EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

2nd Meeting, 2009 (Session 3)

Wednesday 21 January 2009

The Committee will meet at 10.00 am in Committee Room 5.

1. Decision on taking business in private: The Committee will decide whether to take item 6 in private.

2. Education (Additional Support for Learning) (Scotland) Bill: The Committee will take evidence on the Bill at Stage 1 from—
   
   Adam Ingram MSP, Minister for Children and Early Years, Robin McKendrick, Head of Branch 1, Support for Learning Division, Susan Gilroy, Policy Officer, Support for Learning Division, and Louisa Walls, Principal Legal Officer, Scottish Government.


   Fiona Hyslop MSP, Cabinet Secretary for Education and Lifelong Learning, George Reid, Team Leader, Further Education Strategy and College-Specific Issues, and School-College Review Team, and Anne Black, Policy Official, Further Education Strategy and College-Specific Issues, and School-College Review Team, Scottish Government.

4. Subordinate legislation: Fiona Hyslop MSP (Cabinet Secretary for Education and Lifelong Learning) to move S3M-3146—

   That the Education, Lifelong Learning and Culture Committee recommends that the draft Further and Higher Education (Scotland) Act 1992 Modification Order 2009 (SSI 2009/draft) be approved.

5. Petition PE1213: The Committee will consider a petition by Annette Masson calling on the Scottish Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for autistic spectrum disorder (ASD) to ensure that these fully meet the needs of children and to
consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.

6. **Review of Scottish Parliamentary Corporate Body supported bodies:** The Committee will consider its response to the consultation published by the Review of SPCB Supported Bodies Committee.

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Clerk to the Education, Lifelong Learning and Culture Committee  
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The papers for this meeting are as follows—

**Agenda Item 2**

Paper by the Clerk  
ELLC/S3/09/2/1

**Agenda Item 3**

SSI cover note  
ELLC/S3/09/2/2


**Agenda Item 5**

PE1213 cover note  
ELLC/S3/09/2/3

**Agenda Item 6**

Paper by the Clerk  
ELLC/S3/09/2/4 (P)
Background

1. The *Education (Additional Support for Learning) (Scotland) Bill* (SP Bill 16)\(^1\) was introduced in the Scottish Parliament on 6 October 2008 by Fiona Hyslop MSP.

2. The Parliamentary Bureau subsequently referred the Bill to the Education, Lifelong Learning and Culture Committee as lead committee at Stage 1.

3. At its meeting on 1 October 2008, the Committee agreed its approach to its Stage 1 scrutiny of the Bill.

4. The Committee issued a call for evidence with a closing date set as 20 November 2008. It subsequently invited responses from local authorities which did not respond to the initial call for evidence, with a closing date set as 18 December 2008. All responses received have been circulated previously to members and are available on line at this link—


Scrutiny to date

5. The Committee agreed that, as part of its scrutiny, it would hold an informal roundtable discussion session with a group of voluntary sector representatives before it began to take evidence on the Bill formally.

6. This session was held on 26 November 2008. A note of this session is available at this link:


7. On 3 December 2008 the Committee began its formal scrutiny of the Bill and took evidence from Scottish Government officials. The Official Report of that session can be viewed on-line at this link—

   http://www.scottish.parliament.uk/s3/committees/ellc/or-08/ed08-2902.htm#Col1719

8. On 10 December 2008 the Committee took evidence from the Additional Support Needs Tribunals for Scotland (ASNT). The Official Report of that session can be viewed on-line at this link—

http://www.scottish.parliament.uk/s3/committees/ellc/or-08/ed08-3002.htm#Col1755

9. On 17 December 2008 the Committee took evidence from Govan Law Centre and the Independent Specialist Advocacy Service (ISEA). The Official Report of that session can be viewed on-line at this link—

http://www.scottish.parliament.uk/s3/committees/ellc/or-08/ed08-3102.htm#Col1832

10. On 14 January 2008 the Committee took evidence from Argyll and Bute Council; City of Edinburgh Council; Glasgow City Council; and ADES.

