland to offer more in depth transitional support to a wider number of young people is estimated to be £9,996,690. If there are no additional resources for Careers Scotland to support the implementation of the Bill, Careers Scotland will not be able to
meet expectations of offering indepth support to those pupils who are identified as having additional support needs.

Julie-Anne Jamieson
Inclusion & Employability Manager
Careers Scotland (Scottish Enterprise area)

Table (1) Current estimated costs for work with clients with RONs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liaison with partners- gathering background information; liaison with teaching staff; assessment, writing reports; background research; writing career plan of action</td>
<td>13 hours</td>
<td>£429</td>
</tr>
<tr>
<td>Interviews and group work/reviews with pupil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meeting with parents/carer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attending FNA meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total (7,107 pupils)</td>
<td></td>
<td>£3,048,903</td>
</tr>
</tbody>
</table>

Table (2) Estimated costs for 2.1% (recorded) of 14-19 year olds under new arrangements

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liaison with partners- gathering background information; liaison with teaching staff; assessment, writing reports; background research; writing career plan of action</td>
<td>10 hours</td>
<td>£330</td>
</tr>
<tr>
<td>Interviews and group work/reviews with pupil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meeting with parents/carer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total (7,107)</td>
<td></td>
<td>£2,345,310</td>
</tr>
</tbody>
</table>

Estimate that there will be a 3 hour reduction per client due to not having formal FNA meeting.
Table 3  Estimated costs for 20% of 14-19 year olds under new arrangements

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liaison with partners- gathering background information; liaison with teaching staff; assessment, writing reports; background research; writing career plan of action</td>
<td>5 hours</td>
<td>£165</td>
</tr>
<tr>
<td>Interviews and group work/reviews with pupil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meeting with parents/carer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total (60,586)</td>
<td></td>
<td>£9,996,690</td>
</tr>
</tbody>
</table>
EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL

NICKI GEORGHIOU

The **Education (Additional Support for Learning) (Scotland) Bill** was introduced by the Scottish Executive on 28 October 2003. The purpose of the bill is to strengthen and modernise the system for supporting children’s and young persons’ additional support needs to enable them to draw benefit from school education.

The key changes are:

- replacing the term Special Educational Needs with the broader term Additional Support Needs and introducing new duties in this regard
- replacing the Record of Needs system of recording children with ‘pronounced specific or complex’ needs such as require continuing review with the Co-ordinated Support Plan for children with complex or multiple needs who require support from a range of providers.

In addition to the bill, the following have been published:

- **Policy Memorandum**
- **Explanatory Notes**
- **A Guide for Parents: The Additional Support for Learning Bill**
- **Report of the Consultation on the draft Additional Support for Learning Bill**
- **Summary Handout on the Additional Support for Learning Bill**

This paper will cover the policy and legislative background, the provisions of the bill, as well as considerations taken from responses to the consultation on the Executive’s draft bill.
## CONTENTS

KEY POINTS OF THIS BRIEFING .................................................................................................................. 3

INTRODUCTION ............................................................................................................................................ 4

BACKGROUND ............................................................................................................................................... 5

LEGISLATIVE BACKGROUND ....................................................................................................................... 6

- **EDUCATION (SCOTLAND) ACT 1980** ........................................................................................................ 6
  - Special educational needs ......................................................................................................................... 6
  - Record of Needs ....................................................................................................................................... 7
  - Placing requests ...................................................................................................................................... 7
- **RECENT LEGISLATION** .......................................................................................................................... 7

CHANGING DEFINITIONS – SEN TO ASN ....................................................................................................... 8

THE NEED FOR CHANGE ............................................................................................................................... 10

DUTIES ON EDUCATION AUTHORITIES ...................................................................................................... 10

- **INDIVIDUALISED EDUCATIONAL PROGRAMMES AND PERSONAL LEARNING PLANS** ......................................................................................................................... 10
- **ASSESSMENTS** ....................................................................................................................................... 11
- **FRAMEWORK FOR ASSESSMENT AND INTERVENTION - CODE OF PRACTICE** ........................................... 12
- **EDUCATION AUTHORITY RESPONSIBILITY** ............................................................................................ 13

INTEGRATED SERVICES ................................................................................................................................. 14

- **DUTY ON OTHER AGENCIES** ................................................................................................................ 14
- **CO-ORDINATED SUPPORT PLANS (CSP)** ............................................................................................ 15
  - Right to request consideration for a CSP .................................................................................................. 16
  - Content of a CSP ....................................................................................................................................... 17
  - Numbers of CSPs ...................................................................................................................................... 17
  - Review of CSP .......................................................................................................................................... 17

IN Volvement and Support of Parents, Children and Young Persons ......................................................... 18

- **Placing requests** .................................................................................................................................... 20

The ADDITIONAL SUPPORT NEEDS TRIBUNALS ................................................................................ 21

MEDIATION SERVICES AND DisPUTE RESOLUTION ............................................................................. 23

TRANSITIONS AND FUTURE NEEDS .......................................................................................................... 25

TRANSITIONAL PROVISIONS ....................................................................................................................... 25

FINANCIAL MEMORANDUM .......................................................................................................................... 26

- **COSTS ON THE SCOTTISH ADMINISTRATION** ....................................................................................... 26
- **COSTS ON LOCAL AUTHORITIES** ........................................................................................................ 26
- **COSTS ON OTHER BODIES** .................................................................................................................. 27

Sources ........................................................................................................................................................... 28

- **RESPONSES TO THE CONSULTATION ON THE DRAFT EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL** ................................................................. 30
KEY POINTS OF THIS BRIEFING

- The **Education (Additional Support for Learning) (Scotland) Bill** was introduced to the Scottish Parliament on 28 October 2003.

- The aims of the bill are to:
  - move away from the term Special Educational Needs to the broader term of Additional Support Needs which will include children and young people, who, for whatever reason require support to access and benefit from education
  - replace the Record of Needs process with a new Co-ordinated Support Plan for children and young people who have long term needs arising from complex or multiple factors and require support from more than one agency
  - place duties on education authorities to identify and assess whether children and young people have additional support needs or require a Co-ordinated Support Plan
  - promote the integrated working of other agencies such as health and social work to combine support for children and young people
  - strengthen parents’ involvement in decisions affecting their child’s education
  - support children’s and young person’s involvement in their own learning
  - safeguard the rights of those with the most significant and enduring needs.

- The reason for a proposed change in the framework for supporting children and young people with additional support needs is based on changing policies and practices that have been evolving since the current framework was set up under the Education (Scotland) Act 1980 as amended.

- The Executive carried out an initial consultation on the current framework in May 2001 with **Assessing our Children’s Educational Needs: The Way Forward?**. The Executive responded to the outcomes of the consultation with proposals for legislation in February 2002.

- The **Draft Education (Additional Support for Learning) (Scotland) Bill** was published for consultation in January 2003, alongside the framework document **Moving Forward – Additional Support for Learning**.

- Responses to the consultation broadly welcomed the changes proposed, but reservations were strongly held on several of the bill’s provisions including:
  - the criteria for a Co-ordinated Support Plan (CSP)
  - the likelihood that many who currently have a Record of Needs will not be eligible for a CSP
  - the jurisdiction of the Additional Support Needs Tribunals.

- The Executive published a **summary** of the consultation responses on 29 October 2003.
INTRODUCTION

The Education (Additional Support for Learning) (Scotland) Bill was introduced on 28 October 2003. The bill replaces the system for assessment and recording for children and young people1 with special educational needs, including the Records of Needs process. It provides for a new system for identifying and addressing the additional support needs of children and young people who face a barrier to learning. The bill encompasses any need which requires additional support in order for the child or young person to learn.

The bill places duties on education authorities and requires other agencies to help, where their support is required. Education authorities will be required to identify and then make adequate and efficient provision for the additional support needs of children and young people. Parents will be able to request an education authority to establish whether their child has additional support needs (ASN) and whether they require a co-ordinated support plan (CSP).

The CSP will be prepared for those with long term complex or multiple needs that require support from outside the education authority. The CSP will focus on support to achieve learning outcomes and will assist in the co-ordination of services from a range of providers.

Additional Support Needs Tribunals will be established to hear appeals relating to the CSPs. Mediation services will be available to assist in disagreements between parents and education authorities or schools, and authorities may be required to put in place arrangements for dispute resolution.

