

Report

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Report to:	Education Resources Committee
Date of Meeting:	9 November 2010
Report by:	Executive Director (Education Resources)

Subject:	Implementation of the Education (Additional Support for Learning) (Scotland) Act 2009
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ inform members of the commencement from 14 November 2010, of the provisions of the new Education (Additional Support for Learning) (Scotland) Act 2009 ("2009 Act")
- ♦ request agreement for the proposed arrangements for the implementation of the 2009 Act in South Lanarkshire.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the commencement, on 14 November 2010, of the Education (Additional Support for Learning) (Scotland) Act 2009 ("2009 Act") is noted; and
- (2) that the proposed arrangements for the implementation of the 2009 Act in South Lanarkshire are agreed.

3. Background

3.1. The 2009 Act was passed by the Scottish Parliament on 20 May 2009 and received Royal Assent on 25 June 2009. The Scottish Government has informed education authorities that the commencement of the 2009 Act will be on 14 November 2010. The 2009 Act builds on, and strengthens the Education (Additional Support for Learning) (Scotland) Act 2004 ("2004 Act") and is an enhancement of that legislation.

3.2. The 2004 Act:

- Introduced a new system for identifying and addressing the additional support needs of children and young people who face a barrier to learning
- Set out how children and young people with additional support needs should be provided for by education authorities, supported, where necessary, by appropriate agencies
- Introduced Coordinated Support Plans (CSPs) which must be prepared for those with enduring complex or multiple needs that require support from outwith education services; the CSP focuses on supporting the child to achieve learning outcomes and assists the coordination of services from a range of providers
- Established Additional Support Needs Tribunals for Scotland (ASNTS) to hear appeals related to CSPs

- Introduced more rights for parents and young people, including their right to have more say in the educational provision being made, as well as access to new dispute resolution mechanisms; parents can request an education authority to establish whether their child has additional support needs and whether they require a CSP.

4. Education (Additional Support for Learning) (Scotland) Act 2009

4.1. The 2009 Act is founded upon the principles of a Curriculum for Excellence and Getting It Right for Every Child.

4.2. The provisions of the 2009 Act are described in information provided by the Scottish Government; this is attached as Appendix 1. The main changes introduced by the Act include:

- It amends and strengthens the 2004 Act and clarifies the definition of Additional Support Needs (ASN) so that additional support is not limited to educational support but can include multi-agency support from health, social services and voluntary agencies
- All looked after children are deemed to have ASN unless the education authority determine otherwise
- Parental and young persons' rights are increased in respect of access to the Additional Support Needs Tribunals for Scotland (ASNTS), whether or not a CSP is involved
- There is provision for an ASNTS Advocacy Service
- It introduces rights for parents/young people, including those with CSPs, to make out of authority placing requests; if such a placing request is successful, the new host authority becomes responsible for the child's or young person's education and for carrying out all of the duties under the 2004 Act
- It provides for parental access to mediation and dispute resolution from the host authority following a successful out of area placing request
- The child's view must be sought and taken account of with regard to post school transition planning; the 2009 Act also encourages an earlier start to planning for post-school transitions. This is already taken into account in the agreed Future Planning Protocol arrangements
- Local Authorities must meet requests for a specific assessment or examination for the purpose of establishing ASN or need for a CSP from parents/young people which can now be submitted at any time
- There is a new requirement for Scottish Ministers to collect specific information on additional support needs from education authorities
- It requires education authorities to provide parents of children with additional support needs (and young people with additional support needs) with all the information authorities are required to publish under the 2004 Act. It also requires that a summary of the information is available wherever school education is provided in the authority's area, in the school handbook or any other school publication or website (including the authority's website) providing general information about the school or services provided by the authority
- It provides that the authority must provide additional support as appropriate to a child under school age who is brought to the attention of the authority as appearing to have additional support needs arising from a disability

5. Proposals

5.1. Education Resources has been working to set in place arrangements for the implementation of the 2009 Act, focussing particularly on the changes introduced since the 2004 Act. These arrangements include:

- The revision of the Operating Procedure A28 – Additional support for learning – information and guidance
- The revision, printing and distribution of the information leaflets for parents and young people
- