EDUCATION AND SKILLS COMMITTEE

AGENDA

6th Meeting, 2017 (Session 5)

Wednesday 1 March 2017

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 3 and 4 in private. The Committee will also decide whether its consideration of evidence from the Cabinet Secretary for Education and Skills on school education should be taken in private at its next meeting.

2. **Additional Support Needs:** The Committee will take evidence, in a round-table format, from—

   Sally Cavers, Manager, Enquire;

   Colin Crawford, Head of Inclusion, Education Services, Glasgow City Council;

   Carol Gilmour, Parent and Foster Carer;

   Kenny Graham, Member, Scottish Children’s Services Coalition;

   Sylvia Haughney, Support for Learning Instructor, Glasgow City Council and Member of UNISON;

   Professor Sheila Riddell, Director of the Centre for Education Inclusion and Diversity, University of Edinburgh;

   Samreen Shah, Principal Teacher, Pupil Support, Bannerman High School and Member of the EIS;

   Sharon Veelenturf, Parent.

3. **EU Reporter:** The Committee will consider a paper by the Committee’s EU Reporter.
4. **Review of Evidence:** The Committee will consider the evidence heard earlier in the meeting on Additional Support Needs.

Roz Thomson  
Clerk to the Education and Skills Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 85222  
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The papers for this meeting are as follows—

**Agenda item 2**

SPICe Briefing  
ES/5/17/6/1

Submissions  
ES/S5/17/6/2

**Agenda item 3**

PRIVATE PAPER  
ES/S5/17/6/3 (P)
INTRODUCTION
The Committee agreed to take evidence on people’s views and experiences of provision for pupils with additional support needs. This paper provides a brief overview of the key legislation before suggesting key themes based on the submissions received.

ROUNDTABLE WITNESSES

Sally Cavers, Manager, Enquire
Enquire is the Scottish advice service for additional support for learning. It is run by Children in Scotland and funded by the Scottish Government.

[NB On 28th February Sally is attending a roundtable discussion hosted by the Children and Young People’s Commissioner Scotland on ASN as the Commissioner is considering further work in this area. The Commissioner’s office has given permission for Sally to feedback from that session to the Committee.]

Colin Crawford, Head of Inclusion, Education Services, Glasgow City Council
Glasgow City Council has one of the highest rates of identified ASN pupils – 31.7% (see the recent written answer in the Annexe for percentages of all local authorities).

Carol Gilmour, parent and foster carer
Carol has experience of caring for children with additional support needs in mainstream secondary school, as well as experience of approaches taken by a number of different local authorities in relation to ASN.

Kenny Graham, Scottish Children’s Services Coalition
The SCSC campaigns to improve services for children with ASN and its members include: Who Cares? Scotland; Kindred; and Action for Sick Children. Kenny Graham is from Falkland House School, also a member of the SCSC. Falkland House is an independent school based in Fife that specialises in the education and care of boys who require additional support for learning. All pupils at the school follow the Curriculum for Excellence.

Sylvia Haughney, Support for Learning Instructor, Glasgow City Council and Unison education steward
Sylvia is an additional support for learning instructor in an additional learning needs school. In addition, in her role as a Unison education steward, she has experience of ASN in mainstream schools including providing advice to staff on how to support specific pupils.

Professor Sheila Riddell, Director of the Centre for Education Inclusion and Diversity, University of Edinburgh
Professor Riddell has a longstanding specialism in ASN, including acting as an adviser to a previous parliamentary education committee in its scrutiny of this issue. Her submission is a copy of a briefing paper focusing on local authority variation and impact of social background.

Samreen Shah, Principal Teacher, Pupil Support, Bannerman High School and EiS rep for her school
Samreen is a biology teacher, as well as head of pastoral care at Bannerman High School in Glasgow. Samreen is also a member of the EIS Equality Committee.

Sharon Veelenturf, parent and Kindred trustee
Sharon is a mother and has experience in relation to children with ASN in mainstream primary school. Sharon is also a trustee of Kindred, an organisation that provides advocacy services and advice to families of children with additional support needs.

BACKGROUND - LEGISLATIVE FRAMEWORK
The main legislation setting out local authority duties and parents’ rights in this area is the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act). In addition, s.15 of the Standards in Scotland’s Schools etc Act 2000 introduced a legal presumption in favour of children being educated in mainstream schools. For some children with additional support needs (ASN), disability legislation will also be relevant.