The bill aims to encourage partnership working between parents and education authorities. It also provides for the participation of children and young people in decisions affecting their education.

A Code of Practice will be issued which will set out guidance for education authorities to deliver their duties under the bill and set minimum standards for provision of services.

This paper will consider the key provisions incorporating views expressed during the consultation on the draft bill.

Education Committee

The Education Committee have been designated the lead committee on this bill. As part of their Stage 1 scrutiny of the bill, the Education Committee heard evidence from the Executive’s bill team on 5 November 2003. A general call for written evidence has also been issued.

The Education Committee also carried out pre-legislative scrutiny on the bill. This involved visits to mainstream and special schools and taking oral evidence from a panel of experts on 10 September 2003 (Scottish Parliament 2003a).

Finance Committee

The Finance Committee will be taking evidence on the Financial Memorandum of the bill on 18 November 2003 and 2 December 2003.

---

1 Young people are those aged 16 and over who are still receiving school education.
BACKGROUND

The Warnock Report of 1978 reviewed the educational provision in England, Scotland and Wales for ‘handicapped’ children. The report dismissed the concept of handicap and extended the definition of special education to take in all children who may have individual educational needs. It identified that 20% of children were likely to need special educational provision of some kind during their school careers. Within that, a smaller group of approximately 2% were likely to require a Record of Needs as defined in the Education (Scotland) Act 1980 as amended.

However, there has since been a significant cultural shift in the concept of SEN, which has been reinforced by changes in policy and practices. In 1999 the Riddell report on education for children with severe low incidence disabilities called for a review of Special Educational Needs (SEN) provision. It also recommended a national advisory forum be set up for the purpose of discussing SEN at a strategic level between education, health, social work and the voluntary sector to ensure Scottish Ministers and the Parliament have direct access to such views on regular basis. The Special Educational Needs Advisory Forum met 4-5 times a year and advised on the development and implementation to improve standards of SEN provision in Scotland. Its remit came to an end in March 2003.

In February 2001 the Education, Culture and Sport Committee reported on their inquiry into SEN provision and concluded that provision should be inclusive and that the Record of Needs system could be revised or replaced. In May 2001 the Scottish Executive began its consultation on the provision of education for pupils with SEN. The responses indicated a need to address failings of the current Record of Needs system which had been seen as bureaucratic, inflexible and difficult for local authorities to implement fully. In February 2002 the Scottish Executive published a summary of the responses to the consultation and outlined its proposal for change.

On 17 January 2003 the Executive published the Draft Education (Additional Support for Learning) (Scotland) Bill for consultation. A report summarising the responses to the consultation and how it has informed the final bill was published on 29 October 2003.

Also published on 17 January 2003 was the Scottish Executive's Moving Forward! Additional Support for Learning, a framework document aimed at meeting the needs of children who require additional support for learning. A vision was agreed with the National Special Educational Needs Advisory Forum:

> We wish to see an education system that is inclusive, welcomes diversity and provides an equal opportunity for all children to develop their personality, skills and abilities to their fullest potential. (Scottish Executive p6 2003c)

This vision is supported by the following principles:

- education must be child-centred, take a holistic approach to the needs of the child and his or her family
- schools should demonstrate a commitment to inclusiveness
- the rights and views of children, young people and their parents should be respected and listened to
- national and local policies for improving standards should include all children
• allocation of resources by schools, local authorities and their partners should demonstrate a commitment to inclusiveness and delivery of integrated services, and take account of the diversity of local school populations.

Integrating services has been part of the wider policy agenda for some time. For example, the Beattie report (Scottish Executive 1999b) considered the post school transition arrangements for pupils that require additional support and recommended integrated working between agencies. For Scotland's Children (Scottish Executive 2001b) considered the development of integrated working between local authorities, the NHS and the voluntary sector for the development of a single children's services system.

**LEGISLATIVE BACKGROUND**

**EDUCATION (SCOTLAND) ACT 1980**

The Education (Scotland) Act 1980 as amended, is the main legislation governing the education of children with special educational needs in Scotland. The 1980 Act has been amended by the Education (Scotland) Act 1981 and subsequently by the Disabled Persons (Services, Consultation and Representation) Act 1986 and the Self-Governing Schools etc. (Scotland) Act 1989. The principal Regulations of relevance are the Education (Record of Needs) (Scotland) Regulations and the Education (Modification of Enactments) (Scotland) Regulations, both 1982. The 1980 Act covers the duties and rights of parents and education authorities and its general provisions apply to the education of all children. Circular 4/96 issued by the Scottish Office Education and Industry Department (1996) is the key guidance for education authorities outlining their statutory duties under the 1980 Act.

**Special educational needs**

Section 1(5)(d) of the 1980 Act defines SEN as:

*Children and young persons have special educational needs if they have a learning difficulty which calls for provision for special educational needs to be made for them.*

Learning difficulty is said to be present if children and young persons:

a) have significantly greater difficulty in learning than the majority of those of their age; or

b) suffer from a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for those of their age in schools managed by their education authority; or

C) who are under the age of 5 years old and, if provision for special educational needs were not made for them, are or would be likely, when over that age, to have a learning difficulty as defined above.

This definition was clarified in the Scottish Office Education and Industry Department Circular 4/96 as
children or young persons have a 'learning difficulty' if additional arrangements need to be made to enable them properly to access the curriculum. (para 9 1996)

The 1980 Act (Section 1(d)(iii)) is clear that a child or young person does not have a learning difficulty solely because the language he or she will be taught in is different from the language which is spoken in the home.

Very able or gifted children are not specifically referred to in the 1980 Act, but Circular 4/96 notes that

the more able may nevertheless experience learning difficulties of a temporary or continuing nature which give rise to special educational needs. (para 10 1999)

Record of Needs

The Record of Needs is defined in Section 60 of the 1980 Act (as amended) as being for children and young persons who have

pronounced, specific or complex special educational needs which are such as require continuing review

Section 61 states that education authorities have a duty to carry out a process of observation and assessment including educational, psychological and medical assessments before deciding whether a child or young person requires a record.

Placing requests

Section 28A of the 1980 Act places duties on education authorities in relation to placing requests. If a child has a record of needs the parent is able to submit a written request to have the child placed at a mainstream or special school under the authority’s management. Requests can also be made for the child to attend an independent or grant-aided special school (including schools elsewhere in the UK), provided that such a school is willing to accept the child.

RECENT LEGISLATION

In 1991, the UK government adopted the UN Convention on the Rights of the Child, undertaking to bring UK law, policy and practices into line with the Convention’s articles. This undertaking gives children and young people the right to participate in decisions which affect them.

The Children (Scotland) Act 1995 has an overall theme of promoting the best interests of the child and is founded on the principle that each child has a right to be treated as an individual. The 1995 Act made provisions for parental rights and responsibilities in terms of their child’s health, development and welfare.

The Disability Discrimination Act 1995 (as amended) protects disabled pupils in Scotland from discrimination in education. However, it does not require the provision of auxiliary aids or services, or the removal or alteration of physical features (Section 28C). Disability is defined in Section 1(1) as

providing research and information services to the Scottish Parliament
**providing research and information services to the Scottish Parliament**

*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*

The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002, requires education authorities to ensure that strategies are in place to improve access to the curriculum and to the physical environment, and to improve communication with disabled pupils.

The Standards in Scotland’s Schools etc Act 2000 placed a duty on education authorities to

*secure that the 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.* (Section 2(1))

Section 15 of the 2000 Act (which came into force in August 2003) also introduced the presumption of mainstreaming for children and young people with special educational needs, so that where possible they should be educated in mainstream schools rather than special schools, except where it:

- would not be suited to the ability or aptitude of the child
- would be incompatible with the provision of efficient education for the children with whom the child would be educated
- would result in unreasonable public expenditure being incurred which would not ordinarily be incurred
- and it shall be presumed those circumstances arise only occasionally

Section 40 of the 2000 act made provision for children too ill to attend school, ensuring that education authorities make special arrangements for the pupil to receive education elsewhere than at the educational establishment.

