EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Education (Additional Support for Learning) (Scotland) Bill introduced in the Scottish Parliament on 28 October 2003:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 11–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill replaces the system for assessment and recording of children and young people with special educational needs, including the Records of Needs process, established by the Education (Scotland) Act 1980 (“the 1980 Act”) as amended by the Education (Scotland) Act 1981 and subsequent legislation. A new system for identifying and addressing the additional support needs of children and young people who face a barrier to learning is provided for in the Bill. (References to young people are to those aged 16 or over, still receiving school education.)

5. The Bill encompasses any need that requires additional support in order for the child or young person to learn. It places duties on education authorities (in Scotland these are the local authorities) and requires other bodies and organisations to help. In providing school education, education authorities will be required to identify and then make adequate and efficient provision for the additional support needs of children and young people. Parents will be able to request an education authority to establish whether their child has additional support needs and whether they require a co-ordinated support plan.

6. A co-ordinated support plan will be prepared for those with enduring complex or multiple needs that require support from outwith education services. The plan will focus on supporting the child to achieve learning outcomes and will assist the co-ordination of services from a range of providers. New Additional Support Needs Tribunals will be established to hear appeals relating to co-ordinated support plans. Mediation services will be made available to assist in avoiding disagreements between parents and education authorities or schools and authorities may be required to put in place arrangements for dispute resolution.

Section 1 – Additional support needs

7. This section defines what is meant by the term “additional support needs” and describes its context. The need for additional support is related to the ability to benefit from school education. Support is considered as additional if it is provision that is different in some way from that generally provided for children of the same age in pre-school centres and schools.
Section 2 – Co-ordinated support plans

8. This section specifies who will be eligible for a co-ordinated support plan. A child or young person requires a co-ordinated support plan if they have enduring additional support needs that have a significant adverse effect on their education and that require support from services outside education.

9. The duty to provide and maintain a co-ordinated support plan only applies for those children and young people for whom the education authority is responsible for providing school education. This means pupils at local authority schools and pre-school centres, independent special schools where the education authority are meeting the fees, independent pre-school centres that are in partnership with the authority, or places other than schools where the authority are providing education.

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

10. This section specifies the general duties on education authorities to take account of and to make adequate and efficient provision for the additional support needs of children and young people when providing school education. In doing this the education authority cannot act outwith their legal competence nor can their actions result in expenditure of public funds that would generally be considered to be unreasonable. Education authorities also must have in place arrangements for ensuring that the additional support being provided to any child or young person remains adequate for his or her individual needs.

11. Subsection (4) enables education authorities to assist those children and young people with additional support needs for whom they are not responsible for providing school education. This means children and young people being educated at home or at an independent school or pre-school centre under arrangements made by their parents can be helped by an education authority, but the authority are not under a duty to do so. It also includes children under age 3.

Section 4 – Children and young persons for whom education authority are responsible

12. This section places duties on each education authority relating to the children and young people for whom school education is being provided by them, either directly or indirectly. An education authority must have in place arrangements for identifying those with additional support needs and what their additional support needs are, and for determining who may require a co-ordinated support plan.

13. Subsection (2) enables parents, or young persons, to request that an education authority establish whether their child, or they as a young person, have additional support needs. They can also request the authority to establish if the child or young person needs a co-ordinated support plan. Reasons for the request need to be given and education authorities will have to comply with the request unless they consider it to be unreasonable. If they do consider the request to be unreasonable then they must inform the person making the request of the decision and give their reasons. If they do comply with the request then they must inform that person of the outcome.

14. Subsections (7) and (8) provide for other circumstances where it is brought to the attention of the education authority that a child or young person may have additional support
needs or may require a co-ordinated support plan. Where this happens, the education authority must establish if this is so or not, unless they consider it unreasonable to do so. The circumstances may include where a person involved with the child alerts the education authority, for example, any member of school or out-of-school club staff or someone in the child’s community, such as a youth worker or sports coach.

**Section 5 – Other children and young persons**

15. This section enables a request to be made in relation to children and young people for whom the education authority are not responsible for providing school education. Children and young people not being educated in the public system are not eligible for a co-ordinated support plan, but the education authority are given powers to be able to help them where they may have additional support needs. Parents of these children, or young persons themselves, may request the education authority to establish whether their child, or they as a young person, have additional support needs. They may also request the authority to establish whether they would, if they were receiving school education from the education authority, require a co-ordinated support plan. The managers of independent schools and grant-aided schools may also make such a request about one of their pupils requiring a plan. Where someone, other than parents or managers of independent schools, draws it to the attention of an education authority that a child or young person may have additional support needs, the authority may take action to establish that fact.

16. Education authorities are not under a duty to comply with any request, but have discretion to do so. If they do comply, and the child or young person does have additional support needs or would require a co-ordinated support plan, then the education authority must provide appropriate advice and information to the parent or young person or the managers of the independent or grant-aided school. Education authorities are not under any obligation to make provision for supporting the learning of the child or young person who is not in the public schooling system, but they are not prevented from doing so.

