4th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 12  Schedule 1
Sections 13 to 18  Schedule 2
Sections 19 to 26  Schedule 3
Sections 27 and 28  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 13

Robert Brown

269 In section 13, page 12, line 36, at end insert—

<(ba) subject to subsection (3A), failure by an education authority to make adequate or efficient provision for such additional support as is required by a child or young person who, but for the fact that his or her additional support needs could be met by the education authority exercising its functions relating to education alone, would require a co-ordinated support plan,>

Lord James Douglas-Hamilton

34 In section 13, page 12, line 37, leave out <co-ordinated>

Euan Robson

87 In section 13, page 12, line 38, after <plan,> insert <and

( ) it has not been agreed under section 7(1A) that a plan need not be prepared for the child or young person,>

Euan Robson

88 In section 13, page 12, line 39, leave out <(4)(c) of section 7> and insert <(9)(f)(i) of section 9>

Ms Rosemary Byrne

228 In section 13, page 12, line 39, at end insert—

<( ) where it has been established that the child or young person does require a co-ordinated support plan, failure by the education authority to nominate a person to co-ordinate the support contained within the plan,>

Lord James Douglas-Hamilton

35 In section 13, page 13, line 1, leave out <co-ordinated>
Ms Rosemary Byrne

138 In section 13, page 13, line 4, at end insert—
   <( ) any of the information contained in the plan by virtue of subsection (4)(b) of section 7.>

Euan Robson

89 In section 13, page 13, line 9, leave out <(4)(c) of section 7> and insert <(9)(f)(ii) of section 9>

Fiona Hyslop
Supported by: Ms Rosemary Byrne

107 In section 13, page 13, line 11, at end insert <, or
   <(v) failure by the education authority, any person identified in the plan as a person by whom additional support should be provided, or a combination of these persons, to provide the additional support set out in the plan as being required by the child or young person.>

Donald Gorrie

139 In section 13, page 13, line 11, at end insert <, or
   <(vi) failure by an appropriate agency to comply with section 19(3).>

Robert Brown

258 In section 13, page 13, line 13, at end insert—
   <(3A) The right to make a reference arising from a failure of the type specified in subsection (3)(ba) does not arise unless—
   (a) the person making the reference has detailed the grounds of reference in—
      (i) writing, or
      (ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and
   (b) the President of the Tribunal, being satisfied that prima facie a substantial issue arises, grants leave to make the reference.>

Lord James Douglas-Hamilton

36 In section 13, page 13, line 15, leave out <co-ordinated>

Euan Robson

237 In section 13, page 13, line 19, leave out <has> and insert <have>

Robert Brown

259 In section 13, page 13, line 20, at end insert—
<( ) Where subsection (4) applies, the Tribunal may refer the reference to the sheriff having jurisdiction where the specified school is situated, where it is of the opinion that—

(a) issues of substantial legal or other complexity are likely to arise, and

(b) the assistance of a solicitor or advocate would be in the best interests of the child or young person concerned,

and, if so, the reference shall proceed as if it were an appeal to the sheriff under section 28F of the 1980 Act; and the reference in subsection (5)(a) of that section to one or more of the grounds of refusal specified in section 28A(3) shall be construed as a reference to one or more of the circumstances in which the duty does not apply, referred to in paragraph 3 of schedule 2 to this Act.>

Lord James Douglas-Hamilton

37 In section 13, page 13, line 24, leave out <co-ordinated>

Lord James Douglas-Hamilton

38 In section 13, page 13, line 25, leave out <co-ordinated>

Lord James Douglas-Hamilton

39 In section 13, page 13, line 36, leave out <co-ordinated>

Lord James Douglas-Hamilton

40 In section 13, page 13, line 41, leave out <co-ordinated>

Section 14

Lord James Douglas-Hamilton

41 In section 14, page 14, line 7, after <authority> insert <or any other person identified in the plan as a person by whom additional support should be provided>

