

SPICe Briefing

Education (Additional Support for Learning) (Scotland) Bill at stage 3

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09/33

Camilla Kidner

Stage 3 proceedings on the Education (Additional Support for Learning) (Scotland) Bill (the Bill) will take place on 20 May 2009.

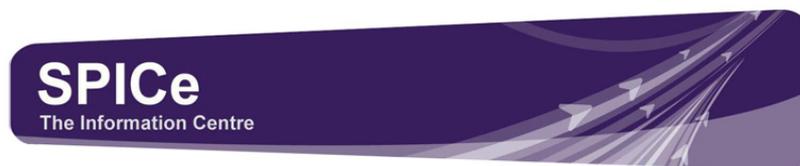
This briefing summarises the legislative and non-legislative recommendations made by the Education, Lifelong Learning and Culture Committee in its stage 1 report and the Scottish Government's response to it. It also summarises the key amendments passed at stage 2 and considers the key areas of debate where no amendments were passed.

SPICe briefing 08/66 (Georghiou and Kidner, 2008a) provides an overview of the Bill as introduced.



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(SB 09/33)

EXECUTIVE SUMMARY

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Background

The Education (Additional Support for Learning) (Scotland) Bill (the Bill) seeks to make technical amendments to the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act). The key proposal is to allow out of area placing requests. The Bill also proposes changes to the Additional Support Needs Tribunal (the Tribunal). This includes establishing new grounds for appeal and extending the circumstances in which placing request appeals transfer between an Education Appeal Committee or Sheriff and the Tribunal.

The need for this legislation arises as a result of various Court of Session rulings (in particular one concerning placing requests), an HMIe report on the implementation of the 2004 Act and recommendations from the annual reports of the Tribunal President. The key issue which the Bill is intended to address is that parents of children with a co-ordinated support plan (CSP) cannot make out of area placing requests. That is, they cannot apply directly to another local authority for their child to be educated there. Parents of children without additional support needs are able to do this under the Education (Scotland) Act 1980 (the 1980 Act). It had been thought that similar rights applied to those covered by the 2004 Act, but the Court of Session cast doubt on this interpretation.

Stage 1 scrutiny

The Bill was considered by the Education, Lifelong Learning and Culture Committee between November 2008 and January 2009. The majority of evidence received by the Committee was in favour of the Bill, but concerns were expressed that more extensive changes to the additional support needs system were required. In general terms, the Scottish Government proposed that many of these concerns could be met by improving the statutory Code of Practice. This Code will be revised and will be considered by Parliament in due course. A key theme in the evidence was that both the Bill's provisions and the Additional Support Needs system are very complex.

Stage 2 amendments

Procedural issues arose at stage 2. The Bill, as introduced, did not require a financial resolution under standing orders rule 9.12.3 as it would not give rise to significant new expenditure. However, at stage 2 members lodged amendments, many of which had cost implications and which would, if agreed to, require the Bill to have a financial resolution. The Government indicated that it did not intend to bring forward a resolution with the effect that, under rule 9.12.6 no proceedings could be taken on amendments which were ruled by the Presiding Officer to cost a 'significant' amount. The Committee did however take evidence from the Minister on 22 April about these amendments. This did not form part of formal stage 2 proceedings. Members

expressed concern about the process and the issue of financial resolutions is to be referred to the Standards, Procedures and Public Appointments Committee. Amendments from the Minister and from non-government members were agreed to at stage 2, many by division and on the casting vote of the Convener.

INTRODUCTION

The Education (Additional Support for Learning) (Scotland) Bill was introduced in the Parliament on 06 October 2008 by the Cabinet Secretary for Education and Lifelong Learning, Fiona Hyslop. The Bill aims to make technical changes to the Education (Additional Support for Learning) (Scotland) Act 2004. The key provisions are:

- To enable parents of children with additional support needs to apply directly to any local authority for the education of their child. That is, to enable out of area placing requests for children with additional support needs. A Court of Session ruling made a strong inference that legislation as originally drafted did not allow this.
- To make certain changes to the powers and remit of the Additional Support Needs Tribunal (the Tribunal). This includes changes to the way in which the Tribunal interacts with Education Appeal Committees and the Sheriff Court and new grounds for appeal to the Tribunal.

SPICe Briefing 08/66 (Georghiou and Kidner, 2008a) provides more detailed information on the Bill's provisions. For background on the Additional Support for learning system see SPICe Briefing 08/46 (Georghiou and Kidner, 2008b).

