

**CONSULTATION ON
DRAFT EDUCATION
(ADDITIONAL SUPPORT
FOR LEARNING)
(SCOTLAND) BILL**

Draft Education (Additional Support for Learning) (Scotland) Bill

The Scottish Executive would welcome comments on this draft legislation. All comments on the draft legislation will be considered carefully and will assist the Scottish Executive in preparing the Bill for introduction to the Scottish Parliament.

Comments should be sent **by Friday 28 March 2003** to:

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Please note that copies of responses received will, as is normal practice, be made available to others, on request, unless respondents indicate that all or part of their response is confidential. In the latter case, the confidentiality of the response will be strictly respected.

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Consultation on draft Education (Additional Support for Learning) (Scotland) Bill

Background

1. The draft Bill arises from concerns expressed by many people that the existing assessment and recording system for children with special educational needs is outdated and overly bureaucratic. Comments on the need to review the current system also came from the Riddell Advisory Committee in a review of provision for children with severe low incidence disabilities (1999); and from the Parliament's Education, Culture and Sport Committee in its Inquiry into Special Educational Needs (2001).
2. When '*Assessing Our Children's Educational Needs: The Way Forward?*' was published in May 2001, the Scottish Executive began a review of the assessment and recording system for children and young people with special educational needs. The Scottish Executive received 148 written responses. The vast majority of responses suggested that the Record of Needs procedure requires amendment and improvement. The Scottish Executive's response and outline proposals for change were published in February 2002.
3. Developing these proposals further has been informed by service users and providers. There were 3 seminar events which were attended by over 300 delegates, including parents, professionals and representatives from voluntary organisations. In addition 4 focus groups were held and the Executive commissioned Children in Scotland to carry out consultation with 6 groups of children and young people. The Scottish Executive is grateful to Children in Scotland and to all the parents, children, young people and professionals who contributed to the process and who have helped inform development of this draft Bill.
4. **The following sections of this document explain what the draft Bill is aiming to achieve. The draft Bill follows thereafter.**
5. However, legislation alone will not deliver all the changes required for a new Additional Support Needs framework. That is why the Executive, in conjunction with the Special Educational Needs Forum, a forum of professionals, parents and officials, is also publishing the framework document *Moving Forward! Additional Support for Learning* for meeting the needs of children who require additional support for learning.
6. There will also be a considerable need for guidance (some of which will be statutory) and Regulations to support implementation of the new arrangements. In addition, consideration must be given to the transitional arrangements for those children and young people who will be moving from the current system to the proposed system to ensure that their needs are still met.
7. Please note that wherever we refer to parents, we mean this to include anyone who has parental responsibility for a child, including carers/guardians, foster parents and social work services. References to young persons mean those aged 16 and over who are still receiving school education. Parents and young persons have the same rights in this draft Bill. Where the draft Bill refers to young persons being 'incapable' this relates to the Adults with Incapacity (Scotland) Act 2000.

Introduction

8. The Scottish Executive recognises that at some time or other, many children will experience greater difficulties in learning and progressing than their peers, and this may be for a number of reasons. A child may have special educational needs, may have a disability or may have other particular life or personal circumstances which could give rise to barriers to learning. Services and agencies need to take account of these if the child is to make the progress expected of him/her.
9. The aim of the draft Bill, and the new framework document, *Moving Forward! Additional Support for Learning*, is to provide an overarching framework that encompasses all children who may have a difficulty in accessing and benefiting from learning, whatever the reason or cause may be for that difficulty. It is not about labelling children or assuming that certain circumstances will always give rise to difficulties in learning. Each child is an individual. Some additional support needs will be temporary while others will present long-term barriers to learning.
10. These children already exist and are already being supported in their learning. But we need to make sure we have systems in place that ensure no child falls through the net and their learning needs are undiscovered, ignored or unmet simply because the label does not suit.
11. We want to encourage a more holistic system in education that identifies the educational needs of all children whenever they occur, supports those needs, and promotes a culture that welcomes diversity. It is about equality of opportunity for all – and that starts with helping and supporting children to make the most of the learning opportunities their school years offer.

Additional Support Needs

12. The draft Bill introduces a new duty on education authorities to identify and address additional support needs of pupils and therefore goes much wider than the current SEN framework. Additional support needs in this context means needs for support that are additional to those which other children normally receive, in order to help a child benefit from education and so make the educational progress which is expected of him/her. It was made clear to us at the earlier consultation seminars that the concept of additional support needs should go much further than the definition that we originally proposed in the response on *Assessing Our Children's Educational Needs: The Way Forward?*, and should include all types of support needs that all children may at some time experience.
13. Education authorities will not have to assess formally every child to establish whether they have any additional support needs, but they will be expected to take steps to ensure that the reasons for a child's lack of progress are identified and appropriate action is taken. That is not to say that formal assessment of a child's difficulties or disabilities is not important. It is, but only as one means to help identify the support needs of that individual child.

14. The duty will 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 will be able to formally request the education authority to establish whether their child has additional support needs.
15. For children not in the public sector system, legislation already provides safeguards to ensure they are provided with suitable education appropriate to their age, ability and aptitude, either by their parents at home or at an independent school. However, to ensure that these children are not excluded from all education authority services, the draft Bill introduces a power for education authorities to assist in the identification and support of their needs, where they come to their attention. This power also extends to those under age 3 or not yet in nursery or school.
16. We have also recognised that, in some cases, identifying and addressing additional needs for learning will require input from other agencies. This already happens but we want to make it more consistent and promote integrated working in supporting the needs of children. There were many comments from our earlier consultations on the difficulties encountered when services are provided by different agencies and we want to reinforce the role other agencies have in supporting children's education.
17. The draft Bill therefore introduces a duty on other agencies, particularly health authorities and social work services, to help education authorities in supporting the education of children with additional support needs when requested to do so. It recognises the statutory or other obligations these organisations have in relation to children. This new duty will support a comprehensive approach to identifying and meeting all types of educational needs and promote a more integrated, efficient and effective provision for children with additional support needs.

Assessment and Intervention

18. There should be a simple, transparent and systematic framework for the identification, assessment and support of the learning needs of a wide range of pupils, arising from factors relating to social, cognitive, linguistic, disability, family/care circumstances. The framework needs to include diverse interventions to meet all types of support needs and should accommodate rather than duplicate other assessment and intervention systems (for example those for Looked After Children).
19. Comments from the earlier consultation favoured uniform procedures across Scotland. Although a single system throughout Scotland may be attractive, realistically this would be difficult to achieve. There are differing local arrangements and structures and progress on integrated working in children's services varies. What is important is that parents know and understand what the process is for identifying their child's additional support needs and what services are available to address these needs. Parents need to be given more information.

20. The draft Bill therefore introduces a duty on education authorities to publish local policies, arrangements and provision for children and young people with additional support needs and explain parents' role, responsibilities and rights. This could be as part of other local authority publications on services available to citizens in the area, or as part of Children's Services Plans or education Improvement Plans or Statements. It should cover, at least, all education authority schools and early year settings (including those in partnership with private sector). We will set a standard for minimum information that education authorities should publish.
21. To support a level of consistency across Scotland, guidance will be used to promote good practice and will set minimum standards for identifying and meeting the needs of pupils with additional support needs. An overall framework for intervention will also be developed to replace EPSN (the HMIE report *Effective Provision for Special Educational Needs*) and the Level of Needs Matrix and incorporate other intervention systems.
22. The draft Bill removes the compulsory nature of educational, medical and psychological observation and assessments as part of the consideration by the education authority of a child's needs. We want the process to identify a child's additional support needs (and for consideration for a Co-ordinated Support Plan) to be as non-intrusive as possible, with other agencies and disciplines only being involved where necessary. Careful consideration should be given to the real need to conduct similar and often stressful and disruptive assessments by different professionals and these should especially not be repeated just because a child has moved between local authority areas or into Scotland. The effect on the child, and the added value any such formal assessments will contribute to the identification of a child's needs, must be considered first.
23. Education authorities will be obliged to seek advice and information from other agencies, where they think it necessary and appropriate, to assist with identifying additional support needs. The advice and information could well involve a formal assessment or examination, but alternatively could be a report based on existing knowledge and records of the child, where these are known to be accurate and still current.
24. In addition to seeking advice from other professionals, education authorities will also be obliged to take into account the views of the parents and the child and any information they may provide, for example, a privately obtained assessment report.

