This document relates to the Education (Additional Support for Learning) (Scotland) Bill as amended at Stage 2 (SP Bill 16A)

EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Education (Additional Support for Learning) (Scotland) Bill (the Bill) introduced in the Scottish Parliament on 6 October 2008 and includes the costs of the additional amendments that were agreed by Parliament during Stage 2 of the Bill’s Parliamentary journey. It has been prepared by the Scottish Government in relation to the Parliament’s consideration of the Bill at Stage 3 and additions or changes to the original financial memorandum are indicated by sidelining in the right margin. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Education (Additional Support for Learning) (Scotland) Bill amends the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”), which came into force in November 2005 with the aim of creating a stronger, better system for supporting children’s learning. The 2004 Act, inter alia, places new duties on education authorities to make adequate and efficient provisions for the additional support needs of every child and young person for whom they are responsible and who requires additional support for learning. Education authorities must identify, support and keep under review the needs of all children with additional support needs.

3. The original policy intention behind the 2004 Act was to allow young people with additional support needs, and parents of children with additional support needs, including those with co-ordinated support plans (CSPs) to make out of area placing requests. However, this was called in to doubt by an Inner House, Court of Session ruling by Lord Macphail on 11 October 2007. Lord Macphail’s ruling held that the 2004 Act did not make, and should not be construed as making, any provision in respect of a child with additional support needs, who required a CSP, for the making of a placing request to any education authority who were not responsible for the child’s/youth person’s education. The ruling also inferred that young people with additional support needs and parents of children with additional support needs could not make out of area placing requests. Prior to Lord Macphail’s ruling, local authorities were considering out of area placing requests for children with additional support needs, including those with co-ordinated support plans. Therefore, the estimated number of future out of area placing requests contained within this memorandum is likely to be fairly accurate.
4. The Convention of Scottish Local Authorities (COSLA) and 6 of the 32 local authorities in Scotland participated in a survey to assist the Scottish Government with the calculations contained within the Financial Memorandum that accompanied the Bill at its introduction to Parliament on 6 October 2008. The six authorities were Dumfries and Galloway Council, Dundee City Council, East Ayrshire Council, Highland Council, City of Edinburgh Council and West Lothian Council. These authorities represent a good cross section of all authorities in Scotland.

5. The survey indicated that each are involved in only a small number of cases which would be affected by this Bill per year and that cases vary considerably in their complexity and length. As such, the estimated cost of dealing with a case also varies, with a wide range of estimated cost per case both between and within local authorities.

6. Estimates used in this Memorandum are based on an examination of the data gathered with ranges given and representative averages chosen to indicate the likely scale of the impact. The estimates below should be treated as an indicative average only.

7. The costs of the additional amendments contained in the Bill as agreed by Parliament during Stage 2 have been estimated and agreed with an Economic Adviser in the Scottish Government’s Education Analytical Services Division and the Scottish Government’s Finance Division.

8. It is important to note that given both the very small number of cases involved and the large variability in cost due to the individual nature of cases, it is not possible to assess precisely either the number of cases or the cost involved. Both number and cost are likely to vary from year to year. Therefore, the total overall additional cost to all of the 32 local authorities as a result of this Bill is as follows:
   - Scottish Government estimate the total cost to be around £767,171 per annum
   - The Presiding Officer of the Scottish Parliament estimates the total cost to be £202,970 per annum.

COST ON LOCAL AUTHORITIES

Extending the jurisdiction of the Tribunal to hear all placing request appeals involving a co-ordinated support plan (CSP) and appeals in respect of a place in a special school

9. Currently, the 2004 Act makes provision for the transfer of a placing request appeal from the Education Appeal Committee (EAC) or the sheriff to the Additional Support Needs Tribunals for Scotland (the Tribunal) only in respect of the situation where the education authority has decided that no CSP is appropriate and that decision has been referred to the Tribunal.