The Education, Lifelong Learning and Culture Committee was appointed lead Committee on the Bill. Table 1 below lists the key dates for parliamentary consideration of the Bill.

PARLIAMENTARY CONSIDERATION

Table 1: Summary of Parliamentary Consideration

Bill introduced	06 October 2008
Preliminary discussion	26 November 2008. Roundtable discussion with voluntary organisations. In private.
Stage 1 General Principles	
Education, Lifelong Learning and Culture Committee	03, 10 and 17 December 2008, 14 and 21 January 2009.
Finance Committee	28 October 2008 . Level 1 scrutiny. Written evidence only.
Subordinate Legislation Committee	04 November 2008 . The Committee had no comments.
Stage 1 Report Education, Lifelong Learning and Culture Committee	03 December , 10 December , 17 December 2008 . 14 January , 21 January 2009.
Stage 1 Debate	04 March 2009
Stage 2 Detailed Consideration	25 March , 29 April 2009 . There was also a meeting on 22 April to discuss amendments, but this was not part of stage 2 proceedings.
Stage 3 Final Consideration (Plenary Debate)	20 May 2009

The remainder of this briefing highlights the key points of the Education, Lifelong Learning and Culture Committee's stage 1 report (Scottish Parliament ELLC 2009a), the Scottish Government's response through the stage 1 debate and response to amendments at stage 2, the main amendments passed at stage 2 and provides a summary of other issues raised at stage 2 which did not result in any amendments.

STAGE 1 KEY ISSUES

During stage 1 (consideration of general principles) the Committee took oral evidence over five meetings and also held a roundtable discussion with representatives of voluntary sector organisations. While there was general agreement on the proposals in the Bill a broad range of other issues on the implementation of the 2004 Act were raised. The main issue of debate was that, for many, because the Bill was not intended to make substantial changes to the 2004 Act it did not go far enough in addressing their concerns about the additional support needs framework.

ENABLING OUT OF AREA PLACING REQUESTS

In general, witnesses considered that allowing out of area placing requests was a matter of equity between pupils regardless of additional support needs. However some local authorities felt that it was legitimate for the home authority to retain a role in the process. (As placing requests are made to the local authority which runs the school which the request is for, only this 'host' authority would be involved, not the authority where the child lives). Local authorities such as Glasgow argued that because there are often complex issues to resolve in meeting a child's additional support needs, the home authority should be involved in deciding which school the child attended. A key issue highlighted by local authorities was the need to consider the needs of all children as well as the needs of the individual child.

CHANGES TO APPEALS SYSTEM

A strong and consistent theme was that the current appeals system is confusing. Concerns related mainly to the potential this has for delay and that a high level of expertise about additional support needs was required. There were proposals that the remit of the Tribunal be extended to include dealing with all placing request appeals in relation to special schools.

OTHER ISSUES DISCUSSED

In addition to the provisions of the Bill, other key themes of discussion were:

- Responsibility for costs in out of area placing requests and whether s23 of the Education (Scotland) Act 1980 was working adequately.
- Parents being generally unaware of their rights of appeal.
- The implication of Lord Wheatley's decision in *SC v. Edinburgh* [2008] CSOH 60. This appears to give a quite narrow interpretation of the 2004 Act as applying only to additional support provided in the classroom. This would have implications for a broad range of support, such as speech and language therapy, which supports education even though it is provided outside of school.
- Concern about the definition of 'significant' in the criteria for a Co-ordinated Support Plan (CSP). The criteria for a CSP includes that a child's needs arise from complex or multiple factors which last more than a year and require 'significant additional support' beyond educational support. A number of witnesses argued that differences in interpretation between local authorities were leading to inconsistent approaches being adopted. The Minister referred to there being a view that "significant has an extremely high threshold for local authorities." (Scottish Parliament ELLC 2009b at col 1909). The Government propose to give further guidance on this issue in the revised Code of Practice.

- A view from some witnesses that the appeals process is too adversarial. The Committee and witnesses discussed how to address this and give a greater ‘equality of arms’ between local authorities and parents.
- A number of witnesses, particularly from the voluntary sector, felt that there should be a more fundamental review of the 2004 Act than is afforded by this Bill.

