
Report To:	Education & Lifelong Learning Committee	Date:	19 January 2010
Report By:	Acting Director of Education	Report No:	EDUC/09/10/CL
Contact Officer:	Colin Laird	Contact No:	01475 712824
Subject:	Additional Support for Learning Bill: Consultation on the Amendments to the draft Code of Practice		

1.0 PURPOSE

- 1.1 The purpose of this report is to provide members with the details of a consultation exercise currently being undertaken by Scottish Government in relation to proposed amendments to the Draft Code of Practice supporting the new Additional Support Needs legislation.

2.0 SUMMARY

- 2.1 A committee report on 12 May 2009 outlined the changes made to the original Additional Support for Learning Act which came into force in November 2005. A number of amendments to the Bill had been proposed at that time by members of the Scottish Parliament.
- 2.2 It is anticipated that the new legislation will come into force by the autumn or early winter of 2010.
- 2.3 In the interim a further consultation on the recent draft of the accompanying Code of Practice has taken place. The closing date for that consultation was 8 January 2010. The proposed response is attached as Appendix 1.
- 2.4 It is appropriate for Education Services to draft a response on behalf of Inverclyde Council. The areas covered in the consultation exercise are Additional Support Needs Tribunals (Practice and Procedures), Coordinated Support Plans, Dispute Resolution, sources of Information and Supporting children's learning. There are in total 147 questions.
- 2.5 A final version of the Code of Practice will be issued in 2010.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that members approve the response made to the consultation exercise on behalf of Education Services, Inverclyde Council.

Albert Henderson
Acting Director of Education

4.0 BACKGROUND

4.1 The background to the consultation is outlined in paragraphs 2.1 – 2.3 above.

5.0 PROPOSALS

5.1 See recommendation 3.1

6.0 IMPLICATIONS

6.1 Finance

None

6.2 Legal

None

6.3 Human Resources

None

6.4 Equalities

None, prior to completion

7.0 CONSULTATION

7.1 Officers working in the field of Additional Support Needs have been invited to contribute to the consultation.

8.0 LIST OF BACKGROUND PAPERS

Education (Additional Support for Learning Act) (Scotland) 2004
Supporting Children's Learning Scottish Executive 2005

The additional Support Needs Tribunals for Scotland (Practice and Procedure)
Amendment Rules 2009

Q1	In light of the provisions contained in the 2009 Act which enable parents and young people to submit out of area placing requests, do you agree that the definition of "authority" in the Tribunal Rules should be amended to include, in respect of out of area placing request disputes, an authority that is not responsible for the education of the child or young person?
A1	No
Q2	If you do not agree with Q1, please state your reasons why.
A2	The responsibility for refusing the request should exclusively lie with the potentially receiving/host authority who, after all, are making the most telling decision on behalf of the child.
Q3	In cases where there are 2 disputes before the Tribunal, one involving an out of area placing request and the other a co-ordinated support plan issue, are you content that these disputes are able to be conjoined under rule 20. if appropriate?
A3	It is appropriate
Q4	If you disagree with Q3, please state your reasons why.
A4	N/A
Q5	Do you agree that the Tribunal should be able to review its decisions in all of the 4 instances listed below? <ul style="list-style-type: none"> • its decision was wrong because of an error on the part of the Tribunal or its staff: or • a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or • new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or • otherwise the interests of justice require
A5	Reason 1-3 seem entirely acceptable. Reason 4 is written in somewhat legalistic terms and may require greater clarification
Q6	If you do not agree with Q5, in which of the 4 instances do you think it would be inappropriate for the Tribunal to review its decisions? Please state your reasons.
A6	See point relating to reason 4 in the question above
Q7	Are there other instances in which you think the Tribunal should be given the power to review its decisions? Please state the instance and your reasons for this.
A7	“New evidence” covers most eventualities. There may be a situation where a case is heard, child moves outwith Scotland for a time, returns and resubmits evidence to Tribunal despite previous refusal. There may be occasional cases where the family situation is dramatically altered and may merit revised consideration.
Q8	Are you content for a convener alone to consider those referrals which involve the breach of a statutory timescale as laid down in Regulation?
A8	No issue with a Convener alone considering such cases.
Q9	If you are not content with Q8, please provide your reasons.
A9	N/A

