The Committee will meet at 10.00 a.m. in Committee Room 1 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—

   Wendy Wilkinson, Bill Team Leader; Donna Bell, Finance and Central Services Department; Naseef Huda, Research, Economic and Corporate Strategy Unit and Jillian Boyle, Performance Management and Finance, Health Department, Scottish Executive

2. **Scottish Water**: The Committee will take evidence as part of their investigation from—

   Alan Sutherland, Water Industry Commissioner for Scotland; John Simpson, Director of Cost and Performance and Katherine Russell, Director of Corporate Affairs, Office of the Water Industry Commissioner for Scotland

   Professor Alan Alexander, Chairman; Dr Jon Hargreaves, Chief Executive and Douglas Millican, Director of Finance, Scottish Water

3. **Items in private**: The Committee will decide whether to consider the commissioning of external research for the Cross-Cutting Expenditure Review into Economic Development in private at future meetings.

4. **Budget Process 2004-05 (in private)**: The Committee will agree its draft report on Stage Two of the Budget Process 2004-05.

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

**Agenda item 1**

Paper by the Clerk – Written Evidence
PRIVATE PAPER

**Agenda item 2**

Paper by the Reporters
PRIVATE PAPER

**Agenda item 4**

PRIVATE PAPER
Finance Committee
Education (Additional Support for Learning) (Scotland) Bill - Financial Memorandum
Written Submissions

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

   Scottish Legal Aid Board (SLAB)
   Education Department, Scottish Executive
   Supplementary Written Evidence from COSLA

2. The Committee is invited to consider these submissions.

Susan Duffy
November 2003
SUBMISSIONS FROM THE SCOTTISH LEGAL AID BOARD

Introduction
The Scottish Legal Aid Board (“the Board”) is grateful for the opportunity to submit comments on the Financial Memorandum to the Finance Committee. The Board’s comments are restricted to the legal aid implications of the Financial Memorandum.

Submissions
1. The Financial Memorandum suggests that the net cost to the Scottish Legal Aid Fund will be £85,000.

2. Any additional cost resulting from the Bill would arise under Advice and Assistance and civil legal aid.

3. Since no form of legal aid will be available for legal representation before the Additional Support Needs Tribunal, the only additional cost to the Scottish Legal Aid Fund in connection with the tribunal would arise from Advice and Assistance being provided to a parent before and after a tribunal hearing. Advice and Assistance could also be used to assist the parent to apply for civil legal aid in connection with an appeal to the Court of Session. The cost implications for Advice and Assistance will depend on the number of financially eligible parents who are provided with Advice and Assistance on matters arising from the Bill. Overall, costs under advice and assistance may well be modest. The average case cost, across all civil subject matters, in 2002/2003 was £148. The Financial Memorandum anticipates 300 appeals to the tribunal. If all 300 appellants were eligible for Advice and Assistance, this would create a cost of £44,400 to the Fund.

4. Civil legal aid will continue to be available for proceedings before the Sheriff. It will also be available for appeals to the Court of Session against decisions of the tribunal. The financial impact upon the Fund will depend upon the number of legally assisted appeals. In 2002/2003, the average cost of a legally aided appeal in the Court of Session was £3,797. The Board understands that it is anticipated that there may be between 10-20 appeals to the Court of Session per year. These would cost between £37,000 to £80,000 to the Fund.

5. Unless there are substantial numbers of appeals against tribunal decisions, any additional cost arising may well be relatively modest.

Conclusions
The Board is happy to assist the Finance Committee with any further information it may require.

Philip Shearer
SUBMISSION FROM THE EDUCATION DEPARTMENT, SCOTTISH EXECUTIVE

As you know, officials are scheduled to give evidence to the Finance Committee on Tuesday 2 December regarding the Financial Memorandum for the above Bill. In support of this, please find enclosed a submission to the Finance Committee setting out the context for the Bill and the approach taken in preparing the Financial Memorandum.

I trust this will be helpful to the Finance Committee in their scrutiny of the cost implications of the Bill.

Wendy Wilkinson
Head of ASL Bill Team

Introduction
This paper sets out the context for the Education (Additional Support for Learning) (Scotland) Bill and the approach taken in preparing the Financial Memorandum. It aims to provide further information to the Finance Committee to assist their scrutiny of the financial implications of the proposed legislation.

Context
The Additional Support for Learning Bill is one strand of the Executive’s drive for improving education and children’s services. The Bill is designed to provide the legislative framework to ensure that all children’s educational support needs are identified and met. It is most important to note when considering the financial implications of the Bill that we are not starting from a zero base. Children who require extra support to benefit from education already exist and many are receiving support services to help their learning.