10. The Bill extends the jurisdiction of the Tribunal to include consideration of any placing request appeal where a CSP has been prepared or is being considered, at any time before final determination by an EAC or sheriff (as appropriate). An example would be where the education authority is in the process of establishing whether a CSP is required.
11. The National Statistics publication “Placing Requests in Schools in Scotland, 2007/2008” states that of the 28,498 placing requests received for all pupils, 725 were appealed to the Education Appeal Committee (EAC), and 8 of those subsequently appealed to the sheriff. From a total school population of 681,573, the percentage of school pupils identified as having additional support needs who have a CSP, an individualised educational programme and/or with provision levels set by a Record of Needs pre-dating the commencement of the 2004 Act is currently 5.7% (38,716). Only 7.0% of those pupils identified as having additional support needs have a CSP (2,694). Therefore, based on these percentages, it is estimated that the number of placing request appeals referred to the Tribunal from the EAC or sheriff because a CSP has been prepared or is being considered will increase by no more than 2 or 3 cases per annum. Conversely, this will also mean a decrease in the number of placing request appeals heard by the EAC or sheriff by 2 or 3 cases per annum.

12. There is considerable variation in the estimated cost of a Tribunal which includes an oral hearing, both between individual cases within the same authority and between local authorities - the cost for a Tribunal case with representation ranges between £500 and £18,000. On the basis of information received, an indicative average cost per case is around £5,000. Therefore, the total cost to all authorities for Tribunals cases with representation at an oral hearing is estimated to be £15,000 per annum (3 x £5,000).

13. On the other hand, the survey indicates that the cost of a sheriff Court appearance ranges between £2,700 and £25,000. An indicative average cost per case is around £9,000. The cost of an appeal to EAC ranges between £350 and £4,800. An indicative average cost per case is around £2,000. Therefore the savings incurred by authorities for those cases that are transferred from either the EAC or sheriff to the Tribunal is estimated to range between £6,000 (3 cases from the EAC at £2,000 each) to £27,000 (3 cases from the sheriff at £9000 each). Depending on the make up of cases, this could result in either an increase in cost or a saving for local authorities. Assuming the reduction in cases is more likely to be an EAC appeal rather than a Sheriff Court appearance, this suggests an indicative saving of £13,000 per annum (2 EAC cases at £2,000 each + 1 sheriff case at £9,000).

14. To date, all placing request appeals dealt with by the Tribunal have related to special schools. The Bill will simplify and bring consistency to decision making in respect of placing requests by allowing all placing request appeals in respect of a place in a special school to be heard by the Tribunal.

15. The calculations provided in paragraphs 13 and 14 show that the local authority cost of referring a case to: its EAC is £2,000; the Sheriff is £9000; and the Tribunal is £5,000. The Placing Requests in Schools in Scotland 2007/2008 shows that there were 9 special school placing request references referred to the EAC (cost £2000 each) and 2 subsequently appealed to the Sheriff Court (cost £9,000 each). On the basis of the available evidence from 07/08, the local authority costs associated with this provision are estimated to be £9,000 (9 Tribunal cases at £5000 each – (9 EAC cases at £2000 + 2 Sheriff cases at £9000).

Out of area placing requests

16. As detailed in paragraph 3, the original policy intention behind the 2004 Act was to allow young people with additional support needs, and parents of children with additional
support needs, including those with co-ordinated support plans (CSPs) to make out of area placing requests. However, this was called into doubt by Lord Macphail’s ruling.

17. The Bill will amend the legislation to make it clear that young people with additional support needs, and parents of children with additional support needs, including those with CSPs, are able to make a placing request to an education authority outwith the local authority area in which they live. Additionally, where a CSP has been prepared or is being considered, an appeal against a decision to refuse an out of area placing request can be referred to the Tribunal.

