

Scottish Government Consultations: Additional Support Needs

Policy Update

This report presents the COSLA responses to the Supporting Children's Learning Code of Practice and Regulations to support the amendments made to the Education (Additional Support for Learning) (Scotland) Act 2004 by the of the Education (Scotland) Act 2016 which will commence in January 2018, and Scotland's Ten Year Strategy for the Learning Provision for Children and Young People with Complex Additional Support Needs 2017-2026.

Summary and Recommendations

The draft third edition Supporting Children's Learning Code of Practice is largely similar to the existing Code of Practice, and though there are concerns around the capacity and impact on wellbeing assessment, officer will continue conversations with ADES, Scottish Government and other partners including Trade Unions on how this works in practice. The impact of the Regulations on Local Authorities is likely to be minimal.

The Ten Year Strategy for the Learning Provision for Children and Young People with complex additional support needs lacks detail and connection to key policies such as GIRFEC. The COSLA response will highlight these and continue to work with Scottish Government and partners, as members of the National Commissioning Group, to ensure a smooth transition from current arrangements to a national commissioning model informed by the needs of local authorities in providing services and education for children and young people with complex additional support needs.

Members are invited to:

- i. Comment on the Code of Practice and Regulations and the proposed COSLA response;
- ii. Comment on the ten year strategy and the proposed COSLA response; and
- iii. Agree the position set out in paragraphs 12-15.

References

Previous reports:

- Executive Group Report September 2014– Education Bill
- Executive Group Report November 2012 – The Doran Review
- Leadership Board Report October 2010 – The Doran Review

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September 2017

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Policy Update

1. The Education (Additional Support for Learning) (Scotland) Act 2004 provides the legal framework for identifying and addressing the additional support needs of children and young people who face a barrier, or barriers, to learning. It was amended by the Education (Scotland) Act 2016 and these amendments to the Act will commence in January 2018. To support the implementation, the statutory guidance and associated regulations required updating, and the consultation seeks views on these updates.
2. The Doran Review report "[The Right Help at the Right Time in The Right Place](#)" was published in November 2012. The draft ten year strategy sets out the proposals around a National Commissioning Process which will provide funding, on a cyclical basis, to services which support children and young people with complex additional support needs and their families. This report outlines the proposed COSLA responses.

Current COSLA Position

Supporting Children's Learning Code of Practice and Regulations

3. In August 2014, The ECYP Board noted the proposals and timescales for introduction of the Education Bill. The Bill provisions included:
 - Amendments to section 70 of the Education (Scotland) Act 1980 on consideration of section 70 complaints to Scottish Ministers
 - Introduce linear process in relation to section 70 of the Education (Scotland) Act 1980 and other dispute resolution mechanisms available under Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)
 - Introduce rights to children (12 and over) with capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 as amended.

There was broad support across Local Authorities and partners including ADES, National Parents Forum Scotland, the Additional Support Needs Tribunals for Scotland and the Children's Commissioner for these provisions.

Ten Year Strategy for the Learning Provision for Children and Young People with Complex Additional Support Needs 2017-2026

4. Following the reports publication in 2012, COSLA officers reported to the Executive Group that in light of the recommendations, the revenue grant to Grant Aided Specialise (GAS) Schools would be renewed on a three yearly basis until 2017/2018 and then ended, subject to progress on the national planning and commissioning processes. A Project Board was set up in June 2013 to oversee the delivery of a Strategic Commissioning Project and work streams were established to support its deliver. COSLA officers have been attending meetings.

What is changing

Supporting Children's Learning Code of Practice and Regulations

5. The amendments to the Act will come into force in January 2018. The proposed COSLA response is attached as Appendix 1.

6. [The consultation](#) asks for views on the third edition of the “Supporting Children’s Learning Code of Practice” which is largely identical to the existing edition. The main changes are:
- Extending the rights of parents, carers and young people 16 and over to children aged 12 to 15 who have ‘capacity’ to use their rights. Capacity will mainly be determined by the education authority. As well as assessing the child’s capacity to exercise a particular right, the assessment will include whether or not using their right will adversely affect their wellbeing.
 - Provision of a support service on request and free of charge, to children 12 and over who wish to, or are considering exercising, relevant rights, or if their parents are exercising relevant rights. The service will provide advice and information so that children know their rights and the support available to help them access their rights, advocacy support, legal representation, and to enable children’s views to be sought.

7. The consultation also seeks views on three sets of Regulations:

The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017

The requirements are currently in the Education (Additional Support for Learning) (Scotland) Act 2009 and will be repealed when the Education (Scotland) Act 2016 is commenced and this Regulation will come into force. This Regulation will result in no change in practice for local authorities, the difference is that Regulations have a shorter time frame for any future changes than changing what is in an Act. COSLA is a member of the Additional Support for Learning Advisory Group and part of the work of this group is to look at data collection and how this can be improved. There is consensus among group members that moving to outcome based reporting, and capturing the experiences and views of children, young people, families and education professionals would be a more useful measure and we will continue working with Scottish Government colleagues towards this.

