

## Education, Lifelong Learning and Culture Committee

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

Note of informal roundtable discussion session – 26 November 2008, 10h00,  
Committee Room 6

#### Background

1. The Education, Lifelong learning and Culture Committee held an informal roundtable discussion session on 26 November 2008 to assist its scrutiny of the Scottish Government's *Education (Additional Support for Learning) (Scotland) Bill*<sup>1</sup>.
2. Those in attendance were:
  - Jonathan Sher, Director of Research, Policy and Practice Development, Children in Scotland
  - John McDonald, Chief Executive, Scottish Society for Autism
  - Dr Stuart Aitken, Principal Officer, Sense Scotland
  - Chris Ratcliffe, Director, National Deaf Children's Society Scotland
  - Nicola Smith, Solicitor, Enable Scotland
  - Maureen Fraser, Parliamentary Advisor, Barnardo's Scotland
  - Dr Pauline Padfield, Director, Scottish Traveller Education Programme
  - Ann Auchterlonie, Policy Officer, Afasic Scotland
  - Alison Gough, Policy Manager, Quarriers
  - Faye Gatenby, Campaigns, Parliamentary and Policy Manager, Capability Scotland (part of For Scotland's Disabled Children)
  - Moira Thomson, South East Representative, Dyslexia Scotland
  - Colin Young, Young People's Information and Advocacy Worker, Special Needs Information Point.

#### General conclusions

3. The *Education (Additional Support for Learning) (Scotland) Bill 2008* was generally welcomed and there was wide support for its provisions and their likely effect, should the Bill be enacted. *The Education (Additional Support for Learning) (Scotland) Act 2004*, to which this Bill makes amendments, was widely considered to have been successful and necessary. General support was expressed for the spirit and intention of the Act. However, significant issues in terms of implementation were raised.
4. The general view expressed was that the Bill did not go far enough and many argued that there was a need for a more wide-ranging review of the Act. A view was expressed that the practical experience across local authorities was very patchy and a 'postcode lottery' had developed in terms of how additional support needs were being met. Many felt that the 2004 Act had aimed to

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<sup>1</sup> Scottish Government (2008). *Education (Additional Support for Learning) (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/s3/bills/16-EdAddSup/index.htm>

reduce bureaucracy and deliver better outcomes for children and that this has not happened as well as had been hoped.

5. The roundtable session considered the two main issues that the Bill addresses in turn, followed by a general session on any other issues.

### **Out of area placing requests**

6. The following views were expressed by participants:
  - The discussion ranged beyond placing requests with key themes being difficulties in getting a CSP and the need for early intervention. Those present felt it was encouraging that local authorities are making efforts to fulfil their responsibilities in relation to the Act. However, many felt that the time normally taken to complete an out of area placing request still needed to be reduced and that the legislation needed to be framed to make this possible.
  - Although not addressed in the Bill, there was discussion about the criteria for CSPs. Many felt that CSPs were overly complex and confusing for children and young people and parents. Some felt that people who did not have CSPs were being “lost in the system.”
  - A number of participants noted that, under the Act, CSPs could be established where ‘significant’ support needs existed. However, there was no definition of ‘significant’ in the Act, and none is provided in the Bill. Some felt that the lack of a definition of ‘significant’ was a problem which gave rise to a patchy provision across local authorities.
  - Concern was expressed that the provisions of the Bill could lead to prospective host authorities rejecting out of area placing requests because of potential cost and resource implications possibly taking priority over the educational and emotional needs of the child or young person.
  - Many felt it was unhelpful that some local authorities were putting a variety of non-statutory plans in place, beyond the IEP recommended in the code of practice, to deal with out of area placing requests and related issues.
  - Specific issues were raised with regard to looked after and accommodated children. Some felt that such children were not well served by the Act and that the Bill did not redress this. Some felt the Bill should be amended to provide a right for looked after children to have someone to speak on their behalf.
  - Some felt the Bill should contain measures to strengthen the provision of advocacy and promote parental involvement by imposing relevant duties on local authorities. It was felt this would help create a greater degree of equity between services users and providers.
  - Examples were given of where the additional support framework did not fit with other educational frameworks. Behavioural problems may stem from additional support needs, but may be dealt with by excluding the child from

school rather than tackling the underlying additional support needs. There was a general view that early intervention needed to be improved.