Evidence session on 21 January 2008

11. On 21 January 2009 the Committee will take evidence from the Minister for Children and Early Years. This is the final oral evidence session.

Draft Stage 1 report

12. The Committee will then have a maximum of three meetings (28 January 2009; 4 and 11 February 2009) to consider and agree its Stage 1 report. The deadline for the completion of Stage 1 set by the Parliament is 6 March 2009.

Nick Hawthorne
Senior Assistant Clerk
Education, Lifelong Learning and Culture Committee
Background


2. If approved, this draft Order would ensure that a college of further education would no longer be required to pay a portion of proceeds from disposal of certain property to the Scottish Ministers. Any payment would, in future, be made to an educational charity directed by the Scottish Ministers. This is to ensure that governing bodies of colleges of further education would not fail the charity test by virtue of section 18(5) forming part of its constitution.

3. The Education, Lifelong Learning and Culture Committee has been designated as lead committee for the instrument and is required to report to the Parliament by 2 February 2009. The Minister responsible is Fiona Hyslop, Cabinet Secretary for Education and Lifelong Learning.

4. The Subordinate Legislation Committee considered the draft SSI at its meeting on 6 January 2009, and determined that it did not need to draw the attention of the Parliament to the instrument on any of the grounds set out within Rule 10.3.1.

5. A note on the procedure for considering affirmative SSIs can be found at Annexe A.

Action

6. The Committee is invited to CONSIDER whether it wishes to recommend approval of the motion:


Nick Hawthorne
Senior Assistant Clerk
Education, Lifelong Learning and Culture Committee
Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks, and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’), and, where relevant, any other committee.

SSIs subject to approval: ‘affirmative instruments’

2. Under Rule 10.6.1, the lead committee “shall decide whether to recommend that the instrument or draft instrument be approved”.

3. The lead committee, by virtue of Rule 10.6.4, must then report to the Parliament on the instrument setting out its recommendations no later than 40 days after the instrument is laid.

Committee recommends approval of an instrument

4. Rule 10.6.5 provides that if the lead committee recommends approval of the instrument, the Parliamentary Bureau must lodge a motion to that effect and schedule time for consideration of the motion by the Parliament. Both the lodging and taking of the Bureau motion can be after the 40 day period has elapsed as the Standing Orders provide no time limit within which these steps must be taken.

Committee agrees not to recommend the approval of an instrument

5. Where the lead committee has considered a motion to recommend approval of the instrument and disagreed to it, then the committee should report to the Parliament indicating that it agrees not to recommend approval.

6. The Scottish Government would then have the option either to withdraw the instrument or to ask the Parliamentary Bureau to schedule time in the Chamber for a debate on it.

7. If the Bureau agreed, it would invite the Parliament, by way of a Business Motion, to decide whether to consider the instrument. If the Parliament agreed, the Bureau would schedule Parliamentary time for a debate. If, after debate, the Parliament did not agree to the motion before it, the instrument could not be approved and the Scottish Government would be required to consider whether to withdraw the instrument. Even if it did not formally withdraw, nothing further could be done with the instrument in the absence of parliamentary approval of the instrument.
Education, Lifelong Learning and Culture Committee

2nd Meeting, 2009 (Session 3), Wednesday 21 January 2009

Public petition: PE1213

Introduction

1. At its meeting on 2 December 2008, the Public Petitions Committee (PPC) agreed to refer petition PE1213 to the Education, Lifelong Learning and Culture Committee (ELLCC) for further consideration—

   Petition by Annette Masson calling on the Scottish Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for Autistic Spectrum Disorder (ASD) to ensure that these fully meet the needs of children and to consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.

2. A copy of PE1213 is attached at Annexe A and is also available at this link:


3. A SPICE briefing was prepared for the PPC consideration and is attached at Annexe B.

PPC consideration

4. At its meeting on 2 December 2008, the PPC agreed to refer the petition to the Education Lifelong Learning and Culture Committee for further consideration as part of its Stage 1 scrutiny of the Education (Additional Support for Learning) (Scotland) Bill. The PPC indicated that, during any consideration of the petition, the ELLCC may wish to invite views from the National Autistic Society and the Scottish Society for Autism.