Education (Additional Support for Learning) (Scotland) Act 2004
The 2004 Act set out the main rights of parents and young people and the duties of local authorities.

What are ‘additional support needs’
A person has ‘additional support needs’ if for whatever reason, they are unlikely to be able to benefit from school education without additional support. This is a very broad definition and includes, for example, very able children and those who may need temporary additional support due to family circumstances such as bereavement. The legislation does not list any particular conditions or type of need, except that there is a presumption that ‘looked after’ children have additional support needs.

The very wide range of additional support needs can be seen the variety of need recorded in the pupil census set out in chart 1 below.
The number of pupils recorded with additional support needs has more than doubled over the last few years (153% increase since 2010). This may be due to better recognition and changes in recording practice. In 2010 102.2 pupils per 1,000 were recorded as having additional support needs. In 2016 this had increased to 248.7 per 1,000.

Since 2002 the number of pupils in special schools has fallen by 19%, compared to a 4% drop in the number of pupils in mainstream primary schools and a 13% drop in the number of pupils in mainstream secondary schools over the same period. (Scottish Government pupil census 2016 table 1.1)

The rate of increase of pupils recorded with additional support needs has been greatest with regard to mental health problems (increase from 1 per 1,000 to 4.1 per 1,000), English as an additional language (increase from 9 per 1,000 to 39.3 per 1,000 and more able pupils (increase from 1.2 per 1,000 to 4.8 per 1,000). There are also a number of new categories recorded such as ‘family issues’ (rate of 17.5 per 1,000 in 2016 and being a young carer (3 per 1,000).

The single most common category remains Social, Emotional and Behavioural Difficulties (21.9 per 1,000 in 2010 increasing to 52.6 per 1,000 in 2016).
The above breadth of need for support needs to be borne in mind when considering how the school system responds.

**Duty to identify and meet additional support needs**

Local authorities must “make adequate and efficient provision” for the additional support required by every child for whose school education it is responsible. However, it does not have to do anything that would require unreasonable expenditure.

The local authority must identify those who have ASN and also those who need a Co-ordinated Support Plan.

In addition, if the needs of a disabled child aged under 3 are brought to the attention of the local authority, then the local authority must provide “such additional support as is appropriate” (s.5).

There are requirements to seek and take account of information in order to aid smooth transition when starting school, moving to secondary school and leaving school. (s.12 and s.13)

Local authorities must make available certain dispute resolution procedures (mostly free of charge)(see below), they must publish certain information and must have regard to the statutory Code of Practice that Ministers are required to publish under the Act.

**Parents and Young People’s Rights**

Where the local authority is responsible for the child’s education, parents have a number of rights under the legislation. These include:

- A local authority must comply with a parent’s reasonable request to establish whether their child has additional support needs (s.6)
- A local authority must comply with reasonable requests for an assessment, and take the findings into account. However, such assessment is to be carried out by a person the local authority consider appropriate (s.8, s8A).
- Rights in relation to Co-ordinated Support Plans. These include requirements relating to timescales, reviews and content of the plan.

Where the local authority is not responsible, for example where the parents have decided to home educate a child or send the child to an independent school, then the local authority has powers rather than duties to provide support.

Certain children with complex needs are entitled to a statutory Co-ordinated Support Plan, which brings with it rights of appeal to the Additional Support Needs Tribunal. Only 1.4% of pupils with ASN have Co-ordinated Support Plans.

**Dispute resolution**

The 2004 Act includes a range of dispute resolution procedures. These are:

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1 The Education (Scotland) Act 2016 extended many of these rights to children aged 12 or over who are assessed as having capacity. These provisions have yet to be commenced.
- Right to have a ‘supporter’ present in discussions or an ‘advocacy worker’ make representations to the local authority, but the local authority do not have to pay for this. (s.14)
- Right to an advocacy services, free of charge, for those taking cases to the Additional Support Needs Tribunal (s.14A)
- Independent mediation, free of charge (s.15)
- Independent adjudication, free of charge (regulations under s.16)
- Additional Support Needs Tribunal for certain issues involving CSPs, placing requests and disability discrimination cases under the Equality Act 2010. (s.17). The full list of grounds for references to the Tribunal are given in s.18 of the 2004 Act.