18. There is considerable variability among the authorities who responded to our survey on the reported cost of an out of area placing request – this ranged between £450 and £12,500. An indicative average cost is around £3,600. Following Lord Macphail’s ruling, the Scottish Government contacted COSLA in March 2008 to establish the extent of the impact of Lord Macphail’s ruling on authorities. COSLA confirmed that in their work with the Association of Directors of Education in Scotland (ADES), they could not find any evidence to suggest that authorities were refusing to accept placing requests for children with additional support needs who were resident in another authority’s area. As a result, there is unlikely to be any increase in cost to local authorities in processing out of area placing request for children with additional support needs (excluding those with a co-ordinated support plans). The National Statistics publication “Placing Requests in Schools in Scotland, 2007/2008” states the total number of “out of area” placing requests received for all pupils is 2999. The number of pupils identified as having a co-ordinated support plan, as detailed in paragraph 11 above is 2694 (5.7% of the total pupil population have been identified has having additional support needs (38,716) and of those, 7.0% have a CSP). Therefore, the estimated number of out of area placing requests for pupils with a CSP is estimated to be around 9 per annum (5.7% of 2999 = 171, 7.0% of 171 = 12). The total estimated cost to all authorities for processing out of area placing requests for pupils with co-ordinated support plans is £43,200 per annum (12 x £3,600).

19. It should also be noted that under section 23(2) of the Education (Scotland) Act 1980, where an education authority has provided school education, with or without other services (excluding mediation or dispute resolution), for any pupil, child or young person belonging to the area of some other authority, or have provided additional support within the meaning of the 2004 Act for any such pupil, the education authority, may, if a claim is made, recover from that other authority such contributions in respect of such provision as may be agreed between the authorities or as the Scottish Ministers may determine. As such, successful placing requests are cost neutral overall.

20. The National Statistics publication “Placing Requests in Schools in Scotland, 2007/2008” states the total number of “out of area” placing requests received for all pupils is 2999. Of those, 2238 (75%) were granted. As detailed in paragraph 11, 5.7% of pupils have been identified with additional support needs, including those with CSPs. Therefore, the estimated number of out of area placing requests for pupils with additional support needs, including those with CSPs is 171 (5.7% of 2,999) and the estimated number granted is 128 (75% of 171). Based on these figures there could be a maximum of 43 (171 minus 128) appeals to either the EAC or the Tribunal for children with additional support needs/CSPs respectively. If only 7.0% of all pupils identified with additional support needs have a CSP, we would expect three of those cases (7.0% of 43) to be cases of children with a CSP. Those cases would go to the Tribunal and the remaining 40 cases could be appealed to the EAC. However, as only 19% of refused placing requests are actually appealed, the numbers could be as little as 1 appeal per annum to the
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Tribunal and 8 appeals to the EAC. There is considerable variation in the estimated cost of a Tribunal case with representation at an oral hearing, both between individual cases within the same authority and between local authorities - the cost for a case ranges between £500 and £18,000. On the basis of information received, an indicative average cost per case is around £5,000. The results of the survey indicate that the cost of an appeal to EAC ranges between £350 and £4,800. An indicative average cost per case is around £2,000. Therefore, the estimated total increase in cost to all authorities for placing request appeals is around £21,000 per annum (1 x £5,000 plus 8 x £2,000).

Mediation and dispute resolution

21. The Bill provides that following the submission of an out of area placing request, a parent or young person will be able to access mediation from the potential host authority regarding the placing request. It will also provide that following a successful out of area placing request, the duty to provide mediation and dispute resolution services will lie with the new “host” authority. Any costs associated with providing these services to the parents of a child or a young person who does not belong to the authority’s area will not be recoverable under section 23(2) of the Education (Scotland) Act 1980.

22. To date, there have not been any cases in which a home authority has been required to provide mediation or dispute resolution for a child being educated in another authority’s area as a result of a placing request. Therefore, the cost to authorities is likely to be minimal. Of the 6 local authorities who responded to the survey, 5 authorities purchase mediation services from the voluntary sector using either a service level agreement or a case by case basis, and 1 authority provides mediation services in house. For those authorities that purchase mediation services from the voluntary sector this cost could range from £0 to £1790 per case depending upon whether they have a service level agreement or purchase services on a case by case basis.