ELLCC consideration

5. The ELLCC will consider the petition for the first time at its meeting on 21 January 2009.

6. John McDonald, Chief Executive, Scottish Society for Autism, took part in the Committee’s informal roundtable discussion session on the Education (Additional Support for Learning) (Scotland) Bill on 26 November 2008. In addition to this, the Committee received written submissions in response to its call for evidence to assist its Stage 1 scrutiny of the Bill from Autism Rights and the National Autistic Society Scotland.

Suggested future consideration

7. Given that the petition was referred to the Committee as part of its consideration of the Education (Additional Support for Learning)
(Scotland) Bill, it is recommended that the Committee defers further consideration of this petition until it has completed its work on the Bill.

**Action**

8. The Committee is invited to **CONSIDER** the suggestion above and **AGREE** its approach.

Nick Hawthorne  
Senior Assistant Clerk  
Education, Lifelong Learning and Culture Committee
Should you wish to submit a public petition for consideration by the Public Petitions Committee please refer to the guidance leaflet [How to submit a public petition](#) and the Guidance Notes at the back of this form.

1. NAME OF PRINCIPAL PETITIONER
   Annette Masson

2. TEXT OF PETITION
   Petition by Annette Masson calling on the Scottish Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for Autistic Spectrum Disorder (ASD) to ensure that these fully meet the needs of children and to consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.

3. ACTION TAKEN TO RESOLVE ISSUES OF CONCERN BEFORE SUBMITTING THE PETITION
   Regular meeting with the Headmaster who stated my child did not have ASD. Education Officer, Education Psychologist, Various Appeals.

   I believe the whole system has to be looked at as the authorities have access to lawyers and in fact have lawyers present fighting the case. If the child needs legal access this has to be paid for and seems very unjust.

   Will be appealing to sheriff court without legal access.

4. ADDITIONAL INFORMATION
   My son has been excluded from school 5 times. Each time was related to his disability. It seems the easy answer for the school is to exclude not include. I believe we are sending the message that ASD children have no rights.

   ASD children are being judged by members of an appeal panel who have no knowledge of ASD. In a case where I was helping a young boy with ASD, it was asked if maybe he was copying his brother who had ADHD and ASD. Another member asked if this was because he had been premature at birth. The solicitor told the panel that his parents were using his ASD as excuse for bad behaviour.

5. DO YOU WISH YOUR PETITION TO BE HOSTED ON THE PARLIAMENT’S WEBSITE AS AN E-PETITION?
   **YES** X **NO**

   CLOSING DATE
   20th November 2008
**COMMENTS TO STIMULATE ON-LINE DISCUSSION**

I believe that we have a real problem in that children with ASD are being excluded from schools. I believe that these children are being let down by the system. I have spent hours in discussion with Enquire Scotland, followed their advice and still got nowhere, I requested mediation and the school did not take part.

I believe that the schools are now are using exclusion as the easy option for dealing with children with ASD and that the exclusion panels who do not have the experience of this condition are always supporting the school no matter what evidence is presented.
Petition Number: PE1213

Main Petitioner: Annette Masson

Subject: Calls on the Parliament to urge the Scottish Government to review the current assessment, diagnosis and appeals procedures for Autistic Spectrum Disorder (ASD) to ensure that these fully meet the needs of children and to consider whether all the support that is necessary within the education system is in place to support children diagnosed with ASD.

Background
Autistic Spectrum Disorder (ASD) is a lifelong developmental disability. It is referred to as a ‘spectrum’ because people with autism share three main areas of difficulty which will affect them in different ways. These are: social communication; social interaction; and social imagination.

The Petitioner is concerned about the level of support in place in the education system for children with additional support needs (ASN), as well as assessments and appeals. In particular, the Petitioner questions the level of knowledge of Education Authority Appeal Committees (EAC) regarding ASD.

The Education (Additional Support for Learning) (Scotland) Act 2004
The Education (Additional Support for Learning) (Scotland) Act 2004, in force since November 2005, created a framework for local authorities and other agencies to support all children with ASN. The 2004 Act created a broad definition of ASN which includes all children who, for whatever reason, require additional support to benefit from school education.

