

## The Education (Additional Support for Learning) (Scotland) Act 2004

The Education (ASL) (Scotland) Act 2004 determines arrangements in education for children with additional support needs. Implementation is to begin in 2005 when it will replace the special educational needs provisions of the Education (Scotland) Act 1980 (as amended). It will be accompanied by a Code of Practice.

This legislation aims to modernise the system for identifying and addressing the needs of children who face any sort of barrier to learning by:

- addressing the needs of all children
- encouraging less bureaucratic, integrated services
- having a focus on outcomes for the child
- promoting partnership with parents
- encouraging provision of informal supporter as well as advocacy support
- implementing extra safeguards like mediation, dispute resolution and a ASN tribunal

The legislation will replace the term “special educational needs” with the term “additional support needs”. ASN is defined as:

A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.

As well as children with what under the previous system were known as special educational needs, the new category of ASN will now include:

- children for whom English is an additional language
- children with social, emotional and behavioural difficulties
- gifted and more able children
- gypsy/traveller children
- refugees and asylum seekers

Authorities must take account of, and keep under consideration, additional support needs of children and they must make adequate and efficient provision for these additional support needs. But they cannot go beyond what they have legal power to do, or if it would incur unreasonable public expenditure. Additional Support Needs includes all needs for support, whatever the reason, to enable the child to benefit from education.

Authorities must put in place arrangements to identify children with additional support needs and consider if a child requires a Co-ordinated Support Plan (CSP). Only children with additional support needs that arise from long-term multiple or complex factors who also require support from a non-educational agency will be entitled to a CSP. The aim is that a CSP will better coordinate support required from these multiple sources. When they prepare or review a CSP, education authorities must tell parents they plan to do so, inform them of the outcome and of their rights of appeal and provide them with a copy of the plan. Parents are expected to be fully involved in the preparation of CSPs.

Authorities must find out and take account of:

- advice and information (including formal assessments) from other agencies (health and social work services)
- the views of the child and his or her parents and any information they may provide, such as an independent assessment report

The CSP must contain:

- the name of the school the child is to attend
- the name of a contact person to provide advice and information to parents (and to co-ordinate the Plan)
- the authority's conclusions about the child's additional support needs
- the target learning outcomes
- the additional support required to meet these outcomes and who will provide this support

Authorities must keep under consideration the adequacy of a CSP and must formally review it at least every 12 months, and make any appropriate amendments.

CSPs are available to children for whom the education authority is responsible for school education:

- who have additional support needs which are likely to continue for more than a year and
- whose needs arise from one or more complex factors or multiple factors and
- who need significant additional support to be provided by the local authority (non-education services) or another appropriate agency (eg health)

Education authorities must also publish:

- their policies and arrangements for identifying and addressing additional support needs
- what the role and rights of parents and children with additional support needs are
- and publish information on these services

Authorities must provide information to whichever agencies will be responsible for supporting the young person on leaving school, including FE Colleges, if the young person agrees. This must be at least 6 months before the young person leaves school to allow preparation and planning with other agencies for a continuum of support.

When there are transitions between schools, authorities must forward information about children with additional support needs in good time to the next school.

In addition, education authorities will have power (they don't need to do it) to help children with additional support needs who are not in the public education system. For those children not yet old enough for school or nursery, this will be whatever type of learning support and advice is appropriate for that child.

The new legislation provides all parents with rights to:

- request that the education authority establish whether their child has additional support needs

- request that the education authority establish whether their child requires a Co-ordinated Support Plan
- request a review of an existing CSP
- be informed of the outcome of these requests
- receive a copy of the CSP, or if the child is not eligible for a CSP be provided with advice and information about their child's additional support needs
- have their views taken into account and noted in the CSP
- make reference to a new independent Tribunal on decisions by the education authority:
  - to prepare or not to prepare a CSP
  - the time being taken to prepare or review a CSP
  - the information in the plan, including the provision of support
  - a refusal to review a CSP
- have a supporter with them or an advocate to represent them at any meeting with the school or education authority and at hearings of the Tribunal
- request the use of mediation services or the dispute resolution process
- make a placing request to an independent special school if their child has additional support needs (at present only those with a Record of Needs can do this)

Young people (16 years and over who are still at school) have all the same rights as parents.

The Act supports all children's rights to be involved in decisions about their education. Guidance will promote involving children with ASN, whatever the complexity and from a young age. The child's views will be sought, taken account of and noted in the Plan. Seeking the views of children with communication support needs will be extremely challenging.

Children facing a barrier to learning, will be entitled to have their additional support needs identified and addressed. Educational planning mechanisms, such as Personal Learning Plans and Individualised Educational Programmes will underpin the approach for the child with additional support needs to achieve their learning outcomes.

There is a new duty on health boards and health trusts and on other local authority service providers, such as social work services, to help education authorities to identify and support children with additional support needs for learning.

There will be a new independent Tribunal to hear appeals relating only to Co-ordinated Support Plans. Tribunal hearings will be designed to operate in a family friendly manner and it is not expected that either party will need legal representation. In reality, the education department will be able to call on the assistance of the authority's legal advisers. The Tribunal will be able to direct the education authority to take action to prepare or review a CSP or to amend its contents. Those without a CSP will be able to access mediation services and dispute resolution.

There will be transitional protections for children and young people who have a Record of Needs but who will not have a CSP. Education authorities have two years from the commencement date to establish if a CSP is needed. During that period, the provision it makes must be no less than was made immediately before the commencement date.

A Code of Practice will clarify these arrangements further details of which are being published at the time of writing.

#### Where can I find out more?

- The ASL (Scotland) Act can be printed out from <http://www.scotland-legislation/hmso.gov.uk/legislation/scotland/acts2004/40004-a.htm>
- The ASL Bill and documents to go with it are available on the Parliament's website (<http://www.scottish.parliament.uk/bills/index.htm> or from the Stationery Office Bookshop, telephone 0870 606 5566)
- The Scottish Executive's website at <http://www.scotland.gov.uk> includes: the report of the consultation during passage of the Bill; the Guide to Parents; and others.
- A useful Summary Handout can be found at <http://www.scotland.gov.uk/library5/education/aslbsh-00.asp>
- The Code of Practice publication date is 25 August 2005.