

Introduction

Purpose of the Act

1. The Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) provides the legal framework which underpins the system for identifying and addressing the additional support needs of children and young people who face a barrier to learning. The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out parents’ rights within the system. The Act has been subsequently amended by the Education (Additional Support for Learning) (Scotland) Act 2009 (“the 2009 Act”).

Purpose of the code

2. This code replaces the original code of practice published in 2005 in order to take account of the 2009 Act. It explains the duties on education authorities and other agencies to support children’s and young people’s learning. It provides guidance on the Act’s provisions as well as on the supporting framework of secondary legislation. The code uses the term “the Act” to include, where appropriate, the secondary legislative provisions and includes features of good practice on how these can be applied. It also sets out arrangements for avoiding and resolving differences between families and authorities.

Status of the code

3. Education authorities and appropriate agencies, such as NHS Boards, are under a duty to have regard to the code when carrying out their functions under the Act. The code is designed to help them make effective decisions but it cannot be prescriptive about what is required in individual circumstances. Education authorities and appropriate agencies must ensure that their policies, practices and information and advice services take full account of the legal requirements of the Act. The code includes brief case studies and examples of good practice to illustrate some of the processes involved in applying the Act’s main provisions. These do not offer definitive interpretations of the legislation since this is ultimately a matter for the courts.

4. The code is intended to explain the principles of the legislation and to illustrate how the law might operate in certain situations. It is important to an appropriate understanding of this framework that this code of practice is read as a whole. Individual chapters should not be taken out of the context of the whole code or read in isolation from each other and the Act and the related secondary legislation. There are some issues which the code cannot resolve and which must await the authoritative interpretation of the courts. The code is not intended to be a substitute for taking appropriate advice on the legal implications of particular situations.

Other legislation and policy

5. The guidance in this code should be read alongside other legislation and policy initiatives where appropriate. In particular, Curriculum for Excellence, Getting it right for every child (GIRFEC) and Hall 4¹ have implications for education authorities' and other agencies' support for learning strategies. The guidance in the code is consistent with these developments. A summary of other relevant legislation and policy issues is provided at Annex A.

Who should read the Code?

6. Education authorities and other appropriate agencies should encourage and support their employees in gaining knowledge of the content of the code and understanding of its application in their day-to-day work. Parents and young people may wish to refer to the code for information and advice on exercising their rights. However, specific guidance is available for them from *Enquire*, the helpline funded by the Scottish Government which provides information and advice on additional support needs.

7. Examples of professionals across agencies who are under a duty to have regard to the Code, or others who may find it useful when carrying out duties under other legislation, include:

Multi-agency planners: policy officers, planners and service managers working in children's services planning networks across education, health, social care, further education and training.

Education: education directorate, head teachers, teachers, classroom assistants, educational psychologists, staff in schools and nursery provision, including partner providers for pre-school education.

Early years and childcare: Early years practitioners, early years workers in family centres, staff delivering out of school provision.

Health: health visitors, public health nurses, community child health teams, paediatricians, physiotherapists, occupational therapists, speech and language therapists, other allied health professionals, clinical psychologists, and medical practitioners in paediatrics, general practice and child and family psychiatry.

Social work: social workers, residential child care staff, support workers, adoption and foster care service staff and social workers with responsibility for child protection and looked after children.

Voluntary sector: staff working in the whole range of children's services.

¹ See policy section in Annex A

Other agencies: professionals in other agencies who may be involved in integrated assessment teams, for example, childcare fieldworkers, youth workers, Children's Reporters, police, schools/community liaison team, community workers, staff working in careers services and in higher and further education.

Definitions

8. A young person has the same meaning as under the Education (Scotland) Act 1980 (referred to here as "the 1980 Act") which is a person over school age (generally over 16 years) who is not yet 18 years of age. Throughout the code the term young people is used instead of young persons, for ease of understanding.

9. "Education authority" under the 1980 Act is defined as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994. In practical terms, the education authority and the local authority are the same entity. In general, the code refers to an education authority when considering a local authority's educational functions and to a local authority in respect of functions other than educational ones such as social work services.

10. The Act applies generally to pre-school provision, which is under the management of the education authority, and made for prescribed pre-school children. This provision also can include provision where an education authority have an arrangement with another provider; for example, where the authority have² arranged for children to attend a private nursery under a partnership agreement. In certain circumstances, described in Chapter 3 below, the education authority have a duty to make provision for certain disabled children under the age of 3 years.

11. The meaning of disability, used in the Code, is as defined in the Disability Discrimination Act 1995 (c50), section 1(1). This states that "a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities."

References in the Code

12. The code refers to the Act and its associated regulations. References to the Act are in the margin of each page, for example s1(1)(a) refers to Section 1, subsection 1(a). References to the titles of other legislation or policies are also in the margin of each page.

Further information

13. Further information on the code of practice is available from:

Support for Learning Division
Scottish Government
Victoria Quay

² The Act treats the term "education authority" as a plural term and for the sake of consistency the code adopts this convention.

Edinburgh
EH6 6QQ

Tel: 0131 244 0946
Fax: 0131 244 0834
Email: ASLAct@scotland.gsi.gov.uk

Chapter 1

SUMMARY OF THE ADDITIONAL SUPPORT FOR LEARNING ACT

1. This chapter summarises the main provisions of the Education (Additional Support for Learning) (Scotland) Act 2004, referred to throughout this code as the Additional Support for Learning Act, or as, simply, the Act. This summary takes account of amendments to the Act introduced by the Education (Additional Support for Learning) (Scotland) Act 2009 (referred to as “the 2009 Act”) but does not cover all of the Act’s provisions. It is provided for ease of reference as a brief overview of the Act, as amended. It is not an authoritative interpretation of the legislation which only the courts can provide.

2. The Act provides the legal framework underpinning the system for supporting children and young people in their school education, and their families. This framework is based on the idea of additional support needs. This term applies to children or young people who, for whatever reason, require additional support, long or short term, in order to help them make the most of their school education. Children or young people may require additional support for a variety of reasons and may include those who:

- have motor or sensory impairments
- are being bullied
- are particularly able or talented
- have experienced a bereavement
- are looked after by a local authority³
- have a learning difficulty
- are living with parents who are abusing substances
- are living with parents who have mental health problems
- have English as a second language
- are not attending school regularly
- have emotional or social difficulties
- are on the child protection register
- are young carers.

3. The above list is not exhaustive nor should it be assumed that inclusion in the list automatically implies that additional support will be necessary. However, the 2009 Act automatically deems that all looked after children and young people have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education. In addition, education

³ Within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)

authorities must consider whether each looked after child or young person for whose school education they are responsible requires a co-ordinated support plan.

Functions and duties of education authorities

4. The Act confers various functions and imposes duties on education authorities in connection with the provision of school education for children and young people with additional support needs belonging to their area. Some of the main duties are listed below. Education authorities must:

- make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible, subject to certain exceptions
- make arrangements to identify additional support needs
- keep under consideration the additional support needs identified and the adequacy of support provided to meet the needs of each child or young person
- provide appropriate additional support for certain disabled children under school age (generally children under 3 years old) belonging to their area who have been brought to the attention of the authority as having additional support needs arising from their disability
- presume that all looked after children and young people have additional support needs unless the authority determine that they do not require additional support to enable them to benefit from school education
- publish, review and update, as necessary, specified information about their policy and arrangements in relation to provision for identifying, addressing and keeping under consideration such provision for each child or young person with additional support needs for whose school education the authority are responsible
- ensure that a summary of the information published under the Act as amended is available, on request, from each place in the authority's area where school education is provided, regardless of whether the school is under the management of the education authority
- provide the above summary in any handbook or other publications provided by any school in the authority's area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and on any website maintained by any such school or the authority for that purpose
- provide those children or young people who need it with a co-ordinated support plan and keep this under regular review
- provide independent and free mediation services for those parents and young people who want to use such services and publish information on these services
- have in place arrangements for resolving disputes

- at least 12 months prior to the expected school leaving date, request, and take account of, information and advice from appropriate agencies likely to make provision for the child or young person when he or she leaves school
- no later than 6 months before the child or young person is expected to leave school provide information to whichever appropriate agency or agencies, as the authority think appropriate, may be responsible for supporting the young person once he or she leaves school, if the child's parent or young person themselves agrees.

Powers of education authorities

5. The Act gives education authorities the **power** to help children and young people belonging to their area who have or may have additional support needs and for whose school education they are not responsible. Those who may be supported include children and young people sent to independent schools by their parents and those being educated at home.

6. Parents of the above children or young people may request the education authority to establish whether a child or young person has additional support needs or, if the education authority were responsible for the school education of the child or young person, would require a co-ordinated support plan. The education authority are not required to comply with the request but if they do they must provide the parent or young person with information and advice about the additional support required.

7. Managers of grant-aided or independent schools may request the education authority to establish whether a child or young person attending their school would require a co-ordinated support plan, if the education authority were responsible for the school education of the child or young person. The education authority are not required to comply with the request but if they do they must provide the managers of the school with information and advice about the additional support required.

8. Education authorities may arrange for children or young people with additional support needs to attend establishments outwith the United Kingdom which make provision wholly or mainly for those with such additional support needs.

Appropriate agencies

9. The Act has an impact wider than education and has significant implications for service providers and professionals working in the health and social work sectors and other appropriate agencies. An appropriate agency must help the education authority in the exercise of any of its functions under this Act, if requested to do so by the education authority, unless the request is incompatible with the agency's own statutory or other duties or unduly prejudices the agency's discharge of its own functions. Under the Act an appropriate agency can be:

- any other local authority
- any NHS Board

10. The Act enables Scottish Ministers to make an order naming other appropriate agencies. In addition to the above, Scottish Ministers have determined that Careers Scotland, all Colleges of Further Education and all Institutions of Higher Education, in Scotland, are appropriate agencies for the purpose of the Act.

Rights of parents and young people

s135(1)
1980 Act
as
amended

11. The Act introduces new rights for parents and young people. The term "parent" has the same meaning as in the 1980 Act and includes "guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of the Children (Scotland) Act 1995 in relation to, or has care of a child or young person." Parents have rights (and young people have these rights on their own behalf) to:

- request the education authority to establish whether their child has additional support needs or requires a co-ordinated support plan
- receive advice and information about their child's additional support needs
- request, at any time, a specific type of assessment and/or examination for the purpose of considering the child's additional support needs as well as when the education authority propose to establish whether a child or young person has additional support needs or requires a co-ordinated support plan (or where a plan is being reviewed)
- request the use of mediation services
- make use of dispute resolution arrangements for matters about additional support needs that are specified in regulations – generally matters not eligible to be considered by the Additional Support Needs Tribunal⁴ for Scotland
- make a placing request to the education authority requiring them to place the child or young person in a specified school which can include an independent or grant-aided special school if their child has additional support needs
- make a placing request to another education authority for their child to attend a school under the management of that authority
- be informed of the outcome of requests under the Act, reasons why a request is refused and any applicable rights to have a decision reviewed, for example, through mediation or dispute resolution, or referred to a Tribunal or an Education Authority Appeal Committee where it concerns a placing request where there is no related co-ordinated support plan matter
- request the education authority to establish whether their child needs a co-ordinated support plan or to review an existing plan
- receive a copy of the co-ordinated support plan, and any amended plan

⁴ The term 'Tribunal' will be used to refer to 'Additional Support Needs Tribunals for Scotland' unless otherwise stated.

- be asked for their views and have them taken into account and noted in the co-ordinated support plan
- refer to the Tribunal specified matters relating to co-ordinated support plans and related placing requests
- have a supporter with them or an advocate to present their case at any meeting with the school or education authority, in connection with the exercise of the education authority's functions under the Act and at tribunal hearings.
- have access to a free advocacy service in tribunal proceedings.

Chapter 2

ADDITIONAL SUPPORT NEEDS

1. This chapter of the code considers the meaning of the terms “additional support needs” and “additional support” and considers the factors that may give rise to the need for additional support.

Legal definition of additional support needs

Additional support needs

1.-(1) *A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.*

s1

(1A) Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)).

(1B) But where, in the course of identifying (in accordance with the arrangements made by them under section 6(1)(b)) the particular additional support needs of a child or young person who is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)), an education authority form the view that the child or young person is, or is likely to be, able without the provision of additional support to benefit from school education provided to or to be provided for the child or young person, subsection (1A) ceases to apply.”

Benefit from school education

2. The Act’s reference to school education links both the 1980 Act and the Standards in Scotland’s Schools etc. Act 2000 (referred to as “the 2000 Act”). The 1980 Act states that school education “means progressive education appropriate to the requirements of pupils, regard being had to the age, ability and aptitude of such pupils”. It should be noted that this definition does not require pupils to be attending school in order to be receiving school education. For example, pupils could be receiving school education in hospital or at home. The 1980 Act also places a general duty on education authorities to secure for their area adequate and efficient provision of school education.

s1(5) 1980
Act

3. The 2000 Act requires the education authority to secure that school education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. School education includes education provided by education authorities in exercising their duty to provide school education for eligible pre-school children, such as may be provided, for example, in nursery classes.

s1(2) 2000
Act

4. The benefit from school education which children and young people gain will vary according to their individual needs and circumstances. However, all children and young people benefit from school education when they can access a curriculum which supports their learning and personal development; where teaching and support from others meet their needs; where they can learn with, and from, their peers and when their learning is supported by the parents in the home and their wider community. A difficulty or particular need in one, or more, of these areas may lead to a requirement for additional support to be put in place to enable a child or young person to benefit from school education. Through *Curriculum for Excellence* all children and young people are entitled to a curriculum that includes a range of features at the different stages – <http://www.ltscotland.org.uk/curriculumforexcellence/curriculumoverview/aims/entitlements.asp>

5. The Act automatically deems that all looked after children and young people have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education. In practical terms this means that education authorities must make arrangements to identify the additional support needs, if any, of every looked after child or young person. In addition, education authorities must consider whether each looked after child or young person for whose education they are responsible requires a co-ordinated support plan.

S6
(1)(b)
and
(1A)

6. The reason for deeming that looked after children have additional support needs, unless it can be shown that they do not require additional support to benefit from school education, is that there is considerable evidence that looked after children and young people face significant cultural and institutional barriers which impede their success in education (reference: *Improving the Education of Looked After Children: A Guide for Local Authorities and Service Providers* (The Scottish Government, 2009), available at <http://www.scotland.gov.uk/Resource/Doc/265301/0079476.pdf>). Children and young people who are looked after (both at home and away from home) need individually tailored support to get the best from their school education. Providing appropriate support is an important function of the corporate parent responsibilities of local authorities and their service provider partners.

What is meant by additional support?

Additional support

“1.-(3) In this Act, “additional support” means—

- (a) in relation to a prescribed pre-school child, a child of school age or a young person receiving school education, provision (whether or not educational provision) which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority for the area to which the child or young person belongs,
- (b) in relation to a child under school age other than a prescribed pre-school child, such provision (whether or not educational provision) as is appropriate in the circumstances.”

7. All children and young people need support to help them learn. The main sources of support in pre-school provision and schools are the staff who, through their normal practice, are able to meet a diverse range of needs. With good quality teaching and learning and an appropriate curriculum most children and young people are able to benefit appropriately from education without the need for additional support.

s1(3) 8. Some children and young people require support which is additional to, or otherwise different from, the provision that is generally provided to their peers in order to help them benefit from school education. Subsection (3) was amended by the 2009 Act to ensure that additional support is not limited to educational support but can include multi-agency support from health, social services and voluntary agencies, for example. Some pre-school children receiving school education may also require additional support. In addition, as described in Chapter 3 below, education authorities have a duty to make provision for the additional support needs of disabled children under the age of 3 years in certain circumstances and this support, as above, is not limited to educational provision.

s1(3)
(a) 9. The Act, as amended, requires that a child’s or young person’s additional support needs are assessed against the provision made for children or young people of the same age in schools managed by the education authority that are responsible for his or her education. When a child or young person is educated in an education authority, other than the one to which he or she belongs, as a result of a placing request then the additional support needs are assessed against the provision in that authority.

10. Where no education authority are responsible for the child’s or young person’s education (e.g. the child or young person is home or privately educated), his or her additional support needs are assessed against the provision made for children or young

people of the same age in schools run by the education authority in which he or she lives.

11. The definition of additional support provided in the Act is a wide one and it is not possible to provide an exhaustive list of all possible forms of additional support. Examples are provided below of forms of additional support which are common in our schools, and many more can be given. What is central to all these forms of support is that they have been identified as additional provision required to help individual children and young people benefit from school education, taking account of their particular needs and circumstances. The examples below refer to particular situations but should be understood more widely. They can be used to suggest how the law might work in analogous situations. However, the examples are illustrative, not comprehensive, and they do not constitute an authoritative or exhaustive interpretation of the legislation.

12. Additional support for children and young people may be provided in a range of locations including in school, at home, in hospital, or in a specialist health, social services or voluntary agency facility. The additional support may include:

- a particular approach to teaching and learning: for example, as used with children and young people with autistic spectrum disorders, dyslexia or sensory impairments
- the deployment of personnel from within the school or education authority: for example support from a learning support teacher in the school or from a peripatetic teacher of the deaf or of English as a second language.
- the deployment of personnel from outwith education: for example, support provided by allied health professionals working in health or social workers from the local authority or staff from the voluntary sector
- provision of particular resources: including information and communications technology (ICT) and particular teaching materials.

13. Examples of additional support provided from within education services to children and young people are the following:

- a support for learning assistant supporting a child with an autistic spectrum disorder in a nursery
- class teacher helping a child by following a behaviour management programme drawn up in consultation with a behaviour support teacher
- tutorial support from a support for learning teacher to help with a reading difficulty
- use of communication symbols by a child with autism
- designated support staff working with Gypsy/Traveller children on their site to help them improve their literacy and numeracy skills
- in-class support provided by an English as Additional Language (EAL) teacher for a child whose first language is not English

- a more able child at the later stages of primary school receiving support to access the secondary mathematics curriculum
- use of voice recognition software by a child with dyslexia.

Mary is in Primary 6. She comes from a highly mobile Gypsy/Traveller family. Distance learning materials had previously been provided but with limited effect and Mary has fallen behind her peer group in a number of areas. She is now settled in a school and is receiving support from a teacher experienced in working with Gypsy/Traveller children. The teacher advises the support for learning and classroom teachers in the school. Mary's level of conceptual development has been assessed independently of her literacy skills. She receives age appropriate resources and is included with children of her ability level.

Anna comes from a bilingual background and is fluent in her first language. She attends a mainstream primary school where she also receives additional language support from a visiting EAL teacher once a week. The teacher works directly with Anna in class and offers advice and support to her class teacher and other teachers and staff who support Anna.

George is an able pupil in primary 6 who has completed the mathematics curriculum for primary school. His head teacher contacted the mathematics department in his associated secondary who agreed to provide suitable support from their department. The secondary mathematics teacher liaised with the class and learning support teachers to provide an appropriate mathematics curriculum for George.

14. Some children and young people will require additional support from agencies from outwith education services if they are to make progress. Some examples are:

- social work support to help a young person remain drug free
- communication programme drawn up by a speech and language therapist and teacher for implementation in the classroom
- anger management programme delivered to a group of young people by staff from a voluntary agency
- counselling provided by a voluntary agency for a child coping with bereavement
- psychiatric support for a child with mental health difficulties
- specialist equipment support from physiotherapy or occupational therapy
- group or individual career support to engage choices for education, training or employment in anticipating school leaving.

Darren is a young carer of his mother who has mental health problems. He attends his local secondary school but has had significant absences because of caring for her. His mother's social worker and guidance teacher identified the extra burdens on Darren and its effect on his attendance. Darren's guidance teacher and his mother's social worker discussed the reasons for Darren's absences with Darren. The social worker arranged for a carer to support Darren's mother during the day, enabling Darren to attend school.

Kyle, aged 11, was placed with foster carers following several periods of serious offending with a group of older boys. As part of his care plan social work staff began working with Kyle and his mother, who is a lone carer, to address his offending behaviour. Kyle also exhibited behaviour difficulties at school requiring close interagency collaboration to ensure an effective programme of support. Kyle benefited from three days in a behavioural support unit and two days in a mainstream class, per week. In mainstream he received additional support through a child support worker employed on a sessional basis within school. This support was co-ordinated through his care plan which incorporated his individualised educational programme.

15. Children under school age who are not prescribed pre-school children will generally be under the age of 3 years and, therefore, unlikely to be receiving school education. In their case, additional support will be provision which is appropriate to their circumstances. For example, support may be provided by educational support services in the form of teachers who visit children at home every fortnight and advise the parents about suitable activities they can carry out to promote their child's development and learning. By virtue of the amendments made by the 2009 Act the wider definition of additional support also applies to these children. Additional support may be provided from outwith education such as from an occupational therapist from social work services or a speech and language therapist from health services.

What gives rise to additional support needs?

16. There is a wide range of factors which may lead to some children and young people having a need for additional support. These fall broadly into the four overlapping themes described below: learning environment, family circumstances, disability or health need, and social and emotional factors.

17. Schools are aware of their responsibilities to provide an effective and efficient education for all children and young people on their roll, including those with additional support needs. However, the educational experiences of some children may not take sufficient account of their individual needs and circumstances to ensure that they derive appropriate benefit from school education. A need for additional support may arise where the **learning environment** is a factor. For example pupils may experience barriers to their learning, achievement and full participation in the life of the school. These barriers may be created as the result of factors such as the ethos and relationships in the school, inflexible curricular arrangements, and inappropriate

s1(3)(b)

approaches to learning and teaching. A child who is more able may need a more challenging curriculum in order to make appropriate progress. A child whose first language is not English may need additional support to access the curriculum.

18. **Family circumstances** may give rise to additional support needs; for example, where a child's or young person's home life is disrupted by homelessness, domestic abuse, parental alcohol or drug misuse or parental mental or physical health problems. Additional support needs may arise where the pupil herself is a young mother or is helping to care for disabled parents or siblings. The child or young person may be being looked after by the local authority or have recently left care or be in need of measures to secure their care and protection. In these circumstances support from social work services may be needed to ensure that the child or young person is able to benefit from education.

19. Issues relating to a **disability or health need** may mean that additional support is required; for example, where a child or young person has a motor or sensory impairment, specific language impairment, autistic spectrum disorder or has learning difficulties. Mental health problems such as attention deficit hyperactivity disorder and depression can disrupt learning and may lead to additional support being required from child and adolescent mental health services to ensure benefit from school education.

20. **Social and emotional** factors may also give rise to a need for additional support. A child being bullied or bullying may need additional support. A child experiencing racial discrimination may need additional support. A child with behavioural difficulties may require additional support to develop positive behaviour in school and to stop offending in the community.

21. Additional support needs may be of short duration, perhaps a few weeks or months, or could be long-term over a number of years. The factors which may give rise to additional support needs are wide and varied because they relate to the circumstances of individual children and an individual may have additional support needs arising from more than one of the factors outlined above

22. The same factor may have different impacts on individual learning. For example, one child or young person may find that difficulties at home have an adverse impact upon his or her learning. Another child in apparently similar circumstances may experience a minimal impact on his or her learning.

23. A need for additional support does not imply that a child or young person lacks abilities or skills. For example, bi-lingual children or young people, whose first language is not English, may already have a fully developed home language and a wide range of achievements, skills and attributes. Any lack of English should be addressed within a learning and teaching programme which takes full account of the individual's abilities and learning needs. Similarly, deaf children may have support needs which are only related to language and communication issues. More able children or young people may require a more challenging educational provision than that of their peers. A young

person with social and emotional difficulties may have talents in one area of learning or be capable of attaining highly across the curriculum. A child with learning difficulties may have very good interpersonal skills.

24 The requirement for additional support varies across a spectrum of needs and circumstances. Generally, it is preferable to ensure that support is provided in ways that are well integrated within everyday practice and do not single out the child requiring additional support. Some children, young people and families will find terms such as dyslexia or autistic spectrum disorder useful in helping them explain and understand any difficulties being experienced. Others may experience such terms as limiting and stigmatising. Children and young people, generally, are keen to be seen as being no different to their peers. Throughout, the requirement should be to view children and young people as individuals and to tailor support to their individual needs.

25. Chapter 3 below describes in more detail the functions and duties on education authorities to identify, assess and make provision for additional support needs.

Chapter 3

MEETING ADDITIONAL SUPPORT NEEDS

Introduction

1. This chapter of the Code sets out guidance on the Act's provisions for identifying and assessing additional support needs and making provision for them. Most children and young people are educated in schools under the management of the education authority for the area to which they belong, the authority in which they reside with their parents, referred to here as the home education authority. However, there are four circumstances under which a child or young person may not be educated in a school under the management of the home education authority. The implications of these circumstances are considered detail in Chapter 4 below. Where responsibility for the school education of the child or young person rests with an education authority other than the home authority then that authority is referred to here as the host authority.
2. The guidance here is considered against a background of authorities' and agencies' evolving approaches to assessment and provision. In particular, it reflects the values and principles to be found in *Curriculum for Excellence* and the development of the national programme *Getting it right for every child* involving those working with children and young people across all agencies. It also draws on the definition of assessment to be found in the national programme and considers the role of agencies outwith education, such as NHS Boards and social work services, in supporting children with additional support needs.

Curriculum for Excellence

3. Curriculum for Excellence aims to achieve a transformation in school education in Scotland by providing a coherent, more flexible curriculum from 3-18. The curriculum comprises the totality of experiences which are planned for children and young people wherever they are being educated. Children and young people are entitled to experience:

- a coherent curriculum from 3 to 18
- a broad general education, including the experiences and outcomes well planned across all the curriculum areas, from early years through to S3
- a senior phase of education after S3 which provides opportunity to obtain qualifications as well as to continue to develop the four capacities
- opportunities for developing skills for learning, skills for life and skills for work with a continuous focus on literacy, numeracy, and health and wellbeing
- personal support to enable them to gain as much as possible from the opportunities which Curriculum for Excellence can provide
- support in moving into positive and sustained destinations beyond school.

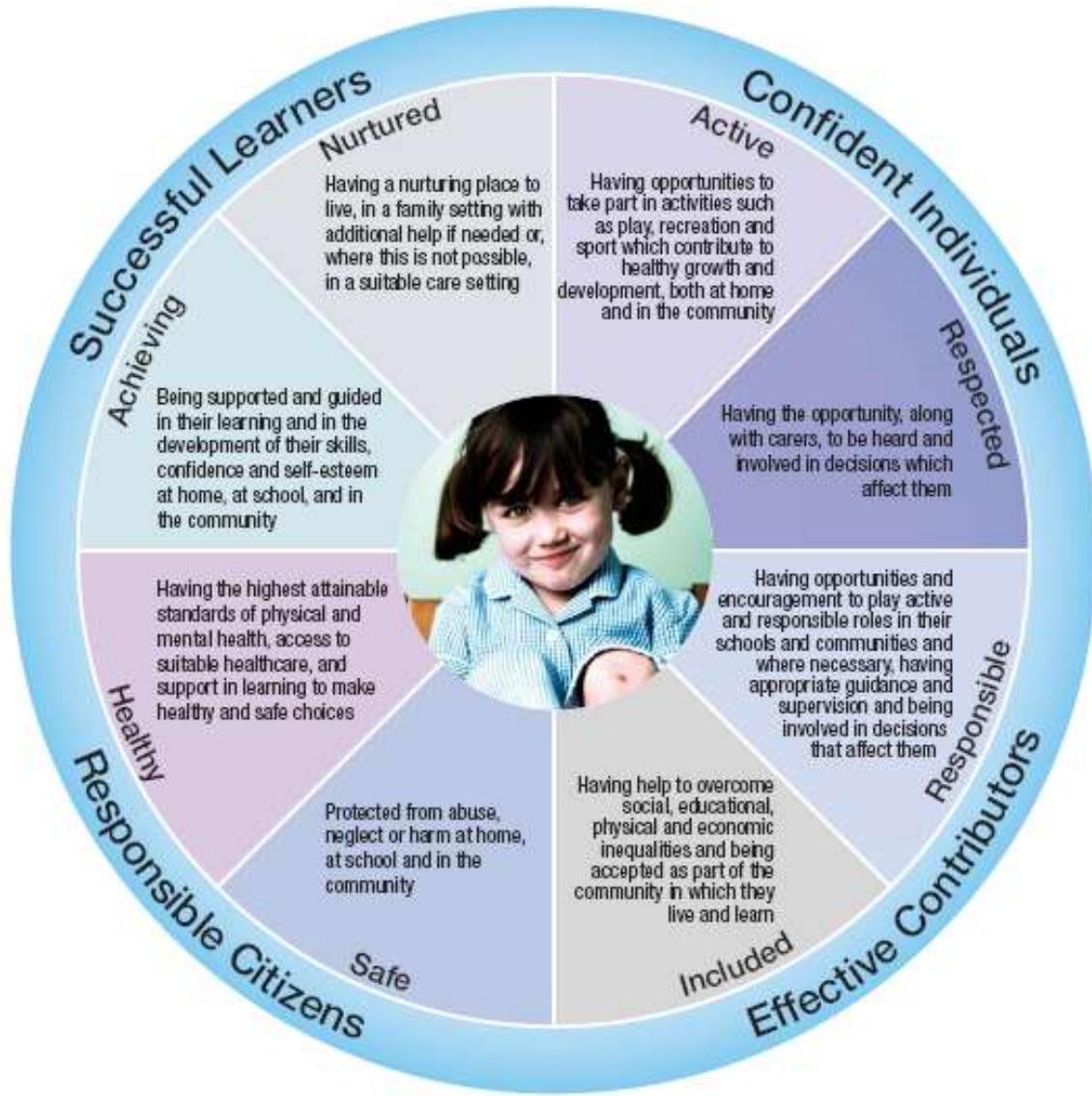
Getting it right for every child

4. Getting it right for every child is a national programme that aims to improve outcomes for all children and young people. In particular, it supports the Government's aspiration that:

- our children have the best start in life and are ready to succeed
- our young people are successful learners, confident individuals, effective contributors and responsible citizens
- we have improved life chances for children, young people and families at risk.

5. The overarching concept of Getting it right for every child is a common, coordinated approach across **all** agencies that supports the delivery of appropriate, proportionate and timely help to all children and young people as they need it. The national programme aims for an improved focus on meeting the needs of children and young people leading to better outcomes for them; effective collaboration among agencies leading to a more integrated approach to the way the needs of children and families are met; the removal of institutional, cultural and procedural barriers to joint working; and access to the services and support needed.

6. The diagram below illustrates the Government's aspiration that all children and young people should be successful learners, confident individuals, effective contributors and responsible citizens. A child's well-being should be considered as set out in the eight indicators: safe, healthy, achieving, nurtured, active, respected, responsible and included. Concerns noted in any of these areas should be seen as a trigger for action.



Values and principles of assessment, planning, action and review

7. Effective assessment, planning, action and review, consistent with the values and principles of Curriculum for Excellence, Getting it right for every child, the Early Years Framework¹ and the provisions of this Act, involve:

- taking a holistic view of children or young people and their circumstances, and what they need to grow and develop and achieve their potential
- seeking, taking account of and noting the views of children, parents and young people and involving them fully in the assessment process and in finding solutions

¹ Launched by the Government in December 2008 :
<http://www.scotland.gov.uk/Resource/Doc/257007/0076309.pdf>

- ensuring that parents, and young people, understand, and are asked to agree to, the aims of any assessment and the purposes of any action proposed
- ensuring that assessment is an ongoing, integrated process of planning, providing for, and reviewing, services for the individual
- adopting the least intrusive and most effective course of action affecting the lives of children, young people and families
- taking into account issues of diversity and equality and ensuring that outcomes do not discriminate against children, young people and their families. This includes not discriminating on grounds of race, disability, gender, sexual orientation, language, culture, religion or belief, and age
- working in partnership with, and building the capacity of, parents to secure education for their children and to promote their child's health and wellbeing, development and welfare.

Inter-agency co-operation

8. Those with additional support needs comprise a broad group of children and young people whose needs require to be identified, understood and addressed to ensure that they benefit from education. Education authorities need to play their part in ensuring that there is effective communication, collaboration and integrated assessment, planning, action and review when other agencies are involved. For example, where a child or young person is looked after away from home, there will already be involvement from social work and health staff as well as, possibly, voluntary agency staff. Similarly, where children are within the Children's Hearing System, or need to be protected from harm, the relevant agencies must work together to ensure an integrated assessment of all of the child's or young person's needs. In all circumstances there should be a clear action plan accessible to all who need to see it and a lead professional responsible for co-ordinating the action set out in the plan and for monitoring its effectiveness.

9. Other agencies too need to ensure that they engage with education. For example, in line with national guidance from the UK National Screening Committee, NHS Boards have introduced Universal Newborn Hearing Screening. In line with Hall 4² guidance, all children should be screened by an orthoptist in their pre-school year, between the ages of 4 and 5. It is clearly important that NHS Boards have arrangements in place for sharing information with education authorities, as necessary, about children with difficulties in hearing and/or vision which may give rise to additional support needs.

Duties on appropriate agencies

² *Health for All Children 4* – the fourth edition of a Royal College of Paediatrics and Child Health report following review of childhood screening and surveillance practice across the UK.

<http://www.scotland.gov.uk/Resource/Doc/37432/0011167.pdf>

10. The Act promotes integrated working across agencies, in assessment, intervention, planning, provision and review. Appropriate agencies have a duty to help an education authority discharge their duties under this Act unless the help asked for:

- is incompatible with the agency's statutory or other duties
- or unduly prejudices the agency in its discharge of its own functions.

11. For the purposes of the Act, appropriate agencies can be any other local authority, any NHS Board or any other person specified by the Scottish Ministers. Those specified under regulations are Skills Development Scotland (formerly Careers Scotland), Further Education Colleges and Higher Education Institutions.

12. As noted in paragraph 10 above there are two circumstances where an appropriate agency need not discharge its duty to help the education authority. The first refers to a situation where an appropriate agency may be asked to do something which it does not have the power to do or which it does not do as part of its normal functions. The second refers to circumstances where if the agency was to provide the help the agency's ability to carry out its other duties may be seriously compromised. For example, an education authority may request that a particular child has a speech and language therapist allocated to him every morning in school throughout the school year. The NHS Board may argue that it has its full complement of therapists all working to capacity and that to release a therapist to provide this service would prevent the Board carrying out its duties with regard to other children. This is an example only and has no legal weight. Ultimately, in the event of a dispute it is a matter for the courts to decide whether either of the exceptions above applies in particular circumstances.

13. Where a child or young person is attending a school under the management of an education authority outside the child's or young person's home area by virtue of a placing request then it is that host education authority which are responsible for the school education of the child or young person and all the duties under the Act transfer to the host authority. Under the powers in relation to appropriate agencies under the Act, the host education authority could request help from the local authority for the area to which the child or young person belongs. In certain circumstances the host authority can recover costs from the host education authority (see Chapter 4 paragraphs 24 and 25).

14. An education authority are under a duty to seek and take account of relevant advice and information from such appropriate agencies and other persons as they think appropriate when establishing whether a child or young person has additional support needs or would require a co-ordinated support plan.

15. The Act also provides that no later than 12 months before the date any child or young person having additional support needs and for whose school education the authority are responsible, is expected to leave school, the education authority must request information from an appropriate agency that they consider is involved with the child or young person once they have left school. Authorities must also seek and take

account of the views of the child or young person and their parents where they make such a request. The authority should in all cases consider whether or not it is appropriate to make such a request of any relevant appropriate agencies. Authorities can request information as they consider appropriate concerning any provision that the appropriate agency is likely to make for the child or young person on ceasing to receive school education. The information provided must then be taken account of by the education authority in considering the adequacy of the additional support to be provided for the child or young person during the period before the child or young person ceases to receive school education.

16. These requests should be made at least 12 months before the child or young person is expected to leave school. However, this period of 12 months before leaving is the latest point at which a request should be made. In good practice, especially with regard to children with significant additional support needs, the process of preparing for leaving school should have begun much earlier than this, perhaps two or three years before leaving school. Where the education authority become aware that the child or young person is to cease receiving school education less than 12 months before that date, the education authority should act as soon as reasonably practicable after they become so aware. Circumstances such as this may occur, for example, where a child or young person moves from one local authority to another and it has not been possible to plan the transition.

s13
s13(4A)
s23(1)

17. No later than six months before the date on which any child or young person with additional support needs is expected to cease receiving school education an education authority must provide information about any child or young person with additional support needs to such appropriate agencies as they see fit. As above, there will be circumstances where it is good practice to provide this information earlier than six months before leaving. Where the education authority become aware that the child or young person is to cease receiving school education less than six months before that date, the education authority should act as soon as reasonably practicable after they become so aware. Any such information is to be provided only with the consent of the child's parent or the young person. Also the education authority must seek and take account of the views of the child unless the child lacks the capacity to express a view.

18. Where it appears to an education authority that an appropriate agency could, by doing certain things, help in the exercise of any of their functions under the Act, they may, specifying what these things are, request the help of that agency. In making a request the education authority should be very specific about the help they are requesting. For example, the education authority should ask an NHS Board to assess a child's or young person's vision or hearing where the child or young person is experiencing learning, behavioural or speech or language difficulties³.

³ Based on recommendations made in *Health for All Children 4* – the fourth edition of a Royal College of Paediatrics and Child Health report following review of childhood screening and surveillance practice across the UK. <http://www.scotland.gov.uk/Resource/Doc/37432/0011167.pdf>

19. The Appropriate Agency Request Period and Exceptions Regulations made under the Act specify that appropriate agencies are expected to respond to requests for help within 10 weeks from the date the request is made by the education authority, subject to certain exceptions. An appropriate agency must comply with a request under this subsection of the Act unless it considers that the exceptions in section 23(3) of the Act, set out above at paragraph 10 apply.

20. The role of Further Education Colleges and Higher Education Institutions as well as Skills Development Scotland, as with all other appropriate agencies, will be in line with their statutory or other duties. For example, Further Education Colleges or Higher Education Institutions may be requested to help with provision of information and support relating to their provision. Other agencies, for example local authorities or NHS Boards, may be asked to assist with assessment of the child's or young person's need for certain support.

21. Further Education Colleges, in line with the sector's statutory duties, may offer link courses to children and young people with additional support needs other than at the stage of transition. For example, Further Education Colleges may be involved in assisting the school's sector to prepare pupils for the transition from school to appropriate further education courses at college. These courses may include "Skills for Work" or other courses for children under school-leaving age which form part of the links partnership between schools and a particular college. Such link courses should be designed to include assessment of the additional support needs of particular individuals that can then support transition planning at a future stage.

22. The help which may be provided by both Further Education Colleges and Higher Education Institutions may include a range of services to support transition from school to post-school provision such as:

- visits to the college or university
- early meetings with college learning/student support advisors, or university disability advisers, to discuss the type of support available
- attendance at link courses or transition courses
- the opportunity to talk with other students with or without additional support needs.

23. These types of support can be extremely helpful to a young person in the transition to college or university, as they may help reassure students that support will be available to resolve any concerns that they might have. Such help may also help reassure them that the issue of future support is being actively addressed. Further information about the roles and responsibilities of Further Education Colleges or Higher Education Institutions is outlined in a guidance document called 'Partnership Matters'⁴.

⁴ Partnership Matters – A Guide for Colleges, Universities, local Authorities, NHS Health Boards and Voluntary Organisation on Supporting Students with Additional Support Needs:-
<http://www.scotland.gov.uk/Publications/2009/05/08155445/0>

24. Where it appears to an education authority that a young person may benefit from such support it would be reasonable for Further Education Colleges or Higher Education Institutions to be asked for help under section 23(1).

25. Skills Development Scotland can:

- help children and young people become more aware of the world of work
- develop the career planning and decision making skills of children and young people
- assist children and young people to enter appropriate education, training or work.

26. The design and delivery of Skills Development Scotland's products and services is intended to take account of the varied needs of individuals, including those with additional support needs.

27. In addition to the support appropriate agencies may provide to individual children and young people, the provisions of the Act could also extend to discussion between the education authority and the appropriate agency to enable them to collaborate effectively.

s23(1)
28. Social work services belonging to another authority are an appropriate agency for the purposes of the Act. Social work services from the same council are not an appropriate agency but are covered by the Act. The Act requires an education authority to exercise any of their other functions (whether relating to education or not) if they consider that would help them in the exercise of their functions under the Act. This is subject to the exceptions based on compatibility with any of their statutory or other duties or being unduly prejudicial to the discharge by them of any of their functions.

s23(5)
29. It is expected that in most circumstances appropriate agencies will support an education authority when asked. Where there is a dispute between the authority and the appropriate agency as to the operation of the exceptions to the duty it will be ultimately for the courts to decide, in particular circumstances, whether any agency is validly relying on the exception.

30. There will be circumstances where agencies are working with children or young people but are not defined as 'appropriate agencies' within the terms of the Act. For example, the police may be working with youth offenders, or a particular voluntary agency may be involved in providing a care package to a child in a family. Education authorities and such agencies will wish to continue working in partnership with each other using a single plan to co-ordinate action. Likewise, Higher Education Institutions and education authorities may work together for the benefit of children and young people with additional support needs even where such support does not involve school to post-school transition arrangements.