Parent and Family Involvement and Support

25. Under existing legislation parents have a duty to promote their child's development, to provide suitable education for their child, whether through the public system for education or otherwise, and to provide direction and guidance. Where parents elect to have their child educated in the public system, they therefore have an important role to play in supporting their child's education and can provide valuable help with homework, development of skills, etc. Good relations therefore need to be fostered between parents and authorities and schools so they can all work together for the best interests of the child.

26. The draft Bill therefore encourages education authorities to involve parents of children with additional support needs and to acknowledge the parents' role in supporting their child's education. This should not inhibit schools' reasonable exercise of professional judgement. It does not mean that they have to involve parents in every decision taken, nor do we want to try to force parents to be actively and continuously involved in their child's school education.
27. In order to be an effective partner in supporting their child's education, parents need to be fully aware of the process for identifying and providing for children's needs in education, understand the planning mechanisms and be familiar with the support services available in the school. The draft Bill provides a duty on education authorities to publish their policies, arrangements and provision for pupils with additional support needs and this will include how they intend to offer parents the opportunity to be involved. This information will be available to all parents in the area regardless of where their child is educated. It should also be available in alternative forms to meet any specific needs of parents.
28. To ensure parents do not have to chase round different agencies or professionals to obtain information about their child's additional support needs arrangements, the draft Bill requires education authorities to provide parents of children with additional support needs (and young persons with additional support needs) with a named contact person. This contact person will act on behalf of the education authority in liaising with parents regarding the Additional Support Needs process and should be whoever is most suitable in the individual circumstances. It could be a member of school staff or it could be an official with the authority.
29. Their role will involve providing parents with advice on the system, keeping parents up to date with what is happening with their child, ensuring that meeting arrangements and contact with parents is sympathetic to their needs and providing them with information about other agencies' services, where relevant. It will be the contact person who liaises with professionals within the school or authority and in other agencies about the provision being made for the child and, where there is a Co-ordinated Support Plan, leads the co-ordination and implementation of the process.
30. Separate from these arrangements, parents will be able to be accompanied by a 'supporter', if they wish, in all meetings or contact with the education authority (and the school). We are separating out the existing dual role of the Named Person. Earlier consultation made it clear that many parents would welcome being able to involve anyone they choose as a supporter to accompany them to any meetings, advise them of procedures and options and to offer practical and emotional support, as necessary. Parents will therefore be able to use different supporters for different meetings making it more flexible than the existing Named Person arrangements. This supporter could be a friend or relative, someone from a voluntary organisation or another parent with experience of the system. It will not be the responsibility of the education authority to provide parents with supporters, though they may wish to advise parents of possible sources.

31. Throughout all the earlier consultation, the importance of involving children themselves in decision-making processes has been emphasised. The point has been made that a child's age or ability to communicate should not be seen as a barrier to participation. Existing legislation obliges both education authorities and parents to take into account the views of children. We want to therefore ensure that wherever a child is willing to express views and be involved, they should be able and enabled to do so. Guidance will be used to promote the principles of involving children and young persons with additional support needs, whatever the complexity and from a young age, in decision making processes about their education.
32. Much of the criticism of current practice on children's involvement, stems from meetings not being receptive to their needs, their views not being listened to and options not being explained. The child will therefore be able to have a supporter to accompany them to meetings, act as their 'voice' where this is preferred, and explain the decision-making process to them.
33. Children will be allowed to choose a supporter they feel most comfortable with whether that is a teacher or other member of staff, or someone else known to them such as their social worker, someone from a voluntary organisation, a friend or a relation. Authorities and schools should attempt to accommodate the child's choice of supporter unless they consider the child's interests to be at risk and can substantiate this. There should be a sensible balance between the freedom of the child to select their own supporter, and the need to avoid a situation that would be contrary to the interests of the child. It should not be the responsibility of the education authority to provide a supporter, but where the child elects to have a member of staff as a supporter then this should be facilitated.
34. Parents or children may also need an interpreter or signer to help them communicate and participate fully in meetings. Sometimes this person may also act as a supporter if the parents, or child, have someone they know with them. However, the education authority should always be able to provide signers or interpreters for meetings where necessary and should not expect the parents' or child's supporter to fulfil this role.

Mediation

35. Mediation is a process in which a mediator, who is an impartial third party, facilitates the resolution of disputes by promoting the participants' voluntary agreement to a solution. The mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. He or she works with the participants to explore options, make decisions and reach their own agreements. The mediator does not impose his or her views on the participants or take sides, but facilitates discussion. There is no obligation on participants to reach an agreement if one of the parties does not want to.
36. Our aim in introducing provision for mediation is to ease the resolution of disputes, avoiding the breakdown of the relationship between parents and the school or education authority. Mediation services will be equally available to parents and to education authorities/schools. In other words, either party will be able to request the service. Mediation is quite distinct from conciliation or arbitration.

[In conciliation, the conciliator brings together the parties in a dispute with the aim of moving forward to a settlement acceptable to all sides. The conciliator will be knowledgeable about the subject under dispute and will contribute his or her views in the progress towards a settlement. Arbitration is where the parties who have a dispute present their case to a neutral person (the arbiter), who decides the outcome of the dispute. The arbiter's decision may well be binding in law.]

37. We do not intend to be prescriptive about what sort of mediation should be offered. The duty on education authorities to provide a mediation service offers flexibility for authorities to purchase the service from national or UK organisations or local voluntary sector organisations or to provide the service directly. It also offers flexibility to fit in with existing services and allows possible future development of the service beyond education, for example to include all children's services, or even all local authority services in an area. If the authority employs a mediator(s) it will be important that mediators are autonomous from decision-making structures in the education authority and are independent from those involved in the identification or provision for those with additional support needs. We will set out minimum standards that will also ensure consistency across Scotland.
38. We expect informal approaches at school or education authority level always to be tried first, with the authority or school aiming to resolve disputes at an early stage through meetings or discussions with parents. If informal efforts fail, formal mediation will be available, at the request of either party. Participation will be voluntary for both parties and neither party should be obliged in the mediation process to reach an agreement or accept a compromise they are not happy with. The use of mediation will be encouraged and we would expect parents to have tried this avenue before resorting to any appeals process. However, whether parents have tried mediation, or not, should not affect their right to appeal, nor should it influence the outcome of that appeal.
39. Education authorities will need to publicise mediation services so that parents know what is available and when they could use the service. Mediation will be for all parents within the area who have a dispute with the education authority on any function by the authority under this draft Bill. This is to ensure that those who access, for example, the educational psychological service, but who are being home educated or are at an independent school, will still be able to have any dispute with the education authority resolved through mediation. The education authority will be under no obligation to provide mediation service to an independent school or any other organisation – it will be for parents (and young persons) only and should only be about a dispute about their child. Where the child is at a pre-school centre run in partnership with the authority, or is placed in an independent special school, mediation would be available between the parents and the education authority (though in practice it is likely that someone from the school would attend).

Transitions and future needs

40. It was clear from the earlier consultations that all transitions need to be improved for those pupils with additional needs. By their nature, having additional support needs can mean that transition is a particularly difficult episode for children and young people. The key to successful transition, whether it be from one level of school to another or across the same level, is preparation and planning. As part of the general duty, therefore, to address additional support needs, education authorities must also pay particular attention to transitions, especially for those pupils where the additional support needs are significant and they expect the additional support needs to continue. By transitions, we expect this to mean from pre-school to primary, from primary to secondary, from one school to another (for example when a family moves house), or in or out of school from or to other arrangements, as well as leaving school once aged 16 or over.
41. Where such a transition can be foreseen, which will be in the vast majority of cases, the education authority must consider the impact the change is likely to have on the pupil and take appropriate action to lessen any potentially adverse effects or reactions. This should form part of their on-going consideration of additional support needs. They must also identify who will be responsible, or play a key role, in supporting the pupil in his/her new environment, involve them at an early stage in the planning and preparation work and ensure sufficient information is provided to allow a continuum of support. Parents and the child should be fully involved in the planning and preparation for the change.
42. The transition from school education to adulthood is invariably the most important of all the transitions.
43. Earlier consultation showed that people do not want a formal, bureaucratic process that is cumbersome to operate and has limited value once the pupil leaves school education. Planning and preparing the pupil for post-school life must be geared towards the young person's individual needs and ambitions, and like other transitions, should be aimed at ensuring a continuum of support where it is required. Additional support needs, as defined, relate to barriers to learning. Post-school, the needs of the young person could be much broader, for example support to live independently from parents. These are outwith the remit of any education authority, even to identify, and it also has to be recognised that the formal responsibilities of the education authority end the day the young person leaves school education. But this should not mean that the young person falls into a void as support ends.
44. The emphasis for the education authority needs to be on preparing the pupil for 'life after school'. To do this they need to discuss with the pupil (and parents) what his/her ambitions are and what options there are. A young person's views should be given precedence over those of the parents. The authority then needs to identify who will be involved in supporting the young person towards realising their ambitions in the future, where the additional support needs are such that the education authority considers that the pupil is likely to have difficulties with the transition and will need extra support beyond school. This may be an agency with statutory responsibility, such as adult social work services or a Further Education College, or it could be a key worker under specific support initiatives or a voluntary organisation or even the parents or young person themselves.