Robert Brown

270 In section 14, page 14, line 9, after <(3)> insert <(ba),>

Fiona Hyslop

108 In section 14, page 14, line 9, leave out <or (iii)> and insert <, (iii) or (v)>

Fiona Hyslop

53 In section 14, page 14, line 10, after <authority> insert <or any other person identified in the plan as a person by whom additional support should be provided>

Lord James Douglas-Hamilton

42 In section 14, page 14, line 27, leave out <co-ordinated>
Lord James Douglas-Hamilton

43 In section 14, page 14, line 34, leave out <co-ordinated>

Ms Rosemary Byrne

140 In section 14, page 14, line 36, at end insert—

<( ) Where the reference relates to the failure referred to in subsection (3)(d)(vi) of that section, the Tribunal may require the appropriate authority to take such action to address the failure as the Tribunal considers appropriate by such time as the Tribunal may require.>

Robert Brown

260 In section 14, page 14, line 39, at end insert—

<( ) The Tribunal may, at any stage of the proceedings, as it sees fit, order an education authority to arrange for a process of assessment or examination to be carried out on the child or young person in respect of whom the reference was made; and such process shall be carried by such person and on such terms as the Tribunal consider appropriate.>

Euan Robson

238 In section 14, page 14, line 41, leave out <issued> and insert <published>

After section 14

Robert Brown

261* After section 14, insert—

<References to Tribunal and powers of Tribunal: further provision

(1) The Scottish Ministers may by order extend the categories of decision, failure or information in respect of which a reference to the Tribunal under section 13(1) may be made; and without prejudice to the generality such further categories of decision, failure or information may include—

(a) a decision of the education authority—

(i) that the child or young person has, or does not have, additional support needs,
(ii) that a child or young person has additional support needs of a type that the person making the referral considers are not an accurate reflection of the child or young person’s additional support needs,
(iii) to refuse an assessment request as referred to in section 6,
(iv) as to the person, or to the means used, or to be used, to carry out the process of assessment or examination referred to in section 6,

(b) failure by—

(i) the education authority,
(ii) any person identified in any co-ordinated support plan prepared for the child or young person as a person by whom additional support should be provided, or

(iii) a combination of these persons,

to provide the additional support required by the child or young person.

(2) Any order made under subsection (1) may also include provision to allow the President to reject references to the Tribunal arising from any further category of decision, failure or information referred to in the order without a hearing where the President is satisfied that the reference prima facie raises no substantial issue.

(3) Orders made under subsection (1) may also make such consequential provision as the Scottish Ministers consider necessary or expedient, including provision as to the Tribunal’s powers in relation to any new category of decision, failure or information that may be referred to it.>

Mr Adam Ingram

262 After section 14, insert—

<Compliance by education authority with Tribunal decision

(1) Where an education authority fails to—

(a) take such action (including complying with a placing request or holding an appeal committee hearing), or

(b) make such amendment,

as was required by a Tribunal under section 14, or fails to do so within such time as the Tribunal required, the appropriate person may refer the failure to the Tribunal.

(2) Where a reference is made to a Tribunal under subsection (1) the Tribunal may require the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may require.

(3) In this section “appropriate person” means—

(a) where the failure relates to a child, the parent of the child,

(b) where the failure relates to a young person—

(i) the young person, or

(ii) where the education authority are satisfied the young person is incapable, the young person’s parent.>

Section 15

Lord James Douglas-Hamilton

229 In section 15, page 15, line 8, at end insert—

<( ) make such interim order as it considers appropriate, having regard to the best interests of the child or young person in respect of whom the reference under section 13 was made.>
After section 15

Ms Rosemary Byrne

After section 15, insert—

<Independent monitoring body

(1) Ministers shall by regulation establish an independent monitoring body to regulate the implementation of any orders made by a Tribunal.

(2) The independent monitoring body shall have the power to use sanctions against education authorities and appropriate agencies where they fail to comply with the orders made by a Tribunal.

(3) The sanctions referred to in subsection (2) shall be set out by Ministers in regulation.

(4) Ministers may, by regulation, make such further provision in connection with the independent monitoring body as they think fit.>

Before section 16

Lord James Douglas-Hamilton

Before section 16, insert—

<Independent advocacy

(1) Every child and young person with additional support needs for whose school education the education authority are responsible, and every parent of such children and young people, shall have a right of access to independent advocacy services.

(2) It is the duty of every education authority to secure the availability of independent advocacy services to such parents, children and young people; and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.

(3) It is the duty of providers of independent advocacy services to provide such services—

(a) to such parents, children and young people, and

(b) to children or young people who, it appears to them, may have additional support needs, and their parents.

(4) In subsection (1) above, “advocacy services” are services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, their education or, as the case may be, their child’s education as is, in the circumstances, appropriate; and such services are “independent” if the person providing the services has no involvement in the exercise by or on behalf of the authority of any of their functions (apart from this section).>

Section 16

Donald Gorrie

In section 16, page 15, line 17, after <authority> insert <or appropriate agency>
Scott Barrie

142 In section 16, page 15, line 18, at end insert—
   
   <( ) children with capacity belonging to that area,>

Donald Gorrie

143 In section 16, page 15, line 21, after <authority> insert <or appropriate agency>

Donald Gorrie

144 In section 16, page 15, line 24, leave out from <in> to end of line 25 and insert <with the relevant authority or agency.>

Lord James Douglas-Hamilton

57 In section 16, page 15, line 25, leave out <their functions under this Act> and insert <any of their functions>

Scott Barrie

145 In section 16, page 15, line 27, after <parent> insert <, child with capacity>

Donald Gorrie

146 In section 16, page 15, line 28, after <authority> insert <or appropriate agency>

Scott Barrie

147 In section 16, page 15, line 31, after <parent> insert <, child with capacity>

Euan Robson

239 In section 16, page 15, line 31, leave out <appeal> and insert <refer>

Lord James Douglas-Hamilton

221 In section 16, page 15, line 32, at end insert—

   <(3A) Where agreement is reached between the parties participating in mediation, it is the responsibility of—
   
   (a) the provider of mediation services to draft, or to secure the drafting of, that agreement in writing, and
   
   (b) each party (or a person authorised to do so on behalf of a party) to sign the agreement, provided the party is satisfied that the written agreement accurately reflects the agreement reached in mediation.

   (3B) An agreement under subsection (3A) is legally binding on the parties that have signed it (except inasmuch as it would require any party to do anything unlawful); but any party may revoke the agreement by notice in writing providing reasons for the revocation.>

Donald Gorrie

148 In section 16, page 15, line 33, after <authority> insert <or appropriate agency>
Rhona Brankin
185 Move section 16 to after section 11

Section 17

Scott Barrie
149 In section 17, page 15, line 38, at end insert—

<(... any child with capacity belonging to that area.>)

Lord James Douglas-Hamilton
230 In section 17, page 16, line 8, at end insert—

<(... Such regulations—

(a) must not require any parent or young person—

(i) to refer any disagreement with the authority to the dispute resolution services provided in accordance with the arrangements, or

(ii) to pay any fee or charge for the provision of the dispute resolution services, and

(b) do not affect the entitlement of any parent or young person to appeal any matter to a Tribunal.>)

Rhona Brankin
186 Move section 17 to after section 11

Schedule 2

Euan Robson
91 In schedule 2, page 27, line 25, leave out <in writing>

Euan Robson
92 In schedule 2, page 27, line 29, leave out <in writing>

Lord James Douglas-Hamilton
58 In schedule 2, page 28, line 2, at end insert—

<(2A) Where the parent of a child having additional support needs makes a request in writing to the education authority to place the child in the school specified in the request, being an independent or grant-aided school, together with confirmation in writing of the specified school’s willingness to accept the child, the authority may place the child accordingly, and meet the fees and other necessary costs of the child’s attendance at the specified school to such extent as it considers appropriate, having regard to all the circumstances.