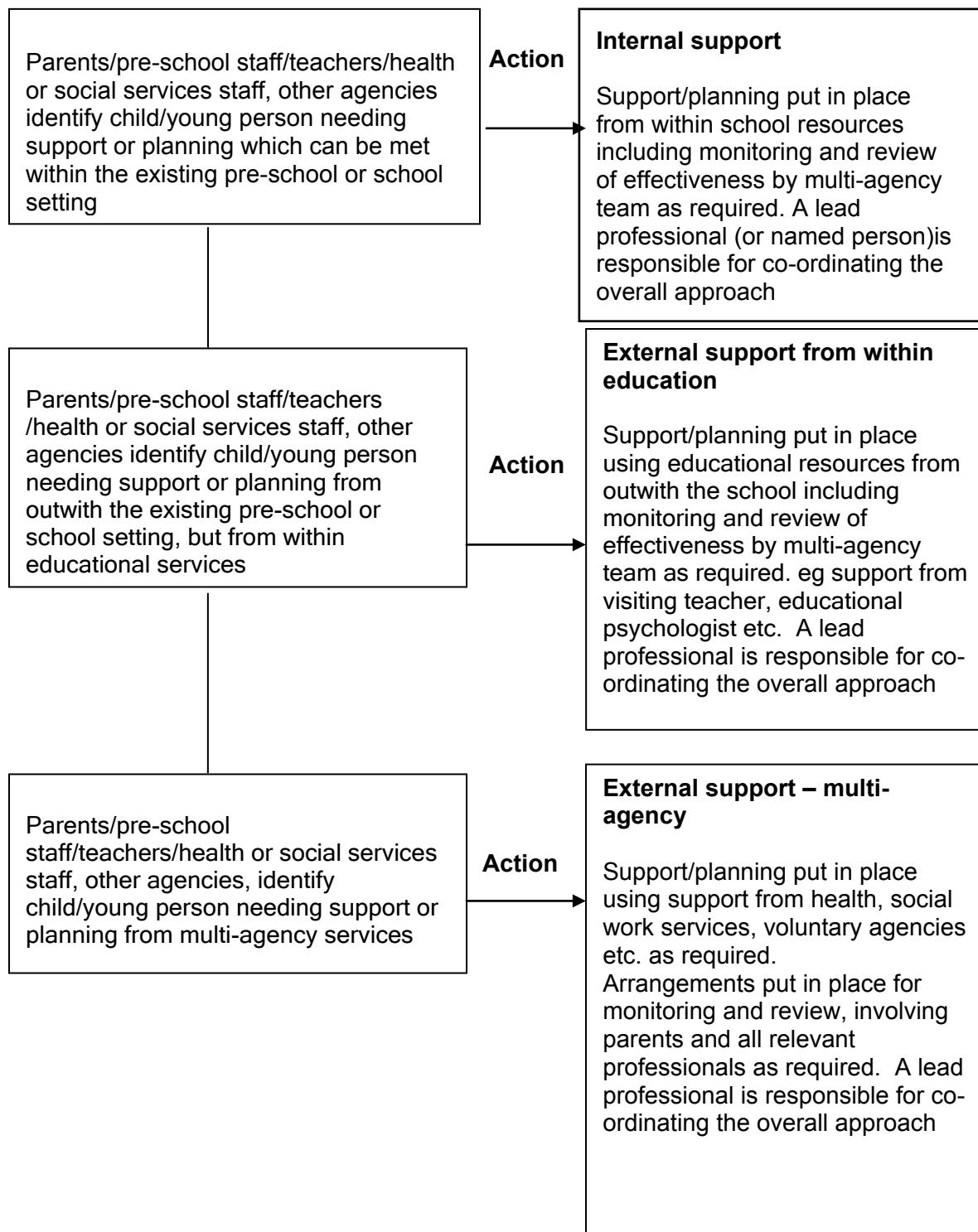
Assessment, planning, action and review

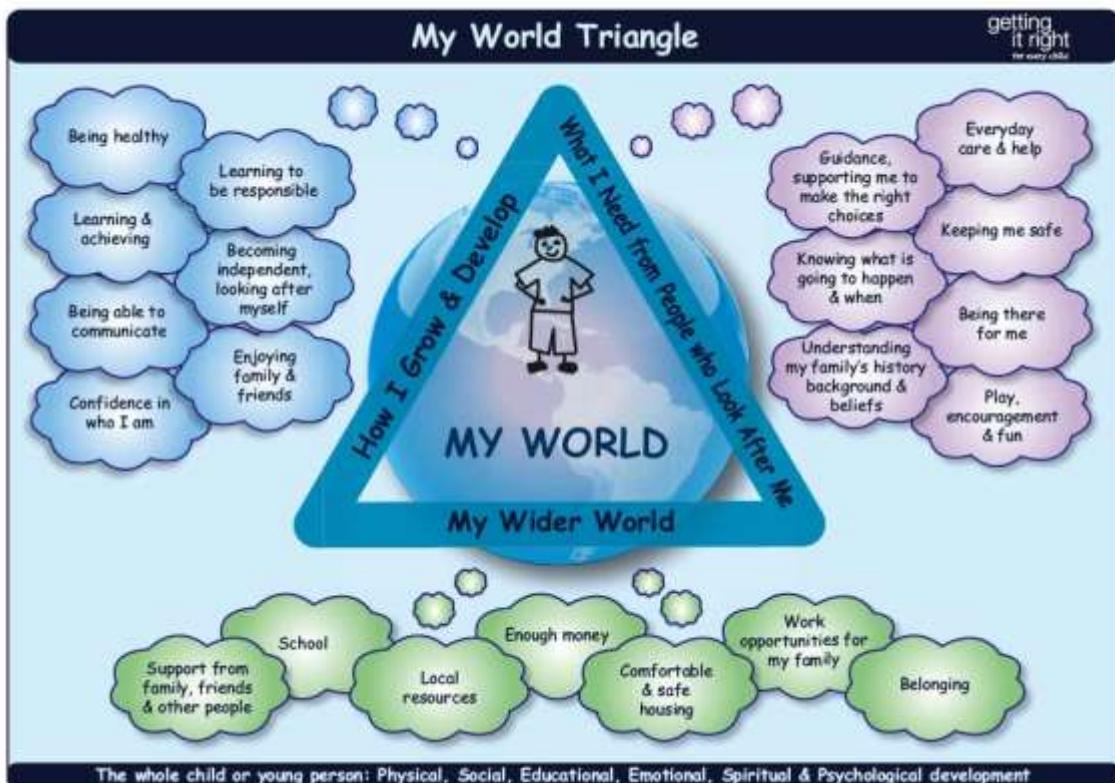
31. Local authorities and other agencies use a wide range of approaches to support assessment and intervention and to promote inter-agency working. In education generally these approaches reflect a staged approach (most commonly four to six stages). Such approaches are built around discrete stages of intervention which seek to resolve difficulties as early as possible and with the least intrusive course of action.

32. The Act does not prescribe any particular model of assessment or support. The diagrams below show some of the common features to be found in most models of staged assessment and provision and in the approach adopted through Getting it right for every child. The My World Triangle allows practitioners to consider systematically:

- how the child or young person is growing and developing
- what the child or young person needs from others
- the impact of the wider world on the child or young person.

Features of approaches to identification, assessment and support





Children and young people for whom the authority are responsible: identifying and assessing additional support needs

Identifying additional support needs

33. The Act requires education authorities to make appropriate arrangements for identifying from among the children and young people for whose school education they are responsible those who have additional support needs and those who have additional support needs and require a co-ordinated support plan (considered in Chapter 5) and the particular additional support needs of those so identified. The authority has to publish information explaining what these arrangements are (see Chapter 9 for more details).

34. Education authorities and schools should be able to identify most children and young people with additional support needs through their arrangements for assessing learning and for monitoring the educational progress of children and young people. However, the Act makes provision for parents and young people to request the education authority to establish whether their child has additional support needs or requires a co-ordinated support plan (see below).

s6(1)

s26(2)

s6(2)

s6(5)
and(6)

35. There will be circumstances where it comes to the attention of the authority (for example, through a teacher, paediatrician, social worker or therapist) that a child or young person may have additional support needs or requires a co-ordinated support plan. In these circumstances the authority must establish whether the child or young person has additional support needs, or requires a co-ordinated support plan, unless the authority consider it unreasonable to do so. The authority should inform any person making such a referral of their conclusions where the education authority consider it appropriate to share such information and there is no legal barrier to such sharing. The consent of the parent or young person should be sought before doing this.

s1(1A),
(1B);
and
s6(1A)

36. The Act presumes that all looked after children have additional support needs unless the education authority determine that they do not require additional support to enable them to benefit from education. In effect this means that each looked after child will be considered to have additional support needs unless he/she is identified as not having them and this means that each looked after child will have to undergo a process of assessment as part of that process of identification. In addition, each should be considered for a co-ordinated support plan.

Assessment

37. In this Code, assessment is seen as an ongoing process of gathering, structuring and making sense of information about a child or young person, and his/her circumstances. The purpose of assessment under the Act ultimately is to help identify the actions required to maximise development and learning. Assessment plays a key role in the authority's arrangements for identifying children and young people who have additional support needs and who, of those, require a co-ordinated support plan. Assessment is a process supported by professionals and parents. It identifies and builds on strengths, whilst taking account of needs and risks. The assessment process also assumes the negotiated sharing of information by relevant persons and agencies where the law, best practice and policy allow or require it.

38. Assessment is a dynamic process with the child or young person at the centre. As a result it should not be divorced from other aspects of the child's life either at school, home or in the community as illustrated in the My World Triangle above. It will usually include discussion with parents and professionals involved with the child or young person, for example, class teacher, support for learning staff, speech and language therapist, social worker, foster carer or residential worker. It should build on other assessment information already available. It may involve observation in one or more day-to-day situations and/or individual work with the child or young person as required. The education authority should always endeavour to seek and take account of the views of the child or young person unless there are particular circumstances to prevent this happening or which make it inappropriate.

39. Where it is required by virtue of the child's or young person's additional support needs, the assessment process should seek effective multi-agency consultation and collaborative working. Following Getting it right for every child practice a lead

professional will co-ordinate the work with the child and family to ensure that the assessment is carried out efficiently and effectively with minimal intrusion into the lives of the child and family members.

s12(2) 40. An education authority must seek and take account of relevant advice and information (including assessments) from such appropriate agencies and such other persons whom they think appropriate in establishing whether a child or young person has additional support needs, or requires a co-ordinated support plan, or in preparing a plan or carrying out a review of a co-ordinated support plan. Those involved from outwith the education authority may be health services. For example, with the consent of the parents or young people themselves, an education authority may request an NHS Board to assess the hearing or vision of a child or young person where the authority are seeking to establish whether the child or young person has additional support needs. The education authority must also take account of any relevant advice and information available from sources within the local authority, other than from education. Such a source is most likely to be the local authority's own social work services.

s12(2)(c) 41. The education authority must also take account of any relevant advice and information provided to them by parents on behalf of their child, or the young person. For example, if the parents have privately commissioned an assessment or report on the child or young person, or the young person has commissioned the report, then the authority must take that report or advice into consideration if asked to do so. Also, the authority must seek and take account of the views of parents and, where appropriate, of children and young people themselves. Further information is provided in Chapter 7 which considers working with children and families.

42. When seeking the views of parents, young people and where appropriate children and when carrying out an assessment, education authorities need to take into account the parents, young people's or child's preferred method of communication. For example, assessments of bilingual children should take into account the child's level of skills in the first language as well as their educational attainment.

Requests for assessment

s8(1),
(2); 8A 43. The Act enables parents or young people to request an education authority to arrange for a child or young person to undergo a process of assessment or examination. This right applies when the authority are proposing to establish whether a child or young person has additional support needs or requires a co-ordinated support plan, or the authority propose to review an existing plan. In addition, the right to request an assessment applies at any time so that where it has been established that the child or young person has additional support needs then the parent or young person may request another assessment if they consider this necessary for any reason.

s28(1)(a),
(b) 44. Any such request from the parents must be in writing or in any other permanent form which can be referred to in future, such as video or audio tape, and should contain a statement of the reasons for the request. The request can be for an educational, psychological or medical assessment or examination or any other assessment or

s8(4) examination which the parents wish for, including any combination of these. In the case of an assessment or examination requested by the education authority from another appropriate agency such as an NHS Board (for example, related to speech and language, hearing or vision) then the other agency must comply with the request unless it considers that the request is incompatible with its own statutory or other duties or unduly prejudices its discharge of its own functions. As provided for in the Appropriate Agency Request Period and Exceptions Regulations, other agencies are obliged to respond to a request for help, which could include assessment, from the education authority within a period of 10 weeks from the date the request is made, unless one of the statutory exceptions applies in the particular circumstances of a specific request by an education of the appropriate agency.

s8(1) 45. The education authority must comply with the request for assessment unless the request is unreasonable. An unreasonable request is not defined in the Act. However, unreasonableness in this context is an objective test - what a third party might consider unreasonable. It will be for the education authority to consider each individual case on its own facts and circumstances. In some circumstances an authority will need to consider carefully whether to comply. For example, the authority may decide not to comply with the request where assessment:

- may not be in the best interests of the child or young person
- may not be seen as being relevant given the child's or young person's circumstances
- may be unnecessary as there has not been a significant change in the child's or young person's circumstances since an earlier assessment was completed
- may be within an inappropriate timescale e.g. falling within a short time of a previous request
- may repeat assessments already carried out.

46. Parents or young people may request other types of assessment beyond education. It is for the education authority to consider who is the appropriate person to carry out the particular process of assessment or examination. Education authorities are not required to arrange for examinations or assessments to be carried out by named individuals or organisations requested by the parents or young person. The education authority may take into account information from social work services or voluntary organisations who are involved with the child or young person. Where a range of assessments is required, the education authority should, in line with Getting it right for every child practice seek to bring these within one assessment process to avoid duplication and placing the child or young person, and his/her family, under stress.

s8(4) 47. Psychological assessment will normally include assessment by an educational psychologist employed by the education authority. In cases where other psychologists (e.g. clinical or occupational psychologists) may have relevant knowledge or information about the child or young person, they should be consulted and their advice recorded and considered.

48. The NHS Board for the area in which the child or young person resides will arrange for provision of assessment or examination, subject to the consent of the child, from the relevant health professional(s) such as, for example, from medical, nursing, speech and language therapy, occupational therapy, physiotherapy, audiologist or orthoptist. Such assessment or examination should take into account relevant information from other professionals as appropriate.

49. A social work assessment may highlight specific issues in the child's or young person's life which are impacting on his or her ability to benefit from school education. For example, there could be child protection concerns linked to domestic abuse or parental substance misuse; mental or physical health problems within the family; concerns about a young person's offending behaviour; or concerns about a child or young person who has experienced bereavement or loss. A social work assessment should normally be sought when considering a residential placement.

50. Once an assessment request has been made the process should be managed by appropriate staff within the education authority, school or other appropriate agencies. The parent or young person should be provided with contact details for the person managing the process to enable them to be updated on progress. The request for assessment should be acknowledged as soon as possible and the response to a request for assessment should be made within 10 weeks⁵. The 10 week period begins when the education authority request the assessment from the appropriate agency. Education authorities should therefore have arrangements in place to make sure that requests are processed without undue delay. In any case where the appropriate agency considers that it cannot meet the timetable it should notify the education authority.

51. As in paragraph 45 above, where an education authority decide not to comply with any request made to them under the Act, including a request for assessment, they must inform the person who made the request, such as the young person or parents, in writing of their decision not to comply and must explain why they are refusing the request. They must also inform the person who made the request about the right to access mediation services provided by the education authority and dispute resolution arrangements and, where appropriate, the Additional Support Needs Tribunal ("the Tribunal").

Early years: children under the age of 3 years

52. The Act requires an education authority to provide additional support to certain disabled pre-school children in their area, normally those who are under 3 years old. This duty applies where such children have been brought to the attention of the education authority as having, or appearing to have, additional support needs arising from a disability within the meaning of the Disability Discrimination Act 1995, and it is established by the education authority that they do have such needs. For example, if

⁵ This provision is contained within The Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005.

s28(2)

s5(2),
(3)

the parent has brought the child to the attention of the education authority, then the authority may establish whether the child has additional support needs arising from a disability under its arrangements for identifying and providing for children with additional support needs.

s5(2)

s1(3)(b)

53. If the education authority then determine that the child has additional support needs arising from a disability, they must provide such additional support as is appropriate for the child provided the child's parent consents. That support is not confined to educational support but could include support from health, social work or voluntary agencies. Where the education authority decide that there are no additional support needs arising from a disability the authority should inform the parents in writing of the decision and the reasons for it.

54. The education authority should monitor the number of children under 3 years of age receiving support and the nature of that support in order that plans can be made to ensure their needs are met on transition to pre-school provision.

55. In good practice, and following the principles of the Early Years Framework, there will be effective communication across health and social work and education services so that the child may already be known to the education authority. Monitoring by health professionals, such as health visitors, general practitioners and community paediatricians, can identify children with likely additional support needs arising from a disability early in their lives, often at, or just after, birth. In good practice the needs of an identified child will be considered by a community team with relevant representation from health, education, social work and voluntary agencies. In partnership with the parents, the team will consider assessment and intervention approaches. This process will also inform the planning of support when the child enters pre-school provision and/or school. A lead professional who has regular contact with the child should be identified from any one of the agencies involved.

56. The team should aim to ensure a co-ordinated approach to gathering information and to avoid parents having to repeat information more than once. Such an approach also provides a holistic view of the child within his or her family and community context and enables early assessment of medical, social and/or learning needs to identify appropriate services, for example, for vulnerable children.

57. Outcomes of the process of identification and assessment for very young children and their families are:

- clarification of the child's needs
- agreement as to what, how, where, when and by whom support will be provided and monitored
- an action plan which details the provision and explains to the parents how they can contribute.
- the identification of a lead professional who acts as a single point of reference for the family and other professionals.

Phillipa is a one year old child with complex medical needs resulting in significantly delayed development. She has been referred to the education authority by the local NHS Board for consideration of her additional support needs arising from her disability. A multi-disciplinary community assessment team is co-ordinating a multi-agency support package for Phillipa and her family. This includes support from a home visiting teacher. It is clear that her needs are complex and enduring and will require significant multi-agency support. It was agreed that in addition to the current additional support the preparation for a co-ordinated support plan will begin before her third birthday.

Early years: prescribed pre-school children⁶

58. The Act places a duty on an education authority to make appropriate arrangements for identifying those children for whose school education they are responsible, who may have additional support needs. At the pre-school stage, this duty will cover a child with additional support needs who is in pre-school provision managed by the education authority or in a partnership nursery under arrangements made by the education authority. It may involve also a child who is about to be provided with school education (including pre-school education), either in a school under the management of the authority, or through arrangements entered into by the authority.

59. Some children in pre-school provision will previously have been identified under the age of 3 years as having additional support needs arising from a disability. However, there will be others in pre-school provision who have a range of additional support needs. Early years staff, in partnership with parents, have a key role to play in identifying children who may require additional support.

School years

60. Education authorities are required to identify the additional support needs of each child or young person for whose school education they are responsible. This can be achieved in a range of ways. Any person working with the child, or young people themselves, could draw attention to the fact that difficulties with learning exist. For example, this person might be the parent, class teacher, a member of the school health team, educational psychologist, social worker or any person who has been working with a child or young person. All education authorities (and all schools) should have a clearly set out policy that describes procedures for identifying additional support needs. All education authorities and appropriate agencies should ensure that their processes for identification, assessment, planning, action, monitoring and review take account of the need for multi-agency and collaborative working following the Getting it right for every child programme.

⁶ See glossary for definition of prescribed pre-school children

61. Within a school these processes typically follow the path outlined below with the aim of identifying and meeting the child's additional support needs at the earliest possible stage:

- the teacher identifies children or young people who need a greater level of attention or planning than is generally required by the majority of children or young people in the class
- the teacher consults with, and seeks help from, other school support, such as learning support staff
- if action at this stage does not resolve the issue, the school in consultation with colleagues and with parents seeks information and advice from educational services outwith the school, such as, for example, from a visiting teacher or educational psychologist
- the teacher and the school incorporate this information and advice into their practice with the child or young person in the school
- if action at this stage does not resolve the issue then support from services from appropriate agencies outwith education may be required such as support from health or social work services. The authority may also look to voluntary agencies for information or advice or from a voluntary agency under a service level agreement. Where more than one agency is, or should be, involved with the child or young person then the education authority and agencies should develop an integrated plan of assessment, sharing information, intervention and review following Getting it right for every child practice.

62. There are variations of the above model in operation. Educational services from outwith the school, such as visiting teachers or educational psychologists, may provide advice to the classroom teacher at the early stages when concerns are first expressed and before these services become directly involved in working with the child and family. This may also apply to services from outwith education where collaborative working is a feature of the work of the school such as is found in some special schools. This overall approach can be very effective. It can lead to a resolution of the issue which avoids the need for formal referrals to these services and provides the class teacher with advice on approaches which may prove successful when similar circumstances arise in the future.

At parents' night Mai Ling's P4 class teacher explained to her parents that while Mai Ling's oral skills were very good, she had difficulties with reading and spelling. These difficulties were beginning to have an adverse impact on her progress in other areas of the curriculum and the class teacher was concerned that Mai Ling might have a form of dyslexia. The parents agreed with the class teacher that the learning support teacher should be asked to assess Mai Ling with a view to determining how best she could be helped in the classroom, whether or not she was dyslexic and what extra support the parents could give her at home.

**Children and young people for whom an education authority are not responsible:
identifying and assessing additional support needs**

63. There will be children and young people belonging to the area of an education authority but where no authority are responsible for their school education. These may be children and young people who are attending independent or grant-aided⁷ schools as a result of parental choice or who are being educated at home. In these circumstances, the parents (or young person) may ask the education authority to establish whether the child or young person has additional support needs or would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. The education authority may comply with the request but are not obliged to do so. In the case where an education authority exercise this power any education plan drawn up, for example an individualised educational programme or co-ordinated support plan, might include arrangements for provision for home education. In reaching a decision to refuse the request education authorities should consider each case on the basis of its own facts and circumstances.

s7(1)(b) 64. Where a child or young or young person is educated outwith his/her home authority as a result of a placing request then any request for assessment should be directed to the host authority since that authority is responsible for the child's or young person's education (see chapter 4 paragraph 22 below).

s7(2)(b) 65. Managers of independent and grant-aided schools may also request the education authority for the area to which the child or young person belongs to establish if the child or young person would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. Again, the education authority may comply with the request but are not obliged to do so. There may be children and young people from outwith Scotland attending these schools but, clearly, such a request could only be made with regard to children and young people whose home education authority is in Scotland.

s28(2) 66. Where the education authority refuse to comply with the request they must inform the person who made the request of their decision and explain their reasons for the decision. They must also inform the parents or young person making the request about the mediation services provided by the authority and about the arrangements for resolving disputes.

67. There may be circumstances where there is no request as such but it is drawn to the attention of the authority that a child or young person belonging to their area, but for whose school education they are not responsible, may have additional support needs. For example, the authority may be aware of a child being educated at home who may have additional support needs. The education authority are not obliged to carry out an assessment but they may, if they wish, establish whether the child has additional support needs by, for example, arranging for an assessment to be carried out by a teacher or educational psychologist. In these circumstances the authority will normally require the agreement of the parents or young person, as appropriate.

⁷ See glossary for grant-aided schools

s7(7) 68. Where the education authority do respond to a request, as above, or decide to assess a child or young person to whom their attention has been drawn, then they must provide the persons making the request with such information and advice about the additional support required by the child or young person as they consider appropriate. In the case of a child, the parents should always be informed about any additional support which the child requires. However, the authority have power but are not obliged to make provision for the additional support needs so identified.

Making Provision

s4(1) 69. The Act requires that the education authority must make adequate and efficient provision for such additional support as is required by **each** child or young person with additional support needs for whose school education the authority are responsible. In other words the Act places a duty on the education authority with regard to **individual** children or young people with additional support needs. Conversely, the authority could be held to be in breach of a duty if it fails to make adequate and efficient provision of additional support for a particular individual with additional support needs. This adds to existing legislation in the 1980 Act which requires that an education authority make adequate and efficient provision of school education for their area.

s1(1)
1980
Act s4(2) 70. The above duties under the Act do not require an authority to do anything outwith their powers or which would result in unreasonable public expenditure. The Act does not define unreasonable public expenditure. Decisions regarding what can be considered adequate and efficient provision and unreasonable public expenditure can only be judged in the light of each child's or young person's circumstances. Expenditure may be unreasonable where the cost incurred would be completely out of scale with the benefits to the child or young person or where suitable alternative provision is available at a significantly lower cost. It may be unreasonable where substantial expenditure on new facilities would be completely out of scale to the benefits to the wider community. Cost should not be the primary consideration in determining what provision is to be made. For example, an education authority will wish to consider whether the expenditure in providing for a particular child or young person may be of benefit to others in the future. Where the education authority refuse to comply with a request on the grounds of the request being outwith their statutory powers, or likely to incur unreasonable expenditure, they must inform the person who made the request of their decision and explain their reasons for the decision.

71. The education authority should ensure that the authority's policy on additional support needs explains clearly the procedures used by their authority, and in their schools, to monitor and review the progress being made by children and young people with additional support needs, and the effectiveness of any additional support provided

s4(1)(b) 72. The Act requires education authorities to take account of the additional support needs of children and young people with such needs when carrying out any of their functions in connection with the provision of school education. Education authorities will

s5(1) wish to review all their policies relating to the provision of school education to ensure that this general duty is met.

s5(4) 73. The above duties apply to children and young people for whose school education the authority are responsible. However, there are circumstances where an education authority are not responsible for the school education of particular children and young people belonging to their area. These circumstances may include children and young people being educated at home or attending independent schools, or grant-aided schools under arrangements made by their parents. In these circumstances, the authority may provide the additional support required for children and young people belonging to their authority area, but they are not obliged to do so. The education authority will wish to keep appropriate records for planning and monitoring purposes where additional support is provided in such circumstances as well as more generally.

Early years: children under the age of 3 years

s5(2);
(3) 74. As described above, the education authority have a duty under the Act to provide additional support in certain circumstances to disabled children belonging to their area, who are under 3 years old and are not a prescribed pre-school child. The nature of that support will depend on the circumstances of the individual child but may include support from a pre-school home visiting teacher and/or attendance at a pre-school centre. This provision need not be educational provision but could include, for example, provision of speech and language therapy. The authority may make provision for children, including children under the age of 3 years with additional support needs, but who are not disabled. However, they are not obliged to make such provision.

Early years: prescribed pre-school children

s4(1) 75. The authority have a duty to make adequate and efficient provision for such additional support as is required by each child or young person with additional support needs for whose school education the authority are responsible. This includes prescribed pre-school children being educated by the authority in its own provision or, for example, in partnership nurseries. The nature of this support will depend on the circumstances of each individual child but the range of support available will in many cases be the same as, or very similar to, that which is available to children in schools.

School years

76. The needs of most children and young people who require additional support will be met through the range of provision available within the school. Importantly, additional support also includes non-educational provision such as support from, for example, a physiotherapist, clinical psychologist, speech and language therapist, play therapist or social worker. Whilst the purpose of additional support is to enable the child or young person to benefit from school education, that support need not be educational in nature and is not restricted to what takes place in a school. Additional support may be provided in a hospital or social work facility. In Chapter 2 additional support was

referred to under three overlapping broad headings: approaches to teaching, provision of personnel and provision of resources. It is clearly not feasible to list all the forms of support but some of the common ways support can be provided to the child or young person within the school include:

- differentiation of the curriculum, including resources and materials
- possible implementation of an individualised educational programme incorporating SMART (Specific, Measurable, Attainable, Relevant, Timed) targets
- specific support from a classroom assistant/additional support needs assistant /behaviour co-ordinator
- group work support within the school provided by teaching and/or social work staff
- peer support arrangements such as buddying, paired reading and circle time
- support from a therapist working directly with the child or young person, and/or working through another such as a teacher or parent following therapist's advice
- individual or small group teaching.

77. Where difficulties persist, a progressive process of assessment and support will inform next steps in learning. Consultation with parents and the child or young person, support staff and agencies outwith the school may be necessary. Additional support may be given within or outwith a classroom or mainstream school context. For example, some children may benefit from attending a unit within the school on a full or part-time basis. Others may benefit from provision in a special school. Others may benefit from attending a health, social work or voluntary agency facility.

Planning: educational plans

78. Planning for learning is an ongoing process subject to continuous review, through pre-school, school and beyond into lifelong learning. Most children and young people who require additional support will have their learning needs met by the day-to-day classroom practice in pre-school and school settings. This practice is subject to the normal self-evaluation and external professional monitoring and quality assurance procedures in place in school education. More formal planning arrangements may be required where additional support is needed from other education services and other appropriate agencies. For example, an educational psychologist may be called on to advise on appropriate learning outcomes for a particular child or young person. Other non-education services may be involved in a joint or shared assessment of a child or young person. In such circumstances an integrated plan of action will be appropriate.

79. In all circumstances, planning should aim to ensure the effective co-ordination of support, including parents and the child or young person, so that it is clear what the intended learning outcomes are and what additional support is required to achieve these. Every opportunity should be taken to ensure that there is an integrated action plan for a child or young person where more than one agency or service is involved and the aim should be to have one plan in line with Getting it right for every child. Such an integrated action plan may be made up of different elements; for example, an

individualised educational programme may be included as part of a child's plan for a looked after child. In this way, the professionals working with the child or young person use one integrated action plan with shared educational objectives. The following paragraphs consider the plans most likely to be used with children and young people who require additional support for learning.

Personal learning planning

80. Personal learning planning helps children, young people and parents to be clear about the goals of learning, including those for personal development, and the experiences and outcomes planned for children and young people through Curriculum for Excellence. Its focus is on supporting dialogue among teachers, parents, children and young people, and ultimately about engaging children and young people in their own learning. The purpose of record keeping and documentation is to support the process of personal learning planning rather than these being ends in themselves. This should be done in whatever way suits learners and the school best. All children with additional support needs should be engaged in personal learning planning and for many this process will be sufficient to address their additional support needs. Further detailed information about personal learning planning including information on sharing criteria, involvement of pupils, gathering evidence, record keeping, individual and group personal learning planning and meeting the needs of pupils with additional support needs, including extracts from case studies explaining each of these further can be obtained from the Assessment is for Learning website which is noted in the resources section.

Individualised educational programme

81. Where children or young people require more detailed planning for learning than can be catered for through personal learning planning, or where substantial adaptation to the curriculum is being considered, an individualised educational programme may be appropriate. An individualised educational programme describes in detail the nature of a child's or young person's additional support needs, the ways in which these are to be met, the learning outcomes to be achieved, and specifies what additional support is required, including that required from agencies from outwith education. Where appropriate, an education authority should work with health, social work or voluntary agencies to draw up the programme so that objectives and services can be co-ordinated

82. Many local authorities have a policy which explains the circumstances under which individualised educational programmes are used. Some have developed a template for an individualised educational programme which can be completed electronically.

Co-ordinated support plans

83. There is a small number of children and young people with significant additional support needs arising from complex or multiple factors who require support from at least one agency from outwith education. These children may fulfil the statutory requirements for having a co-ordinated support plan, which is described in detail in chapter 5, to ensure that the support for learning is co-ordinated effectively across agencies. The links between co-ordinated support plans and other educational plans are considered in Chapter 5.

Planning: agencies outwith education

84. There is a range of plans, which a child or young person may have. Education authorities and other agencies should seek to ensure that assessment for, and production of, learning plans takes account of any other planning processes within the local authority and across agencies. The ultimate aim is to have one plan in line with Getting it right for every child. Educational objectives should be shared across plans. In particular, education plans should link with any health or social care plan. This will help prevent duplication and facilitate the co-ordination and implementation of support for children and young people.

85. Particular issues may arise with statutory care plans. There is a statutory duty on the local authority as “corporate parent” to review children and young people looked after by them. Although the emphasis of the care plan will quite properly focus on the child or young person in placement, and contact arrangements with the family, it must also reflect fully the child’s or young person’s learning needs. Effective planning is important to ensure that children and young people receive the services they need. “Children who are looked after should have the same opportunities as all other children for education, including further and higher education, and access to other opportunities for development. They should also, where necessary, receive additional help, encouragement and support to address special needs or compensate for previous deprivation or disadvantage.” (*Guidance to the Children (Scotland) Act 1995*)

86. Schools are required to report on the educational progress of each child or young person who is looked after away from home. Where children or young people have additional support needs, these should be stated in their care plan. In many cases it will be appropriate for that part of the care plan which covers education to refer to any planning documents used for education, and for these documents to be appended to the care plan, without necessarily completing the education section of the care plan.

87. There is a range of health care plans for different disciplines within health, e.g. medical, nursing, occupational therapy, speech and language therapy, and physiotherapy. Each plan is informed by an assessment process with clear objectives and outcomes. These outcomes are monitored to inform and ensure clinical effectiveness. Plans may be single or multi-disciplinary, or form part of a multi-agency plan as appropriate. Although these plans have their own specific purposes, it is important that they are integrated with and cross-refer to education plans for purposes

of identifying learning needs and educational objectives. However, the Government's eCare Framework will eventually provide secure multi agency information sharing.

Louise, aged 6, is the oldest of three children. The school is concerned about her short concentration span, poor communication and aggressive behaviour towards other children. The family receive support from the local family centre and there have been regular multi agency meetings to co-ordinate support.

For the previous six months all three children have been on the child protection register because of concerns of neglect. At the most recent review of the child protection plan it was highlighted that Louise's communication skills remained poor despite an individualised educational programme being in place. A speech and language therapist assessed Louise and advised the school about more appropriate teaching approaches and objectives and helped to develop new appropriate education targets within the plan. The educational objectives are now shared across the child protection plan and the individualised educational program

Monitoring and review

88. Education authorities must make appropriate arrangements for keeping under consideration the additional support needs of, and the adequacy of additional support provided to, each child and young person with additional support needs for whose school education they are responsible. Education authorities, with appropriate agencies, must monitor the progress of children and young people who have additional support needs to ensure that they are learning effectively and making adequate progress. Where children and young people are not making adequate progress as expected, the child's needs should be re-assessed and appropriate support provided.

89. Education authorities and other agencies need to have arrangements in place to co-ordinate the planning and review process for children and young people. These arrangements will maximise effective joint and coherent working across agencies and authorities involved and help reduce pressure on the child or young person and their parents as well as promoting the child's or young person's development to their fullest potential. This is particularly important where the review schedules for plans vary. For example, individualised educational programmes are reviewed regularly by teachers and children and young people as part of the continuous teaching and learning cycle. Formal programme reviews are called, as required, but typically every two months or each term.

90. The local authority, as a minimum requirement, must review the circumstances of children and young people looked after away from home within six weeks of being placed. Thereafter, reviews must take place within three months of the first review; and subsequently, at intervals of no more than six months. The purpose of these reviews is to prepare a care plan which addresses the immediate and longer term needs of the child or young person with a view to safeguarding and promoting his or her welfare. Where a looked after child or young person also has an individualised educational

programme or a co-ordinated support plan, the authority may decide to review these within the care plan review process. Any meetings should fully involve the parents and the child or young person in preparing the plan or plans. A copy of the plan should go to parents, young persons and all those who have contributed to the plan or plans.

91. Authorities and agencies should have arrangements in place to ensure that all appropriate plans are updated and integrated as required. Local arrangements should be in place to decide who convenes multi-agency review meetings and who the lead professional will be. As noted ‘in paragraph 36 above, the Act presumes that all looked after children have additional support needs unless the education authority determine that they do not require additional support to enable them to benefit from education. Reviews should be used to consider whether looked after children or young people have additional support needs.

92. Changes in educational provision such as transfer of school and planning for leaving school require to be considered carefully to ensure that transitions are as smooth and purposeful as possible. Transitions are considered in Chapter 6.

Chapter 4

SCHOOL ATTENDANCE: RIGHTS, RESPONSIBILITIES AND PLACING REQUESTS

Introduction

1. For the purpose of arranging for children to attend schools, local authorities usually divide cities, towns and country areas into school catchment areas and children living in the same catchment area usually attend the same school. Most children and young people with additional support needs are educated in their local schools under the management of the education authority to which the child or young person belongs. This is the authority in which they usually reside with their parents, referred to here as the home education authority. Some children with additional support needs may attend schools in the local authority outwith their catchment areas as a result of arrangements made by the authority with the agreement of the parents. For example, children and young people may attend special schools or other schools in the local authority because they are better able than the local school to provide education to meet the child's or young person's additional support needs.

2. This chapter considers the following four circumstances under which a child or young person may not be receiving school education in their local school.

- the parents may be educating the child or young person at home or may have arranged for the child or young person to attend an independent or grant-aided school
- the home education authority may have entered into arrangements with another education authority to have the child or young person educated in a school under the management of that education authority
- the home education authority may have arranged for the child or young person to be educated in an independent or grant-aided special school, or a school in England, Wales or Northern Ireland providing wholly or mainly for children or young people with additional support needs
- the child may be being educated in a school as a result of a successful placing request made by the parent(s). A young person may have made such a placing request in his/her own right.

3. With regard to the last point above, parents may make a placing request:

- to the home education authority for their child to attend a school, outwith their catchment area, managed by the home education authority
- to another education authority for their child to attend a school managed by that other education authority
- to the home education authority for their child to attend an independent or grant-aided special school in Scotland or a school in England, Wales or

Northern Ireland the managers of which are willing to admit the child and the school makes provision wholly or mainly for children or young people with additional support needs.

Sch
2(8)

4. Young people can make placing requests on their own behalf unless the education authority are satisfied that they lack the capacity to do so in which case the parents can act on their behalf

5. In considering each of the above, the focus in this chapter will be on where the responsibility for providing the education rests when a child is educated at home or in a school outwith his or her catchment area and what procedures are available for the parents or young people to pursue when they have concerns or disputes about the provision available. In particular, the Act provides parents and young people with access to mediation, dispute resolution and the Additional Support Needs Tribunal for Scotland (referred to here as “the Tribunal”) in certain circumstances. While each of these is considered in detail in Chapter 8 the following summary is provided here for ease of reference.

- mediation: an education authority must have an independent mediation service in place for disagreements relating to matters concerning the exercise of the authority’s functions under the Act. It allows disputing parties to seek to resolve their differences with the assistance of a mediator acting as an impartial third party. Mediation is free of charge to parents and young people.
- dispute resolution: the procedure for resolving disputes allows for a formal review of an individual case by an independent third party, external to the local authority, who considers the circumstances leading to the disagreement, and makes a report with recommendations for all parties. The referral for dispute resolution is made to the Scottish Ministers and dispute resolution is free of charge to parents and young people.
- Tribunal: the Tribunal will hear references from parents and young people on matters relating to co-ordinated support plans, placing requests and school to post-school transitions. The Tribunal’s statutory functions, decisions and dealings with its users and the public are independent of government, national and local. It is free of charge to parents and young people.

An authority’s functions under the Act

s7(1)

6. An authority’s functions under the Act refer to their powers under the Act and to their duties under the Act. The authority’s powers under the Act are discretionary so the authority may choose to exercise these or not. For example, where parents of a child belonging to the area of an authority, but for whose education the authority are not responsible, request the authority to establish whether their child has additional support needs the authority may comply with request but need not do so. However, duties are

s6(1)(a)

mandatory and must be carried out. For example, each authority must make arrangements to identify from among those children and young people for whose education they are responsible those who have additional support needs.

Parents providing education at home or through making arrangements for attendance at an independent or grant aided school

7. Section 30 of the Education (Scotland) Act 1980 states that “It shall be the duty of the parent of every child of school age to provide efficient education for him suitable to his age, ability and aptitude either by causing him to attend a public school regularly or by other means.” Most parents discharge this duty by sending their child to a school managed by the local authority in which they live. However, they may discharge their duties under the 1980 Act by educating their child at home or by making arrangements for him/her to attend an independent or grant-aided school under circumstances where the home education authority are not responsible for the child’s education. Usually, the parents would require to meet any costs of their child attending such a school.

8. The Act gives education authorities the following **powers** (see Chapter 3 paragraphs 61-66):

- to help children and young people belonging to their area who have, or may have, additional support needs (eg they could provide support to a child being home educated or attending an independent school)
- to respond to requests from parents, managers of grant-aided or independent schools or young people themselves to establish whether children or young people have additional support needs and would require a co-ordinated support plan if the education authority were responsible for the education of the child or young person.

Mediation

s15

9. Parents of children for whose school education an authority are not responsible have access to an education authority’s mediation services. Young people have access in their own right. However, mediation is available only where the disagreement relates to the authority’s exercise of their functions under the Act. For example, parents of a child at an independent or grant-aided school, for whose school education the authority are not responsible, may request the authority to establish whether the child has additional support needs or would require a co-ordinated support plan. If the authority decide to exercise their discretion not to do this then the matter cannot be referred to mediation because the authority have no duty to carry out any assessment. However, if the authority **have exercised their discretionary power** and have established that the child has additional support needs or would require a co-ordinated support plan then they are obliged to provide the parents with information and advice about the additional support required. Failure to do so could be referred to mediation and/or to the Scottish Ministers under section 27 of the 2004 Act or section 70 of the 1980 Act, as a failure to

s7(2)(a)(i)

s7(7)

s5(4)

comply with this duty would be a failure to comply with education legislation. The authority are not obliged to provide the support so identified, but may exercise their discretionary power to do so. However, where they **have** provided the support and, for example, wish to change it, then if the parents disagree with the authority's decision in relation to the provision of support they may refer the matter to mediation.

Dispute resolution

s16

10. As with mediation services, parents and young people have access to an education authority's dispute resolution arrangements, irrespective of whether the authority are responsible for a particular child's or young person's school education. However, the matter in dispute must be related to the authority's exercise of their functions under the Act and must be one of the specified matters in the Regulations¹. In the example above, if the authority have established that the child has additional support needs or would require a co-ordinated support plan but have not provided the parents with the necessary information about the additional support required then the matter **cannot** be referred for dispute resolution because failure to provide the information is not a specified matter in the Regulations. However, where the authority have exercised their discretionary power to provide additional support and then alter the level of support provided, then the matter can be referred to dispute resolution because failure to provide additional support is one of the specified matters in the Regulations.

Tribunal

s18(1)

11. Disputes can only be referred to the Tribunal where an education authority are responsible for the school education of the child or young person. Therefore, in the circumstances described above, where no education authority are responsible for the child's education (eg where the child is being home educated or has been placed by parents in an independent or grant-aided school), there is no Tribunal access.

The home education authority have entered into arrangements with another education authority to have the child or young person educated in a school under the management of that education authority

12. The home education authority may enter into arrangements with another education authority to have the child or young person, for whose school education they are responsible, educated in a school under the management of that other education authority, referred to here as the host education authority. Typically this situation arises because these arrangements enable the home education authority to fulfill their duty under the Act to make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible. It may be that the home education authority lacks a specialist provision (eg special school provision or teachers with expertise in a particular aspect of providing for additional support needs) which the host education authority can provide. Or, a particular child or young person may be looked after away from home

¹ The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

and placed with foster parents in another local authority and attending a school in that local authority.

s29(3A)

13. In these circumstances, the home education authority retain responsibility for the child's or young person's school education even though the child or young person is being educated in a school in another education authority. For example, the home education authority retain responsibility for identifying and keeping under review the additional support required, for preparing and reviewing co-ordinated support plans where these are required, and for providing mediation and dispute resolution. To all intents and purposes it is as if the child or young person is being educated in a school under the management of the home education authority itself.

Mediation

14. The home education authority are responsible for providing mediation should this be required. However, the disagreement for which mediation is requested must relate to the exercise of the home authority's functions under the Act. For example, a parent may consider that the additional support being provided for the child in the host authority is inadequate and may request the home authority to arrange with the host authority to improve it. Failure on the part of the home authority to do this could be referred for mediation.

Dispute resolution

15. As with mediation, dispute resolution is provided by the home education authority. The disagreement must relate to the discharge of the authority's functions under the Act and it must be a specified matter in the Regulations. In the example, above, since failure to provide, or make arrangements for the provision of, additional support (whether relating to education or not) required is a specified matter then the parent may access dispute resolution.

Tribunal

16. Where references to the Tribunal are made these would be in terms of decisions, information and failures of the home education authority. References to the Tribunal are considered in more detail in paragraphs 32-39 below and in Chapter 8. Set out below are some examples of matters which may be referred to the Tribunal. This list is not exhaustive:

- the home authority's refusal to grant a placing request for the child to attend a special school under the management of the home authority;
- or, indeed, any authority's refusal to grant a placing request for the child to attend a special school under the management of that authority;
- or, the home authority's refusal to grant a placing request for the child to attend an independent special school;

- or, the refusal of the home authority to grant a placing request to a school in England, Wales or Northern Ireland which makes provision wholly or mainly for additional support needs and where the managers of the school are willing to admit the child.