45. The education authority needs to work with this agency or person to identify future needs for support (not just learning-related), based on the direction the young person wants to take. This is broadly the same process as for all other transitions, but the main difference is the change in the type of support needs that there may be. The aim is still to ensure a continuum of support for the young person to assist them to fulfil their potential.
46. The education authority must, formally, notify relevant agencies, about such a pupil undergoing a transition and do so a minimum of 6 months prior to that transition (or as soon as possible once they are made aware of a transition if this is within 6 months). Information provided would be with the permission of the parents or young person.
47. Guidance will detail the minimum requirements for preparing and planning transitions, particularly for the leaving school transition. For example, we would expect preparations for leaving school to begin soon after a pupil reaches age 14.
48. At this stage, we do not consider it necessary to have separate statutory reports of the planning and preparation arrangements, or any formal record of agreed future needs. In practice this will form part of other planning mechanisms, such as Personal Learning Plans, Individualised Educational Programmes and Co-ordinated Support Plans, and the planning mechanisms of future lead agencies, such as FE Colleges.
49. The planning and preparation for all transitions will equally apply to those who are excluded or are “out of school” for any other reason, or who are receiving education provision from the education authority but in a non-education authority school.

Co-ordinated Support Plan (CSP)

50. The draft Bill introduces a statutory Co-ordinated Support Plan (CSP). The aim of the CSP is to plan long term and strategically for the achievement of learning outcomes and to foster co-ordination across the range of services (multi-agency and multi-disciplinary) required to support this. CSPs will be for those children who face complex or multiple barriers to learning which significantly, and adversely, affect (or could reasonably be expected to affect) their educational development over the long term; and who require frequent access to a diversity of services outwith services from the school and education authority. These external services could be therapy services provided by NHS or respite care from social work services, for example.
51. The basis for needing a CSP is that the child requires support from a range of service providers and this needs to be co-ordinated. Where support is provided entirely by the school (or from within the education authority) then this should be easily managed or co-ordinated by the school and there should be no need for any extra plan to facilitate this.
52. As well as the duty on education authorities to identify additional support needs, the draft Bill also introduces a duty to consider whether a child or young person with additional support needs requires a CSP.

53. Parents will have a right to request the education authority to consider their child for a CSP. Independent schools and grant-aided schools will also be able to make such a request (except for any pupil who attends the school under arrangements made by an education authority). This will allow them to seek help from the education authority where they perhaps feel the needs of a pupil are moving beyond what they can provide for. The education authority will be able to refuse a request if they consider it to be unreasonable. They would have to have grounds for doing so and would need to provide these to the parent or school making the request.
54. Others will be able to draw to the attention of the education authority the need for a child to be considered, for example, head teachers or other school staff in education authority schools, health professionals, social workers. It will only be a child or young person who is educated within the public sector who will be eligible to have a CSP opened, in other words those who are being provided with school education either directly or indirectly by an education authority. The education authority in other circumstances will be able to offer advice.
55. The education authority will need to inform the child's parents (and school) of their intention to consider a child for a CSP and will need to carry out the appraisal within a set time period. The authority will then need to inform the parents (and school) of the outcome of the appraisal and whether a CSP is appropriate or not for the child's circumstances.
56. If the answer is yes, then the education authority will arrange for a CSP to be drawn up, again within a set time period. This should only be done for those pupils who are in receipt (or are likely to be in receipt in the near future) of education provision from the education authority either directly or indirectly. By this we mean all pupils at local authority schools, early years settings and special schools, pupils placed in independent schools by the authority and those being educated away from school by the authority (for example, in hospital, at home, on gypsy or traveller sites). Drawing up the CSP will involve the school, other agencies and also the parents and child or young person.
57. For those pupils placed at independent schools by their parents, or who are being educated at home by their parents, then the education authority is not required to open a CSP for the child even if the outcome of the appraisal is affirmative. However, the education authority will be expected to provide information and advice to the parents about their child's additional support needs. In opting out of public provision for the education of their child, the responsibility rests with the parents to ensure that the child is provided with education appropriate to their 'age, ability and aptitude' (section 30 of the Education (Scotland) Act 1980).
58. We consider that it would not be appropriate for an education authority to be held responsible for a CSP where they play no part in providing for the child's education (either directly or indirectly). We have also concluded that current legislative provision is sufficient to ensure that parents act on the findings of the education authority and that the authority has power to take action if they do not. The provision in this draft Bill will not prevent informal (non-statutory) CSPs, or other planning mechanisms, being operated for these children or young people if the education authority is willing, based on the power to assist in addressing the additional support needs of children brought to their attention.

This will also apply to those under age 3 where provision of such assistance will be encouraged.

59. Details of the format of the CSP will be set out in Regulations. It is expected to contain biographical information about the child, name the people involved in the CSP (various professions and others (and their agency), parents, child), a named contact person responsible for co-ordinating the CSP, parents' views and child's views, details of the authority's conclusions regarding the additional support needs, the learning outcomes (both short term and long term) and the services to be provided, the nominated school and the proposed date of next review.
60. We will produce guidance which will outline how the CSP will build on other educational plans already in place as well as linking with plans in health and social work services, if applicable. The CSP will detail the long and short term learning outcomes for the child or young person. Long term target outcomes are expected to be for a minimum of 12 months and ideally for 2 to 3 years (or longer) where practicable and realistic. In practice, the CSP will include information that would otherwise be found in an Individualised Educational Programme and Personal Learning Plan. The aim is to have a streamlined system that avoids duplication or repetition of basic information about the child or young person.
61. Most importantly, the CSP will be a 'working' document that records target outcomes, provision of support and facilitates practice. Parents or the young person (and the child if appropriate) will receive a copy of the CSP (and subsequent copies each time it is amended or updated). All those involved in providing the necessary support to the child and monitoring their progress will also be provided with the information they require from the plan.
62. Once the CSP has been finalised, after discussions with the parents or young person, the child, appropriate school staff and those from other agencies, then the education authority will be responsible for implementing the Plan. The education authority will also have to ensure that the CSP is maintained for as long as it is necessary and that the content is up to date and relevant. To achieve this, the short term targets of the CSP and the provision needed should be updated as required throughout the year. To facilitate this, the CSP will have an annex (Progress Report), the content of which cannot be appealed. This will record any minor changes in circumstances or diagnosis, progress towards the agreed short term outcomes and any new outcomes set or changes to the provision. It should be referred to in conjunction with the main body of the CSP. All members of the team (professionals, parents, child/young person) should add to the annex as appropriate and have an amended version for reference.
63. The CSP will be reviewed at least annually. The frequency of reviews more often than annually will depend on the child's individual support needs and progress towards planned outcomes. The review will ensure that the information contained in the CSP about the child's or young person's additional support needs is still relevant and that the educational outcomes and provision being specified are still appropriate. Reference should be made to the information in the Progress Report which will have built throughout the year and should therefore provide the basis for discussion at the review.