**CHANGING DEFINITIONS – SEN TO ASN**

A key provision of the bill is the shift from Special Educational Needs (SEN) to Additional Support Needs (ASN). The reasoning behind the move from SEN to ASN as outlined in the bill’s Policy Memorandum (2003b), is

*…to encompass not just those with the most severe needs, but all children and young persons who face a barrier to learning.* (p1 para 2 Policy Memorandum 2003b)

By moving away from the term SEN the bill aims to ensure,

*…that the needs of all children and young persons who have difficulties in accessing and progressing in learning are identified and addressed.* (p1 para 2 Policy Memorandum 2003b)

The term SEN does not include the learning needs of able or gifted children and young persons, nor those for whom English is an additional language. Children and young persons with social, emotional and behavioural difficulties are also not considered by education authorities to have SEN under the definition of the 1980 Act.
The concept of SEN may have been seen as a positive step in the 1980 Act, but the term has had the effect of isolating a minority of children and young people, and the term itself

…carries with it a degree of stigma that does not sit comfortably with current policies on the development of inclusive education within an inclusive society (p3 para 9 Policy Memorandum 2003b)

By broadening the term to ASN, the aim is to support needs which may be mild and temporary, for example a recently bereaved child, through to those which are more complex and long term. ASN, as defined in section 1 of the bill:

…means a requirement for provision, to help a child or young person benefit from education, that is additional to or different from that which other children or young persons of the same age normally receive. (p2 para 5 Policy Memorandum 2003b)

Considerations on the move to additional support need

The definition of additional support needs was broadly welcomed by those that responded to the Executive’s consultation. For example,

We are pleased that a large number of children with support needs outwith the current narrow definition of SEN, will now be protected by legislation. (Scottish Spina Bifida Association 2003)

ASPEP recognises the need to replace the existing Special Educational Needs and Record of Needs legislation, which is at odds with the development of inclusive education, as well as being inequitable and out of step with other recent legislation and policy guidance. (Association of Scottish Principal Educational Psychologists 2003)

However, some concerns were raised. The Disability Rights Commission (2003) stated that while the new definition was welcomed, safeguards were needed to ensure that it did not lead to any diminution of the support currently available. Enable (an organisation for people with learning disabilities) stated a concern over the duty to provide adequate and efficient provision for children with ASN

The reality is that currently the local authorities do not adequately provide for the percentage of children who currently qualify for a record of needs, therefore to widen the group out will meant that current resources will be stretched further and the provision for children with special educational needs will be diluted. (p1 2003)

The National Autistic Society Scotland raised concerns that widening the criteria would lead to a

…dilution of expertise in conditions that represent a significant barrier to learning. Pupils with autism spectrum disorders need specific support in accessing the curriculum and engaging in the life of the classroom that cannot always be provided by generic support workers. (p3 2003)
The Commission for Racial Equality (2003) and The Scottish EAL (English as an Additional Language) Co-ordinating Council (2003) both raised concerns on the inclusion of children and young persons for whom English is an additional language under the definition of ASN. The SEALCC stated that treating this group as an additional support category would ignore issues which could impact on their learning, such as problems of accurate assessment and the effects of racism, and recommended such issues should be addressed in the bill.

We are not convinced that bringing bilingual pupils into this framework by virtue of their bilingualism alone will ensure equality or improve provision. (SEALCC 2003)

THE NEED FOR CHANGE
The Scottish Executive state that it could have been possible to continue with the current system under the 1980 Act, by updating guidance. However, the Scottish Executive have noted there has been a significant cultural shift since the concept of SEN which has been reinforced by the inquiry carried out by the Education, Culture and Sport Committee and advice from the National SEN Advisory Forum (p3 para 9 Policy Memorandum 2003b).

The current SEN framework has faced much criticism over the years, with particular focus on the Record of Needs. Problems associated with the Record of Needs include (p5 para 16 Policy Memorandum 2003b):

- it only addresses the needs of a limited few
- it is viewed as a means of securing resources
- it is time-consuming and bureaucratic
- it is not a working document
- it focuses on weaknesses
- it does not set learning targets
- it does not include the views of the child
- the statements are too vague to provide useful advice to teachers
- part V of the record which states the provisions to meet the needs cannot be appealed

DUTIES ON EDUCATION AUTHORITIES
The bill introduces a duty on education authorities to identify and address the additional support needs of all pupils for whom they are responsible by making ‘adequate and efficient’ provision for any additional support required. Furthermore education authorities will have a duty to keep under consideration the additional support needs of individual pupils and the adequacy of provision. The Policy Memorandum states that

In this way the Bill aims to set up a simple, systematic framework for the identification and support of learning needs, whether those needs arise from factors relating to social, cognitive, linguistic, disability, or family and care circumstances. (p2 para 6 2003b)

INDIVIDUALISED EDUCATIONAL PROGRAMMES AND PERSONAL LEARNING PLANS
The bill does not legislate for a record in terms of those pupils who are identified as having additional support needs, but do not have long term needs arising from complex or multiple factors and requiring support from a range of agencies (see section on CSPs below). In the
report on the consultation (p21 para 47 2003b) the Scottish Executive state that recording the support needs of such children and young people would be a matter of good practice and would be noted in existing mechanisms such as Personal Learning Plans (PLP) and Individualised Educational Programmes (IEP). This was also stated in the Guide for Parents (Scottish Executive 2003d). However, specific reference to PLPs and IEPs are absent from the Policy Memorandum.

The framework document, Moving forward! Additional support for learning (Scottish Executive 2003c) offers further explanation. From 2003 schools will be expected to provide all pupils with a PLP. The PLP provides a continuous record and action plan for learning which can be regularly updated. PLPs will also provide teachers with a working assessment tool to actively involve children and families. IEPs are currently in use for many children who require additional support for learning. IEPs are outcome focused, stating what a pupil is expected to learn and the resources needed to achieve this. The Scottish Executive state they are working on one unified system to bring together PLPs and IEPs (p15 para 28 2003c).

Considerations on IEPs and PLPs

While IEPs and PLPs are not statutory provisions in the bill, the framework for additional support for learning implies that such records would be used for children identified as having additional support needs but who do not require a CSP.

Many responding to the consultation requested further clarification on how IEPs and PLPs will work in practice. For example, the Association of Support for Learning Officers\(^2\), who state that they will be responsible for implementing any legislative change in this area within their own authorities, argue

> Very little mention is made of IEPs in either the Draft Bill or the draft policy paper. Given the substantial amount of time devoted by the Scottish Executive, HMIE, education authorities and school staff to this initiative over the past 3 years…it seems disingenuous not to place IEPs at the centre of the proposed new system. (p2 2003)

The Equity Group\(^3\) (2003) questions the need to have an IEP for pupils with additional support needs if all pupils are to have a PLP, since it will create a different and ‘special’ system. For those with more complex needs, which require co-ordination from other agencies, they suggest the CSP could be incorporated into the PLP.

The Headteachers Association of Scotland argued that the combination of PLPs, IEPs and CSPs will put an ‘undue level of demand on schools’:

> There are clearly increased demands on schools for meetings and administration and record-keeping which will require the allocation of additional trained support staff. (p2 2003)

**ASSESSMENTS**

---

\(^2\) ASLO – a formally constituted group that represent education authority officers with Support for Learning responsibilities across Scotland

\(^3\) A group of adults with disabilities, parents of children with disabilities, educational professionals who share a commitment to inclusive education in Scotland.
Under the bill, education authorities will no longer have a duty to carry out the compulsory medical, educational and psychological assessments outlined in the 1980 Act. However, under Section 6, parents will be able to request particular assessments in addition to being able to request their child is assessed for additional support needs (Scottish Executive 2003b). This provision was not present in the draft bill, the change is a direct result of comments made during the consultation.

The Policy Memorandum (2003b) indicates that education authorities will be expected to take steps to ensure a child or young person’s lack of progress is identified and action is taken. The bill allows education authorities to take a more responsive approach to a child or young person’s circumstance.

Where information has been gathered already, further assessments may not need to duplicate this. Where observation might be more appropriate than a formal assessment, there is scope in the bill to allow for this. (p5 para 18 Policy Memorandum 2003b)

Considerations on assessments

While compulsory assessments were removed in the draft version of the bill, following requests during the consultation the Scottish Executive have ensured that parents will be able to request specific types of assessment. Despite making this change to the bill, the arguments for keeping compulsory assessments may still be valid.