The home education authority have arranged for the child or young person to be educated in a grant-aided or independent special school, or a special school in England, Wales or Northern Ireland

17. The home education authority may have arranged for the child or young person to be educated in a grant-aided or independent special school, or a special school in England, Wales or Northern Ireland. As in paragraph 13 above the home education authority retain responsibility for the child's or young person's education and are subject to all of the relevant duties in terms of the Act.

Mediation

18. The home education authority remain responsible for providing mediation services as in paragraph 14 above.

Dispute resolution

19. Likewise, the home education authority retain responsibility for providing dispute resolution as in paragraph 15 above.

Tribunal

20. As in paragraph 16 above, where references to the Tribunal are made these would be in terms of decisions, information and failures of the home education authority.

The child or young person is being educated in a school under the management of another education authority as a result of a successful placing request made to that authority by the parents or young person.

Placing requests

21. The Act enables parents to make placing requests for their child with additional support needs to attend a school outwith the local authority in which the child lives, the home authority. Young people with additional support needs have the right to make placing requests on their own behalf. The placing request is made to an authority not responsible for the school education of the child or young person. Placing requests may be made whether or not children or young people have co-ordinated support plans.

22. Where a child or young person is being educated outwith his or her home authority as a result of a successful placing request then responsibility for the child's or

young person's school education transfers to the host authority who are then responsible for all relevant duties under the Act.

s1(3) 23. Decisions about additional support needs following a successful placing request are made by considering the provision, whether or not educational, which is additional to or otherwise different from the educational provision made generally for children or young people in schools under the management of the host authority which is responsible for the child's or young person's education.

Recovery of costs

Sch 3 3(4) 24. The Act also provides that references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act. The provisions of section 23(2) of the 1980 Act on contributions from the home education authority to the host education authority apply as they do within the framework of the 1980 Act. These are that where an education authority have provided school education, with or without other services, for any pupil, child or young person belonging to the area of some other authority, the education authority, may, if a claim is made recover from that other authority such contributions in respect of such provision as may be agreed between the authorities or as the Scottish Ministers may determine. There are two exceptions, however, relating to mediation and dispute resolution (see paragraphs 27 and 29 below).

25. Where the provision relates to additional support needs then it follows from paragraph 22 above that these needs are assessed against the educational provision generally made for children or young people of the same age in the host authority. It should be noted that following a successful placing request to a local authority there is no obligation on the authority to provide transport between the child's home address and the school in question. However, if the successful placing request is for an independent or grant-aided special school, or a school in England, Wales or Northern Ireland providing wholly or mainly for children or young people with additional support needs, then the authority must meet the necessary costs of the child's attendance at the school, including fees.

Mediation

s15(1) 26. Following a successful out of area placing request, parents and young people are able to access mediation from the host authority regarding that authority's functions under the Act. Also following the submission of an out of area placing request, parents or young people are able to access mediation from the potential host authority regarding the placing request.

s4 2009 Act 27. However, where a child or young person is being educated outwith the area in which he or she lives as a result of a successful out of area placing request, the host authority cannot recover the cost of providing any mediation services from the authority for the area in which the child lives (the home authority).

Dispute resolution

s16(1) 28. Following a successful out of area placing request, parents and young persons are able to access dispute resolution from the host authority in relation to the specified matters in the Regulations regarding authority's functions under the Act

s4
2009 Act 29. However, where a child or young person is being educated outwith the area in which he or she lives as a result of a successful out of area placing request, the host authority cannot recover the cost of providing any dispute resolution from the authority for the area in which the child lives (the home authority).

Co-ordinated support plans

s12(3A) 30. Following a successful out of area placing request for a child or young person with a co-ordinated support plan, the new host authority are under a duty to seek and take account of information and advice from the education authority from which the coordinated support plan was transferred as well as from any agencies or persons involved in providing support under the co-ordinated support plan prior to its transfer. This ensures that the new host authority, and the previous authority responsible for the school education of the child or young person, are in contact and that the new authority has all the information necessary from the old authority and the agencies previously supporting the child or young person. The aim is to make the transition from one authority to another as smooth as possible.

s10(1)
and
(5A) 31. The duty to keep under review any co-ordinated support plan prepared by the original home authority transfers to the new host authority following the successful placing request, since the host authority are responsible for the school education of the child or young person. The host authority must then review the co-ordinated support plan as soon as possible after the date of any transfer of the co-ordinated support plan from the home authority to the host authority (time limits for conducting this review will be specified in secondary legislation).

References to the Tribunal

s18(3)
(da) 32. Where an education authority decide to refuse a placing request in respect of a place in a Scottish special school then that decision may be referred to the Tribunal. Similarly, the decision of an education authority to refuse a placing request in respect of a place in a school in England, Wales and Northern Ireland, which is a school making provision mainly or wholly for children or young people with additional support needs, may be referred to the Tribunal. These references to the Tribunal may apply whether or not a co-ordinated support plan is involved.

s19(4A) 33. When hearing a placing request appeal in respect of a place in a special school, or a school in England, Wales or Northern Ireland, making provision wholly or mainly for children or young persons with additional support needs, whose managers are willing to admit the child, the Tribunal has the power to confirm the decision of the authority or

s19(5)(b)
i)

overtake the decision of the authority. It has the power to specify when a successful placing request should commence and make any amendments to a co-ordinated support plan.

34. A decision of an education authority to refuse a placing request may be referred to the Tribunal where a co-ordinated support plan has been prepared, is being considered, or the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal. Where an authority are considering a co-ordinated support plan when no such plan has been prepared but it has been established by the education authority that the child or young person requires such a plan; or the education authority have advised the parents or young person that they intend to establish whether a co-ordinated support plan is required then in these circumstances the decision to refuse a placing request by either the education authority or by the education authority appeal committee will be considered by the Tribunal.

Repeat references to the Tribunal

35. References to the Tribunal on the decision to refuse a placing request can only be made once in each 12 month period unless any co-ordinated support plan has been reviewed in that period, or a Tribunal has ordered a coordinated support plan to be amended or prepared. Similarly, a period of 12 months will have to lapse before another reference can be submitted to the Tribunal regarding a decision to refuse a placing request to a Scottish special school or to a school in England, Wales and Northern Ireland which is a school making provision mainly or wholly for children or young people with additional support needs.

The Tribunal, sheriff and education authority appeal committee

36. Where a child or young person has a co-ordinated support plan, is being considered for a co-ordinated support plan, or the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal, appeals regarding placing requests should be referred to the Tribunal rather than to the education authority appeal committee or the sheriff.

37. A decision made by an education authority appeal committee to refuse a placing request may be referred to the Tribunal if, before the expiry of the time limit for appeal to the sheriff court (28 days), a co-ordinated support plan is involved or being considered.

38. If, at any time before the education appeal committee or sheriff has made their final decision on a placing request appeal, a co-ordinated support plan is being prepared, is being considered, or the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal, the appeal is to be transferred to the Tribunal. Any reference transferred back to the sheriff from the Tribunal will be treated as if it were an appeal made directly to the

s18(7)

s18(1)
and

Sch
2(7)(1A)

s18(3)(f)

s18(4)

Sch
2(7)(12)

sheriff in the first instance thus ensuring the sheriff has the power to deal with such a reference.

39. While the Tribunal has the discretion to transfer a placing request decision back to the education appeal committee or sheriff where it has been decided that no co-ordinated support plan is required, it is anticipated that in the majority of cases the Tribunal will make a decision on the placing request reference.

s19(5)
(ba) and
(d)

Chapter 5

CO-ORDINATED SUPPORT PLAN

1. Previous chapters have considered the general provision for additional support needs that the Act requires education authorities to make. However, a small number of children and young people have additional support needs arising from complex or multiple factors which require a high degree of co-ordination of support from education authorities and other agencies in order that their needs can be met. This support is co-ordinated through the provision of a co-ordinated support plan under the Act. This chapter explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered.

2. The co-ordinated support plan is a statutory document which is subject to regular monitoring and review for those children and young people who meet the criteria for requiring one. Education authorities must have arrangements in place to identify from among those children and young people for whose school education they are responsible, those children and young people with additional support needs who require a co-ordinated support plan and the particular additional support needs of the children so identified. Also, the Act, as amended, assumes that all looked after children and young people have additional support needs unless the authority are able to demonstrate that an individual looked after child or young person does not require additional support in order to benefit from school education. In addition, the Act, as amended, requires education authorities to consider whether each individual looked after child or young person requires a co-ordinated support plan

s6(1)

s6(1A)

3. The criteria for requiring a plan are as follows:

s2(1)

.....a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if-

- (a) *an education authority are responsible for the school education of the child or young person,*
- (b) *the child or young person has additional support needs arising from-*
 - (i) *one or more complex factors, or*
 - (ii) *multiple factors,*
- (c) *those needs are likely to continue for more than a year, and*
- (d) *those needs require significant additional support to be provided-*
 - (i) *by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or*

(ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

Applying the criteria for a co-ordinated support plan

An education authority must be responsible for the school education of the child or young person

- s2(1)(a) 4. The first test for determining whether or not a child or young person requires a co-ordinated support plan is that an education authority must be responsible for the school education of the child or young person before one can be prepared. Children and young people for whose school education an authority are not responsible cannot have a co-ordinated support plan (see paragraph 10 below).

Early years and pre-school

- s5 5. In the early years those children below the age of a prescribed pre-school child (normally the age of 3 years) are not eligible for a co-ordinated support plan, since they are not eligible to receive school education. Nevertheless, as described in Chapter 3, the authority may, in certain circumstances have a duty to provide additional support for learning to certain children, belonging to their area, who have been drawn to their attention as having additional support needs arising from a disability within the terms of the Disability Discrimination Act 1995 (c 50) even though a co-ordinated support plan cannot be provided. However, when the children are in pre-school provision managed by the authority, or in a partnership nursery, then they may have a co-ordinated support plan, provided the other criteria for having one are met.

6. Education authorities should not wait until children reach the age of entitlement to school education, at the age of 3 years approximately, before commencing the initial assessments to determine whether a co-ordinated support plan will be necessary, if they have grounds to believe that such a plan will be required. For some children who are about to start pre-school provision, such as nursery school, it may therefore be necessary to begin the assessment process for deciding whether a co-ordinated support plan should be prepared, or not, for a child of two years of age.

School age

- s4(1) 7. The education authority are responsible for the school education of children and young people belonging to their area who attend schools under the management of the authority (referred to here as the home authority). The authority are also responsible for the education of children and young people attending independent or grant-aided special schools where the authority have made the arrangements for children and young people to attend these schools, for example, to enable the authority to discharge their functions to make adequate and efficient provision for the additional support required. Children and young people may also be placed in independent and

grant-aided special schools, and secure units, through the Children's Hearing system. In these cases the education authority are also responsible for the school education of children and young people belonging to their area. In any of these circumstances, the education authority will require to consider whether such individual children and young people require a co-ordinated support plan.

8. A child or young person may attend a school under the management of an education authority other than the education authority for the area to which the child or young person belongs. This former education authority are referred to here as the host education authority; the latter are the home education authority. The home education authority may enter into arrangements with another education authority, and arrange for that child or young person to be educated in that host education authority, in order that the home education authority can discharge their duties under the Act. In such circumstances, the home education authority are responsible for the school education of the child or young person including being responsible for establishing whether that child or young person requires a co-ordinated support plan, for preparing the plan, as necessary, and for keeping under consideration the adequacy of any plan so prepared.

9. However, where a child or young person is attending a school in an authority other than the home education authority as a result of a placing request, then it is the host education authority which are responsible for the school education of that child or young person. The host education authority are responsible for ensuring that they fulfil all their duties under the Act, as required, where an education authority are responsible for the school education of a child or young person. These duties include being responsible for establishing whether that child or young person requires a co-ordinated support and for preparing the plan, as necessary.

s10(1)

10. Children and young people who have been placed in independent or grant-aided schools, by their parents or others, or are being educated at home, and for whose school education the authority are not responsible, are not eligible to have a co-ordinated support plan. In these circumstances, parents or the young person may ask the education authority to establish whether the child or young person has additional support needs, or would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. The education authority may comply with the request but are not obliged to do so. Managers of independent and grant-aided schools may also request the education authority to establish if the child or young person would require a co-ordinated support plan, if the authority were responsible for the school education of the child or young person. Again, the education authority may comply with the request but are not obliged to do so.

s7

Additional support needs arising from complex and multiple factors

11. To have a co-ordinated support plan a child or young person must have additional support needs arising from one or more complex factors or multiple factors and these needs must be likely to continue for more than a year. It should be noted that while the need for support arising from these factors should be likely to continue for

s2(1)(b)
and (c)

more than a year the Act does not require that the ‘significant additional support’ provided (see practical examples in Annex C) must last for more than a year.

12. As noted in Chapter 2 there is a wide range of factors which may lead to children and young people having additional support needs. The factors may be grouped into broad overlapping themes arising from the learning environment, family circumstances, disability and health issues, and social and emotional factors.

13. The Act states that a factor is a complex factor if it has, or is likely to have, a **significant adverse effect** on the school education of the child or young person. The Act does not define the length of time over which a complex factor has an effect (although the additional support needs arising from one or more complex factors have to be likely to last for more than a year for a child or young person to require a co-ordinated support plan), nor does the Act define the term ‘significant adverse effect’. However, since a complex factor is one that has a significant adverse effect on the school education of the child or young person, it is likely that it will affect most aspects of learning. Some examples of complex factors grouped according to the above themes could be the following:

s2(2)(a)

Learning environment – where the teaching approaches and curriculum are significantly different from what the child or young person requires and are thus having a significant adverse effect on his or her school education. This may arise where the child or young person is attending a particular mainstream school and the learning and teaching approaches available there cannot, for whatever reasons, be suitably adapted to take account of the child’s or young person’s learning needs. In this example, a special school may provide a more effective education. Alternatively, a child or young person in a special school may require to be placed in a mainstream school. Or, the child or young person may have severe dyslexia which is having a significant effect on his or her ability to access the curriculum and, because the appropriate measures have not been put in place, this is adversely affecting the child’s or young person’s progress in school.

Family circumstances – where family life is disrupted, perhaps through parental alcohol, drug or domestic abuse or mental health problems, and the child or young person is not receiving the parental support, direction and guidance needed to make the most of school education. Or, where for example, school attendance is very poor and is adversely affecting educational progress.

Disability or health – where the child or young person faces barriers to learning and development from, for example blindness, or a physical disability such as cerebral palsy or other condition such as autistic spectrum disorder, specific language impairment or developmental co-ordination disorder and requires measures to be put in place if the child or young person is to benefit from school education. In addition, some children or young people with a

mental health problem such as attention deficit hyperactivity disorder, depression or anorexia may experience significant or frequent disruption to their school education.

Social and emotional factors – children or young people may have social and emotional difficulties, such as behaviour difficulties which may lead to offending or they may be being bullied, which prevents them attending school regularly or engaging effectively with the curriculum.

14. Multiple factors are factors which are not by themselves complex factors but, taken together, have or are likely to have, a significant adverse effect on the school education of the child or young person. For example, a child may have a mild sensory impairment (disability or health), live in disadvantaged social circumstances where there are parental relationship difficulties, unemployment and low income (family circumstances) and may not be receiving appropriate education (learning environment) which takes account of the sensory impairment. Each of these taken separately may not have a significant adverse effect on the education of the child or young person, but the cumulative effect of these multiple factors is such that the school education of the child or young person is being adversely affected to a significant degree.

s2(2)(b)

15. In all cases it is how the factors impact on the child's learning and development that is important and it is assessment which determines this. Those well placed to decide whether or not factors are complex or multiple are those working with the child or young person, as well as the parents, and of course the child or young person. What may be complex, or multiple, factors with a significant adverse effect for one child or young person may not be for another. It is the effect of the factor(s) on school education that is important, not any diagnostic label alone. Every child or young person should be considered on an individual basis. In some cases, there will be a need for a co-ordinated support plan while for others, another existing planning process e.g. an individualised educational programme, or a Care Plan may be sufficient to address the child's or young person's needs.

A co-ordinated support plan may not need to last throughout a child's or young person's school career

Adam has a specific language impairment which had led to a co-ordinated support plan being prepared during his pre-school year. He maintained a split placement between a language unit and mainstream primary school for the first three years of his primary schooling. During this time his needs required a high degree of co-ordination amongst the professionals involved and he received significant support from a speech and language therapist. In P4 he attended his mainstream school full time supported by an outreach teacher and a speech and language therapist. In working with the speech and language therapist, the school staff were able to develop new skills and appropriate strategies within class to meet his needs. At the next review of the co-ordinated support

plan, it became clear that significant support from outwith education was no longer necessary and there was no longer a need for a co-ordinated support plan.

Additional support needs likely to continue for more than a year

16. As noted above, in addition to deciding on whether the criteria of complex or multiple factors are met, professionals involved with the children and young people must determine how long those additional support needs are likely to last. For a co-ordinated support plan to be required the judgment must be that these needs are likely to continue for more than a year.

Significant additional support

17. These additional support needs must also require the provision of significant additional support from an education authority, and either the local authority exercising their functions other than education (e.g. social work services) and/or one or more appropriate agency/agencies¹, within the meaning of the Act and the associated regulations, if a co-ordinated support plan is to be required. One purpose of the co-ordinated support plan is to ensure that support is co-ordinated effectively when at least one service is required from outwith what the education authority provides as part of its educational functions.

18. The Act does not define what “significant additional support” means but the issue has been discussed in the Tribunal and courts. In particular, the opinion delivered by Lord Nimmo Smith in the Inner House of the Court of Session in the case of *JT* is particularly relevant and is followed here². The use of the term “significant” signals that the scale of the support provided, whether it is in terms of approaches to learning and teaching (e.g. adaptation or elaboration of the curriculum) or personnel (eg provision of learning support assistant) or resources (eg specialist aid to communication or a special hoist), or a combination of these, stands out from the continuum of possible additional support. The issue of significance thus refers to the extent of the provision. Judgments about significance have to be made taking account of the frequency, nature, intensity and duration of the support and the extent to which that support needs to be co-ordinated and is necessary for the achievement of the educational objectives which will be included in the plan. In particular, the support must be of sufficient duration to make it worthwhile preparing a co-ordinated support plan in order to ensure that it is co-ordinated properly.

19. In Annex C a grid is provided with some examples which may prove useful in considering the issue of significance. Full-time placement in a special school or unit would count as significant additional support, as would provision of personnel full-time

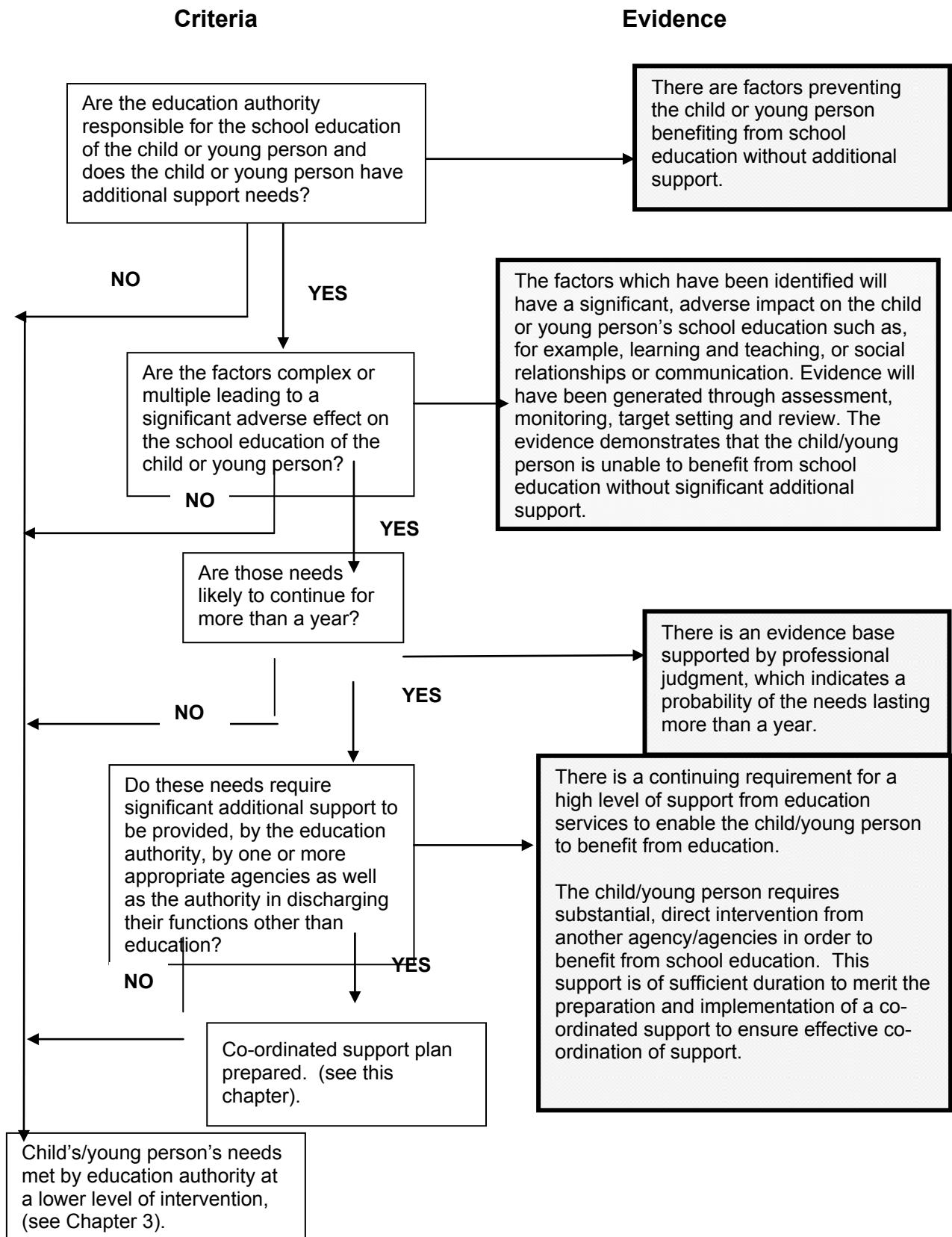
¹ These are: any other local authority, any NHS Board., Careers Scotland, all Colleges of Further Education and all Institutions of Higher Education in Scotland.

² Lord Nimmo Smith, Inner House, Court of Session , June 2007 - <http://www.scotcourts.gov.uk/opinions/2007CSIH52.html>

to support a child or young person in a mainstream school, and provision of specialist aids to communication.

20. Where a child or young person is looked after and living away from home in a special school then that is certainly significant additional support. Where support is required from social work services to sustain the child's or young person's attendance at the school, and hence to enable him or her to achieve their educational objectives (see below), than that is likely to count as significant additional support. In these circumstances, it is likely that the child or young person would require a co-ordinated support plan. However, it is not possible to generalise as to what should count as significant and consideration has to be given to circumstances in individual cases.

21. The following diagram provides a decision tree to help authorities to decide whether children and young people require a co-ordinated support plan. It should be read in conjunction with the Co-ordinated Support Plan Regulations. This chart should be read as relevant to all appropriate agencies.



Seeking and taking account of views and providing information

22. When considering whether or not a co-ordinated support plan may be required, or in preparing such a plan, an education authority must seek and take account of relevant advice and information (including assessments) from appropriate agencies and other persons whom they think are appropriate. This may be, for example, from health services. They must also take account of advice and information available from sources within the authority, other than from education. Such a source is most likely to be the authority's own social work services. They must also take account of information provided to them by, or on behalf of, the child or young person. For example, if the parents have privately commissioned an assessment or report on the child or young person, or the young person has commissioned the report himself or herself, then the authority must take that report or advice into consideration if provided to them. Also, the authority must seek and take account of the views of children and their parents, and young people themselves.

s12(2)

23. If an education authority identify a child or young person as requiring a co-ordinated support plan it is expected that the parents would want to, and will, participate in its preparation. Most parents are keen to do what is best for their child and do co-operate with education authorities. In some cases, parents may be concerned about the assessment process and may not co-operate. If the parent will not co-operate with the assessment process the education authority will require to decide whether they have enough information available to prepare a co-ordinated support plan. This is also the case where a child, or a parent on their behalf where the child lacks the capacity to consent, has refused to give consent to a medical assessment or examination. For most children or young people who require a co-ordinated support plan there will be detailed information available. Education authorities are still able to draw up co-ordinated support plans even where parents disagree that one should be prepared or where they refuse to co-operate. In circumstances where the parents disagree that a co-ordinated support plan is required it is open to them to refer the authority's decision to the Tribunal.

s2(4) Age of Legal Capacity (Scotland) Act 1991

24. Where an education authority propose to establish whether any child or young person requires a co-ordinated support plan they must, before proceeding, inform the parents (or young person). They must also inform the managers of independent or grant-aided schools, where they are responding to a request by them to establish whether a child or young person would require a co-ordinated support plan if the education authority were responsible for the child or young person's school education. When they have reached a view on whether a co-ordinated support plan is required the authority must also inform these persons about their conclusions and any rights to make a reference to the Tribunal regarding the authority's conclusions.

s11(1), (2) and (3)

Requesting an assessment

25. As described in Chapter 3, where an education authority are responsible for the school education of a child or young person they must meet requests made by a

parent or young person to establish whether any child or young person has additional support needs, or requires a co-ordinated support plan, unless the request is unreasonable.

26. Where an education authority are not responsible for the school education of a child or young person they may meet requests made by the parents, young person or managers of an independent or grant-aided school to establish whether the child or young person would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan.

27. In both cases above those making the request will be expected to provide sufficient information to explain why they think assessment is required. The education authority must notify the parents or young person, or the managers of the independent or grant-aided school (as appropriate), of a decision not to comply with the request. In the case of a child or young person for whose school education they are responsible, the education authority must notify the parents or the young person, before proceeding, of their proposal to establish whether the child or young person requires a co-ordinated support plan. In the case of a child or young person for whose school education the education authority are not responsible then where the education authority decide that a co-ordinated support plan would have been required, if they were responsible for the child's or young person's school education, then they must provide the person who made the request with such information and advice about the child's or young person's additional support needs as they consider appropriate.

28. Education authorities should notify the person making the request of either decision as quickly as possible but certainly no later than 4 weeks from when the request is received.

29. Where an education authority are responsible for the school education of a child or young person then their decision not to comply with a request to establish whether a co-ordinated support plan is required is treated as a decision of the education authority that the child or young person does not require a co-ordinated support plan. In notifying the parents or young person of their decision, they must also notify them of their right to make a reference to the Tribunal. A reference to the Tribunal can only be made where an education authority are responsible for the school education of the child or young person.

30. Where a parent or young person has requested that the authority establish whether the child or young person requires a co-ordinated support plan and the authority have not responded to that request within a specified period of time (set out in Regulations), the Act, as amended, provides that the failure to respond is treated as if it was a decision by the education authority that no co-ordinated support plan is required. In these circumstances the parent or young person can refer to the Tribunal the authority's deemed refusal to prepare a co-ordinated support plan.

31. Also, where an authority have notified a parent or young person that they will establish whether the child or young person requires a co-ordinated support plan but,

s28(2)

s7

s18(5)

s28(2)(d)

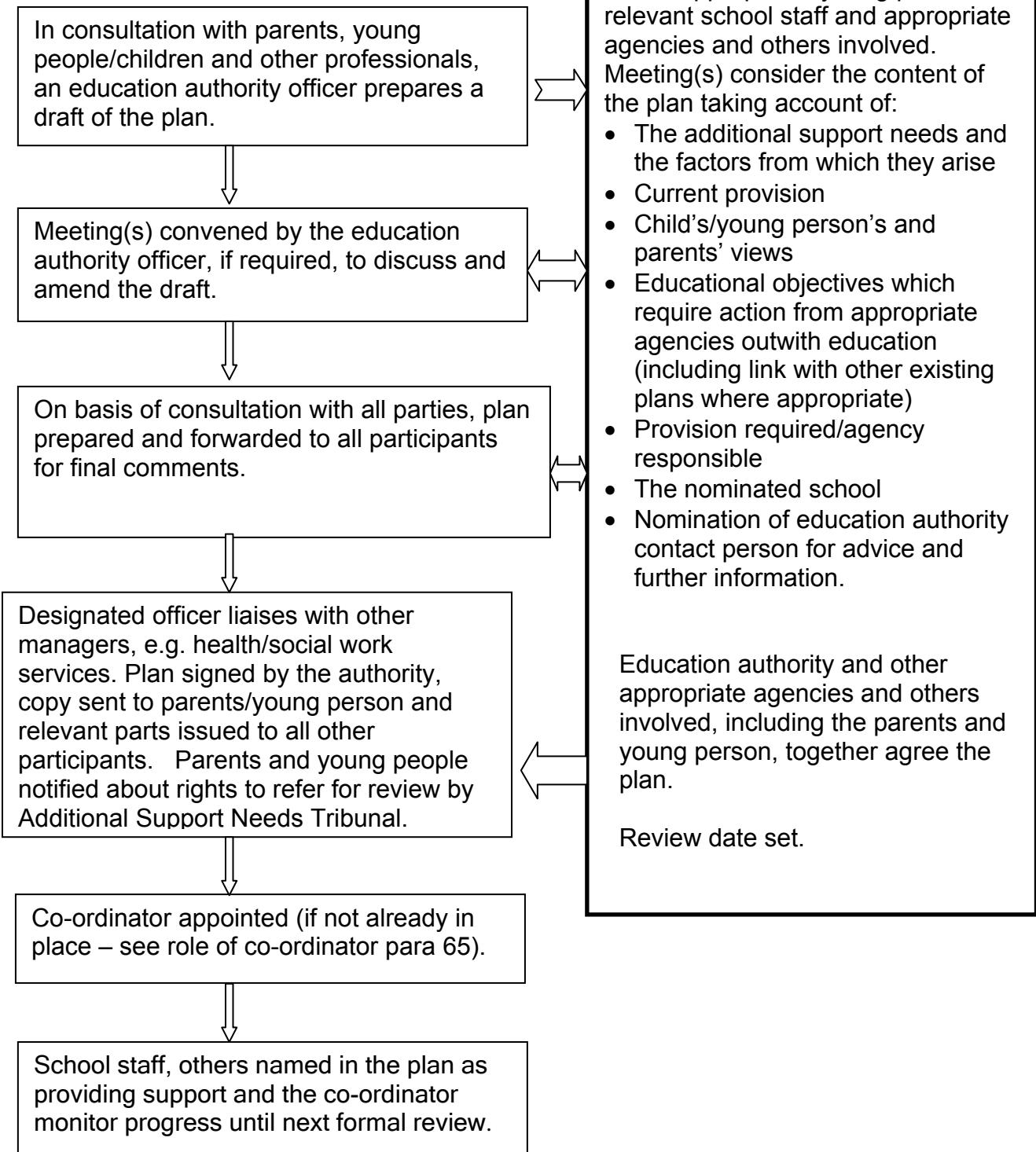
s18(5A)

s18(5B) after a specified period of time (set out in Regulations), the authority have not made a decision on the matter either way, the Act, as amended, enables that failure to be treated as if it were a decision of the education authority that no co-ordinated support plan is required. Decisions of an authority that no co-ordinated support plan is required can be referred to the Tribunal.

s8(1) s8A 32. Where an education authority propose to establish whether a child or young person has additional support needs or requires a co-ordinated support plan they must also comply with a request for an assessment or examination made by the parent or young person unless the request is unreasonable; as noted earlier, the Act, as amended, allows this request to be made at any time, not just when establishing whether a child or young person has additional support needs or requires a co-ordinated support plan. The parent or young person can request that the education authority arrange for the child or young person, referred to in the proposal, to undergo a process of educational, medical, psychological or other type of assessment or examination (or a combination of these) for the purposes of establishing if there is a requirement for a co-ordinated support plan. The managers of independent or grant-aided schools may request an assessment or examination where an education authority propose to establish whether a child or young person has additional support needs or a child or young person would require a co-ordinated support plan if the education authority were responsible for the child or young person's school education.

s7(2)(b) 33. Educational assessments are an intrinsic part of day-to-day practice in schools. Education authorities should consider these when deciding whether a request for any additional or particular assessment or examination, not already contained in the proposal for establishing if there is a requirement for a co-ordinated support plan, is reasonable. They should consider also any other available assessments (for example, health or social work) and decide whether there is any requirement or need for further detail.

Preparing a co-ordinated support plan



34. The flow diagram above describes the steps which may be taken to draw up a co-ordinated support plan. It is essential that the plan is prepared having sought and taken account of the views of:

- the parents and child
- the young person
- representatives of those appropriate agencies, and any others, providing support.

35. Education authorities should have clear arrangements for joint working with those appropriate agencies and others involved in supporting children and young people with additional support needs. These should include the arrangements under which support specified in the co-ordinated support plan can be approved and provided by the authority itself and appropriate agencies.

Timescale for drawing up the plan

36. An education authority will have 16 weeks within which to produce a completed co-ordinated support plan as set out in the Co-ordinated Support Plan Regulations. Within this timescale they will have to undertake a process to establish whether the child or young person meets the criteria for having a co-ordinated support plan, reach a decision, notify the parents or young person of the outcome and prepare the plan, if it has been established that one is required.

37. As part of this process they have to seek and take account of views and information provided, identify the educational objectives to be achieved, the support required, and identify and liaise with the appropriate agencies and other persons that will provide the support.

38. The 16 week period starts from the date the education authority inform the child's parents or the young person of their proposal to establish whether a co-ordinated support plan is required. The date is the date on which information about the proposal is sent by the education authority.

39. An education authority's proposal for establishing whether a co-ordinated support plan is required should also inform parents or young people about:

- the agencies, other departments of the authority and other people from whom the education authority propose to seek views, advice and information
- any proposed assessments or examinations
- their right to request particular assessment(s) relevant to the proposal
- their right to provide advice and information relevant to the proposal
- their involvement in the process
- a proposed timescale for the process
- their rights under the Act to make a reference to the Tribunal

- their right to make a placing request if they disagree with the school nominated in the plan.

40. The majority of children and young people being considered for requiring a co-ordinated support plan will previously be known to the education authority.

Consideration for a co-ordinated support plan will have arisen from monitoring the child's or young person's additional support needs and his or her ability to benefit from the school education being provided. In most cases, education authorities would be expected to be able to reach a decision fairly quickly as to whether a co-ordinated support plan is required. There will be situations where reaching a decision will take longer, for example, where the child or young person has moved to the authority area from outwith Scotland and limited information is available, or where an appropriate agency cannot comply with a request for help quickly.

41. It will be in an education authority's best interests to ensure that the information about the proposal is as detailed as possible and that action is taken promptly to get the process underway, such as through contacting appropriate agencies, or others as appropriate, to seek and prepare to take account of information, advice or help. It is expected that the authority will have reached a decision and notified the parents or young person no later than 4 weeks after informing them of their proposal to establish whether a co-ordinated support plan is required, unless it would be impractical to do so. Where an education authority decide that the child or young person does require a co-ordinated support plan then they will have no more than 12 weeks remaining in which to prepare the plan and provide the parent or young person with a copy.

42. The statutory 16 week period ends on the date on which the education authority give the child's parents or the young person a copy of the completed co-ordinated support plan. This date is the date a copy of the co-ordinated support plan is sent by the education authority.

43. As in paragraph 31 above, if the authority have notified the parents or young person that they intend to establish whether or not a co-ordinated support is required and after a specified period of time (set out in regulations) have not made a decision on the matter either way then that failure will be treated as if the authority have decided that a co-ordinated support plan is not required. The parents and young person are able then to refer that decision to the Tribunal.

Time limit exceptions

44. While an education authority will be expected to take all reasonable steps to ensure that the time limit is complied with, there will be circumstances outwith the education authority's control which make compliance impracticable. The Co-ordinated Support Plan Regulations, therefore, set out the circumstances where it would be considered impracticable for an education authority to meet the usual 16 week

timescale. The exceptions cover circumstances relating to both the establishing and preparing phases of the overall process. These include where:

- the child's parent or the young person has made a request for a particular type of assessment or examination and that cannot take place, or the results will not be available, before the end of the 16 week period
- the education authority have asked an appropriate agency or other persons for help and they have not been able to respond in time.

45. When an education authority become aware that the 16 week time limit is unlikely to be met, they must explain to the child's parents or the young person the reason for the delay and must set a new date for completion of the process. The regulations require that the new time limit should not exceed the standard 16 weeks by longer than is reasonably necessary in the circumstances, which in any event must not be more than 24 weeks from the start date (see paragraph 38 above). This is to allow for the individual circumstances surrounding the delay to be taken into consideration and to allow an appropriate new timetable to be set in the light of these.

46. A parent or young person can make a reference to the Tribunal where, once it has been established that the child or young person does require a co-ordinated support plan, the education authority fail to prepare a plan by the 16 weeks statutory time limit unless one of the exceptions apply. Education authorities should have regard to this when considering applying any of the time limit exceptions. In some cases an education authority may have to proceed to reach a decision about requirement for a co-ordinated support plan or the actual content of a plan on the basis of the information available.

What does a co-ordinated support plan contain?

47. The Act and associated regulations set out the form and content for a co-ordinated support plan. The statutory parts of the plan and prescribed decisions, failure or information can be referred to the Tribunal for review. Plans must contain:

- the education authority's conclusions as to the factor or factors from which the additional support needs of the child or young person arise
- the educational objectives sought to be achieved taking account of those factors
- the additional support required to achieve these objectives
- details of those who will provide this support.

48. The plan must also contain:

- the name of the school the child or young person is to attend
- the details of the person who will coordinate the additional support identified in the plan, or the details of any person nominated by the education authority to carry out the co-ordinator function, if not an education authority official

s18(3)(c)

- the details of a contact person within the local authority from whom the parent or young person can obtain advice and further information.

49. The plan should be clear and succinct, and refer to needs that will, or are likely to, continue for more than a year. Short-term objectives would continue to be contained within personal learning planning or an individualised educational programme or other plan. In cases where there is an individualised educational programme or other planning approach in place, the co-ordinated support plan should refer to these but not duplicate the content of the plans unless required to meet the statutory requirements for the plan.

50. The co-ordinated support plan also contains other details in addition to those required by the Act. These are:

- specified biographical and contact details of the child or young person
- specified contact details for the parents(s) or those adults who have, or share, responsibility for the care of the child or young person
- a profile - the purpose of this is to build a holistic pen picture of the child or young person. It should focus on the positive aspects of the child's/young person's life, for example, his/her skills and capabilities. It may also include information about the school attended or curriculum, other planning in place, his/her favourite activities, or how he/she likes to learn
- parents' and child's/young person's comments on any aspects of the co-ordinated support plan process as well as the plan itself
- a review timetable.

51. While the co-ordinated support plan details the factors giving rise to the child's or young person's additional support needs, the plan does not contain the multi-agency information, including assessment/examination reports that contributed to the education authority reaching these conclusions. How or where this information is kept or shared is a matter for all the professionals involved to consider while bearing in mind that some of this information may be sensitive or could cause distress to the child or young person or other family members.

52. A co-ordinated support plan template containing guidance notes can be found at Annex B. Further information and guidance on how to complete a co-ordinated support plan will be contained in separate guidance.

The factors giving rise to additional support needs

53. This part of the plan must state the complex factor or factors, or multiple factors giving rise to additional support needs. In some cases, the factors may be diagnostic terms such as autistic spectrum disorder, learning disability or clinical depression. In other cases, the factor or factors may be more descriptive and related directly to the personal circumstances of the child or young person and family. For example, parental mental health problems may be a complex factor which results in

difficulties in the family and leads to the child or young person being looked after away from home.

54. It should be clear from the assessment information which underpins the co-ordinated support plan what the complex and/or multiple factors are and how these are influencing the development of the child or young person and his/her ability to benefit from school education. All the complex and/or multiple factors involved should be stated in the co-ordinated support plan. The factors triggering the requirement for a co-ordinated support plan need to have, or be likely to have, a significant adverse effect on the school education of the child or young person.

Educational objectives

55. The co-ordinated support plan is designed to enable children or young people to work towards achieving their educational objectives. Within the meaning of the Act, school education includes, in particular, education directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. Educational objectives should be set to secure that the child or young person benefits from the school education provided or to be provided. They should be viewed in the widest sense as encompassing a holistic view of the child or young person. They should be specific to the child or young person and his or her additional support needs.

56. Educational objectives, for example, may include those required for personal and social development or for health and wellbeing. For some children or young people, legitimate educational objectives could be, for example, learning to travel independently or learning particular social skills concerned with, say, feeding or dressing. What is important is that the plan contains those educational objectives which require the various forms of support to be co-ordinated if the educational objectives are to be achieved. For example, a teacher and speech and language therapist may need to ensure their support is well co-ordinated if the educational objectives to be achieved are related to improving the communication skills of a child with an autistic spectrum disorder; a teacher and social worker may need to work together to ensure that a child looked after away from home is able to complete schoolwork assignments outwith school.

57. The educational objectives in the co-ordinated support plan must take account of the factors giving rise to the child's or young person's additional support needs. The objectives will require the co-ordination of services if they are to be achieved. Children and young people will always be working to achieve other learning outcomes which are not documented in the plan and these will be outcomes which do not depend, for their achievement, on the level of co-ordination of support required by the plan. For example, a particular child with a co-ordinated support plan may have intended learning outcomes set for, say, language and mathematics and, apart from the usual support from the family, the school may feel that these will be achieved without any support from other agencies. These learning objectives will be documented through other school

planning arrangements such as personal learning planning, an individualised educational programme, or another approach used by the school and will not be listed in the co-ordinated support plan.

58. Decisions about what are appropriate educational objectives to meet a child's or young person's additional support needs should be taken independently of the additional support required to achieve these and should be informed by the assessment information available. The starting point should be to establish what it is reasonable to expect the child or young person to achieve over the course of the next year, taking account of the assessment information available. The objectives should be described in terms that are specific enough to enable the education authority, and the other agencies involved in supporting the child or young person, to monitor and review progress over time. When setting an objective, a question that needs to be answered is "How will we know the objective has been achieved?" Since each co-ordinated support plan has to be reviewed on, at least, an annual basis then the objectives should be those which can be achieved in a year approximately or for which progression milestones will be identifiable within the year.

59. Those drawing up the educational objectives will find it useful to consider as a starting point the Experiences and Outcomes in *Curriculum for Excellence* because these apply across all schools in Scotland and are relevant for all children and young people as they pursue their education.