23. The 6 local authorities who responded to the survey estimated the cost of staff time for mediation at around £800 per case. Scottish Ministers have set the fee payable by authorities to an Independent Adjudicator for dispute resolution at £355 per case. This excludes the cost of staff time estimated at around £850. If parents or young persons were to request mediation from the host authority in 1% – 5% of the estimated 171 out of area placing requests for pupils with additional support needs/CSPs (see paragraph 18), this could result in an increase of between 2 to 9 mediation cases per annum. If parents or young person were to request dispute resolution from the host authority in 1% - 5% of the estimated 128 out of area placing requests granted for pupils with additional support needs/CSPs (see paragraph 20), this could result in an increase of between 2 to 6 dispute resolution cases per annum. The total cost to all authorities per annum for providing mediation and/or dispute resolution services to pupils belonging to another authority’s area is estimated to range between £1,600 (2 x £800) for mediation only to £22,770 (6 x (£1,790+£800+£355+£850)) for provision of mediation and dispute resolution.

Provision of published information to certain persons

24. The Bill provides that education authorities are under a duty to provide parents of children with additional support needs (and young persons with additional support needs) with all the information authorities are required to publish under section 26 of the 2004 Act.
25. The *Pupils in Scotland, 2008* census shows that 5.7% of the total school population have been identified as having a CSP, an IEP and/or provision levels set by a RoN. However, *The Warnock Report (1978)* on special educational needs states that up to 1 in 5 school children will require some form of special educational provision.

26. Based on the above figures, this Bill could place authorities under a duty to provide all the information they are required to publish under section 26 to anywhere between 38,716 and 136,315 parents and young people. The Bill does not specify the method by which this information should be provided to parents and young people. However, as not all parents and young people will have access to a computer, it is assumed the preferred method would be by post.

27. In order to post the information to every parent of a child with additional support needs (and young persons with additional support needs), local authorities will be required to print/produce an appropriate number of copies for dissemination. The range of materials produced by authorities under section 26 of the 2004 Act can vary substantially from a booklet to a very detailed code of practice. In 2008, the Scottish Government produced the *health promotion guidance for local authorities and schools* and the cost of producing 4,500 copies was £4,155. Therefore, the cost of providing between 38,716 and 136,315 copies of a similarly formatted document would range between £35,748 and £125,864. The Scottish Government recently published ‘The Autism Toolbox’ for all schools; the cost of producing 6,000 copies was £38,345. Therefore, the cost of producing between 38,716 and 136,315 copies of a similarly formatted document would range between £247,427 and £871,166.

28. Similarly, the cost of posting this information is likely to range from £0.90 for a 500g second class large letter (max. 353mm (L) x 250mm (W) x 25mm (D)) to £2.49 for a 1kg second class packet (over 353mm (L) x 250mm (W) x 25mm (D)). The total cost to education authorities in distribution will range from approximately £34,844 to £339,425.

29. Combining the cost of production (ranging between £35,748 and £871,166) and distribution (ranging between £34,844 and £339,425) gives a range of costs between £70,592 and £1,210,591. With a median cost is £640,592. However, the Presiding Officer of the Scottish Parliament costed this duty at £50,000.

**Availability of published information**

30. The Bill places authorities under a duty to ensure that a summary of the information they are required to publish under section 26 of the 2004 Act is available, on request, from each place in the authority’s area where school education is provided and also requires education authorities to provide this summary in any handbook or other publications provided by any school in the authorities area, that is provided by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority on any website maintained by any such school or the authority for that purpose.

31. It is not anticipated that there would be any costs resulting from the duty for education authorities to ensure that the summary, mentioned in the amendment is available, on request from each place in the education authority’s area where school education is provided as this does
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not stipulate that each school must have their own copy, merely that they should be able to access one, should one be requested.

32. Any costs associated with this requirement would result from necessary revisions to the school handbook in order to include the summary of information published under section 26 of the 2004 Act. At the minimum end of the scale, should the summary represent a small amount of information, this could be done by inserting a sheet or flier inside the existing school handbook. This would require minimal printing costs and no extra costs in terms of distribution.

33. Should the summary be required to be more substantial, it could require the school handbooks to be revised and reprinted. 107,846 children entered P1 and S1 in Scotland in 2008 (52,106 into P1 and 55,740 into S1), each of whom received a school handbook. A conservative estimate of the costs of reprinting the handbook, based on the costs of printing a small sized document: the health promotion guidance for local authorities and schools comes to £0.92 per copy.