**Section 6 – Assessments and examinations**

17. This section provides a right to request a specific type of assessment or examination for additional support needs. This means that when parents, or young people, request that the education authority establish whether their child, or they as a young person, have additional support needs they can also specify if they consider a certain type of assessment is necessary, giving their reasons for this. This applies too when requesting the authority to establish if a co-ordinated support plan is required or requesting an early review of a co-ordinated support plan. This is not a right to request an assessment by a specific individual.

**Section 7 – Duty to prepare co-ordinated support plans**

18. This section specifies the duties relating to co-ordinated support plans. Where it is established that a child or young person does require a co-ordinated support plan, and the education authority are responsible for their school education, then the authority must prepare a plan. The plan must record:
   - the reasons for the individual’s need for additional support,
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- the planned outcomes to be achieved that will ensure that the individual benefits from school education,
- the additional support required to achieve these outcomes and who will provide that support,
- the school the individual is to attend,
- the details of the nominated person who will co-ordinate the plan, and
- contact details of a named officer from whom information and advice may be sought.

19. The nominated co-ordinator and the contact person can be either one person or two separate people. The co-ordinator does not need to be employed by the education authority but the contact person does.

20. Subsection (4) provides for the Scottish Ministers to make further provision in regulations about co-ordinated support plans, including provision about their form, content and the timescales and procedures attaching to managing those plans. It is intended that these regulations will, among other things, establish a template to be used by education authorities for co-ordinated support plans.

Section 8 – Reviews of co-ordinated support plans

21. This section provides for reviews of co-ordinated support plans. Education authorities have a duty to keep under consideration the adequacy of each co-ordinated support plan. The education authority must therefore review each plan every 12 months. It may be reviewed earlier if there has been a significant change in the circumstances of the child or young person, for example if their needs change or if progress is greater than expected. This will ensure that the information contained in the plan remains up-to-date and relevant, especially the educational outcomes and the support needed to achieve these.

22. Parents, or a young person, may also request the education authority to review the plan at an earlier interval than 12 months. The education authority must comply with such a request unless they consider the request to be unreasonable, in which case they must inform the person of that decision and their reasons.

Section 9 – Co-ordinated support plans: further provision

23. This section describes the procedures to be followed by education authorities in preparing or amending co-ordinated support plans. If consideration is being given as to whether a child or young person may require a co-ordinated support plan, or the plan needs to be reviewed, then, before proceeding, the education authority must inform the parent or young person (or managers of an independent or grant-aided school, if applicable) of their intentions. On establishing whether the child or young person requires a co-ordinated support plan, or on completion of the review of the plan, they must also inform the parent or young person of the outcome and of any rights they may have to appeal to an Additional Support Needs Tribunal.

24. When a plan has been prepared, or amended, the education authority must provide a copy of the plan to the parent or young person and then take steps to ensure that the plan is
implemented and the support co-ordinated. To facilitate this, the education authority must also provide information about the contents of the plan to those involved in providing the support that is set out in the plan. This is likely to be those in other agencies, such as health professionals, or others in the local authority such as social workers.

Section 10 – Duties to seek and take account of views, advice and information

25. This section places duties on education authorities to seek and take account of advice and information or views from others, including other agencies and the child or young person and their parents. This should be done when the education authority are establishing an individual’s additional support needs or whether a co-ordinated support plan is needed or when the need for continuing such a plan is being reviewed. Those who should be approached by the education authority will depend on the individual child or young person and their needs and whom the education authority consider appropriate. It may be necessary to seek advice and information from elsewhere in the public sector, from health professionals for example, or from a voluntary organisation that may have been supporting the child.

26. Subsections (5) and (6) provide specifically for the period prior to a child or young person with additional support needs leaving school. Education authorities must approach, for information, any other agency that they consider is likely to be involved with the child or young person in the future once they have left school and to take account of any provision other than education that the local authority are likely to provide on the child or young person ceasing school education. This should be done at least 12 months before the child or young person is expected to leave school, so it could be done when the child is 15 years old or even earlier.

Section 11 – Provision of information etc. on occurrence of certain events

27. This section places a duty on education authorities to provide information about any child or young person with additional support needs to other agencies where the authority consider that the other agency will have a role in supporting the child or young person once they have left school education. The education authority must also consider what provision, if any, other than education the local authority are likely to provide to the child or young person on their ceasing school education. The section requires these things to be done at least 6 months before the child or young person leaves school, but they could be done much earlier. Information to other agencies may only be passed on with the consent of the child’s parent or the young person.

28. Subsections (6) and (7) enable the Scottish Ministers to make provision, by regulations, for action when other changes in school education may occur and when information about a child’s or young person’s additional support needs should be shared with others. It is intended that these regulations will cover moves from one school to another, from one stage of schooling to another, and when arrangements in schooling change, for example a return to school after a long stay in hospital.

Section 12 – Additional Support Needs Tribunals for Scotland

29. This section provides for the establishment of the new Additional Support Needs Tribunals for Scotland. Schedule 1 specifies provision about the constitution and procedures of the Tribunals and other matters. The Scottish Ministers will appoint a President to head up the
Tribunals and may, by regulations, make further provision in connection with the Tribunals and the President.

**Section 13 – References to Tribunal in relation to co-ordinated support plan**

30. This section specifies the references that may be made to a Tribunal. If an education authority are responsible for providing school education for the child or young person, then the parent of the child or young person (if incapable), or the young person themselves, may make a reference to a Tribunal.