The additional support required by the child or young person

60. The co-ordinated support plan must describe the additional support required to achieve the educational objectives stated. This will cover teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching. The statement of support to be provided should be clear and specific and, wherever possible, should be quantified. Everyone should understand and be clear about what is being provided and why it is being provided. Statements such as "learning support as necessary" or "speech and language therapy as required" are too vague to be helpful. Statements such as the following provide a clearer idea about what is being provided:

- voluntary agency to provide group work in school for two hours per week, approximately, for one term
- speech and language therapist and classroom assistant will provide weekly therapy within a small group setting for six weeks followed by a specific programme being supported within the mainstream curriculum by the teacher and classroom assistant with a review of outcomes at the end of term.

The persons by whom the support is provided

61. The plan must state the "persons" who should be providing the support. What is meant here are the agencies or professions providing the support, not the actual

names of individuals. So, for example, terms such as “visiting teacher of the deaf”, “speech and language therapist”, “social worker”, “clinical psychologist”, and “Careers Scotland³” are acceptable terms. It is neither desirable, nor necessary, to name, for example, the speech and language therapist, since while personnel may change the additional support provided need not.

The nominated school

62. The plan must state the name and address of the school it is intended that the child or young person will attend. If a child or young person is being educated at home under arrangements made by the education authority the plan must state this.

The contact details of the contact person

63. The plan must state the name, address and telephone number of the person in the local authority responsible for providing advice and further information about the co-ordinated support plan to parents and young people.

The contact details of the co-ordinator

64. The plan should state the name, address and telephone number of the person responsible for co-ordinating the provision. The authority can arrange for another person to discharge their co-ordination responsibility and, if so, must provide their nominee's contact details.

Role of co-ordinator

65. The co-ordinator is the person responsible for monitoring provision to ensure that the services required to deliver the additional support identified in the co-ordinated support plan are in place for the child or young person and for taking action to secure services when necessary. Once a plan has been agreed, the co-ordinator should ensure that parents, young people and all those involved in providing additional support know what is required of them under the plan. The Co-ordinated Support Plan Regulations make provision for necessary information sharing between appropriate agencies and other parties to enable each to do their part in delivering the necessary support to meet the needs of the child or young person. The co-ordinator and anyone intending to share personal information about the child, young person or their family must consider how the regulations and the wider legal framework for information sharing apply in each individual case.

66. The co-ordinator should be aware of the objectives set out in the plan and be closely involved in working with the team who support the child or young person. The co-ordinator should know the procedures to follow if there is a break in the delivery of necessary services to fulfil educational objectives. For example, if support from external services breaks down due to staff ill health or absence, the co-ordinator must then liaise

³ Now part of Skills Development Scotland

with the relevant agency to seek to ensure a replacement of services without undue interruption to the provision of those services.

s18(3)(
d)(ia)

s19(3)

67. The co-ordinator should note that the Act, as amended, enables parents and young persons to make references to the Tribunal where there is a failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. The Act, as amended, enables the Tribunal to require the education authority to take action to rectify the failure by the authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.

The role of the co-ordinator

Danny is 10 years old and is looked after away from home and placed with foster carers. He exhibits behaviour difficulties in all situations and requires a high degree of co-ordinated support, for which a co-ordinated support plan is in place.

Danny's attendance at school is becoming increasingly erratic and he displays increasingly confrontational behaviour in class, leading to the possibility of exclusion from school. His class teacher asks his co-ordinator to find out if there is anything happening in Danny's home-life that may be affecting him. The co-ordinator's enquiries of colleagues in the multi-agency team reveal that the family support package has broken down following the departure of his social worker. The co-ordinator contacts the local social work manager and highlights the current difficult situation stressing the need for urgent support.

As an interim measure, the social work manager arranges for Danny to receive support from a children's service worker who has a base at the school. The worker is able to work on a one to one basis with Danny with the aim of calming him down sufficiently, to return to his mainstream class. The school also increases the level of in class support from a classroom assistant. The co-ordinator has arranged to meet with the social work manager in a month's time to review the situation.

68. In addition, the co-ordinator should:

- maintain regular contact with the child or young person and his/her family
- be familiar with the school within which the child's or young person's needs are met
- have a working knowledge of relevant service policies and practices
- have experience of working with children and young people with additional support needs

- have experience of compiling and implementing educational support plans (e.g. individualised educational programmes) or health and care plans
- be able to work with other agencies.

Who can be a co-ordinator?

69. The education authority will appoint a co-ordinator, and this person could be from any agency contributing to the plan, but need not be. The choice of co-ordinator will depend on the nature of the additional support needs and the provision to be put in place for the child or young person. The education authority are not required to seek the parent's or young person's agreement to the person appointed as co-ordinator. However, it would be difficult to envisage how a co-ordinator could fulfil his or her role without having the confidence of the parent or young person. Education authorities should seek and take account of the views of the parent, child and young person when considering appointment of the co-ordinator. The co-ordinator may change in the light of circumstances, for example at transition from one stage of education to another. Where practicable, changes should be kept to a minimum. Where the co-ordinator does change, the co-ordinated support plan must be amended and details circulated. The parent or young person should receive a copy of the updated plan.

70. There are several stages in the preparation of a co-ordinated support plan. These include the discussion which results in the decision to prepare a co-ordinated support plan, the drawing up of the plan, the authorisation of the plan and the co-ordination to ensure the services are available. The co-ordinator could be appointed at any of these stages depending on the procedures in the local authority. Throughout the parent, young person or child should be kept fully informed as to the name and contact details for the person responsible for drawing up the plan, see flowchart following paragraph 33.

Review of the co-ordinated support plan

71. The Act requires that the education authority responsible for the school education of child or young person must keep under consideration the adequacy of each co-ordinated support plan and must formally review each plan at least every 12 months, making appropriate amendments, as necessary. The education authority must have completed the review within 12 weeks on the expiry date which is the anniversary of the date on which the plan was prepared unless any of the various exceptions apply as prescribed in the Co-ordinated Support Plan Regulations.

s10(2)

72. Education authorities should ensure that an appropriate review schedule is in place for each plan and that the appropriate agencies, and parents or young person, receive sufficient advance notice of review meetings as appropriate. Paragraphs 8 and 9 of this chapter describe the requirements where a child or young person is receiving school education in an education authority other than the one for the area to which the child or young person belongs.

73. Authorities may carry out a review earlier than 12 months if they feel it necessary or expedient to do so because of a significant change in the child's or young person's circumstances since the plan was prepared or last reviewed. Alternatively a child's parents or the young person may request a review before 12 months have elapsed and authorities must meet this request unless the request is unreasonable. Education authorities should give clear guidance to schools and their staff in this regard.

74. Before proceeding with any review, the education authority must notify the child's parents or the young person of their proposal and ask them for their views. Parents should be notified about what is likely to happen during the review, such as consideration of:

s11(1), (2)
and (3)

- how far the educational objectives have been met
- the child's or young person's additional support needs
- the setting of new educational objectives, the support required and the agencies responsible for providing it.

75. The parents should also be informed of their right to request an assessment if they feel that what the authority is proposing does not include a particular assessment which they may feel is necessary. For example, a particular child may be receiving support from a physiotherapist and speech and language therapist. The parents may feel that an assessment by an occupational therapist would be helpful and they could request the education authority to arrange this.

s8(1)(a)(ii)
and (b)

76. Monitoring and review arrangements should be agreed amongst the professionals working with the child or family. A person who has regular contact with the child may be identified by the team to help the family to get the most out of the process. The co-ordinated support plan co-ordinator or contact person also has a role to play.

77. Following a review, the education authority must notify the child's parents or the young person of the outcome and of their rights to make a reference to the Tribunal. If the plan has been amended as a result of the review (or subsequent to a requirement made by the Tribunal), the education authority must give a copy of the amended plan to the child's parents or the young person as appropriate. The authority must then ensure that:

s11(5)

- the additional support they have to provide, as recorded in the plan, is provided, insofar as they have the power to do this
- the additional support others have to provide, as recorded in the plan, is provided
- the support above is co-ordinated
- all providing the support are informed about what the amended plan contains and the implications of this for them.

78. The Act, as amended, provides the President of the Tribunal with the power to monitor the implementation of Tribunal decisions. Following a decision of a Tribunal that requires an education authority to do anything, the President of the Tribunal may

require the authority to provide him or her with information about the authority's implementation of the Tribunal decision. This includes information about whether an authority has amended a co-ordinated support plan as required by a Tribunal and carried out the action in paragraph 77 above.

Sch 1
11A

79. The Act also provides the President with the power to refer the matter to the Scottish Ministers where he or she is satisfied that the authority are not complying with the Tribunal decision. The Scottish Ministers, in turn, have the power to direct an education authority (or authorities) regarding the exercise of their functions under the Act. Authorities must comply with such a direction. For example, if an authority has failed to amend a co-ordinated support plan following the decision of a Tribunal then it can be directed to do so by the Scottish Ministers.

Sch 1
11A
s27 (9),
(10) and
(11)

80. The arrangements described in paragraphs 74 and 77 for notifying parents and the young person about reviews and their outcomes apply also to the managers of independent or grant-aided schools where an authority have responded to their request to establish whether a child or young person would require a co-ordinated support plan if the education authority were responsible for the child or young person's school education

Custody, Transfer, Disclosure, Discontinuance, Preservation and Destruction of the co-ordinated support plan

81. Specific provisions for the custody, transfer, disclosure and discontinuance of co-ordinated support plans are contained in the Co-ordinated Support Plan Regulations. In the case of a co-ordinated support plan for a young person, requirements in the Regulations to notify the young person or obtain his or her consent are satisfied by notifying or obtaining the consent of his or her parents where the education authority considers that the young person does not have the capacity (understanding) to consent.

Custody of the co-ordinated support plan

82. The education authority must keep a copy of a co-ordinated support plan, which they prepared, in a place the authority consider appropriate. This would normally be in the appropriate department at the authority's headquarters. The Act provides for a child's parents or the young person to receive a copy of the plan. However, they must also be told where they can inspect free of charge the authority's copy during normal business hours.

83. A copy of a co-ordinated support plan must also be kept at the school attended by the child or young person. How it is kept is a matter for the school to decide bearing in mind that it is a confidential document and should not be disclosed to anyone other than those authorised to see it or have copies of or extracts from it. The co-ordinated support plan will inform classroom planning and practice for the individual child or young person and forms part of the child's or young person's Pupil Progress Record.

Transfer of the co-ordinated support plan

84. When a child or young person with a co-ordinated support plan moves, without any immediate intention of returning, from the area of one education authority to that of another, the education authority who prepared the co-ordinated support plan must transfer it to the new education authority within 4 weeks from either the date of departure notified on which the child or young person will be moving or, if the child or young person has already left the area, from the date the original education authority become aware the move has taken place.

85. From the date of transfer, the co-ordinated support plan is deemed to have been prepared by the receiving education authority. Subject to any review they may initiate, (which they may do immediately if they consider it necessary or expedient as a significant change in the circumstances of the child or young person) the new education authority are bound by the terms of the co-ordinated support plan and the plan must be treated in the same way as any other co-ordinated support plans prepared for children and young people in their area. Any review will be subject to the provision in section 10 of the Act and in the Regulations.

86. As soon as reasonably practicable the new education authority are responsible for notifying the parents or, as appropriate, the young person of the transfer and for informing them that, in future, responsibility for the co-ordinated support plan and providing for the additional support needs of the child or young person rests with the authority. Wherever possible the new education authority should at the same time inform the parents or young person about the co-ordinator within, or appointed by, the new education authority and the person within the receiving authority, from whom the parent or young person can obtain advice and further information.

87. The Act, as amended, requires that where a child or young person with a co-ordinated support plan moves to a school in the new host authority, as a result of a placing request or simply because the parents have changed their home address, then the new authority are under a duty to seek and take account of information and advice from the education authority from which the co-ordinated support plan was transferred as well as from any agencies or persons involved in providing support under the co-ordinated support plan prior to its transfer. This ensures that the new host authority and the previous authority responsible for the school education of the child or young person are in contact and that the new authority has all the information necessary from the previous authority and the agencies previously supporting the child or young person. This should aim to make the transition from one authority to another as smooth as possible.

s10(1)
s10(5A)

88. For children or young persons with additional support needs who are attending a school outwith the area in which they live following a successful out of area placing request, then the Act, as amended, requires that the duty to keep under review any co-ordinated support plan transfers from the original home authority to the new host authority. The Act, as amended, places a duty on the new host authority to carry out a

review of the co-ordinated support plan as soon as possible after the date of any transfer of the co-ordinated support plan from the home authority to the host authority (time limits for conducting this review will be specified in secondary legislation).

89. When a child or young person who has had a co-ordinated support plan in Scotland subsequently moves to England, Wales or Northern Ireland, the education authority which prepared the plan can disclose the plan or extracts from it to the relevant authority for that area, where the original authority considers it necessary to do so in the interests of the child or young person to whom the plan relates. Although the education authority do not have to seek the consent of the child's parents or the young person, it is recommended that they notify the parents or young person of their intentions.

Disclosure of the co-ordinated support plan

90. The co-ordinated support plan is a confidential document but for it to be effective, and by its very nature, the plan or information in it will require to be shared with a range of people. While consideration must be given to the effect sharing certain information may have for the child or young person and their family the co-ordinated support plan should not be a document that is locked away and rarely referred to. As a strategic planning document it should be used and referred to on a regular basis.

91. When education authorities prepare or amend a co-ordinated support plan they must tell the people involved in providing additional support for the child or young person about matters in the plan as they consider appropriate.

92. However, there will be certain persons who would require to have a copy of the actual plan or extracts from it depending on different circumstances. The child's or young person's teacher will need a copy of the plan to help inform planning and monitoring of progress. The appropriate agencies and other persons providing support to help meet the educational objectives may only require to have the part of the co-ordinated support plan containing that information. Education authorities will have to make these decisions based on the individual circumstances of the child or young person.

93. In addition to those providing additional support to the child or young person the Co-ordinated Support Plan Regulations set out those persons to whom education authorities can disclose a co-ordinated support plan or extracts from it without seeking the consent of the child's parents or the young person. These include:

- those people the education authority think it necessary in the interests of the child or young person
- the person who will act as the co-ordinated support plan co-ordinator where that is not an education authority officer
- the Principal Reporter.

94. In terms of good practice, however, it is recommended that education authorities notify parents or young people of their intention to share the plan or extracts and their reasons for disclosure. In making decisions about who should receive a copy of, or extracts from a co-ordinated support plan, education authorities must have regard to not only the Regulations but to the wider legislative framework that covers sharing information, such as the Data Protection Act 1998. Different legislation may apply depending on the individual circumstances of the child or young person, such as whether or not they have social work or health needs. The Resources section contains sources of guidance on information sharing.

95. In all other circumstances, education authorities must not disclose a co-ordinated support plan or extracts from it without first seeking the consent of the parents or young person. Education authorities should reserve the right to request the return of any copies or extracts of co-ordinated support plans.

Discontinuance, preservation and destruction of the co-ordinated support plan

96. Where a co-ordinated support plan is to be discontinued following a review, or where the education authority are no longer responsible for the child's or young person's school education, the discontinued plan must be preserved for a period of 5 years from the date of discontinuance which date must be noted on the plan.

97. If the plan is to be discontinued following a review, the education authority must inform the parents or young person of their decision. The education authority must not discontinue the plan before the expiry of the 2 month period parents and young people have in which to refer the decision to a Tribunal.

98. At the end of the 5 year period the co-ordinated support plan must be destroyed. The education authority should notify the parents or young person that this has happened as soon as reasonable practicable. It may be that after 5 years the whereabouts of the parents or young person are not known. If that is the case, the education authority should take reasonable steps to obtain contact details.

99. Where a Tribunal overturns the education authority's decision to prepare, or continue, a co-ordinated support plan, the education authority must notify the child's parents or the young person when the plan will be discontinued and ask them to let the authority know within 21 days (excluding school holidays) whether they want it to be preserved for a period of 5 years or not. If the answer is yes then the plan must be preserved. If the answer is no, or there is no response, the education authority must destroy the plan and let the parents of the young person know this has happened.

100. During the period that the co-ordinated support plan is preserved, the arrangements for disclosure described in paragraph 90 to 95 above continue to apply.

Getting it right for every child and the co-ordinated support plan

The Getting it right for every child approach

101. In the Getting it right for every child approach, any child or young person who requires additional help should have a plan to address their needs and improve their well-being. This may be a single agency plan such as, for example, in education where a child may have an individualised educational programme because he or she needs support to overcome a learning difficulty. When two or more agencies are involved there will be a multi-agency 'child's plan' co-ordinated by a Lead Professional.

102. Where necessary Getting it right for every child integrates and co-ordinates plans developed by different agencies. It looks to practitioners to work in accordance with legislation and guidance but also expects agencies to think beyond their immediate remit, drawing on the skills and knowledge of others as necessary and thinking in a broad, holistic way. For example, a care plan for a child looked after by the local authority, a health care plan, or an individualised educational programme should be incorporated within the child's plan where the child or young person's circumstances require this.

103. Every plan, whether it is single or multi-agency, should in the Getting it right for every child approach include and record:

- reasons for the plan
- partners to the plan
- the views of the child or young person and their parents or carers
- a summary of the child or young person's needs
- what is to be done to improve a child or young person's circumstances
- details of action to be taken
- resources to be provided
- timescales for action and for change
- contingency plans
- arrangements for reviewing the plan
- lead professional arrangements where they are appropriate
- details of any compulsory measures if required.

Links with the co-ordinated support plan

104. The co-ordinated support plan is a multi-agency plan and because it is statutory it needs to be included along with the child's plan (or be readily extractable from the child's plan) as a stand alone document. The date of the co-ordinated support plan is based on the date it is sent to parents and young person where appropriate. Education authorities must be able to produce this stand alone document to demonstrate adherence to legally specified processes and timescales and also because copies have to be made available to a range of people including parents, children, young people, HM Inspectors of Education, the Tribunal and those whom the authority think should see the plan.

105. Clearly there are significant similarities between the contents of the child's plan and the co-ordinated support plan. However, one important difference is that the co-ordinated support plan is concerned with the additional support a child or young person requires in order to benefit from education. The child's plan, however, potentially covers a wider range of issues related to promoting a child's or young person's wellbeing and it will, therefore, refer to matters not contained in the co-ordinated support plan such as, for example, issues relating to compulsory care measures or child protection. However, it is important that the process of developing the co-ordinated support plan is fully integrated with the planning and review of the child's plan so that, for example, the annual review of the co-ordinated support plan dovetails with the review of the child's plan and so that assessment is carried out in a holistic way as illustrated by the My World Triangle in Chapter 3.

Chapter 6

TRANSITIONS

1. School education is organised in such a way that all children and young people experience transitions as they move through the various stages of schooling. These transitions include entry to pre-school provision, transfer to primary school and through the different stages of primary and secondary school and, in particular, to post-school provision. Some may experience changes in their school education at other times with a transfer to another school or a break in their school education. Early or timely planning is required to ensure continuity and progression between stages or breaks in education. This chapter considers the requirements on education authorities and others under the Act in relation to transitions.
2. Some changes in school education may involve irregular transition experiences through, for example, exclusions and school closures. Where these involve a child or young person with additional support needs, the education authority and other agencies should take account of the way these changes affect the planning of the support needs for the child's or young person's school education.

Planning for changes in school education

3. Education authorities should have appropriate arrangements in place to ensure that changes in school education for all children and young people can be as smooth as possible. Effective planning helps to promote shared understanding and close communication among all relevant persons and above all helps to ensure that any required action is co-ordinated appropriately. An education authority's routine arrangements should enable schools to provide sufficient support for the majority of children and young people faced with changes in school education. In some circumstances, education authorities will require to involve other agencies to ensure that the transition process is effective for certain children and young people with additional support needs.
4. The Act is supported by the Changes in School Education Regulations which are referred to here¹. The regulations specify the action that the education authority must take at various transition points in a child's or young person's school career.
5. It should be noted that in setting out below the duties and arrangements for transitions the education authority have some discretion about the particular children or young people to whom these duties apply under the Act. The reason for this is that it would be burdensome and unnecessary to apply these duties and arrangements to every child and young person with additional support needs given that some additional support needs may be transitory and/or relatively minor. It will be for those working with the child taking into account the views of the parents and child to decide whether the

¹ The Additional Support For Learning (Changes in School Education) (Scotland) Regulations 2005

duties described below apply; young people have the same rights as parents under the Act. However, it is anticipated that the transitional duties will apply to all those children and young people with additional support needs who:

- have a co-ordinated support plan
- are in a specialist placement such as a specialist unit or a day or residential special school
- have additional support needs arising from a disability within the meaning of the Disability Discrimination Act 1995
- are otherwise at risk of making a successful transition.

Starting nursery school

6. When a child starts receiving school education in pre-school provision, usually at the age of 3 years, in a school under the management of an education authority or where an authority have entered into arrangements with an establishment to provide school education, then the Regulations require that the education authority must seek and take account of relevant advice and information from appropriate agencies and other persons before the child is expected to begin receiving school education. The appropriate agency most likely to be involved is an NHS Health Board. Advice should also be sought from the authority's own social work services if necessary.

Reg 3
(1) and
(2)

7. The authority should take the above steps no later than 6 months before the child is due to start at the pre-school provision; they may do it earlier if they wish. However, if they only become aware of the circumstances less than 6 months before the child is due to start at the pre-school provision then they should take action as soon as possible.

8. The requirement to seek relevant information and advice applies to such agencies and other persons as the authority consider appropriate (see paragraph 5 above). Where the education authority seek advice and information from other appropriate agencies or other persons then the Regulations require the authority also to seek and take account of the views of the child (if the child is able to express a view) and the child's parent before starting school. The authority has discretion about whether or not to seek the views of a particular child and clearly it may be considered that a very young child lacks the capacity to provide an informed view and should, therefore, not be asked for one.

Reg 3
(2)(a)
(b) and
(4)

9. The advice and information is relevant where it is likely to assist the education authority in:

Reg 3
(3)

- establishing the child's additional support needs
- determining the provision of additional support required
- considering the adequacy of the additional support provided.

10. No later than 3 months before the child is due to commence at pre-school provision the education authority must inform these agencies about:

- the date education is due to commence
- the child's additional support needs
- the additional support provided to the child during the 3 months immediately prior to providing the information to the appropriate agency.

11. As above, if they only become aware of the circumstances less than 3 months before the child is due to start at the pre-school provision then the authority should take action as soon as possible.

12. The education authority must seek the consent of the child's parents before passing on information. Copies of any information passed on to an appropriate agency should be sent to the parents at the same time as it is sent to the appropriate agency.

Pre-school to primary school; primary school to secondary school

13. The above duties apply also to children transferring from pre-school provision to primary school and from primary school to secondary school. However, the timescales are different. The duty to seek and take account of information and advice should be completed no later than 12 months before the change of school is anticipated, not 6 months as above, and the duty to provide information should be completed no later than 6 months before the anticipated change of school, not 3 months as above. As above, if the authority cannot meet these timescales because they were not made aware of the proposed change in school education in time then they should take steps to fulfil the requirements as soon as possible.

14. Where an education authority transfer a child to another school under their management then the above duties also apply.

15. As above, where the education authority seek advice and information from other appropriate agencies or other persons then the Regulations require the authority also to seek and take account of the views of the child (if the child is able to express a view) and the child's parent before starting the new provision. The education authority must also seek the consent of the child's parents before passing on information to an appropriate agency. Copies of any information passed on to an appropriate agency should be sent to the parents at the same time as it is sent to the appropriate agency. Young people have the same rights as parents under the arrangements for transitions, in particular with regard to giving consent for the sharing of information regarding their additional support needs.

Co-ordinated support plan

16. There are particular requirements applying to children and young people with co-ordinated support plans who transfer from a school in one authority to a school in another authority either as a result of a placing request or because of a change of residence. These are referred to in Chapter 5, paragraphs 84-88.

Good practice

17. Education authorities should take account of the following principles of good practice whenever a child or young person with additional support needs is approaching a transition point in their school education:

- transition planning should be embedded within the education authority's policies and procedures for additional support needs
- other agencies, such as health and social work services, Skills Development Scotland (Careers), Further Education Colleges and Institutions of Higher Education should also be involved in transition planning where required
- the child's or young person's views should be sought and taken into account when discussing changes in school education
- parents should be part of the planning process, and their views should be sought, and taken account of, and they should receive support, as required, during the transition process
- early consultation should take place with the school or post-school provision, which the child or young person will be attending
- schools should plan to ensure that the necessary support is in place for children who have additional support needs to help them through the transition phase to their new school or provision
- professionals from all agencies working with the child and family should plan in good time for transition to future services
- transition should be co-ordinated by a relevant person known to the child or young person and their family
- where a child or young person has a co-ordinated support plan then any anticipated change in the statutory co-ordinator should be discussed with the child or young person, and parents, as far in advance of the change as possible.

Sarah had a straightforward primary school experience and untroubled family life until the start of P7 when her mother died unexpectedly. Sarah's schoolwork suffered and she became withdrawn. Her father became concerned about how she would cope with transferring to secondary school. Relevant staff in the secondary school, who prior to transfer routinely visited all P7 classes of associated primary schools, were made aware of the situation. The secondary school staff arranged that Sarah would be in a form class along with some of her close friends when she transferred and agreed to pay particular attention to Sarah over the initial stages of the transition.

Preparing for Adulthood

18. Education authorities and schools should be able to address the requirements of most children and young people with additional support needs, as they approach the end of their school education, through the school's routine vocational guidance

arrangements and Skills Development Scotland (Careers). Preparation for adulthood should involve explicit recognition of the strengths, abilities, wishes and needs of the child or young person as well as identification of relevant support strategies which may be required. It is essential that there is good communication between the child or young person and parents and all supporting agencies. Information should be shared promptly and effectively, with the child's, parents', or young person's consent. Where a child has sufficient capacity to consent their consent should also be sought in addition to that of the parents.

19. In their final years at school, children and young people with additional support needs should engage in the transitional planning process to help them to prepare their plans for the next stage in their education, training or employment. For example:

- some young people may need to develop independence skills so that they manage money more effectively, learn to travel independently to placements, check a bus timetable and ask for information
- some may need help to organise how they will interact with their new educational provision and/or their work commitments

20. Whatever children and young people require to learn in order to make the transition successful should, in good practice, be planned for carefully and in a timely manner.

Zahir is following an HNC programme in information systems. He has Asperger's Syndrome. He came from a mainstream school where he received one-to-one support and achieved standard grades at general level. A year prior to leaving school he applied to attend a further education college. A transition programme was agreed by Zahir, his parents, teachers, social worker and college learning support staff. Short and long term targets were agreed for a structured transition period and regular meetings were held with all relevant parties. As a result the school was able to help Zahir to make a successful transition to college and the college was able to prepare a learning programme and support arrangements appropriate for his learning needs.

21. Effective transition can involve a range of strategies. The school should ensure that the child or young person has sufficient information and understanding, within their programme of learning, on which to base decisions about the relevant choices of training or work placements and college or higher education courses. This process of transitional planning should start at an early point in his or her secondary schooling, for example, prior to subject choices being made for externally validated course work. Opportunities to sample options should be made available through visits or work experience relevant to the young person's aspirations and interests in order that the child or young person can be involved in making fully informed choices. A phased entry to college, training placement or workplace, for one or two days a week, while continuing at school for the remainder of the week would be an appropriate approach to

making the this transitional step less threatening for the young person than an abrupt change to full-time attendance at a new provision.

More Choices More Chances

22. Encouraging all young people to stay in learning post-16 is the best way of ensuring their long-term employability and contribution to society. 16+ Learning Choices and the entitlement to a Senior Phase of Education supports this aspiration within Curriculum for Excellence. There are three key elements:

- the right **learning provision** must be in place - a range of options, including staying on at school, entering further or higher education, participating in the national training programmes, or taking part in personal and social development opportunities offered through community learning and development, must be available to each young person, or a flexible programme sharing several of these elements
- the right **financial support** must be available to ensure that young people make choices based on the most appropriate learning for them, rather than on the amount of money offered
- the right **information, advice and guidance** must be available early enough to make sure that young people know what opportunities are on offer, how those fit with their own needs and ambitions, and how they will be able to progress through and beyond these opportunities to sustain positive life outcomes.

More Choices, More Chances

More Choices, More Chances², the Government's strategy to reduce the proportion of young people not in education, employment and training, recognises key features of effective school to post-school transition:

- identifying every young person (in school; not attending/excluded from school; in alternative provision) before they reach the stage where they will be progressing beyond schooling, at a time most appropriate to their needs, and ensuring they receive the information, advice and guidance they need to secure an appropriate opportunity to progress post-16
- where the young person has additional support needs, using the statutory measures in the ASL Act, and the advice in the code of practice, to ensure the arrangements for school to post-school transition are planned well in advance; that these arrangements are clear and well-understood by all involved
- making an offer, well in advance of a young person's intention to progress beyond secondary schooling, of a programme of learning - which could include staying on at school as all or part of the programme offered to them- taking into account their individual learning and support needs and appropriate financial support
- ensuring there is sufficient, appropriate provision to meet the needs of all young people in the local area; in particular, identifying and filling gaps between what young people want and the currently available programmes and measures of support
- supporting the transitional planning and providing continued support to monitor and sustain positive progressions, including early warning systems to prevent drop-out.

23. For most young people with additional support needs, the transition process is helped by the involvement of a lead professional to co-ordinate planning. This might be a teacher, careers adviser, social worker, community education worker or someone from another agency. The lead professional can then assist the child or young person to make a smooth transition to employment, training, further or higher education, or other services. Where a child or young person has a co-ordinated support plan, their co-ordinator should take the lead in ensuring that all relevant agencies are brought together to plan for transition to post-school and plan for the transfer of the lead person to someone who will effect that transfer.

24. The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 set out particular duties placed on local authorities to provide advice,

² Reference: <http://www.scotland.gov.uk/Topics/Education/Life-Long-Learning/16581>

guidance and assistance to children and young people who are looked after or who have ceased to be looked after over school age. As well as stressing the need for education and social work staff to work closely together to ensure that young people achieve their maximum potential whilst within the education system, local authorities are also encouraged to work closely with Skills Development Scotland (Careers) to support young people in making their choices for education and training.

Duties on education authorities and others under the Act

25. The Act requires education authorities to take specific action to help young people with additional support needs to make the transition from school to post-school life successfully. It places a duty on the education authority to request information from appropriate agencies, if any, which are likely to be involved with the child or young person on leaving school. The appropriate agencies, all in Scotland, which may be involved are:

- any NHS Board
- any other local authority
- Skills Development Scotland (Careers)
- any Further Education College
- any Institution of Higher Education.

26. The duties apply to children and young people for whose school education the authority are responsible. The Act gives the education authority discretion about which appropriate agency (if any) requires to be approached to provide information (see paragraph 5). The authority should seek information from an appropriate agency or agencies whose help will assist the child or young person with additional support needs in the move to post-school provision. It is anticipated that education authorities will seek information from another appropriate agency, or agencies, in the case of most children and young people with co-ordinated support plans.

27. The education authority must seek and take account of the views of the child, where he or she is capable of expressing these, the child's parents and the young person (or the young person's parent where the young person lacks the capacity to express his/her views). Although the Regulations do not require that information should only be sought with the consent of the child's parent or the young person (or the young person's parent where the young person is not able to give consent) in good practice education authorities working in partnership with parents and young people should aim to secure consent. A situation could arise where the child wishes information sought from another appropriate agency, or agencies, and the child's parents do not (or vice versa). The education authority should, in deciding what course of action to take under the circumstances, consider the best interests of the child or young person as well as the child's or young person's capacity to express a view, and act accordingly. s12(6)(c)(ii)

28. The purpose of obtaining such information from an appropriate agency, or agencies, is to enable the education authority to consider the adequacy and appropriateness of additional support provided by the education authority and other services in the period up to the child or young person progressing beyond school; ultimately this is to support the process of ensuring a good match between their needs and options for subsequent support. These options include provision which may be made by an appropriate agency, or agencies, as well as any provision which the local authority make for the child or young person on leaving school; this provision includes, for example, that made by social services or housing.

29. This process of seeking and taking account of information from an appropriate agency, or agencies, and the other requirements referred to above, must be completed no later than 12 months before the date a child or young person with additional support needs is expected to cease receiving school education. However, this means that the process will require to be started well in advance of the 12 month period to be carried out effectively for the benefit of the child or young person. There will be circumstances, where the education authority has less than 12 months to carry out these functions in which case they should be carried out as soon as reasonably practical after they become aware of the fact that the child or young person is to cease receiving school education. s12(6)(c)(i)

30. The Act also requires the education authority to pass on information to appropriate agencies (if any), no later than 6 months before the child or young person is expected to progress beyond school. Where an authority find that a child or young person is expected to leave school within 6 months, then it must pass that information on to appropriate agencies as soon as is reasonably practicable after they become aware of the fact. This information includes: s13(1)and (2)

- the child's or young person's expected date of progression beyond school
- any provision the local authority may make when the child or young person leaves school such as, for example, through social work or housing
- any other information that the authority thinks will help appropriate agencies to make provision.

31. However, any information can only be provided with the consent of the child's parent or the young person or the young person's parent where the young person is not able to give consent. s13(5)

32. The Act, as amended, places education authorities under a duty to seek and take account of the child's views (unless the authority are satisfied that the child lacks capacity to express a view) in relation to any information to be provided to an appropriate agency or agencies under the Act regarding the child leaving school s13(4A)

Monitoring and review

33. Education authorities should ensure that the arrangements required for transition to post-school are clear so that the child or young person, and all those

involved, know exactly what is happening, when it is happening, and who is responsible. The effectiveness of the action required should be monitored by a lead person and reviewed if there is a change of circumstances, or if the child or young person requests an alteration. Where the child or young person has a co-ordinated support plan the education authority has a duty to review any co-ordinated support plan at least every 12 months. Such a review should help inform action to be taken prior to a child or young person, with a co-ordinated support plan, progressing beyond school. All relevant information in the co-ordinated support plan should be incorporated into the transition planning process.

Tribunal

34. The Act, as amended, allows the Tribunal to consider references in relation to an authority's failure to comply with any of its duties in terms of post-school transitions under sections 12(5) and (6) and 13 of the 2004 Act and described in paragraphs 25-32 above. The exception to this would be where the parents or young person have not given permission for the education authority to provide information to an appropriate agency or agencies. s18(3)(g)

Mediation and dispute resolution

35. The Act also enables parents and young people to use the arrangements in place for mediation or dispute resolution where they have concerns about how an authority has carried out their arrangements for all transitions (see Chapter 8).

Stuart has Down's Syndrome and is in a stable long term foster placement. At Stuart's transitional review meeting at the end of S3, it was agreed in discussion with Stuart and his foster parents that he would like to pursue a career in gardening and landscaping. Stuart was still developing his skills in literacy and numeracy, particularly in the use and handling of money. It was agreed with Stuart and his foster parents that he should:

- stay on at school beyond 16 on a part-time basis to continue developing his literacy skills
- consider attending college part-time to pursue his horticultural studies and to continue to develop his numeracy skills
- have extended work experience with the council landscaping department in conjunction with his college course
- continue to have support from the transitions social worker in relation to coordinating the community activities for Stuart, linking with the college facilities for sport and leisure.

With his foster parents' permission it was agreed that the college would be sent information about Stuart's progress in school, his interest in pursuing a course at college and the transitional arrangements being put in place. The college will be asked about the arrangements which may be made for Stuart in college and about what provision should be made in school to prepare Stuart for attending college and having a successful transition.

Chapter 7

WORKING WITH CHILDREN AND FAMILIES

1. This chapter of the Code describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions on supporters and advocacy.
2. All children and young people should have the opportunity to make their views known about decisions which affect them. They should have the opportunity to express their opinions and have these opinions taken seriously. They should be encouraged to contribute to decision-making processes, the setting of educational objectives, the preparation of learning plans, reviews and transition planning. They need to know that what they have to say will be respected, listened to and, where appropriate, acted on.
3. Parents must also have the opportunity to be involved fully in discussions and decisions about their child's learning. Most parents want what is best for their children and have unique knowledge and experience to contribute to understanding their child's additional support needs. They, therefore, have a key role to play in their child's education and account should be taken of their wishes and the perspective they bring.
4. Professionals need to involve parents and take account of their views on their child's development and education. Partnership with parents is therefore central to ensuring that children and young people with additional support needs benefit fully from school education directed to the development of their personality, talents and mental and physical abilities to their fullest potential. The Act serves to strengthen further the involvement of children, young people and their parents in working with authorities to reach decisions which are best for children's and young people's learning.

Views of children and young people

5. The 2000 Act places a duty upon education authorities, where they are responsible for the school education of a child or young person, to secure that the education is directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. In so doing, the authority must have regard to the views of children and young people (if there is a wish to express them) in decisions that significantly affect their education.

2000
Act
s2(2)

6. The Act builds on the above duty by placing a duty on the education authority to seek and take account of views of children and young people as the authority consider appropriate under specific circumstances. These circumstances include where the authority are seeking to establish whether the child or young person has additional support needs and when they are determining what additional support the child or young person may require. The authority have some discretion in whether they seek the views of such children or young people. The purpose of this provision is, primarily, to avoid over-formalising the dialogue between professionals, teachers

s12(2)
and (3)

especially, and children and young people by requiring the authority to take account of, and record, children's and young people's views **every** time they are considering whether children or young people have additional support needs. All children should be encouraged to take part in personal learning planning processes and in discussing, monitoring and evaluating their learning. It is expected that, except under exceptional circumstances, children or young people who have additional support needs should have the opportunity to discuss their needs and the support to be provided to meet those needs.

s12(1),
(2) and
(3)

7. In addition to good practice in involving children and young people in decision making about their school education, under the Act an education authority must seek, and take account of the views of children and young people (unless the child or young person is not able to provide a view then the views of the parents are sought) when they are:

- establishing whether a co-ordinated support plan is required
- preparing a co-ordinated support plan
- reviewing whether the child or young person still requires a co-ordinated support plan.

Expressing views

8. In order to express views, children and young people need to have experience of being asked for their views, being listened to, making some choices and having some influence over what they do. Schools and early years settings should create a climate where seeking children's views and encouraging participation in decision-making are part of everyday activities.

9. Some children and young people with additional support needs will be able to express themselves clearly and directly. All they may need are the opportunities and the encouragement to do so. Others may need support with communication or confidence to express their views. Very few will be unable to express a view at all.

10. The education authority may have to make specific arrangements to seek out the views of some children and young people, for example, children with complex communication support needs. They may need to make arrangements for those who require an interpreter; or whose first language is not English; or who have behavioural difficulties and are unwilling to co-operate. But it is just as important and relevant for these children and young people to have their views listened to as it is for those who can more easily express views. A range of approaches will need to be considered to determine their views including, for example, the use of alternative or augmentative communication systems, including signing, the use of interpreters, and engaging the views of others such as family members, foster carers, social workers and other professionals who know the child or young person.

Jamie is 13 years old and has depression. A meeting was convened to discuss his additional support needs but he made it clear that he would not attend. He agreed with his guidance teacher that a video could be made of them discussing what additional support he would find helpful.

Communication with children and young people

11. Good communication with children and young people is essential to enabling them to influence decisions made about their learning. This applies equally to education generally and at specific points related to co-ordinated support plans. There are many reasons why a child or young person may have difficulty in expressing their views. For example, communication with young children requires a range of different strategies which could include play, art, and the use of audio and video. Education authorities should take account of the good practice points at the end of this chapter.

12. Representatives of other appropriate agencies may be able to provide guidance and support to children and young people to help them express their views. They may also be able to provide guidance and support to other people involved in meetings on the best methods of communication. For example, a speech and language therapist may offer guidance on the appropriate level of language or communication method to use to ensure the child or young person understands and how best to facilitate and support their response.

13. When noting views, particularly where the child or young person has communication support needs, it is helpful to consider two factors. First, what the child or young person actually expressed, whether through speech, in writing, tape, sign or other form of communication such as facial expression or body posture. Second, what interpretation was made of the child's or young person's view and by whom. Both should be noted.

Taking account of views

14. Having sought the child's or young person's views, and recorded what these are, education authorities need to consider what weight to give to them. Taking account of these views does not mean education authorities have to accept and implement everything. At the same time, once sought and expressed, these views should not be disregarded and due weight should be given with consideration of the following:

- the child's capacity to understand the information on which their views were based
- the ability of the child or young person to express his or her own views
- the child's or young person's understanding of the range of options
- how well the people reporting the child's or young person's views know him or her.

15. It is important that a balance is struck between what a child or young person may want and what is realistic and appropriate. Where an education authority are unable to act on a child's or young person's views, reasons for this should be provided to them as appropriate.

Children and young people who lack capacity

16. The Act provides for children or young people who may lack capacity to do something; for example, where they are incapable of doing something by reason of mental illness, developmental disorder, or learning disability, or are unable to communicate because of a physical disability. However, the Act makes it clear that children or young people should not be treated as lacking capacity by reason only of a lack or deficiency of communication where an alternative means of communication or interpretation, (human or mechanical), would assist the child or young person to make his or her views known.

17. The question of whether children or young people have the capacity to do something must be considered at each stage of their involvement. When asked for a view, the child's or young person's capacity should be judged at that point and in relation to their ability to express a view with regard to the particular circumstances. For example, it should not be assumed that because young people lack the capacity to request the authority to establish whether they have additional support needs that they lack the capacity to understand, or hold a view on, the support considered appropriate.

Young people who may lack capacity

18. Questions of capacity arise particularly for young people, that is, people over 16 who are not yet 18. Young people enjoy the same rights as parents under the Act unless they are considered to lack capacity to exercise their rights. It is, therefore, important to consider carefully whether in individual cases a young person may lack capacity. The Act, as amended, provides a test which authorities can use to determine whether a young person lacks capacity.

19. The Act requires education authorities to publish and keep up-to-date certain information about a range of matters concerned with additional support needs including the authority's policy on provision for additional support needs (see Chapter 9). The Act, as amended, requires education authorities to provide all parents of all children with additional support needs (and young people with additional support needs), for whose school education the authority are responsible, with all the information authorities are required to publish.

20. The Act, as amended, specifies that where the authority are satisfied that the young person lacks the capacity to understand the information which is published under the Act, that information should be sent instead to the young person's parent. **The test to be used by authorities in establishing whether a young person lacks capacity relates to the young person's ability to understand the information published.**

s3

s26(1)

s26(1)(d)

s26(2A)
(ii)

21. Clearly in applying the test the education authority will discuss the matter with the young person, where possible and appropriate, and certainly with those who know the young person well, such as the parents, and those who have the professional expertise to assess his or her capacity to understand the information published by the education authority under the Act.

s12(2)
22. The Act allows parents to speak and act for their child, or young person, where the child or young person lacks capacity to express a view. Nevertheless, it is important to continue to support the child's or young person's participation in decision-making, at an appropriate level, at the same time as seeking the views of their parents.

23. Those who are closest to the child or young person can often give an informed view on whether or not he or she can understand a particular matter. These could include parents, foster carers, teachers, allied health professionals or social workers. A speech and language therapy assessment of comprehension should inform this process where there are differences in opinion or significant uncertainty about comprehension. The education authority should consider all these views when being called on to make a decision about capacity. It is best to reach such decisions by consensus recording clearly why such a view was reached and how it was arrived at. Where a parent, child or young person disagrees with the authority's decision this should be recorded.