During stage 1 the Minister and Scottish Government officials discussed on-going policy work on the implementation of the 2004 Act. This included:

- Funding for advocacy groups. Funding for ISEA¹ and Govan Law Centre was provided for 2008/09 and funding for ISEA was extended to December 2009. The Minister told the Committee on 22 April that he is “committed to establishing a representative advocacy service at tribunals for all parents and young people throughout Scotland” and will provide funding of £100,000 per annum.
- A working group on CSPs. This included consideration of the definition of ‘significant’ in the criteria for a CSP (Scottish Parliament ELLC 2009b at col 1909). It was intended that this group complete its work before the Bill is passed so that its conclusions can be taken into account in later parliamentary stages (Scottish Parliament ELLC 2009b at col 1927).
- Plans to consult on a revised Code of Practice for the 2004 Act (Scottish Parliament ELLC 2009b at col 1905).

GOVERNMENT AMENDMENTS INDICATED AT STAGE 1.

At stage 1, the Minister for Children and Young People, Adam Ingram advised the Committee that the Government would be proposing amendments in three areas. These were:

- To enable all appeals in respect of placing requests for special schools to be heard by the Tribunal. This was raised in evidence to the Committee by the Govan Law Centre and by the President to the Additional Support Needs Tribunal.
- To ensure that parents have a right to request an assessment of their child’s needs at any time. This was raised in evidence to the Committee in a joint submission from children’s organisations.
- To enable tribunals to specify when a placing request should start. This was raised in evidence to the Committee by a joint submission of children’s organisations, National Autistic Society Scotland, RNIB and the President of the Additional Support Needs Tribunal.

He advised of a further amendment in the stage 1 debate:

- To revise the definition of ‘additional support’ as a result of Lord Wheatley’s ruling. This issue was raised by a number of witnesses, including in a joint submission by children’s organisations.

STAGE 1 REPORT

The following table sets out the recommendations made by the Committee in their stage 1 report and indicates where there was a specific Government response – either in the stage 1 debate or through discussion of amendments at stage 2. In the stage 1 debate the Minister said: “the purpose of today’s debate is to discuss the general principles of the bill, not to provide a detailed response to all the points that have been made. However, I assure members that we

¹ A parents group established in 1998 to provide advice, information and support to parents of children and young people with additional support needs.

will consider and reflect carefully on the committee’s report and the points that members make in today’s debate” (Scottish Parliament 2009 at col 15368).

The table also indicates where Committee recommendations were taken forward by Committee members through amendments. More detail on all stage 2 amendments is given in later sections of this briefing.

Table 2: Committee Stage 1 Report Recommendations and Response

Report para	Recommendation	Scottish Government Response
Implementation of 2004 Act		
170	Notes the extent of comment that a more extensive review of the legislation is necessary	The Minister said that there are no plans for a wider review (Scottish Parliament 2009 at col 15366)
173	Notes concerns that provision not always in the spirit of the Act and that cost remains a major factor in determining provision	The Minister stated: “I make it absolutely clear that cost is not an excuse” (Scottish Parliament 2009 at col 15414)
Mediation and Dispute Resolution		
180	“As a matter of urgency” address parents’ lack of awareness of their rights, paying particular attention to looked after children, low income families, Gypsy/Travellers and parents who serve in the armed forces	The Government had been considering putting local authorities under a duty to publish information on the procedures for dispute resolution by amendment to the Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 and is also working with Enquire on their marketing strategy, (Scottish Parliament 2009 at col 15367). The Minister intends to issue a ‘letter of direction’ under s.27(9) of the 2004 Act on this issue. (Scottish Parliament ELLC 2009e). (There were also non-government amendments lodged on the issue of information provision and consultation by Margaret Smith and Elizabeth Smith, some of which were successful)
Responsibility for Placements		
181	Recommends clarification at stage 2 or in Code of Practice on responsibility for inter-authority placements	No specific response
182	Recommends a stage 2 amendment giving a statutory right for host authorities to reclaim costs from home authorities in appropriate circumstances	The Minister argued at stage 2 that the law is already clear on this issue. (A successful non-government amendment was lodged by Ken Macintosh)
The Tribunal		
178	Concerned that the system remains complex. Consideration should be given to the options of changing the Tribunal’s remit to: special schools only, all children with ASN, or that the reason for request is the child’s ASN	A successful Government amendment was lodged that all appeals on placing requests to special schools will go to the Tribunal
186	Asks the Minister to ‘reflect’ before stage 2 on whether to allow the Tribunal to take an alternative legal opinion to that presented by local authorities	No specific response