31. Subsection (3) lists the matters that can be referred to a Tribunal. These are:

- decision of an education authority on whether or not a co-ordinated support plan is required or continues to be required,
- failure by an education authority to prepare a co-ordinated support plan in the required time,
- decisions of the education authority about information contained in a co-ordinated support plan relating to:
  - the reasons for the individual’s need for additional support,
  - the planned outcomes to be achieved,
  - the additional support required to achieve the planned outcomes,
  - who will provide the additional support,
- failure by an education authority to carry out or to complete a review of the plan by the required time,
- decision of an education authority to refuse to carry out an early review of the plan,
- decision by an education authority to refuse a placing request to a specified school, in particular circumstances.

32. Where information in the co-ordinated support plan is referred to a Tribunal, there cannot be a further reference on the same information until an updated plan is issued following its next review. The information being referred does not need to have been changed from the previous version of the plan in order to be appealed so long as the plan has been reviewed.

33. References relating to refusal of a placing request can be made to a Tribunal if, at the time the request was refused, a co-ordinated support plan has been prepared for the child or young person concerned, or a plan is about to be prepared or if a reference has been made to the Tribunal over the decision that a plan is not required. Referrals on refusal of placing requests can only be made once in each 12 months unless the plan has been reviewed in that period, or a Tribunal has ordered a plan to be amended or prepared.

**Section 14 – Powers of Tribunal in relation to reference**

34. This section specifies the powers that a Tribunal has in relation to references. The Tribunal may either confirm the authority’s decision that a co-ordinated support plan is needed, or not needed, or overturn the decision and direct the authority to take specific action within a
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specified time. This also applies where the education authority have decided not to comply with a request to review a co-ordinated support plan earlier than the required 12 month period.

35. Where a reference relates to the education authority’s failure to prepare a plan or their failure to conduct or complete a review of the plan within the time required, then the Tribunal can require the authority to rectify this. Where a reference relates to information in a plan, the Tribunal may confirm the information or direct the education authority to amend the information.

36. Where a reference relates to an education authority’s refusal of a placing request, as described in section 13, then the Tribunal must consider the statutory grounds of refusal and the appropriateness of the refusal for the individual child or young person. The statutory grounds of refusal are listed in schedule 2. The Tribunal may confirm the decision to refuse the placing request, or they may direct the education authority to amend the co-ordinated support plan and place the child in the school specified in the placing request.

37. In considering a reference relating to obtaining a co-ordinated support plan, if the Tribunal confirms the education authority’s decision that the child or young person does not require a plan, then the Tribunal may refer any related appeal on a refused placing request to the education authority’s appeal committee (set up under section 28D of the 1980 Act). If the Tribunal does this, then the education authority’s appeal committee will consider the appeal on the refused placing request and either confirm or overturn the education authority’s decision, as they will do for all other appeals on refused placing requests not connected with a co-ordinated support plan.

38. In determining all its decisions and directions, Tribunals must take account of any relevant code of practice issued by the Scottish Ministers to education authorities about how authorities should exercise their functions under this Bill.

Section 15 – Appeal to Court of Session against Tribunal decision

39. This section enables any person who has made a reference to a Tribunal, and the relevant education authority, to subsequently appeal the decision of the Tribunal to the Court of Session. Such an appeal to the Court of Session may only be made on a point of law.

Section 16 – Mediation services

40. This section places a duty on education authorities to arrange for independent mediation services to be provided, free of charge, to parents of children or young persons in the education authority area. Mediation services will seek to avoid or resolve disagreements between the authority and parents or young persons concerning functions under the Bill. Subsection (2) defines mediation services as being independent if those providing the service have no involvement in the authority’s exercise of any other of its functions under this Bill. This will allow education authorities to employ mediators directly, for example where there is a wider local authority or public sector mediation service, but any such mediators cannot be involved in any way in providing education services or decisions relating to education provision.
41. Subsection (3) provides that parents or young persons are not compelled to refer disagreements to a mediation service and that their entitlement to make a reference to a Tribunal is not affected by their use or otherwise of mediation.

Section 17 – Dispute resolution

42. This section enables the Scottish Ministers, by regulations, to require education authorities to put in place arrangements to resolve disputes between the authority and any parents or young persons in the local authority area. Regulations will prescribe which disputes relating to particular functions of the authority under the Bill will be subject to dispute resolution.

Section 18 – Placing requests

43. This section refers to schedule 2 and provision on making requests and appealing decisions relating to placements in specified schools for children and young people with additional support needs.

Section 19 – Other agencies etc. to help in exercise of functions under this Act

44. This section places duties on other agencies to help an education authority in its functions under this Bill if requested to do so. Appropriate agencies are defined as any other local authority, any Health Board and any other person that the Scottish Ministers may specify.

45. Agencies requested to help must comply with the request unless to do so would be incompatible with their own statutory or other duties or would unduly prejudice their ability to carry out its functions. The Scottish Ministers will be able, by regulations, to specify the time periods within which other agencies should comply with requests.

46. Subsection (5) places a duty on education authorities to exercise their non-education functions (for example, social work services or housing) if they consider that would help in the exercise of their functions under the Bill. However, they need not exercise those functions if it would be incompatible with their statutory or other duties or would prejudice the discharge of any of their functions.