(2B) In deciding, under sub-paragraph (2A), whether to agree to the placing request, the education authority must take into account—>
(a) whether the child’s additional support needs can be met in any school under their management at which a place is available and, if so, whether it would be in the child’s interests to be placed in that school, and
(b) whether it would be in the child’s interests to be placed in the specified school.

Lord James Douglas-Hamilton

59 In schedule 2, page 28, line 3, leave out <or (2)> and insert <, (2) or (2A)>

Robert Brown

263 In schedule 2, page 28, line 38, after <needs> insert <of a severity or type>

Robert Brown

264 In schedule 2, page 28, line 38, after <or> insert <level of>

Robert Brown

265 In schedule 2, page 29, line 3, after <make> insert <adequate>

Euan Robson

93 In schedule 2, page 29, line 37, leave out from <and> to end of line 41

Lord James Douglas-Hamilton

60 In schedule 2, page 29, line 40, at beginning insert <(except in the case of a request made by virtue of sub-paragraph (2A))>

Lord James Douglas-Hamilton

61 In schedule 2, page 30, line 9, after <request> insert <(other than a parent who made a placing request by virtue of sub-paragraph (2A))>

Section 19

Dr Elaine Murray

222 In section 19, page 16, line 25, leave out <must> and insert <has a duty to>

Lord James Douglas-Hamilton

94 In section 19, page 16, line 26, leave out from <unless> to end of line 28

Fiona Hyslop

150 In section 19, page 16, line 26, leave out from <unless> to the end of line 28 and insert—

<( ) Subsection (3) does not require an appropriate agency to do anything which—
(a) they do not otherwise have power to do, or
(b) would result in unreasonable public expenditure being incurred.>
Lord James Douglas-Hamilton

44 In section 19, page 16, leave out line 28

Robert Brown

266 In section 19, page 16, line 28, leave out <unduly> and insert <substantially>

Lord James Douglas-Hamilton

45 In section 19, page 16, line 28, at end insert <, or—

( ) is not appropriate to the additional support needs of the child or young person.>

Lord James Douglas-Hamilton

95 In section 19, page 16, line 29, after <that,> insert <on application by the education authority or otherwise,>

Ms Rosemary Byrne

151 In section 19, page 16, line 38, leave out from <, or> to end of line 39

After section 19

Ms Rosemary Byrne

187 After section 19, insert—

<Monitoring of implementation of Act

(1) Within—

(a) 12 months of the date on which the provisions of this Act are all in force, and

(b) each subsequent period of 12 months beginning on the anniversary of that date,

the Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on

the operation and implementation of this Act.

(2) A report under subsection (1) must include an assessment of whether the Act is being

implemented in such a way that children or young persons with similar types of

additional support needs are being provided with the same level of support in each

education authority area.

(3) If an assessment carried out in pursuance of subsection (2) shows that the level of

support being provided to such children or young persons varies between education

authority areas, the report under subsection (1) must specify what action the Scottish

Ministers intend to take to ensure that the same level of support is provided in each

education authority area (that level being at least the minimum standard of support

required to be provided under this Act).>

Section 21

Lord James Douglas-Hamilton

231 In section 21, page 17, line 10, leave out <wholly or mainly>
Section 22

Euan Robson

206 In section 22, page 17, line 33, leave out <3(3)> and insert <(Duties of education authority in relation to children and young persons for whom they are responsible)(1)(b)>

Lord James Douglas-Hamilton

46 In section 22, page 17, line 37, leave out <co-ordinated>

Section 23

Euan Robson

240 In section 23, page 18, line 14, leave out <issue> and insert <publish>

Euan Robson

241 In section 23, page 18, line 14, leave out <re-issue> and insert <re-publish>

Euan Robson

242 In section 23, page 18, line 15, after <authorities> insert <and appropriate agencies>

Lord James Douglas-Hamilton

271 In section 23, page 18, line 18, after <factors> insert <(which may include disability within the meaning of Section 1 of the Disability Discrimination Act 1995 (c.50))>