The Scottish Government reports the use of the various dispute resolution procedures. Their last report in March 2016 noted that:

- There were 156 mediation related enquiries made. The use of independent mediation has more than doubled in the last 5 years.
- There were 4 referrals to independent adjudication from November 2014 to November 2015.
- There were 2 s.70 references (see below)
- There were 70 references to the ASNTS. The report noted that the majority settle before a hearing is fixed. “Let’s Talk” ASN provide advocacy for those taking a case to the ASNT. There were 75 new referrals for advocacy from December 2014 to November 2015.

Outwith these statutory dispute resolution procedures, there is advice and information provided by voluntary organisations. For example, there were 1,444 calls to the ‘Enquire’ helpline2, mostly in connection with provision of support to children with autism.

In previous years, s.70 Education (Scotland) Act 1980 has been used as a route for redress in relation to some ASN matters. This provided for referral to Ministers if an education authority failed to undertake a statutory duty. The Education (Scotland) Act 2016 removed matters from this provision if they were within the remit of the ASNTS. This provision has yet to be commenced.

Publication of information
Every local authority must publish its ASN policy and provide certain information to parents of children with ASN. This includes information about their rights under the legislation and the provision available from the local authority.

In addition, Ministers have a duty to collect certain information from local authorities, and between 2009 and 2016 had a duty to lay an annual report in the Scottish Parliament.

**Education (Disability Strategies and Pupils’ Educational Records) (Scotland) Act 2002**

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2 run by Children in Scotland and funded by the Scottish Government.
This Act requires local authorities to prepare “accessibility strategies” for improving access to the curriculum for pupils with disabilities. It includes improving the physical environment of the school as well as improving communication with pupils with a disability.

**Equality Act 2010**
The Equality Act includes provision in relation to disability discrimination in school education. The Equality and Human Rights Commission have issued technical guidance for Scottish schools on complying with the legislation. This sets out the Act’s requirements for all ‘protected characteristics’ under the 2010 Act. In addition to the protections afforded all those with protected characteristics, in relation to disability there are additional requirements to make reasonable adjustments and protection against discrimination arising from a disability.

**Standards in Scotland’s Schools etc Act 2000**
Section 15 of this Act provides a legal presumption that children will be educated in mainstream schools unless mainstream provision:

- would not be suited to the ability or aptitude of the child;
- would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
- would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

and it shall be presumed that those circumstances arise only exceptionally.

The Scottish Executive issued guidance on this in 2002. The guidance explained the broader intention of the policy:

“It is based on the premise that there is benefit to all children when the inclusion of pupils with special educational needs with their peers is properly prepared, well-supported and takes place in mainstream schools within a positive ethos. Such inclusion helps schools to develop an ethos to the benefit of all children, and of society generally. It also helps meet the wishes of many parents that their children should be educated alongside their friends in a school as close to home as possible.”

In January 2016 the Scottish Government said it would review the guidance (Holyrood, May 2016). Last year ENABLE published a report on mainstreaming. Included In the main reported on a survey finding that “truly inclusive education is still far from a reality for young people who have learning disabilities.” The issue of mainstreaming was debated in Parliament on 30th November 2016.

**Scottish Government Policy**
As mentioned, between 2009 and 2016, the 2004 Act included a requirement to publish an annual report to parliament on implementation of the legislation. The last report was published in March 2016 and some of the policy developments highlighted included:

- establishment of a network of ‘Inclusion Ambassadors’, “These young people will represent their authority in a range of events and discussions on inclusion.”
• continued implementation of the Doran review\(^3\), with the main focus on strategic commissioning
• refreshed guidance on children who are unable to attend school due to ill health published
• review of the guidance on administration of medicines re-established in December 2015. Draft guidance on healthcare needs in schools was published in February 2017.

Other recent developments include draft guidance for schools, local authorities and other stakeholders on supporting children and young people from travelling communities to engage in school education published February 2017.

MAIN THEMES IN SUBMISSIONS
The Committee received a large number of submissions, mainly from parents and teachers. Organisations submitting included: Youth Scotland, Glasgow University, Additional Support Needs Tribunal, UNISON, CELCIS, AHDS, ADHD Parent Support, Scottish Children's Services Coalition, Adoption UK, Highland Council, Scottish Centre for Children with Motor Impairments, National Deaf children’s Society and Down’s Syndrome Scotland.