Section 20 – Power to prescribe standards etc. for special schools

47. This section enables the Scottish Ministers to make regulations which set standards and make requirements of special schools. It re-enacts, with changes to reflect the new concept of additional support needs, section 65F of the 1980 Act.

Section 21 – Attendance at establishments outwith the United Kingdom

48. This section provides education authorities with a discretionary power to support a child or young person with additional support needs to attend a school or other appropriate establishment outside the United Kingdom. It re-enacts, with changes to reflect the new concept of additional support needs, section 65G of the 1980 Act.
Section 22 – Publication of information by education authority

49. This section places duties on education authorities to publish and keep up to date certain information. Subsection (2) lists the information that should be published. Subsection (3) enables the Scottish Ministers, by regulations, to add further matters to the requirements relating to publishing information.

Section 23 – Code of practice and directions

50. This section requires the Scottish Ministers to issue a code of practice on the exercise by education authorities of their functions under this Bill. Subsection (2) lists topics on which a code of practice may, in particular, include guidance. There is a duty placed on education authorities to have regard to any such code. Subsections (4) to (6) enable the Scottish Ministers to give directions to all, or any, education authorities about the exercise of authorities’ functions under this Bill and education authorities are under a duty to comply with such directions.

Section 24 – Interpretation

51. This section defines terms used throughout the Bill and is self explanatory. In the Bill young people are given the same rights as parents of children, unless they are considered to be incapable, and the definition of incapable is given in this section. Children or young people for whose school education an education authority are responsible, are those who are, or are about to be, provided with school education either in a school managed by the authority or under arrangements made by the authority. This also includes pre-school centres. The section also provides a new definition of special school, referring to provision suited to the additional support needs of children and young persons, rather than recorded children as in the previous definition.

52. Subsection (5) allows for the use of electronic means in providing anything in writing.

Section 25 – Ancillary provision

53. This section enables the Scottish Ministers to make further provision, by order, which is consequent upon the Bill.

Section 26 – Modification of enactments

54. This section refers to schedule 3 where the modifications of enactments in consequence of the Bill are listed.

Section 27 – Orders, regulations and rules

55. This section makes general provision about orders, regulations and rules made under the Bill by the Scottish Ministers. They will be made by statutory instrument.

Section 28 – Commencement and short title

56. This section allows the Scottish Ministers to set different dates to commence different provisions of the Bill by order, other than sections 24, 25 and 27 which will come into force on Royal Assent.
Schedule 1 – Additional Support Needs Tribunals for Scotland

57. This schedule contains provisions for and arrangements under which the new Additional Support Needs Tribunals for Scotland will operate. The Tribunals will be supervised by the Scottish Committee of the Council on Tribunals (schedule 3, paragraph 8 modifies the Tribunals and Inquiries Act 1992).

58. The Scottish Ministers will appoint a President of the Tribunals and two panels of members. One panel will be of individuals who may act as convener of a Tribunal and one panel will be of individuals who may act only as members. The President may be a convener of any Tribunal. Each Tribunal must consist of a convener and two members. The qualifications, training and experience of Tribunal members will be prescribed. It is intended that conveners will be legally qualified and members will have expertise or experience in additional support for learning. Tribunal members may serve for 5 years and may be re-appointed.

59. The President must ensure that Tribunal functions are exercised efficiently and effectively and can issue directions on the practice and procedure of Tribunals. It is intended that Tribunals will be held in locations across Scotland. The Scottish Ministers may make rules as to the practice and procedure for Tribunals. These will set out operational matters for the Tribunals and paragraph 11 lists the particular areas that may be included in the rules.

60. It is intended that each party to the appeal will have an opportunity to present any relevant evidence in support of their case to the Tribunal, including documents and evidence from witnesses at the hearing. Tribunals will have the power to commission expert reports, though this is not expected to be normal practice. Tribunals will also be able to hold hearings in private and impose reporting restrictions. Witnesses may be cited by Tribunals and may be required to provide documents. A decision by a Tribunal will be by a majority and must be recorded, with a full statement of the facts and the reasons for the decision. This must be copied to each of the parties.

61. The President is required to submit an annual report to the Scottish Ministers, which shall be laid before the Scottish Parliament, and may also be required to provide Ministers with information about the discharge of Tribunal functions.

Schedule 2 – Children and young persons with additional support needs: placing requests

62. This schedule is distinct from the provision relating to placing requests and appeals in the 1980 Act (sections 28A, 28C, 28E to 28G) and relates to placing requests for children or young people with additional support needs. The schedule starts with a duty on the education authority to comply with a parent’s (or young person’s) request to place the child or young person with additional support needs in a specified school. The request can be for a special school (public or independent) or a mainstream school. If the specified school is an independent special school, in Scotland or elsewhere in the United Kingdom, the education authority must meet the fees and other costs. Paragraph 3 sets out the circumstances where the duty to comply is restricted.

63. These circumstances include the requirement in section 15 of the Standards in Scotland’s Schools etc. Act 2000. That section provides for an assumption to educate in a mainstream school unless this would not be suited to the ability or aptitude of the child or young person; or it
would be incompatible with providing efficient education to the other children at the mainstream school; or it would result in unreasonable public expenditure. A further ground of refusal applies where the request is for an independent special school, but the education authority can make provision for the child in another school and this school is more suitable, including with regard to cost, than the specified school.