The National Autistic Society Scotland (2003) described the removal of compulsory assessments as a ‘retrograde step’. It is their view that without compulsory assessments, there will be no guarantee of a full and correct assessment which will be detrimental because they describe early intervention as integral to the development of children with autism spectrum disorders.

Enable stated

It is often through these ‘compulsory’ assessments that many additional needs of the children are identified. To remove this will weaken the service provided to the children. (2003)

PAMIS (in partnership with people with profound learning disabilities and their carers) stated

If there is no formal multi-disciplinary assessment process and it is left solely to the parents to establish whether their child has additional support needs, we fear that many children will be denied access to the extra support for learning they require at this crucial stage of development. (p2 2003)

In their report on the consultation the Scottish Executive (2003b) stated compulsory assessments currently only apply to children who have or are thought to require a Record of Need (approximately 2.2% of the school population), whereas the draft bill, and now the bill as introduced, requires authorities to identify all children that require additional support for learning or a CSP.

FRAMEWORK FOR ASSESSMENT AND INTERVENTION - CODE OF PRACTICE
During the consultation on the draft bill, many respondents commented that a move away from the current deficit model of assessment to a new system was very much welcomed, although some argued that there should be a national compulsory framework for assessment and intervention to ensure consistency across Scotland. Others argued that the system required to be flexible to take account of local circumstances. Many called for guidance on what is meant by assessment and to set minimum standards to assist education authorities (Scottish Executive 2003b).

The bill therefore introduces a Code of Practice in section 23. The Code of Practice will include guidance on:

- particular factors which give rise to additional support needs
- the identification of complex and multiple factors in terms of considering a CSP
- the nature of additional support to be provided in pursuance of a CSP
- seeking of information and advice from appropriate agencies
- seeking of views of the child, young person and parent
- mediation services

The Education Committee heard oral evidence from the Executive’s bill team on 5 November 2003. They stated that the Code of Practice will be drafted and consulted on, and that the committee would be able to view the Code of Practice before it is finally issued.

EDUCATION AUTHORITY RESPONSIBILITY

The education authority is responsible, either directly or indirectly for pupils at:

- local authority schools and nurseries
- independent special schools where the authority is meeting the fees
- independent nurseries where the authority is meeting the fees
- independent nurseries that are in partnership with the education authority
- places other than schools where the authority is providing school education (eg a traveller site).

Section 5 of the bill gives rights to young persons and parents of children outwith the public education system, such as those being educated at home, those at independent schools, and those under age 3, to request the education authority to establish whether the child or young person has additional support needs or would require a CSP if in the public system. The bill introduces a power for education authorities to assist in the identification and support of their needs. The education authority may also assist with the educational provision for such children and young persons although they will not be obliged to do so (p6 para 24 Policy Memorandum 2003b).

Considerations on those being educated outwith the public system

In terms of the power to assist in the identification of ASN for those children and young persons outwith the public system Learning and Teaching Scotland expressed the following
...the principal should be clearly enacted that all children, wherever they are educated, should have additional support needs met. (2003)

The Home Education Advisory Service (2003) stated that many parents contact them because they are concerned about the provision their children will receive in a mainstream or special school, and that some become what has been termed ‘non-elective’ home educators. They believe such parents should not be denied the chance to have their child’s needs met, and they have suspicions concerning the education authority power to give information and advice.

_We have grave doubts as to whether the proposal to place a duty upon education authorities to offer ‘such information and advice…as they consider appropriate’ would be sufficiently specific to be of any real assistance to home educating parents in meeting their child’s needs._ (2003)

The Scottish Society for Autism (2003) raised concern about the lack of provision for the under 3s, particularly in light of the fact that Autism Spectrum Disorder is being diagnosed earlier now than in the past. Further that increasing numbers of parents of children with autism are choosing to educate their children at home.

However, in a letter to the Convener of the Education Committee, the Minister for Education and Young People, Peter Peacock, explained

_I have concluded that making this a duty would not be welcomed by those parents who wish no involvement from the public education system; it would provide unnecessary subsidy to the independent sector; and lastly appeals to Tribunals would be unworkable since in essence the parents would be appealing against themselves as the persons responsible for their child’s education._ (p7 Peacock 2003)

**INTEGRATED SERVICES**

**DUTY ON OTHER AGENCIES**

The bill introduces a duty on other agencies, such as health bodies, social work, and the voluntary sector to help education authorities where their support is required in identifying and addressing the needs for additional support. This may include support from occupational therapists, speech and language therapists, social skills support and respite care (p6 para 21 Policy Memorandum 2003b). Other agencies will need to consider their own powers and duties which they might use to assist education authorities in carrying out their functions in the bill.

**Considerations on the duty of other agencies**

While the duty on other agencies to assist education authorities was broadly welcomed, some issues were raised. Resources were one key theme, particularly in terms of the shortage of therapy staff and social workers, and over-stretched budgets (Scottish Executive 2003b). Another theme is the legal obligation of other agencies.

On these issues, the Chartered Society of Physiotherapy stated they are concerned that
…demands will be placed on existing services and agencies without either the legal obligation or the resources to provide the service. Parents will inevitably be very unclear as to how to ensure that their children get the appropriate support, what authorities to approach and what rights exist. (p6 2003)

ADES (Association of Directors of Education in Scotland) Social Inclusion Committee stated:

*Despite the moves made toward integrating Children’s services, the development of the New Community Schools agenda and the joint Children’s Service plans, responsibilities for meeting the needs of children with additional learning needs are narrowly targeted at education authorities. There is no notion of joint responsibility or statutory requirements of other agencies. (p2 2003)*

Although the bill states under Section 19, that other agencies will have a duty to comply with requests to help an education authority in their functions under the bill, it was still felt that duties on other agencies needed clarification, particularly in terms of the jurisdiction of Additional Support Needs Tribunals (this is explored below) (Carnahan 2003).

The Child Health Directorate at Fife PCT stated

*Recruitment and retention is a real problem for all therapy staff at a national level. There is a genuine concern amongst therapy managers across Scotland that we would not be able to fully meet the demands set out in this bill. (p2 2003)*

**CO-ORDINATED SUPPORT PLANS (CSP)**

The bill introduces a co-ordinated support plan (CSP), defined in Section 2 for

*…children and young persons with enduring additional support needs arising from complex or multiple factors for whose school education the education authority are responsible, who require support from a range of providers. (p7 para 26 Policy Memorandum 2003b)*

The report of the consultation gives a fuller explanation of complex or multiple factors, part of the criteria required for a CSP (Scottish Executive 2003b). A CSP will be opened for pupils who have ASN arising from complex or multiple factors which are likely to continue for more than a year, and who need support from at least one other agency as well as the education authority.

**Complex factor**
- one that affects most aspects of learning
- a long term educational, medical or other factor
- examples given are: sensory impairment such as blindness, physical disability such as cerebral palsy, Attention Deficit Hyperactivity Disorder, dyslexia or Autism Spectrum Disorder.

**Multiple factors**
- combination of two or more factors, but which are not by themselves complex factors
- in combination these may have the same effect as a complex factor

(providing research and information services to the Scottish Parliament)

15
the example given is ‘a child’s additional support needs may arise from multiple factors such as being bullied, poor self-esteem and living with parents who have addiction and low income problems. In general, factors may be expressed by the child or young person through poor anger management, a history of poor progress, psychological or mental health problems, or may be external such as circumstances within the child or young person’s family.’ (p36 para 71 Scottish Executive 2003b).

Range of providers

If a child or young person has additional support needs arising from complex or multiple factors, they will also need to require ‘significant additional support to be provided by one or more appropriate agencies, including the support other than education from the authority’ in order for a CSP to be opened (p35 para 69 Scottish Executive 2003b).

The Scottish Executive are clear however, that diagnosis is not about attaching labels to children and young people,

…..what may be complex or multiple factors for one child may not be for another. It is the effect of the factor(s) and not the factor(s) or diagnosis label alone. (p36 para 72 Scottish Executive 2003b)

The aim of the CSP is to plan for long term educational outcomes and to involve co-ordination across a range of services provided by education authorities and other agencies. Establishing the need for a CSP will not require compulsory assessments, instead such assessments will be used when ‘appropriate and necessary’ (p7 para23 Policy Memorandum 2003b).