24. An education authority will also need to take note of the arrangements for decision-making under the Adults with Incapacity (Scotland) Act 2000 and any persons with legal powers in respect of an adult for whom the authority is providing school education. An adult under this legislation is someone aged 16 and over.

Good practice in communicating with children and young people

A child or young person may benefit from:

- being given enough time to prepare and to go over the ideas and material to be discussed
- being given information in a form which is readily understood
- a teacher or other helper to help understand the meaning of key terms and concepts
- a supportive communication facilitator to tease out the full meaning of all of the issues
- specialised or new vocabulary (perhaps in sign or symbol form) in order to discuss a particular topic
- support to go over ideas, perhaps on several occasions
- help to understand outcomes and agreements.

Issues related to language:

- if spoken English is not the child's or young person's first language, consider using an interpreter, preferably not a family member to avoid any conflict of interests
- consider using a facilitator for those with language or speech difficulties
- use appropriate alternative or augmentative communication systems such as visual aids and/or sign language for deaf and/or communication impaired children or young people
- take account of any cultural preferences
- take time to explain what decision has to be made, why it's important and how the child or young person can influence it.

Supporting parents

25. All professionals, schools, education authorities and appropriate agencies should seek actively to involve parents in their work with children. They should value parents' contribution and regard them as partners in their children's learning.

26. In good practice, authorities and other agencies will ensure that parents are fully aware of the processes for assessing and providing for children's needs, understand the planning mechanisms and are familiar with the support services available from the school, the education authority and from other agencies, including voluntary organisations. Wherever possible, a partnership approach should be extended to include older children and young people.

27. Access to information and advice is central. The Act requires education authorities to publish information about certain specified matters including their policies, arrangements and the role of parents. They should ensure, in discharging their statutory information duties, that they use accessible language and take account of the child's, young person's and parents' rights to information and advice about the authority's provision for additional support needs. The authority should have a named contact person for additional support needs who can provide parents with information on the availability of supporters and advocates. Education authorities should also be aware of the valuable role the voluntary sector has in supporting parents and should aim to establish links and support effective working, wherever possible.

Supporters and advocacy

28. Supporters and advocates can help by making sure that a parent's or young person's view is understood, put across and taken account of in discussions where parents or young people feel unable or less confident to do so themselves.

s14 29. The Act provides young people and parents with the right to have a supporter or advocate present at any discussions or meetings with an education authority in regard to the authority's functions under the Act. Education authorities should, as a matter of good practice, make parents and young people aware of this right and how they can find out how to access such services.

30. The education authority must comply with the wish to have a supporter or advocate present unless the wish is unreasonable. Judgements about what an education authority may view to be unreasonable will depend very much on the particular circumstances being considered. An education authority may consider it unreasonable to include a supporter or advocate in discussions where the supporter or advocate is unable to represent the parent or young person appropriately. In such circumstances, the authority should provide the parent or young person with their reasons for taking this view.

31. Although a child does not have a right to have a supporter or advocate present, and the education authority does not have a duty to allow it, there is nothing to stop a child making such a request and an education authority agreeing to it where it would be in the interest of the child.

Supporters

32. A supporter can be anyone the parent or young person wants to nominate. A supporter could be a relative, friend, befriender or voluntary organisation worker or other person. The supporter could also be a professional working with the family provided there is no conflict of interest with that professional's duty under the Act or his/her responsibilities as an employee. A supporter can attend discussions with the parent or young person. The supporter may assist in a number of different ways, including:

- acting as a sounding board for the parent in preparing for the meeting
- taking notes so that the parent or young person can participate more fully in the discussions
- suggesting points for further clarification, questions to ask or giving advice to the parent during the meeting.

Advocates

33. The Act allows for a parent or young person to appoint a person to conduct all or part of any discussion with the education authority or make written or other representation to the authority on their behalf. This person, known as an advocate, can come from a range of backgrounds, including:

s14(1)(b)

- someone who has acted, or is already acting, as a supporter to the parent or young person – the parent or young person may wish the supporter to speak on his or her behalf
- a person not trained in advocacy but who is aware of education and other legislation and/or the needs of the child or young person who has additional support needs
- a voluntary organisation which need not be an advocacy organisation
- a formal advocacy service or agency, with trained advocates, possibly operating to its own guidelines or code of practice.

34. The main objectives of an advocate should be to speak up on behalf of the parent or young person and to represent the parent or young person at discussions.

35. Education authorities do not have a duty to provide or pay for a supporter or advocate. They should include, in their information materials for parents, details about the right to an advocate or a supporter, and how parents or young people can find out what services are in their area.

The Tribunal

36. The Act, as amended, requires the Scottish Ministers to make an advocacy service available on request and free of charge to support parents and young people in Tribunal proceedings. By advocacy service in this context the Act means '*a service whereby another person conducts discussions with or makes representations to the Tribunal or any other persons involved in the proceedings*' on behalf of the parent or young person. It is important to note that the service is available to provide support at the actual Tribunal hearing and not at any other meeting or discussion with the authority or other persons. Also, the service becomes available once a parent or young person has made a reference to the Tribunal. However, there would be discussions or meetings between the parent(s) or young person and the advocate prior to appearing before the Tribunal.

s14A

37. As a matter of good practice, education authorities should inform parents about the advocacy service when they become aware that a parent or young person is considering making a reference to the Tribunal. They should also refer to the service in the information they publish about additional support needs under the Act.

38. Parents will be able to obtain information about how to access the advocacy service from the Tribunal secretariat. The arrangements for providing the service have still to be finalised and further information about it will be available later in the year.

Good practice in communicating with parents

39. Education authorities should take account of the following good practice points when working with parents.

Professionals should:

- acknowledge and draw on parental knowledge and expertise in relation to their child
- consider the child's strengths as well as areas of additional need
- recognise the personal and emotional investment of parents and be aware of their feelings
- ensure that parents understand procedures, are aware of how to access support and are given documents to be discussed well in advance of meetings
- respect the validity of differing perspectives and seek constructive ways of reconciling different viewpoints
- cater for the differing needs parents may have, such as those arising from a disability, or communication and linguistic barriers.

Information should be:

- clear and understandable and avoid jargon
- provided easily in accessible formats
- readily available and provided automatically without a charge and without a fuss.

Communication works well when:

- people have the interpreters they need
- someone in authority takes responsibility for keeping parents up-to-date
- people are told what has been happening between meetings
- any information provided by parents is acknowledged
- formal references to statutory procedures are avoided.

Effective working relationships develop when:

- contact with parents is sensitive, positive, helpful and regular
- parents feel included and are encouraged to contribute to discussions
- positive, clear and easily understood language is used
- parents are involved and processes and roles are explained from the beginning
- parents are told what to expect and the next steps
- times of meeting take account of parents' availability.

Meetings work best when:

- parents are asked what times and places suit them best, taking account of any access need or family responsibilities
- notes from meetings, and any papers to be considered, are sent out in good time
- parents are invited to add points to the agenda, at the same time as everyone else
- people attending are aware of their roles and the roles of others and they understand the child's or young person's additional support needs
- there are no hidden issues, and no last minute surprises
- decisions are made when parents are at the meeting, or agreed with them before meeting takes place, not after the meeting has closed, unless further consultation takes place with them
- ample time is given to allow people time to raise concerns, so that decisions are not rushed.

Identifying the way forward works well when:

- all views are taken on board – including those of the child or young person
- people are interested in learning from each other
- people show an interest in general family priorities and take them on board
- services are identified in agreement with the family and are responsive to individual needs.

Accountability and involvement:

- who is responsible for what is clearly defined and understood
- parents concerns are responded to quickly
- decisions are open to scrutiny
- parents have a clear point of contact who can answer questions, make decisions and ensure that agreed actions are taken
- people do what they agreed within the timescale committed to – if a decision is likely to take time, parents are told and given some idea of when a decision is likely.

Chapter 8

RESOLVING DISAGREEMENTS

1. Use of the good practice guidance in Chapter 7 can help to avoid disagreements or prevent them from escalating into more serious disputes. This chapter considers provisions under the Act for resolving disputes where these do arise. The Act makes provision both for mediation services and arrangements for external independent adjudication (dispute resolution) to resolve disputes. It also provides parents and young people with rights to refer particular matters to the Additional Support Needs Tribunals for Scotland (“the Tribunal”).
2. It is expected that most disagreements will be resolved at school and education authority level with only a small number going to formal review procedures. Education authorities and schools should have clear staged disagreement resolution procedures in place with named contacts at each stage. The diagram following paragraph 53 outlines how the Act’s provisions sit within an overall framework for avoiding and resolving disagreements.
3. The following paragraphs consider each of the three approaches: mediation, dispute resolution and the Tribunal. Previous chapters of the code have discussed these approaches in some detail and reference will be made to these earlier discussions, where appropriate, to avoid repetition here. This purpose of this chapter is to draw together the various approaches for resolving disagreements and illustrate their similarities, differences and links.

Mediation

Every education authority must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and-

s15(1)

- (a) *the parents of any children,*
- (b) *any young persons, or*
- (c) *in relation to any young persons who lack capacity to express a view or make a decision for those purposes, their parents,*

concerning the exercise by the authority of any of their functions under this Act in relation to the children or young persons.

Aims and benefits

4. The Act, as amended, requires every education authority to have mediation services in place for resolving disagreements relating to matters concerning the exercise of any of the authority’s functions under the Act in relation to children and young people. Those accessing the mediation services may belong to the area of the

authority but they need not. Under the circumstances described in paragraph 15 below parents and young people are able to access the mediation services of an education authority other than the one to which they belong.

5. Mediation provides an option for avoiding, resolving or narrowing the area of disagreement between the authority and parents or young people. It allows disputing parties to seek to resolve their differences with the assistance of a mediator acting as an impartial third party.

6. Mediation services can help families and authorities to build or rebuild a positive relationship, leading to co-operation in making arrangements for the child or young person. They can help avoid conflicts that arise out of misunderstandings or lack of shared information by helping parents, teachers, authority officials and others involved to communicate directly with one another. The overriding principle is that the disputing parties come to a shared agreement on how to resolve their disagreement themselves.

7. Mediation can be used at any time in the life of a disagreement between an authority and parents or a young person. The process can be used more than once as it can be useful for resolving parts of a disagreement, as well as the whole of a disagreement. It can improve strained relationships among individuals who have experienced conflict in the past and prevent the escalation of disagreements.

8. Mediation may not be appropriate in all cases. For example, the parents or young person may not wish to engage in mediation. In addition, the provision of mediation under the Act is not the appropriate route for parents who have disagreements with the school about issues other than additional support needs. In such situations parents should follow normal school and authority complaints procedures.

9. Parents and young people must be informed that taking a disagreement to mediation in no way affects their entitlement to refer any competent matter to other appropriate formal or statutory review routes. For example, the parents or young person may wish to make a reference to the Tribunal in respect of relevant matters concerning a co-ordinated support plan.

10. The education authority's mediation services must be available, free of charge, to parents or young people. If the young person lacks the capacity to express a view or make a decision, then parents can pursue mediation on behalf of the young person.

Independent services

s15(2) *Mediation services are independent... if the person providing the services has no involvement in the exercise by or on behalf of the authority of their functions relating to education or any of their other functions (apart from this section).*

11. The Act, as amended, requires education authorities to provide mediation services which are completely independent of the local authority. That is, the local authority cannot choose to offer as mediators local authority employees or anyone else involved in conducting any other work on behalf of the authority. It is most likely that the authority may choose to employ a freelance mediator on a case-by-case basis or to contract with a mediator or a mediation provider using a service level agreement. They may also choose to collaborate with another authority to provide mediation on a reciprocal basis. When giving thought to engaging an independent mediation service provider, further information and guidance is available for Scottish Mediation Network www.scottishmediation.org.uk

12. Objectivity and impartiality are key principles for whichever option is chosen. All parties concerned need to be satisfied that the mediator is truly independent. All parties should be assured that mediators are appropriately trained, engaged in continuing professional development and operate to recognised standards. Appropriate disclosure checks should be carried out on all mediators.

13. The Act gives parents and young people the right to have a supporter or advocate present at any discussions or meetings with the education authority. This should apply equally to mediation sessions although it is important that mediation remains as a joint problem-solving process rather than an adversarial forum. It is not envisaged that the parties would bring legal representation to mediation. All participants, including the child, need to feel confident that their views and concerns will receive equal respect. The purpose of mediation is to achieve a solution to a difference of views and it is not about apportioning blame.

14. Parents of children for whose school education an authority are not responsible have access to an education authority's mediation services. Young people have access in their own right. However, mediation is available only where the disagreement relates to the authority's exercise of their functions under the Act (see Chapter 4 paragraph 9 for an example). Parents would not be able to use the mediation services to resolve a disagreement which did not involve the education authority's functions under the Act, such as a disagreement with the school itself.

15. Following a successful out of area placing request, parents or a young person are able to access mediation from the host authority regarding that authority's functions under the Act. Also following the submission of an out of area placing request, a parent or young person is able to access mediation from the potential host authority regarding the placing request.

16. The Act requires education authorities to publish information on the independent mediation arrangements they have in place within their area. This information should be kept up to date and under review and be widely available for authority staff and parents and young people. There should also be administrative support for arranging mediation meetings at a neutral venue with all the relevant people.

s14(1)

s15(1)

s26(2)(e)

Arrangements should be made for recording outcomes and providing a copy of these to the parents or the young person.

17. The education authority should have clear procedures in place to evaluate and monitor arrangements for their mediation services. Further detail on the features of mediation services, performance issues and sources of information are referred to in Annex D and the resources section.

Mrs Campbell's son, Alex has had a succession of supply teachers this term and she is concerned that his work is suffering due to the lack of continuity. She spoke to the current supply teacher who was not able to reassure her. The school had already issued information on resolving disagreements to which she referred. Mrs Campbell met with the head teacher in the first instance who listened to her concerns. The head teacher provided Mrs Campbell with some examples of Alex's work which showed that he was making suitable progress with his learning. Mrs Campbell was happy with this outcome.

Mr & Mrs Jacks have a son Paul aged 14 who has been diagnosed with Asperger's Syndrome. The transition from his local mainstream primary school to secondary proved very difficult. Increasingly frustrated by what they saw as the school's inability to meet Paul's needs, his parents withdrew him from school and educated him themselves at home.

Although the home education programme was working out very well, his parents felt that Paul was socially isolated from his peers and would benefit from returning to school. Agreement with the home education authority over a suitable school proved difficult and over time the positions of both parties had become increasingly entrenched, with a lot of distrust and negative feelings building up. Both parties agreed to explore further discussions with the help of an independent mediator.

Following discussion, both parties agreed that Paul's home education programme would continue, and that an additional support needs teacher from Paul's local school with autism specific training would begin some outreach support work with a view to helping Paul work towards attending his local school. Initially this was on a part-time basis, until if, and when, Paul and his parents were comfortable with this step.

Lorna is 8 years old. She has significant physical disabilities and learning difficulties, and attends her local primary school with the support of an auxiliary. Her mother, Cathy, was generally pleased with the placement but became anxious about the increasing gap between Lorna's learning and that of her peers.

Cathy began speaking to the class teacher daily about Lorna's progress. The teacher found this difficult to manage. In an effort to support her staff, the head teacher asked Cathy to stop the daily meetings. Cathy took offence at this and complained about the head teacher's attitude to various people in the education authority including the Director of Education.

Both sides agreed to explore the issues in a mediation session. With help of the mediator they were able to reach an acceptable outcome. Cathy's need for communication about Lorna's progress would be met by the use of a daily home-school diary. The classroom auxiliary would take responsibility for this with guidance from the teacher. Cathy and the teacher would meet up once a month for one hour and if Cathy had any problems she wished to discuss she could telephone the head teacher. Everyone agreed that they would meet again to review these arrangements after 6 months.

Resolving disputes by independent adjudication

18. The Act, as amended, enables the Scottish Ministers to require education authorities to put in place procedures to resolve disputes which arise between the authority and any parents or young people regarding the authority's exercise of any of their functions under the Act, as prescribed in Regulations¹. The procedures must be free of charge. Parents, and young people, cannot be compelled to use any dispute resolution procedure put in place. Also the use of dispute resolution does not affect their entitlement to make a reference to the Tribunal, or any other statutory review system, where appropriate.

s16

19. The Dispute Resolution Regulations prescribe which disputes relating to particular functions of the authority under the Act will be capable of reference to dispute resolution and timescales for the process.

20. In the context of the Act, the procedure for resolving disputes allows for a formal review of an individual case by an independent third party, external to the local authority, who considers the circumstances leading to the disagreement, and makes a report with recommendations for all parties.

What does it cover?

21. The service is for disagreements about the way the authority are exercising their functions under the Act, as prescribed in the Regulations, as these relate to the education of individual children or young people.

22. Disagreements may be about:

¹ The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

- whether or not the child or young person has additional support needs
- in the case of a child or young person with additional support needs, the accuracy of the description of these needs
- the refusal of the education authority to respond to a request from the parent or young person to establish whether a child or young person, for whose education they are responsible, has additional support needs
- the refusal of an education authority to respond to an assessment request from the parents or young person
- the person carrying out an assessment or examination or the method of carrying it out
- the failure of the authority to provide, or make arrangements for the provision of, the additional support required by the child or young person, whether educational provision or not
- the failure of the education authority to request help from an appropriate agency².

23. As with mediation services, under the Act, as amended, access to an education authority's dispute resolution arrangements are not restricted to parents of children or young people belonging to the area of the authority. In particular, following a successful out of area placing request, parents and a young person are able to access dispute resolution from the host authority in relation to the specified matters in the Regulations regarding the authority's exercise of their functions under the Act, as amended.

What does it not cover?

24. The Act, as amended, enables a reference to be made to the Tribunal where there is a failure to provide or make arrangements for the provision of the additional support identified in the co-ordinated support plan. However, it is also possible for a dispute about a failure to provide additional support set out in the co-ordinated support plan to go to dispute resolution. It is intended to consult on changing the Regulations on dispute resolution to prevent disputes about failures to provide additional support set out in the co-ordinated support plan going to dispute resolution. If this change is accepted then there would only be one formal route for considering such disputes, namely, the Tribunal (see paragraphs 34-52 below).

25. Dispute resolution also does not cover disagreements relating to the refusal of a placing request made under Schedule 2 of the Act. Such a disagreement can be taken to the education authority appeals committee and subsequently to a sheriff. Or, a reference could be made to the Tribunal if a co-ordinated support plan is involved, or where an authority has refused a placing request to a special school in Scotland (or to a similar type of school in England, Wales or Northern Ireland – see Chapter 4) or where

² These are: any other local authority, any NHS Board., Careers Scotland, all Colleges of Further Education and all Institutions of Higher Education in Scotland.

the dispute concerns failures of the education authority regarding the provision made under the Act for a child or young person to transfer from school to post-school provision. Education authority appeal committees will continue to deal with issues concerning exclusions.

26. In addition, dispute resolution is not for issues relating to broader strategy or policy matters or about allegations of misconduct or, for example, school closures. It is also not intended to be for personal disputes between parents and any member of staff at the school or education authority. All such matters should continue to follow established local authority complaint procedures.

Information on dispute resolution

27. The Act, as amended, requires education authorities to publish information on their dispute resolution procedures and keep that information up to date and under review. This information should be readily available to parents and young people.

Process of independent adjudication

28. Currently, applications for dispute resolution are made by the parent or young person directly to the authority. However, the Act, as amended, enables Regulations to be made requiring all requests for dispute resolution by parents or young people to be made to the Scottish Ministers. It is intended to consult on whether the current Regulations should be amended to require references for dispute resolution to be made to the Scottish Ministers instead of the education authority. If the Regulations are supported then it is proposed that within 5 working days of receipt of the referral, Scottish Ministers will refer the application to the relevant education authority for consideration. Where the request relates to a matter covered by the Dispute Resolution Regulations, the Scottish Ministers will nominate an external adjudicator to consider the case and will advise the education authority and parent or young person accordingly. The statutory 60 day timescale for carrying out the process of dispute resolution will not change but the precise arrangements and accompanying timescales will be the subject of consultation.

29. The education authority should review the case with a view to establishing that all appropriate steps have been taken to resolve the disagreement. They should prepare all appropriate papers for forwarding to the adjudicator. In addition, they should inform parents about how they can present their case to the adjudicator and what support is available to help them do this.

30. The role of the external independent adjudicator is to review, objectively and independently, all the information relating to the case, and make recommendations for both parties on the best way forward to ensure that the child's learning is supported with reference to the terms of the Act. The adjudication process is a paper exercise. However, the independent adjudicator will be able to ask for further information or clarification if required. Exceptionally, the adjudicator may arrange to meet the parties,

for example, if the adjudicator is concerned that one party, or both parties, may have been disadvantaged by the way the case has been presented.

31. The expectation is that both parties will accept the outcome of the process. Education authorities do not have a legal duty to implement the recommendations of the adjudicator. However, it is expected that generally the authority will do so provided these recommendations are not incompatible with their statutory or other duties or would unduly prejudice the discharge by the education authority of any of its functions. Recommendations, therefore, should be accepted in all but exceptional circumstances. The education authority should give reasons for their decision to accept or reject the adjudicator's recommendations.

Timescales

32. The process of independent adjudication should not normally take more than 60 working days from the time an authority have confirmed acceptance of an application to the parent receiving the independent adjudicator's report and the authority's decision. A working day means any day which is not a Saturday, Sunday, a day from 27th December to 31 December inclusive, a day in July, or a day specified as a bank holiday in Scotland. The independent adjudicator will encourage the parties to meet the timescales in the Regulations for the exchange of information about each parties' case and their comments on the other party's proposals to resolve the areas of disagreement. As noted in paragraph 28 above it is intended to consult on amending the Regulations and any implications for the timings of the various stages of dispute resolution within the overall 60 day time limit.

Monitoring

33. Education authorities should record the number of cases referred to mediation or dispute resolution and their outcomes for monitoring purposes. Further information is available in the Scottish Executive procedural guidance on provision for resolving disputes.

Additional Support Needs Tribunals

34. The Act, as amended, enables the Tribunal to hear references from parents and young people on matters relating to:

- co-ordinated support plans
- placing requests
- school to post-school transitions.

35. A reference can only be made in relation to a child or young person for whom an education authority are responsible. So, for example, parents who have placed their child in an independent school, and where an education authority have no responsibilities for the child's education, are not able to make a reference to a Tribunal.

36. The Tribunal's statutory functions, decisions and dealings with its users and the public are independent of government, national and local. The aims of the Tribunal are:

- to provide independent and expert adjudication, operating impartially, efficiently and effectively, in accordance with the Act
- to be user-friendly through informal and flexible proceedings and being accessible to users
- to discourage formal, litigious encounters between parents and education authorities by providing a forum for constructive dialogue
- to make decisions which, within the framework of the Act, reflect best practice in relation to providing for additional support needs.

37. In exercising its powers in relation to a reference made to it, the Tribunal must take account of the code of practice. When considering the facts of a case, the Tribunal will take account of the extent to which the education authority (and other bodies) have had regard to the code prior to the hearing. When determining the content of a decision, the Tribunal will be informed by the code. The Tribunal decision may require an education authority to take action within a timescale set by the Tribunal.

38. The Act, as amended, provides the President of the Tribunal with the power to monitor the implementation of Tribunal decisions. Following a decision of a Tribunal that requires an education authority to do anything, the President of the Tribunal may require the authority to provide him or her with information about the authority's implementation of the Tribunal decision. This includes information about any decisions relating to co-ordinated support plans, placing requests or school to post-school transitions.

39. The Act also provides the President with the power to refer the matter to the Scottish Ministers where he or she is satisfied that the authority are not complying with the Tribunal decision. The Scottish Ministers, in turn, have the power to direct an education authority (or authorities) regarding the exercise of their functions under the Act. Authorities must comply with such a direction. For example, if an authority has failed to amend a co-ordinated support plan following the decision of a Tribunal then it can be directed to do so by the Scottish Ministers

Co-ordinated support plan

40. The Act and associated procedural rules make provision for parents and young people to make references to the Tribunal in the following circumstances. Any parent or young person, or where the young person lacks capacity, the parent, may refer to the Tribunal the following decisions or failures of an education authority including:

- a decision to prepare a co-ordinated support plan

s19(7)

Sch1
11A

Sch1
11A

s27(9)
(10)
and
(11)

s18

- a decision not to prepare a co-ordinated support plan
- a decision to continue a co-ordinated support plan following a review
- a decision to discontinue a co-ordinated support plan following a review
- a failure to meet the timescales for preparing the co-ordinated support plan.
- a decision not to comply with a request to establish whether a child or young person has additional support needs requiring a co-ordinated support plan.

41. In addition, they may make a reference to the Tribunal, where a co-ordinated support plan exists, on:

- the information contained in the co-ordinated support plan by virtue of section 9(2)(a) of the Act
- the failure of the authority to review the co-ordinated support plan by the expiry date (ie 12 months from the date it was prepared) or within the timescale set by regulations
- the decision of the authority to refuse a request from a parent or young person to review the co-ordinated support plan
- the failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives

42. On the last point above, the Act, as amended, gives the Tribunal the power to require the education authority to rectify its failure to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.

43. The Act, as amended, also allows a reference to a Tribunal where there are certain procedural failures (described in paragraphs 30 and 31 of Chapter 5) of an authority:

- failure to respond to a request to establish whether a co-ordinated support is required
- where they have said they intend to establish that one is required but have failed to respond in the time specified in Regulations.

Placing requests

44. References to the Tribunal regarding placing requests are considered in detail in Chapter 4.

School to post-school transitions

45. The circumstances under which a reference can be made to the Tribunal concerning school to post-school transitions are considered in Chapter 6 paragraph 34.

Parental right to make a reference

46. The relevant education authority are responsible for informing parents of their right to make a reference to the Tribunal, whenever the authority makes a decision in relation to any of the matters listed above. Education authorities should explain this right to make a reference in any relevant documentation, e.g. accompanying a co-ordinated support plan. The education authority should also make clear to parents that they may bring a supporter or advocate to the Tribunal hearing as well as at other discussions with the authority (subject, to any restrictions in the Tribunal rules of procedure). They should also advise them of the requirements on the Scottish Ministers to provide a free advocacy service to support them at Tribunal proceedings (Chapter 7 paragraphs 36-38).

47. The President of the Tribunal has produced detailed guidance for parents, education authorities and others on how to make a reference and on how the Tribunal operates. Details can be found on the Tribunal website³. The code of practice does not address these aspects.

Tribunals and dispute resolution

48. The Act and Regulations provide for resolving disputes through external independent adjudication which broadly cover matters which are outside the Tribunal's remit. These are principally cases in which the child has additional support needs but does not require a co-ordinated support plan. Dispute resolution arrangements are not intended for matters which are within the jurisdiction of the Tribunal (although see paragraph 24 above).

49. The use of dispute resolution procedures does not in any way affect the parents' entitlement to take a matter to the Tribunal. Where a child's circumstances change such that they fall within the remit of the Tribunal, previous discussions held as part of the process of dispute resolution are to be treated in confidence by both sides unless otherwise agreed. However, the *outcome* of previous dispute resolution may be relevant to the Tribunal and, where both parties agree, may be brought to the attention of the Tribunal.

Tribunal and mediation

s15(3)(b) 50. The use of mediation procedures does not in any way affect the parents' entitlement to take a matter to the Tribunal. Conversely, the making of a reference to the Tribunal does not in any way affect their entitlement to use mediation services. The education authority should make this clear to parents when the possibility of mediation is raised by parents or the authority.

³ Website address: www.asntscotland.gov.uk/

51. The Tribunal may wish to ascertain whether the parents were aware of any mediation services available (for statistical reasons). However, discussions held as part of mediation are to be treated in confidence by both sides unless otherwise agreed. This means they are not to be disclosed by either side in the papers for or in the course of the Tribunal's proceedings.

Tribunal rules and regulations

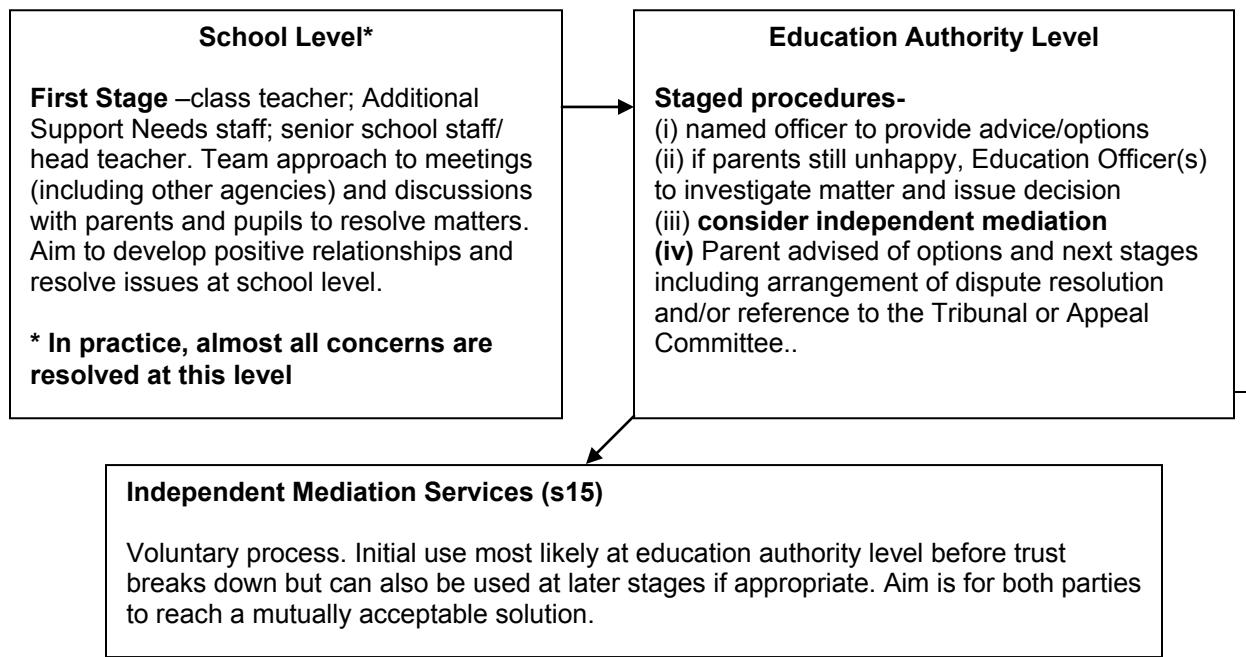
52. The Act provides for the Tribunal to be governed by rules of procedure separate from the code of practice. The qualifications, training and experience required by the President, conveners or members of the Tribunal are set out in the Appointment of President, Conveners and Members and Disqualification Regulations. Procedural matters are detailed in the Tribunal rules of procedure. The President has powers under the Act to make directions about the practice and procedure to be followed by Tribunals in relation to any matter.

Further recourse

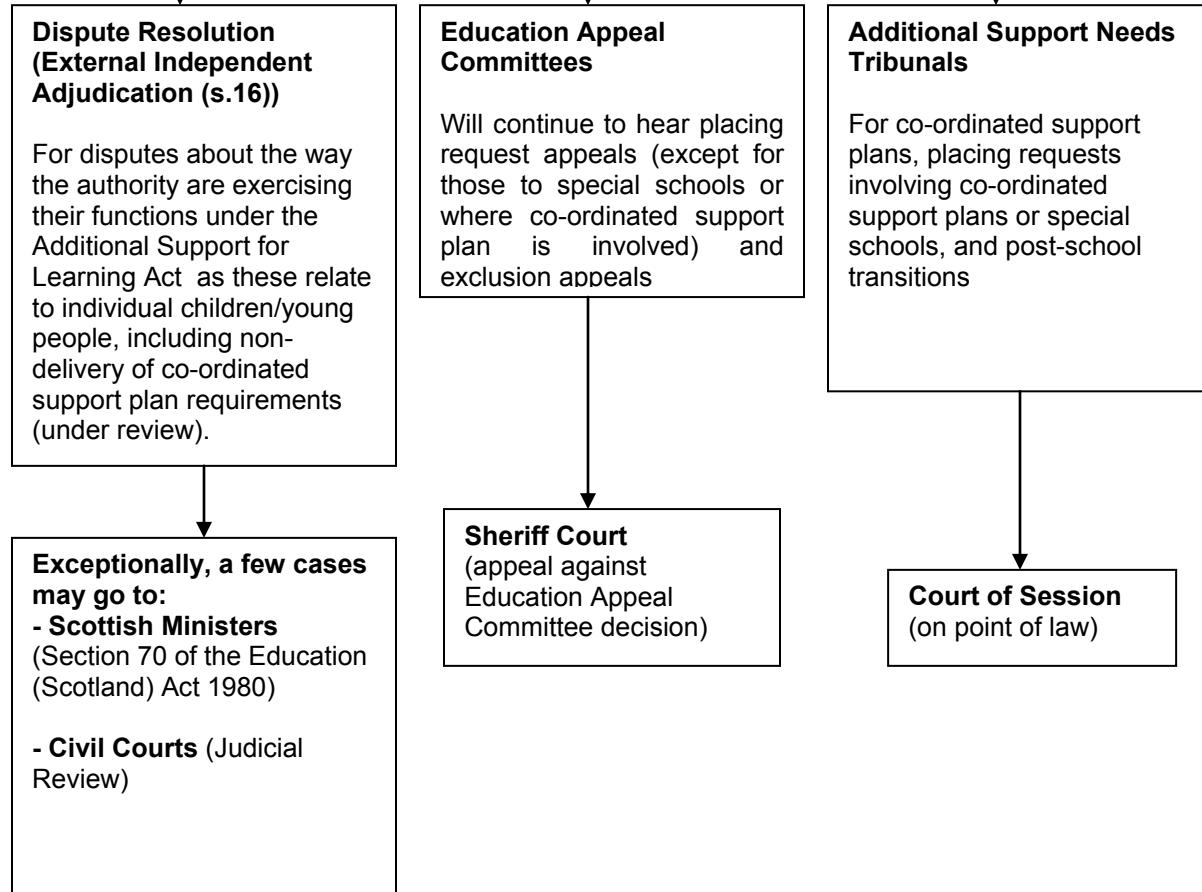
53. Application of good practice and the arrangements described above should be sufficient to resolve, or determine, almost all cases of disagreement between parents, young people and education authorities. Exceptionally, there may be a few cases where parents or young people will seek recourse elsewhere in certain circumstances. This includes the right to refer alleged failings to carry out a statutory education duty to Scottish Ministers under section 70 of the Education (Scotland) Act 1980. Section 70 gives a discretionary power for Scottish Ministers to intervene where they are satisfied that an education authority or others have failed to discharge any duty imposed on them by education legislation. In considering any complaint under section 70 Scottish Ministers will wish to consider whether other more local forms of resolving disagreement have been tried although the Ministers will not seek to intervene in relation to confidential discussions which take place in mediation or dispute resolution procedures under the Act or take account of such discussions in reaching any decision under section 70 of the 1980 Act except where all parties agree to this being made available to the Ministers.

FRAMEWORK FOR RESOLVING DISAGREEMENTS

PARTIES REACH AGREED OUTCOME



THIRD PARTY REVIEW AND RECOMMENDATION



Chapter 9

GENERAL PROVISIONS

1. This chapter considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the Code.

Placing Requests

2. The system relating to placing requests where the child has additional support needs is set out in schedule 2 to the Act. Whilst the scheme set out in schedule 2 broadly replicates that which operates where the child does not have additional support needs (which is contained in sections 28A to G of the Education (Scotland) Act 1980) there are some notable differences. The more important of these differences are highlighted below and have been discussed in detail in Chapter 4. Young people with additional support needs have the same placing request rights as parents of children with additional support needs unless the education authority are satisfied that they lack the capacity to do so in which case the parents can act on their behalf. For ease of reference the following refers to parents but young people also have these rights in their own name.

3. Parents of a child with additional support needs can make a placing request:

- to the home education authority for their child to attend a school, outwith their catchment area, managed by the home education authority
- to another education authority for their child to attend a school managed by that other education authority
- to the home education authority for their child to attend an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and the school makes provision wholly or mainly for children or young people with additional support needs.

4. School means any school, including a nursery school and a partnership provider where an authority has entered into arrangements for other persons to provide pre-school education. Under the Act parents are not able to make a placing request for an independent or grant-aided school which is not a special school.

Outwith the United Kingdom

5. The Act does give the power to an education authority to make such arrangements as they consider appropriate to enable a child or young person with additional support needs to attend an establishment, whether or not a school, outwith the United Kingdom. The establishment has to make provision, wholly or mainly, for

children or young people with additional support needs. However, there is no duty upon an education authority to comply with a request for a child to attend such an establishment. Education authorities have discretion as to what arrangements they consider appropriate and the power allows an education authority to meet wholly or partly the fees payable, or the travelling, maintenance and other expenses in respect of the child's or young person's attendance at the establishment. They can also meet similar expenses for the parents or some other person, where they consider it to the advantage of the child or young person that one or other of the parents or some other person was present during the time the child or young person attending the establishment.

Costs of placement

sch 2
2(2) 6. When a pupil with additional support needs attends a school, which is not an education authority school, as a result of a placing request, the education authority must meet the fees and other necessary costs of the placement

Timing of placing requests

7. Parents of children with additional support needs can make a placing request at any stage of a child's education. The authority must notify them of that right where a child is due to start at one of its schools, or where the authority propose that the child should, for any reason, be moved to a new or different school. An education authority should invite parents to take part in consultations leading to the school placement for children with additional support needs. They should also provide parents with the opportunity to visit the school or schools proposed.

Rights of young people

8. Young people have the same rights to make placing requests on their own behalf as parents have for their children. Where the education authority are satisfied that a young person is not capable of making a request then the young person's parents have the right to make a placing request for the young person.

Grounds for refusing placing requests

9. An education authority must comply with a placing request unless one or more or a number of the exceptions contained in paragraph 3 of schedule 2 to the Act apply. For example, an education authority may refuse a placing request if the specified school is a special school and for the authority to place a child there would cause it to be in breach of its duty to provide mainstream education.

10. A request may be refused if to comply with it involves significant expenditure on extending or otherwise altering the accommodation or facilities at the school. In refusing a request under these grounds, an education authority would have to act reasonably in assessing what amounts to significant expenditure. For a complete list of

all the potential grounds of refusal users of the code should have regard to the provisions in paragraph 3 of schedule 2 of the Act.

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

11. Additionally, an education authority do not have to comply with a placing request for an independent or grant-aided special school in Scotland (or a school in England, Wales or Northern Ireland making provision for children, or young people, with additional support needs) where, for example, any of the following apply:

- the authority are able to make alternative provision for the child's additional support needs (which may or may not be in one of their schools) other than in the specified school (ie the school for which the placing request is made)
- it is not reasonable to place the child or young person in the specified school, having regard to both the respective suitability and cost of the provision for his or her additional support needs there and in the school which she or he would otherwise attend and in which a place has been offered.

12. In considering the ground in paragraph 3(1)(f) of schedule 2 to the Act and whether the individual circumstances of the request justify its use, an authority may wish to consider whether the provision made in the specified school can justify the costs of attendance there.

13. There are also other grounds for refusing such a request, for example, as described in paragraph 9 above or where the school in question is not suited to the age, ability or aptitude of the child.

Power to accept a placing request

14. Schedule 2 gives an education authority the power to accept a placing request notwithstanding the fact that there are the grounds for refusal.

Reserved places

15. An education authority can also refuse a placing request, in certain circumstances, in respect of a child who is resident outwith the catchment area of the specified school. This is where accepting the placing request would prevent the authority retaining places (known as "reserved places") at certain schools for incomers to the area served by the school.

Appeals on refusal to grant a placing request

16. An education authority must inform parents in writing of their decision on a placing request. Parents or young people can then proceed to appeal where a placing request has been refused. In complying with a successful placing request, an education

sch 2
3(1)(f)

sch 2
3(1)(b)

authority should update, where appropriate, the nomination of the school in a child's, or young person's, co-ordinated support plan.

17. An education authority will be deemed to have refused a placing request made in accordance with schedule 2 paragraph 2 of the Act if:

- they have not informed the parent or young person in writing of their decision by the 30th April on a request made on or before 15th March for a school placement at the start of the school year in the following August or
- in the case of any other placing request, on the expiry of the period of 2 months (excluding school holidays), immediately following receipt by the authority of the placing request.

Appeal routes

18. Parents of a child with additional support needs can refer a decision by an authority to refuse a placing request to the education authority appeal committee, set up under the 1980 Act. However, the Act, as amended, makes specific provision for appeals against refusals to grant the placing request in which there is an issue relating to the co-ordinated support plan and/or a special school. These issues are considered in Chapter 4 but are summarised here. The decision of an authority to refuse a placing request may be referred to the Tribunal where:

- the request is in respect of a special school in Scotland or a school in England, Wales or Northern Ireland, making provision wholly or mainly for children or young persons with additional support needs, whose managers are willing to accept the child or young person (this last condition applies to independent special schools in Scotland)
- a co-ordinated support plan has been prepared (and has not been discontinued)
- the education authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal
- no such plan has been prepared but it has been established by the education authority that the child or young person requires such a plan
- the education authority have advised the parents or young person that they intend to establish whether a co-ordinated support plan is required.

19. In the last four circumstances in paragraph 18 above the decision to refuse a placing request by either the education authority or by the education authority appeal committee will be considered by the Tribunal.

Education authority appeal committee

20. An appeal committee, set up, under section 28 D of the 1980 Act, can confirm or refuse to confirm an authority's decision to refuse a placing request. Where they refuse to confirm the authority's decision, the appeal committee must either require the authority to place a child in the public school specified in the request or require the

authority to meet the fees and other necessary costs of a child's attendance at the specified special school which could be an independent or grant-aided special school, a school in England, Wales or Northern Ireland which caters for children and young people with additional support needs or a school where education is provided by the education authority under arrangements made under section 35 of the 2000 Act (that is, where the education authority have entered into arrangements with a provider of pre-school education). The authority must comply with a decision of the appeal committee. Where an appeal committee uphold an authority's decision to refuse the placing request, they must notify the parents of their right to make an appeal to a sheriff or to the Tribunal as appropriate, as in paragraph 21 below.

S18(3)
(f)

21. If any of the last four circumstances in paragraph 18 apply before the education authority appeal committee have made their final determination the appeal should automatically be transferred to the Tribunal. If the education authority appeal committee have made their decision and within 28 days of that decision, one of the last four circumstances apply, the correct route of appeal would be to the Tribunal rather than the sheriff. The appeal committee are not required to take any further action until the Tribunal's decision on the co-ordinated support plan is made.

s19(5)
(ba) and
(d)

22. While the Tribunal has the discretion to transfer a placing request decision back to the education appeal committee or sheriff where it has been decided that no co-ordinated support plan is required, it is anticipated that in the majority of cases the Tribunal will make a decision on the placing request reference.