194	Recommends that failure of a local authority to meet its duties on transition be a ground for referral to the Tribunal	The Minister argued at stage 2 that this makes the system more complex. (A successful non-government amendment on this issue was lodged by Elizabeth Smith)
Application of the Act re: school education		
195	Government should consider whether the Act should be extended to all those in school education, regardless of age	The Minister argued in Committee on 22 April that problems with transition are better tackled through policy. (An unsuccessful non-government amendment was lodged on this issue by Margaret Smith)
197	Before stage 2, the minister should clarify his position on the implications of Lord Wheatley's decision in SC v. Edinburgh [2008] CSOH 60	A successful Government amendment was lodged to clarify the definition of 'additional support.' The policy is that support should not be limited to a teaching environment (Scottish Parliament 2009 at col. 15368).
Code of Practice		
181	Recommends clarification at stage 2 or in Code of Practice on responsibility for inter-authority placements	No specific response
190	There should be wide consultation on revising the Code of Practice	In the stage 1 debate the Minister assured the Parliament that an extensive consultation would be conducted in due course (Scottish Parliament 2009 at col 15367)
193	Specific consideration to be given to looked after children, those with mental health issues and young carers	The Minister argued at stage 2 that the ethos of the 2004 Act was that specific groups of children were not specified in this way. (Non-government amendments were lodged on this issue by Ken Macintosh and Margaret Smith some of which were successful)
Subordinate Legislation		
179, 65-72	Take into account calls for setting a deadline for appropriate agencies and the home authority to provide appropriate information to the host local authority in order to review a CSP	No specific response
183	In revising Tribunal rules, consider the ability of the Tribunal to monitor outcomes of its decisions	At stage 1 and 2 the Minister argued that this would change the role of the Tribunal from independent arbiter to a 'policing' role. (A successful non-government amendment was lodged on this issue by Ken Macintosh)
193	Specific consideration to be given to looked after children, those with mental health issues and young carers	The Minister noted that the Code of Practice would be strengthened in this regard. (Successful non-government amendments were lodged on this issue)
198	There should be wide consultation on subordinate legislation	The Minister assured the Parliament that there would be an extensive consultation will be conducted in due course (Scottish Parliament 2009 at col 15367)

STAGE 2: PROCEDURAL ISSUES

Stage 2 of this Bill raised issues about procedure. The Presiding Officer is expected to write to the Standards, Procedures and Public Appointments Committee to ask it to consider the issues which have arisen. On 25 March amendments were taken up to section 5 of the Bill. However, proceedings were then stopped because the next amendment to be taken would have required a financial resolution.

The financial memorandum to the Bill as introduced had estimated the net cost to authorities of implementation of the whole bill at £54,770. A financial resolution was not therefore required because this level of expenditure was not considered to increase significantly expenditure on the Scottish Consolidated Fund (Standing Orders rule 9.12.3).

Amendment 23 had been lodged by Ken Macintosh and concerned the right to an assessment for children pre-school, home educated and privately educated children. The Presiding Officer had ruled that this amendment would give rise to 'significant' expenditure so creating the requirement for a financial resolution for the Bill. By the start of stage 2 proceedings on 25 March, the Government had not indicated whether it intended to bring forward a motion for such a resolution.

As a result no proceedings on that amendment could take place unless the Parliament agreed a Financial Resolution for the Bill (rule 9.12.6). Only a member of the Government or a junior minister can bring forward a motion for a financial resolution (rule 9.2.7). In committee on 25 March the Minister declined to do so, stating..

“it is not our intention to lodge a financial resolution [...] I think that I made it perfectly plain from the outset that I intended neither to tamper with the ethos of the legislation, nor to extend the scope of the bill and the associated financial envelope in any significant way. It was on that basis that the bill's principles were agreed to at stage 1, so I do not think that it would be in any way appropriate to open up the bill to amendments that would shoehorn millions of extra pounds into the debate or place such obligations on the Scottish Government or the education authorities. Given that explanation, I feel entirely justified in not acceding to any demands to lodge a financial resolution (Adam Ingram, Scottish Parliament ELLC Committee, 2009c at col 2165)

In response, a number of committee members argued that it was important to be able to debate issues raised with them at stage 1. For example, Margaret Smith was of the opinion that:

“it closes down parliamentary discussion and decision making on issues that were raised with us in our evidence sessions”

On 1 April, motion S3M-3845 by Bruce Crawford was agreed to by the Parliament which delayed the end of stage 2 until 1 May. The continuation of further proceedings at stage 2 was delayed until 29 April. In the meantime, members were asked to submit costings for all their amendments to the Presiding Officer who would determine whether they carried significant cost. It was decided that the cumulative cost of the bill and any amendments could reach £300,000 before a financial resolution would be required.