The bill provides for a co-ordinator to oversee the CSP. While the duty rests with the education authority, it will be possible to delegate this task to someone from a different agency who may have more involvement with the family. There is also provision for a named contact at the education authority to provide information and advice to the child, young person or parent.

The CSP is to be a ‘working document’ to be used collaboratively between different agencies. This will allow it to be adapted to changing needs and avoid duplication by complementing other existing plans within education, health and social work. It will be available to all those involved in the provision of support with the child or young person’s consent.

Right to request consideration for a CSP

Parents will have the right to request the education authority to consider their child for a CSP. Young persons, ‘unless they are incapable’, will also be able to make such a request on their own behalf. Head teachers or school staff, health professionals or social workers will also be able to make such requests. Education authorities will be able to refuse requests if they deem they are unreasonable and will have to give reasons for the refusal.

CSPs will only be provided for children or young persons educated in the public sector. Managers of independent or grant-aided schools will be able to make a request to consider whether a child or young person would be eligible for a CSP if they were educated in the public sector.

The education authority will need to inform the child’s parents or young person of their intention to consider a pupil for a CSP. The Policy Memorandum (2003b) indicates that regulations will
set out a time period for carrying out such appraisals. Parents or the young person will be informed by the education authority of the outcome.

**Content of a CSP**

Regulations will set out the form and content of CSPs, but it is intended that they will contain:

- biographical information
- a statement of factors from which the additional support needs arise
- educational objectives to be achieved
- additional support required to achieve objectives
- the persons who will provide the support
- a nomination of a school to be attended
- the person responsible for co-ordinating the plan
- the person responsible for providing information and advice to the parents, child or young person
- notes on the views of the parents, child or young person
- the proposed date of the next review

**Numbers of CSPs**

Some children and young persons that currently have a Record of Needs will not be eligible for a CSP, but the Scottish Executive state that this should not be to their detriment since

> ...the fundamental principal of meeting the needs for all those who require additional support is enshrined in the bill. (p10 para 40 Policy Memorandum 2003b)

According to the latest statistics from the Scottish Executive (2003e) on pupils with a Record of Needs, a total of 15,315 (2.1%) pupils in publicly funded schools currently have a Record of Needs as at September 2002. The proportion with a Record of Needs ranges across Scotland between 0.8% to 3.6%.

The Financial Memorandum (Explanatory Notes 2003c) estimates the number of CSPs to be between 11,200 to 13,700 at any one time. The estimation is based on the assumption that 50% of children who currently have a Record of Needs will have additional support needs that require a CSP plus an additional proportion of the school population (estimated to be 0.3-0.6%) will have such needs but do not currently have a record.

**Review of CSP**

The CSP is to be reviewed annually, although earlier reviews will be possible at the request of the education authority or parent or young person, if there has been a significant change in circumstances or progress made. If the education authority is not willing to review early they must inform the parent or young person with their reasons in writing.
Considerations on CSPs

While the need for a change in the system has focused on the problems associated with the Record of Needs, the proposals to replace the Record of Needs with the CSP provoked the strongest reactions.

Some felt that the definition of who would be eligible for a CSP is too narrow. Dyslexia in Scotland (2003) commented that the fact that dyslexic children would not get a CSP is a ‘backwards step into the dark ages.’ Furthermore that:

In our opinion this is blatant discrimination against children and young persons with hidden learning difficulties and educational support needs only. (p2 2003)

Dyslexia in Scotland explained that their views have not changed on introduction of the bill, stating that children with dyslexia currently have a Record of Needs but would not eligible for a CSP, and therefore would be deprived the benefit of rights afforded by a CSP (Reilly 2003).

Down’s Syndrome Scotland (2003) is concerned that pupils with Down’s syndrome would not qualify for a CSP, and have confirmed that parents are still concerned about this (Bain 2003)

Research into Down’s syndrome has shown that the average young person with Down’s syndrome will have moderate learning difficulties. Does this mean therefore that they may not be entitled to a CSP? (p2 2003)

Barnardo’s Scotland (2003) raises concerns that the interpretation of complex and multiple factors may vary resulting in inconsistency across Scotland, and that

Despite the intention to create a more responsive and less bureaucratic system there is a possibility that the CSP process could be less responsive and more bureaucratic. (p6 2003)

A parents group (Edinburgh Special Schools Cluster Group) stated

...parents of children who do not have a CSP fear that their children may be seriously disadvantaged by comparison with their position under present legislation. (p1 2003)

Because of such a situation the Scottish Human Services Trust states

We predict that parents will be forced into the position of emphasising deficiencies in order to get their child a CSP because a CSP will be seen as the ‘ticket’ to resources, the right to tribunal etc.; this will increase a diagnostic and conflict-based approach to education which cannot be in anyone’s interests. (p2 2003)

INVolVEMEnT AND SUPPORT OF PARENTS, CHILDREN AND YOUNG PERSONS
One aim of the bill is to strengthen the role of parents in making decisions about their child’s education and to support the participation of children and young persons’ involvement in decision making (p1 para 2 Policy Memorandum 2003b).

The bill requires a named contact officer to provide information and advice for those with ASN and those with a CSP. The Code of Practice will specify that parents and young persons will be able to have a supporter of their choice to help them in their contact with the education authority. The Code of Practice will also include ways in which the education authority should enable parents, young persons and children to participate in the system. Education authorities will have a duty to publish information in accordance with their duties under the bill.

The bill specifies that a young person is someone aged 16 or over who is still receiving school education in line with the Education (Scotland) Act 1980. The bill affords certain rights to parents and young persons. For example, requesting an education authority to establish whether a child or young person has ASN; requesting a specific type of assessment; requesting a review of the CSP; a duty on education authorities to inform parents and young persons if they are considering the child or young person for a CSP; and a right for parents and young persons to appeal to the Tribunal.

However, young persons will not have such rights if they are considered ‘incapable’. The definition of incapable is given in Section 24\(^4\) of the bill,

\[
\text{‘incapable’ means incapable of forming or communicating any views by reason of mental illness or learning disability, but a person is not to be treated as incapable by reason only of a lack of deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretive nature or otherwise).}
\]

In such cases it will be the parent of the young person who has such rights afforded under the bill.

While the intention is to strengthen the role of children in terms of making decisions about their education, children as a group do not have the rights afforded to parents and young persons. Section 10 of the bill does place a duty on education authorities to seek and take account of the views of children when pursuing whether the child has ASN or requires a CSP, unless they are satisfied that the child is incapable, in which case it will have a duty to take account of the parents’ views.

Considerations on the involvement and support of parents, children and young persons

The proposals to involve parents, children and young persons, and to provide support mechanisms were broadly welcomed by those that responded to the Executive’s consultation.

The report on the consultation by the Scottish Executive (2003b) noted that proposals to ensure better involvement for parents, children and young people were viewed as very positive. There was also wide support for a contact person to provide advice and information about the system, although some felt that having a contact person would remove parents’ rights to have direct contact with the professionals making provision for their children. There was further support for the role of parental and child supporters, who could be a different person for each meeting. This will allow parents to choose the most appropriate person for a particular meeting.

\(^4\) The definition is based on the Adults with Incapacity (Scotland) Act 2000.
However the Scottish Independent Advocacy Alliance argued that an independent advocate would be more suitable in supporting parents and children at meetings (2003). The Advocacy Safeguards Agency had concerns specifically about the role of supporters for children, suggesting that independent advocacy would be preferable.

The concept of ‘independent advocacy’ means that advocacy is provided by a person who is not linked with an organisation providing a service, for example, in relation to this Bill, the Education Authority or School. The advocate will also have no direct family relationship with the child or young person. In this way, the advocate will enable the views of the child or young person to be put forward in an unbiased way. (2003)

The duty to publish information was also seen as a positive step, although some felt there should be a duty to disseminate the information, owing to concern that some authorities and schools do not like giving information or providing choices. The Scottish Executive stated that changes in attitudes and behaviour are needed as well as guidance (Policy Memorandum 2003b).

Pupil involvement was broadly welcomed, although some raised the point over the potential for conflict between the views of the parent and their child.

The Govan Law Centre (2003) and the Scottish Child Law Centre (2003) questioned the limited rights afforded to children compared with rights afforded to parents and young persons.

