

AUTISM (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 Autism (Scotland) Bill introduced in the Scottish Parliament on 26 May 2010:

- Explanatory Notes;
- a Financial Memorandum; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 44–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Hugh O'Donnell MSP, who is the member in charge of the Bill. They have been prepared 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.

SUMMARY AND BACKGROUND

4. The Bill places a statutory duty on the Scottish Ministers to prepare and publish an autism strategy by not later than 4 months after the Bill comes into force.

5. The Bill provides that the autism strategy is to be a strategy for meeting the needs of children and adults in Scotland with autistic spectrum conditions, through improving the provision of relevant services by local authorities and National Health Service bodies to such children and adults. The Scottish Ministers are required to keep the autism strategy under review and may revise it. The Scottish Ministers have a duty to consult and seek the participation of appropriate stakeholders and such other persons as the Scottish Ministers consider appropriate in both preparing the autism strategy and revising it.

6. In addition, the Bill requires the Scottish Ministers to issue guidance, by not later than 12 months after the day on which the Bill comes into force, to NHS bodies (as defined in section 4(1)) and local authorities on implementation of the autism strategy. The Scottish Ministers must keep the guidance under review, and consult with the NHS bodies, local authorities and appropriate stakeholders both before issuing the guidance and before revising it in any way that would result in a substantial change.

COMMENTARY

Section 1: Autism strategy

7. Section 1(1) places a duty on the Scottish Ministers to prepare and publish a document, to be called "the autism strategy" (subsection (2)), setting out a strategy for meeting the needs of children and adults in Scotland with autistic spectrum conditions, by improving the provision of relevant services by local authorities and NHS bodies. Under subsection (3) the autism strategy must be published not later than 4 months after the Bill comes into force (as the Bill comes into force 2 months after Royal Assent, the strategy will be published a total of 6 months after enactment).

8. "Relevant services" are defined in section 4 in the following terms:

- (a) in relation to an NHS body, means health services provided for the purposes of the health service continued under section 1(1) of the National Health Service (Scotland) Act 1978 (c. 29),
- (b) in relation to a local authority, means services provided by a local authority for the assessment, care and support of persons with autism.

9. Autistic spectrum conditions are lifelong conditions which affect how a person communicates with, and relates to, other people and the world around them. The word “spectrum” is used because the characteristics of the condition vary from one person to another. As research and experience refines the understanding of autism, so the range of characteristics will change. It is because of this that no definition of the term “autistic spectrum condition” has been included in the Bill. The intention is that definitional issues will be dealt with in the autism strategy, which, as it has to be kept under continual review, will allow for changes to be made much more quickly in response to new developments than if the definition were to be included in primary legislation.

10. Section 1(4) requires the Scottish Ministers to keep the autism strategy under review and allows the strategy to be revised, in which case it must be re-published (subsection (5)).

11. Section 1(6)(a) specifies that the Scottish Ministers must consult and seek the participation of appropriate stakeholders and any other persons and groups as the Scottish Ministers consider appropriate in preparing the autism strategy. The appropriate stakeholders whose participation will be sought are organisations representing persons with autistic spectrum conditions, organisations representing professionals delivering support to persons with such conditions, organisations involved in research relating to services for persons with such conditions, local authorities, and NHS bodies. Bodies whose participation is sought will be actively involved in the development of the autism strategy, rather than only being able to respond through the consultation process.

12. Consultation and steps to seek participation are also required if the Scottish Ministers propose to undertake substantial revision of the strategy (section 1(6)(b)).

Section 2: Guidance by the Scottish Ministers

13. Section 2(1) places a duty on the Scottish Ministers to issue guidance on the implementation of the autism strategy to local authorities and NHS bodies. The guidance must be issued not later than 12 months after the day on which the Bill comes into force (subsection (2)).

14. Section 2(3) requires the Scottish Ministers to keep the guidance under review and allow revisions to be made. In keeping the guidance under review, the Scottish Ministers must give particular consideration to the extent to which the guidance has effectively secured the implementation of the autism strategy (subsection (4)).

15. Section 2(5) stipulates a range of matters that must be addressed in the guidance issued by the Scottish Ministers. These are:

- the provision of relevant services for the purpose of diagnosing autistic spectrum conditions;
- the identification of persons with such conditions;
- the assessment of the needs of persons with autistic spectrum conditions for relevant services;
- planning in relation to transition arrangements for persons with autistic spectrum conditions as they move from being children to adults;
- other planning in relation to the provision of relevant services;
- training of staff who provide relevant services to persons with autistic spectrum conditions; and
- local arrangements for leadership in relation to the provision of relevant services to persons with such conditions.

16. The list is not exhaustive, and the Scottish Ministers are free to include other matters in the guidance as well as those contained in this subsection.

17. The guidance to local authorities and NHS bodies on the identification of children and adults with autistic spectrum conditions and the planning of service provision for them may, for example, cover the collection of information about the numbers of persons requiring services and the kinds of services they need.

18. Section 2(6) requires the Scottish Ministers to consult and seek the participation of local authorities, NHS bodies and appropriate stakeholders before issuing guidance on the implementation of the autism strategy, and before making substantial changes to the guidance once issued. There is nothing to prevent the Scottish Ministers from consulting more widely or seeking the participation of organisations or individuals other than those stipulated in this subsection.

Section 3: Local authorities and NHS bodies: duty to have regard to guidance

19. This section imposes a duty on local authorities and NHS bodies to have regard to the guidance under section 2 in the exercise of their functions concerned with the provision of relevant services.