64. The review will include a fundamental consideration of the child's or young person's circumstances (for example a change in diagnosis or becoming a Looked After Child), the long and short term outcomes and the setting of new ones, the support required in light of these, as well as consideration of the parents' and child's or young person's views.
65. The time taken to conduct the review and to amend the CSP will be set. The existing CSP will stand during the review period and must continue to be implemented accordingly. The education authority must send a copy of the revised CSP to the parents or young person and again provide appropriate information to those involved in providing support and monitoring progress of the child or young person.
66. The education authority or parents or young person will be able to request a review sooner than annually when there has been a significant change in circumstances including progress towards the learning outcomes. If the education authority is unwilling to review then they should inform the parents (or young person) of this giving their reasons. The parents (or young person) will then have recourse to mediation and ultimately the new Tribunal. If parents or the young person disagree to a review, then the authority will have no power to force them (or the child) to participate, though this will not prevent the review going ahead without them. The parents or young person will still have recourse to mediation and appeal if they are not content with any aspect of the resulting revised CSP.
67. There are also key transition points at which special attention will be needed. Transitions between schools should be planned and prepared for well in advance, as should the transition to leaving school. The development outcomes and provision in a CSP must take account of this.
68. The draft Bill provides that all parts of the CSP, including provision, will be eligible for appeal to a new Tribunal, as will decisions to draw up or not to draw up a CSP, to discontinue it or not to review it. Parents will also be able to appeal to the Tribunal if there is undue delay in drawing up or reviewing a CSP.
69. If as a result of a review, the education authority decides that the child or young person no longer meets the criteria for a CSP, the parents or young person should be notified in writing of this decision and advised of their appeal rights. If there is no objection to this decision then the CSP will be discontinued and preserved for a suitable length of time. Education authorities should discontinue the CSP if directed to do so by the Tribunal. It should also be discontinued once the young person is no longer receiving school education.

Appeals and the Tribunal

70. The draft Bill provides for new, independent, expert Tribunals to be established. At present the new Tribunal is referred to as the Additional Support Needs Tribunal. The new Tribunal will fit in with the standard procedures for Tribunals, as set out by the Council on Tribunals (who will monitor the work of the new Tribunal) and will be headed by a President. The President will constitute Tribunals as required and hearings will be expected to be held in locations across Scotland.

71. The provisions in the draft Bill cover the Tribunal's constitution, membership and power to impose decisions, together with powers for Scottish Ministers to make Regulations to cover Tribunal practice and procedures.
72. Each Tribunal will consist of three members: the Chair will be legally qualified and the other two members will have knowledge or experience of working with children with additional support needs. There may be value in the Tribunal having access to specialist advice, depending on the nature or complexity of the additional needs of the child or young person.
73. There will be a panel of members from which the members of a Tribunal will be drawn. Members will be appointed by Scottish Ministers for a period of up to 5 years. The normal procedures for public appointments will be followed. The legal member will be the chair at every hearing. Members will be expected to have to divulge their interests (for example having worked for a local authority) and will not be expected to be involved in a hearing of a case where they have, or have had, an interest (for example, they know the family).
74. Tribunal members will receive allowances for preparing for and attending hearings and will be expected to participate in appropriate training and to be objective in making their decisions.
75. The draft Bill sets out the types of appeal that can be taken to the Tribunal. Parents (or young persons) will be able to appeal against an education authority's decision on whether or not to prepare or review or discontinue a Co-ordinated Support Plan for their child and against the Co-ordinated Support Plan's contents. This includes the educational outcomes which have been set for the child and the provision (including the nominated school) proposed to meet these outcomes. There will be no right of appeal against the contents of any annexes to the CSP.
76. A hearing will be attended by the education authority and by the parents or young person. The child will also be able to attend the hearing if they wish to do so, although it may not be appropriate for them to be in the hearing room for the entire duration of the hearing. If the child, young person or their parents have communication difficulties or require an interpreter, provision should be made by the Tribunal as necessary to support them at the hearing.
77. The Tribunal will be expected to have regard to all relevant education legislation, for example sections 2 and 15 of the Standards in Scotland's Schools, etc. Act 2000. Although the interests of the child will be the primary concern, the Tribunal will be expected to take account of the implications of any order it makes for setting precedents and for public resources (and consequently provision for other children). This means that the Tribunal should never make a decision which would not be in the interests of the child.

78. The Tribunal will be able to compel witnesses to attend to give evidence or to produce any document. The Tribunal will be able to order the education authority to open (prepare and maintain), discontinue, amend the contents or review a CSP. Provision will also be required in Regulations for enforcement of orders made by the Tribunal within specified timescales.
79. The Tribunal will only have jurisdiction over education authorities. Where any order of the Tribunal relates to provision of services or support from another agency, then such an agency will have to consider its duties under this draft Bill to help the education authority when requested to do so.
80. Appeals against the decisions of the Tribunal will be to the Court of Session but on a point of law only. Legal aid will be available to children and their parents (if they qualify for it) for appeals to the Court of Session on the same basis as for other appeals in civil proceedings.
81. It is expected that the Tribunal will operate in a ‘user friendly’ manner and will aim to be less intimidating for parents and children than a more traditional court setting. Tribunal members will be expected to use clear, plain English. Under such a system, legal representation (for either party) will not be encouraged. Although parents or young persons will be able to have legal representation if they wish, they will not be entitled to legal aid for this purpose (although they could clearly still get legal aid to consult a solicitor in advance if they were eligible for this). Parents and young persons will however be entitled to bring a representative to the hearing as a supporter.
82. Tribunal hearings are normally held in public, but rules of procedure will make provision for hearings to be held in private and we would expect this to be frequent practice since proceedings will relate to children. The President will publish an Annual Report and this is expected to contain a variety of data about appeals: what was being appealed, what the main difficulty in learning was and whether each appeal was successful. The Report is also expected to include a breakdown of appeal numbers by local authority, or groups of authorities if small numbers mean confidentiality may be breached. This should protect individuals from being identified, but will allow interested parties to see what the most common areas of appeal were and how successful certain types of appeal were.

Placing Requests

83. The draft Bill extends to all parents of children with additional support needs and to young people with additional support needs the right to make placing requests to independent special schools. At present, only parents of children with a Record of Needs can request a place at such a school. (The definition of a special school, in the Education (Scotland) Act 1980, will need to be amended to remove the reference to Records of Need.)

84. The education authority will have to comply with a placing request to an independent special school unless the child or young person does not have the appropriate additional support needs for that school or the education authority can make provision for those support needs in a school under its own management or by other arrangements (taking account of legislation on mainstreaming). Appeals against the decision of the education authority on a placing request will continue to be to the Education Authority Appeals Committee in the first instance, and then to Sheriff Court, unless the child or young person has a Co-ordinated Support Plan.
85. Where a child has a Co-ordinated Support Plan, education authorities will have to consider the parents' (or young person's) views on their preferred school as part of the process for drawing up or reviewing the Plan. If, after discussion, the school nominated in the Plan by the education authority is not the preferred school, the parents (or young person) will be able to appeal to the Tribunal. This appeal would be on the contents of the Plan. Appeals regarding the decision of the education authority on the nominated school in the CSP will not be able to go to the Education Authority Appeals Committee. For those in the process of obtaining a CSP or appealing to get a CSP, provision needs to be developed. We need to avoid overlaps of the two appeal routes.

Transitional Provisions

86. Provisions in the draft Bill for arrangements on the transfer from the current system to the new Additional Support Needs framework are being developed. It is expected that those children or young people who currently have a Record of Needs will be considered under the new framework whenever their Record comes up for review. Consideration will need to be given to the most appropriate planning arrangements for the individual child. It could be a Co-ordinated Support Plan is required or that an Individualised Educational Programme or even a Personal Learning Plan is more appropriate. Whatever planning arrangements are thought appropriate, the child's or young person's support needs should still be identified and addressed. In this way, the current provision they receive to support their learning should remain, regardless of what planning tool replaces their Record, assuming their needs remain the same.
87. The new Tribunal would be set up as soon as is practical after the proposed Bill has completed the whole Parliamentary process. It is expected that appeals which are ongoing at that time, will be completed under present arrangements and will not transfer to the Tribunal. However, no new Records of Needs will be opened once the Co-ordinated Support Plan has started to be phased in. Appeals to the Tribunal will not be allowed to be retrospective. They will only be about CSPs.

Scottish Executive Education Department
January 2003

Education (Additional Support for Learning) (Scotland) Bill

[CONSULTATION DRAFT]

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Education (Additional Support for Learning) (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young persons having additional support needs; and for connected purposes.

Main definitions

1 Additional support needs

- (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.
- (2) In subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.
- (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 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 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 educational provision as is appropriate in the circumstances.

2 Co-ordinated support plans

- (1) For the purposes of this Act, 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,

which are likely to continue for more than a year, and

- (c) those needs require significant additional support to be provided by one or more appropriate agencies (within the meaning of section 17(2)) as well as the education authority.
- (2) For the purposes of subsection (1)—
- (a) 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,
 - (b) multiple factors are factors which—
 - (i) are not by themselves complex factors, but
 - (ii) taken together, have or are likely to have a significant adverse effect on the school education of the child or young person.