- It was generally agreed that resource issues were central to the successful provision of ASL and placing requests. A view was also aired, however, that by pursuing a placing request parents are effectively saying that they do not consider the local authority's own provision to be adequate. This implied criticism might make it difficult to progress out of area placing requests.
- Concern was expressed that different specialisms that had been developed in ASL in a number of local authorities could lead to an imbalance of placing requests between authorities and could mean that disproportionate costs could fall on certain host authorities.
- Many felt that mediation should be used more frequently resolving disputes relating to out of area placing request issues and that the Bill should contain measures to promote and monitor the use of mediation.
- Some participants raised the problem of under-reporting of the numbers of children with particular additional support needs – such as hearing impairment, dyslexia and autism.
- In general, it was felt that interaction between the health service and education service needed to be improved – particularly for children below school age. The point was made that the bill has an education framework, but additional support needs are lifelong.

### **Additional Support Needs Tribunals**

7. The following views were expressed by participants:

- Participants noted that although Tribunals were intended to be supportive to children and their parents, they had, in fact become quite adversarial. It was felt this was not in keeping with the spirit and intention of the 2004 Act. Many also held the view that if a case went to Tribunal the system had failed.
- While some felt that it was important that parents had access to suitable legal representation when attending Tribunals, in the context of local authorities being supported at the Tribunal by a full legal team, concern was also expressed that this could make Tribunals increasingly adversarial. It was also felt that the problems addressed by the Tribunal should, wherever possible, have been identified and addressed earlier in the process.
- The needs of parents who themselves had communication difficulties was also raised. For example, if a parent has dyslexia, they will find it very difficult to work through the paperwork to get the support needed for their child.
- Others felt Tribunals were necessary as a last resort and final voice and the amendments to the 2004 Act contained in the Bill were appropriate. However, some felt the Bill gave an implicit message that more cases would go to

Tribunals and that the Bill was making it easier for this to happen. Many agreed that Tribunals were not a solution and felt the Bill should be amended in ways which would put the emphasis on encouraging resolution without the need for a Tribunal.

- Some felt that Tribunals needed more powers to “punish” local authorities which had refused out of area placing requests and where discrimination by the local authority against the children concerned had been shown.
- Some participants believed that the Bill should be amended to impose a duty on local authorities to pay for the provision of advocacy and support services.
- Some felt the Bill should be amended to provide for deadlines to be set in respect of the implementation of Tribunal decisions. However, others felt that the timetable should be in relation to consideration of the needs of the child and that imposing a deadline could be counter productive.
- Some participants expressed concern at Tribunals being able to review their own decisions in certain circumstances and were concerned over possible questions of impartiality.

### **Any other areas**

8. The following views were expressed by participants:

- Many felt that HMle had reported on the Act too soon, before a clear picture of issues arising from its implementation had emerged.
- Many felt it was not helpful for the Scottish Government to consider possible changes to the Code of Practice after the Bill has gone through the Parliamentary process rather than before.
- Many felt that more support was needed for children at the early years stage. Participants felt the Bill should have been explicit about who was responsible for the coordination and delivery of services for early years.
- Some felt the Bill should have contained provisions intended to ensure multi-agency engagement and participation in community planning.
- Many felt the Bill should have contained provisions relating to the transition between school and adult life in respect of young people with additional support needs and that specific duties should have been placed on local authorities in this regard.
- It was noted that current additional support needs data recording captures only limited information as it only counts children for whom there are CSPs or IEPs. An example given was that only one third of deaf children were captured by the data.

- It was stated that FE colleges were not covered by the 2004 Act although many children with additional support needs studied at colleges. The Committee was encouraged to remember all the children who are not being served by the Act – those who were not known about or were absent.

**Nick Hawthorne**  
**Senior Assistant Clerk**  
**Education, Lifelong Learning and Culture Committee**  
**2 December 2008**