Local authorities are required by the Act to assess those children for whose education it is responsible and to make adequate and efficient provision for the additional support required.

Some children will require co-ordinated support from a range of agencies, and may require a Co-ordinated Support Plan (CSP). The CSP is a statutory document, subject to regular review and monitoring. A CSP must be drawn up where:

- the local authority is responsible for the child’s education, and
• the child has ASN which have a significant adverse effect on their education. (These needs can arise from one or more complex factors or from multiple factors which taken together have a significant adverse effect), and
• those needs are likely to continue for more than a year, and
• those needs require significant additional support to be provided beyond education such as from social work or health

A child with ASD will have ASN, but a CSP is dependent on the above factors.

**Resolving disputes**
The 2004 Act provides the following mechanisms for resolving disputes concerning children with ASN:

• Mediation services – local authorities must provide independent mediation services to resolve disagreements in relation to authority functions under the Act.
• Dispute resolution – local authorities are required by regulations under the Act to have procedures in place to resolve disputes. Dispute resolution is carried out by an independent adjudicator who considers the case and makes recommendations to all parties
• Additional Support Needs Tribunal – matters relating to CSPs can be appealed to the Additional Support Needs Tribunal

**Appealing against exclusion from school**
The Petitioner refers specifically to appeals regarding exclusion from school. Exclusions are not covered by the 2004 Act and, therefore, these are heard by Education Appeal Committees (EAC), irrespective of whether a child has ASN or a CSP.

Where an education authority decides to exclude a pupil on a long-term temporary basis or to remove the pupil from the school register, the authority must first identify a suitable alternative placement for the pupil.

Parents have the right to appeal the decision to exclude under Section 28H of the Education (Scotland) Act 1980. The appeal is made first to the EAC. The EAC may either recommend the pupil’s unconditional re-admission to school, modify the conditions of return, or uphold the decision. The education authority must comply with the decision.

If dissatisfied with the decision, parents have further recourse to the sheriff, but must submit an appeal within 28 days of receiving the decision of the appeal committee. The sheriff has the same options as to the appeal committee, but his or her decision is final.

**Scottish Government Action**
The Scottish Government has introduced the *Education (Additional Support for Learning) (Scotland) Bill* (the Bill) which makes amendments to the 2004 Act. The Bill makes a number of technical changes in order to give better effect to the original policy intention. The main proposal is to allow ‘out of
area’ placing requests to be made by parents of children with ASN, so that a child may attend a school in a different authority to that in which they live. There are also proposals relating to appeals to the Additional Support Needs Tribunal which mainly concern when a placing request appeal would be considered by a Tribunal, rather than an EAC, and when cases can transfer back from the Tribunal to the EAC or sheriff. There is no intention of bringing exclusions within the scope of the 2004 Act.

The subject of exclusions is not something which has been emphasised by respondents to the consultation on the Bill. However, some of the respondents expressed concern about the level of knowledge which EACs had of ASN issues. A key factor is the wide definition of ASN which can sometimes involve very complex issues about the type of provision required. A SPICe Briefing on the Bill will be published on 27 November 2008.

Education Appeal Committee reform proposals
The previous Scottish Executive published proposals for reforming Education Appeal Committees (2006). This noted that: “A report in 2000 by the Scottish Council of the Committee of Tribunals, who oversee all tribunals in Scotland, found that the current processes around EACs were often "seriously unsatisfactory". The Committee's key recommendation was that all those involved with EACs should be properly trained. The main proposals for improving the current system were:

- issuing guidance for local authorities
- producing national training materials
- producing an information leaflet for parents and young people

Responses to the consultation were published in March 2007.

The Scottish Government has not yet published a response to this consultation.

Scottish Parliament
The Education, Lifelong Learning and Culture Committee are designated as lead Committee on the Bill. They have issued a call for evidence scheduled to close at 12 noon on Thursday 20 November. The Committee is going to begin taking Stage 1 evidence on the Bill on Wednesday 3 December 2008.

Nicki Georghiou
Senior Research Specialist
14 November 2008

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