Good practice is already delivering services beyond the current statutory obligations and significant investment is being made to improve all children’s services, including those directed at education. The net expenditure by local authorities on special educational needs, for example, increased by 9.5% from 2000-01 to 2001-02, when the expenditure was in excess of £258 million. The 5 National Priorities in Education provide the focus for improvements in schools and the latest self-assessment by schools indicates that most rate their provision for meeting special educational needs as being either very good or good. Investment through the National Priorities Action Fund to support improvements in education, including the priority to improve inclusion and support to those with additional needs, is £141 million in 2003/04, rising to £154 million in 2004/05 and £162 million in 2005/06. Furthermore, implementation of this proposed legislation on additional support for learning should be seen in the context of the programme for better integrated children’s services. Developments are underway on the overarching framework for information sharing and integrated assessment of children in need.

The Executive does recognise that there are varying levels of services across the country to provide for children’s additional support needs for learning. Providing a new legislative framework will even out the playing field and so filling the gaps in services is acknowledged as a cost implication of the Bill. However, in attempting to quantify the costs of filling these gaps it became clear from those consulted that
there was no particular group of children with additional support needs who were not receiving any support for their learning. It was considered, rather, that levels of support services varied across the range of needs pupils may present with, as well as across the country.

Preparing the Financial Memorandum
The Bill repeals current provision for the Records of Needs system and proposes a new system for supporting additional needs for learning. Preparing the Financial Memorandum therefore required information on costs of the current system from local and health authorities. A consultant was commissioned by the Executive in 2002 to research the cost implications of changing to the proposed new system. This research involved interviewing and obtaining information principally on current arrangements from 10 local authority areas, namely East Dunbartonshire, Edinburgh, Glasgow, Falkirk, Angus, Eilean Siar, North Lanarkshire, Highland, Dumfries and Galloway and Perth and Kinross. Information included input to the current system by local authorities, health providers, further education colleges and careers advice. This was used to help inform the development of the Financial Memorandum.

In 2003, when the draft Bill was published for consultation, a working group was established to advise on preparation of the Financial Memorandum. The Convention of Scottish Local Authorities (CoSLA) was contacted to propose members. The group comprised representatives from CoSLA, Association of Directors of Education in Scotland (South Lanarkshire Council), Association of Directors of Social Work (East Lothian Council), City of Edinburgh Council (Education Department) and Fife Council (Finance Department), as well as officials from various parts of the Scottish Executive. Three meetings were held to discuss the key areas where there would be cost implications from the proposed Bill, to discuss the model for estimating costs and to consider a draft of the Financial Memorandum.

The group facilitated a request for information and views from local authorities regarding gaps in services, annual activity for aspects of Records of Needs system and views on the future system. Returns were received from the following Councils: Highland, East Renfrewshire, South Lanarkshire, Glasgow, Edinburgh, Falkirk, Aberdeen, West Dunbartonshire and South Ayrshire.

In addition, a group representing health interests was established comprising representatives from Forth Valley NHS Board, Greater Glasgow NHS Board and North Glasgow University Hospitals NHS Trust. The group convened twice to discuss the implications for the NHS arising from the Bill. The lead Child Health Commissioners of all 15 boards were approached for information and returns were received from the following: Argyll and Clyde, Ayrshire and Arran, Borders, Dumfries and Galloway, Fife, Forth Valley, Grampian, Greater Glasgow, Highland, Lothian and Tayside.

Information was also obtained from the Scottish Further Education Funding Council and Careers Scotland, for their respective interests, on costs and level of input to the current system.
Significantly, it was acknowledged by all that views on cost implications were influenced and affected by other factors, particularly workforce matters (in social work services and health therapy services) and the recently commenced legislation on the presumption of mainstreaming (along with the report by Audit Scotland, Moving to Mainstream, May 2003). The Executive recognises that both these issues are a concern to stakeholders, but considers that as they are not a direct consequence of this Bill the costs associated with them should not form part of the Financial Memorandum and are therefore excluded from estimations of the cost implications.

In the returns received, a wide range of estimates of current and potential future levels of service emerged. However, the information was factored into, as best as it could be, the calculations and estimates of costs which feature in the Financial Memorandum. Ranges have been presented, where appropriate, to illustrate the degree of estimation involved. In addition, scenario planning was undertaken around those key assumptions which were likely to have a large influence on costs. As part of future funding considerations, the Executive will take account of the risks identified by the working group and those consulted.

