

# Education (Additional Support for Learning) (Scotland) Bill

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## 1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 10

Long Title

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

### Section 1

#### Ken Macintosh

- 17 In section 1, page 1, line 21, after <practicable> insert <(and in no case later than 90 days)>

#### Ken Macintosh

- 18 In section 1, page 1, line 23, at end insert—

<( ) In section 12 (duties to seek and take account of views, advice and information), after subsection (3) insert—

“(3A) Where any such co-ordinated support plan as is mentioned in section 10(1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority’s duty under subsection (2)(a) includes a duty to seek and take account of information and advice (within such period as will enable the authority to comply with their duty under section 10(5A)) from the education authority from which the plan was transferred and any agencies or persons involved in providing support under the plan prior to its transfer.”.>

#### Mr Adam Ingram

- 1\* In section 1, page 1, line 24, at end insert—

<( ) after paragraph (d) of subsection (3) insert—

“(da) a decision of an education authority refusing a placing request made in respect of a child or young person (including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)—

- (i) made under sub-paragraph (1) of paragraph 2 of schedule 2 in relation to a special school, or
- (ii) made under sub-paragraph (2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub-paragraph.”.>

**Mr Adam Ingram**

2 In section 1, page 1, line 26, at end insert—

<( ) after “request” insert “, other than a placing request mentioned in paragraph (da),”>

**Mr Adam Ingram**

3 In section 1, page 2, line 17, at end insert—

<( ) in subsection (7), for “(3)(e)” substitute “(3)(da) or (e)”>

**Mr Adam Ingram**

4 In section 1, page 2, line 18, at end insert—

<( ) after subsection (4) insert—

“(4A) Where the reference relates to a decision referred to in subsection (3)(da) of that section the Tribunal may—

(a) confirm the decision if satisfied that—

(i) one or more grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and

(ii) in all the circumstances it is appropriate to do so,

(b) overturn the decision and require the education authority to—

(i) place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and

(ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require.”>

**Mr Adam Ingram**

5 In section 1, page 2, line 19, at end insert—

<( ) in paragraph (b), at the end of sub-paragraph (i) insert “by such time as the Tribunal may require”>

**Mr Adam Ingram**

6 In section 1, page 4, line 15, at end insert—

<( ) after sub-paragraph (11), add—

“(12) Any references to an appeal under this paragraph (however expressed), except such references in sub-paragraphs (3)(a) and (b) and (5), include references to an appeal relating to a decision which has been referred back under section 19(5)(f) or (g).”>

## After section 5

### Mr Adam Ingram

7 After section 5, insert—

*<Additional support needs*

#### **Additional support**

5 In section 1(3)(a) of the 2004 Act (additional support needs), after “provision”, where it occurs for the first time, insert “(whether or not educational provision)”.>

### Margaret Smith

7A As an amendment to amendment 7, line 4, leave out <1(3)(a) of the 2004 Act (additional support needs)> and insert <1(3) of the 2004 Act (additional support needs)—

( ) in paragraph (a),>

### Margaret Smith

7B As an amendment to amendment 7, line 5, at end insert—

<( ) in paragraph (b), for “educational provision” substitute “provision (whether or not educational provision)”.>

### Mr Adam Ingram

8 After section 5, insert—

#### **<Assessments and examination**

After section 8 of the 2004 Act insert—

#### **“8A Assessments and examinations: further provision**

- (1) A person specified in subsection (3) may request that the education authority arrange for a child or young person to whom section 4(1)(a) applies to undergo, for the purpose of considering the additional support needs of the child or young person, a process of assessment or examination.
- (2) The education authority must comply with the request unless it is unreasonable.
- (3) The persons referred to in subsection (1) are—
  - (a) where the request relates to a child, the child’s parent,
  - (b) where the request relates to a young person, the young person or, where the authority are satisfied the young person lacks capacity to make the request, the young person’s parent.
- (4) The education authority must, in accordance with the arrangements made by them under section 4(1)(b), take into account the results of any assessment or examination undertaken by virtue of this section.
- (5) A process of assessment or examination undertaken by virtue of this section is to be carried out by such person as the education authority consider appropriate.

- (6) In this section the reference to assessment or examination includes educational, psychological or medical assessment or examination.”.>

**Ken Macintosh**

23 After section 5, insert—

**<Assessment requests**

In section 8 of the 2004 Act (assessments and examinations), for subsections (1) and (2) substitute—

“(1) A person specified in subsection (2) may request that the education authority arrange for a child or young person specified in subsection (2A) to undergo, for a purpose mentioned in subsection (2B), a process of assessment or examination (such a request being referred to in this section as an “assessment request”).

(1A)The education authority must comply with the request unless it is unreasonable.

(2) The persons referred to in subsection (1) are—

- (a) where the request relates to a child, the child’s parent,
- (b) where the request relates to a young person, the young person or, where the authority are satisfied that the young person lacks capacity to make the request, the young person’s parent.

(2A)The children or young persons referred to in subsection (1) are children or young persons—

- (a) for whose school education the authority are responsible, or
- (b) belonging to the area of the authority but for whose school education an authority is not responsible.

(2B)The purposes referred to in subsection (1) are—

- (a) identifying whether the child or young person has additional support needs,
- (b) identifying whether a child or young person with additional support needs requires a co-ordinated support plan,
- (c) considering the additional support needs of a child or young person,
- (d) reviewing a co-ordinated support plan under section 10.

(2C)Where both subsections (2A)(a) and (2B)(c) apply, the education authority must, in accordance with the arrangements made by them under section 4(1)(b), take into account the results of any assessment or examination undertaken by virtue of this section.”.>

**Margaret Smith**

**Supported by: Ken Macintosh**

14 After section 5, insert—

**<Additional support needs etc.: specified children and young people**

(1) In section 1 (additional support needs) of the 2004 Act, after subsection (1) insert—

5 “(1A) Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after and accommodated by a local authority under section 26 of the Children (Scotland) Act 1995 (c.36).”.

(2) In section 6 (children and young persons for whom education authority are responsible) after subsection (1) insert—

10 “(1A) Without prejudice to the generality of subsection (1) every education authority must in particular consider whether each child or young person falling within section 1(1A) for whose school education they are responsible requires a co-ordinated support plan.”.>

**Ken Macintosh**

14A As an amendment to amendment 14, line 7, at end insert—

<( ) is a carer (within the meaning of section 12AA of the Social Work (Scotland) Act 1968 (c.49) or section 24 of the Children (Scotland) Act 1995 (c.36))>

**Ken Macintosh**

14B As an amendment to amendment 14, line 7, at end insert—

<( ) has a mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13))>

**Ken Macintosh**

14C As an amendment to amendment 14, line 7, at end insert—

<( ) is deaf or partially deaf>

**Ken Macintosh**

14D As an amendment to amendment 14, line 7, at end insert—

<( ) is blind or partially sighted>

**Ken Macintosh**

14E As an amendment to amendment 14, line 7, at end insert—

<( ) is (any or all) deaf, partially deaf, blind or partially sighted>

**Ken Macintosh**

14F As an amendment to amendment 14, line 7, at end insert—

<( ) has a disability within the meaning of the Disability Discrimination Act 1995 (c.50)>

**Ken Macintosh**

13 After section 5, insert—

*<Co-ordinated support plans*

**Co-ordinated support plans**

In section 2(1)(d) (persons by whom additional support provided) of the 2004 Act, the word “significant” is repealed.>

**Ken Macintosh**

26\* After section 5, insert—

*<Pre-school children*

**Functions of education authority in relation to certain pre-school children with additional support needs**

In section 5 of the 2004 Act (general functions of education authority in relation to additional support needs)—

- (a) in subsection (2), the words “, subject to subsection (3),” are repealed, and
- (b) subsection (3) is repealed.>