64. Where an education authority do not comply with a request, parents or a young person may appeal the decision to the education authority’s appeal committee (established under section 28D of the 1980 Act). They may then appeal the decision of the appeal committee to the sheriff.

65. Where a child or young person has a co-ordinated support plan, appeals regarding placing requests will be referred to the new Additional Support Needs Tribunal. No such appeal will be able to be made to an education authority appeal committee. Where an appeal on a refused placing request has been made to the appeal committee or the sheriff and before it has been disposed of a reference is made to a Tribunal over the decision that a co-ordinated support plan is not required, the placing request appeal must be transferred to the Tribunal for disposal.

Schedule 3 – Modification of enactments

66. This schedule lists all the modifications to existing legislation as a consequence of this Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

67. The Bill introduces a new system for identifying and addressing the additional support needs of children and young people in school education. This replaces the current system for recording and assessing children with special educational needs. The term additional support needs encompasses a wider range of learning needs than special educational needs. Pupils with additional support needs already exist and many are having their learning needs identified and met. It is intended that the new system will bring together the variety of assessment and intervention arrangements under a single framework that takes account of all types of barriers to learning that pupils may have.

68. The Bill replaces and introduces new duties on education authorities, and other public bodies, to support the learning of pupils with additional support needs. It provides parents and children and young people with rights to be involved and have their views taken into account. The Bill also makes provision for mediation services and for new appeals Tribunals.

69. The Scottish Executive recognised that the costs attaching to the new system would have to be offset against cost savings of ending the current system and this would be across education, social work and health sectors. A working group was set up to help advise on estimating the financial implications of the Bill, comprising representatives from the Convention of Scottish
Local Authorities, City of Edinburgh Council, South Lanarkshire Council, Fife Council and East Lothian Council. This was further supported by a group of health representatives from Greater Glasgow Health Board, North Glasgow University Hospital Trust and Forth Valley Health Board. Information has also been used from research (of 10 local authorities done in 2002 by an independent consultant) into the resources attaching to the current system, as well as information from those local and health authorities (and others) involved in the working groups.

70. All costs are in current (2003/04) prices.

Costs on the Scottish Administration

71. The main on-going direct cost to the Scottish Executive associated with the Bill will be the Additional Support Needs Tribunals. Costs incurred under the current Record of Needs appeals system, which is to the Scottish Ministers, will end.

72. The new Additional Support Needs Tribunals will hear appeals relating to co-ordinated support plans. The Scottish Executive will directly fund the Tribunals. It is estimated that there will be around 300 appeals per annum in Scotland, based on the number of cases the SEN and Disability Tribunal in England and Wales has, calculated on the population proportion. The average cost per case in England and Wales, for 2001/02 was £1,632. The cost per case is likely to be greater in Scotland because fixed overheads will be spread over a smaller number of cases and because of rurality. The range could be from £1,800 to £3,000 per case. Using the mid-point of £2,400 as our best estimate, running costs of the Tribunals would be £720,000 per annum. Adjusting for inflation in the intervening period gives an estimate of £760,000 per annum in 2003/04 prices. This best-estimate of annual running costs is shown in table 1 below. This figure includes staffing, members’ fees and expenses, training, travel, accommodation and central service overheads.

73. The cost of setting up the Tribunals is estimated at £150,000, covering recruitment, training, equipment, publicity and accommodation. This would be a one-off cost.

74. Legal aid costs will arise from any parents (who are eligible for legal aid) seeking legal advice prior to an appeal hearing (legal aid will not be available for legal representation at a Tribunal hearing). Legal aid costs could also arise for any cases taken to the Court of Session (either on a point of law or as a judicial review). Estimated costs for legal aid are £70,000-£100,000 per annum. The mid-point, best-estimate of £85,000 is shown in table 1 below.

75. Under the current appeals system for Records of Needs, officials from the Scottish Executive and Her Majesty’s Inspectorate of Education are involved in considering each case, along with the Scottish Ministers. The annual cost of the input from officials is estimated at £75,000 per annum based on around 30 appeals a year. With the end of the current appeals system this will be a saving to the Scottish Executive.

76. Supporting implementation of the Bill and the changeover from the current system to the new system will incur costs to the Scottish Executive. Guidance and manuals of good practice will require to be re-written and promotional work undertaken to raise awareness and understanding of the new system. It is estimated that this will be a one-off cost in the region of £300,000.
77. There may also be incidental costs to the Scottish Executive to monitor and evaluate the impact of the Bill. This one-off cost is estimated at around £80,000. Her Majesty’s Inspectorate of Education will continue its monitoring role and this may be complemented with occasional research projects. Changes will be required to statistical databases, but these will be minor.

Costs on local authorities

78. The Bill places duties on local authorities as education authorities and, to a lesser extent, as social work authorities. Arrangements must be put in place to identify and address the additional support needs of children and young people for whom the local authority provides, either directly or indirectly, school education. Many children will currently be having their educational additional support needs identified and addressed under the variety of existing arrangements, such as those for looked after children, those for children with special educational needs, including the Records of Needs system, arrangements for children with social, emotional and behavioural difficulties and for children at risk or in need.

