Inclusion Scotland is a national network of disabled peoples' organisations and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland. Inclusion Scotland is part of the disabled people’s Independent Living Movement.

In this brief submission, Inclusion Scotland wishes to highlight two areas we hope the Committee will address during Stage 1.

1 Attainment

1.1 The focus of the Bill appears to be on socio-economic factors that impact on attainment. Disabled school leavers with additional support needs have lower educational attainment than pupils without such needs, even when the support needed is unrelated to a learning difficulty. Lower educational attainment impacts on disabled people’s job opportunities.

1.2 Analysis by Inclusion Scotland on the Scottish Government’s data for Attainment and Leavers Destinations for 2012/13 shows that 7.1% of school leavers who had ASN left with no qualifications at SCVQ level 2 or above, compared with only 0.9% of leavers with no ASN.2

1.3 It also confirms the long term trend that school leavers with Additional Support Needs are more than twice as likely to be unemployed or workless (18.1%) than those with no ASN (8.3%).3

1.4 One of the current National Priorities for Education is “to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages”.4

1.5 We urge the committee to consider what impact the new provisions will have on this priority and how the provisions in the Bill will help address the attainment gap for disabled children.

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2 Table A3.2. Highest qualifications attained by leavers with additional support needs, by ASN, 2012/13
3 Table L2.3. Percentage of school leavers from publicly funded secondary schools in Scotland by follow-up destination category and Additional Support Needs, 2012/13
2 Education (Additional Support for Learning) (Scotland) Act

2.1 Inclusion Scotland supports in principle the proposal to give rights to children with capacity under the Education (Additional Support for Learning) (Scotland) Act. This would seem to be consistent with the principles of both the United Nations Convention of the Rights of the Child (UNCRC) and the United National Convention on the Rights of Disabled People (UNCRPD).

2.2 The UNCRC recognises that a child’s participation in decision-making must occur in a manner that is appropriate to the child’s age and maturity. Inclusion Scotland believe that this applies equally to decision-making in relation to additional support needs as to any other decision affecting the child. Children with additional support needs should have the same rights as any other children with capacity in the education system, including in relation to placement requests.

2.3 However, we are concerned that proposals in the Bill undermine these principles by allowing the education authority to determine if the child has sufficient maturity and understanding and if it is in the child’s best interests. The latter in particular seem contradictory, as if you have determined that the child has capacity, then they should surely be able to make an informed decision about what is in their own best interest?

2.4 Inclusion Scotland is concerned that the provisions in the Bill undermine existing rights of young persons (16-17) by giving additional powers to education authorities to determine if they have capacity, including a “best interest” test. The inclusion of “a matter relating to having Additional Support Needs” as a new criteria which can be used to determine a lack of capacity is particularly worrying. This would seem to allow an education authority to prevent a child or young person from exercising their rights under the ASN Act simply because they have ASN.

2.5 The Consultation on Extend all rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children did not contain any proposals to introduce a “best interest” test, or to include matters relating to having ASN as a new criteria for determining capacity, and have therefore not been consulted on.⁵

2.6 Inclusion Scotland urges the Committee to question why restrictions have been included in the Bill on the extending all rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children.

If you have any questions on this submission, or for further information, contact:

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