Amendments that were judged not to have 'significant' costs could be moved, debated and voted on on 29 April, subject to their cumulative effect not reaching the 'significant' threshold.

On 20 April the Presiding Officer issued his determination on costs. A Committee meeting was held on 22 April, attended by the Minister and his officials, to discuss those amendments which were deemed to have cost implications. Members then had until 24 April to finalise their amendments in advance of the continuation of stage 2 proceedings on 29 April. Amendments submitted on 24 April also had to be costed.

Stage 2 continued on 29 April. However, individual amendments which had 'significant' costs could not be called. Amendments which did not have 'significant' costs were to be taken in

order, although once the cumulative cost of the bill and amendments reached £300,000, no proceedings could be taken on further amendments with cost implications. (In the event, the cumulative cost of all the amendments which could be called was below the £300,000 threshold so all of them could be moved).

At the meeting on 22 April, members expressed their concerns about the process. These included the difficulty in providing costings for amendments and that because the Presiding Officer, by convention, does not give reasons for his decisions, they had no information on the methodology underpinning the costings in his rulings.

There were differing views on whether it was appropriate to have held the meeting on 22 April to discuss amendments outside of stage 2 proceedings. (For example, Kenneth Gibson was of the view that the meeting was not appropriate whereas Ken Macintosh found it useful to discuss with the Minister the substance of amendments which could not be discussed in stage 2 proceedings (ELLC Committee 22 April col 2218). There were also differing views on whether or not a motion for a financial resolution ought to have been brought forward.

Introduction of financial resolution at stage 2

In 2006, the Legal Profession and Legal Aid (Scotland) Bill had a financial resolution lodged at Stage 2. This was agreed to by the Parliament on 28 September 2006. The Bill reformed the system for handling complaints against lawyers by the creation of a new statutory body - the Scottish Legal Complaints Commission, and also sought to improve the delivery of all forms of publicly funded legal assistance.

STAGE 2 MAIN AMENDMENTS AGREED TO

Table 3: Summary of Main Amendments Agreed to At Stage 2

Issue	Amendment and Effect
Placing requests – transfer of CSP	
Amendment 18, Ken Macintosh. Agreed to by division 5:3.	When a pupil with a CSP transfers to a different local authority, the new local authority must seek and take account of information and advice from the previous local authority. The Minister argued that this would be overly bureaucratic and may cause a local authority to focus on the past rather than the future.
Placing requests to special schools	
Amendments 1, 2, 3, 4. Adam Ingram. Agreed without division.	All appeals about placing requests to special schools will be heard by the Tribunal whether or not the pupil has a CSP.
Start of placing request	
Amendment 5. Adam Ingram. Agreed without division.	The Tribunal will be able to specify when a placing request should start.
Transfer of appeals	
Amendment 6. Adam Ingram. Agreed without division.	Gives the Tribunal discretion to transfer a placing request case back to the Sheriff.
Definition of additional support	
Amendment 7, Adam Ingram. Agreed without division.	This aims to clarify the definition following SC v. City of Edinburgh Council. Additional support may take the form of non-educational activity and need not take place in a classroom or teaching environment. Applies to school children and those receiving pre-school education.
<i>End of consideration on 25 March, the following amendments were discussed on 29 April</i>	

