Dear James,

The Education and Skills Committee will be aware that The Education (Additional Support for Learning) (Scotland) Act 2004 has been amended by the Education (Scotland) Act 2016, with an extension that provides that children will have largely the same rights as young people and parents under the Additional Support for Learning legislation, except in relation to placing requests and the use of mediation services. It is intended that these amendments to the Act will commence in January 2018.

In preparation for this we have updated the statutory guidance to the 2004 Act (as amended), The Supporting Children’s Learning Code of Practice and associated regulations (the Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017, The Section 70 (Procedure) (Scotland) Regulations 2017 and The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017). A public consultation took place on the Code of Practice and associated Regulations, from 19 June to 12 September 2017.

The Code of Practice was updated to take account of:

- the extension to children’s rights, with regards to additional support for learning in school education (those aged 12+ with capacity), this is woven throughout the Code to ensure that all references to rights include the appropriate children’s rights.
- the new requirement on education authorities to assess capacity and whether or not there may be adverse impact on wellbeing, with regards to children aged 12+ using their extended rights.
- the information that education authorities should use to reach conclusions on capacity and adverse impact on wellbeing, ideally using information that should already be known about the child.
the associated appeal processes where a decision is taken that a child does not have capacity or there is adverse impact on wellbeing and vice versa.

the requirements on Tribunals to assess capacity and whether or not there may be adverse impact on wellbeing.

the functions of the Children’s Support Service to be established by Scottish Ministers.

Other relevant legislative and policy developments including Children and Young People Act (as far as possible at this stage), Corporate Parenting Responsibilities, Looked After Children Strategy, National Improvement Framework etc.

The following changes were made as a result of the consultation:
- The link to early years services, including the Universal Health Visiting Pathway
- The role of the children’s support service
- The definitions of eligible pre-school child, young person and looked after children
- The respective responsibilities and roles of parents, young people and eligible children
- The role of the Scottish Agricultural College (now SRUC)
- Clarified what is meant by social and emotional factors to ensure links made to prejudice based bullying.
- Emphasised the responsibilities in relation to establishing additional support needs and co-ordinated support planning for looked after children
- Included information on Developing the Young Workforce
- Clarified requirements for looked after children and those leaving care under the 2014 Act
- Clarified information on the Tribunal President’s power to Monitor

Subject to the 2004 Act (as amended) the Code of Practice must lay before the Scottish Parliament for 40 days. The Code is due to lay, along with the associated regulations from 26 October 2017 until 5 December 2017. The updated Code is expected to be published by the end of 2017.

JOHN SWINNEY