SUBMISSION FROM ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Education (Additional Support for Learning) (Scotland) Bill

Summary

1. Scotland’s children would benefit from the following amendments to the Bill:
   
   1. Provide for all appeals in respect of placing requests for special schools, independent or otherwise to be heard by the ASNTS;
   
   2. Provide for the Tribunal to direct, where a placing request appeal is allowed, the commencement date of that placement;
   
   3. Provide for a mechanism whereby a parent may refer back to the Tribunal where any decision of the Tribunal has not been implemented for the purposes of ensuring implementation and reporting;
   
   4. Provide for a statutory review to determine if there should be an assessment for any child who is accommodated or looked after for any period in excess of six months within the following three month period to identify whether or not the criteria for a co-ordinated support plan are satisfied;
   
   5. Provide for the jurisdiction of the Tribunal to be extended to cover all persons undergoing school education (including where this is provided within a FE college under school-college partnership arrangements) whether or not they have attained 18 years in view of the duties under the Act in respect of school leavers and transitions;
   
   6. Provide for any exclusions, where the parent or young person claims that the behaviour leading to the exclusion is in consequence of additional support needs, to have that matter considered by the Tribunal.

Introduction

2. This legislative review, three years after the legislation came into force, is welcomed, but it is limited in scope. We now have an opportunity to ensure that the legislation is made fit for purpose so that children and young people with additional support needs may have access to appropriate assessment, support and remedies. This response draws on our experience of 147 references, 55 of which have been decided at hearing, and it addresses only those matters where the Tribunal may assist in strengthening the ethos of the legislation.

3. It is noted that the Scottish Government’s Disability Equality Scheme (2008-2011) commits to “a full legislative review of the Education (Additional Support for Learning) (Scotland) Bill”. This response seeks to ensure that children and young people with additional support needs have access to appropriate assessment, support and remedies.
Support for Learning) (Scotland) Act 2004” by 2008/2009 in order to improve “education and support for children with additional support needs (ASN) and disabilities”. It is submitted that a broader review is appropriate and these proposals try to achieve this end.

4. The progress and development of the Tribunal can be followed in the President’s three Annual Reports delivered to Scottish Ministers for the years 2005 to 2008 and these can be accessed at www.asntscotland.gov.uk. We particularly welcome the fact that some of the legislative proposals implement issues highlighted in past reports as requiring amendment whilst others may be addressed through secondary legislation.

1. Placing request references

5. It is noted that the proposals include provision to permit the Tribunal to consider any placing request appeal where a CSP has been prepared, or is being considered, at any time before final determination by an education appeal committee or a sheriff. The intention to avoid the anomaly of a parent having to face two separate hearings is being addressed, but in the light of criticisms of the legislation as being too complex, particularly in respect of routes of redress, the proposed changes only serve to further complicate what should be a clear and consistent appeal pathway. In view of the very wide variation in the incidence of CSPs across education authorities and the fact that the references on placing requests dealt with by the Tribunal have all related to special schools then the proposal to reserve to the Tribunal all placing request appeals relating to special schools would greatly simplify, and bring consistency to decision-making in respect of placing requests.

6. It would also enable parties to benefit from a specialist decision-making body with expertise in additional support needs rather than such appeals being heard by the Education Appeal Committees. This amendment would remove the uncertainty in the Bill where the Tribunal may, or may not, decide to retain jurisdiction in some circumstances and prevent a situation where a parent may find themselves having to appear to give evidence on the issue of the placing request before two separate bodies.

7. The potential increase in the number of appeals to the Tribunal would be modest and could be accommodated within the existing Tribunal resources. The weight of the responses to the consultation on the amendments to the legislation support this change and the stated concern of “frivolous” references on CSPs to secure the jurisdiction of the Tribunal would be entirely resolved.

2. Commencement date of placement

8. The legislation should make explicit the power of the Tribunal to state, in appropriate cases, the commencement date where the placing request is allowed in order to deliver the certainty which the parent seeks once such a decision is made. There have been a number of instances where a decision of the Tribunal has not been implemented timeously and where the expectation
of the parent has not been met. Any decision stating the commencement date would, as in any Tribunal decision, be subject to parties being heard on this issue at hearing.