Lord James Douglas-Hamilton

47 In section 23, page 18, line 22, leave out <co-ordinated>

Euan Robson

204 In section 23, page 18, line 24, leave out <3(3)> and insert <(Duties of education authority in relation to children and young persons for whom they are responsible)(1)(b)>

Robert Brown

267* In section 23, page 18, line 25, at end insert—

<() the particular circumstances or factors which may give rise to a substantial issue referred to in sections 13(3A) and (References to Tribunal and powers of Tribunal: further provision)(2),>

Ms Rosemary Byrne

Supported by: Lord James Douglas-Hamilton

152 In section 23, page 18, line 27, at end insert—

<() appropriate persons to carry out a process of assessment or examination under section 6(1)(b), and the professional qualifications of such persons,>
Euan Robson

243 In section 23, page 18, line 28, at end insert—

<(2A) Before publishing a code of practice under subsection (1), the Scottish Ministers must consult—
(a) each education authority and appropriate agency, and
(b) such other persons as they think fit.

(2B) The Scottish Ministers must lay before the Scottish Parliament a draft of any code of practice they propose to publish under subsection (1).

(2C) The Scottish Ministers must not publish the code until after the expiry of the period of 40 days beginning with the day on which the draft was laid before the Parliament.

(2D) The Scottish Ministers must, in the published code of practice, take account of any comments on the draft expressed by the Parliament within that period.

(2E) In calculating any period of 40 days for the purposes of subsections (2C) and (2D), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.>

Euan Robson

244 In section 23, page 18, line 29, after <authorities> insert <and appropriate agencies>

Euan Robson

245 In section 23, page 18, line 30, leave out <issued> and insert <published>

Euan Robson

246 In section 23, page 18, line 36, leave out <issued> and insert <published>

Euan Robson

247 In section 23, page 18, line 37, leave out <re-issued> and insert <re-published>

Ms Rosemary Byrne

109 In section 23, page 18, line 37, at end insert—

<( ) Any code prepared or revised and re-issued under this section must be laid before the Scottish Parliament and the Scottish Ministers may not issue the code until it has been approved by resolution of the Parliament.>

Before section 24

Euan Robson

96 Before section 24, insert—

<Requests under this Act: further provision

(1) References in this Act to a “request” are to a request which—

(a) is in—
(i) writing, or
(ii) another form which, by reason of it s having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

(b) contains a statement of the reasons for making the request.

(2) Where an education authority decide not to comply with any request made to them under this Act, the authority must—

(a) inform the person who made the request of that decision,
(b) in so doing, give reasons for the decision,
(c) except where the request was of the type specified in section 5(2)(b), provide the person who made the request with information as to—

(i) the mediation services provided in pursuance of arrangements made by the authority under section 16(1), and
(ii) any procedures for the resolution of disputes established by the authority in pursuance of any regulations under section 17,

(d) where the request was made under section 8(4), inform the person who made the request of the right under section 13(1) to refer the decision to a Tribunal, and

(e) where the request was a placing request, inform the person who made the request of—

(i) the right under paragraph 5 of schedule 2 to refer the decision to an appeal committee, or
(ii) the right under section 13(1) to refer the decision to a Tribunal,

(as appropriate).>

Lord James Douglas-Hamilton

96F As an amendment to amendment 96, line 5, after <writing,> insert—

< ( ) where the request is made by a person who by reason of disability is unable to make the request in writing, an alternative format.>

Lord James Douglas-Hamilton

96D As an amendment to amendment 96, line 12, at end insert <in writing>

Scott Barrie

96B As an amendment to amendment 96, line 13, at beginning insert <subject to subsection (3),>

Ms Rosemary Byrne

96E As an amendment to amendment 96, in line 13, at end insert—

<( ) when the request was an assessment request under section 6, provide such information and such reasons in writing and within 14 days of receiving the request,>
Fiona Hyslop

96A  As an amendment to amendment 96, in line 20, leave out <where the request was made under section 8(4)> and insert <where the refusal of the request gives rise to a right of referral under section 13(1)>