The Section 70 (Procedure) (Scotland) Regulations 2017

These Regulations set out the procedure which applies to an investigation carried out by the Scottish Ministers under section 70 of the Education (Scotland) Act 1980. The Regulations define what a Section 70 “relevant complaint” is, and specifies the process for carrying out an investigation, including timelines. It is not anticipated that this will have an impact on local authorities or Government due to the low number of Section 70 complaints. In 2015, only two Section 70 complaints were made, with none in 2016.

The Additional Support for Learning Dispute (Scotland) Amendment Regulations 2017

These Regulations amend the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 to enable any eligible child (aged 12-15 who the authority is satisfied has capacity) to request independent adjudication in relation to the support or provision made for them and to require those acting as independent adjudicators to consider complaints from these children. It is anticipated that there will be a very low number of children requesting independent adjudication, however the assessment of capacity and impact on wellbeing will be a responsibility on the education authority so this must be noted.

Ten Year Strategy for the Learning Provision for Children and Young People with Complex Additional Support Needs 2017-2026

8. The Scottish Government are now consulting on the draft [Scotland’s Ten Year Strategy for the Learning Provision for Children and Young People with Complex Additional Support Needs 2017 – 2016](#). The proposed COSLA response is attached as Appendix 2. The strategy proposes that a National Commissioning Process will provide funding, on a cyclical basis, to include the following services:
- Direct education, care and health services for children and young people with complex additional support needs;

- Research related to children and young people with complex additional support needs that provides a sound evidence base, alongside other sources of evidence to support national policy development and service provision to improve educational outcomes for children and young people with complex additional support needs;
 - Sustainable, child and young person focused learning and development for those supporting children and young people with complex additional support needs aligned to a mechanism for sharing practice;
 - Broader services which support the education of children and young people with complex additional support needs including services provided across a number of authority areas, provided by local authorities or voluntary organisations which taken across Scotland may constitute a national need.
9. The National Strategic Commissioning group, following ministerial approval, will oversee the implementation of a 3 year cyclical commissioning plan that supports this Strategy. It will follow a cycle of planning, commissioning and review and will support the on-going anticipation of future need in addition to ensuring that services are addressing identified current national need. COSLA will remain a member of this group. Within the ten year period the strategy is to cover it is proposed that there will be cycles of commissioning and the intention is to align with the spending review timeline.
10. The budget which will be used for National Commissioning currently funds the seven grant aided specialist schools and three education support services. These are Corseford School in Renfrewshire, The Craighalbert Centre in Cumbernauld, Donaldson's School in Linlithgow, East Park School in Glasgow, Harmeny School in Balerno, Edinburgh, Royal Blind School in Edinburgh, Stanmore House School in Lanark, CALL Scotland, Enquire and the Scottish Sensory Centre.
11. There will be a phased release of funding from these commitments and Ministers have committed to a carefully managed transition from the current arrangement to the new commissioning programme ensuring children and young people who are currently supported by these services are not disadvantaged and that the organisations currently receiving this grant funding are supported through the change process.

Proposed COSLA Position

Supporting Children's Learning Code of Practice and Regulations

12. COSLA Officers will respond to the consultation broadly supporting the content of the Code of Practice and the legislation, noting concerns on the areas of assessing capacity and impact on wellbeing and importantly the wider impact of the proposals in the Education Governance Review on children and young people with Additional Support Needs. Officers will continue to attend the Advisory Group Additional Support for Learning where the discussion around capacity and impact on wellbeing assessment will be on the agenda, as will data collection and the opportunity to consider an alternative, improved focus for this.

Ten Year Strategy for the Learning Provision for Children and Young People with Complex Additional Support Needs 2017-2026

13. Though supportive of the vision, aim and objectives detailed in the strategy, there is concern around the limited detail around process for national commissioning within the document, lack of reference to key policies such as GIRFEC and the role of integrated children's services. It is also noted that in light of the proposals within the Education Governance Review, elements of the strategy will require reconsideration. These concerns are shared by Social Work Scotland and ADES and noted in their responses.

14. COSLA officers will continue as members of the National Commissioning Group to support the development and delivery of the strategy. This will ensure the needs of local authorities, in terms of providing services for children and young people with complex additional support needs, can shape the services commissioned.

Next Steps

15. The consultation on the Code of Practice and Regulations closed on 12 September 2017 and the consultation on the Ten Year Strategy closed on 28 August 2017 however an extension to 18 September 2017 for both was given in order that this report could be presented to the board. The COSLA responses will be submitted and a COSLA officer will continue to sit on the Advisory Group on Additional Support for Learning and the National Commissioning Group.

Summary and Recommendations

16. The draft third edition Supporting Children's Learning Code of Practice is largely similar to the existing Code of Practice, and though there are concerns around the capacity and impact on wellbeing assessment, officer will continue conversations with ADES, Scottish Government and other partners including Trade Unions on how this works in practice. The impact of the Regulations on Local Authorities is likely to be minimal.

17. The Ten Year Strategy for the Learning Provision for Children and Young People lacks detail and connection to key policies such as GIRFEC. The COSLA response will highlight these and continue to work with Scottish Government and partners, as members of the National Commissioning Group, to ensure a smooth transition from current arrangements to a national commissioning model informed by the needs of local authorities in providing services and education for children and young people with complex additional support needs.

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