Criteria for a Co-ordinated Support Plan
There appears to be some variation in interpretation of the provision in the Bill for the criteria on eligibility for a Co-ordinated Support Plan (CSP) and in turn this has influenced predictions of the numbers of pupils likely to have a CSP. The Executive remains clear that the policy intention is for CSPs to be for those with most complex or multiple needs who require significant services from outwith education, either through other functions of a local authority or through functions of other organisations, to support their learning. The Minister for Education and Young People is writing to the Education Committee to clarify this matter.

EXPLANATION OF SCENARIO PLANNING ON FINANCIAL MEMORANDUM COSTS

The Financial Memorandum sets out the best-estimate costs of the Bill to the various bodies involved. These best-estimates were obtained by taking a bottom-up approach to the cost modelling process i.e. component costs and parameters were established through in-depth consultation before calculating aggregate costs for each body. However, given the inherent uncertainty involved in the projections, two types of scenario planning were carried out around the key parameters:

The number of CSPs (Co-ordinated Support Plans) as a proportion of RoNs (Records of Needs);
The number of children going through the ‘future needs system’.

Through the use of the scenario planning, outlined below, we were able to test the sensitivity of the cost estimates to certain unavoidable future uncertainties. It should be noted that the costs associated with the scenario planning are not included in the Financial Memorandum, where we have reproduced only our best estimates. The ranges included in the Financial Memorandum are generally due to uncertainty over
that group of children who will require a CSP but would not currently receive a Record of Needs (see below).

**CSPs as a proportion of RoNs**
The costs shown in the Financial Memorandum are based on the assumption that 50% of children who currently have Records of Needs will have such needs that require a CSP. In addition to this it is assumed that a proportion of the school population (0.3-0.6%) who do not currently have a Record will also have such needs and require a CSP. We varied the ‘50%’ assumption in the range 40-70%. The range used (0.3-0.6%) for the proportion of the school population who do not currently have a Record but who would require a CSP was held constant. The figures produced below assume this proportion equals 0.5%.

The table below illustrates the cost implications for local authorities, health bodies, Careers Scotland and FE colleges in gross and net terms. The latter subtracts the current costs incurred by the relevant body from the costs of administering the current system.

<table>
<thead>
<tr>
<th></th>
<th>40% estimate</th>
<th>50% estimate Financial Memorandum</th>
<th>60% estimate</th>
<th>70% estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LOCAL AUTHORITIES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of Administering CSP system</td>
<td>£6,300,000</td>
<td>£7,300,000</td>
<td>£8,400,000</td>
<td>£9,400,000</td>
</tr>
<tr>
<td>Net Annual costs</td>
<td>£1,880,000</td>
<td>£2,770,000</td>
<td>£3,790,000</td>
<td>£4,760,000</td>
</tr>
<tr>
<td><strong>HEALTH BODIES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of Administering CSP system</td>
<td>£829,000</td>
<td>£915,000</td>
<td>£1,008,000</td>
<td>£1,100,000</td>
</tr>
<tr>
<td>Net Annual costs</td>
<td>-£171,000</td>
<td>-£55,000</td>
<td>£38,000</td>
<td>£129,000</td>
</tr>
<tr>
<td><strong>CAREERS SCOTLAND</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of Administering CSP system</td>
<td>£992,000</td>
<td>£1,000,000</td>
<td>£1,021,000</td>
<td>£1,037,000</td>
</tr>
<tr>
<td>Net Annual costs</td>
<td>-£8,000</td>
<td><strong>NIL</strong></td>
<td>£21,000</td>
<td>£37,000</td>
</tr>
<tr>
<td><strong>FE COLLEGES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of Administering CSP system</td>
<td>£225,000</td>
<td>£230,000</td>
<td>£232,000</td>
<td>£235,000</td>
</tr>
<tr>
<td>Net Annual costs</td>
<td>-£5,000</td>
<td><strong>NIL</strong></td>
<td>£2,000</td>
<td>£5,000</td>
</tr>
</tbody>
</table>
Demand for Extra Future Needs Support
All young people currently receive support from careers advisers in preparing for leaving school. The cost implications of the Bill in addressing the future support needs of children will be where ‘extra’ support is required. Estimating the extent of this extra support is made difficult due to a number of issues. First, as with the current system, the level of extra input required each year will vary as each child progresses through secondary school. Added to this is the problem of identifying the timing of when the ‘extra’ input will be required i.e. S2, S3, S4 or beyond. Furthermore, needs will differ considerably across local authorities and will depend on the adequacy of existing careers support. Therefore, due to the varying levels of need, average estimates of support were used to calculate the best-estimate net costs shown in the Financial Memorandum.

In acknowledgement of the uncertain nature of these calculations, scenario planning was carried out around the number of children who would require extra support in preparing and planning for leaving school and moving to adult support services to support their future needs.

It has been estimated that if the numbers of children requiring extra support were to rise significantly above our best estimates, net costs to the relevant bodies below could rise to a maximum of the following:

<table>
<thead>
<tr>
<th></th>
<th>Financial Memorandum Estimates</th>
<th>Maximum</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Net Cost</td>
<td>Total Net Cost</td>
<td>Change</td>
</tr>
<tr>
<td>LOCAL AUTHORITIES</td>
<td>£2,770,000</td>
<td>£3,470,000</td>
<td>£700,000</td>
</tr>
<tr>
<td>HEALTH BODIES</td>
<td>(55,000)</td>
<td>£95,000</td>
<td>£150,000</td>
</tr>
<tr>
<td>CAREERS SCOTLAND</td>
<td>£Nil</td>
<td>£510,000</td>
<td>£510,000</td>
</tr>
<tr>
<td>FE COLLEGES</td>
<td>£Nil</td>
<td>£110,000</td>
<td>£110,000</td>
</tr>
</tbody>
</table>


I have been noting with interest the oral and written evidence which witnesses have provided to date to the Education and Finance Committees about the Education (Additional Support for Learning) (Scotland) Bill as it progresses through Stage 1 of the parliamentary process. I am pleased that the majority of witnesses are broadly
supportive of the principles underpinning the Bill, although a number have made suggestions which, in their view, would lead to improvements in it.

One particular issue has arisen which has prompted me to write to you, and that concerns the interpretation by some, including CoSLA representatives, of the criteria for eligibility for a Co-ordinated Support Plan (CSP). There appears to be a misunderstanding that the changes made to section 2(1)(c) of the Bill from that in the consultation draft of the Bill, will lead to an increase in the number of children meeting the criteria for a CSP. This in turn would impact on the estimated cost implications of the Bill.

I would like to reassure you and all Committee members that although changes have been made to section 2 of the Bill these have not in any way altered the eligibility criteria for a CSP. I attach, at Annex A, a detailed account of what changes were made to section 2(1)(c) and the reason for these. As the extracts in Annex A indicate, the policy intention regarding eligibility for a CSP has not changed since the draft Bill was published for consultation in January of this year.

Legally “education authority” and “local authority” are the same entity, but education legislation refers historically to education authority as meaning the council exercising its education function. The Bill now makes explicit reference to the functions of an education authority other than its education function to clarify that local authority services other than education are to be regarded in same way as those from other agencies for purposes of this Bill. The change is intended to avoid any confusion which the use of the term “education authority” rather than “local authority” might have caused.

I can understand why these drafting changes, aimed at providing legal clarity, led to some misinterpretations of the position. However, I trust that this explanation together with the clear statement of policy intent is sufficient to reassure Committee members that the criteria for eligibility for a CSP have not changed from the draft Bill published for consultation.

A copy of this letter is being sent to the Clerk of the Finance Committee.

FOLLOW-UP SUBMISSION FROM COSLA

Thank you for your letter of 17 November inviting COSLA to provide written information to substantiate its claim that a higher proportion of children will fall within the scope of the Bill and receive a CSP than estimated by the Scottish Executive.

The assumption in the Memorandum is that 50 per cent of children with a RoN (2 per cent of the child population) 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; evidence derived from research literature and local authority data indicates that the following groups (and proportions in the child population) could be captured by the Bill and require a CSP:

- dyslexia (1-2%),
- ADHD (1%),
- dyspraxia (1%),
- language/autistic spectrum disorders (1%),
- sensory impairment (0.5%),
- social/emotional/behavioural difficulties (3-4%),
- moderate/severe/profound learning difficulties (1%),
- family circumstances relating to such factors as mental and physical health, criminal justice, marital breakdown, etc (3%),
- looked-after and other children under social work supervision (3%),
- some bilingual, gifted and homeless pupils (0.5%),
- children of ethnic minorities, of travellers or at some other cultural disadvantage (0.5%).

The incidence of pupils falling under many of these categories rose steadily during the 1990s and shows a continuing upward trend as methods of assessment and identification have gradually improved. Although there is some overlap between these categories, given the breadth of eligibility for a CSP under the Bill, there will inevitably be other pupils who fall outwith any of these categories who will be deemed eligible for a CSP. On the above basis, our estimate that 15 per cent of the child population could be captured by the Bill and require a CSP seems to be a reasonable one (unless there is an intention under the Bill to exclude from a CSP a large proportion of children attending special schools/classes, where, for example, therapy is delivered as an integral part of the provision). Ultimately, however, until the Executive provides more detail of the criteria for opening a CSP, the issue of the proportion of children captured by the CSP will remain problematic and resourcing uncertain.