Both law centres expressed concerns over the use of the term ‘incapable’. The Govan Law Centre indicated there would be no clear route for challenge in the event that a young person is denied rights because of a disputed view of capability. In particular, where a young person wants to make an appeal to the Tribunal it would be the education authority who decide whether or not a young person is capable, rather than the Tribunal (Nisbet 2003).

The Scottish Child Law Centre was of the opinion that the term ‘incapable’ is insulting and derogatory and should be replaced with the phrase, ‘children and young people who lack the required capacity’ with a definition of ‘capacity’ given in a later section of the bill.

Placing requests

The bill extends to all parents of children with ASN and young persons the right to submit a placing request to independent special schools. Under the current system, only parents of children with a Record of Needs can make such a request. Education authorities will have to comply except under specified circumstances such as the child not having the appropriate ASN for that school.

The appeal mechanism against the decision of the education authority on a placing request (relating to provision made in the bill) depends on whether the child has ASN or a CSP. If the child has ASN then appeals should go to the Education Authority Appeals Committee in the first instance. A further appeal against the decision of the Education Authority Appeal Committee may be made to the Sheriff Court. If the child has a CSP, or it is in preparation, or there has been a decision not to prepare a CSP then it should be referred to the Additional Support Needs Tribunal (see section on the Additional Support Needs Tribunal below).
Considerations on placing requests

The Scottish Executive’s report of the consultation (2003b) reported that there were mixed views on the extension of placing requests to independent special schools to all parents of children with ASN and young persons with ASN. Some expressed the view that it was equitable in line with broadening the system from SEN to ASN, while others felt it was in contradiction with the legislation on mainstreaming and the inclusion agenda.

Views were also expressed on appealing decisions on placing requests. In the draft bill, appeals on placing request decisions would have to go through the Education Authority Appeal Committees if the child did not have a CSP. The Scottish Executive have changed this in the bill as introduced to allow appeals on placing requests to go to the Tribunal if parents are also appealing the decision not to prepare a CSP (Scottish Executive 2003b).

THE ADDITIONAL SUPPORT NEEDS TRIBUNALS

The bill establishes the Additional Support Needs Tribunals for Scotland. It is intended that they will hear cases on the education authority’s decision to prepare or not to prepare a CSP, the information contained in the CSP, and failures by an authority to carry out certain actions within the time limits prescribed by regulations.

To ensure accessibility, tribunals will sit across Scotland and operate in an ‘amenable manner’ which should be less intimidating than a traditional court setting. The Policy Memorandum states that ‘representation for either party will be permitted, legal or otherwise, though use of legal representation is not expected to be a regular occurrence.’ (p14 para 59 Policy Memorandum 2003b).

Each tribunal will consist of 3 members. The convener will be legally qualified, while the two other members will have relevant knowledge or experience of additional support needs. It is expected that members of the tribunals will be impartial and will participate in training in order to ensure the required level of knowledge, sensitivity in approach and objectivity in judgement.

The tribunals will only have jurisdiction over education authorities.

Where any decision of the Tribunal relates to provision of services or support from another agency, then such an agency will have to consider its duties under this bill to assist the education authority when requested to do so. (p14 para 64 Policy Memorandum 2003b)

An appeal against the decision of a Tribunal can be made to the Court of Session, available to each party on a point of law only.

Placing requests

Appeals made in relation to the decision to refuse a placing request will be heard by an Additional Support Needs Tribunal where:

- there is a CSP
- it has been established a CSP is required
- there is a dispute over the need for a CSP.
The bill extends the right to submit placing requests for independent special schools to all children with ASN (see above), but the tribunal is only to cover appeals concerning CSPs. For those appealing against a placing request decision, but where a CSP is not an issue, appeals will be heard by the Education Authority Appeals Committee. There are provisions in the bill to transfer cases on placing requests from the Appeals Committee to the tribunal if the need for a CSP arises, and similarly there is provision to transfer a case from the tribunal to the Appeals Committee where it decides a CSP is not required.

**Considerations on the Additional Support Needs Tribunal**

While the establishment of an Additional Support Needs Tribunals was broadly welcomed in terms of being a quick and efficient appeal route, independent of education authorities, some specific concerns were raised.

The Scottish Committee of the Council on Tribunals (2003) was concerned about limiting the jurisdiction of the tribunal to education authorities, regarding it as an anomaly. In particular they referred to the shortage of social work and health service input into the field of additional support needs and believe it to be unrealistic to think that education authorities will be able to procure such services from an already overstretched area. Further,

> Any tribunal which has limited powers to ensure that its decisions are implemented speedily, or at all, will lead to frustrated families and tribunal members and could adversely affect the whole tribunal system. (2003)

The jurisdiction of the tribunal was also questioned by others responding to the consultation. The National Autistic Society for Scotland stated

> Successful educational provision for many pupils with autism spectrum disorders depends hugely on input from other agencies. The Tribunal should be able to hold health and social services to account for failures to deliver therapeutic services, in particular speech and language therapy. (p11 2003)

Another issue which caused concern was the position on legal aid. In the Draft bill, the Scottish Executive (2003a) explained that while legal representation would be allowed if parents and young persons wanted it, legal aid would not be available, although they would receive legal aid, if eligible, to consult a solicitor in advance of the hearing. The Policy Memorandum does not explicitly refer to legal aid, although it is referred to in the consultation report and in the letter from the Minister for Education and Young People to the Convener of the Education Committee.

The Disability Rights Commission argued that in their experience an education authority will ensure its solicitor is present at a tribunal, and that for those who qualify for legal aid, ‘...there is a potential for serious imbalance and inequality…’ (p5 2003). This view was shared by many that responded to the consultation.

The Minister for Education and Young People made the following statement on this issue

> In line with other Tribunals, legal aid is not provided at hearings where civil rights and obligations are not being determined, though legal aid is available (to those who qualify) for legal advice to be sought prior to and after any hearing. The hearings of the Additional Support Needs Tribunals are intended to be family friendly and legal representation will not be encouraged for either party.
Parents will be enabled to bring a supporter with them in whatever capacity they choose, in addition to legal representation, if they wish. (Peacock 2003)

A different opinion was expressed by the Headteachers’ Association of Scotland (2003), in particular the level of liability to which authority officers, headteachers and other staff could be exposed if recourse to tribunal were to become a regular feature under the new framework for additional support needs.

MEDICATION SERVICES AND DISPUTE RESOLUTION

The bill introduces a duty on education authorities to provide independent mediation services, in order to seek to avoid or resolve disagreements between parents or young persons and education authorities. The bill does not prescribe the way mediation services are to be provided except that they should be independent of both parties and be free of charge to parents and young persons.

Education authorities will be able to purchase the service from a national organisation, a local voluntary sector organisation, or provide the service directly. It is intended that the Code of Practice will set out the minimum standards for mediation to promote consistency across Scotland.

Mediation services will be available in respect of all children who have additional support needs. It will also be possible for those being educated out with the public system to refer any dispute with the education authority to mediation.

Section 17 of the bill states that Scottish Ministers may by regulations make provision for dispute resolution. This is to resolve disputes between education authorities and parents of children with ASN or young persons with ASN. This will allow a formal procedure for cases to be reviewed where a CSP is not an issue. It is anticipated that the dispute resolution will be similar to the current referral system for social work functions. This provision was included in the bill following comments made during the consultation about not being able to appeal unless the pupil concerned was being considered for or had a CSP. It is anticipated that this will be of particular help for those who currently have a Record of Needs but will not have a CSP (p13 para 53 Policy Memorandum 2003b).

Considerations on mediation services

Mediation services were broadly welcomed by respondents to the consultation. Many respondents stressed the need for mediation to be independent. In particular the Scottish Mediation Network stated:

*Independence and therefore impartiality of the mediator and the mediation service is fundamentally important for the process to work effectively. Neutrality needs to be both actual and perceived.* (p2 2003)

Some respondents expressed views that resources could be better spent on reducing conflict at an earlier stage, for example Equity stated

*It seems unwise to impose a duty on local authorities to spend money providing conflict-resolution services when it would be better to prevent conflict arising in the first place.* (p4 2003)
There was also broad support for advocacy and conciliation instead of or in addition to mediation, because it was felt that mediation only comes into play when a relationship breaks down (Scottish Executive 2003b).