General powers and duties

3 General functions of education authority in relation to additional support needs

- (1) Every education authority must—
- (a) in exercising any of their functions in connection with the provision of school education, take account of the additional support needs of children and young persons having such needs, and
 - (b) subject to subsection (2), make adequate and efficient provision for such additional support as is required by children and young persons—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible.
- (2) Subsection (1)(b) does not require an education authority to do anything which—
- (a) they do not otherwise have power to do, or
 - (b) is not practicable at a reasonable cost.
- (3) Every education authority must, in relation to each child and young person having additional support needs for whose school education the authority are responsible, keep under consideration—
- (a) the additional support needs of, and
 - (b) the adequacy of the additional support provided for,
- the child or young person.
- (4) An education authority may, so far as they have power to do so apart from this subsection, make such provision as they consider appropriate for the additional support needs of children and young persons belonging to the area of the authority—
- (a) having additional support needs, but
 - (b) for whose school education the authority are not responsible.

*Establishment of additional support needs and need for co-ordinated support plan***4 Children and young persons for whom education authority are responsible**

- (1) Every education authority must make such arrangements as they consider appropriate for identifying, from among the children and young persons for whose school education they are responsible—
 - (a) those who have additional support needs, and
 - (b) those having additional support needs who require a co-ordinated support plan.
- (2) Where an education authority receive from a person specified in subsection (3) a written request to establish whether any child or young person for whose school education the authority are responsible—
 - (a) has additional support needs, or
 - (b) requires a co-ordinated support plan,the authority must, in accordance with the arrangements made by them under subsection (1), comply with the request unless they consider the request to be unreasonable.
- (3) The persons referred to in subsection (2) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent.
- (4) If an education authority decide not to comply with a request referred to in subsection (2) they must—
 - (a) inform the person who made the request of that decision, and
 - (b) in so doing, give the reasons for the decision.
- (5) Subsection (6) applies where a child or young person for whose school education an education authority are responsible comes to the attention of the authority as—
 - (a) having, or appearing to have, additional support needs, or
 - (b) having such needs and requiring, or appearing to require, a co-ordinated support plan.
- (6) Where this subsection applies, the education authority must, in accordance with the arrangements made by them under subsection (1), establish whether the child or young person does have additional support needs or, as the case may be, require a co-ordinated support plan, unless the authority consider it unreasonable to do so.
- (7) Subsections (2) and (6) are without prejudice to subsection (1).

5 Other children and young persons

- (1) Where an education authority receive a request of a type specified in subsection (2) in relation to any child or young person—
 - (a) belonging to the area of the authority, but
 - (b) for whose school education the authority are not responsible,

the authority may, in accordance with the arrangements made by them under section 4(1), comply with the request.

- (2) The types of request referred to in subsection (1) are—
 - (a) a request from a person specified in subsection (3) to establish whether the child or young person in relation to whom the request is made—
 - (i) has additional support needs, or
 - (ii) would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan,
 - (b) in the case of a child or young person being provided with school education at an independent school or a grant-aided school, a request from the managers of the 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 such a plan.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent.
- (4) If an education authority decide not to comply with a request referred to in subsection (1) they must—
 - (a) inform the person who made the request of that decision, and
 - (b) in so doing, give the reasons for the decision.
- (5) Subsection (6) applies where a child or young person—
 - (a) belonging to the area of an education authority, but
 - (b) for whose school education an education authority are not responsible,comes to the attention of the authority (otherwise than as a result of a request referred to in subsection (1)) as having, or appearing to have, additional support needs.
- (6) Where this subsection applies, the education authority may, in accordance with the arrangements made by them under section 4(1), establish whether the child or young person does have additional support needs.
- (7) Where an education authority establish—
 - (a) pursuant to a request referred to in subsection (1), or
 - (b) under subsection (6),that a child or young person has additional support needs, the authority must provide the persons mentioned in subsection (8) with such information and advice as to the additional support required by the child or young person as they consider appropriate.
- (8) The persons referred to in subsection (7) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—

- (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent,
- (c) where the authority establish the matter referred to in that subsection pursuant to a request made by the managers of an independent school or a grant-aided school, those managers.

Co-ordinated support plans

6 Duty to prepare co-ordinated support plans

- (1) Where an education authority establish in pursuance of any provision of this Act that a child or young person for whose school education they are responsible requires a co-ordinated support plan, they must prepare such a plan for the child or young person.
- (2) A co-ordinated support plan prepared under subsection (1) must contain—
- (a) a statement of the education authority's conclusions as to—
 - (i) the factor or factors from which the additional support needs of the child or young person arise,
 - (ii) the educational objectives sought to be achieved taking account of that factor or those factors,
 - (iii) the additional support required by the child or young person to achieve those objectives, and
 - (iv) the appropriate agency or agencies, and any other persons, by whom the support should be provided,
 - (b) a nomination of a school to be attended by the child or young person, and
 - (c) the name and other appropriate contact details of an officer of the authority from whom—
 - (i) in the case of a plan prepared for a child, the child's parent,
 - (ii) in the case of a plan prepared for a young person, the young person or, where the authority are satisfied that the young person is incapable, the young person's parent,can obtain advice and further information.
- (3) The references in subsection (2)(a) to educational objectives are to objectives set to secure that the child or young person benefits from school education (within the meaning of section 1(1)) provided or to be provided for the child or young person.
- (4) The Scottish Ministers may by regulations make further provision as to co-ordinated support plans including, in particular, provision as to—
- (a) the form of such plans,
 - (b) the information (in addition to that required by subsection (2)) to be contained in them,
 - (c) the times by which they are to be prepared and by which reviews carried out under section 8 are to be completed,
 - (d) the procedures to be followed in relation to the keeping, preparation, discontinuance and destruction of such plans,

- (e) the transfer of such plans when the children and young persons for whom they are prepared move from the area of one education authority to that of another,
- (f) the disclosure of such plans, and
- (g) such other matters in relation to such plans as they think necessary or expedient.

7 Co-ordinated support plans: further provision

- (1) Subsection (2) applies where an education authority propose—
 - (a) in pursuance of any provision of this Act, to establish whether any child or young person requires, or would require, a co-ordinated support plan,
 - (b) to review under section 8 any such plan prepared for any child or young person.
- (2) Where this subsection applies, the education authority must—
 - (a) before proceeding, inform the persons mentioned in subsection (3) of their proposal, and
 - (b) on establishing the matter referred to in subsection (1)(a) or, as the case may be, completing the review referred to in subsection (1)(b), inform those persons of—
 - (i) the outcome, and
 - (ii) the rights (if any) which they have under section 12(1) to make a reference to a Tribunal in connection with the outcome.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) in the case of a child, the child’s parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person’s parent,
 - (c) where the proposal arises as a result of a request referred to in section 5(1) made by the managers of an independent school or a grant-aided school, those managers.
- (4) Subsection (5) applies where an education authority—
 - (a) prepare a co-ordinated support plan for any child or young person under section 6(1), or
 - (b) amend any such plan following a review carried out under section 8.
- (5) Where this subsection applies, the education authority must—
 - (a) give a copy of the plan or amended plan—
 - (i) in the case of a child, to the child’s parent,
 - (ii) in the case of a young person, to that young person or, if the authority were satisfied for the purposes of subsection (3) that the young person is incapable, to the young person’s parent,
 - (b) ensure that additional support is provided by them for the child or young person in accordance with the plan or amended plan so far as they have power to do so,

- (c) seek to ensure that additional support is provided for the child or young person in accordance with the plan or amended plan by any appropriate agency or other person identified in the plan as one by whom such support should be provided,
 - (d) inform such persons as they consider appropriate, being persons who will be involved in the provision of additional support for the child or young person, of such matters contained in the plan or amended plan as they consider appropriate.
- (6) Where, under section 5, an education authority establish that a child or young person—
- (a) belonging to the area of the authority, but
 - (b) for whose school education the authority are not responsible,
- would require a co-ordinated support plan if the authority were so responsible, the authority must provide the persons mentioned in subsection (7) with such information and advice as to the additional support required by the child or young person as they consider appropriate.
- (7) The persons referred to in subsection (6) are—
- (a) in the case of a child, the child's parent,
 - (b) in the case of a young person, that young person or, if the authority were satisfied for the purposes of subsection (3) that the young person is incapable, the young person's parent,
 - (c) where the authority establish the matter referred to in subsection (6) pursuant to a request referred to in section 5(1) made by the managers of an independent school or a grant-aided school, those managers.

