

A consultation on The Supporting Children’s Learning Code of Practice and 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.

This consultation is seeking your views on:

- The Supporting Children’s Learning Code of Practice (third edition) 2017
- The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017
- The Section 70 (Procedure) (Scotland) Regulations 2017
- The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017

Why we are consulting:

The Education (Additional Support for Learning) (Scotland) Act 2004 has been amended to extend rights to children.

Background

The Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) 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.

The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out the rights of children, young people and parents within the system.

The Act has been amended by the Education (Scotland) Act 2016 (“the 2016 Act”). This extension provides that children will have 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 November 2017.

In preparation for this, there is a need to update Regulations and statutory guidance. There will also be non-statutory guidance prepared on the provisions within the Act which require:

- Assessment of capacity for children in relation to the use of their rights and;
- Consideration of whether there may be adverse impact on the child’s wellbeing as a result of using their rights.

This guidance will also be published for consultation in due course.

At the same time, the Additional Support Needs Tribunals for Scotland will be transferring into the new structure for Tribunals in Scotland. This means that there is a need to prepare regulations on how the Tribunals will practice. The regulations

which previously existed under the Additional Support for Learning Act have been taken into the new regulations to ensure consistency . There are some small changes to ensure consistency across all Scottish Tribunals. These draft regulations are currently the subject of consultation which is available from <https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/additional-support-needs-tribunals/> and will close on 1 August 2017.

This consultation

This consultation seeks the views of those involved in supporting children and young people with additional support needs. This includes parents and carers, those working in schools, education authorities, health boards, social work services, voluntary sector services and those who are involved in providing dispute resolution services including mediation, independent adjudication and Tribunals. This consultation will be of interest to those organisations and individuals who have an interest in the promotion of children's rights in Scotland.

This consultation seeks views in relation to 4 things (the code of practice and 3 sets of regulations):

The Supporting Children's Learning Code of Practice

The **Supporting Children's Learning Code of Practice** is the statutory guidance for the Education (Additional Support for Learning) Act. It has been updated to reflect the Education (Scotland) Act 2016 amendments to the Education (Additional Support for Learning) (Scotland) Act 2004.

This third edition of the statutory code of practice takes has been updated to reflect further amendments to the Act including extending children's rights under the 2016 Act and updates to other policy and legislative requirements . This code replaces the second edition of the code of practice as published in 2010.

Regulations

This consultation also seeks comments on regulations relating to the Education (Scotland) Act 2016 amendments to the Education (Additional Support for Learning) (Scotland) Act 2004.

The Additional Support for Learning Dispute Resolution (Scotland)

Amendment Regulations 2017 amends the 2005 regulation to enable children who have capacity and where there will be no adverse impact on wellbeing to use independent adjudication in their own right.

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

Regulations 2017 are created to continue to require Scottish Ministers to collect and publish specified information. This removes the requirement from the face of the 2004 Act and moves it to become a regulatory requirement. This allows Ministers flexibility should the type of information to be collected and publish require to be changed in future. This regulation recreates the current requirements on Ministers so there is in effect no change to these requirements at this time.

The consultation also seeks comments on a regulation relating to the Education (Scotland) Act 2016 amendments to the Education (Scotland) Act 1980.

The Section 70 (Procedure) (Scotland) Regulations 2017 sets out a broad timescale within which complaints to Ministers will be considered. The regulation sets a maximum timescale. This timescale will be drawn out further in guidance which will also be published for consultation (as it applies to all parties concerned in dealing with a complaint). This guidance will also be published for consultation in due course.

Consultation responses

Overleaf, are a range of questions to guide responses to the consultation. Please provide specific comments wherever possible i.e. suggest alternative wording if you feel a sentence or paragraph requires amendment, state clearly any concerns that you have or issues that should be examined further.

You must complete the Respondent Information Form to ensure that your consultation response is formally considered as part of the consultation process.

DRAFT

RESPONDENT INFORMATION FORM



Scottish Government
Riaghaltas na h-Alba
gov.scot

Please Note this form **must** be completed and returned with your response.
Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Convention of Scottish Local Authorities (COSLA)	01314749317
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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Questions: The draft statutory guidance The Supporting Children's Learning Code of Practice (third edition) 2017

(If you are responding to this consultation electronically, to complete tick boxes, please double click on one of the boxes above and select the default value as 'checked').

1. Introduction

The introduction provides information on what the guidance is about, how the guidance should be used, and the audience for the guidance.

- Is the information provided in the introduction clearly set out? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

The term "pre-school provision" is not commonly used. Early Learning and Childcare is the standard terminology. This repeats throughout the document.