Section 4: Interpretation

20. Section 4 sets out definitions of terms which appear throughout the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

21. This document relates to the Autism (Scotland) Bill introduced in the Scottish Parliament on 26 May 2010. It has been prepared by Hugh O'Donnell MSP, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

22. The objective of the Bill is to ensure that the Scottish Government has a statutory duty to prepare and publish a strategy to meet the needs of children and adults with autism; consult with appropriate organisations and people; and issue statutory guidance to local authorities and health boards on their services for children and adults with autism.

23. At present Scotland is the only part of the United Kingdom without a national autism strategy.

24. Owing to a lack of a national autism strategy in Scotland, people with autism and their carers face something of a postcode lottery in terms of service provision. Through the strategy and the resulting guidance, this Bill will seek to address these discrepancies, providing for national standards of service and provision.

COSTS ON THE SCOTTISH ADMINISTRATION

National autism strategy and guidance

25. The Bill requires Scottish Ministers to publish a national autism strategy and to issue guidance to local authorities and NHS bodies on the implementation of that strategy.

26. While there will be costs to the Scottish Administration associated with the preparation and consultation to inform the strategy, it is not expected that these costs will be significant.

27. Having spoken to former and current staff in the Scottish Administration, regarding the costs relating to public consultations and subsequent policy documents, it seems reasonable to suggest that the cost to the Government of preparing, consulting on and publishing an autism strategy would be no more than £5000. This would be incurred in the financial year 2011/12 and at any point when the strategy was revised. The figure is based on the Government consultation for the Health Boards (Membership and Elections) (Scotland) Bill consultation, the total cost of which was £3,500 (comprising £2,500 print costs and £1,000 for support meetings).

Margin of uncertainty

28. It is recognised that the above estimate is a best approximation of the costs and if a considerable number of bodies and individuals sought the opportunity to respond to the consultation then there may be a resultant increase in the costs. It is not, however, believed that any increases to this figure will be significant.

Implementation of the guidance

29. The Bill is principally concerned with the duty on Scottish Ministers to publish a national autism strategy and issue guidance to local authorities and NHS bodies on the implementation of that strategy. The Bill does not dictate the content of the strategy at all and, while it gives some guidance as to the matters which should be covered in the guidance, it does not specify in what way the substance of those matters should be addressed. The contents of the strategy and the guidance will be determined by the Scottish Ministers after consultation. Until the contents of these documents are known, it is obviously impossible to estimate the costs which local authorities and NHS bodies will incur in having regard to the strategy and the guidance in exercising the relevant functions. To that extent, the costs of implementation are not directly attributable to the Bill, but to the completed strategy and guidance and to the extent to which the guidance is followed by local authorities and NHS bodies.

COSTS ON LOCAL AUTHORITIES

30. Costs on local authorities will be limited to responding to the consultation to inform the preparation of the national autism strategy. While there is no requirement in the Bill for local authorities to respond to the consultation, if they were to respond, it is estimated that it would cost £1,500 per local authority.

31. Other than requiring them to have regard to the guidance, the Bill does not prescribe how local authorities should respond to the guidance issued as a result of the strategy. As such, in this regard, the Bill does not have any direct financial implications for local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

NHS bodies

32. Costs on NHS bodies will be restricted to responding to the consultation to inform the preparation of the national autism strategy. While there is no requirement in the Bill for NHS bodies to respond to the consultation, if they were to respond, it is estimated that it would cost £1,500 per body.

33. Other than requiring them to have regard to the guidance, the Bill does not prescribe how NHS bodies should respond to the guidance issued as a result of the strategy. As such, in this regard, the Bill does not have any direct financial implications for NHS bodies.

Businesses/other bodies

34. It is not anticipated that there will be any significant costs for businesses in relation to the Bill beyond those potentially incurred in responding to the consultation to inform the national autism strategy. A notional cost of responding to the consultation required by the Bill may be in the order of £100.

Individuals

35. It is not anticipated that there will be any significant costs for individuals in relation to the Bill beyond those potentially incurred in responding to the consultation to inform the national autism strategy. A notional cost of responding to the consultation required by the Bill may be in the order of £10.00.

SAVINGS

36. Evidence would suggest that individuals with autism incur significant costs to their health and wellbeing when they don't get the right assistance.

37. Evidence also shows that the right care and support, provided at the right time to someone with autism, can really change their prospects and allow them to live full and independent lives especially if they can be supported into employment.

38. Public finances will face significant pressures over the coming years, but many people with autism will be left exceptionally vulnerable if support is removed from them. A national strategy would ensure that limited resources are used to the greatest effect.

39. It is not only those individuals with autism who are affected by the right care not being available at the right time. A report on the economic costs of autism by the National Audit Office (NAO) highlighted the significant costs to local government and health services. There is a challenge for government to consider the full costs of unmet need and the reliance on more expensive care packages compared with the costs of early intervention, which could potentially lead to significant savings.

40. The NAO has identified the true costs of autism services and support at approximately £2.3 billion for Scotland each year. The NAO believes that steps to deliver the right support for adults with autism will save millions of pounds and lead to much better outcomes for people with autism.

41. NAO believe that if local authorities identify and support just 4% of adults with Asperger syndrome the cost of services will be cost-neutral. The more people who are identified and supported the greater the savings will be.

**PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE
COMPETENCE**

42. On 20 May 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Autism (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Autism (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 26 May 2010

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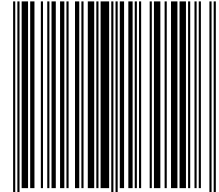
EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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