34. No further distribution costs will be incurred as these would be encompassed in the cost of distributing the school handbook. Therefore, the Scottish Government considers that a conservative estimate of the total cost of this amendment ranges from negligible costs to around £99,218 (£0.92 x 107,846). With a median cost of £49,609. However, the Presiding Officer of the Scottish Parliament costed this duty at £25,000.

Reviewing a co-ordinated support plan (CSP) following a successful out of area placing request

35. Section 10 of the 2004 Act provides for reviews of CSPs. The 2004 Act states that education authorities have a duty to keep under consideration the adequacy of any co-ordinated support plan prepared for a child or young person belonging to their area. 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 the level of additional support provided changes. In practice, it is likely that an authority would review a co-ordinated support plan when a child changes school, particularly if the new school was based in another local authority’s area.

36. Where an education authority accepts a placing request for a child who does not belong to its area, that authority will assume responsibility for the child’s education and will be required to review any CSP as soon as is reasonably practical after the date of transfer. The cost of reviewing a CSP in the Financial Memorandum which accompanied the 2004 Act was calculated at £440. The current estimated cost for reviewing a CSP is around £800 per plan. The estimated number of out of area placing requests granted for children with additional support needs is 128 and of those, only 7.0% are likely to have a CSP, indicating that there will be approximately 9 cases per annum. Total cost to authorities for reviewing a co-ordinated support plan following a successful out of area placing request is estimated to be around £7,200 per annum (9 x £800).

37. It is useful to note that under section 23(2) of the Education (Scotland) Act 1980, these costs can be recovered from the home authority.
Three new Tribunal reference categories - education authorities exceed specified timescales or failure to plan for post-school transitions

38. Parents will be able to submit references to the Tribunal in relation to two new procedural failures by local authorities to take action within specified timescales. The first is where an authority fails to acknowledge (within a specified time to be stipulated in secondary legislation) a request from a parent of a child with additional support needs or a young person with additional support needs to establish whether the child/young person requires a CSP. The second is where an authority has notified a parent or young person that it will establish whether their child/young person requires a CSP and after a specified period of time (to be stipulated in secondary legislation), the authority has not made a decision either way. It is important to note that authorities can avoid references under these new categories by involving parents/young people in the process, keeping parents/young people abreast of the situation and taking action within the specified timescales. Furthermore, with regard to the second new appealable failure, the 2004 Act currently enables a local authority to write out to a parent or young person to advise them that it requires an extension to the timescale. The extension cannot exceed 24 weeks starting from the date the authority issued its proposal to establish whether a CSP is required. It is estimated that these two new reference categories will result in a 5% to 10% increase per annum in the number of referrals to the Tribunal (4 – 8 cases). The costs of these extra cases are set out below in paragraph 42.

39. Section 6A of the Bill extends the jurisdiction of the Tribunal to allow it to consider references in relation to an authority’s failure to comply with its duties in terms of post-school transition planning under sections 12(5) and (6) and 13 of the 2004 Act.

40. On the basis of the available evidence from 07/08, the local authority costs associated with this particular amendment would be the change in the dispute route for a child/young person with additional support needs, but without a co-ordinated support plan. They would now be able to make a reference to the Tribunal at £5,000 per case, rather than Independent Adjudication at £1,205 per case (£355 for IA’s fee + £850 for staff time) with a variance of £3,795 per case.

41. The Scottish Government are of the opinion that this amendment is cost neutral as to date there have not been any cases that we are aware of involving an education authority’s failure to make adequate post school transitional arrangements that have been referred to Independent Adjudication. However, the Presiding Officer of the Scottish Parliament costed this new reference category as £60,000.