**Claire Baker**

15 After section 5, insert—

*<Supporters and advocacy*

**Supporters and advocacy**

In section 14 (supporters and advocacy) of the 2004 Act—

- (a) in subsection (1)—
  - (i) the word “or” immediately following paragraph (a) is repealed,
  - (ii) after paragraph (b) insert—
    - “(c) the authority to secure the provision of a supporter or an advocate on the relevant person’s behalf,”
- (b) subsection (3) is repealed.>

**Kenneth Gibson**

21 After section 5, insert—

*<Mediation services*

**Mediation services**

In section 15(2) (independence of mediation services) of the 2004 Act, for the words “under this Act (apart from this section)” substitute “relating to education or any of their other functions”.>

**Kenneth Gibson**

22 After section 5, insert—

*<Dispute resolution*

**Dispute resolution**

In section 16(2) (dispute resolution) of the 2004 Act, before paragraph (a), insert—

“(za) requiring any application by a person mentioned in subsection (1)(a) to (c) for referral to dispute resolution to be made, in the first instance, to the Scottish Ministers.”.>

**Elizabeth Smith**

**10** After section 5, insert—

*<Publication of information by education authority*

**Provision of published information to certain persons**

In section 26 of the 2004 Act—

(a) in subsection (1)—

(i) the word “and” immediately following paragraph (b) is omitted, and

(ii) after paragraph (c), insert “and,

(d) provide the persons mentioned in subsection (2A) with any information published under paragraph (a) or (c).”.

(b) after subsection (2), insert—

“(2A) The persons referred to in subsection (1)(d) are—

(a) in the case of a child with additional support needs, the child’s parent,

(b) in the case of a young person with additional support needs—

(i) the young person, or

(ii) if the authority are satisfied that the young person lacks capacity to understand the information or advice, the young person’s parent.”.>

**Margaret Smith**

**19** After section 5, insert—

*<Publication of information by education authority*

**Availability of published information**

In section 26(1) of the 2004 Act (publication of information by education authority), after paragraph (a) insert—

“(aa) ensure that the published information is available—

(i) on request, from each place in the authority’s area where school education is provided,

(ii) in any handbook or other publications provided by any school in the authority’s area or 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, and

- (ii) on any website maintained by any such school or the authority for that purpose (whether or not the website is also maintained for any other reason).>

**Elizabeth Smith**

11\* After section 5, insert—

*<Publication of information by education authority*

**Publication of information on dispute resolution**

In section 26(2) of the 2004 Act (publication of information by education authority), after paragraph (e) insert—

- “(ea) any dispute resolution procedures established by the authority in pursuance of section 16.”>

**Margaret Smith**

20 After section 5, insert—

*<Publication of information by education authority*

**Publication of information on other sources of advice**

In section 26 of the 2004 Act (publication of information by education authority)—

(a) in subsection (2)—

- (i) the word “and” immediately following paragraph (e) is repealed, and
- (ii) after paragraph (f) insert “and

(g) other specified persons or bodies from whom—

- (i) parents of children having additional support needs, and
- (ii) young persons having such needs,

can obtain advice and further information about provision for such needs.”, and

(b) after subsection (3) insert—

- “(4) In subsection (2)(g), “specified” means specified for the purposes of that subsection in an order made by the Scottish Ministers.”>

**Margaret Smith**

24 After section 5, insert—

*<Publication of information by education authority*

**Annual statistical report**

In section 26 of the 2004 Act (publication of information by education authority) after subsection (3) insert—

- “(4) Every education authority must publish annually a report setting out (by school and year group)—

- (a) the number of children and young persons for whose school education the authority are responsible having additional support needs, and

- (b) the principal grounds on which such children and young persons have been identified as having additional support needs.
- (5) Subsection (3)(b) applies to a report published under subsection (4) as it applies to information published under subsection (1).”.>

**Margaret Smith**

25 After section 5, insert—

*<Publication of information by education authority: consultation etc.*

**Publication of information by education authority: consultation etc.**

- (1) After section 26 of the 2004 Act (publication of information by education authority), insert—