Scott Barrie

96C  As an amendment to amendment 96, line 27, at end insert—

<(3) Where the request was made by a child and it would be contrary to the child’s best interests to be given the reasons for the decision in relation to the request, or any other information connected with the decision, an education authority must give reasons for the decision to the child’s parents instead of the child.>

Section 24

Scott Barrie

153  In section 24, page 19, line 8, at end insert—

<“child with capacity” means—

(a) in relation to the provision of information or advice or the giving of a copy of a plan, a child capable of having a general understanding of the information, advice or plan,

(b) in relation to the making of a request or referral, a child who has a general understanding of the nature of the request or referral and the consequences of making it, and

(c) in relation to a disagreement or dispute, a child who has a general understanding of the nature of the disagreement or dispute and the consequences of a failure to resolve it,

and a child of twelve years of age or more shall be presumed to be of sufficient age and maturity to have understanding; and related expressions shall be construed accordingly.>

Lord James Douglas-Hamilton

48  In section 24, page 19, line 9, leave out <co-ordinated>

Lord James Douglas-Hamilton

62  In section 24, page 19, line 11, leave out <co-ordinated>

Lord James Douglas-Hamilton

232  In section 24, page 19, line 12, at end insert—

<“disability” has the same meaning as in the Disability Discrimination Act 1995>
In section 24, page 20, line 11, after <person> insert—

(a) 

In section 24, page 20, line 14, at end insert—

(b) who would fall within paragraph (a) but for the fact that the child or young person has been temporarily removed from, or has not commenced, such education pending the resolution of any dispute or outcome of any appeal concerning the child’s or, as the case may be, young person’s education.

After section 24

After section 24 insert—

Transitional provision: recorded children and young persons

(1) This section applies to any child or young person—

(a) for whose school education an education authority are, at the commencement date, responsible, and

(b) who, immediately before that date, was a recorded child or young person within the meaning of the 1980 Act.

(2) Such a child or young person is, for the purposes of this Act, to be taken to have additional support needs.

(3) The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 4(1), whether the child or young person requires a co-ordinated support plan.

(4) Until the appropriate date, the education authority must ensure that the provision made by them in pursuance of section (Duties of education authority in relation to children and young persons for whom they are responsible)(1)(a) for the additional support required by the child or young person is no less than the provision which was, immediately before the commencement date, made for the child or young person under section 62(3) (duty of education authority to provide for special educational needs of recorded children and young persons) of the 1980 Act.

(5) In subsection (4), “the appropriate date” means—

(a) where the education authority establish in pursuance of subsection (3) that the child or young person requires a co-ordinated support plan, the date on which they so establish that matter,

(b) where the authority establish in pursuance of that subsection that the child or young person does not require such a plan, the date of expiry of the period of 2 years beginning with the date on which they so establish that matter, or

(c) if there is a significant change in the child’s or young person’s additional support needs, the date on which the authority establish the occurrence of that change, whichever occurs first.
(6) In this section—

“the commencement date” means the date on which this section comes into force, and

“the education authority” means the education authority responsible for the child’s or young person’s school education.

Section 25

Euan Robson

249 In section 25, page 20, line 23, after <consequential,> insert <further>

Schedule 3

Euan Robson

205 In schedule 3, page 33, line 8, after <section> insert <(Duties of education authority in relation to children and young persons for whom they are responsible) or>

Section 27

Euan Robson

250 In section 27, page 21, line 1, after <except> insert <section 12(5),>

Robert Brown

268 In section 27, page 21, line 4, leave out <section> and insert <sections (References to Tribunal and powers of Tribunal: further provision) and>

Euan Robson

251 In section 27, page 21, line 5, leave out <is> and insert <, or

( ) regulations under section 12(5),
is or are>

Euan Robson

252 In section 27, page 21, line 6, after <order> insert <or regulations>

Section 28

Mr Adam Ingram

190 In section 28, page 21, line 10, leave out <Additional>