Expedited Tribunal paper based decision making process

42. The Bill will make possible a new expedited Tribunal paper based decision making process for those references in which authorities have exceeded any specified timescales. This will include the two new reference categories detailed in paragraph 38 above and those cases that are currently appealable under the 2004 Act (where it has been established by the authority that a child/young person requires a co-ordinated support plan and the authority fails to prepare a plan by the time specified in regulation (16 weeks, or 24 weeks if the authority has written to the parent or young person notifying them that it cannot meet the 16 week timescale). While the cases that are currently appealed under the 2004 Act could result in an oral hearing, experience to date indicates that these references have been decided without the need for an oral hearing. The reason for this is that these references have not been opposed or subject to dispute in terms
of facts. As mentioned in paragraph 38, authorities have the power to avoid appeals made under these categories by involving parents/young people in the process, keeping parents/young people abreast of the situation and taking action within the specified timescales. The new expedited paper based decision making process will enable the Convener of a Tribunal to consider such cases alone and this will keep the cost to authorities to a minimum – estimated to be around £2,800 per case. The total cost to all authorities for these new reference categories is estimated to range between £11,200 (4 x £2,800) - £22,400 (8 x £2,800). Using the mid range of 6 cases the cost is estimated to be £16,800 per annum.

Enabling the Tribunal to review its decisions

43. The Bill will enable the Tribunal to review, vary or revoke its decisions in certain circumstances which will be specified in regulations. Currently the 2004 Act enables any person who has made an appeal to the Tribunal, and the relevant education authority, to 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. Therefore, if a Tribunal considered it appropriate to review its decision based on a point of law, this could result in possible savings for authorities as fewer cases will need to be referred to the Court of Session. The local authority cost of an appeal to the Court of Session ranges between £9,000 and £28,000. An indicative average cost is around £14,000. The indicative average cost of a Tribunal case with an oral hearing is around £5,000. This would save authorities approximately £9,000 per case. Since the commencement of the 2004 Act, 5 cases per annum have been referred to the Court of Session on a point of law. Therefore, the total saving to all authorities in cases where the Tribunal reviews its decision on a point of law is estimated to be around £45,000 (5 x £9,000).

TOTAL ESTIMATED COSTS PER ANNUM ON ALL LOCAL AUTHORITIES:

Cost of the Bill as introduced to the Scottish Parliament on 6 October 2008

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<tr>
<th>Improved Services</th>
<th>Increase in cost</th>
<th>Saving</th>
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<tbody>
<tr>
<td>Coordinated support plan appeals - Tribunal cases with representation at an oral hearing (paragraph 12)</td>
<td>£15,000</td>
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<tr>
<td>Cases transferred from the EAC or sheriff to the Tribunal (paragraph 13)</td>
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<td>£13,000</td>
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<tr>
<td>Processing out of area placing requests (paragraph 18)</td>
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<tr>
<td>Increase in placing request appeals (paragraph 20)</td>
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<td>Providing mediation and/or dispute resolution (paragraph 23)</td>
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<td>Reviewing a coordinated support plan (paragraph 36)</td>
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<td>Expedited Tribunal paper based process (paragraph 42)</td>
<td>£16,800</td>
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<td>Tribunal reviews its decision on a point of law (paragraph 43)</td>
<td>£45,000</td>
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<td><strong>Total</strong></td>
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Additional costs of amendments agreed to at Stage 2

<table>
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<tr>
<th>Description</th>
<th>Scottish Government costings</th>
<th>Presiding Officer’s costings</th>
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<td>Appeals relating to a place at a special school – Tribunal cases with representation at an oral hearing (paragraph 15)</td>
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<td>Provision of published information to certain persons (paragraph 28)</td>
<td>£640,592 (median cost)</td>
<td>£50,000</td>
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<td>Availability of published information (paragraph 33)</td>
<td>£49,609 (median cost)</td>
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<td>Duties for post school transitions planning (paragraph 1)</td>
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<td><strong>Total</strong></td>
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Total cost of Bill including amendments agreed to at Stage 2

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<tr>
<th>Scottish Government costings</th>
<th>Cost of Bill as introduced plus Presiding Officer’s costings</th>
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<tr>
<td><strong>£767,171</strong></td>
<td>(£112,770 - £58,000 + £699,201)</td>
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<tr>
<td><strong>£202,970</strong></td>
<td>(£112,770 - £58,000 + £135,000)</td>
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COST ON THE SCOTTISH ADMINISTRATION

Additional Support Needs Tribunals for Scotland

44. The main on-going direct cost to the Scottish Government associated with the 2004 Act and the Bill will be the Additional Support Needs Tribunals for Scotland (the Tribunal), which the Scottish Government directly funds.