2 year olds are also eligible for funded ELC on criteria related to income, using the same criteria as for eligibility for free school meals.

2. Chapter 1 – Summary of the Additional Support for Learning Act

Chapter 1 summarises the main provisions of the Act.

Is the information provided in Chapter 1 appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

The list in paragraph 2 provides a range of reasons a child may need additional support. This list includes "are living with parents who have mental health problems". We would suggest that living with parents or siblings with any health condition could be a reason a child may require additional support and that changing this statement to reflect this may be more appropriate and in line with wider commitments to reduce the stigma and discrimination associated with mental illness. We would also suggest adding an example to the list of where a

child may have a short term additional support need, for example following a close bereavement.

The list of functions and duties includes the assessment of capacity and impact on wellbeing, there is a lack of clarity on how this should be carried out and the wider implications. We are aware that guidance is being developed on this and will work with our professional colleagues in ADES and Scottish Government and other partners on this.

While we have no concerns about the new support service for children 12 and over who wish to exercise or are considering exercising relevant rights or whose parents wish to exercise or are considering exercising relevant rights, we are keen to see it's use monitored in terms of numbers, type of support required, and in relation to which rights, and the impact of the services us in terms of supporting that child to help inform changes in practice if required.

3. Chapter 2- Additional Support Needs

Chapter 2 considers the meaning of the terms “additional support needs” and “additional support” and considers the factors that may give rise to the need for additional support.

Is the information provided in Chapter 2 appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

There is no logical split between the list in paragraph 12 and in paragraph 13. If the attempt was to outline types of support provided by education services in paragraph 12, and outside of education services in paragraph 13, this is not clear, as the introductory statement does not indicate this and both lists contain examples which could be delivered by a range of services. There is also concern that providing a list of very specific examples may not be helpful to education services, parents, or children and young people.

Paragraph 14 states “ certain looked after children under the age of 3 years” – the word certain should be removed, or a clearer definition or reference to the earlier definition provided.

We would suggest splitting paragraph 16 at “ A need for additional support may arise where the **learning environment** is a factor” as family circumstances,

disability or health need, and social and emotional factors all have separate paragraphs.

Paragraph 17 should be edited to better reflect the work ongoing in schools and education authorities to ensure the learning environment is one in which all children and young people can flourish:

“Schools can monitor and review the learning environment by **through** evaluating the quality of ethos and relationships in the school, the curricular arrangements and the approaches to learning and teaching. Such review can **ensures schools are places of** ~~reduction in barriers to~~ learning, achievement and full participation of children and young people with additional support needs in the life of the school.”

Paragraph 19 refers to CAMHS as a response to mental health and wellbeing issues, we would suggest replacing this with “partners who can provide specialist input and support” noting that CAMHS is not always the appropriate service to refer children and young people to, and that there are examples across the country of innovative services within schools and local authorities, and partnerships with third sector agencies who provide advice, guidance and support on such issues, to staff and directly to children, young people and families.

Paragraph 22 provides an example in the second section which may sit better as a case study, as has been done with the other examples.

4. Chapter 3- Meeting Additional Support Needs

Chapter 3 sets out guidance on the Act’s provisions for identifying and assessing additional support needs and making provision for them.

Is the information provided in Chapter 3 appropriate? Please tick the box that applies.

Yes No Don’t know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

We have ongoing concerns with the data collection referred to in paragraph 2 and are working as part of the Advisory Group on Additional Support for Learning to identify more meaningful outcomes based data collection.

Paragraph 21 refers to Further Education Colleges. Colleges provide both further and higher education, therefore we suggest removing “further education” from this statement. Similarly in paragraph 22, and throughout this document, the

terminology should be colleges and universities, as both provide further and higher education.

As stated earlier, the issue of assessing children's capacity and impact on wellbeing of exercise their rights (paragraph 42) is a complex one and we are keen to work with Scottish Government on the implications this new responsibility may have.

In the section entitled "Planning" (paragraph 81-90) we suggest removing the figures, as these are reported elsewhere and do not fit with the purpose of the document as guidance. They will also not be current or useful in months or years to come.

Under "monitoring and review" (paragraph 91) the statement "When children and young people are progressing as expected, their additional support needs proving to be of a short duration, then additional support provision will no longer be required and they will benefit from school education through personal support." Is unclear. We suggest rewording this as " When children and young people are progressing as expected, their additional support needs **may be fluctuating or have been of** short duration, **and** additional support provision **may** no longer be required, **or may not be required at that time.**

5. Chapter 4 School Attendance: Rights, Responsibilities and Placing Requests

Chapter 4 considers five circumstances under which a child or young person may not be receiving school education in their local school

Is the information provided in Chapter 4 appropriate? Please tick the box that applies.