8 Reviews of co-ordinated support plans

- (1) Every education authority must keep under consideration the adequacy of any co-ordinated support plans prepared (and not discontinued) for any children or young persons belonging to their area.
- (2) The education authority must carry out a review of each such co-ordinated support plan—
 - (a) on the expiry of the period of 12 months beginning with date on which the plan was prepared, and
 - (b) thereafter, on the expiry of each successive period of 12 months beginning with the date on which the previous review (whether carried out under this subsection or subsection (3) or (4)) of the plan was completed.
- (3) An education authority may carry out a review of such a co-ordinated support plan before the expiry of a period referred to in subsection (2) only—
 - (a) pursuant to a request referred to in subsection (4), or
 - (b) if the authority consider it necessary or expedient to do so because of a significant change in the circumstances of the child or young person for whom the plan was prepared since the plan was prepared or, as the case may be, last reviewed.
- (4) Where the education authority receive from a person specified in subsection (5) a written request to carry out a review of any such co-ordinated support plan as is mentioned in subsection (1) before the expiry of a period referred to in subsection (2), the authority must carry out a review of the plan unless they consider the request to be unreasonable.

- (5) The persons referred to in subsection (4) are—
 - (a) in the case of a co-ordinated support plan prepared for a child, the child’s parent,
 - (b) in the case of a co-ordinated support plan prepared for a young person—
 - (i) that young person, or
 - (ii) where the education authority are satisfied that the young person is incapable, the young person’s parent.
- (6) A person making a request referred to in subsection (4) must give reasons for doing so.
- (7) In reviewing any co-ordinated support plan under this section, the education authority must, in accordance with the arrangements made by them under section 4(1), establish whether the child or young person for whom the plan was prepared still requires such a plan and—
 - (a) if so, continue the plan for the child or young person and make such amendments of it as the authority consider necessary or appropriate,
 - (b) if not, discontinue the plan.

Exchange of information

9 Duty to seek relevant advice and information

- (1) In establishing—
 - (a) in pursuance of any provision of this Act whether any child or young person—
 - (i) has additional support needs, or
 - (ii) requires, or would require, a co-ordinated support plan,
 - (b) in pursuance of a review carried out under section 8 whether any child or young person still requires a co-ordinated support plan,
 the education authority must comply with the duty described in subsection (2).
- (2) That duty is a duty to—
 - (a) seek and take account of relevant advice and information from such appropriate agencies and other persons as the education authority think appropriate,
 - (b) seek and take account of the views of—
 - (i) in the case of a child, the child (unless the authority are satisfied that the child is incapable) and the child’s parent, and
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person is incapable, the young person’s parent, and
 - (c) take account of any relevant advice or information provided to the authority by or on behalf of the child or young person concerned.
- (3) Advice or information is relevant for the purposes of subsection (2)(a) or (c) if it is likely to assist in establishing whether the child or young person concerned—
 - (a) has additional support needs,
 - (b) requires, or would require, a co-ordinated support plan, or
 - (c) still requires such a plan,
 (as the case may be).

10 Notification of appropriate agencies etc. on occurrence of certain events

- (1) Every education authority must—
 - (a) no later than 6 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible,is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 6 months before that date, as soon as reasonably practicable after they become so aware,provide the persons mentioned in subsection (2) with such information as the authority consider appropriate concerning the child or young person and the additional support needs of the child or young person.
- (2) The persons referred to in subsection (1) are—
 - (a) such appropriate agencies as the authority think fit, and
 - (b) where the child or young person is expected to receive further education on ceasing to receive school education, the person responsible for providing that further education.
- (3) Information is to be provided under subsection (1) only with the consent of—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) where the education authority are satisfied that the young person is incapable, the young person's parent.
- (4) The Scottish Ministers may by regulations make provision for the taking by education authorities of specified action in connection with the occurrence or likely occurrence of specified changes in the school education of children and young persons—
 - (a) having additional support needs, and
 - (b) for whose school education the authorities are responsible.
- (5) Regulations under subsection (4) may, in particular, make provision—
 - (a) for the disclosure by the authorities of specified information about such children or young persons—
 - (i) to specified persons or persons of specified descriptions,
 - (ii) subject to specified conditions,
 - (b) for such information to be disclosed, or any other action taken, by specified times.
- (6) In subsections (4) and (5), “specified” means specified in regulations under subsection (4).

*Appeals***11 Additional Support Needs Tribunals for Scotland**

- (1) Tribunals to be known as Additional Support Needs Tribunals for Scotland (each referred to in this Act as “a Tribunal”) are to be constituted in accordance with this Act to exercise the functions which are conferred on a Tribunal by virtue of this Act.
- (2) There is to be an officer to be known as the President of the Additional Support Needs Tribunals for Scotland (referred to in this Act as “the President”) who is to be an individual appointed by the Scottish Ministers.
- (3) The President has such functions as are conferred on the President by virtue of this Act.
- (4) Schedule 1 makes further provision about the constitution and procedures of the Tribunals, the appointment and functions of the President and administrative and other matters in connection with the Tribunals and the President.
- (5) The Scottish Ministers may by regulations make such further provision in connection with the Tribunals and the President as they think fit.

12 Appeal to Tribunal in relation to co-ordinated support plan

- (1) Any of the persons specified in subsection (2) may refer to a Tribunal any matter specified in subsection (3).
- (2) The persons referred to in subsection (1) are—
 - (a) the parent of a child for whose school education an education authority are responsible,
 - (b) a young person for whose school education an education authority are responsible,
 - (c) where the education authority were, for the purposes of section 7(3), satisfied that such a young person is incapable, the parent of the young person.
- (3) The matters referred to in subsection (1) are—
 - (a) a decision of the education authority that the child or young person concerned—
 - (i) requires a co-ordinated support plan, or
 - (ii) following a review carried out under section 8, still requires such a plan,
 - (b) a decision of the education authority that the child or young person concerned—
 - (i) does not require such a plan, or
 - (ii) following a review carried out under section 8, no longer requires such a plan,
 - (c) where it has been established that the child or young person concerned does require a co-ordinated support plan—
 - (i) failure by the education authority to prepare a plan by the time required by regulations made in pursuance of subsection (4)(c) of section 6,
 - (ii) any of the information contained in the plan by virtue of subsection (2)(a) or (b) of that section,
 - (iii) failure by the education authority to carry out a review of the plan by the time required by subsection (2) of section 8,
 - (iv) a decision of the education authority to refuse a request referred to in subsection (4) of that section,

13 Powers of Tribunal in relation to appeal

- (1) This section specifies the powers of a Tribunal in relation to a reference made under section 12.
- (2) Where the reference relates to a decision referred to in subsection (3)(a), (b) or (c)(iv) of that section, the Tribunal may—
 - (a) confirm the decision, or
 - (b) overturn the decision and direct the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may direct.
- (3) Where the reference relates to a failure referred to in subsection (3)(c)(i) or (iii) of that section, the Tribunal may direct the education authority to take such action to rectify the failure as the Tribunal considers appropriate by such time as the Tribunal may direct.
- (4) Where the reference relates to information referred to in subsection (3)(c)(ii) of that section, the Tribunal may—
 - (a) confirm the information, or
 - (b) direct the education authority to make such amendment of the information as the Tribunal considers appropriate.
- (5) In exercising its powers under this section, a Tribunal must take account, so far as relevant, of any guidance issued by the Scottish Ministers under section 19(1).

14 Appeal to Court of Session against Tribunal decision

- (1) Either of the persons specified in subsection (2) may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a reference made under section 12.
- (2) The persons referred to in subsection (1) are—
 - (a) the person who made the reference to the Tribunal,
 - (b) the education authority concerned.
- (3) Where the Court of Session allows an appeal under subsection (1) it may—
 - (a) remit the reference back to the Tribunal or to a differently constituted Tribunal to be considered again and give the Tribunal such directions about the consideration of the case as the Court considers appropriate,
 - (b) make such ancillary orders as it considers necessary or appropriate.

*Mediation***15 Mediation services**

- (1) 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—
 - (a) parents of children or young persons belonging to the area of the authority, or
 - (b) young persons belonging to that area,concerning the exercise by the authority of their functions under this Act in relation to such children or young persons.