The main themes in submissions received were:
• inclusion and mainstreaming
• parent’s rights
• resources

Also apparent from the submissions is the breadth of type of additional support needs.

THEME 1 - Definitions and recording of additional support needs
The 2004 Act does not list specific conditions, with the exception that looked after children are presumed to have additional support needs unless shown otherwise. This broad approach is considered in one submission to be the Act’s “most distinctive feature – its magic” (Jonathan Sher). On the other hand, Adoption UK suggest that children adopted from care should be presumed to have additional support needs.

Illustrating the diversity of additional support needs are the particular conditions and circumstances referred to in submissions to the Committee. These include: dyslexia, autism, down syndrome, ADHD, brittle bone disease, looked after children, adopted children, dyscalculia, very able children, hearing impairment, anxious children, nystagmus, aspergers, agenesis of the corpus callosum growth hormone deficiency and pituitary issues, complex needs requiring 24 hr support, foetal alcohol spectrum disorder.

Variation in recording practices and implementation were mentioned by, for example, CELCIS, the Scottish Children’s Services Coalition and Comann nam Parant. Bill Colley, an educational consultant specialising in ADHD refers to inconsistent recording of pupils with ASN. He discusses the lack of monitoring and information in a variety of ASN areas and suggests that:

\(^3\) Published in 2012, this looked at provision for children with complex needs.
“A legitimate measure of performance at school level, and thus across an authority, would be rates of parental and pupil satisfaction with the support received.”

THEME 2 - Inclusion and mainstreaming

The pupil census records that 93% of pupils with additional support needs spend all their time in mainstream classes. Those with the most complex needs have Co-ordinated Support Plans, and half of these pupils spend all their time in mainstream (Scottish Government pupil census 2016, table 1.6).

The legal presumption of mainstreaming is part, but not all, of ensuring an inclusive approach to school education. Submissions made the following main points:

- that teachers need to know both about specific conditions but also have a broader understanding of what inclusion means
- some parents' preference for home education or special schools is based on negative experiences of mainstream, whereas for others it is a positive choice
- that some parents and teachers consider that lack of resources means that inclusion doesn't work in practice

For example one said:

“I’m all for inclusion if its properly supported, but otherwise can be to the detriment of other children”

There were positive examples of inclusion having worked, but again, recognition that this requires both resources and commitment from staff. For example one parent said:

“In our view more children with Down’s syndrome should be accommodated and included in mainstream schools. Our transition experiences have highlighted to us why most attend special school instead. There is a definite lack of investment and quality in local authority schools for children with Down’s Syndrome many of whom could be accommodated with the right level of support.”

In addition to resource issues, the main concern about mainstreaming was teachers’ knowledge. There were calls for teachers to have training in relation to specific conditions such as autism, dyslexia and ADHD as well as better knowledge of issues faced by looked after and adopted children. Highland Council’s submission referred to CPD resources they provide for pupil support assistants.

However, there were some who disagreed that all those in mainstream ought to be there:

“many of the pupils I teach can barely cope for an hour or two a week in a mainstream class and when you ask them about it they prefer to be separate”

Related to this are the concerns expressed by members of UNISON:

“members are now expected to deal with a range of medical and personal care needs for children that they do not feel adequately trained, supported or indeed paid to undertake”
Perhaps drawing these different perspectives together was the submission which focused on choice.

“There should be a variety of education options for children with additional support needs and it should be parents who make the decision of where and in what environment their child is taught, with advice from relevant staff.”

Lack of resources and lack of skills/knowledge serve to highlight another strong theme in submissions which was the gap between policy and legislative aspiration and practice. For example one parent referred to “good laws’ but then the Scottish Government “washes their hands” of the implementation by delegating to local authorities. Similarly the Scottish Centre for Children with Motor Impairments note that the Scottish Government

“is neither in direct control of the planning, nor the delivery of services and those with responsibility for services’ delivery may be either unwilling or unable to deliver the quality of services desired”.

They state that:

“there is no effective national leadership in this field.”