Q10	Do you think that 15 days is reasonable for the expedited case statement period?
A10	15 days is an adequate timescale for expediting such cases.
Q11	If you answered 'no' to question Q10, what duration of case statement do you consider appropriate? Please state your reasons.
A11	N/A
Q12	Do you agree that references involving a timescale failure should not be consolidated with references of a different nature?
A12	Agreed. References around a timescale failure should be dealt with separately.
Q13	If you do not agree with Q12, please state your reasons.
A13	N/A
Q14	Do you agree that rule 26 should be amended to enable a convener alone (as opposed to the Tribunal) to consider references in which the circumstances detailed below apply? <ul style="list-style-type: none"> • Where no response is submitted to the secretary within the time appointed by rule 10 or any extension of time allowed under rule 19; • Where the authority states in writing that they do not resist the reference • Where the authority withdraws their opposition to the reference; or • Where both parties agree in writing to dispense with a hearing
A14	Yes, agreed. This could be time effective from all perspectives.
Q15	If you do not agree with Q14, please state your reasons.
A15	N/A
Q16	Should a convener have the ability to extend or shorten the case statement period regardless of whether a placing request is involved?
A16	Yes, to provide maximum flexibility.
Q17	If your answer to Q16 is no, please state your reasons.
A17	N/A
Q18	Do you agree that the case statement period for either the appellant or respondent should be shortened in order to reduce the duplication of papers?
A18	Yes
Q19	If you do not agree with Q18, please state your reasons why.
A19	N/A
Q20	Are you content for the case statement period of the appellant (parent or young person) to be shortened?
A20	Yes, this alleviates stress for all involved.
Q21	If you are not content with Q20, please tell us why.
A21	N/A
Q22	Do you think that the case statement period of the respondent (the authority) should be shortened instead?
A22	No, ten days seems reasonable for the authority to respond.
Q23	If you answered 'yes' to Q22, please state your reasons.
A23	N/A
Q24	Are you content for 'In exceptional circumstances' to be removed from rule 8(4), thus enabling the appellant to amend the reference at any time, if permission is given by a convener or a Tribunal?
A24	Yes

Q25	If you are not content with Q24, please state your reasons.
A25	N/A
Q26	Do you agree that rule 9(2) should be amended to enable the Secretary to circulate all late submissions in advance of the hearing?
A26	Yes, agreed fully.
Q27	If you do not agree with Q26, please state your reasons.
A27	N/A
Q28	Should the ability of the Secretary to alter the date and time of a hearing be removed?
A28	Yes
Q29	If you disagree with Q28, please state your reasons.
A29	N/A
Q30	Do you agree that rule 27(7)(c) should be amended to clarify that a 'supporter' cannot be called as a witness or as an additional representative where the party is already represented?
A30	Yes, otherwise the business of a Tribunal could be come very protracted.
Q31	If you do not agree with Q30, please state your reasons.
A31	N/A
Q32	Are you content for the convener to be given the power to carry out preliminary functions/processes?
A32	Yes
Q33	If you are not content with Q32, please provide your reasons.
A33	N/A
Q34	Are you content for the Tribunal to have the ability to call a witness if that witness can assist the Tribunal in reaching its decision, or that person has an interest in the proceedings before the Tribunal?
A34	Yes
Q35	If you are not content with Q34, please state your reasons why.
A35	N/A
Q36	Do you agree that the Secretary should have the discretion to accept electronic references without a signature?
A36	Yes, with a view to saving time and easing procedures a little.
Q37	If you do not agree with Q36, please state your reasons.
A37	N/A
Q38	Do you agree that an appellant's representative should be able to sign a withdrawal notice to expedite the process?
A38	Yes
Q39	If you do not agree with Q38, please state your reasons why.
A39	N/A
Q40	Are you content for the provision relating to the number of witnesses to be moved from rule 28 to rule 22?
A40	Yes
Q41	If you are not content with Q40, please state your reasons why.
A41	N/A
Q42	Do you agree that rules 23 and 29 should be combined?
A42	Yes, it would be helpful to parties in remoter parts of Scotland.
Q43	If you do not agree with Q42, please state your reasons.
A43	N/A