Right to request assessment	
Amendment 8 Adam Ingram. Agreed without division.	This allows a parent or young person to request an assessment at any time from the local authority responsible for their education. Applies to school children and those receiving pre-school education. The Minister will amend the dispute resolution regulations to ensure that complaints under this new sub section 8A can be referred to independent adjudication.
Extending ASN definition to specified children	
Amendment 14 Margaret Smith and 14A to 14E Ken Macintosh 14A to 14E agreed to by division using Convener's casting vote: 3:3 and 2 abstentions. 14 agreed to by division 4:3 with 1 abstention.	<p>This group deems that certain groups of children are automatically considered to have additional support needs and should be considered for a CSP. These are:</p> <ul style="list-style-type: none"> • children looked after away from home, • young carers, • children and young people <ul style="list-style-type: none"> ○ with mental health problems, ○ who are deaf, ○ who are blind or partially sighted ○ who are partially sighted or deaf/blind. <p>The proposers argued that although the 2004 Act already had a general duty towards any child with additional support needs, difficulties with implementation required that these groups should be specified.</p> <p>The Minister argued that this went against the ethos of the 2004 Act which had moved away from categorising certain children as automatically having additional support needs. He highlighted policy work relevant to these groups of children and undertook to strengthen the Code of Practice.</p>
Assessment of disabled children	
Amendment 31 Ken Macintosh. Agreed without division.	Any disabled child under school age is entitled to an assessment. Currently, an assessment of a disabled child aged under 3 only needs to be done if they are brought to the attention of the education authority by the health board. This removes the 'gatekeeper' role of the health board.
Access to and provision of information	
Amendment 10 Elizabeth Smith. Agreed to by division 5:3	<p>This will require local authorities to provide to parents and young people with additional support needs, the information that they are required to publish under s.26 of the 2004 Act. The Presiding Officer ruled that this would cost £50,000.</p> <p>The Minister argued that the amendment did not fully meet the policy intent and that the drafting implied a duty to provide information to anyone – not just those in the local authority area. He argued instead for amendment 29. He will issue a letter of direction under s.27(9) of the 2004 Act to ensure local authorities meet their obligations for providing information. He will also commission a publicity campaign to raise awareness of parents' rights under the 2004 Act and will provide further details on this at stage 3.</p> <p>The proposer argued that examples from other countries testified to the value of providing relevant information to parents, rather than only telling them how to access information.</p>
Amendment 33 Margaret Smith. Agreed to by division 5:3	<p>This will ensure that a summary of the information which is required to be published under s.26 of the 2004 Act is available; from schools, in the school handbook and on the school or local authority website. The Presiding Officer ruled that this would cost £25,000.</p> <p>As above, the Minister argued instead for amendment 29 which would require information to be available in full.</p>

Amendment 11. Elizabeth Smith. Agreed without division.	This will require local authorities to publish information on dispute resolution procedures. The Minister noted that this made unnecessary his proposal at stage 1 to provide for this through regulations.
Tribunal Jurisdiction	
Amendment 12 Elizabeth Smith. Agreed to by division 5:3	<p>This will create a new ground for appeal to the Tribunal – that a local authority had failed in its duties on transitions from secondary school. This applies to all those with ASN – not just those with CSPs.</p> <p>The proposer argued that difficulties with transitions had been highlighted by HMIE and in stage 1 evidence.</p> <p>The Minister argued that it made the system more complex as there was already recourse to dispute resolution and mediation. He will strengthen the Code of Practice in this area and has also recently created a post to work with stakeholders to improve transitions and preparation for adulthood.</p>
Monitor Tribunal Decisions	
Amendment 27 Ken Macintosh. Agreed to by division 5:3.	<p>This will allow the Tribunal President to monitor that the local authority implements her decisions.</p> <p>The proposer argued that some decisions had not been implemented and that the alternative route of section 70 complaints was rarely used.</p> <p>The Minister argued that it was inappropriate for an independent, impartial Tribunal to take on a ‘policing’ and ‘prosecuting’ role. It risked undermining the perception of independence. He also objected to the lack of reference to the need to take account of the views of children and young people. He stated that parents could use s.70 of the 1980 Act to complain to Ministers that an education authority had failed in its duties, or could ask a Minister to issue a direction under s.27(9) of the 2004 Act.</p> <p>The Minister will ask the Tribunal President to make changes to the information provided in the decision letter.</p>
Recovery of Costs	
Amendment 28 Ken Macintosh. Agreed to by division on Convener using her casting vote. 4:4.	<p>This states that the ‘home’ authority must make payments to any ‘host’ authority for the provision of additional support.</p> <p>The proposer argued that this was necessary because it has been argued that the 2004 Act affected the 1980 Act so as to restrict the ‘home’ authority’s liability for costs where there were placing requests to another authority. (n.b – this interpretation has been rejected by the Court of Session). This had resulted in one local authority stopping payments in relation to placing requests made by parents of children in their authority to another authority. However, both Ministers and the Court of Session had subsequently required them to make the payments.</p> <p>The Minister argued that the law was already clear in s.23 of the 1980 Act and following the ruling of Lord Penrose in <i>East Renfrewshire City Council v. Glasgow City Council</i> [2008 CSOH 175].</p>

STAGE 2 AMENDMENTS NOT PASSED

Table 4 outlines the key areas of debate where no amendments were passed and indicates the outcome of the debate.