There was general support for central funding of mediation and the need to provide guidance on standards and good practice to ensure consistency. In addition there were comments about the lack of trained mediators currently available.

**Enquire** (National advice service for special educational needs in Scotland) is currently running a pilot mediation project involving five local authorities across Scotland. Mediators have been recruited to attempt to resolve difficulties between parents and special educational needs professionals. Based on this experience they call for guidance on the training of mediators

*Recent training of Enquire mediators on the involvement of children and young people in the mediation process has highlighted that consulting with children in accordance with their legal rights is a sensitive and complex issue. Guidance on mediation services should address this issue in some detail.* (p4 2003)
TRANSITIONS AND FUTURE NEEDS

The bill seeks to improve the transition stages between schools and other changes in school education, for example a return to school after a long stay in hospital. Regulations will make provision for transitions, with detail on the procedures for notification of a pupil’s ASN, and for joint planning and preparation.

The bill makes specific provision for the transition to post-school arrangements, extending to all pupils with ASN ‘who may have significant difficulties at this stage’ (p16 para 74 Policy Memorandum 2003b). It is intended that the statutory provision for Future Needs Assessment (FNA) under the 1980 Act will be discontinued, to be replaced with

‘...a more streamlined, flexible process which is less likely to involve large, formal meetings. With an emphasis on planning and preparation, a continuum of support for the young person should be encouraged.’ (p16 para 74 Policy Memorandum 2003b)

Under section 10(5) & (6) of the bill, education authorities will have a duty to plan for when pupils with ASN leave school. A period is set for no less than 12 months before pupils are due to cease receiving school education, although the Policy Memorandum suggests that in some cases it may be two years (p16 para 75 2003b). Education authorities will also have a duty to request information from relevant agencies as well as considering in what way they may be involved in providing for the child or young person in exercising functions other than those relating to education.

Considerations on transitions and future needs

The consultation report (Scottish Executive 2003b) noted that getting other agencies involved sooner and addressing a wider group of pupils, not just those that have a Record of Needs as with the current system, but for all pupils with ASN who require it, was broadly welcomed. There was also general agreement that better forward planning was required. The Scottish Executive state that they have taken on board the concerns raised during the consultation and strengthened the proposed process for future needs.

However, some concerns were raised. Some felt that a key worker should be in place to co-ordinate the future transitions process, while others felt that the CSP process should continue post-school in line with the proposed extension of Education Psychology Services to cover the age 16-24 population.

On the issue of key workers, the Scottish Executive announced on 22 October 2003 that it would maintain funding for Careers Scotland to continue supporting post-school transitions based on the success of their Inclusiveness Projects. In terms of the extension of Education Psychology Services, an interim report was published in August 2003 on current proposals.

TRANSITIONAL PROVISIONS

It is anticipated that the changeover for those who have a Record of Needs will take approximately two years to bring them into the new system. The first priorities will be to establish the Additional Support Needs Tribunals and to issue the Code of Practice to assist education authorities in the implementation of their duties (p18 para 83 Policy Memorandum 2003b).
FINANCIAL MEMORANDUM

The Financial Memorandum (Explanatory Notes 2003c) estimates the costs for implementing the new framework for additional support needs. The costs are based on best estimates, but the Scottish Executive accept there will be some margins of error. Estimations on the current and new system have been informed by local authorities, the NHS, Careers Scotland and the Scottish Further Education Funding Council.

COSTS ON THE SCOTTISH ADMINISTRATION

- Costs in setting up the Additional Support Needs Tribunal are estimated to be £150,000.
- Costs in running the Additional Support Needs Tribunal are estimated to be £760,000 per annum in 2003/04 prices.
- Legal aid costs are estimated to be £85,000.
- A saving of £75,000 is estimated, based on the ending of the current system of appeals for Record of Needs.
- Supporting implementation of the Bill, in terms of changeover from the current system, including guidance and manuals of good practice is estimated to be a one-off cost of £300,000.
- A one-off cost of £80,000 is estimated in terms of monitoring and evaluating the impact of the Bill.

COSTS ON LOCAL AUTHORITIES

The Financial Memorandum states that the cost impact will be in filling any gaps in provision there may be at present, which will differ across local authorities. However, it is envisaged that

…improving services to support learning through more integrated work practices, reducing duplication of effort and taking preventative measures will all have a positive impact on reducing service costs. (p14 para 80 Explanatory Notes 2003c)

As stated earlier it is estimated that 50% of pupils who currently have a Record of Need will be eligible for a CSP. According to the latest statistics from the Scottish Executive (2003e) on pupils with a Record of Needs, a total of 15,315 (2.1%) pupils in publicly funded schools currently have a Record of Needs as at September 2002. The proportion with a Record of Need ranges across Scotland of between 0.8% to 3.6%.

It is estimated that between 11,200 to 13,700 CSPs are expected at any one time, based on the 50% who currently have a Record of Need, and additional 0.3-0.6% who do not have a Record but may require a CSP. The number of new CSPs prepared each year could range from 1,700 to 2,500. The cost of assessing for, preparing and reviewing CSPs is estimated to be between £6.3m to £8.3m per annum. This cost estimation is based on the professional involvement in administering the system, for example, teachers, educational psychologists, and social workers. The estimated average cost of local authority input to assessing and preparing a CSP is £880 and is half that amount for reviewing a CSP.

In terms of the changeover to the new system, it will mean far more CSPs being prepared in the first two years. The estimated costs for year 1 are between £7.7m-£8.8m, and year 2 £9.5m-£11m. After this period, costs are expected to fall back to the levels mentioned above.

The cost for administrating Records will end, with an estimated saving of £6.7m per annum.
The current future needs assessment will also end with an estimated saving of £2.1m per annum. For those pupils with a CSP, costs in terms of future planning will come under the estimated costs for administering CSPs as mentioned above. However, for those who have no CSP but require additional support to prepare them for leaving school, it is estimated that the additional cost will be £700,000 per annum.

The cost for mediation services have been estimated at £0.8m-£1.8m per annum, if a distinct national service is set up. The cost of setting up a national service is estimated at £130,000. If the service is to be provided by local authorities, the estimated cost is £1.2m-£2.5m per annum.

If Scottish Ministers require education authorities to set up dispute resolution arrangements under this bill, the maximum cost is estimated to be £1.5m.

In terms of duties such as providing a named contact, publishing information, and the extension of the right to make placing requests, the cost impacts are expected to be neutral.

In terms of tribunals it is expected that a cost of around £220,000 will be spent on preparing for and attending appeals.

One-off costs to publish local guidance and undertake awareness training are estimated to be less than £500,000.

**COSTS ON OTHER BODIES**

The bill potentially has cost implications for the NHS, Careers Scotland and Further Education colleges.

NHS input into CSPs is estimated to be less than current costs for Records of Need, including future needs. The main reason for this is that medical assessments will now be targeted rather than the compulsory assessments. Current costs are estimated at £1m per annum, but under the new system the range is estimated between £820,000-£1m per annum.

Costs to the NHS for changing over to the new system are estimated at £880,000-£1m in year 1, and £1.1m-£1.2m in year 2.

NHS will also incur costs of around £30,000 per annum in preparing for attending Tribunals.

Careers Scotland currently input around £1m to the Future Needs Assessment. The FNA will cease and be replaced by a new planning framework which is estimated to be £960,000-£1m per annum. It is not expected that costs will vary much under the new system, despite more children and young people with additional support needs requiring support.