79. The cost impact of the Bill in addressing the learning needs of children will be in filling any gaps in provision there may be at present. This will differ considerably across local authorities and will depend on the adequacy of their existing children’s services (and how these are being improved through children’s service plans, implementation of the For Scotland’s Children Action Plan and use of the Changing Children’s Services Fund). For example, returns by local authorities on performance indicators to Audit Scotland indicate that expenditure on special educational needs has increased in current terms on average by 15% from 2000/01 to 2001/02.

80. It is most unlikely that any one group of children will not be having any of their learning needs met currently, rather that the extent and level of supporting individuals’ needs will vary. Expectations about support services may also increase as standards are raised. The overarching requirement to improve children’s services is not solely attributable to this Bill, so identifying the cost impact of the Bill in this area would inevitably be imprecise. Commencement of legislation supporting mainstreaming has further complicated the issue. However, improving services to support learning through more integrated work practices, reducing duplication of effort and taking preventative measures will all have a positive impact on reducing service costs.

81. For those children and young people with complex or multiple enduring needs and who require services from outwith education, a statutory co-ordinated support plan (CSP) will have to be maintained. It is expected that there will be around 11,200 to 13,700 CSPs at any one time. The number of new CSPs being prepared each year could range from 1,700 to 2,500. This estimate is drawn from a model based on an assumption that 50% of children who currently have Records of Needs will have such needs that require a CSP plus an additional proportion of the school population (0.3-0.6%) who will also have such needs but who do not currently have a Record. The model takes account of information and views supplied by local authorities consulted on this. The cost of administering the system (assessing for, preparing and reviewing CSPs) is therefore estimated at £6.3m-£8.3m per annum. The cost range is based on the estimated costs associated with professional involvement in administering the system (educational psychologist, teacher, clerical, education officer, social work). The estimated average cost of local authority input to assessing and preparing a CSP is £880 and is half that amount for reviewing a CSP. The mid-point best-estimate of the range (£7.3m) is shown in table 1 below.
These documents relate to the Education (Additional Support for Learning) (Scotland) Bill (SP
Bill 11) as introduced in the Scottish Parliament on 28 October 2003

82. In addition, the changeover to the new system will mean far more CSPs have to be
prepared in the first 2 years, as those with a Record of Needs are considered for CSPs. Off-set
against this will be the lesser amount of CSPs to be reviewed in the first 2 years – in particular in
year 1. Costs of preparing a CSP will not be so high for those who have a Record of Needs since
considerable information will already be known about the child through the Record of Needs
system. The costs are estimated at £7.7m-£8.8m in year 1 and £9.5m-£11m in year 2. The
mid-point best-estimates for year 1 (£8.2m) and year 2 (£10.3m) are shown in table 2 below.
Costs will then fall back to the levels in paragraph 81 above.

83. With the Bill, the Records of Needs system will end. There are 17,315 Records
(September 2002 School Census and January 2003 pre-school census) and around 3,000 are
opened each year (based on number of assessments). The cost to local authorities of
administering the system (assessing for, opening and reviewing Records) is estimated at £6.7m
per annum. This is based on estimated costs associated with professional involvement in
administering the system (educational psychologist, teacher, clerical, education officer and social
work). These indicate an average cost of local authority input to assessing for and opening a
Record at £930, and for reviewing, half that amount.

84. The current future needs assessment (and review) will also end. The cost to local
authorities of administering this is estimated at £2.1m per annum and this will be a saving. The
Bill provides for planning and preparing for post-school as part of the CSP annual reviews and,
for those who do not have a CSP, as part of other educational planning tools. The cost of support
to those who have a CSP, for local authorities, is included at paragraph 81. For those who do not
have a CSP, but who require additional support to prepare them for leaving school, there will be
additional costs to local authorities of around £700,000 per annum.

85. Local authorities will be under a duty to provide independent mediation services. Some
authorities do this at present, either providing the service directly or purchasing it from the
voluntary sector. The Bill is not prescriptive about how mediation services must be provided.
Additional costs could therefore vary across local authorities. The demand-led nature of the
service will also impact on costs. An indication of the likely costs of mediation services has
therefore been calculated using two service models: a national mediation service and a local
authority in-house education conciliation service. Costs could be in the region of £0.8m-£1.8m
per annum for a distinct national service set up under this Bill. The estimated cost range
includes staffing, training, accommodation and central service overheads. The cost of setting up
a distinct national service is estimated at £130,000, covering recruitment, staffing, training, and
central service overheads. Alternatively, providing the service in-house could cost from £1.2m
to a maximum of £2.5m per annum. The estimated cost range includes staffing, training,
accommodation and equipment. The mid-point, best-estimate of this range (£1.85m) is shown in
table 1 below.

86. There is also provision for the Scottish Ministers to require education authorities to have
arrangements for dispute resolution. It is expected that this will provide for review of cases
referred to them by parents on matters that are not eligible for appeal to either a Tribunal or
education authority appeal committees. It is estimated that such arrangements will not cost more
than £1.5m.
These documents relate to the Education (Additional Support for Learning) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 28 October 2003

87. There are further duties placed on local authorities in the Bill: to provide a named contact person for each child with a CSP; to publish information about arrangements for children with additional support needs and to involve parents and children in the decision-making process for supporting the child’s learning needs. The Bill formalises this good practice that is already occurring in local authorities and it is therefore expected that these duties will be absorbed within existing resources.