Table 4: Stage 2: Key areas of debate – no amendments passed

Issue	Amendment and Effect
Placing requests – transfer of CSP	
Amendment 17. Ken Macintosh. Withdrawn, but may revisit at stage 3	Sought to set a 90 day time limit for reviewing a CSP following a pupil's transfer to another local authority.
Definition of additional support needs	
Amendment 7A, 7B Margaret Smith. Withdrawn.	This sought to extend the Government amendment 7 to apply to children under 3 years. The Minister argued that this would extend education authority responsibility beyond education and argued instead for his amendment 7 to be passed without further amendment.
Amendment 14F Ken Macintosh. Withdrawn	Sought to deem disabled children and disabled young people to automatically have additional support needs and required that they be assessed for a CSP. The member stated that having received different opinions from stakeholders on this issue, he had decided not to pursue it.
Mediation and dispute resolution	
Amendment 21 Kenneth Gibson. Withdrawn, but may revisit at stage 3.	Sought to ensure that mediation services were independent of the local authority. Currently, they only need to be independent of the education function. The Minister argued that the drafting actually precluded any mediation services from being provided.
Amendment 22 Kenneth Gibson. Withdrawn	Sought to alter dispute resolution procedures to allow parents to apply in the first instance to Scottish Ministers rather than to the local authority. The proposer argued that this would ensure both the perception and practice of independence. The Minister argued that it would add a bureaucratic layer to little effect. However, he accepted that local authorities could be 'tardy' in their response to dispute resolution applications and will issue a direction under s.27(9) of the 2004 Act.
Access to, provision and collection of information	
Amendment 29 Adam Ingram. Disagreed to by division 3:5.	Sought to ensure that information on ASN was available from schools and that parents of those with ASN and children and young people with ASN were told how to access such information. The Minister will also issue a direction under s.27(9) of the 2004 to ensure that education authorities meet their duties to publish information under s.26. Amendments 10 and 33 were passed in its stead.
Amendment 19 Margaret Smith. Not moved.	Sought to make information about a local authority's additional support for learning policy available on request from a school or local authority, in the school handbook or any publications provided by the school and on websites. The Presiding Officer determined that this would cost £100,000. The Minister argued that this would require all the 's.26 information' to be sent out every time any general information about the school was sent out. He also argued that it would turn the school handbook into 'a manual on ASN'. The proposer disputed the amount of information that would need to be sent out.

Amendment 20 Margaret Smith. Not moved	Sought to allow Ministers to name specific bodies from whom advice and information on ASN could be sought. The Minister argued that a similar power already exists at s.26(2)(g) of the 2004 Act which allows local authorities to name such bodies. He argued that this is actually wider in that it referred to providers of support and advocacy as well as information and advice.
Amendment 24 Margaret Smith. Not moved	Sought to require local authorities to publish an annual report of children and young people with ASN broken down by school, year group and the grounds for their ASN. The proposer argued that although there was already information published at a national and local authority level, there was a need for more robust data. The Minister argued that it would require a new data set to be developed and recommended extending the existing data set instead.

AMENDMENTS NOT CALLED

The following amendments were lodged but were considered by the Presiding Officer to have 'significant' cost and so could not be moved or debated during stage 2 proceedings. The following is based on discussion at Committee on 22 April (Scottish Parliament ELLC 2009d).

Right to request assessment

Amendment 30 was lodged by Ken Macintosh in place of his earlier Amendment 23. Both were intended to give parents of children under school age and those who are home educated the right to request an assessment at any time. He argued that it was a 'modest extension' to the Minister's amendment 8. The way that amendment 23 had been drafted meant that it also included those educated at independent schools. The Minister had argued that this was 'unworkable', 'burdensome' and 'costly' because, in extending to privately educated children, local authorities would be required to carry out assessments on those for whom they have no duty to make any provision. Ken Macintosh therefore replaced amendment 23 with amendment 30 which sought only to cover children under school age and those being home educated. This revised amendment was also ruled by the Presiding Officer to have 'significant' costs (Scottish Parliament ELLC 2009f).