Q44	Are you content for the 15 working day timescale to be removed and to allow the convener to specify the relevant timescale?
A44	Yes
Q45	If you are not content with Q44, please state your reasons why.
A45	N/A
Q46	Are you content for this error to be corrected?
A46	Yes
Q47	If you are not content with Q46, please state your reasons why.
A47	N/A
Q48	Do you have any other comments on the changes to the Tribunal Rules?
A48	N/A

The Additional Support for Learning (Co-ordinated Support Plan) (Scotland)
Amendment Regulations 2009

Q1	Do you agree that the Regulations should be amended to facilitate the transfer of a co-ordinated support plan between authorities for those children who live in one authority area but are attending school in another authority's area?
A1	Yes, it is appropriate to transfer the Coordinated Support Plan between authorities. It makes sense for the receiving authority to take operational ownership of the Plan, its requirements and its updating.
Q2	If you do not agree with the proposal outlined in Q1, please state your reasons why.
A2	N/A
Q3	Are you content that on receipt of any transferred co-ordinated support plan, the new host authority must conduct a review of the co-ordinated support plan within the time limits currently set for the review of such a plan as detailed in Regulations 5 and 7?
A3	Yes, this should in practice happen anyway.
Q4	If you do not agree with Q3, please provide your reasons why.
A4	N/A
Q5	The 2009 Act enables cases to be referred to the Tribunal where a parent or young person requests an authority to establish whether a co-ordinated support plan is required and the authority fails to respond to the request within a specified period of time. Do you agree that the specified period of time should be 8 weeks?
A5	Agreed with the suggested timescale
Q6	If you disagree with the 8 week period suggested at Q5 above, please state your reasons why.
A6	N/A
Q7	If you disagree with the 8 week period suggested at Q5 above, how many weeks do you think are more appropriate? Please provide your reasons.
A7	N/A
Q8	The 2009 Act enables cases to be referred to the Tribunal where the education authority have issued their proposal to establish whether a co-ordinated support plan is required (under section 11(2)(a)) but, within a specified timescale, has not taken a decision either way. Do you agree that the specified period of time should be 16 weeks?
A8	Agreed with the 16 – week timescale which coincides with the timescale for normal completion of the CSP process.
Q9	If you disagree with the 16 week period suggested at Q8 above, please state your reasons why
A9	N/A
Q10	If you disagree with the 16 week period suggested at Q8 above, how many weeks do you think are more appropriate and why?
A10	N/A
Q11	Should a timescale be introduced within which an authority must respond to a request from a parent or young person to conduct an early review of a co-ordinated support plan?
A11	Yes, a reasonable timescale for a review should be introduced.

Q12	If you disagree with the proposal at Q11, please state your reasons.
A12	N/A
Q13	If you agree with Q11, are you content with the 4 week timescale proposed or do you think a shorter or longer duration would be more appropriate?
A13	4 weeks is an acceptable timescale.
Q14	Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that where they have an outstanding placing request or placing request appeal with a potential host authority, they should notify that potential host authority that their child/they are in co-ordinated support plan territory.
A14	Yes
Q15	If you do not agree with the proposal outlined in Q14, can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have an outstanding placing request or placing request appeal, is in co-ordinated support plan territory?
A15	N/A
Q16	Do you agree that authorities should be placed under a duty when writing to parents or young people about co-ordinated support plan matters to advise the parents or young person that in any future placing requests submitted by the parent or young person to another authority, the parent or young person should notify the potential host authority of any co-ordinated support plan action.
A16	Yes
Q17	If you do not agree with the proposal outlined in Q16 can you suggest an alternative method to ensure that a potential host authority is informed of the fact that a child or young person, for whom they have received a placing request is in co-ordinated support plan territory?
A17	N/A
Q18	Do you agree that a potential 'host' authority should be placed under a duty to notify its appeal committee or the sheriff that the placing request appeal should be transferred to the Tribunal?
A18	Yes
Q19	If you do not agree with the proposed outlined in Q18, what other method do you suggest for ensuring that the appeal committee or sheriff transfer the placing request appeal to the Tribunal?
A19	N/A
Q20	Are you content for authorities to have discretion regarding the duty to notify a child's parents or the young person at the end of the 5 year retention period that the co-ordinated support plan has been destroyed?
A20	Yes
Q21	If you are not content for authorities to have the discretionary power mentioned in Q20, please state your reasons why.
A21	N/A
Q22	Do you have any other comments on the changes to the Co-ordinated Support Plan Regulations?
A22	Nil