However Glasgow University consider that:

“the gap between policy and practice seems to be bridged best by knowledgeable and highly qualified teachers”

The submission from Highland council states that:

“we believe that improvement planning informed by self-evaluation is the means to achieve effective service delivery”

Some submissions referred to provision that may technically be in a mainstream school, but queried whether this provided access to the curriculum. For example, one parent said:

“a lot of children who are on the spectrum are being ‘lost’ in the mainstream environment and a large number spend a significant part of their school day in solitary conditions and not in the classroom, either spending significant time in ‘sensory rooms’ ‘safe rooms’ ‘soft play rooms’ etc but yet this seems to be acceptable and parents are told ‘but your child is accessing the curriculum.’”

The Scottish ADHD coalition referred to children being excluded from schools and being

“put on “short days” or taught away from other children sometime on their own in unsuitable locations such as a photocopier cupboard.”

**THEME 3: Parents’, Children’s and Young Peoples’ Rights**

Parents, young people and, in some cases, children, have significant rights under the 2004 Act as outlined above. However, a number of submissions raise the issue of the degree to which they are, in practice, able to assert these rights.

For example, both the Glasgow University’s and ASNT’s submissions refer to parents being unaware what they can ask for and their legal rights.
A regular theme in submissions from parents was delays in assessment, sometimes linked to fears that this was due to a lack of willingness to provide support.

The legislation quite deliberately does not require diagnosis of a specific condition before support must be provided, however submissions do suggest that getting a diagnosis is in practice an important part of accessing support. For example:

“My other child has not been diagnosed, but I suspect that is because the school do not want to have to provide him with any support as it would eat into their ever-dwindling budget”

A number of submissions from parents refer to them having to fight to get support in place. One referred to “feeling you have to fight the system every step of the way,” another that “we fight for her right to have an education.”

Others referred to promised support not materialising or lack of resources meaning that even where the school is supportive, the required support is not put in place.

Another issue mentioned in a few submissions was a lack of satisfaction with complaints systems. The various dispute resolution mechanisms have been outlined in the legislative context section above, together with the relatively low numbers using them.

One parent described how they had tried both mediation and independent adjudication but found neither impartial, saying they were a “waste of time.”

**Resources**

Resource issues are closely linked to the arguments around mainstreaming, inclusion and difficulties with accessing support as discussed above. As Jonathan Sher points out in his submission,

“It is commonly acknowledged that ASN services and support for ASL eligible children are routinely being decided by money, not need or entitlement.”

Highland council refers to the difficulty in predicting required resource and states that:

“we have worked hard to provide a robust system of identifying need with a resource allocation model”

The most commonly mentioned resource issue across the submissions as a whole is the lack of suitably trained staff. For example, one parent said:

“I feel very strongly that (my children) have not been catered for in their school, but I don’t blame the school as I know that they just don’t have the resources and have far too many needs to meet.”

One submission linked the issue to preventative spend:

“At the moment schools are having to work in a reactive manner rather than being proactive in dealing with ASN pupils as they do not have the time, staff and resources to look ahead. We all know there are budget cuts and severe pressures on councils and the need is to save money immediately, but in the long term, more
money will be spent because the right support has not been put in place to begin with.”

Another parent described how they paid for a private tutor for their son as the support offered at school was not enough. She said:

“Howver, I really struggle to pay this […] A child’s education should be free and they should be given every opportunity to reach their full potential through the state system”

Highland Council’s submission outlines their improvements to ASN provision and would welcome:

“central government recognising the resource implications of providing effective support structures and holistic training strategies across children’s services, starting in the early years.”

They also point out that the extension of early learning and childcare will need to factor in provision for ASN.

Camilla Kidner
SPICE
22nd February 2017
**Question S5W-05965: Miles Briggs, Lothian, Scottish Conservative and Unionist Party, Date Lodged: 05/01/2017**

To ask the Scottish Government, further to the answer to question S5W-01096 by John Swinney on 25 July 2016, whether it will provide the information for 2016.

**Answered by John Swinney (26/01/2017):**

Please see in the following table how many and the percentage of pupils with additional support needs in each local authority for 2016.

The information on hours of support provision is not held centrally.

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Pupils with an ASN</th>
<th>Percentage of pupils with an ASN</th>
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<tbody>
<tr>
<td>Aberdeen City</td>
<td>4,883</td>
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<td>Aberdeenshire</td>
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<td>Angus</td>
<td>1,685</td>
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<td>Argyll &amp; Bute</td>
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<td>Clackmannanshire</td>
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<td>Dumfries &amp; Galloway</td>
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<td>Scotland</td>
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**Current Status:** Answered by John Swinney on 26/01/2017