**“26A Consultation on policy in relation to provision for additional support needs etc.**

- (1) Before publishing information under section 26(1), every education authority must comply with the duties described in subsections (2) and (3).
- (2) The first duty is a duty to consult at least once every three years (beginning with the commencement of this section) the persons specified in subsection (4) about the matters specified in section 26(2).
- (3) The second duty is a duty to have regard to any guidance issued by the Scottish Ministers about—
  - (a) the content of information published under section 26(1),
  - (b) the way in which such information is to be published, and
  - (c) the persons to be consulted by virtue of subsection (2).
- (4) Those persons are—
  - (a) (in so far as the education authority considers them to be of a suitable age and maturity), such children and young persons for whose school education the authority is responsible,
  - (b) such parents of such children and young persons, and
  - (c) such other persons,
 as the authority considers appropriate.
- (5) Consultation on the matter specified in section 26(2)(a) must in particular seek the views of the persons specified in subsection (4) about any general policies or practices applied (or proposed to be applied) by the authority in complying with their duty under section 4(1)(a) (for example, policies as to what constitutes adequate and efficient provision for children or young persons with a particular type of additional support need).
- (6) A consultation under subsection (2) is to be carried out on the authority’s behalf by a person who is not employed by the authority (whether in the exercise of their functions relating to education or any of their other functions).
- (7) A report of the consultation carried out under subsection (2) is to be published in such manner as the authority considers appropriate and a copy sent to Her Majesty’s Inspectors.”.

- (2) In section 29(2) of the 2004 Act (interpretation) after ““Health Boards”,” insert—  
““Her Majesty’s Inspectors”,.”.>

**Margaret Smith**

**Supported by: Ken Macintosh**

- 16 After section 5, insert—

*<Definition of “young person”*

**Definition of “young person”**

In section 29 (interpretation)—

- (a) in subsection (1), after the definition of “Tribunal” insert—

““young person” means a person over school age who is still in school education.”,

- (b) in subsection (2), the words “young person” are repealed.>

**Before section 6**

**Elizabeth Smith**

- 12\* Before section 6, insert—

**<References to Tribunal in relation to duties under section 12(6) and 13**

- (1) In section 18 of the 2004 Act—

- (a) in the title, omit “in relation to co-ordinated support plan”, and

- (b) in subsection (3), after paragraph (f) (as inserted by section 1(6)(b) of this Act), insert—

“(g) failure by the education authority to comply with their duties under section 12(6) and 13 in respect of the child or young person (except where consent for information to be provided under section 13(2)(a) or (4) has not been given under section 13(5)) .”.

- (2) In section 19(3) of the 2004 Act, for “or (d)(ii) or (iii)”, substitute “, (d)(ii) or (iii) or (g)”.>

**After section 7**

**Ken Macintosh**

- 27 After section 7, insert—

**<Power to monitor implementation of Tribunal decisions**

In schedule 1 of the 2004 Act (Additional Support Needs Tribunals for Scotland) after paragraph 11, insert—

*“Power to monitor implementation of Tribunal decisions*

- 11A The President may, in any case where a decision of a Tribunal required an education authority to do anything, keep under review the authority’s compliance with the decision and, in particular, may—

- (a) require the authority to provide information about the authority’s implementation of the Tribunal decision,
- (b) where the President is not satisfied that the authority is complying with the decision, refer the matter to the Scottish Ministers.”.>

**After section 7**

**Ken Macintosh**

28 After section 7, insert—

*<Recovery of costs*

**Provision by education authority for education of pupils belonging to areas of other authorities: recovery of costs where pupil has additional support needs**

After section 27 of the 2004 Act insert—

*“Recovery of costs*

**“27A Provision by education authority for education of pupils belonging to areas of other authorities: recovery of costs where pupil has additional support needs**

Where the responsible education authority make a claim to recover reasonable costs for the education of pupils belonging to areas of other authorities, where the child or young person has additional support needs and in respect of those additional needs, that other education authority must make payment.”.>

**Long Title**

**Mr Adam Ingram**

9 In the long title, page 1, line 3, after <education;> insert <to make minor provision in relation to additional support needs;>



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