88. The Bill also extends to all parents of children with additional support needs and to young persons with additional support needs the right to make placing requests to independent special schools and grant-aided special schools (removing the current requirement for a child or young person to have a Record for such a placing request to be made). This may lead to a small increase in the number of placing requests to be administered by local authorities but the additional costs are not expected to be significant. Where any of these requests are met, there may be additional costs, although part of the consideration of whether to meet the request is the suitability of other arrangements and provision in the public system. Where a child has a CSP, appeals relating to a refusal of a placing request will not be directed to education authority appeal committees, as they presently are for those with a Record of Needs. This will mean a reduction in appeals for the appeal committees (and the proportion of further appeals to the Sheriff Court), but it is expected this will be off-set, to some extent, by the possible increase in appeals on refused placing requests to independent special schools and grant-aided special schools. When balanced out, it is anticipated that the cost impact will be neutral.

89. Local authorities will also incur costs of around £220,000 in staff resources spent on preparing for and attending appeals at the new Tribunals. This will be partly off-set by the resource input of time spent in the existing appeals system, as well as time spent resolving disagreements with parents in areas that cannot currently be appealed. However, in table 1 the full amount is shown.

90. The changeover from the current system to the new system proposed in the Bill will require some local administrative and operational alteration by local authorities. Local guidance and instructions will need to be revised and awareness training undertaken. The one-off costs associated with this for local authorities are estimated to be less than £500,000.

Costs on other bodies, individuals and businesses

91. The Bill does potentially have cost implications for the NHS, for Careers Scotland and for Further Education Colleges. There may be other bodies, such as higher education institutions, that will be affected, but the cost implications arising from this Bill are not expected to be significant.

92. As with local authorities, any gaps in provision in supporting the learning needs of children and young people could lead to additional service costs to the NHS (particularly in speech and language, physiotherapy and occupational therapy services). The difference in NHS input to the CSP, compared with the Record of Needs, including future needs, will be a little less, principally because medical assessments will be targeted rather than the present mandatory universal involvement. Current cost of involvement in the Record of Needs/future needs process is estimated at £1.0m per annum, while costs under the new system are estimated at £820,000-£1.0m per annum. The mid-point, best-estimate of £915,000 is shown in table 1 below. Costs
reflect the involvement of professional health staff in administering the new system (therapists, paediatric consultants).

93. In changing over from the current system to the proposed system, some operational alterations may be required, along with awareness training. The changeover to the new system will mean far more CSPs have to be prepared in the first 2 years, as those with a Record are considered for CSPs. As in paragraph 82, this increased cost to the NHS will be offset against the lesser amount of CSPs to be reviewed in the first 2 years – in particular in year 1. Costs of preparing a CSP will not be as high for those who have a Record of Needs since considerable information will already be known about the child through the Records of Needs system. The costs are estimated at £880,000-£1.0m in year 1 and £1.1m-£1.2m in year 2. The mid-point best-estimates for year 1 (£940,000) and year 2 (£1.15m) are shown in table 2 below. Costs will then fall back to the levels in paragraph 92 above.

94. The NHS will also incur costs of around £30,000 per annum in staff resources spent on preparing for and attending appeals at the new Tribunals.

95. For Careers Scotland, there will be a role in supporting the transition from school of those children and young people with continuing additional support needs. The current input to the Future Needs Assessment will cease. The cost of the current input is estimated at £1m. The input required in future, as a result of the Bill, is estimated at £960,000-£1.1m per annum. The mid-point, best-estimate of £1.0m is shown in table 1 below. Although more children and young people with additional support needs are expected to receive support from Careers Scotland on the transition from school, this input will be more adaptable and responsive to the young person, their circumstances and needs. Costs will therefore not vary much. It is anticipated that, over the changeover period, costs for Careers Scotland will not differ significantly from these costs.

96. For further education colleges, the situation will be the same as for Careers Scotland. Current input is estimated at £230,000 per annum, and in future this will be around £220-£240,000 per annum. The mid-point, best-estimate of £230,000 is shown in table 1 below. Reasons for cost differences here are similar to those for Careers Scotland, but are further augmented by the proposal for further education college staff visiting schools to speak with groups of pupils rather than solely individuals. It is anticipated that, over the changeover period, costs for the further education colleges will not differ significantly from these costs.

97. Cost implications of the Bill for individuals rest primarily with parents and will be optional. There are no duties placed on parents that will result in them having to incur additional costs. Appeals to a new Tribunal may be supported by legal representation if the parent wishes, but the Tribunals are intended to be a family-friendly process where legal representation will not be a necessity. Parents may also wish to seek their own legal advice and may wish to obtain independent assessments and reports on their child. These are optional costs that exist at present and are not a result of the Bill.