The Additional Support for Learning Dispute Resolution (Scotland)
Regulations 2005

Q1	Do you agree that parents and young people should be able to refer an authority's refusal of a request for a specific assessment under new section 8A to dispute resolution?
A1	Yes
Q2	If you disagree with Q1, please provide your reasons
A2	N/A
Q3	Are you content with the proposal that parents and young people should send referrals for dispute resolution directly to Scottish Ministers?
A3	Yes
Q4	If you are not content with the proposal outlined in Q3, please state your reasons why.
A4	N/A
Q5	If you do agree with the proposal in Q3, do you think that the proposed time limit of 5 working days for Scottish Ministers to send the referral to the authority is a realistic timescale?
A5	Yes
Q6	If your answer to Q5 is no, what timescale do you think would be more appropriate?
A6	N/A
Q7	Are you content with the proposed monitoring approach for dispute resolution applications?
A7	Yes
Q8	If you are not content with Q7, please state your reasons why.
A8	N/A
Q9	Do you agree that where the authority have failed to provide the support contained in a co-ordinated support plan the only route of appeal should be to the Tribunal?
A9	Yes
Q10	If you do not agree with Q9, please provide your reasons.
A10	N/A
Q11	Should the rate that authorities pay for Independent Adjudication be increased to £380 per case (excluding expenses for travel and subsistence)?
A11	In the current financial climate no increase is acceptable.
Q12	If your answer to Q11 is no, what rate do you think is appropriate?
A12	The rate should be maintained at the current level.
Q13	Do you have any other comments which are relevant to the dispute resolution procedure?
A13	N/A

The Additional Support for Learning (Sources of Information) (Scotland)
Order 2010

Q1	Do you agree that the listed organisations should be included in the order?
A1	Yes, agreed.
Q2	If you do not agree, why not?
A2	N/A
Q3	Are there other organisations you would like to see included in the order?
A3	Should Children in Scotland also be included?
Q4	If so, please provide the details of these organisations.
A4	Children in Scotland – www.childreninscotland.org.uk

Supporting Children’s Learning – Code of Practice

Q1	Do you agree that chapter 1 provides a balanced overview of the main provisions of the Act?
A1	Yes, this contains the appropriate information.
Q2	If you do not agree with Q1, please state your reasons why.
A2	N/A
Q3	Is there any other information you would like to see included in chapter 1 ?
A3	Nil
Q4	Are you generally content with the guidance contained in chapter 2 ?
A4	Yes, examples given are very helpful.
Q5	If you are not content with Q4, please tell us why.
A5	N/A
Q6	Is there any other information you would like to see included in chapter 2 ?
A6	Nil
Q7	Are you generally content with the guidance contained in chapter 3 ?
A7	Yes, this is a particularly useful chapter highlighting appropriately the transitions timescale and the role of Skills Development Scotland.
Q8	If you are not content with Q7, please tell us why.
A8	N/A
Q9	Is there any other information you would like to see included in chapter 3 ?
A9	Nil
Q10	Are you generally content with the guidance contained in chapter 4 ?
A10	Yes, this is much clearer than the previous version.
Q11	If you are not content with Q10, please tell us why.
A11	N/A
Q12	Is there any other information you would like to see included in chapter 4 ?
A12	Some real life examples would have helped.
Q13	Does chapter 4 clearly distinguish the differences in an education authority's responsibilities for those children and young persons for whom: <ul style="list-style-type: none"> • no authority are responsible for their education; • arrangements have been entered into between authorities; • the home authority have arranged for them to attend a grant aided or independent special school or have arranged for them to attend a special school in another part of Britain; • the parent or young person has made a successful out of area placing request and as a result they are being educated in a school outwith the local authority area in which they live?
A13	Yes
Q14	If your answer to Q13 is no, how do you suggest we improve this?
A14	N/A
Q15	Does chapter 4 clearly identify the rights of parents and young persons in the 4 different scenarios contained in Q13?
A15	The rights are perhaps inferred rather than ideally started.
Q16	If your answer to Q15 is no, how do you suggest we improve this?
A16	Clearer identification of parental and young persons’ rights in a BOX.
Q17	Is there any other information you would like to see included in chapter 4 ?
A17	Some clear examples would help.