23. An appeal committee will be deemed to have confirmed the decision of the education authority if they have:

- failed to hold a hearing within 2 months immediately following receipt by them of the reference
- Failed within the period of 14 days immediately following an adjournment of a hearing, to fix a date for a resumed hearing of the reference.
- failed to notify the parents or young person who made the reference and the education authority of their decision and the reasons for it within the period of 14 days immediately following the conclusions of the hearing.

Appeals to the sheriff from the appeal committee

24. A parent who has made a reference to an appeal committee may appeal to the sheriff against the decision of the appeal committee on that reference. In such a case, the education authority may be a party to the appeal to the sheriff, not the appeal committee. An appeal must be made by way of summary application and lodged within 28 days from the date of receipt of the appeal committee's decision. The sheriff may hear an appeal, in the event of a late application, if the parents can show good cause for the delay in submitting the appeal.

25. The sheriff can confirm or refuse to confirm the authority's decision to refuse a placing request. Where the sheriff refuses to confirm the authority's decision, the sheriff must require the authority to place the child in the specified public school requested. The authority must comply with a decision of the sheriff. The sheriff has the power to make an order as to the expenses of an appeal to the sheriff as she or he sees fit. The judgement of a sheriff on an appeal is final.

26. The circumstances under which appeals are transferred from the education authority appeal committee or the sheriff to the Tribunal, and from the Tribunal to education authority appeal committee or sheriff, are considered in Chapter 4 paragraphs 36-39.

Publishing information

27. The Act, as amended, requires an education authority to publish information about a range of specified matters relating to additional support needs. Those specified matters include information about:

- the authority's policy in relation to provision for additional support needs
- the authority's arrangements for identifying children and young people with additional support needs and those who may require a co-ordinated support plan together with the particular additional support needs of those so identified
- the role of parents, children and young people in any of these arrangements
- arrangements for monitoring and reviewing the adequacy of additional support for children and young people with additional support needs
- arrangements for independent mediation services, including details of the service and how to access it
- procedures for dispute resolution, including details of the service and how it may be accessed
- the officer(s) in the authority from whom parents of children having additional support needs, or young people who have these needs, can obtain further information and advice
- information about any NHS Board in their area or part of the area from whom parents of children having additional support needs, or young people who have these needs, can obtain further information and advice¹
- such other recognised agencies or organisations that can provide further support, information and advice to parents and young people that it considers appropriate, including information about support and advocacy.
- any other persons specified in an order made by the Scottish Ministers from which parents and young people can obtain further advice, information and support in relation to the provision for additional support needs, including information about support and advocacy.

¹ The Act was amended to include this point and the following one by The Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005

28. Education authorities should also include information on practice for:

- the management of reviews
- arrangements for support for learning
- how parents or young people can make requests for assessment
- the types of support available.

29. The authority should also publish information about its arrangements for resolving disagreements between the authority and parents of children belonging to the area of the authority, or young people belonging to the area of the authority, in respect of any of the authority's functions under the Act. This information should set these arrangements in the overall context of the arrangements which a particular authority has for preventing disagreements arising, and resolving them when they do arise.

30. The Regulations on information to be published require, as above, that education authorities must also publish information about any NHS Board in their area or part of the area and such other recognised agencies or organisations that can provide further support, information and advice to parents and young people that it considers appropriate and where this information is already known to the education authority or is easily obtainable. This could be contact details for the speech and language therapy service, for social work services or for local and national voluntary organisations, including support and advocacy services under section 14 of the Act.

Availability of information

31. The Regulations also state that the information should be available on request in alternative forms such as on audio tape, in Braille or through sign language.

32. Education authorities must also keep that information under review and revise and publish that revised information as necessary or appropriate.

33. The Act, as amended, requires education authorities to provide all parents of all children with additional support needs (and young persons with additional support needs), for whose school education the authority are responsible, with all the information authorities are required to publish as noted in paragraph 27 above. Where the authority are satisfied that the young person lacks capacity to understand the information then the information should be made available to the young person's parent. It is for each individual authority to decide how to meet this requirement but having the information set out in one handbook or available on a USB Pen Drive may be ways to meet this requirement effectively and efficiently.

s26(1)(d)

34. Authorities are under a duty to ensure that a summary of the information published under section 26 of the 2004 Act is available, on request, from each place in the authority's area where school education is provided, regardless of

s26(1)(e)

whether the school is under the management of the education authority. School in this context includes nursery schools and other pre-school education providers.

s26(1)(e) 35. The Act, as amended, requires education authorities to provide this summary in any handbook or other publications provided by any school in the authority's area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and on any website maintained by any such school or the authority for that purpose. Again it is for each authority to decide how to develop and disseminate this summary but it may be that a leaflet, available electronically, which summarises the information and indicates where more detailed advice can be obtained would meet the requirements of the legislation.

s26(2)(i) 36. The Act, as amended, enables the Scottish Ministers to make an order specifying certain persons from which parents and young people can obtain further advice, information and support in relation to the provision for additional support needs, including support and advocacy services as referred to in section 14 of the 2004 Act and places education authorities under a duty to publish information as to those persons. In broad terms the Act allows the Scottish Ministers to name national bodies providing these services and information about these bodies would then have to be included in the information published by the authorities.

Requests under the Act

s28 37. The Act uses the word "request" in a number of different provisions and the term has been specifically defined. This provision allows authorities to be clear as to the reasons for the requests being made. A "request" is one which is in writing, or another form which can be used for future reference, for example, where the request has been recorded in audio or video format. Where, an education authority refuse a request under the Act, they must inform the person who made the request and provide reasons for their decision. They must also provide details of their arrangements for mediation and/or dispute resolution procedures except where the request is from the managers of an independent or grant-aided school in relation to a child or young person being provided with education there.

38. Where the request is a placing request, the education authority must inform the person who made the request of their right to either refer the decision to an appeal committee or to the Tribunal where appropriate.

39. When education authorities are replying to or informing parents or young people they must do so in writing which could include e-mail if the parent or young person agree or another form as the parent or young person may require which can be used for future reference. Where a parent or young person has made a "request" in a particular form such as e-mail then the education authority should reply similarly or at least in a form that meets any particular known needs or preference of the parent or young person.

Collection of data on additional support needs

40. The Act, as amended, requires the Scottish Ministers to collect from education authorities, and to publish annually, specified information about additional support needs. That includes information about:

s27A

- the number of children and young people with additional support needs for whose school education the authority are responsible
- the principal factors giving rise to the additional support needs of these children and young people
- the types of support they are provided with
- the cost of providing that support.

41. Further details about the arrangements for collecting this data, and any secondary legislation required, will be made available in due course.

s26A

Information about additional support needs

42. The Act, as amended, requires that for the first five years after commencement of the Act, the Scottish Ministers must report to the Scottish Parliament on what progress has been made ensuring that sufficient information relating to children and young people with additional support needs is available to monitor the implementation of the Act.

Annex A

LINKS TO OTHER LEGISLATION, POLICIES AND GUIDANCE

The Act should be read alongside other legislation and policy supporting children and young people in Scotland. Some of the main aspects of these are set out below.

Legislation

Equality issues

Equality for all underpins the Act. It allows schools, local authorities and other agencies to address additional support needs which may arise as a result of inequality and discrimination. A number of pieces of legislation outlaw discrimination on grounds of disability, sex, race, sexual orientation and religion and belief.*

The **Human Rights Act 1998** incorporates the European Convention on Human Rights into Scots law. It supports the requirement for local authorities and other bodies not to discriminate on grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in securing the enjoyment of any of the rights set out in the ECHR. The right to education is set out in Article 2 of the First Protocol to the Convention.

Article 14

The **Disability Discrimination Act 1995**, as amended, outlaws discrimination against disabled people and requires local authorities and schools not to treat disabled pupils less favourably and to make reasonable adjustments to avoid putting them at a substantial disadvantage.

The disability equality duty, introduced through the above Act places a general duty on public bodies, including education authorities in respect of schools they manage. The **Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005** requires that education authorities and managers of grant-aided schools promote equality of opportunity for disabled people and publish a Disability Equality Scheme every 3 years. Authorities and the managers of grant-aided schools must also make arrangements for each school under their management to: assess the impact of their policies and

* The Equality Bill introduced to the Westminster Parliament in April 2009 is intended to consolidate and streamline existing equality legislation. If passed, it will replace the Disability Discrimination Act, Sex Discrimination Act, Race Relations Act and a number of other pieces of legislation with a single Equality Act. A new, integrated public sector equality duty will require public bodies to tackle discrimination, promote equality of opportunity, and encourage good relations across race, disability, gender, sexual orientation, religion and belief, age, gender reassignment and maternity and pregnancy.

practices on equality for disabled pupils; gather information on the opportunities available to, and on the achievements of disabled pupils.

The **Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002** places a duty on education authorities, managers of grant-aided schools and the owners of independent schools to prepare a strategy to increase, over time, the physical accessibility of the school environment and the accessibility of the curriculum for pupils with disabilities and prospective pupils with disabilities. The strategy must also provide for the improvement of communication with pupils with disabilities, especially in relation to the provision of school information.

The race equality duty, introduced through the **Race Relations (Amendment) Act 2000**, places a general duty on public bodies, including education authorities in respect of schools they manage, to eliminate unlawful racial discrimination and to promote equality and good race relations. Education authorities must publish a race equality scheme setting out their race equality policy and the arrangements for schools to monitor and assess the impact of their policies on pupils, staff and parents from different racial groups, including in relation to attainment.

The gender equality duty, introduced through the **Equality Act 2006**, places a general duty on public bodies, including education authorities in respect of schools they manage, to eliminate unlawful discrimination and harassment, and promote equality of opportunity between men and women. Education authorities must publish a gender equality scheme and make arrangements for schools to monitor and assess the impact of their policies on male and female pupils, staff and parents, including in relation to attainment.

The **Equality Act 2006** also makes it unlawful to discriminate on grounds of religion or belief (including lack of religion or belief) when goods, facilities and services are being provided. These provisions extend to the delivery of education and other services by schools.

The **Equality Act 2006 (Sexual Orientation) Regulations 2007** make discrimination on the grounds of sexual orientation unlawful in a number of areas including education in schools. Schools therefore need to make sure that gay or lesbian pupils, or the children of gay or lesbian parents do not receive different and less favourable treatment from that given to other pupils.

The **Children (Scotland) Act 1995** establishes the responsibilities of services, providers and parents in matters affecting children's care and welfare. Local authorities must provide services designed to minimise the impact of disabilities on children and to allow them to lead lives which are fulfilling. Children's views must be sought and taken account of in key decisions that affect them.

s23

s6

School education

Under the **Education (Scotland) Act 1980** education authorities must provide adequate and efficient school education for children of school age within their

area. The **Standards in Scotland's Schools etc. Act 2000** places education authorities under a duty to secure that the education provided is directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

s15(1) and
s40 2000
Act

Education authorities should provide education to school age pupils in a mainstream setting unless certain exceptions apply. Education authorities must make special arrangements for pupils who are unable, or where it would be unreasonable to expect them, to attend school through prolonged ill-health.

s2(2) 2000
Act

Education legislation gives certain rights to parents and young people rather than to **children** in their own right. However, the 2000 Act recognises that children should have the right to express views on issues that affect them. Chapter 6 of the code describes where children's views should be taken into account under the 2004 and 2009 Acts.

s2 Age of
Legal
Capacity Act
1991

The 2004 Act, as amended by the 2009 Act, also sits alongside legislation which recognises that children with legal capacity are able to make some decisions on their own behalf. For example, a child over 12 may consent to any medical procedure or treatment and instruct a solicitor in relation to civil matters so long as he or she is considered capable of understanding the nature and possible consequences.

Young people (young persons in legislation) have similar rights to parents regarding school education. They may also express their views on, and take decisions about, their school education.

Adults with
Incapacity
(Scotland)
Act 2000

The law provides for decisions to be made on behalf of adults who lack legal capacity to do so themselves because of mental disorder or inability to communicate. Adults are defined as being over 16 years of age. The decisions concerned may be about the adult's property or financial affairs, or about their personal welfare, including medical treatment. Professionals carrying out functions under the 2004 Act as amended should have due regard to the provisions of the Adults with Incapacity Act.

s1 Schools
(Health
Promotion
and Nutrition)
(Scotland)
Act 2007

The Schools (Health Promotion and Nutrition) (Scotland) Act 2007 places education authorities under a duty to ensure that all schools are health promoting. A school is health promoting if it provides activities and an environment and facilities which promote the physical, social, mental and emotional health and wellbeing of pupils. Guidance on the provisions of the Act is available at <http://www.scotland.gov.uk/Publications/2008/05/08160456/0>.

Nutritional guidelines to support schools in meeting nutritional requirements are available from <http://www.scotland.gov.uk/Publications/2008/09/12090355/0>.

s30 1980

Parents, under the 1980 Act, must ensure that their children of school age receive adequate education suitable for the age, ability and aptitude of their child, either by sending their child to a school managed by the education authority, or by other means, for example an independent school or home education.

Parents must, where it is in the interests of the child and is practicable, safeguard and promote their child's health, development and welfare. This also applies to anyone over 16 who has care or control of a child under the age of 16. In addition, parents can provide their children who are under 18 years of age, with appropriate direction and guidance. They should maintain personal relations and direct contact with their son or daughter on a regular basis, if they do not live with their child. Parents can also act as their child's legal representative. Where a person takes a major decision in fulfilling a parental responsibility or right under the 1995 Act they must have regard to the views of the child, taking account of the child's age and maturity and whether the child wishes to express a view.

The **Scottish Schools (Parental Involvement) Act 2006** places a duty on Scottish Ministers to promote parents' involvement in their child's education. Because parents have such a vital role to play in their children's education, the Act aims to make it easier for parents to become involved in their own child's education and in their child's school more generally. To help achieve these aims, all parents will automatically be members of the parents forum at their child's school and will be entitled to have a say in what happens at the school.

The Act made changes to the arrangements for parental representation in all schools. Since August 2007 Parent Councils have been the representative body for parents. The Act also places a duty on education authorities to promote the involvement of parents in school education. This includes authorities giving advice and information to parents about their own child in response to reasonable requests.

Other legislation

The **NHS Reform (Scotland) Act 2004** required NHS Boards to submit schemes of establishment for Community Health Partnerships to Scottish Ministers for approval by December 2004. Schemes had to comply with The Community Health Partnerships (Scotland) Regulations 2004 and the Statutory Guidance issued in October 2004.

The **Protection of Children (Scotland) Act 2003** introduced safeguards to prevent unsuitable people from working with children. The Act covers a range of childcare positions defined in the 2003 Act (as amended), not just those involved in directly caring for, training, supervising or being in sole charge of children. It includes those whose normal duties include work in a school; a further education institution; a hostel used mainly by pupils attending a school or further education institution; or in hospitals which are mainly for children.

Professionals carrying out functions under the **Mental Health (Care and Treatment) (Scotland) Act 2003** should have due regard to the provisions within education legislation, as there may be instances where there is some cross over between them.

The **Antisocial Behaviour etc (Scotland) Act 2004** introduced and built upon a number of measures designed to tackle antisocial behaviour. It defined what antisocial behaviour is for the purposes of that Act; made provisions with regard to ASBOs; provided powers to take action on premises where there is significant and persistent disorder or serious nuisance to the local community; and also introduced, amongst other things, on the spot fines for a range of low level antisocial behaviour, and powers to seize vehicles being driven antisocially.

The **Further and Higher Education (Scotland) Act 1992** requires that adequate and efficient provision of further and higher education is made in Scotland. Due regard should be given to the requirements of those over school age who have a learning difficulty or disability which may affect their education. In preparing young people for leaving school, teachers should be aware of legislation covering further and higher education. Under the **Further and Higher Education (Scotland) Act 2005**, the Scottish Further and Higher Education Funding Council must have regard to the support needs of students and prospective students of further education colleges and higher education institutions.

The **United Nations Convention on the Rights of the Child** (UNCRC) applies to everyone under 18. It is an international law that recognises that all children and young people have rights. There are 42 articles that describe specific rights, 4 of which are described as the underpinning principles: non-discrimination (article 2); commitment to the best interests of the child (article 3); the right to life, survival and development (article 6); and respect for the views of the child (article 12). The UNCRC is reflected in legislation relating to children and young people e.g. the Children (Scotland) Act 1995 and the Scottish Government has made clear its ongoing commitment to the UNCRC and to promoting and supporting the rights of all children in Scotland as a key strand of our activity to improve outcomes for all. On 1 September 2009 the Scottish Government published its response to the 2008 recommendations from UN Committee on the Rights of the Child. This publication, 'Do the Right Thing', set out specific actions the Scottish Government will take in 21 priority areas relating to children's rights.

The **Adoption and Children (Scotland) Act 2007** provides the legislative framework for adoption and permanence for children in Scotland who can no longer live with their natural parents. The Act restates the duty of a Local Authority to provide an adoption service for placing children with adopters and assessing adopters and widens the range of people who are able to adopt. The Act introduces a court order for accommodating children who cannot live with their natural parents (a "permanence order") and also improves access to a broader range of support services for people affected by adoption, including members of adoptive and original families.

Policy

The Scottish Government has a wide range of policies which supports the development and well-being of Scotland's children and young people. The broad definition of additional support needs (which has been widened by the 2009 Act) means that application of the Act's provisions requires effective interaction across policies in a number of areas. The following paragraphs describe some of these policy areas.

Overview

The Act complements Scottish Ministers' high expectations and aspirations for all of Scotland's children and young people. These expectations and aspirations apply across agency, service and professional boundaries. Ministers' aspiration for all children and young people in Scotland is that they should be successful learners, confident individuals, responsible citizens and effective contributors to society and at work. Ministers believe that children and young people should be:

Healthy ... experiencing the highest standards of physical and mental health, and supported to make healthy safe choices

Achieving ... receiving support and guidance in their learning - boosting their skills, confidence and self-esteem

Nurtured ... having a nurturing and stimulating place to live and grow

Active ... offered opportunities to take part in a wide range of activities - helping them to build a fulfilling and happy future

Respected ... to be given a voice and involved in the decisions that affect their well-being

Responsible ... taking an active role within their schools and communities

Included ... receiving help and guidance to overcome social, educational, physical and economic inequalities; accepted as full members of the communities in which they live and learn

And above all, to be safe ... protected from abuse, neglect or harm.

The Getting it right for every child programme builds from universal health and education services to achieve these outcomes for children. It drives developments to change the way adults think and act to help all children and young people grow, develop and reach their full potential. It requires a positive shift in culture, systems and practice across services for children, young people and adults. It is a fundamental way of working that builds on research and practice evidence to help practitioners focus on what makes a positive difference for children and young people and act to deliver these improvements. Getting it right for every child threads through existing policy, practice, strategy

and legislation affecting children, young people and families. The Getting it right for every child approach with its emphasis on meeting the needs of the child is entirely congruent with the additional support needs agenda.

The Getting it right for every child approach is particularly helpful when professionals from more than one agency need to work together to provide effective support. That multi-agency practice in the field needs to be matched by effective strategic planning mechanisms. The Single Outcome Agreements agreed between Community Planning Partnerships, consisting of local authorities and their partner agencies, and the Scottish Government under the Concordat with local government form an effective mechanism for doing so at the strategic level and will be underpinned by more detailed joint operational plans such as the integrated Children's Services Plans provided for in the Children (Scotland) Act 1995.

Education

The Standards in Scotland's Schools etc. Act 2000 requires that Scottish Ministers should set national priorities in education. Five **National Priorities in Education** underpin the Scottish Government's education policies. These are:

Achievement and Attainment: To raise standards of educational attainment for all in schools, especially in the core skills of literacy and numeracy, and to achieve better levels in national measures of achievement including examination results.

Framework for Learning: To support and develop the skills of teachers, the self discipline of pupils and to enhance school environments so that they are conducive to teaching and learning

Inclusion and Equality: To promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages.

Values and Citizenship: To work with parents to teach pupils respect for self and one another and their interdependence with other members of their neighbourhood and society, and to teach them the duties and responsibilities of citizenship in a democratic society

Learning for Life: To equip pupils with the foundation skills, attitudes and expectations necessary to prosper in a changing society, and to encourage creativity and ambition.

All five priorities are relevant to ensuring that children and young people with additional support needs receive the help they require. The priorities are delivered in a range of educational settings, but the overarching context is one of schools developing their capacity to provide for the full range of children and young people within education.

The government's reform programme of education, Curriculum for Excellence encompasses the five national priorities for education in that it will provide a better quality of teaching and learning, increased attainment and achievement for all children and young people in Scotland with a focus on literacy and numeracy and health and wellbeing throughout.

The new curriculum framework will enable all young people in Scotland to gain the knowledge and skills for learning, skills for life and skills for work which will help them become successful learners, confident individuals, responsible citizens and effective contributors.

Curriculum for Excellence is intended to be for all learners. It should lead to improved quality of learning and teaching and increased attainment and achievement for all children and young people including those in need of more choices and more chances.

The Scottish Government places a high priority on getting it right in the early years. The Early Years Framework was published in December 2008, with a focus on maximising the opportunities for all our children to get the best start in life, no matter what their background or circumstances. The Framework is built on the principles of early intervention – a shift from intervening only when a crisis happens to prevention and early intervention.

The Framework sets out a list of priorities for action that need to be taken forward in partnership over the next 10 years, some short term, some medium term and some long term. The Framework was developed through partnership and can only be effectively delivered through partnership. Scottish Government and COSLA will continue to work together with other partners to implement and deliver the framework.

The Scottish Government believes that good relationships and positive behaviour across whole school communities are fundamental to the successful delivery of Curriculum for Excellence. The government is committed to supporting schools create and maintain peaceful and positive learning environments, working with local authorities to introduce the most effective approaches to promoting positive behaviour. There are a wide range of approaches from universal whole school approaches to more targeted or additional approaches through school and multiagency assessment, planning and provision for children and young people with behavioural needs. Provision includes that beyond the classroom to address needs and keep children and young people included, engaged, and involved in their education.

The Scottish Government also has a wide range of policies across health, social work and other agencies which support children and young people who have additional support needs.

Curriculum for Excellence aims to achieve transformational change within the Scottish education system by providing a coherent more flexible and enriched curriculum which will provide more choices and more chances for those young

people who need them. The design of Curriculum for Excellence enables schools and their partners to build a flexible system that offers personalisation and choice to meet the needs of all children and young people, **wherever** their learning is taking place. It also provides clear and supported pathways for young people to make successful transitions and to continue learning beyond compulsory schooling.

The new qualifications framework will facilitate a smooth progression for learners at different rates and in different ways. The recognition of wider achievements in addition to formal qualifications will also allow learners at all levels to gain recognition for a much wider variety of skills and abilities.

A robust system of assessment that reflects the values, purposes and principles of Curriculum for Excellence is needed to provide good quality information about learning and teaching. Later this year, we will publish a statement setting out the key elements of the proposals to support assessment in Curriculum for Excellence. In addition to this, we will provide more detailed guidance through the publication of a *Framework for Assessment*, which will outline our plans in greater detail and give detailed advice for educational planners, managers and practitioners.

Developments in assessment will also be supported by the new National Assessment Resource, an online system to support assessment for ages 3 through to 18. The first stage of the development of this resource is expected to be completed in the Summer of 2010.

Updates on Assessment will be made available through the Curriculum for Excellence website at www.ltscotland.org.uk/curriculumforexcellence/index.asp

Health

There are 40 Community Health Partnerships across Scotland. These partnerships lead the planning and delivery of person-centred and integrated community based services. They are a focus for providing better primary and specialist health services for adults and children locally and joint services with local authorities. They also have a significant role in improving health and reducing health inequalities set within the context of community planning.

The Scottish Government published the Better Health. Better Care: Action Plan in 2007. Community Health Partnerships are at the heart of this agenda, shifting the balance of care by improving access, managing demand, reducing unnecessary referrals and providing better community care services.

The Scottish Executive 2003 review of speech and language therapy, physiotherapy and occupational **therapy services** for children called on service providers to develop new methods of working in non-traditional and inclusive settings, such as mainstream schools and nurseries and other community settings. Other recommendations called on local authorities and NHS Scotland

to develop integrated approaches to the provision of therapy and other related interventions for children.

The Scottish Government **Allied Health Professions and Education Working in Partnership National Guidelines**, which are scheduled to be published in June 2010, will further promote and support partnership working primarily between speech and language therapy, occupational therapy and physiotherapy these being the professions most closely involved in supporting children and young people within school, and education staff at all levels. The guidelines, based on extensive engagement with stakeholders, document evidence-based good practice and include exemplars, tools, continuous professional development resources and the service user's perspective. The guidance intends to improve understanding about the role and working practices of AHPs and how AHPs contribute to supporting education of children and young people, including those with additional support needs.

Health for All Children (Hall 4) guidance was issued to NHS Boards in 2005 following the review of child health screening, surveillance and health promotion activity by the Royal College of Paediatrics and Child Health. The guidance sets out the core programme of screening, surveillance and health promotion contacts which every child should receive and recommends tiered levels of support according to assessed need.

The Scottish Government's Framework for Nursing in Schools sets out the direction for school nursing in Scotland. The framework sets out in clear terms the nursing service that should be delivered to children and young people in Scottish schools. The concept of the Health Promoting School underpins the entire framework. There is a change in focus, away from surveillance and towards proactive assessment of the health needs of each school. While there are specific sections in the framework on health promotion, highlighting key priority areas, the starting point is that the school nursing service focuses primarily on promoting health and well being as part of an integrated cross school approach, with a focus on the needs of the child as an individual is central to the new approach.

The Scottish Government has also commenced a two year project to increase healthcare capacity in schools starting in communities that have the highest number of vulnerable children & young people. The delivery of care will be developed in an integrated way using a partnership approach between partners involved. The model will harness existing skills whilst at the same time develop new roles. This new model will not be more of the same but it is an opportunity to redesign services that will provide effective healthcare to children young people and their families particularly at key transition stages. The project will run until March 2011 and will be independently evaluated.

The Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care sets out a range of activities and approaches to support children and young people's mental health and wellbeing. The framework was developed to support integrated approaches to children and young people's mental health, across mental health promotion, prevention of mental illness, and

care and treatment for those with mental health problems. It highlights mental health promotion and stresses the importance of considering the child's global environment, recognising elements which support mental health and wellbeing as well as those factors which may increase the risk of mental health problems, including the potential impact of a parent's ill health on their child.

The framework promotes a "mainstream" approach to mental health and wellbeing, which equips a range of health and other children's services professionals with the basic skills to be able to support parents in developing a basic understanding of risk and protective factors that may affect their child's mental health and wellbeing. To support this, NHS Education for Scotland has published a mental health competency framework for all those involved in supporting children, young people and their families. This framework is about to be revised by NES in conjunction with the Scottish Government Mental Health and Workforce Divisions and Skills for Health. Education policy and practice already has a strong focus on promoting and supporting emotional wellbeing, and the **Health Promoting Schools** concept broadens this focus beyond the curriculum to a "whole school approach".

Towards a Mentally Flourishing Scotland, the recently published policy and action plan for mental health improvement, also includes a focus on the mental health of infants, children and young people.

The mental health and wellbeing of children is part of all aspects of health care and is also an underpinning part of The Early Years Framework, Getting It Right for Every Child, The Curriculum for Excellence and Health for all Children (HALL 4).

Children and families

The Scottish Government continues to work closely with the 30 **Child Protection** Committees set up throughout the country to improve the protections offered to children and young people in our communities. These Child Protection Committees (CPCs), developed into their current structure following the child protection reform programme completed in 2006, are responsible for the delivery of effective child protection measures in their area.

Work continues to be undertaken by the Scottish Government and its partners to introduce a common overall approach to the most significant operational aspects of protecting children from harm and to embed best practice from the child protection practitioner community into day to day practice across the country. Progress is also being made in the implementation of the "Getting it Right for Every Child" agenda for children's services, as it applies to children who are at risk of significant harm.

Following careful consideration of responses to the consultation "Strengthening for the Future" on the reform of the Children's Hearings system which finished in October 2008, Scottish Government are bringing forward proposals to reinforce and modernise the Children's Hearings system. The Draft Children's Hearings

(Scotland) Bill was published on 26 June 2009. The key proposals contained in the Draft Bill are:-

- The creation of a new national body, the Scottish Children's Hearings Tribunal, to drive up standards across Scotland.
- Changes in functions and practice to improve support for both professionals and panel members, leading in turn to improving better outcomes for children and young people.
- Legal and procedural changes to increase efficiency and ensure that children's rights continue to be properly upheld.

Under these proposals, the Scottish Children's Hearings Tribunal will be responsible for all functions associated with the Children's Panel, including recruitment, selection and training of panel members.

The Scottish Children's Reporter Administration will deliver the Children's Reporters service.

People will continue to be recruited, selected, trained and sit on hearings on a local basis.

The Scottish Government's aim is that there should be no difference between the outcomes of children and young people who have been **Looked After** and their peers who have not, particularly in relation to educational achievement. Historically, this has been far from the case. Looked After Children and Young People: We Can and Must Do Better (Scottish Executive 2007) sets out a framework for action, most of which was completed during 2008. The website www.LTSscotland.org.uk/lookedafterchildren contains all the relevant publications as well as providing opportunities for practitioners and others to participate in online discussions. The key publications are:

- *These Are Our Bairns – guidance for community planning partnerships on how to be a good corporate parent* which sets out the responsibilities of all members of the extended corporate family and how they can measure their success.
- *We Can and Must Do Better Training Materials* – a comprehensive revision of the *Learning With Care* materials comprising an award-winning interactive DVD rom.
- The national evaluation of educational outcomes of Looked After children pilots, with an accompanying practical guide for practitioners.
- Core Tasks for Designated Managers in Educational and Residential Establishments which up-dates the previous Learning With Care provisions.
- The Resource Pack for Care Leavers – a DVD rom for local authorities to customise to provide accessible advice to young people leaving care.

HMIE has published a self evaluation toolkit – How Good is Our Corporate Parenting – which will support councils and other providers in assessing the services they provide to Looked After children and young people and care leavers.

The 2009 amendments to the 2004 Act include a requirement for all Looked After children and young people to be assessed for a Co-ordinated Support Plan.

In addition, the Looked After Children Regulations are currently being up-dated, and Getting It Right For Every Child in Kinship and Foster Care, the Securing Our Future Initiative and the National Residential Child Care Initiative are focused on the needs of particular groups of children and young people within the care system.

The Youth Justice framework, "Preventing Offending by Young People - A Framework For Action" was launched in June 2008. The framework is jointly owned by Scottish Government, the Convention of Scottish Local Authorities, the Association of Chief Police Officers Scotland, the Scottish Children's Reporter Administration and the Crown Office and Procurator Fiscal Service, as key delivery agencies. The Framework is broad in its scope, spanning prevention, diversion, intervention and risk management with reference to the individual, the family and the wider community. The Framework reaches from pre-birth and early years through to the transition to adult service.

The new antisocial behaviour framework *Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland* was published in March 2009. This framework provides the strategic direction nationally and locally for tackling antisocial behaviour and provides a platform for future work. It aims to promote positive outcomes through more prevention, better partnership working, enhanced community engagement and improved communication. The review aims to build upon past successes and will seek to improve the 2004 Act rather than repeal it. An implementation plan for the framework will be published later this year.

Tackling parental substance misuse and its effects on children is a key priority for the Scottish Government. Chapter 5 of the National Drugs Strategy - *The Road to Recovery: A New Approach to Tackling Scotland's Drug Problem* - includes a range of measures aimed at protecting children affected by parental substance misuse (**CAPSM**).

The CAPSM actions centre on prevention & early intervention, with a strong focus on strengthening support for families & management of immediate risk which is consistent with the wider Getting it right for every child (GIRFEC) approach. GIRFEC sets out the principles and values for professionals dealing with children & includes the child's safety - putting the child at the centre - and working in partnership with families.

A CAPSM Project Board has been established to support the delivery of the CAPSM priority actions which were identified in Chapter 5 of the Road to Recovery. It includes representation from the Scottish Government, Local Authorities & the voluntary sector.

More Choices, More Chances aims to better prepare vulnerable young people for adult life and work. Providing the right support, choices and chances to young people is central to its' overall purpose. MCMC is located in a strategic framework that comprises Getting it Right for Every Child, Curriculum for Excellence (16+ Learning Choices is the new model for supporting the planning and delivery of the Senior Phase of Curriculum for Excellence) and Skills for Scotland and which underpins Government's commitment to improve outcomes for all young people – with more choices and chances for those who need them. The strategy has five key approaches to resolving this:

- by ensuring that Curriculum for Excellence provides opportunities to young people under 16 that are tailored to individual need, with flexibility and appropriate support for every young person – intervening as early as possible to ensure that;
- by ensuring that every young person has a clear 16+ Learning Choices pathway from school into learning post-16, with supported transitions and sustained opportunities;
- by ensuring that learning is a financially viable option, by considering the financial support available to young people;
- by ensuring that the right support is available to young people to find out about, engage with and sustain learning and employment;
- by making a joint commitment to action between central and local government, employers, learning providers and support agencies to develop the service infrastructure required to meet the needs of vulnerable young people;

Post school education services

Following the report of the Beattie Committee *Implementing Inclusiveness: Realising Potential* (1999) the then Executive endorsed the principle that inclusiveness should underpin all post-school education. Inclusiveness is about providing learning opportunities that give the best match to the needs of the individual. The Scottish Government's approach to participation in lifelong learning is focussed not only encouraging all colleges and universities in Scotland to continue to develop inclusive, learner centred policies but also to remove barriers which prevent students from participating in lifelong learning. That is why the Scottish Government is moving from a widening access agenda to the widening of the mainstream.

To assist with this process the Scottish Government has recently updated *Partnership Matters* (<http://www.scotland.gov.uk/Publications/2007/08/partnershipmatters>) which provides guidance to local authorities, NHS Boards and voluntary organisations on supporting students with additional needs in further and higher education. The guidance sets out the roles and responsibilities of all the agencies involved and encourages a partnership approach to cross-agency working. It recognises that young people may experience barriers in accessing and participating in learning and that colleges, universities and schools may be required to work together to plan for and prepare the young person for transition from school to post school education

As part of the commitment to providing learning opportunities that give the best match to the needs of the individual the Scottish Government is working alongside the Scottish Funding Council to improve further education in Scotland for students with complex needs .

The same as you? review of services for people with learning disabilities called for an inclusive approach to services for children, young people and adults with learning disabilities and autism spectrum disorders. It highlighted how the transition phase between child and adult services is crucial and the need for partnership between local authorities and NHS Boards in planning services. Recommendations from a follow up report *Working for a change?* have led to a national focus on employment for people with learning disabilities within the Workforce Plus agenda. *The same as you?* implementation group have also produced a report, *Changing Childhoods*, outlining appropriate service models for children and young people with learning disabilities.

Annex B

CO-ORDINATED SUPPORT PLAN TEMPLATE

Here insert the Unique Pupil Identifier (UPI) for the child or young person

SCHEDULE

CONFIDENTIAL

Official use:
Date of first
CSP/subsequent
amended versions

Set out name of authority

CO-ORDINATED SUPPORT PLAN

for [insert forename(s) and family name of child/young person]

Home Address:

The address where the child resides the majority of the time and where a parent or recognised carer for the child also lives

Contact Telephone Number:

Date of Birth:

Gender:

Preferred language/communication method

the child's language of preference/method of communication used to make themselves understood i.e. signing, lip-speaking, by using communication aids or symbols, audio equipment, Braille

School currently attended:

Date of Entry to Current School:

Parental Details:

Details of the child's parent(s) and/or those adults who have or share responsibility for their care, such as foster carers, a relative or social work services should be recorded here. The template only contains 2 boxes but additional boxes can be added as required

Surname:

Forename(s):

Relationship to child/young person:

Address (if different from child's/young person's)

Contact Telephone Number:

Preferred language/communication method: [as above]

Surname:

Forename(s):

Relationship to child/young person:

Address (if different from child's/young person's)

Contact Telephone Number:

Preferred language/communication method: [as above]

PROFILE

(here set out a summary of the child's/young person's skills and capabilities and any other relevant information)

The purpose of the profile is to build up a holistic pen-picture of the child or young person. It should focus on the positive aspects of the child's/young person's life, for example his/her skills and capabilities. It may also include information about the type of placement or curricular guidelines he/she follows, the other plans he/she has as well as the activities he/she likes to do or how he/she likes to learn. The person responsible for drawing up the co-ordinated support plan will have to summarise information provided by the child or young person, their parents and the other people who know/work with the child or young person. The result should be a summary that encapsulates the child or young person.

The size of the box is not restricted to the space that appears in the form in the Regulations.

Factors giving rise to additional support needs

(here set out the factors which give rise to the child's/young person's additional support needs)

The complex or multiple factor or factors may be diagnostic labels such as autistic spectrum disorders, learning disability or clinical depression. In other cases the factor or factors may be more descriptive and related directly to the personal circumstances of the child or young person or family. All factors should be included.

While these will be the education authority's conclusions, they will be based on the multi-agency assessment information, including that provided by the parents or young person, which underpins the plan.

The size of the box is not restricted to the space that appears in the form in the Regulations.

Educational Objectives	Additional Support Required	Persons providing the additional support
<p>(here set out the educational objectives that require co-ordination of support for the child/young person, taking account of the factors giving rise to additional support needs)</p> <p>Educational objectives should be viewed in the widest sense as encompassing a holistic view of the child or young person. Objectives can include, for example, those required for personal and social development or to improve communication skills (see chapter 4 of the Code for more details).</p> <p>The objectives should be specific and should be set for a minimum of 12 months but this could be longer depending on the individual circumstances of the child or young person.</p>	<p>(here set out the additional support required by the child/young person to achieve each of the educational objectives)</p> <p>This will include teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching to be used.</p> <p>The statement of the support to be provided should be clear and specific and, wherever possible, should be quantified.</p>	<p>(here specify the persons by whom the additional support shall be provided)</p> <p>These will be the agencies or professions providing the support i.e. 'speech and language therapist', 'social worker', 'Barnardo's' but <u>not</u> the actual names of the individuals.</p>

NOMINATED SCHOOL

this should be the name and address of the school it is intended that the child or young person will attend

Name of School:

Address:

Telephone Number:

Head Teacher:

Nature of Placement:

(part-time, day, residential, base, joint-placement)

PARENTAL COMMENT

(here set out the views of the parent on the Plan)

The views, if any, of the parent(s) on any aspects of the co-ordinated support plan process as well as the plan itself should be recorded here. Parents should, wherever possible, complete these themselves or they could provide the education authority with written or verbal comments to be inserted. Alternative forms of communication can be used, such as a CD-ROM or the use of signs or symbols. Parents should consider areas such as their involvement in the process, including the drafting of the plan, and whether their views have been adequately taken into account.

The size of the box is not restricted to the space that appears in the template in the Regulations.

CHILD'S/YOUNG PERSON'S COMMENTS

(here set out the views of the child or young person on the Plan)

The views, if any, of the child or young person on any aspects of the co-ordinated support plan process as well as the plan itself should be recorded here. Children and young people should be enabled to complete these themselves or they could provide the education authority with written or verbal comments to be inserted. Alternative forms of communication can be used, such as a CD-ROM or the use of signs or symbols. Children and young people should be encouraged to consider areas such as their involvement in the process, including the drafting of the plan, and whether their views have been adequately taken into account.

The size of the box is not restricted to the space that appears in the template in the Regulations.

CO-ORDINATED SUPPORT PLAN REVIEW TIMETABLE

Date Co-ordinated Support Plan made/amended:
(delete as applicable)

Date by which review must begin:
(on the expiry of 12 months from the date the Plan was made/amended)

Date by which review must be completed:
(within 12 weeks of the date on which the review began)

EDUCATION AUTHORITY CONTACT POINTS**Additional Support Provision Co-ordinator**

This person is responsible, on behalf of the education authority, for co-ordinating the additional support required by the child/young person as detailed in this co-ordinated support plan.

Surname: Forename(s):

Contact Address: Contact Telephone Number:

Work Position/Title:

Parental Advice and Information on the Co-ordinated Support Plan

The parent of a child with a Co-ordinated Support Plan or a young person with a co-ordinated support plan may obtain advice and further information from the following person:

Surname: Forename(s):

Contact Address: Contact Telephone Number:

Work Position/Title

In accordance with section 11 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act") and the Education (Co-ordinated Support Plan) (Scotland) Regulations 2005 ("the Regulations"), this Co-ordinated Support Plan is made/amended (delete as applicable) by [insert name of education authority] on [insert date] in respect of [insert name of child or young person].

Name: Work Position/Title:

Signed (authorised officer of the authority)

Making decisions about whether or not the additional support required is significant

Chapter 5 of the code of practice describes in detail the circumstances under which co-ordinated support plans have to be prepared. In particular, section 2 of the Act sets out the following requirements to be met for a co-ordinated support plan to be prepared. In practice, there can be particular difficulties in deciding when *significant additional support* (see (d) below) requires to be provided. Chapter 5 discusses the issue of significance in detail. The purpose of the case studies below is to consider in practical terms how the issue of significance may be considered. For the purposes of Annex C it is assumed that all the case studies fulfil the requirements (a), (b) and (c) below. What then is being considered is whether (d) holds in which case a co-ordinated support plan is required. If (d) does not hold than a co-ordinated support plan is not required.

.....a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if-

- (a) *an education authority are responsible for the school education of the child or young person,*
- (b) *the child or young person has additional support needs arising from-*
 - (i) *one or more complex factors, or*
 - (ii) *multiple factors,*
- (c) *those needs are likely to continue for more than a year, and*
- (d) *those needs require significant additional support to be provided-*
 - (i) *by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or*
 - (ii) *by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.*

In considering the examples below it should be noted that:

- the education authority decide on whether support from the appropriate agency or agencies is significant, not the appropriate agency or agencies, although clearly those involved will discuss this

- significance itself relates to the dimensions of the support provided not to the effect of that support on the child or young person
- the support from the appropriate agency or agencies is assumed to help the child benefit from education and achieve his or her educational objectives and the question to be answered in these examples is whether or not that support is significant and, therefore, triggers the preparation of a co-ordinated support plan.

Case study 1: A P3 pupil whose name is on the Child Protection Register

Mark finds it very hard to settle to work and to concentrate in class. His relationships with other pupils are poor, his self esteem is very low and he regularly reacts by kicking or hitting out. The psychologist is concerned about attachment difficulties. The various professionals involved provide support including: individual work by the psychologist focusing on attachment and anger management; support from a teaching assistant and the classroom teacher; attendance at a Nurture Group; and direct work with Mark by the social worker on developing self-esteem. Social work and school staff working together also supported his mother to be involved in learning how to help him with his homework and how to help him to play at home.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
Social work	Fortnightly	Experienced social worker who is able to carry out the individual work required and who can work with the psychologist and teaching staff.	1-1 direct work with the child on issues relating to self-esteem, confidence and resilience.	Likely at least one year.	In this case support is needed to secure educational objectives relating to personal and social development.	Yes

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
Social work	Fortnightly	Experienced social worker who is able to carry out the individual work required and who can work with the psychologist and teaching staff.	1-1 direct work with the child on issues relating to self-esteem, confidence and resilience.	Likely at least one year.	In this case support is needed to secure educational objectives relating to personal and social development.	Yes
Comments: Support from the social worker is significant taking into account the frequency, nature, intensity and duration of the support and the need for it to be co-ordinated..						