Criteria for CSP

Amendment 13 was lodged by Ken Macintosh and sought to change the criteria for a CSP so that support from agencies outside education services no longer had to reach the threshold of 'significant' support. He argued that "the word [significant] has become a barrier that prevents some children from accessing the appropriate level of support." The Minister argued that the amendment would "remove the discretionary element of deciding whether a co-ordinated support plan should be prepared. That would have a major impact on the ethos of the Bill and in financial terms." He argued that it would give a CSP to a child with dyslexia or who had English as a second language "who receives support from an allied health professional once or twice a year [...] clearly that would be disproportionate." Margaret Smith considered that the matter could be addressed by guidance which the Government was drafting.

Advocacy

Amendment 32 was lodged by Claire Baker in place of her earlier Amendment 15. Amendment 15 had sought to require local authorities to provide a supporter or advocate free of charge while Amendment 32 required a national scheme to be established. Currently, the 2004 Act gives parents a right to a supporter or advocate, but does not require the local authority to pay for this. The amendment reflected concerns by witnesses at stage 1 that the Tribunal process was becoming increasingly adversarial with parents at a disadvantage compared to local authorities. In reply, the Minister considered that provision of support in dealing with local

authority disputes was different from support through the Tribunal process. The Minister was of the view that the former, although desirable, is unaffordable – referring in particular to the fact that costs are likely to grow as people find out about the service. However, in relation to the latter he stated that: “I am committed to establishing a representative advocacy service at tribunals for all parents and young people throughout Scotland” The Minister told the Committee that £100,000 per annum will be allocated for this and the new service should be available in the new year.

Consultation

Amendment 25 was lodged by Margaret Smith and sought to require local authorities to consult on their additional support for learning policy every three years. She stated in Committee that the cost would be £152,000 every three years. However, given that the Presiding Officer had ruled that the amendment had ‘significant’ costs and therefore could not be moved, Margaret Smith sought assurances from the Minister that he would write to chief executives to ask how they were consulting on additional support needs policy. The Minister agreed with the policy intention and agreed to write to chief executives about best practice in this regard. They agreed to discuss the amendment prior to the continuation of stage 2.

Age

Amendment 16 was lodged by Margaret Smith and later substituted by her by amendment 34. This sought to include in the provisions of the 2004 Act those aged 18 or over who are still at school. There were different views about whether the amendment would result in more young people over 18 staying on at school and this difference of interpretation affected cost estimates. In addition, the Minister pointed out that as drafted, amendment 16 changed a principle of education legislation which is that a young person is defined as being under 18. Margaret Smith subsequently lodged an amendment which sought to avoid changing this definition. However, this amendment was also ruled by the Presiding Officer to carry ‘significant’ costs.

ANNEX: GLOSSARY

ASN	Additional Support Needs. The definition of additional support needs is very wide, including any child who, for whatever reason needs additional support in order that they benefit from education.
ASNT	Additional Support Needs Tribunal. Established by the 2004 Act to deal with complaints relating to CSPs.
CSP	Co-ordinated Support Plan. A statutory plan introduced by the 2004 Act. There are certain criteria which must be met for a child to get a CSP.
EAC	Education Appeals Committee. Established under s.28D of the 1980 Act, these deal with placing requests and school exclusions. Decisions can be appealed to the Sheriff Court. Members are nominated by the local authority. It is not a Committee of the authority but operates under the Scottish Committee of the Council of Tribunals.
Home Authority	In a placing request, the authority where the child lives is the home authority and the authority where they attend school is the host authority.
Host Authority	Where, as a result of a placing request, a child attends school in a local authority where they do not live, the local authority where that school is, is known as the host authority.
IEP	Individualised Education Programme. These are not statutory, but are recommended in the 2005 Code of Practice.
Independent Adjudication	Independent adjudication was introduced by the 2004 Act and is a formal review by someone independent of the education authority.
Looked After	Children who are 'Looked after' under the Children (Scotland) Act 1995 are either accommodated by the local authority (e.g. through foster care or in a children's home) or are living with their parents, but are subject to a court order or supervision order from a Children's Hearing.
Mediation	Mediation is a non-judicial way to resolve disagreements. An independent, trained mediator will be present and parents can have a supporter with them.
Out of area placing request	Where a parent makes a placing request for their child to attend a school in a local authority where they do not live.
Placing Request	Parents who wish their child to attend a school other than the one offered by the local authority can request this by using a 'placing request'. Placing requests for children with ASN are made under Schedule 2 of the 2004 Act.
RoN	Record of Needs. A statement of the support required by children with special educational needs. The system has been replaced by the 2004 Act.
SEN	Special Educational Needs. The term was introduced by the Warnock Report of 1978, which identified the children likely to need special education provision.

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