3. Power or referral for implementation

9. As indicated above, there have been a number of instances where the Tribunal has been asked by parents who have had a successful appeal outcome to ensure that the decision is correctly and expeditiously implemented by the authority. There is currently no power for the Tribunal to address this.

10. There are several possible routes for trying to ensure implementation but none of these revert to the Tribunal and there is no way of tracking when decisions made are not implemented, or not correctly or timeously implemented. A provision to grant parties liberty to apply directly to the Tribunal for power of referral to Scottish Ministers in the event of failure to implement would greatly enhance the force of Tribunal decisions and assure the effectiveness of decision issued.

4. Assessment for accommodated or looked after children

11. The apparent failure of the legislation to adequately encompass the needs of accommodated or looked after children is evidenced by the absence of any references to the Tribunal relating to such children and is also raised by HMIe in their 2007 Report. It is clear that specific provisions are required to demonstrate and deliver an effective service for some of the most vulnerable children.

12. *These Are Our Bairns*, the guide to community partnerships on being a good corporate parent published in September 2008, whilst recognising that many, if not most, children in this situation will have social, emotional or behavioural problems, barely mentions the Education (Additional Support for Learning) (Scotland) Act 2004 or the potential applicability of a co-ordinated support plan in meeting the needs of such children. Their generally poor educational attainment is well documented.

13. The needs of these children should be approached in a holistic manner through the change programme envisaged in Getting It Right For Every Child but those children with the most severe or complex needs should also be assessed for a CSP. There is no evidence that this is currently happening throughout all the authorities. These children all have needs which already involve agencies other than education but there may be an absence of a person to advocate on behalf of the child to ensure that the support in relation to the child’s educational development is appropriate or sufficient. Accordingly it is suggested that an amendment to provide that where a child is accommodated or looked after for a period in excess of six months, there should be a review to determine if an assessment should be carried out in the three month period thereafter to determine whether the child meets the criteria for a CSP. In the absence of such a provision it is likely that children or young
people who are accommodated or looked after will not be enabled to benefit from this legislation despite the policy intention that they be specifically included.

5. Extension of jurisdiction for all young persons undergoing school education

14. Under the present legislation the Tribunal has no jurisdiction when a young person reaches the age of 18 even if they are still attending school. A number of cases have addressed the needs of children who are aged almost 18 and the Tribunal cannot proceed to address the issues once the young person reaches that age despite the fact that the school provision may have an impact on the priority received by the young person in accessing transitional post-school provision. The amendment should simply change the definition of young person to define it by reference to a person undergoing school, or equivalent, education. Although this may be seen as a minor issue, it is submitted that such an amendment would be consistent with the intention to make accessible the appropriate provisions for school leavers with complex additional support needs and would result in little additional financial cost.

15. Such an amendment would also facilitate transitional arrangements for those learners who have had a significant element of their school education provided in a further education college from as early as S3. Many have additional support needs and may have a co-ordinated support plan. In some cases the young person may remain on the school roll until aged 18 and then transfer to the college as a student, at which point the authority is no longer responsible for the young person’s education. This amendment would undoubtedly ease the transition process.

6. Jurisdiction to cover exclusion appeals where the child had additional support needs

16. The broadly equivalent jurisdictions in Wales and England are currently considering proposals to bring within their ambit appeals relating to exclusions where the child has additional support needs (special educational needs) in view of the accepted close correlation between exclusions and additional need factors.

17. Any submission based on recent statistical evidence is not possible in view of the absence of figures relating to exclusion appeals in Scotland since the implementation of the 2004 Act. The most recent figures available dating from 2004/2005 confirm the relationship between additional support needs giving rise, in some cases, to school exclusion but the absence of more recent data alone raises concerns about the way in which such appeals are currently heard. In response to a request for current information, the Statistician at the Pupil and School Statistics Department of the Scottish Government stated “The information we receive from Local Authorities is deemed highly unreliable, with appeals (especially successful appeals) likely underreported. This would give an incomplete and possibly skewed picture if a large proportion of successful appeals were by pupils with ASN”.
18. The possibility of children with additional support needs, which are not currently sufficiently well addressed, being excluded from school, is a real one. By placing this type of appeal within the jurisdiction of the Tribunal these issues could benefit from adjudication by a panel comprising of two members with relevant expertise.

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President

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