Case study 2: An S3 pupil who is looked after

Following a decision from the Children's Hearing, which made a statutory supervision requirement, Robin in S3 is looked after at home. He is involved in group work through social work services as identified in his Care Plan to help him reflect on his poor school attendance and its causes. The school is part of the multi-agency group which is supporting the plan. Robin is well able to engage with the curriculum but does have learning support because of reading and spelling difficulties which the school is finding difficult to deal with because of poor attendance.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
Social work	Fortnightly	Experienced local authority social worker who is able to work with Robin and the family and who can liaise with the school. Group work to be carried out on voluntary agency premises	Group work 2 hours per fortnight involving social activities and discussion.	Supervision requirement will last at least one year. For a 3 month period.	If the social work support achieves its outcome in terms of improving Robin's attendance then this will help the development of his literacy skills.	No
Comments: Support from the social worker is not significant in terms of the meaning of the Act because it is lasting only 3 months and takes place in a setting where a high degree of involvement or co-ordination from the school is not necessary. There will be liaison between the school and social work agency but the overall support provided by social work services is not such as to trigger the requirement for a co-ordinated support plan.						

Case study 3: An S2 pupil who is looked after away from home

Joanna is on supervision because of offending behaviour and substance misuse. She has been known to social work services since she was in P1 because of parental drug abuse which led to her neglect. Subsequent foster placements did not work out well and in S2 she was placed in a residential school situated in a small town. She lives with residential child care staff in a house in the community with three other young people, attends the special school on a daily basis and has part-time attendance at the local secondary school to have the opportunity of experiencing subjects her own school is unable to offer.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
Social work	Support is ongoing because the local authority social worker is responsible for placement in the school and for ensuring that Joanna benefits from it.	Experienced local authority social worker who is able to work with Joanna and the family and who can liaise with the school and residential child care staff. Specialist teaching and child care support provided through the placement.	There is regular contact with Joanna's family, Joanna herself, the school and child care staff.	Supervision requirement will last at least one year .	Social work support is necessary to maintain the placement and to ensure that Joanna benefits from it in the broadest sense in terms of her overall wellbeing but also in terms of her opportunity to achieve educationally.	Yes
Comments: Support from the local authority social work services is significant since they are responsible for the placement and for ensuring that within the Child's Plan prepared for Joanna there is appropriate co-ordination through the co-ordinated support plan to ensure that Joanna achieves her educational objectives.						

Case study 4: A pre-school child preparing to transfer to primary school

Stuart is in his final six months of his nursery school placement. He has Asperger's syndrome and has significant difficulties with social communication. His speech and language therapist is working with the staff, parents and Stuart to help him interact more effectively with his peers. An occupational therapist is working individually with Stuart to help him improve his fine motor co-ordination which is poorer than that of his peers and to help him learn to manage his toileting and dressing more effectively.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
NHS Board Speech and language therapist	Weekly	Experienced speech and language therapist who has expertise in working with children with Asperger's syndrome and can advise staff and parents on appropriate strategies to use. Experienced occupational therapist who can advise staff on the development of Stuart's fine motor skills and self help skills.	1-1 support on a 6 weekly block followed by a 6 week break. Pattern continued throughout the year. Advice to staff and parents following sessions.	To last a year	If Stuart is to benefit from education he needs support to improve his communication, fine motor and social skills. This support needs to be co-ordinated. The support from the speech and language therapist is significant, that from the occupational therapist is not in terms of the Act..	Yes
	2x per term		Advice to staff and parents 2x per term.	To last a year		
Comments: The speech and language therapist is providing significant support and that requires to be co-ordinated to help Stuart achieve his educational objectives. The support provided by the occupational therapist is not significant.						

Case study 5: A P3 pupil attending a special school

Jamal attends a special school. He has physical difficulties stemming from cerebral palsy and needs considerable support from speech and language therapy to develop his communication skills, from physiotherapy to maintain and develop his posture and muscle tone and so that he can work at his desk, and from occupational therapy to support the development of his fine motor and self help skills. The education authority have contracted these therapists from the local NHS Board to work in the school with those pupils who need support.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks / terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
NHS Board Speech and language therapy Occupational therapy Physiotherapy	Jamal is seen once a week by all three therapists.	Experienced therapists who are able to work with children within their respective disciplines and can provide advice to staff, parents and children.	There is 1-1 support for from each therapist for up to one hour weekly together with liaison with class teachers.	This will likely be ongoing throughout Jamal's school career subject to regular monitoring and review.	All therapists are providing significant support but contributing to educational objectives in different ways which all needs co-ordinated with educational input.	Yes
Comments: Although the therapists are working in the school they are employed directly by an appropriate agency, their own NHS Board, and so their contribution fulfils one of the requirements for having a co-ordinated support plan.						

Case study 6: A P7 pupil attending a mainstream school

Alec in P7 has been known to speech and language therapy services since he was in nursery school. He has a long history of language and communication difficulties which have impacted quite severely on the development of his literacy skills particularly. He did have a co-ordinated support plan until he was in P5 but this was discontinued when the speech and language therapy input was reduced because it was felt that it did not need to be maintained at that level. However, his progress is still monitored by speech and language therapy who maintain contact with the school

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type – personnel, learning and teaching approaches (L&T) – degree of individualisation / differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks /terms / years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a co-ordinated support plan - if they are to be achieved?]	Is a co-ordinated support plan required?
NHS Board Speech and language therapy	Once a term	Experienced speech and language therapist who has expertise in working with children with language and communication disorders. Main input now is on monitoring progress, advising staff and contributing to his individualised educational programme.	Contribute to review once a term.	Over a year.	Support is helping Alec achieve his educational objectives but is not significant.	No

and parents.

Comments: Alec does not require further direct support from a speech and language therapist because school staff, parents, and Alec himself, are aware of the support strategies required. The speech and language therapist continues to advise the staff, parents and Alec, the ultimate aim being to withdraw involvement at the end of P7.

FEATURES OF MEDIATION

The following features of mediation and performance evaluation have been provided by a range of mediation service providers.

Features

It is voluntary. It is important that the parties come to the table in good faith, with a will to settle the dispute. The dispute will only be resolved in mediation if the parties voluntarily decide on a way forward which is mutually acceptable.

It is confidential. This means that issues and ideas for resolution of the conflict can be discussed during the mediation without fear of them being used against the parties in the future if no agreement is reached.

Mediations are easily arranged. Usually it only takes a few phone calls for a session to be set up at a neutral venue. It is essential that all the people who have decision making responsibility about the dispute are available.

Mediations tend to be informal. The mediator is trained to make the meetings as accessible as possible for everyone involved.

It is balanced. Everyone has a fair chance to be heard. Mediation provides an opportunity for all the parties to say what is important to them and to hear the other party's perspectives.

The parties control the agenda and outcomes. The mediation approach is problem-solving rather than adversarial so creative options for settlement are often the result. In mediation, the parties speak for themselves and make their own decisions.

Monitoring and evaluation arrangements

Education managers with responsibility for mediation should ensure that evaluation takes place and that the findings are used to improve services. School personnel, authority officials, parents, young people, and mediators are all both stakeholders and informants — they provide information and, to differing degrees, use evaluation information to make decisions about future courses of action.

Performance

A qualitative evaluation process may be more appropriate for mediation. Some performance issues that are critical to the varying purposes of mediation evaluation are listed below:

Performance Areas	Key Performance Issues
Service Efficiency	Cost to participants Time from referral to resolution
Service Effectiveness	Outcomes of mediation Participant satisfaction with mediated outcomes Durability of mediated outcomes Impact on relationship between participants Impartiality of the service
Mediation Process	Appropriateness & usefulness Preparation process and materials Fairness (opportunity to tell story, feeling understood, respectful treatment, control over outcomes)
Mediator Performance	Skills of the mediator Knowledge of the mediator Impartiality of the mediator

**EDUCATION (ADDITIONAL SUPPORT FOR
LEARNING) (SCOTLAND) ACT 2009 (the 2009 Act)**

**The Additional Support Needs Tribunals for Scotland (Practice and
Procedure) Amendment Rules 2009**

CONSULTATION PAPER NO 1.

1. INTRODUCTION

The Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) introduced a new system for identifying and addressing the additional support needs of children and young persons who face a barrier to learning. References to young persons are to those aged 16 or 17 who are still receiving school education.

The 2004 Act made provision for the establishment of the independent Additional Support Needs Tribunals for Scotland (the Tribunal). The Tribunal hears and decides appeals made by parents against the decisions by or failures of education authorities in relation to a co-ordinated support plan.

For the purposes of the 2004 Act a child or young person will require a co-ordinated support plan for the provision of additional support if-

- an education authority is responsible for the school education of the child or young person;
- the child or young person has additional support needs arising from one or more complex factors or multiple factors;
- those needs are likely to continue for more than a year;
- those needs require significant additional support to be provided by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education or by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority itself.

Reference to the Tribunal may also be made regarding the refusal of placing requests in certain circumstances.

In determining all its decisions and directions, the Tribunal must take account of the code of practice published by the Scottish Ministers. The 2004 Act also provides for the Tribunal to be governed by rules of procedure and regulations separate from the code of practice.

2. LEGISLATIVE FRAMEWORK

The 2004 Act

Section 17(1) of the 2004 Act provides that the Tribunal is to be constituted to exercise the functions conferred on a Tribunal by virtue of the 2004 Act.

Subsection (2) provides that there is to be an officer known as the President of the Tribunal appointed by the Scottish Ministers. The President's functions are conferred on him by virtue of the 2004 Act. Schedule 1 makes further provision as to the constitution and procedures of the Tribunal including the appointment and functions of the President and administrative and other matters in connection with the Tribunal and the President.

A young person (where they have capacity) or the parent of a child or a young person (who does not have capacity), may refer to the Tribunal certain decisions, failures or information in

relation to a co-ordinated support plan relating to any child or young person for whose school education an education authority is responsible. Section 18 of the 2004 Act specifies the types of referral which may be made and by whom. Section 20 of the 2004 Act confers on the Scottish Ministers a power to extend the categories of decision, failure or information which can be referred.

An appeal on a point of law to the Court of Session lies against the decision of the Tribunal (section 21 of the 2004 Act). The Court of Session may allow the appeal and remit the case back to the Tribunal or to a differently constituted Tribunal for reconsideration at the same time issuing directions as it considers appropriate. The education authority and the person who made the referral under section 18 of the 2004 Act have the right to appeal.

Section 18 of the 2004 Act prescribes the references that may be made to the Tribunal. If an education authority are responsible for providing school education for the child or young person, then the parent of the child or young person (if the young person lacks capacity to do this), or the young person themselves, may make a reference to the Tribunal.

Subsection (3) lists the matters that can be referred to the Tribunal. These are -

- decision of an education authority on whether or not a co-ordinated support plan is required or continues to be required,
- failure by an education authority to prepare a co-ordinated support plan in the required time,
- decisions of the education authority about information contained in a co-ordinated support plan relating to:
 - the reasons for the individual's need for additional support,
 - the planned outcomes to be achieved,
 - the additional support required to achieve the planned outcomes,
 - who will provide the additional support,
- failure by an education authority to carry out or to complete a review of the plan by the required time,
- decision of an education authority to refuse to carry out an early review of the plan,
- decision by an education authority to refuse a placing request to a specified school, in particular circumstances.

Where information in the co-ordinated support plan is referred to a Tribunal, there cannot be a further reference on the same information until an updated plan is issued following its next review. The information being referred does not need to have been changed from the previous version of the plan so long as the plan has been reviewed.

References relating to refusal of a placing request can be made to a Tribunal if, at the time the request was refused, a co-ordinated support plan has been prepared for the child or young person concerned, or a plan is about to be prepared or if a reference has been made to the Tribunal over the decision that a plan is not required. Referrals on refusal of placing requests can only be made once in each 12 months unless the plan has been reviewed in that period, or a Tribunal has ordered a plan to be amended or prepared.

Section 19 of the 2004 Act specifies the powers that a Tribunal has in relation to references. The Tribunal may either confirm the authority's decision that a co-ordinated support plan is needed, or not needed, or overturn the decision and direct the authority to take specific action within a specified time. This also applies where the education authority have decided not to comply with a request to review a co-ordinated support plan earlier than the required 12 month period.

Where a reference relates to the education authority's failure to prepare a plan or their failure to conduct or complete a review of the plan within the time required, then the Tribunal can require the authority to rectify this. Where a reference relates to information in a plan, the Tribunal may confirm the information or direct the education authority to amend the information.

Where a reference relates to an education authority's refusal of a placing request, as described in section 18, then the Tribunal must consider the statutory grounds of refusal and the appropriateness of the refusal for the individual child or young person. The statutory grounds of refusal are listed in schedule 2. The Tribunal may confirm the decision to refuse the placing request, or they may direct the education authority to amend the co-ordinated support plan and place the child in the school specified in the placing request.

In considering a reference relating to obtaining a co-ordinated support plan, if the Tribunal confirms the education authority's decision that the child or young person does not require a plan, then the Tribunal may refer any related appeal on a refused placing request to the education authority's appeal committee (set up under section 28D of the 1980 Act). If the Tribunal does this, then the education authority's appeal committee will consider the appeal on the refused placing request and either confirm or overturn the education authority's decision, as they will do for all other appeals on refused placing requests not connected with a co-ordinated support plan.

In determining all its decisions and directions, Tribunals must take account of the code of practice published by the Scottish Ministers (under section 27). The code of practice provides guidance to education authorities and others about how they should exercise their functions under this Act.

The 2009 Act

The 2009 Act makes the following adjustments to the 2004 Act in relation to Tribunals:

Section 1

- provides that following the refusal of an out of area placing request in respect of a child or young person who has a co-ordinated support plan, is being considered for a co-ordinated support plan, or in respect of whom the education authority have decided does not require a co-ordinated support plan and that decision has been referred to the Tribunal, a parent or young person is able to appeal the decision to refuse the request to the Tribunal. Where the placing request is to a special school the decision to refuse the request will be referable to the Tribunal whether or not a co-ordinated support plan is involved.

- enables the decision of an education authority refusing a placing request in respect of a place in a Scottish special school to be referred to the Tribunal and also allows the decision of an education authority refusing a placing request in respect of a place in a school in England, Wales and Northern Ireland which is a school making provision mainly or wholly for children or young people with additional support needs to be referred to the Tribunal.
- provides that when hearing a placing request appeal in respect of a place in a special school, the Tribunal has the power to confirm the decision of the authority or overturn the decision of the authority and specify when the placing request should commence and make any amendments to a co-ordinated support plan.
- extends the power of the Tribunal, when considering a placing request appeal, to enable it to specify a time scale for placing the child in the school specified in the placing request.
- ensures that any reference transferred back to the sheriff from the Tribunal will be treated as if it were an appeal made directly to the sheriff in the first instance.
- permits the Tribunal to consider any placing request appeal, where a co-ordinated support plan has been prepared or is being considered, at any time before final determination by an education appeal committee (EAC) or sheriff.

Section 10

- requires the Scottish Ministers to secure the provision of an advocacy service to be available on request and free of charge to support parents and young people in Tribunal proceedings.

Section 18

- extends the types of references that may be made to the Tribunal to include failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives.
- extends the power of the Tribunal to enable it to require the education authority to take action to rectify a failure by the authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.
- extends the circumstances in which the decision of an education authority to refuse a placing request can be referred to a Tribunal, to include those decisions where an education authority has issued its proposal to establish whether a co-ordinated support plan is required.
- extends the circumstances in which parents and young persons can make references to the Tribunal consequent on certain procedural failures of the education authority.

Section 19

- extends the jurisdiction of the Tribunal to allow it to consider references in relation to an authority's failure to comply with its duties in terms of post-school transitions.

Section 20

- enables the Scottish Ministers to make rules to allow a convener sitting alone to consider certain references and to allow the Tribunal to review its decisions in certain specified circumstances.

Section 21

- provides that following a decision of a Tribunal that requires an education authority to do anything, the President of the Tribunal will have the power to require the authority to provide him or her with information about the authority's implementation of the Tribunal decision.
- provides the President of the Tribunal with the power to refer the matter to Scottish Ministers where he or she is satisfied that the authority is not complying with the Tribunal decision.

3. PROPOSED CHANGES TO THE LEGISLATION

i. APPEALING AN OUT OF AREA PLACING REQUEST TO THE TRIBUNAL

The 2009 Act

The 2009 Act enables all parents of children with additional support needs and young people with additional support needs (including those with a co-ordinated support plan) to submit a placing request directly to an authority outwith the authority in which they live. The 2009 Act also provides that where an out of area placing request is refused by an authority in respect of a child or young person with a co-ordinated support plan, the parents or young person will have the ability to refer the decision to refuse the request to the Tribunal.

Proposed changes

It will be necessary to amend the definition of "authority" in the Tribunal Rules to accommodate references to the Tribunal in respect of out of area placing requests, where the authority making the decision is not the authority responsible for the child's education. Further amendments will be required to enable the home authority to appear or be represented at a hearing involving an out of area placing request where they have information about the child which would assist the Tribunal in reaching its decision. In such cases, the home authority will not be 'party' to the dispute.

If there are 2 disputes before the Tribunal, one involving an out of area placing request and the other a co-ordinated support plan issue, these disputes can be conjoined under rule 20.

- Q1.** In light of the provisions contained in the 2009 Act which enable parents and young people to submit out of area placing requests, do you agree that the definition of “authority” in the Tribunal Rules should be amended to include, in respect of out of area placing request disputes, an authority that is not responsible for the education of the child or young person?
- Q2.** If you do not agree with Q1, please state your reasons why.
- Q3.** In cases where there are 2 disputes before the Tribunal, one involving an out of area placing request and the other a co-ordinated support plan issue, are you content that these disputes are able to be conjoined under rule 20. if appropriate?
- Q4.** If you disagree with Q3, please state your reasons why.

ii. **ENABLE THE TRIBUNAL TO REVIEW, VARY OR REVOKE ITS DECISIONS**

The 2004 Act

The 2004 Act does not currently allow for the Tribunal to review its decisions. Therefore, the only way in which a decision can be legally challenged is by a referral to the Court of Session on a point of law with attendant costs.

The 2009 Act

The 2009 Act extends the jurisdiction of the Tribunal to enable it to review, vary or revoke any of its decisions, orders or awards in certain circumstances.

Proposed changes

The Tribunal Rules will specify the exact circumstances under which the Tribunal can review, vary or revoke any of its decisions, orders or awards.

The Scottish Committee - Administrative Justice & Tribunals Council *Guide to Drafting Tribunal Rules* prescribes that the Tribunal may review and set aside or vary the relevant decision if the Tribunal is satisfied that:

1. its decision was wrong because of an error on the part of the Tribunal or its staff: or
2. a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or
3. new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

4. otherwise the interests of justice require.

- | |
|---|
| Q5. Do you agree that the Tribunal should be able to review its decisions in all of the 4 instances listed above? |
| Q6. If you do not agree with Q5, in which of the 4 instances do you think it would be inappropriate for the Tribunal to review its decisions? Please state your reasons. |
| Q7. Are there other instances in which you think the Tribunal should be given the power to review its decisions? Please state the instance and your reasons for this. |

iii. **ENABLE THE CONVENER OF A TRIBUNAL TO SIT ALONE TO DISPOSE OF A REFERENCE**

Current position

Section 18(3)(c) of the 2004 Act provides for the Tribunal to consider a procedural timescale failure of the education authority to prepare a co-ordinated support plan by the time required in the Co-ordinated Support Plan Regulations.

Experience to date shows that references made under section 18(3)(c) are often unopposed and the facts are seldom disputed. The procedure for considering such references is disproportionately complex.

As part of the consultation on the 2009 Act, consultees were asked for their thoughts on whether a new Tribunal document based process should be introduced to expedite such references and 84% of the consultees who responded agreed that this was a good idea.

Rule 26 of *The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006* states that a Tribunal may, in certain circumstances, decide a reference without a hearing. Those circumstances are:

1. where no response is submitted to the Secretary within the time appointed by rule 10 or any extension of time allowed under rule 19;
2. where the authority states in writing that they do not resist the reference;
3. where the authority withdraws their opposition to the reference; or
4. where both parties in writing to dispense with a hearing.

The 2009 Act

The 2009 Act enables the Scottish Minister's to make rules regarding the ability of a convener sitting alone to consider those references in which an education authority has failed to comply with statutory time limits.

Proposed changes

The Tribunal rules will be amended to introduce a documents only based process to expedite those references in which the authority have established that the child or young person requires a co-ordinated support plan, but they have failed to prepare a plan by the time required by regulations.

Due to the fact that there has already been consultation on this proposal, no further consultation is required on the change.

Provision will be required to enable referrals of this nature to be considered by a convener sitting alone.

It is proposed that the expedited case statement period for such cases should be 15 days. It is also proposed that parties will be able to apply to the convener for an extension if they are finding it difficult to meet the 15 day case statement period (see paragraph iv below).

As a result of the above, it will not be appropriate for the Tribunal to consolidate a reference made under section 18(3)(c) with any other type of reference (e.g. the refusal of a placing request) where the former is being considered under the expedited process. Therefore, an amendment will be required to rule 20 to specify that where the reference relates to such a timescale failure, the reference shall not be consolidated with any other type of reference.

It is also proposed to amend rule 26 to enable a convener alone (as opposed to the Tribunal) to consider those references for which the circumstances detailed in paragraph 2 apply.

Q8. Are you content for a convener alone to consider those referrals which involve the breach of a statutory timescale as laid down in Regulation?

Q9. If you are not content with Q8, please provide your reasons.

Q10. Do you think that 15 days is reasonable for the expedited case statement period?

Q11. If you answered ‘no’ to question Q10, what duration of case statement do you consider appropriate? Please state your reasons.

Q12. Do you agree that references involving a timescale failure should not be consolidated with references of a different nature?

Q13. If you do not agree with Q12, please state your reasons.

Q14. Do you agree that rule 26 should be amended to enable a convener alone (as opposed to the Tribunal) to consider references in which the circumstances detailed in below apply?

- Where no response is submitted to the secretary within the time appointed by rule 10 or any extension of time allowed under rule 19;
- Where the authority states in writing that they do not resist the reference
- Where the authority withdraws their opposition to the reference; or
- Where both parties agree in writing to dispense with a hearing

Q15. If you do not agree with Q14, please state your reasons.

iv. ENABLE THE CONVENER TO SHORTEN A CASE STATEMENT PERIOD ON THE APPLICATION OF EITHER PARTY OR AT THE CONVENER'S DISCRETION

Current position

Rule 8(6) allows the case statement period to be extended or shortened when the case relates to a placing request refusal. This is anomalous and presents a difficulty if there are two references for the same child and the provision is applied because the hearings cannot be consolidated.

Proposed change

There are many circumstances in which it would be in the best interests of the child to extend or shorten the case statement period. It would be more flexible and equitable if it was open to parties to apply to the convener, or for the convener to have the discretion to amend the length of the case statement period without application being made (subject to parties' views being taken into account), regardless of whether a placing request was involved. This has particular merit where a parent is unrepresented as it empowers the convener to manage the case to safeguard the parent's interest.

It is proposed to amend rule 8(6) to allow an application to be made to the convener, or for the convener acting on his or her own initiative, to alter the case statement and to require the convener to seek written representation from any other party or parties before making a decision.

Q16. Should a convener have the ability to extend or shorten the case statement period regardless of whether a placing request is involved?

Q17. If your answer to Q16 is no, please state your reasons.

v. CHANGE TO THE APPELLANT'S CASE STATEMENT PERIOD

Current position

Rule 8(2) sets the case statement period at 30 working days. Both rules 8(3) and 10(1) state that the parent or young person (the appellant) and the authority (the respondent) must submit all written evidence to Tribunal by the end of the 30 day case statement period (unless an extension has been granted under rule 19).

Rule 9(1)(iii) requires the Secretary to distribute copies of the papers submitted by each party at the end of the case statement period. The Secretariat cannot edit the bundle of papers to be issued.

Due to the fact that parties lodge their evidence at the same time, substantial duplication of papers becomes inevitable.

Proposed change

It is not in the best interests of the child or young person to extend the overall duration of the process. Therefore, it is proposed that the case statement period for the parent or young person be shortened to 20 days. The authority will then have the remaining 10 days within which to draft their response to the documents submitted by the parent or young person. This keeps the framework to the original total of 30 days.

It is important to note that if the proposal at paragraph iv. above is supported, the convener will have the power to extend the case statement period if the parent or young person is experiencing difficulty in preparing the statement within the 20 day period.

It is also recognised that where the reference concerns a placing request refusal, the parent or young person may not know the grounds of refusal on which the authority will rely. In order to address this, on receipt of such a reference, the convener will direct the authority (under rule 15) to provide the necessary information to enable the parent or young person to complete the case statement.

Other options considered

Officials did consider asking the authority to submit all their papers first as they have greater resources. However, this could prove challenging in cases where the authority are not clear on the extent of the dispute and it could result in unnecessary papers being produced.

- Q18. Do you agree that the case statement period for either the appellant or respondent should be shortened in order to reduce the duplication of papers?**
- Q19. If you do not agree with Q18, please state your reasons why.**
- Q20. Are you content for the case statement period of the appellant (parent or young person) to be shortened?**
- Q21. If you are not content with Q20, please tell us why.**
- Q22. Do you think that the case statement period of the respondent (the authority) should be shortened instead?**
- Q23. If you answered ‘yes’ to Q22, please state your reasons.**

vi. AMENDING A REFERENCE

Current position

Rule 8(4) allows a reference to be amended “in exceptional circumstances”. To date there have been several references on the grounds of failure to meet timescales which have been followed by a decision to refuse to prepare a co-ordinated support plan before the original reference has settled e.g. an authority fails to prepare a co-ordinated support plan within the 16 week statutory timescale and the parent lodges a reference with the Tribunal. However, towards the end of the case statement period, the authority withdraws their opposition (allowing the reference to be disposed of without an oral hearing) and immediately issues the co-ordinated support plan, calling it the final version. The parent then wishes to dispute the contents of the co-ordinated support plan, and in order to do this they must submit a new reference to the Tribunal. This is not in keeping with the overriding objective and does not represent appropriate economy in terms of expense or time.

Proposed change

Removing the qualifying “In exceptional circumstances” from rule 8(4) enables the Tribunal to adopt a more enabling approach and delivers a more responsive remedy for appellants. In the example given above, if the convener or Tribunal gave permission at a hearing, the appellant would be able to change the terms of the reference and the original case statement period and hearing date would stand.

Q24. Are you content for ‘In exceptional circumstances’ to be removed from rule 8(4), thus enabling the appellant to amend the reference at any time, if permission is given by a convener or a Tribunal?

Q25. If you are not content with Q24, please state your reasons.

vii. DISTRIBUTION OF DOCUMENTS BY THE SECRETARY

Current position

Typically, there is about 3 weeks between the end of the case statement period and the hearing. This period is necessary to allow compilation and distribution of bundles of documents and a period for parties and the Tribunal to consider the contents of the bundle. Rule 9(2) provides that the Secretary can only circulate copies of any documents received after the end of the case statement period if the case statement period has been extended under rule 19.

It was originally envisaged that by the end of the case statement period, all documentary evidence would be submitted by both sides and no further evidence would be received in all but the most exceptional circumstances. However, in practice, in the intervening period further submissions are often submitted.

Where there is sufficient time, the Secretary must forward late evidence to the convener who will consider whether to extend the case statement period under rule 19 and admit the evidence. If the convener decides to extend the case statement period (and in doing so admit the evidence), the Secretary has to inform the other party that the case statement period has

been extended and copy the evidence admitted. The Secretary cannot copy the evidence to the other party unless the case statement period has been formally extended.

In the majority of references, evidence is submitted after the case statement end date. Where the evidence is very late there is no choice but for the Tribunal to consider them as a preliminary matter at the beginning of a hearing. This can lead to a break in the proceedings or even an adjournment to consider the late productions. If the productions are lodged very close to the hearing date, there is no way round this.

Proposed change

To enable the Secretary, where time allows, to circulate all late submissions in advance of the hearing allowing parties to consider and at least prepare their representations without the need for a break in proceedings and without the need for a formal order from the convener extending the case statement period.

This could be achieved by amending rule 9(2) to read as follows:

“If a reference, a statement of case, amendment, supplementary statement, response, written representation, written evidence or any other document or application is delivered to the Secretary at any time, the Secretary shall send a copy of it to the other party to enable representations to be made within such time limits as may be prescribed by a convener or by a Tribunal at a hearing.”

Q26. Do you agree that rule 9(2) should be amended to enable the Secretary to circulate all late submissions in advance of the hearing?

Q27. If you do not agree with Q26, please state your reasons.

viii. REMOVE THE ABILITY OF THE SECRETARY TO AMEND THE DATE OR TIME OF A HEARING

Current position

Under rule 25(c) the Secretary can change the date, time or location of the hearing provided parties are given 5 working days notice. However, under rule 30 a convener may, on his or her own initiative, or on application by either party, postpone any hearing without notice. These rules are at odds with one and other.

In practice it would be inconceivable for the Secretary to alter the date of the hearing without the agreement of the convener. It is feasible that the Secretary could have grounds for altering the venue but the date and time are ultimately a matter for the convener.

Proposed change

Amend rule 25(3) to remove ‘**date, time or**’ (which appears twice).

Q28. Should the ability of the Secretary to alter the date and time of a hearing be removed?

Q29. If you disagree with Q28, please state your reasons.

ix. CLARIFY THE ROLE OF THE SUPPORTER DURING THE HEARING

Current provision

Rule 27(7)(c) enables parties to bring a supporter to the hearing, although the limitations of that role are not specified.

Early Tribunals have found that parties used the scope afforded to bring someone to act as a witness or additional representative.

Proposed change

Amend rule 27(7)(c) to clarify that a supporter cannot act in the capacity of a witness or additional representative (where there is already a representative).

Q30. Do you agree that rule 27(7)(c) should be amended to clarify that a ‘supporter’ cannot be called as a witness or as an additional representative where the party is already represented?

Q31. If you do not agree with Q30, please state your reasons.

x. ENABLE ALL PRE-HEARING DIRECTIONS AND DECISIONS TO BE THOSE OF THE CONVENER

Current positions

Rule 21 on recovery of documents makes this a decision of the Tribunal, whereas rule 22(2) on calling witnesses or adding additional witnesses not listed makes this a decision for the convener. Rule 22(3) makes it a decision of the Tribunal to cite witnesses. Rule 24 only permits a Tribunal to direct a report of an expert whereas in practical terms this requires to be done before the hearing and should be reserved to the convener also, even where there is likely to be consultation with members.

Any rule that relates to preliminary issues should be amended to also provide the convener with the ability to carry out the function/process. It will be at the discretion of the convener whether or not it is appropriate to consult with members. The practical benefit of this is that some decisions require to be made before the composition of the Tribunal is known and they may be exercised by any convener if there is to be a delay in seeking the convener identified for the hearing.

Proposed change

Amend rules 21, 22 and 24 so that these decisions can also be taken by the convener .

Q32. Are you content for the convener to be given the power to carry out preliminary functions/processes?

Q33. If you are not content with Q32, please provide your reasons.

xi. ABILITY OF THE TRIBUNAL TO CONVENE OTHER WITNESSES

Current position

While rule 24 enables the Tribunal to appoint an expert where the Tribunal is of the view that such assistance is necessary, in reviewing papers submitted by parties, there have been a number of occasions where the Tribunal would have liked to have heard evidence from a particular person (not an expert) whom neither party has called as a witness.

Proposed change

Amend the Tribunal rules to enable the Tribunal, on the application of a party or on its own initiative, to require any person to attend a hearing when that person has information which could assist the Tribunal in reaching its decision, or that person has an interest in the proceedings before the Tribunal (e.g. a provider of additional support as detailed in a co-ordinated support plan).

Q34. Are you content for the Tribunal to have the ability to call a witness if that witness can assist the Tribunal in reaching its decision, or that person has an interest in the proceedings before the Tribunal?

Q35. If you are not content with Q34, please state your reasons why.

xii. ELECTRONIC REFERENCES

Current position

Appellants may complete an electronic reference form and email it to the Tribunal secretariat. As drafted, rule 5 requires the reference to be signed by the appellant. Therefore, on receipt of an emailed reference form, the secretariat prints off the reference and sends it back to the appellant for signature.

Proposed change

Amend rule 5 to provide the Secretary with the discretion to accept electronic references without a signature. A verification process could be developed by the Tribunal to provide some assurance.

Q36. Do you agree that the Secretary should have the discretion to accept electronic references without a signature?

Q37. If you do not agree with Q36, please state your reasons.

xiii. WITHDRAWING A REFERENCE

Current provision

Where an appellant has a representative it is common for the Tribunal to receive verbal notification from the representative that the appellant proposes to withdraw his or her reference. Under the current rules this is not sufficient for the convener to proceed to dismiss the reference as rule 11 requires a signed notice from the appellant. This leads to an unnecessary delay in disposing of the reference.

Proposed change

In the interests of informality and flexibility, rule 11 should be amended to permit a representative to sign a withdrawal notice to expedite the process. It seems disproportionate not to accept the representative's status when it comes to bringing the process to an end.

Q38. Do you agree that an appellant's representative should be able to sign a withdrawal notice to expedite the process?

Q39. If you do not agree with Q38, please state your reasons why.

xiv. MOVING THE PROVISION RELATING TO THE NUMBER OF WITNESSES

Current position

The provision relating to limiting the numbers of witnesses to two presently sits in rule 28 on conduct of the hearing. However, it would be more appropriately placed in rule 22 on witnesses and citation of witnesses.

Proposed change

The provision for a convener to limit a party to leading evidence from two witnesses should be moved from rule 28 (2) to rule 22.

Q40. Are you content for the provision relating to the number of witnesses to be moved from rule 28 to rule 22?

Q41. If you are not content with Q40, please state your reasons why.

xv. EVIDENCE AT A HEARING

Current position

Rule 23 provides that at the start of any hearing, a convener or the Tribunal may, on the application of either party or on his, her or its own initiative, determine that a witness be allowed to give evidence by telephone, through a video link or by any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

Rule 29 provides that evidence at a hearing may be given in person or by written statement. It also provides that a party shall only be permitted to submit written evidence after the case statement period has expired, subject to the other party's approval and that of the convener or Tribunal.

Proposed change

In order to have one rule which covers all the forms of evidence that parties can bring to the Tribunal, rule 23 and rule 29 should be combined.

Q42. Do you agree that rules 23 and 29 should be combined?

Q43. If you do not agree with Q42, please state your reasons.

xvi. ORDERS OF THE COURT

Current provision

Rule 38 outlines the procedures where a decision is remitted to the Tribunal from the Court of Session. There is no mechanism to notify the Tribunal directly of the outcome of any appeal where the Tribunal is not a party to the appeal. The Tribunal almost always takes action as soon as they are aware of the outcome.

The current provision allows 15 working days for a supplementary statement from parties but does not specify when those 15 working days begin. Additionally, a timescale of 15 working days is not realistic for parties to consider the terms of the Court's opinion and prepare a supplementary statement. It is not a rule that the Tribunal have applied. Their current procedure is to hold a conference call to agree the best way to proceed.

Proposed change

It would be more enabling to allow the convener to consider representations from parties and direct the appropriate timescales to take the remitted reference forward.

Q44. Are you content for the 15 working day timescale to be removed and to allow the convener to specify the relevant timescale?

Q45. If you are not content with Q44, please state your reasons why.

xvii. CORRECTION TO RULE 28

Current position

Rule 28(8) provides a Tribunal with the power to order all persons to withdraw from the sitting of the Tribunal with the exception the convener and members of the Tribunal and any of the persons mentioned in 27(5)(f) to (j). However, rule 27(5)(f) to (j) does not exist. This should read 27(7)(f) to (j).

Proposed change

Amend rule 28 to read rule 27(7)(f) to (j).

Q46. Are you content for this error to be corrected?

Q47. If you are not content with Q46, please state your reasons why.

Q48. Do you have any other comments on the changes to the Tribunal Rules?

**EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2009 (the 2009 Act)**

**The Additional Support for Learning (Co-ordinated Support Plan)
(Scotland) Amendment Regulations 2009**

CONSULTATION PAPER NO 2.

1. INTRODUCTION AND OVERVIEW

The Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) places duties on education authorities to make adequate and efficient provision for the additional support needs of every child and young person for whose school education they are responsible and who requires additional support for learning. Education authorities must identify, support and review the needs of all children with additional support needs.

The above duties apply to those children (or young persons) for whom education authorities provide, or are likely to provide, education either directly or indirectly. This means pupils at local authority schools and nurseries, independent special schools where the education authority is meeting the fees, and independent nurseries that are in partnership with the education authority, or places other than schools where the authority is providing school education. Parents are able to formally request the education authority to establish whether their child has additional support needs or requires a co-ordinated support plan.

A co-ordinated support plan is for those 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 significant support from more than one source. The aim of the co-ordinated support plan is to plan long-term and strategically for the achievement of a child's or young person's educational outcomes, and to foster co-ordination across the range of services, both within and outwith the authority required to support this.

2. LEGISLATIVE FRAMEWORK

The 2004 Act

Section 9 of the 2004 Act specifies the duties relating to co-ordinated support plans. Where it is established that a child or young person requires a co-ordinated support plan, and the education authority are responsible for their school education, then the authority must prepare a plan. The plan must record:

- the reasons for the individual's need for additional support,
- the planned outcomes to be achieved that will ensure that the individual benefits from school education,
- the additional support required to achieve these outcomes and who will provide that support,
- the school the individual is to attend,
- the details of the nominated person who will co-ordinate the plan, and
- contact details of a named officer from whom information and advice may be sought.

The nominated co-ordinator and the contact person can be either one person or two separate people. The co-ordinator does not need to be employed by the education authority but the contact person does.

Section 10 of the 2004 Act provides for reviews of co-ordinated support plans. Education authorities have a duty to keep under consideration the adequacy of each co-ordinated support plan for any child or young person belong to their area. The education authority must therefore review each plan every 12 months. It may be reviewed earlier if there has been a significant change in the circumstances of the child or young person, for example if their

needs change or if progress is greater than expected. This will ensure that the information contained in the plan remains up-to-date and relevant, especially the educational outcomes and the support needed to achieve these.

Parents, or a young person, may also request the education authority to review the plan at an earlier interval than 12 months. The education authority must comply with such a request unless the request is unreasonable.

Section 11 of the 2004 Act describes the procedures to be followed by education authorities in preparing or amending co-ordinated support plans. If consideration is being given as to whether a child or young person may require a co-ordinated support plan, or the plan needs to be reviewed, then, before proceeding, the education authority must inform the parent or young person (or managers of an independent or grant-aided school, if applicable) of their intentions. On establishing whether the child or young person requires a co-ordinated support plan, or on completion of the review of the plan, they must also inform the parent or young person of the outcome and of any rights they may have to appeal to an Additional Support Needs Tribunal.

When a plan has been prepared, or amended, the education authority must provide a copy of the plan to the parent or young person and then take steps to ensure that the plan is implemented and the support co-ordinated. To facilitate this, the education authority must also provide information about the contents of the plan to those involved in providing the support that is set out in the plan. This is likely to be those in other agencies, such as health professionals, or others in the local authority such as social workers.

Subsection 11(8) enables the Scottish Ministers to make further provision in regulations about co-ordinated support plans, including provision about their form, content and the timescales and procedures attaching to managing those plans. It is intended that these regulations will, among other things, provide a template to be used by education authorities for co-ordinated support plans.

The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 contain detailed information on: the form and content of a co-ordinated support plan; time limits for preparation and review of a plan; arrangements for keeping the plan; arrangements regarding the transfer for a plan to another education authority; arrangements for the disclosure without explicit consent of the plan to specified persons or in specified circumstances; and arrangements for the discontinuance, retention and destruction of a plan. These regulations replaced and revoked the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Regulations 2005 (S.S.I. 2005/266)

The 2009 Act

The Education (Additional Support for Learning (Scotland) Act 2009 (the 2009 Act) amends section 10 of the 2004 Act to provide that following a successful out of area placing request, responsibility for reviewing any co-ordinated support plan will transfer from the authority in which the child or young person lives to the authority that is responsible for the education of the child or young person. The 2009 Act also provides that in such circumstances, where a co-ordinated support plan is transferred from one education authority to another, the receiving authority must review the co-ordinated support plan as soon as practicable.

The 2009 Act enables the Tribunal to consider a placing request appeal if, at any time before the education appeal committee or sheriff has made their final decision on the placing request appeal, a co-ordinated support plan is being prepared, is being considered or the authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal.

The 2009 Act also provides that a reference can be made to the Tribunal where parents or young persons have requested that the authority establish whether the child or young person requires a co-ordinated support plan and the authority have not responded to that request within a specified period of time (set out in regulations). The failure to respond is treated as if it were a decision by the education authority that no co-ordinated support plan was required. It also provides that where an authority have notified a parent or young person that they will establish whether the child or young person requires a co-ordinated support plan but, after a specified period of time (set out in regulations), the authority have not made a decision on the matter either way, that failure is to be treated as if it were a decision of the authority that no co-ordinated support plan is required. Decisions of an authority that no co-ordinated support plan is required can be referred to the Tribunal.

3. PROPOSED CHANGES TO THE LEGISLATION

i. Transferring and reviewing a co-ordinated support plan following a successful out of area placing request

Current position

Following a successful out of area placing request, while responsibility for the child's or young person's school education transfers to the new 'host' authority, responsibility for reviewing any co-ordinated support plan remains with the original 'home' authority (section 10 of the 2004 Act). .

Regulation 9 of *The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005* refers only to the transfer of co-ordinated support plan where a child moves residential address from one local authority's area to another. Regulation 9 does not currently cover those children who live in one local authority area but are attending school in another authority's area.

The 2009 Act

The 2009 Act enables parents of children with additional support needs and young persons with additional support needs including those with co-ordinated support plans to make requests for their children or themselves (as appropriate) to attend a school outwith the local authority area in which the child or young person lives.

For children and young persons with additional support needs who are attending a school outwith the area in which they live following a successful out of area placing request, the 2009 Act transfers responsibility for reviewing any co-ordinated support plan to the new 'host' authority.