98. The Bill has no direct cost impact on businesses. Independent schools have no new obligations placed on them by the Bill.
Uncertainties in cost estimates

99. All the costs are best estimates from available data but inevitably have margins of error. The cost of the current system and estimates for the new system being introduced by the Bill, have been informed by information from local authorities and NHS, Careers Scotland and Scottish Further Education Funding Council. The new system of CSPs is intended to be child focused and will therefore very much depend on the individual child. It is also intended to better target support services, by strengthening the links between the services to be provided and the learning outcomes they should help achieve. Both the Tribunal and the mediation services will be demand led. Judgements from the Tribunals will also influence decisions taken by local authorities and others. The overall cost impact of the new system inevitably carries a degree of uncertainty for the reasons set out.

TABLE 1: SUMMARY OF ON-GOING COSTS (FROM YEAR 3 ONWARDS)

Note: where a range is estimated the mid-point, best-estimate is used in the summary table below

<table>
<thead>
<tr>
<th></th>
<th>Existing annual costs which will cease under the new system</th>
<th>Gross annual costs under the new system.</th>
<th>Net annual costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Executive</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tribunal</td>
<td>£760,000</td>
<td>£760,000</td>
<td></td>
</tr>
<tr>
<td>Legal aid</td>
<td>£85,000</td>
<td>£85,000</td>
<td></td>
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<tr>
<td>Record of Needs appeals</td>
<td>£75,000</td>
<td>(£75,000)</td>
<td>(£75,000)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>£770,000</strong></td>
</tr>
<tr>
<td><strong>Local authorities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Co-ordinated support plans</td>
<td>£7,300,000</td>
<td>£7,300,000</td>
<td></td>
</tr>
<tr>
<td>Records of Need</td>
<td>£6,700,000</td>
<td>(£6,700,000)</td>
<td>(£6,700,000)</td>
</tr>
<tr>
<td>Future needs assessments</td>
<td>£2,100,000 incl above in CSP costs</td>
<td>(£2,100,000)</td>
<td>(£2,100,000)</td>
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<tr>
<td>Further support for future needs</td>
<td>£700,000</td>
<td>£700,000</td>
<td></td>
</tr>
<tr>
<td>Mediation (using in-house model)</td>
<td>£1,850,000</td>
<td>£1,850,000</td>
<td></td>
</tr>
<tr>
<td>Referral for review arrangements</td>
<td>£1,500,000</td>
<td>£1,500,000</td>
<td></td>
</tr>
<tr>
<td>Tribunal</td>
<td>£220,000</td>
<td>£220,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>£2,770,000</strong></td>
</tr>
</tbody>
</table>
These documents relate to the Education (Additional Support for Learning) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 28 October 2003

<table>
<thead>
<tr>
<th>Other bodies:</th>
<th>Existing annual costs which will cease under the new system</th>
<th>Gross annual costs under the new system.</th>
<th>Net annual costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Health bodies</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Records of Needs and future needs assessments</td>
<td>£1,000,000</td>
<td>(£1,000,000)</td>
<td></td>
</tr>
<tr>
<td>Co-ordinated support plans, incl future needs</td>
<td>£915,000</td>
<td>£915,000</td>
<td></td>
</tr>
<tr>
<td>Tribunal</td>
<td>£30,000</td>
<td>£30,000</td>
<td></td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>(£55,000)</td>
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<td><strong>Careers Scotland</strong></td>
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<tr>
<td>Future needs assessment</td>
<td>£1,000,000</td>
<td>(£1,000,000)</td>
<td></td>
</tr>
<tr>
<td>Support for future needs</td>
<td>£1,000,000</td>
<td>£1,000,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td><strong>FE colleges</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Future needs assessment</td>
<td>£230,000</td>
<td>(£230,000)</td>
<td></td>
</tr>
<tr>
<td>Support for future needs</td>
<td>£230,000</td>
<td>£230,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>Nil</td>
<td></td>
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TABLE 2: SUMMARY OF CSP COSTS FOR CHANGEOVER YEARS

Note: all costs in the summary table below represent the mid-point, best-estimate and are on a gross basis. Net annual costs are calculated from CSP costs for years 1 and 2 below, and all other costs as for year 3 onwards in Table 1.

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
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</thead>
<tbody>
<tr>
<td><strong>Local Authority</strong></td>
<td>£8,200,000</td>
<td>£10,300,000</td>
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<tr>
<td><strong>Net annual Costs</strong></td>
<td>£3,670,000</td>
<td>£5,770,000</td>
</tr>
<tr>
<td><strong>Health</strong></td>
<td>£940,000</td>
<td>£1,150,000</td>
</tr>
<tr>
<td><strong>Net Annual Costs</strong></td>
<td>(£30,000)</td>
<td>£180,000</td>
</tr>
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TABLE 3: ONE-OFF COSTS

<table>
<thead>
<tr>
<th>Scottish Executive</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tribunal set-up</td>
<td>£150,000</td>
</tr>
<tr>
<td>Tribunal implementation</td>
<td>£300,000</td>
</tr>
<tr>
<td>Bill monitoring and evaluation</td>
<td>£80,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£530,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Local authority</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Change-over costs</td>
<td>£500,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£500,000</strong></td>
</tr>
</tbody>
</table>

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

100. On 28 October 2003, the Minister for Education and Young People (Peter Peacock) made the following statement:

“In my view, the provisions of the Education (Additional Support for Learning) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

101. On 24 October 2003, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Education (Additional Support for Learning) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”