- (2) Mediation services are independent for the purposes of subsection (1) if the person providing the services has no involvement in the exercise by or on behalf of the authority of their functions under this Act (apart from this section).
- (3) Arrangements made in pursuance of subsection (1) must not—
 - (a) require any parent or young person to refer any disagreement with the authority to the mediation services provided in accordance with the arrangements, or
 - (b) affect the entitlement of any parent or young person to appeal any matter to a Tribunal.

Placing requests

16 Placing requests

Schedule 2 makes provision about placing requests in relation to children and young persons having additional support needs.

Miscellaneous

17 Other agencies to help education authority

- (1) Where it appears to an education authority that an appropriate agency could, by doing certain things, help in the exercise of any of the education authority's functions under this Act, the authority may, specifying what those things are, request the help of that agency.
- (2) For the purposes of this Act, each of the following is an appropriate agency, namely—
 - (a) any other education authority,
 - (b) any local authority,
 - (c) any Health Board,
 - (d) any National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978 (c.29),
 - (e) any person, or a person of any description, specified for the purposes of this subsection in an order made by the Scottish Ministers.
- (3) An appropriate agency must comply with a request made to it under subsection (1) unless it considers that the request—
 - (a) is incompatible with its own statutory or other duties, or
 - (b) unduly prejudices the discharge of any of its functions.
- (4) The Scottish Ministers may by regulations provide that, where an appropriate agency is under a duty by virtue of subsection (3) to comply with a request to help an education authority in establishing whether any child or young person—
 - (a) has additional support needs,
 - (b) requires, or would require, a co-ordinated support plan, or
 - (c) still requires such a plan,

the agency must, subject to such exceptions as may be provided in the regulations, comply with the request within such period as is specified in the regulations.

18 Publication of information by education authority

- (1) Every education authority must—
 - (a) publish information with respect to the matters specified in subsection (2),
 - (b) keep that information under review, and
 - (c) where necessary or appropriate, revise the information and publish that revised information.
- (2) The information referred to in subsection (1)(a) is information as to—
 - (a) the authority's policy in relation to provision for additional support needs,
 - (b) the arrangements made by the authority in pursuance of section 4(1),
 - (c) the other opportunities available under this Act for the identification of children and young persons who—
 - (i) have additional support needs,
 - (ii) require, or would require, a co-ordinated support plan,
 - (d) the role of parents, children and young persons in the arrangements referred to in paragraph (b),
 - (e) the mediation services provided in pursuance of section 15(1),
 - (f) the officer or officers of the authority from whom—
 - (i) parents of children having additional support needs, and
 - (ii) young persons having such needs,can obtain advice and further information about provision for such needs.
- (3) The Scottish Ministers may by regulations make further provision as to the publication of information under subsection (1) including, in particular—
 - (a) provision amending subsection (2) so as to add further matters,
 - (b) provision as to—
 - (i) the time or times by which, and
 - (ii) the form and manner in which,the information is to be published.

19 Guidance and directions

- (1) The Scottish Ministers may issue guidance as to the exercise by education authorities of their functions under this Act.
- (2) Education authorities must, in exercising their functions under this Act, have regard to any guidance issued under this section.
- (3) The Scottish Ministers may give to education authorities directions (whether general or specific) as to the exercise of their functions under this Act.
- (4) Such directions may be given to all education authorities, to a particular authority or to authorities of a particular description.

*General***20 Interpretation**

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c.44),

“the 2000 Act” means the Standards in Scotland’s Schools etc. Act 2000 (asp 6),

“additional support” has the meaning given in section 1(3),

“additional support needs” is to be construed in accordance with section 1(1),

“appropriate agency” is to be construed in accordance with section 17(2),

“co-ordinated support plan” has the meaning given in section 2(1) and, in relation to any such plan which has been amended by virtue of any provision of this Act, references in this Act to a co-ordinated support plan are (except where the context otherwise requires) to the plan as amended,

“incapable” means incapable of forming or communicating any views by reason of mental illness or learning disability or of inability to communicate because of a physical disability, but a person is not to be treated as incapable by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“placing request” has the meaning given in paragraph 2(3) of schedule 2,

“prescribed pre-school child” means a child of any description prescribed in an order under section 1(1A) (children under school age in respect of whom education authorities must make provision for school education) of the 1980 Act,

“President” means the President of the Additional Support Needs Tribunals for Scotland appointed under section 11(2),

“primary education” and “secondary education” are to be construed in accordance with section 135(2) of the 1980 Act,

“Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under section 11(1).

(2) In this Act, the following expressions have the meanings given in section 135(1) of the 1980 Act—

“child”,

“education authority”,

“further education”,

“grant-aided school”,

“Health Board”,

“independent school”,

“managers”,

“parent”,

“public school”,

“school”,
“school age”,
“school education”,
“special school”,
“young person”.

- (3) In this Act, references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education—
- (a) in a school under the management of the education authority, or
 - (b) in pursuance of arrangements made or entered into by the authority.
- (4) In this Act, 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.

21 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

22 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 21 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act (except section 21 (where subsection (5) applies) and section 23) is subject to annulment in pursuance of a resolution of the Parliament.
- (5) No order under section 21 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

23 Commencement and short title

- (1) The provisions of this Act, other than sections 21 and 22 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2003.

SCHEDULE 1
(introduced by section 11)

ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Interpretation

- 1 In this schedule—
- “panel” means a panel referred to in paragraph 3(1),
 - “regulations” means regulations under section 11(5),
 - “Tribunal functions” means the functions which are conferred on a Tribunal by virtue of this Act,
 - “Tribunal member” means a member of a panel.

The President

- 2 (1) The Scottish Ministers must not appoint an individual under section 11(2) as President unless that individual has such qualifications, training and experience as are prescribed in regulations.
- (2) The President may serve as the convener of a Tribunal.
- (3) The President’s functions may, if the office of the President is vacant or the President is for any reason unable to act, be exercised by one of the members of the panel referred to in paragraph 3(1)(a) appointed for that purpose by the Scottish Ministers.
- (4) Regulations may make provision for the delegation by the President of any of the President’s functions to any member of that panel or any member of the staff provided under paragraph 9.
- (5) Paragraphs 3(2), 5, 6 and 7 of this schedule apply, with any necessary modifications, to the President as they apply to a Tribunal member.

The panels

- 3 (1) The Scottish Ministers must appoint—
- (a) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as the convener of a Tribunal, and
 - (b) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as a member of a Tribunal other than the convener.
- (2) An individual is disqualified from appointment, and from being, a Tribunal member if the individual is—
- (a) a member of the Scottish Parliament,
 - (b) a member of the Scottish Executive or a junior Scottish Minister, or
 - (c) of such other description as may be prescribed in regulations.

Constitution of Tribunals

- 4 (1) The President must from time to time constitute such number of Tribunals as the President thinks necessary to exercise Tribunal functions.
- (2) A Tribunal constituted under sub-paragraph (1) must consist of—
- (a) either—
 - (i) the President, or
 - (ii) one member selected by the President from the panel referred to in paragraph 3(1)(a),who is to act as the convener of the Tribunal, and
 - (b) two other members selected by the President from the panel referred to in paragraph 3(1)(b).

Terms of office

- 5 Each Tribunal member—
- (a) holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment,
 - (b) may at any time resign office by giving notice in writing to the Scottish Ministers,
 - (c) vacates office on the day on which the member attains the age of 70,
 - (d) vacates office on becoming disqualified from being a Tribunal member under paragraph 3(2),
 - (e) in other respects holds office in accordance with the terms of the member's instrument of appointment.

Removal from office and re-appointment

- 6 Regulations may make provision as to—
- (a) the removal from office of a Tribunal member,
 - (b) the re-appointment of any Tribunal member whose period of office expires under paragraph 5(a).

Allowances for Tribunal members

- 7 The Scottish Ministers may pay to a Tribunal member such allowances as they may determine.

Administration of Tribunal functions

- 8 (1) The Tribunals constituted under paragraph 4(1) are to sit at such times and in such places as the President may determine.
- (2) The President must ensure that Tribunal functions are exercised by those Tribunals efficiently and effectively.
- (3) The President may—
- (a) give such directions, and

(b) issue such guidance,
as respects the administration of the Tribunals, or any one of them, as appear to the President to be necessary or expedient for the purpose of ensuring that Tribunal functions are exercised efficiently and effectively.

Staff, property and services

9 The Scottish Ministers are to provide the President and the Tribunals, or ensure that they are provided, with such property, staff and services as the Scottish Ministers consider are required for the exercise of the functions of the President and Tribunal functions.