Graham Atherton
Policy Manager
1. At its meeting on 4 November, the Committee appointed us as reporters to investigate issues surrounding Scottish Water. At its meeting on 11 November, the Committee agreed the following remit:

“To investigate the following issues:

accountability – looking at the role of the Water Industry Commissioner (WIC), the relationship with Scottish Water, the Scottish Executive and local authorities

structure – looking at water charging and debt management

investment – looking at capital projects, the profile of procurement and borrowing, billing and financial management

and to suggest potential areas for questioning of Scottish Water and the Water Commissioner. A paper to the Committee will be completed by 26 November prior to the evidence-taking session to be scheduled for 2 December.

To analyse the output from this evidence session and to produce a report for the Committee by 15 January. This report will contain proposals for future action that may be taken by the Committee.”

2. As proposed in the paper agreed by the Committee on 11 November, we met with representatives of the following organisations on 20 November 2003:

Water Customer Consultation Panels
Scottish Trades Union Congress
Forum of Private Businesses in Scotland
Scottish Council for Voluntary Organisations
Federation of Small Businesses

3. We would like to thank these organisations for taking the time to offer their views which we found extremely helpful. The following gives a flavour of the issues that were raised:

Accountability and Consultation

4. There was a view that the combined efforts of the Scottish Executive, Scottish Water and the Water Industry Commissioner Scotland (WICS) were perceived not to be working in the public interest. In particular, there was concern that little or no consultation took place prior to the water increases announced in April 2003.

5. Additionally, it was felt that late notice was given of charges making it difficult for organisations to budget, particularly small businesses and the voluntary sector.
6. It was thought that the last Strategic Review did damage and undermine confidence that the WIC was working in the consumer interest. The feeling was that the next strategic review must give due regard to customer views. On this issue, there was concern that the Water Customer Consultation Panels should be more clearly defined so that the good work they are doing can be built upon and that they can have an integral role in overall consultation.

7. There was also a view that the basic structure and accountability is clear on paper although questions were raised as to whether or not these were the correct structures and whether or not the current lines of accountability were working properly. Additionally, it would appear there is a perception that the WIC “filled a void” with his strategic review and “assumed the mantle of Regulator”.

8. Finally, it was felt that there is a need for a more formal complaints procedure and evidence produced that complaints are being taken seriously.

Financial Structure, Strategy and Operational Considerations

9. The view was there was a need for real world pricing. Additionally, the assertion that this necessarily is a fixed cost industry was challenged and questions were raised as to why volumetric charging did not form a larger percentage of the overall charge.

10. The observation was made that the Strategic Review plans to see the outstanding Scottish Water debt extinguished by 2017 and questions were raised over the entire issue of debt management and whether what the current way of tackling debt was correct.

11. A further observation was that the “big battle” is on the pace of change and that it is not realistic to match the English performance. There was concern that there could be a danger that the efficiencies savings, especially redundancies, could have a negative effect and actually result in higher costs.

12. There was a need for “Objective Testing of Answers”

13. In summary, it was agreed that the variables which influence performance, costs and charges and therefore should be examined, include:

   - The borrowing limit
   - Actual Borrowing
   - Underspend
   - Access to EU Infrastructure Money
   - Capital Expenditure – New Installations
   - Capital Expenditure – Replacement of old infrastructure
   - Capital Expenditure – Achievable, Postponed, Downgraded
   - Developer contributions to new infrastructure
   - Use of PPP/PFI
   - Cost effectiveness of PPP/PFI deals
Rate of Repayment of Debt
Other channels of finance
Internal cost of capital
Operating expenditure
Domestic Non Payment (which may be around 7%)
Business non-payment
Effectiveness of charging systems and the completeness of data
The effect of the proposed Water Services Bill – would this potentially lead to a loss of large users?
Current billing deals that deviate from published terms and conditions
Charging principles
Charging skew between domestic and business (being mindful that there should be mechanisms for alleviating Water Poverty)

14. An overriding problem which was identified was that Scottish Water is expected to operate as if in a competitive environment (as with the privatised utilities) whereas it is actually operating in a public policy environment. If this situation is to continue, then Scottish Water needs to be properly funded.

**Economic Consequences**
15. It was recognised that there could be various economic consequences if Scottish Water if these issues are not addressed. These consequences include: a lack of water services for new developments, thereby potentially inhibiting the number of developments; higher fixed costs for businesses in Scotland; the loss of amenities in scenic village, thereby impacting on tourism and finally, the potential reduction in property values.

Jim Mather MSP
Jeremy Purvis MSP
Reporters to the Finance Committee