45. The Tribunal hears and decides appeals made by parents against the decisions or failures of education authorities about co-ordinated support plans. Reference to the Tribunal may also be made regarding the refusal of a placing request in certain circumstances. The Tribunal’s statutory functions, decisions and dealings with its users and the public are independent of government, national and local.

46. In the original Financial Memorandum that accompanied the 2004 Act, it was estimated that there would be around 300 appeals per annum to the Tribunal and that the cost of running the Tribunal in 2003/04 would be £760,000 per annum. This figure included staffing, members’ fees and expenses, training, travel, accommodation and central service overheads.

47. The actual annual cost of running the Tribunal since the commencement of the 2004 Act has been 2003/2004=£453,000; 2004/2005=£680,000; 2005/2006=£843,000 (this included £150,000 for the purchase and set up of a records management system); 2006/2007=£541,000;
and 2007/2008 = £402,000. The cost of running the Tribunal in 2008/2009 is expected to be around £542,000.

48. As at 25 July 2008, the total number of appeals received since the commencement of the 2004 Act is 141, broken down as follows: 2005/06 = 2; 2006/07 = 42; 2007/08 = 76; 08/09 = 21.

49. It is expected that the overall changes contained in this Bill will generate an increase of no more than 12 to 18 references to the Tribunal per annum (16% to 24%) The estimated cost of a Tribunal hearing ranges between £1,250 and £8,200. Using the mid ranges of 15 references and a cost of £4,725 per hearing, this will result in an increase in cost to the Tribunal of £70,875. However, it should be noted that the Tribunal should be able to deal with any increase in the number of appeals as part of its day to day work.

50. The Tribunal has estimated that the new paper based expedited process will cut the Tribunal cost of a paper based hearing from £1050 per case to £310 – a 70% savings. As detailed in the third annual report of the President of the Tribunal, 10 references were decided by paper based process i.e. without the need for an oral hearing. Saving the Tribunal £7,400 (10 x (1050 - 310)).

51. The Bill will not require the appointment of any additional Tribunal staff, members or conveners

52. However, it is useful to note that if the changes contained in this Bill were to generate any increase in the running costs of the Tribunal, these additional costs could be contained within the current portfolio budget.

**TOTAL ESTIMATED COST TO THE SCOTTISH ADMINISTRATION:**

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<tbody>
<tr>
<td>20% increase in the number of cases referred to the Tribunal</td>
<td>£70,875</td>
<td></td>
</tr>
<tr>
<td>Introduction of a new paper based Tribunal expedited process</td>
<td></td>
<td>£7,400</td>
</tr>
</tbody>
</table>

**Scottish Court Service**

53. Currently a small number of cases a year go to the Sheriff Court or Court of Session and this number is likely to be reduced as a result of this Bill. Due to the small number of cases involved, the considerable variability of the individual cases in terms of length of case and resources required, it has not been possible for the Scottish Court Service to estimate the likely savings to the courts as a result of fewer cases. However, as there have been fewer than 11 cases per annum (in 2007 there were 5 placing request appeals referred to the sheriff in respect of all pupils in Scotland, plus 5 Tribunal decisions referred to the Court of Session on a point of law as detailed in the President of the Tribunal’s annual report), the potential savings will be low and will not impact on the operation of the Courts.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Parents

54. Cost implications of the Bill for individuals rest primarily with parents. There are no duties placed on parents that will result in them having to incur additional costs. Appeals to the 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 of their child. These are optional costs that exist at present and are not a result of the Bill.

55. The Bill will enable the Tribunal to review, vary or revoke its decisions. It is anticipated that this provision will only be used where the Tribunal considers it appropriate to review its decision based on a point of law. This could result in fewer cases being referred to the Court of Session on a point of law and as a result, create a possible saving for parents who will no longer be required to secure legal representation to handle their case.

Other bodies and businesses

56. The Bill has no direct cost impact on businesses, charities or voluntary bodies. Therefore, there was no need for a Regulatory Impact Assessment to be completed. Independent schools have no new obligations placed on them by the Bill.
This document relates to the Education (Additional Support for Learning) (Scotland) Bill as amended at Stage 2 (SP Bill 16A)

EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM


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