Similarly, for further education colleges, the cost is not expected to differ significantly from the current input of around £230,000 per annum.
SOURCES


*Special Educational Needs Advisory Forum [Online]. Available at: http://www.scotland.gov.uk/education/senaf/default.asp*

RESPONSES TO THE CONSULTATION ON THE DRAFT EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL


Association of Scottish Principal Educational Psychologists (2003)


Barnardo’s Scotland (2003)

Chartered Society of Physiotherapy (2003)

Child Health Directorate at Fife Primary Care Trust (2003)


Down’s Syndrome Scotland (2003)

Dyslexia in Scotland (2003)


Enable (2003)

Enquire (2003)

Equity Group (2003)

Govan Law Centre (2003)

Headteachers’ Association of Scotland (2003)

Home Education Advisory Service (2003)

Learning and Teaching Scotland (2003)


PAMIS (2003)

Scottish Child Law Centre (2003)


The Scottish EAL (English as an Additional Language) Co-ordinating Council (2003)

---

5 Copies of the actual written responses are available in the Scottish Executive’s library (contact telephone 0131 244 4565).
Scottish Human Services Trust (2003)
Scottish Independent Advocacy Alliance (2003)
Scottish Spina Bifida Association (2003)
Finance Committee


Under section 11(9) of the Public Finance and Accountability (Scotland) Act 2000, the Scottish Commission for Public Audit (members of which are appointed by the Parliament), must examine Audit Scotland’s proposals for its use of resources and expenditure for each financial year, and report them to Parliament.

The Commission published its report to Parliament on Audit Scotland’s Budget 2004-05 on 7 November 2003 and a copy of this report has been attached.

Audit Scotland’s budget is top sliced from the Scottish Consolidated Fund (as is the budget for the Scottish Parliamentary Corporate Body) and is, therefore, allocated before the Executive makes other allocations.

The Committee is invited to note the observations made by the Commission in its report and to note its recommendations that Audit Scotland’s bid for a budget of £7.105m for the year 2004/05 be approved by the Parliament and that Audit Scotland’s submission for an autumn budget revision of an additional £2.6m to the 2003/04 budget also be approved by Parliament.

Susan Duffy
Clerk to the Committee
The Scottish Commission for Public Audit

1st Report (Session 2) 2003

Audit Scotland’s Budget 2004-2005

Presented to the Scottish Parliament and published pursuant to section 11 (9) of the Public Finance and Accountability (Scotland) Act 2000

Friday 7th November 2003
Scottish Commission for Public Audit

Membership:
Margaret Jamieson (Convener)
Brian Monteith
Cathy Peattie
Keith Raffan
Andrew Welsh

Secretary to the Commission:
David McGill

Assistant Secretary to the Commission:
Seán Wixted
Scottish Commission for Public Audit

1st Report (Session 2) 2003

Audit Scotland Budget 2004-2005

The Commission reports to the Parliament as follows—

1. In terms of section 11(9) of the Public Finance and Accountability (Scotland) Act 2000, the Scottish Commission for Public Audit (“the Commission”) must examine Audit Scotland’s proposals for its use of resources and expenditure for each financial year, and report on them to the Parliament.

2. The Commission met on 8 October 2003 to take evidence from Mr Robert Black, Auditor General for Scotland and Mr Russell Frith, Director of Audit Strategy, Audit Scotland on Audit Scotland’s 2004/05 budget proposals. Subsequently, the Commission requested additional written information from Audit Scotland which was provided by the Auditor General on 20 October 2003. The Commission met on 6 November 2003 to consider its draft report to the Parliament on Audit Scotland’s budget proposals for 2004/05.

2004/05 Budget Proposals

3. Audit Scotland’s proposals for 2004-05 indicate a total resource requirement of £7.105m, comprising £5.8m for recurrent costs and £1.305m for capital. After taking account of a non-recurring provision of £0.5m in 2003-04, the bid represents an increase of 4.7% in the recurrent costs approved for that year. Additional capital resources are requested for a major refurbishment of one of Audit Scotland’s Headquarters buildings.

4. In addition, Audit Scotland is seeking approval of additional provision of £2.6m for 2003-04 by way of autumn budget revision, comprising £1.425m underspent in 2002-03 and £1.175m in respect of an additional VAT liability.

VAT

5. In its previous reports to the Parliament under section 11(9) of the Public Finance and Accountability (Scotland) Act 2000, the Commission has highlighted the ongoing situation regarding Audit Scotland’s VAT status. The establishment of Audit Scotland in April 2000 merged the staff, assets, liabilities and obligations of the Accounts Commission and the staff of the
National Audit Office in Scotland. Each of these bodies had differing VAT positions. Audit Scotland has been in dialogue with HM Customs and Excise since early 2000 in order to seek confirmation that the VAT status of the previous Accounts Commission would be transferred to it. The Accounts Commission received special status under section 33 of the VAT Act 1974 under which it was treated as analogous to a local authority and therefore did not charge VAT to audited bodies but could recover all of its input tax.

6. In evidence to the Commission in November 2002, the Auditor General stated that he expected that a final decision on VAT would be reached by HM Customs and Excise shortly. However, in his evidence to the Commission the Auditor General has confirmed that no final decision has yet been reached by HM Customs and Excise and, as a result, Audit Scotland will be liable for additional VAT costs up to 31 March 2004. As no provision had been made in the current 2003/04 budget to cover this situation, the Auditor General has requested a revision to the 2003/04 budget granting a further £1.175m to cover the cost of any liability which may arise. The Commission therefore agrees to the Auditor General's request for an additional £1.175m, to be allocated to Audit Scotland's current 2003/04 budget to cover the cost of VAT liability.

7. The delay by HM Customs and Excise in reaching a final decision on Audit Scotland’s VAT status has been an issue of some concern to the Commission since it first reported to the Parliament on the subject in 2000. The Commission has, on a number of occasions since then, offered to exercise whatever influence it could to assist Audit Scotland in achieving a quick decision from HM Customs and Excise. The Auditor General stated in the evidence to the Commission that, when it became apparent to Audit Scotland that a quick decision would not be forthcoming on VAT, Audit Scotland also became aware that HM Customs and Excise was in the process of conducting a general review of the VAT position of all audit bodies in the UK. This would, most likely, further delay any final decision on Audit Scotland’s VAT status. In the Auditor General’s opinion intervention by the Commission in these circumstances would not have resulted in a quick resolution.

8. The Commission also noted with concern the firm view expressed by HM Customs and Excise to Audit Scotland in correspondence of 1 October 2003 that, while no final decision has been reached, it is clear that Audit Scotland will not be able to recover VAT under the provisions of section 41 of the VAT Act 1994. Such a view has major implications for Audit Scotland in terms of both its annual costs and any increase which may be necessary in the audit fee it charges to audited bodies in order to recover these costs.

9. The Commission agreed with the opinion expressed to it by the Auditor General that, in the light of the firm view expressed by HM Customs and Excise, officer level exchanges between the two organisations have run their course and, if a different result is to be obtained, the intervention of the Commission may be appropriate at this time.
10. Therefore, the Commission will write urgently to the Minister for Finance and Public Services to draw his attention to the potential implications of the view expressed by HM Customs and Excise for public expenditure in Scotland. The Commission proposes to write to the Chancellor of the Exchequer of HM Government, to bring this matter to his attention and exercise what influence it can to achieve a positive decision for Audit Scotland’s VAT status.

**Capital Costs**

11. The Commission notes Audit Scotland’s request for an increase of £0.9m in its capital expenditure budget 2004/05. In his evidence to the Commission the Auditor General stated that the requirement for this increase was as a result of an assessment of Audit Scotland’s accommodation needs, and its legal requirement to ensure all its premises comply with the Disability Discrimination Act 1995. The Auditor General stated that the bulk of this increase related to the decision to refurbish Audit Scotland’s premises at 18 George St, Edinburgh. The Commission agrees with the Auditor General’s opinion that, following the results of the accommodation assessment, refurbishment of premises represents best value for money.

**Autumn Budget Revision 2003-04**

12. The Commission notes Audit Scotland’s proposals in relation to the underspend carried forward from 2002-03 and is satisfied that the resources can be used for these purposes. The Commission also supports the bid for resources to meet the additional VAT liability.

**Corporate Governance**

13. The Commission welcomes the production of a draft corporate plan for Audit Scotland as part of its programme in achieving best practice in corporate governance. As part of this process, the Commission recommends that Audit Scotland seek to develop quantifiable targets in its corporate plan against which performance can be measured. Such targets would assist the Commission in its scrutiny of Audit Scotland’s annual budget and would significantly contribute to the programme of achieving best practice in corporate governance.

**Conclusions**

14. We draw the Parliament’s attention to the observations made and recommend that Audit Scotland’s bid for a budget of £7.105m for the year 2004/05 should be approved by the Parliament. We further recommend that Audit Scotland’s submission for an autumn budget revision of an additional £2.6m to the 2003/04 budget be approved by the Parliament.