Finance

10 The Scottish Ministers are to pay any expenses reasonably incurred by the President or a Tribunal in the exercise of the President's functions or, as the case may be, Tribunal functions.

Rules of procedure

11 The Scottish Ministers may make rules as to the practice and procedure of the Tribunals.

Practice directions

12 The President may give directions as to the practice and procedure to be followed by Tribunals in relation to any matter.

Evidence

- 13 (1) A Tribunal may by citation require any person—
- (a) to attend proceedings of the Tribunal, at such time and place as is specified in the citation, for the purposes of giving evidence,
 - (b) to produce any document in the custody, or under the control of, that person.
- (2) A Tribunal may administer oaths to persons giving evidence.
- (3) A person is not obliged by virtue of this paragraph to answer any question or produce any document which that person would be entitled to refuse to answer or produce in civil proceedings before the Court of Session.
- (4) If a person on whom a citation under sub-paragraph (1) has been served—
- (a) fails to attend the Tribunal proceedings as required by the citation,
 - (b) refuses or fails, whilst attending proceedings as so required, to answer any question,
 - (c) deliberately alters, conceals or destroys any document which that person is required by the citation to produce,
 - (d) refuses or fails to produce any such document,
- that person is guilty of an offence.
- (5) It is a defence for a person charged with an offence under sub-paragraph (4)(a), (b) or (d) to show that the person had a reasonable excuse for the refusal or failure.

- (6) A person who commits an offence under sub-paragraph (4) is liable—
 - (a) on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

Decisions of a Tribunal

- 14 (1) A decision of a Tribunal—
 - (a) may be reached by majority, and
 - (b) must be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (2) The Tribunal must—
 - (a) inform each party of its decision, and
 - (b) send a copy of the document mentioned in sub-paragraph (1)(b) to each party as soon as reasonably practicable after it is prepared.

Annual report

- 15 (1) The President must, in respect of each reporting year, prepare a written report as to the exercise of Tribunal functions during that year.
- (2) The President must submit each report prepared under sub-paragraph (1), as soon as practicable after the end of the reporting year to which it relates, to the Scottish Ministers.
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2).
- (4) A reporting year for the purposes of this paragraph is—
 - (a) the period beginning with the date on which the first President is appointed and ending with 31st March next following that date, and
 - (b) each successive period of 12 months ending with 31st March.

Disclosure of information

- 16 The President must, at such times and in respect of such periods as regulations may specify, provide to—
 - (a) the Scottish Ministers, and
 - (b) such persons as the regulations may specify,such information relating to the exercise of Tribunal functions as is specified in the regulations.

SCHEDULE 2
(introduced by section 16)

CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

Introductory

- 1 Sections 28A, 28C, 28E, 28F and 28G of the 1980 Act (which make provision as to the making of placing requests and appeals in relation to the refusal of such requests) do not apply in relation to children and young persons having additional support needs and instead the provisions of this schedule apply in relation to such children and young persons.

Duty to comply with placing requests

- 2 (1) Where the parent of a child having additional support needs makes a written request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.
- (2) Where the parent of a child having additional support needs makes a written request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being—
- (a) a special school the managers of which are willing to admit the child,
 - (b) a school in England and Wales or in Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or
 - (c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,
- it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school.
- (3) A request made under sub-paragraph (1) or (2) is referred to in this Act as a "placing request" and the school specified in it is referred to in this schedule as the "specified school".
- (4) Where a placing request relates to 2 or more schools being—
- (a) schools under the management of the education authority to whom it is made, or
 - (b) schools mentioned in sub-paragraph (2)(a), (b) or (c) the managers of which are willing to admit the child in respect of whom the request is made,
- the duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) applies in relation to the first mentioned such school, which is to be treated for the purposes of this schedule as the specified school.

Circumstances in which duty does not apply

- 3 (1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply—
- (a) if placing the child in the specified school would—

- (i) make it necessary for the authority to take an additional teacher into employment,
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school,
 - (iii) be seriously detrimental to the continuity of the child's education,
 - (iv) be likely to be seriously detrimental to order and discipline in the school,
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school,
 - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at the school, or
 - (vii) though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers,
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child,
 - (c) if the education authority have already required the child to discontinue attendance at the specified school,
 - (d) if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,
 - (e) if the specified school is a single sex school (within the meaning of section 26 of the Sex Discrimination Act 1975 (c.65)) and the child is not of the sex admitted or taken (under that section) to be admitted to the school, or
 - (f) if all of the following conditions apply, namely—
 - (i) the specified school is not a public school,
 - (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
 - (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
 - (iv) the authority have offered to place the child in the school referred to in paragraph (ii).
- (2) An education authority may place a child in the specified school notwithstanding sub-paragraph (1)(a) to (e).
 - (3) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school.

- (4) Nothing in sub-paragraph (3) prevents an education authority from placing a child in the specified school.
- (5) In sub-paragraph (3), “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as the Scottish Ministers may by regulations prescribe) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1st August to which the placing request relates.
- (6) In sub-paragraphs (3) and (5) “catchment area”, in relation to a school, means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.

Placing requests: further provision

- 4 (1) An education authority must inform a parent in writing of their decision on a placing request made by the parent and, where they decide to refuse it, must give the parent written reasons for their decision and inform the parent of the parent’s right under paragraph 5 to refer the decision to an appeal committee.
- (2) On complying with a placing request relating to a child for whom a co-ordinated support plan has been prepared (and not discontinued), an education authority must modify accordingly the nomination in the plan of a school to be attended by the child.
- (3) The Scottish Ministers may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with sub-paragraph (1) within such period or before such date as may be prescribed in the regulations.

Reference to appeal committee of refusal of placing request

- 5 (1) A parent who has made a placing request may refer a decision of the education authority refusing the request to an appeal committee set up under section 28D of the 1980 Act.
- (2) Sub-paragraph (1) does not apply in relation to a placing request made in respect of a child or young person for whom a co-ordinated support plan has been prepared (and not discontinued).
- (3) Where a reference under this paragraph has been made in respect of a child, no further such reference in respect of the child is competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (4) A reference under this paragraph must be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority.
- (5) For the purposes of sub-paragraph (4), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
 - (a) on the day after the date on which it was posted, or
 - (b) if posted on a Friday or Saturday, on the Monday next following.
- (6) The committee may, on good cause being shown, hear such a reference notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4).

References to appeal committees: supplementary provisions

- 6 (1) An appeal committee may, on a reference made to them under paragraph 5, confirm the education authority's decision if they are satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances it is appropriate to do so,
- but otherwise must refuse to confirm the authority's decision.
- (2) Where they so refuse, the appeal committee shall require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school,
- and the authority must comply with that requirement.
- (3) An appeal committee must notify their decision under this paragraph and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they must inform the parent of the right of appeal to the sheriff under paragraph 7.

Appeal to sheriff from appeal committee

- 7 (1) A parent who has made a reference to an appeal committee under paragraph 5 may appeal to the sheriff against the decision of the appeal committee on that reference.
- (2) The education authority may, but the appeal committee may not, be a party to an appeal under this paragraph.
- (3) An appeal under this paragraph—
- (a) is to be made by way of summary application,
 - (b) must be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee, and
 - (c) is to be heard in chambers.
- (4) For the purposes of sub-paragraph (3)(b), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
- (a) on the day after the date on which it was posted, or
 - (b) if posted on a Friday or Saturday, on the Monday next following.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (3)(b).
- (6) The sheriff may, on an appeal made under this paragraph, confirm the education authority's decision if satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances, it is appropriate to do,
- but otherwise must refuse to confirm the authority's decision.

- (7) Where the sheriff so refuses, the sheriff must require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school,
- and the authority must comply with that requirement.
- (8) The sheriff may make such order as to the expenses of an appeal under this paragraph as the sheriff thinks fit.
- (9) The judgment of the sheriff on an appeal under this paragraph is final.

Young persons having additional support needs

- 8 (1) Paragraphs 2 to 7 apply to a young person having additional support needs as they apply to a child having such needs.
- (2) For the purposes of the application of those provisions to a young person having additional support needs references in the provisions to the parent of a child having additional support needs (as well as references to the child) are to be construed as references to the young person.
- (3) Sub-paragraph (2) does not apply in a case where the education authority are satisfied that the young person is incapable.

Consequential modifications

- 9 In section 28D(1) of the 1980 Act—
- (a) the words “and 63” are omitted, and
 - (b) after “Act” insert “and paragraph 5 of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2003 (asp 00)”.

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