Q18	Is there anything contained in chapter 4 that you think should be removed?
A18	Nil
Q19	Are you generally content with the guidance contained in chapter 5 ?
A19	Yes
Q20	If you are not content with Q19, please tell us why.
A20	N/A
Q21	Are you content with the case study grid provided in Annex C ?
A21	Yes, this is a particularly useful section.
Q22	If you are not content with Q21, please tell us why.
A22	N/A
Q23	Do you think chapter 5 and Annex C provide further clarity on the definition of the term 'significant additional support'?
A23	Yes, much needed clarity has been achieved here.
Q24	If your answer to Q23 is no, how do you suggest we clarify this?
A24	N/A
Q25	Do you think that chapter 5 clearly demonstrates the links with the <i>Getting it right for every child</i> (Girfec) approach?
A25	Yes, fully
Q26	If your answer to Q25 is no, how do you think this can be develop?
A26	N/A
Q27	Is there any other information you would like to see included in chapter 5 or Annex C ?
A27	Sometimes it is worth stressing the difference between a Coordinated Support plan and a Record of Needs.
Q28	Is there anything contained in chapter 5 or Annex C that you think should be removed?
A28	No
Q29	Are you generally content with the guidance contained in chapter 6 ?
A29	In paragraph 3 it could be stated more forcefully that transitions are an absolutely paramount stage in a child's life. This is an area nationally where more could be done to support young people.
Q30	If you are not content with Q29, please tell us why.
A30	N/A
Q31	Is there any other information you would like to see included in chapter 6 ?
A31	N/A
Q32	Is there anything contained in chapter 6 that you think should be removed?
A32	N/A
Q33	Are you generally content with the guidance contained in chapter 7 ?
A33	Yes
Q34	If you are not content with Q33, please tell us why.
A34	N/A
Q35	Is there any other information you would like to see included in chapter 7 ?
A35	Good practice boxes are very helpful. Processes within the Authority are very well explained.
Q36	Is there anything contained in chapter 7 that you think should be removed?
A36	N/A
Q37	Are you generally content with the guidance contained in chapter 8 ?
A37	Yes, framework page is very helpful.

Q38	If you are not content with Q37, please tell us why.
A38	N/A
Q39	Is there any other information you would like to see included in chapter 8 ?
A39	N/A
Q40	Is there anything contained in chapter 8 that you think should be removed?
A40	N/A
Q41	Are you generally content with the guidance contained in chapter 9 ?
A41	Yes
Q42	If you are not content with Q41, please tell us why.
A42	N/A
Q43	Are you content that chapter 5 and chapter 9 fully cover placing request provision?
A43	Yes
Q44	If you are not content with Q43, please tell us why.
A44	N/A
Q45	Do chapter 4 and chapter 9 clearly explain the different placing request appeal routes?
A45	Yes
Q46	If you answered no to Q45, how could this be improved?
A46	N/A
Q47	Is there any other information you would like to see included in chapter 9 ?
A47	No
Q48	Is there anything contained in chapter 9 that you think should be removed?
A48	No, the content is entirely appropriate
Q49	Are you generally content with the guidance contained in Annex A ?
A49	Yes, there is appropriate linkage to a variety of other pieces of legislation and policies.
Q50	If you are not content with Q49, please tell us why.
A50	N/A
Q51	Is there any other information you would like to see included in Annex A ?
A51	No
Q52	Is there anything contained in Annex A that you think should be removed?
A52	No
Q53	Are you generally content with the guidance contained in Annex B ?
A53	Yes, the template for the CSP has been very useful for demonstrating the contents of the document to parents and prospective users.
Q54	If you are not content with Q53, please tell us why.
A54	N/A
Q55	Is there any other information you would like to see included in Annex B ?
A55	Perhaps a completed sample
Q56	Is there anything contained in Annex B that you think should be removed?
A56	No
Q57	Are you generally content with the guidance contained in Annex D ?
A57	Yes, case studies are very helpful
Q58	If you are not content with Q57, please tell us why.
A58	N/A
Q59	Is there any other information you would like to see included in Annex D ?
A59	No

Q60	Is there anything contained in Annex D that you think should be removed?
A60	No, nothing
Q61	Do you have any other comments that are relevant to the revised <i>supporting children's learning code of practice</i> ?
A61	A list of appropriate support agencies would have been helpful. Will there be a further financial memorandum published?