Proposed changes

Under section 11(8)(g) of the 2004 Act, it is proposed to amend the Regulations to provide that:

- following a successful out of area placing request, in cases where a child or young person has a co-ordinated support plan, the plan should be transferred to the new host authority.
- the timescale for the transfer of the plan from the home authority to the host authority will be 4 weeks from the date the child starts at the new school or, where a child has already started school in the new host authority, 4 weeks from the date on which the home authority becomes aware of the change (this mirrors the provisions contained in Regulation 9).
- on receipt of the co-ordinated support plan the new authority must treat the plan as if it had been prepared by the new authority.
- on receipt of the transferred co-ordinated support plan, the new host authority must conduct a review of the co-ordinated support plan within the time limits currently set for the review of such a plan as detailed in regulations 5 and 7 of *The Additional Support for Learning (Co-ordinate Support plan) (Scotland) Amendment Regulations 2005*.

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| Q1. Do you agree that the Regulations should be amended to facilitate the transfer of a co-ordinated support plan between authorities for those children who live in one authority area but are attending school in another authority's area? |
| Q2. If you do not agree with the proposal outlined in Q1, please state your reasons why. |
| Q3. Are you content that on receipt of any transferred co-ordinated support plan, the new host authority must conduct a review of the co-ordinated support plan within the time limits currently set for the review of such a plan as detailed in Regulations 5 and 7? |
| Q4. If you do not agree with Q3, please provide your reasons why. |

ii. Time limit for preparation of a co-ordinated support plan

Current position

The supporting children's learning code of practice states that where an authority has received a request under section 6(2)(b) of the 2004 Act from a parent or young person to establish whether their child/they require a co-ordinated support plan, the authority should notify the person making the request of their decision to either comply or refuse to comply with the request as quickly as possible, but certainly no later than 4 weeks from when the request is received.

Where an education authority is responsible for the school education of a child or young person then their decision not to comply with a request to establish whether a co-ordinated support plan is required is treated as a decision of the education authority that the child or young person does not require a co-ordinated support plan. In notifying the parents or young person of their decision, they must also notify them of their right to make a reference to the Tribunal.

Where the education authority agree to comply with the request from the parent or young person, the authority must notify the parents or the young person, before proceeding, of their proposal to establish whether the child or young person requires a co-ordinated support plan (section 11(2)(a) of the 2004 Act)

An education authority will have 16 weeks in which to either produce a completed co-ordinated support plan or inform the parent or young person of their decision that the child or young person does not require a plan. The time limit starts from the date the education authority inform the child's parents or the young person of their intention to establish whether the child or young person requires or would require a co-ordinated support plan.

The 2009 Act

The 2009 Act extends the circumstances in which parents and young people can make references to the Tribunal to include:

1. failure by the authority to respond within a specified period of time (set out in Regulations) to a request from a parent or young person to establish whether a co-ordinated support plan is required; and
2. following an authority issuing their proposal to establish whether a co-ordinated support plan is required, failure by the authority to make a decision on the matter either way within a specified period of time.

Proposed changes

Under section 11(8)(g), it is proposed to set the specified periods of time, as described in bullet points 1 and 2 above, as follows:

- where a parent or a young person has requested that the authority establish whether the child or young person requires a co-ordinated support plan and the authority has not responded to that request within **8 weeks**, the authority's failure to respond is treated as if it were a decision by the authority that no co-ordinated support plan is required.
- where an authority have notified a parent or young person that they will establish whether the child or young person requires a co-ordinated support plan but, after **16 weeks**, the authority has not made a decision on the matter either way, that failure is to be treated as if it were a decision of the authority that no co-ordinated support plan is required. The decision of an authority that no co-ordinated support plan is required can be referred to the Tribunal under either section 18(5A) or 18(5B) of the 2004 Act, as amended by the 2009 Act.

- Q5.** The 2009 Act enables cases to be referred to the Tribunal where a parent or young person requests an authority to establish whether a co-ordinated support plan is required and the authority fails to respond to the request within a specified period of time. Do you agree that the specified period of time should be 8 weeks?
- Q6.** If you disagree with the 8 week period suggested at Q5 above, please state your reasons why.
- Q7.** If you disagree with the 8 week period suggested at Q5 above, how many weeks do you think are more appropriate? Please provide your reasons.
- Q8.** The 2009 Act enables cases to be referred to the Tribunal where the education authority have issued their proposal to establish whether a co-ordinated support plan is required (under section 11(2)(a)) but, within a specified timescale, has not taken a decision either way. Do you agree that the specified period of time should be 16 weeks?
- Q9.** If you disagree with the 16 week period suggested at Q8 above, please state your reasons why.
- Q10.** If you disagree with the 16 week period suggested at Q8 above, how many weeks do you think are more appropriate and why?

iii. **Time limit for responding to a request from a parent or young person for an early review of a co-ordinated support plan**

Current position

The education authority must review each co-ordinated support plan every 12 months. It may be reviewed earlier if there has been a significant change in the circumstances of the child or young person, for example if their needs change or if progress is greater than expected. This will ensure that the information contained in the plan remains up-to-date and relevant, especially the educational outcomes and the support needed to achieve these.

A parent, or a young person, may also request the education authority to review the plan at an earlier interval than 12 months. The education authority must comply with such a request unless the request is unreasonable.

Proposed changes

Under section 11(8)(g), it is proposed to introduce a new timescale within which an authority must respond to a request from a parent or young person to conduct an early review of a co-ordinated support plan. It is proposed that:

- an authority will have 4 weeks starting from the date on which the authority receive the review request from the parent or young person to issue their proposal under

section 11(2)(a) or their refusal to comply with the request under section 28(2). Failure by the authority to issue their proposal or decision will be treated as if it were a decision by the education authority to refuse the request.

Q11. Should a timescale be introduced within which an authority must respond to a request from a parent or young person to conduct an early review of a co-ordinated support plan?

Q12. If you disagree with the proposal at Q11, please state your reasons.

Q13. If you agree with Q11, are you content with the 4 week timescale proposed or do you think a shorter or longer duration would be more appropriate?

iv. **Information flow arrangements**

The 2009 Act

The 2009 Act enables the Tribunal to consider any placing request appeal, where a co-ordinated support plan is being prepared or is being considered, at any time before the final determination by an education appeal committee (appeal committee) or sheriff.

Paragraphs 6 and 7 of schedule 2 to the 2004 Act, as amended by the 2009 Act, specify the exact circumstances in which a placing request appeal can be transferred from the appeal committee or sheriff to the Tribunal. The circumstances are:

- a co-ordinated support plan has been prepared (and not discontinued) for the child or young person,
- no such plan has been prepared, but it has been established by the authority that the child or young person requires such a plan,
- no such plan has been prepared, but the authority have issued their proposal (under section 11(2)(a)) to establish whether the child or young person requires a co-ordinated support plan, or
- the authority have decided that the child or young person does not require such a plan and that decision has been referred to the Tribunal.

Proposed changes

In order to facilitate the transfer of an out of area placing request appeal from the appeal committee or sheriff to the Tribunal, under section 11(8)(g) of the 2004 Act, it is proposed to:

- place authorities under a duty when writing to parents or young people regarding any co-ordinated support plan related matter (including any decision not to comply with a co-ordinated support plan related request) to advise the parent or young person that where they have an outstanding placing request or placing request appeal with another local authority (the potential host authority), they should notify that potential host

authority that their child/they are in co-ordinated support plan territory. Also, that in any future placing requests submitted by the parent or young person to another authority, the parent or young person should notify the potential host authority of any the co-ordinated support plan action.

- place the potential host authority under a duty to notify its appeal committee so that the placing request appeal can be transferred to the Tribunal or notify the sheriff in writing that the placing request appeal should be transferred to the Tribunal.

- Q14. Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that where they have an outstanding placing request or placing request appeal with a potential host authority, they should notify that potential host authority that their child/they are in co-ordinated support plan territory?**
- Q15. If you do not agree with the proposal outlined in Q14, can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have an outstanding placing request or placing request appeal, is in co-ordinated support plan territory?**
- Q16. Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that in any future placing requests submitted by the parent or young person to another authority, the parent or young person should notify the potential host authority of any co-ordinated support plan action.**
- Q17. If you do not agree with the proposal outlined in Q16 can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have received a placing request is in co-ordinated support plan territory?**
- Q18. Do you agree that a potential ‘host’ authority should be placed under a duty to notify its appeal committee or the sheriff that the placing request appeal should be transferred to the Tribunal?**
- Q19. If you do not agree with the proposed outlined in Q18, what other method do you suggest for ensuring that the appeal committee or sheriff transfer the placing request appeal to the Tribunal?**

v. **Discontinuance, retention and destruction of the plan**

Current position

Regulation 11 of *The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005* currently stipulates that where a co-ordinated support plan is to be discontinued following a review, or where the education authority is no

longer responsible for the child's or young person's school education, the discontinued plan must be retained for a period of 5 years from the date of discontinuance.

If the plan is to be discontinued following a review, the education authority must inform the child's parents or young person of their decision. The education authority must not discontinue the plan before the expiry of any prescribed period during which the parent or young person can refer the decision to the Tribunal. The Scottish Ministers have powers in paragraph 11(2) of schedule 1 to the 2004 Act to prescribe a time limit for references to the Tribunal of certain decisions, information or failures under section 18(3) of the 2004 Act.

At the end of the 5 year retention period, the co-ordinated support plan must be destroyed. The education authority should notify the child's parents or the young person that this has happened, if the whereabouts of the parents or young person are known to the authority.

Where a Tribunal overturns the education authority's decision to prepare, or continue, a co-ordinated support plan, the education authority must notify the child's parents or the young person when the plan will be discontinued and ask them to let the authority know within 21 days whether they want the plan to be retained for a period of 5 years or not. If the answer is yes then the plan must be retained. If the answer is no, or there is no response, the education authority must destroy the plan and let the parents or young person know this has happened.

The education authority must also notify any person named in the plan as providing additional support and such other persons as they consider appropriate of the discontinuance of the plan and its date.

During the period that the plan is retained, the provisions on disclosure in regulation 10 apply.

Proposed change

Under section 11(8)(c) of the 2004 Act, it is proposed to amend:

- Regulation 11 of *The Additional Support for Learning (Co-ordinate Support plan) (Scotland) Amendment Regulations 2005* to provide authorities with a discretionary power in relation to informing the parents or young person that the plan has been destroyed. It is envisaged that this discretionary power should only be used in those circumstances where the authority deem it inappropriate to contact the parent or young person.

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| Q20. Are you content for authorities to have discretion regarding the duty to notify a child's parents or the young person at the end of the 5 year retention period that the co-ordinated support plan has been destroyed? |
| Q21. If you are not content for authorities to have the discretionary power mentioned in Q20, please state your reasons why. |

Q22. Do you have any other comments on the changes to the Co-ordinated Support Plan Regulations?

**EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2009**

The Additional Support for Learning Dispute Resolution (Scotland) Regulations
2005

CONSULTATION PAPER NO 3.

1. INTRODUCTION AND OVERVIEW

The Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) places duties on education authorities to make adequate and efficient provision for the additional support needs of every child and young person for whose school education they are responsible and who requires additional support for learning. Education authorities must identify, support and review the needs of all children with additional support needs.

Dispute resolution is the process for a formal review of an individual case by an independent third party, external to the local authority, who considers the disagreement, forms their own view, and makes a written report with recommendations to the education authority on how they think the dispute should be resolved.

The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 detail the matters that can be referred to dispute resolution and the dispute resolution process and time limits.

2. LEGISLATIVE FRAMEWORK

The 2004 Act

Section 16 of the 2004 Act enables the Scottish Ministers, by regulations, to require education authorities to put in place arrangements to resolve disputes between the authority and any parents or young people in the local authority area. These arrangements must be free of charge. Regulations may prescribe which disputes relating to particular functions of the authority under the Act will be subject to dispute resolution. Parents, and young people, will not be compelled to use any dispute resolution procedure put in place, nor will their entitlement to make a referral to a Tribunal be affected.

The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (the Regulations) set out the list of specified matters referred to in section 16 of the 2004 Act which are subject to dispute resolution procedures. The Regulations also detail the dispute resolution process and time limits.

Currently, under section 8 the 2004 Act, a parent or young person can only request a specific assessment when an authority is proposing to establish whether a child or young person has additional support needs or requires a co-ordinated support plan, or when the authority propose to review an existing co-ordinated support plan.

The 2009 Act

The 2009 Act inserts new section 8A into the 2004 Act to extend the rights of parents and young people to enable them to request a specific assessment, such as an educational, psychological or medical assessment, at any time.

The 2009 Act amends section 16 of the 2004 Act by removing the requirement for the child or young person to belong to the authority's area and provides that where a parent or young person makes an application for dispute resolution, the Scottish Ministers **may** by regulation, provide that the application must be made to Scottish Ministers.

The 2009 Act also amends section 18 of the 2004 Act by extending the circumstances in which parents and young persons can make references to the Tribunal to include failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives.

4. PROPOSED CHANGES TO THE REGULATIONS

Refusing an assessment request

Paragraph 1 of the specified matters schedule in the Regulations should be amended to extend the rights of parents and young people to enable them to refer to dispute resolution an authority's refusal of a request for a specific assessment under new section 8A, such as an educational, psychological or medical assessment, at any time.

Sending referrals to the Scottish Ministers

Currently, applications for dispute resolution are made by the parent or young person directly to the authority. However, thoughts are sought on whether the Regulations should be amended to provide that applications should be sent to Scottish Ministers as opposed to the education authority.

Should this amendment to the Regulations be supported, it is proposed that Scottish Ministers would, within 5 working days of receipt of the referral, refer the application to the relevant local authority for consideration under regulation 4 which makes provision about the preliminary arrangements to be made by the authority on receipt of an application.

It is important to note that while this change will add 5 days to the process at the very outset, it will not change the statutory 60 day dispute resolution timescale as this timescale only commences once an authority have confirmed acceptance of an application

Regulation 4 stipulates that within a period of 10 working days from the date of receipt of such an application, the authority must either accept the application and write to Scottish Ministers for nomination by them of an individual to act as an independent adjudicator or send the applicant notice of their decision not to proceed with the application and their reasons for that decision.

It is recognised that the Scottish Ministers could nominate an independent adjudicator as soon as they receive the application from the parent or young person. However, due to the fact that Ministers will be unable to determine whether the application is competent and that some cases may be resolved as soon as the authority receives the application for dispute resolution, it is considered more appropriate for the Scottish Ministers to nominate an independent adjudicator once the referral has been deemed competent by the authority. As previously stated, this approach will not impact upon the duration of the statutory dispute resolution timescale (60 days). The authority must ask the Scottish Ministers to nominate an Independent Adjudicator at the same time as sending the applicant confirmation of acceptance. By the time the authority are in a position to send the application, their response and any further observations to the Independent Adjudicator (within 25 working days), the

Scottish Ministers will already have notified the authority of the nominated Independent Adjudicator's details.

Failure to provide the additional support identified in a co-ordinated support plan

Currently, a failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan is referable to dispute resolution and/or Scottish Ministers in the form of a section 70 complaint. However, the 2009 Act also enables these cases to be referred to the Tribunal.

It is recognised that this could overcomplicate the dispute resolution process by providing a dual appeal route for the same matter. Therefore, it is proposed to amend paragraph 2 of the specified matters Schedule to the Regulations to exclude referrals to dispute resolution where the education authority have failed to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan.

5. MONITORING APPLICATIONS FOR DISPUTE RESOLUTION

It is envisaged that the Scottish Ministers will keep a record of all applications for dispute resolution and contact an authority directly if, after 10 working days, the Scottish Ministers have not received a request from the authority for the nomination of an independent adjudicator. However, we do not intend to amend the Regulations to reflect these simple steps in the process. It is considered proportionate for the Scottish Ministers to contact the authority to establish whether the application is competent and the authority is in breach of the statutory 10 working day timescale, or the application is not competent and the authority has written to the parent to advise them of this. This monitoring process will be outlined in the revised *supporting children's learning code of practice*.

6. CHANGES TO THE FEE FOR INDEPENDENT ADJUDICATION

Regulation 6 requires the education authority to appoint the individuals nominated by the Scottish Ministers from the panel established under regulation 5 and to pay such fee, expenses or charge as may be directed by the Scottish Ministers or, where there is no such direction, as the authority considers appropriate.

In November 2005, the Scottish Ministers issued a direction (Circular 6/2005) in line with the provisions of the Regulations, and under the powers conferred on them by section 27 of the 2004 Act, setting the rate that authorities must pay for Independent Adjudication at £355 per case (excluding expenses for travel).

While the fee for Independent Adjudication has not increased since November 2005, on a comparative scale, the Scottish Government Public Sector Pay Policy Guidance for senior appointments, fees for Chairs & Members have increased as follows:

2006-07 - 1.75% 2007-08 - 1.40% 2008-09 - 2.00% 2009-10 - 1.50%

We therefore proposed to bring the fee for Independent Adjudication in line with the overall increase in fees for Chairs & Members. This will increase the rate that authorities must pay for Independent Adjudication to £380 per case (excluding expenses for travel and subsistence).

- Q1. Do you agree that parents and young people should be able to refer an authority's refusal of a request for a specific assessment under new section 8A to dispute resolution?**
- Q2. If you disagree with Q1, please provide your reasons.**
- Q3. Are you content with the proposal that parents and young people should send referrals for dispute resolution directly to Scottish Ministers?**
- Q4. If you are not content with the proposal outlined in Q3, please state your reasons why.**
- Q5. If you do agree with the proposal in Q3, do you think that the proposed time limit of 5 working days for Scottish Ministers to send the referral to the authority is a realistic timescale?**
- Q6. If your answer to Q5 is no, what timescale do you think would be more appropriate?**
- Q7. Are you content with the proposed monitoring approach for dispute resolution applications?**
- Q8. If you are not content with Q7, please state your reasons why.**
- Q9. Do you agree that where the authority have failed to provide the support contained in a co-ordinated support plan the only route of appeal should be to the Tribunal?**
- Q10. If you do not agree with Q9, please provide your reasons.**
- Q11. Should the rate that authorities pay for Independent Adjudication be increased to £380 per case (excluding expenses for travel and subsistence)?**
- Q12. If your answer to Q11 is no, what rate do you think is appropriate?**
- Q13. Do you have any other comments which are relevant to the dispute resolution procedure?**

**EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2009**

**The Additional Support for Learning (Sources of Information) (Scotland)
Order 2010**

CONSULTATION PAPER NO 4.

1. INTRODUCTION AND OVERVIEW

The Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) places duties on education authorities to make adequate and efficient provision for the additional support needs of every child and young person for whose school education they are responsible and who requires additional support for learning. Education authorities must identify, support and review the needs of all children with additional support needs.

The 2004 Act also places a duty on education authorities to publish and keep up-to-date certain information and enables Ministers, by regulation, to add further matters to the requirements relating to publishing information.

2. LEGISLATIVE FRAMEWORK

Section 26(1) of the 2004 Act places duties on education authorities to publish and keep up-to-date certain information. Subsection (2) lists the information that should be published. Subsection (3) enables the Scottish Ministers, by regulations, to add further matters to the requirements relating to publishing information.

The Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 (the Regulations) amend section 26(2) of the Act by extending the list of information that education authorities are required to publish. The Regulations also provide, at Regulation 3, for the timescale within which that information is to be published. Regulation 4 sets out the details of the form and manner in which information is to be published.

The Education (Additional Support for Learning) (Scotland) Act 2009 (the 2009 Act) amends section 26(2) of the 2004 Act to enable Scottish Ministers to issue an order which specifies certain persons from which parents and young people can obtain advice, further information and support in relation to the provision for additional support needs, including support and advocacy as referred to in section 14 of the 2004 Act and places local authorities under a duty to publish information as to those persons.

3. BACKGROUND

The 2004 Act

Section 26 of the 2004 Act requires education authorities to publish information about a range of specified matters relating to additional support needs. They must also keep that information under review and revise and republish that information as necessary or appropriate. Those specified matters include information about each authority's:

1. policy in relation to provision for additional support needs.
2. arrangements for identifying children and young people with additional support needs and those who may require a co-ordinated support plan.
3. the role of parents, children and young people in any of the arrangements.
4. arrangements for monitoring and reviewing the adequacy of additional support for children and young people with additional support needs.
5. arrangements for independent mediation services, including details of the service and how to access it.

6. officer(s) from whom parents of children having additional support needs, or young people who have these needs, can obtain further information and advice.

The Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 (the Regulations) amended section 26 of the 2004 Act to provide that education authorities must also publish information about any NHS Board in their area, or part of the area, and such other recognised agencies or organisations that can provide further support, information and advice to parents and young people that they consider appropriate. This could be contact details for the speech and language therapy service, for Social Work Services or for local and national voluntary organisations, including support and advocacy services under section 14 of the Act.

The 2009 Act

The 2009 Act extends the list of matters on which authorities are required to publish information to include any dispute resolution procedures established by the authority in accordance with section 16 of the 2004 Act.

The 2009 Act also enables the Scottish Ministers to make an order specifying certain persons from whom parents and young people can obtain advice, further information and support in relation to the provision for additional support needs, including support and advocacy as referred to in section 14 of the 2004 Act and places education authorities under a duty to publish information as to those persons.

4. CONTENT OF ORDER TO BE ISSUED BY SCOTTISH MINISTERS

The order specifying the persons from whom parents and young people can obtain further advice will be entitled *The Additional Support for Learning (Sources of Information) (Scotland) Order 2010* (the order). It is proposed that the relevant contact details of the following organisations will be included in the order:

- Enquire – the Scottish advice service for additional support for learning.
- The Scottish Independent Advocacy Alliance
- The advocacy service secured by the Scottish Ministers in terms of section 14A of the 2004 Act, as amended by the 2009 Act.

Authorities will be under a duty to publish information as to these persons.

- | |
|--|
| Q1. Do you agree that the listed organisations should be included in the order? |
| Q2. If you do not agree, why not? |
| Q3. Are there other organisations you would like to see included in the order? |
| Q4. If so, please provide the details of these organisations. |

**EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2009 (the 2009 Act)**

Changes to the *supporting children's learning code of practice (the code)*

CONSULTATION PAPER NO 5.

1. INTRODUCTION AND OVERVIEW

The Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) provides the legal framework which underpins the system for identifying and addressing the additional support needs of children and young people who face a barrier to learning. The 2004 Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out parents’ rights within the system. The 2004 Act has been subsequently amended by the Education (Additional Support for Learning) (Scotland) Act 2009 (“the 2009 Act”).

2. LEGISLATIVE FRAMEWORK

Section 27 of the 2004 Act requires the Scottish Ministers to publish a code of practice giving guidance on the exercise by education authorities and appropriate agencies of their functions under the Act. Subsection (2) lists topics which a code of practice may include. Before a code, or revised code, is published, the Scottish Ministers must consult all education authorities and agencies and anyone else they think appropriate, and they must take account of any comments by Parliament on the draft code.

Section 27 of the 2004 Act provides that education authorities and appropriate agencies, such as NHS Boards, are under a duty to have regard to the code when carrying out their functions under the Act. .

3. PURPOSE OF THE REVISED CODE

The revised code replaces the original code of practice published in 2005 in order to take account of the 2009 Act. It explains the duties on education authorities and other agencies to support children’s and young people’s learning. It provides guidance on the provisions of the 2004, as amended by the 2009 Act, as well as on the supporting framework of secondary legislation. The code uses the term “the Act” to include, where appropriate, the secondary legislative provisions and includes features of good practice on how these can be applied. It also sets out arrangements for avoiding and resolving differences between families and authorities.

The guidance contained in the revised code is considered against a background of authorities’ and agencies’ evolving approaches to assessment and intervention. In particular, it reflects the values and principles to be found in *Curriculum for Excellence* and the development of the national programme *Getting it right for every child* involving those working with children and young people across all agencies. It also draws on the definition of assessment to be found in the national programme.

4. PROPOSED CHANGES TO THE CODE

You can view the proposed revised code of practice at:

While all of the chapters in the code have been revised, chapters 4 (new chapter), 5, 6 and 9 are considered to contain the most changes.

Chapter 1

It summarises the main provisions of the Act, although it should be noted that it does cover the entire Act.

- Q1.** Do you agree that chapter 1 provides a balanced overview of the main provisions of the Act?
- Q2.** If you do not agree with Q1, please state your reasons why.
- Q3** Is there any other information you would like to see included in chapter 1?

Chapter 2

It considers the meaning of the terms ‘additional support needs’ and ‘additional support’ and considers the factors that may give rise to additional support needs.

- Q4.** Are you generally content with the guidance contained in chapter 2?
- Q5.** If you are not content with Q4, please tell us why.
- Q6.** Is there any other information you would like to see included in chapter 2?

Chapter 3

It sets out guidance on the Act’s provisions for identifying and assessing additional support needs and making provision for them.

- Q7.** Are you generally content with the guidance contained in chapter 3?
- Q8.** If you are not content with Q7, please tell us why.
- Q9.** Is there any other information you would like to see included in chapter 3?

Chapter 4

It considers school attendance in relation to rights, responsibilities and placing requests.

- Q10.** Are you generally content with the guidance contained in chapter 4?
- Q11.** If you are not content with Q10, please tell us why.
- Q12.** Is there any other information you would like to see included in chapter 4?
- Q13.** Does chapter 4 clearly distinguish the differences in an education authority's responsibilities for those children and young persons for whom:
- no authority are responsible for their education;
 - arrangements have been entered into between authorities;
 - the home authority have arranged for them to attend a grant aided or independent special school or have arranged for them to attend a special school in another part of Britain;
 - the parent or young person has made a successful out of area placing request and as a result they are being educated in a school outwith the local authority area in which they live?
- Q14.** If your answer to Q13 is no, how do you suggest we improve this?
- Q15.** Does chapter 4 clearly identify the rights of parents and young persons in the 4 different scenarios contained in Q13?
- Q16.** If your answer to Q15 is no, how do you suggest we improve this?
- Q17.** Is there any other information you would like to see included in chapter 4?
- Q18.** Is there anything contained in chapter 4 that you think should be removed?

Chapter 5

It explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered.

Annex C can be view at:

It contains case studies to assist in making decisions about whether or not the additional support required is ‘significant’.

- Q19.** Are you generally content with the guidance contained in chapter 5?
- Q20.** If you are not content with Q19, please tell us why.
- Q21.** Are you content with the case study grid provided in Annex C?
- Q22.** If you are not content with Q21, please tell us why.
- Q23.** Do you think chapter 5 and Annex C provide further clarity on the definition of the term ‘significant additional support’?
- Q24.** If your answer to Q23 is no, how do you suggest we clarify this?
- Q25.** Do you think that chapter 5 clearly demonstrates the links with the *Getting it right for every child* (Girfec) approach?
- Q26.** If your answer to Q25 is no, how do you think this can be develop?
- Q27.** Is there any other information you would like to see included in chapter 5 or Annex C?
- Q28.** Is there anything contained in chapter 5 or Annex C that you think should be removed?

Chapter 6

It considers the requirements on education authorities and others under the Act in relation to transitions.

- Q29.** Are you generally content with the guidance contained in chapter 6?
- Q30.** If you are not content with Q29, please tell us why.
- Q31.** Is there any other information you would like to see included in chapter 6?
- Q32.** Is there anything contained in chapter 6 that you think should be removed?

Chapter 7

It describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions on supporters and advocacy.

- Q33.** Are you generally content with the guidance contained in chapter 7?
- Q34.** If you are not content with Q33, please tell us why.
- Q35.** Is there any other information you would like to see included in chapter 7?
- Q36.** Is there anything contained in chapter 7 that you think should be removed?

Chapter 8

It considers provisions under the Act for resolving disputes where they do arise.

- Q37.** Are you generally content with the guidance contained in chapter 8?
- Q38.** If you are not content with Q37, please tell us why.
- Q39.** Is there any other information you would like to see included in chapter 8?
- Q40.** Is there anything contained in chapter 8 that you think should be removed?

Chapter 9

It considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the code.

- Q41.** Are you generally content with the guidance contained in chapter 9?
- Q42.** If you are not content with Q41, please tell us why.
- Q43.** Are you content that chapter 5 and chapter 9 fully cover placing request provision?
- Q44.** If you are not content with Q43, please tell us why.
- Q45.** Do chapter 4 and chapter 9 clearly explain the different placing request appeal routes?
- Q46.** If you answered no to Q45, how could this be improved?
- Q47.** Is there any other information you would like to see included in chapter 9?
- Q48.** Is there anything contained in chapter 9 that you think should be removed?

Annex A

It contains the legislative and policy landscape for supporting children and young people in Scotland.

Q49. Are you generally content with the guidance contained in Annex A?

Q50. If you are not content with Q49, please tell us why.

Q51. Is there any other information you would like to see included in Annex A?

Q52. Is there anything contained in Annex A that you think should be removed?

Annex B

It contains the co-ordinated support plan template.

Q53. Are you generally content with the guidance contained in Annex B?

Q54. If you are not content with Q53, please tell us why.

Q55. Is there any other information you would like to see included in Annex B?

Q56. Is there anything contained in Annex B that you think should be removed?

Annex D

It contains features of mediation and the Scottish Mediation Network's Quality Standards.

Q57. Are you generally content with the guidance contained in Annex D?

Q58. If you are not content with Q57, please tell us why.

Q59. Is there any other information you would like to see included in Annex D?

Q60. Is there anything contained in Annex D that you think should be removed?

Q61. Do you have any other comments that are relevant to the revised *supporting children's learning code of practice*?

Online Questionnaire

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2009

- Q1. In light of the provisions contained in the 2009 Act which enable parents and young people to submit out of area placing requests, do you agree that the definition of “authority” in the Tribunal Rules should be amended to include, in respect of out of area placing request disputes, an authority that is not responsible for the education of the child or young person?
- Q2. If you do not agree with Q1, please state your reasons why.
- Q3. In cases where there are 2 disputes before the Tribunal, one involving an out of area placing request and the other a co-ordinated support plan issue, are you content that these disputes are able to be conjoined under rule 20. if appropriate?
- Q4. If you disagree with Q3, please state your reasons why.
- Q5. Do you agree that the Tribunal should be able to review its decisions in all of the 4 instances listed below?
- its decision was wrong because of an error on the part of the Tribunal or its staff; or
 - a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or
 - new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or
 - otherwise the interests of justice require
- Q6. If you do not agree with Q5, in which of the 4 instances do you think it would be inappropriate for the Tribunal to review its decisions? Please state your reasons.
- Q7. Are there other instances in which you think the Tribunal should be given the power to review its decisions? Please state the instance and your reasons for this.
- Q8. Are you content for a convener alone to consider those referrals which involve the breach of a statutory timescale as laid down in Regulation?
- Q9. If you are not content with Q8, please provide your reasons.
- Q10. Do you think that 15 days is reasonable for the expedited case statement period?
- Q11. If you answered ‘no’ to question Q10, what duration of case statement do you consider appropriate? Please state your reasons.
- Q12. Do you agree that references involving a timescale failure should not be consolidated with references of a different nature?
- Q13. If you do not agree with Q12, please state your reasons.

- Q14. Do you agree that rule 26 should be amended to enable a convener alone (as opposed to the Tribunal) to consider references in which the circumstances detailed below apply?
- Where no response is submitted to the secretary within the time appointed by rule 10 or any extension of time allowed under rule 19;
 - Where the authority states in writing that they do not resist the reference
 - Where the authority withdraws their opposition to the reference; or
 - Where both parties agree in writing to dispense with a hearing
- Q15. If you do not agree with Q14, please state your reasons.
- Q16. Should a convener have the ability to extend or shorten the case statement period regardless of whether a placing request is involved?
- Q17. If your answer to Q16 is no, please state your reasons.
- Q18. Do you agree that the case statement period for either the appellant or respondent should be shortened in order to reduce the duplication of papers?
- Q19. If you do not agree with Q18, please state your reasons why.
- Q20. Are you content for the case statement period of the appellant (parent or young person) to be shortened?
- Q21. If you are not content with Q20, please tell us why.
- Q22. Do you think that the case statement period of the respondent (the authority) should be shortened instead?
- Q23. If you answered ‘yes’ to Q22, please state your reasons.
- Q24. Are you content for ‘In exceptional circumstances’ to be removed from rule 8(4), thus enabling the appellant to amend the reference at any time, if permission is given by a convener or a Tribunal?
- Q25. If you are not content with Q24, please state your reasons.
- Q26. Do you agree that rule 9(2) should be amended to enable the Secretary to circulate all late submissions in advance of the hearing?
- Q27. If you do not agree with Q26, please state your reasons.
- Q28. Should the ability of the Secretary to alter the date and time of a hearing be removed?
- Q29. If you disagree with Q28, please state your reasons.
- Q30. Do you agree that rule 27(7)(c) should be amended to clarify that a ‘supporter’ cannot be called as a witness or as an additional representative where the party is already represented?

- Q31. If you do not agree with Q30, please state your reasons.
- Q32. Are you content for the convener to be given the power to carry out preliminary functions/processes?
- Q33. If you are not content with Q32, please provide your reasons.
- Q34. Are you content for the Tribunal to have the ability to call a witness if that witness can assist the Tribunal in reaching its decision, or that person has an interest in the proceedings before the Tribunal?
- Q35. If you are not content with Q34, please state your reasons why.
- Q36. Do you agree that the Secretary should have the discretion to accept electronic references without a signature?
- Q37. If you do not agree with Q36, please state your reasons.
- Q38. Do you agree that an appellant's representative should be able to sign a withdrawal notice to expedite the process?
- Q39. If you do not agree with Q38, please state your reasons why.
- Q40. Are you content for the provision relating to the number of witnesses to be moved from rule 28 to rule 22?
- Q41. If you are not content with Q40, please state your reasons why.
- Q42. Do you agree that rules 23 and 29 should be combined?
- Q43. If you do not agree with Q42, please state your reasons.
- Q44. Are you content for the 15 working day timescale to be removed and to allow the convener to specify the relevant timescale?
- Q45. If you are not content with Q44, please state your reasons why.
- Q46. Are you content for this error to be corrected?
- Q47. If you are not content with Q46, please state your reasons why.
- Q48. Do you have any other comments on the changes to the Tribunal Rules?

**The Additional Support for Learning (Co-ordinated Support Plan) (Scotland)
Amendment Regulations 2009**

- Q1. Do you agree that the Regulations should be amended to facilitate the transfer of a co-ordinated support plan between authorities for those children who live in one authority area but are attending school in another authority's area?
- Q2. If you do not agree with the proposal outlined in Q1, please state your reasons why.
- Q3. Are you content that on receipt of any transferred co-ordinated support plan, the new host authority must conduct a review of the co-ordinated support plan within the time limits currently set for the review of such a plan as detailed in Regulations 5 and 7?
- Q4. If you do not agree with Q3, please provide your reasons why.
- Q5. The 2009 Act enables cases to be referred to the Tribunal where a parent or young person requests an authority to establish whether a co-ordinated support plan is required and the authority fails to respond to the request within a specified period of time. Do you agree that the specified period of time should be 8 weeks?
- Q6. If you disagree with the 8 week period suggested at Q5 above, please state your reasons why.
- Q7. If you disagree with the 8 week period suggested at Q5 above, how many weeks do you think are more appropriate? Please provide your reasons.
- Q8. The 2009 Act enables cases to be referred to the Tribunal where the education authority have issued their proposal to establish whether a co-ordinated support plan is required (under section 11(2)(a)) but, within a specified timescale, has not taken a decision either way. Do you agree that the specified period of time should be 16 weeks?
- Q9. If you disagree with the 16 week period suggested at Q8 above, please state your reasons why.
- Q10. If you disagree with the 16 week period suggested at Q8 above, how many weeks do you think are more appropriate and why?
- Q11. Should a timescale be introduced within which an authority must respond to a request from a parent or young person to conduct an early review of a co-ordinated support plan?
- Q12. If you disagree with the proposal at Q11, please state your reasons.
- Q13. If you agree with Q11, are you content with the 4 week timescale proposed or do you think a shorter or longer duration would be more appropriate?
- Q14. Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that where they have an outstanding placing request or placing request

appeal with a potential host authority, they should notify that potential host authority that their child/they are in co-ordinated support plan territory.

- Q15. If you do not agree with the proposal outlined in Q14, can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have an outstanding placing request or placing request appeal, is in co-ordinated support plan territory?
- Q16. Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that in any future placing requests submitted by the parent or young person to another authority, the parent or young person should notify the potential host authority of any co-ordinated support plan action?
- Q17. If you do not agree with the proposal outlined in Q16 can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have received a placing request is in co-ordinated support plan territory?
- Q18. Do you agree that a potential ‘host’ authority should be placed under a duty to notify its appeal committee or the sheriff that the placing request appeal should be transferred to the Tribunal?
- Q19. If you do not agree with the proposed outlined in Q18, what other method do you suggest for ensuring that the appeal committee or sheriff transfer the placing request appeal to the Tribunal?
- Q20. Are you content for authorities to have discretion regarding the duty to notify a child’s parents or the young person at the end of the 5 year retention period that the co-ordinated support plan has been destroyed?
- Q21. If you are not content for authorities to have the discretionary power mentioned in Q20, please state your reasons why.
- Q22. Do you have any other comments on the changes to the Co-ordinated Support Plan Regulations?

The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

- Q1. Do you agree that parents and young people should be able to refer an authority’s refusal of a request for a specific assessment under new section 8A to dispute resolution?
- Q2. If you disagree with Q1, please provide your reasons.
- Q3. Are you content with the proposal that parents and young people should send referrals for dispute resolution directly to Scottish Ministers?
- Q4. If you are not content with the proposal outlined in Q3, please state your reasons why.

- Q5. If you do agree with the proposal in Q3, do you think that the proposed time limit of 5 working days for Scottish Ministers to send the referral to the authority is a realistic timescale?
- Q6. If your answer to Q5 is no, what timescale do you think would be more appropriate?
- Q7. Are you content with the proposed monitoring approach for dispute resolution applications?
- Q8. If you are not content with Q7, please state your reasons why.
- Q9. Do you agree that where the authority have failed to provide the support contained in a co-ordinated support plan the only route of appeal should be to the Tribunal?
- Q10. If you do not agree with Q9, please provide your reasons.
- Q11. Should the rate that authorities pay for Independent Adjudication be increased to £380 per case (excluding expenses for travel and subsistence)?
- Q12. If your answer to Q11 is no, what rate do you think is appropriate?
- Q13. Do you have any other comments which are relevant to the dispute resolution procedure?

The Additional Support for Learning (Sources of Information) (Scotland) Order 2010

- Q1. Do you agree that the listed organisations should be included in the order?
- Q2. If you do not agree, why not?
- Q3. Are there other organisations you would like to see included in the order?
- Q4. If so, please provide the details of these organisations.

Supporting Children's Learning – Code of Practice

- Q1. Do you agree that chapter 1 provides a balanced overview of the main provisions of the Act?
- Q2. If you do not agree with Q1, please state your reasons why.
- Q3. Is there any other information you would like to see included in chapter 1?
- Q4. Are you generally content with the guidance contained in chapter 2?
- Q5. If you are not content with Q4, please tell us why.
- Q6. Is there any other information you would like to see included in chapter 2?

- Q7. Are you generally content with the guidance contained in chapter 3?
- Q8. If you are not content with Q7, please tell us why.
- Q9. Is there any other information you would like to see included in chapter 3?
- Q10. Are you generally content with the guidance contained in chapter 4?
- Q11. If you are not content with Q10, please tell us why.
- Q12. Is there any other information you would like to see included in chapter 4?
- Q13. Does chapter 4 clearly distinguish the differences in an education authority's responsibilities for those children and young persons for whom:
- no authority are responsible for their education;
 - arrangements have been entered into between authorities;
 - the home authority have arranged for them to attend a grant aided or independent special school or have arranged for them to attend a special school in another part of Britain;
 - the parent or young person has made a successful out of area placing request and as a result they are being educated in a school outwith the local authority area in which they live?
- Q14. If your answer to Q13 is no, how do you suggest we improve this?
- Q15. Does chapter 4 clearly identify the rights of parents and young persons in the 4 different scenarios contained in Q13?
- Q16. If your answer to Q15 is no, how do you suggest we improve this?
- Q17. Is there any other information you would like to see included in chapter 4?
- Q18. Is there anything contained in chapter 4 that you think should be removed?
- Q19. Are you generally content with the guidance contained in chapter 5?
- Q20. If you are not content with Q19, please tell us why.
- Q21. Are you content with the case study grid provided in Annex C?
- Q22. If you are not content with Q21, please tell us why.
- Q23. Do you think chapter 5 and Annex C provide further clarity on the definition of the term 'significant additional support'?
- Q24. If your answer to Q23 is no, how do you suggest we clarify this?
- Q25. Do you think that chapter 5 clearly demonstrates the links with the *Getting it right for every child* (Girfec) approach?
- Q26. If your answer to Q25 is no, how do you think this can be develop?
- Q27. Is there any other information you would like to see included in chapter 5 or Annex C?

- Q28. Is there anything contained in chapter 5 or Annex C that you think should be removed?
- Q29. Are you generally content with the guidance contained in chapter 6?
- Q30. If you are not content with Q29, please tell us why.
- Q31. Is there any other information you would like to see included in chapter 6?
- Q32. Is there anything contained in chapter 6 that you think should be removed?
- Q33. Are you generally content with the guidance contained in chapter 7?
- Q34. If you are not content with Q33, please tell us why.
- Q35. Is there any other information you would like to see included in chapter 7?
- Q36. Is there anything contained in chapter 7 that you think should be removed?
- Q37. Are you generally content with the guidance contained in chapter 8?
- Q38. If you are not content with Q37, please tell us why.
- Q39. Is there any other information you would like to see included in chapter 8?
- Q40. Is there anything contained in chapter 8 that you think should be removed?
- Q41. Are you generally content with the guidance contained in chapter 9?
- Q42. If you are not content with Q41, please tell us why.
- Q43. Are you content that chapter 5 and chapter 9 fully cover placing request provision?
- Q44. If you are not content with Q43, please tell us why.
- Q45. Do chapter 4 and chapter 9 clearly explain the different placing request appeal routes?
- Q46. If you answered no to Q45, how could this be improved?
- Q47. Is there any other information you would like to see included in chapter 9?
- Q48. Is there anything contained in chapter 9 that you think should be removed?
- Q49. Are you generally content with the guidance contained in Annex A?
- Q50. If you are not content with Q49, please tell us why.
- Q51. Is there any other information you would like to see included in Annex A?
- Q52. Is there anything contained in Annex A that you think should be removed?
- Q53. Are you generally content with the guidance contained in Annex B?
- Q54. If you are not content with Q53, please tell us why.

- Q55. Is there any other information you would like to see included in Annex B?
- Q56. Is there anything contained in Annex B that you think should be removed?
- Q57. Are you generally content with the guidance contained in Annex D?
- Q58. If you are not content with Q57, please tell us why.
- Q59. Is there any other information you would like to see included in Annex D?
- Q60. Is there anything contained in Annex D that you think should be removed?
- Q61. Do you have any other comments that are relevant to the revised *supporting children's learning code of practice*?