Yes **No** **Don't know**

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

6. Chapter 5- Co-ordinated Support Plans

Chapter 5 explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered

Is the information provided in Chapter 5 appropriate? Please tick the box that applies.

Yes **No** **Don't know**

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

7. Chapter 6- Transitions

Chapter 6 considers the requirements on education authorities and others under the Act in relation to transitions.

Is the information provided in Chapter 6 appropriate? Please tick the box that applies.

Yes **No** **Don't know**

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

Within the transition section there is a description of More Choices More Chances (from paragraph 23) we would suggest removing the detail of this as the next section on Developing the Young Workforce covers the current policy and opportunities for young people moving on from formal education. Within local authorities there are potentially a wide range of opportunities to ensure young people have supportive transitions into employment. The apprenticeship levy meant that local authorities could focus their efforts on providing these opportunities and ensuring supportive transitions and communications where a young person has additional support needs. It was therefore disappointing that the decision was taken that councils would not receive the apprenticeship levy, which means there is less funding available for these opportunities in house.

We would encourage including a case study which is an example of Developing the Young Workforce in a local authority to show the opportunities the programme presents for young people with additional support needs.

8. Chapter 7 – Working with Children and Families

Chapter 7 describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions regarding supporters and advocacy.

Is the information provided in Chapter 7 appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

As stated previously, the issue of assessing capacity and impact on wellbeing will require further discussion as it comes into force, and consideration must be given to the potential for conflict between a parent and a child in terms of requests or decisions.

9. Chapter 8 – Resolving Disagreements

This chapter considers provisions under the Act for resolving disputes.

Is the information provided in Chapter 8 appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

This section would benefit from guidance on supporting families where there are disagreements between a child/young person and family members.

In paragraph 54 on monitoring, similar to comments on other sections, we would suggest removing the figures from 2011 and 2015, instead including a sentence on where to find up to date information.

10. Chapter 9 – General Provisions

This chapter considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the code.

Is the information provided in Chapter 9 appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

11. Annexes and Glossary

There are 6 Annexes to the guidance, a Glossary and Resources section. They are:

- Annex A Links to Other Legislation, Policies and Guidance
- Annex B Co-ordinated Support Plan Template
- Annex C Decisions about whether the additional support required is significant
- Annex D Features of Mediation
- Annex E Practice Matrix
- Annex F Planning, Reporting and Review of additional support for learning
- Glossary of Terms
- Resources

Is the information provided in the Annexes and Glossary appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

In order to reduce the size of the document, we would suggest removing the detail from other legislation, policies and guidance, and replacing with a link to an online resource with these. This section will also need updated relatively soon after the guidance is published, given the changes proposed in the Education Governance Review, including the introduction of an Education Bill by June 2018. Similarly with the resources section, this could be a link to an online list which would be more easily updated.

12. Format

Is the format of the document appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of suggestions for improvement.

Prior to the publication of "Education Governance: Next Steps" paper, it was hoped that this guidance would undergo much more of a rewrite and attempt to streamline and make the document shorter and more manageable. Given the current context and in light of the governance review, this approach of updating the guidance where required seems more appropriate as legislation, policies and procedures would need to change under the reviews proposals. We have significant concerns about the way in which the changes proposed by the governance review would impact on the education and lives of children and young people with additional support needs and their families.

13. Additional Comments

Are there any other comments you wish to make about the guidance.

- Please provide comments in the box below.

Regulations

14. The Section 70 (Procedure) (Scotland) Regulations 2017

Is the draft regulation appropriate? Please tick the box that applies.

Yes No Don't know

- If you selected no, please provide details of suggestions for improvement.

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

Is the draft regulation appropriate ? Please tick the box that applies.

Yes **No** **Don't know**

- If you selected no, please provide details of suggestions for improvement.

We are keen to move to the collection of more outcomes based data on the experiences and outcomes of children and young people with additional support needs, where possible within existing systems and reporting structures given the time and resource demands on schools and local authorities. We will continue to work with members of the Advisory Group on Additional Support for Learning towards these.

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

Is the draft regulation appropriate ? Please tick the box that applies.

Yes **No** **Don't know**

- If you selected no, please provide details of suggestions for improvement.

Thank-you for responding to this consultation.

Please return a completed copy of respondent information form by email to or by post to ASLCodeofPractice@gov.scot, Support and Wellbeing Unit, Area 2C South, Victoria Quay, Edinburgh, EH6 6QQ.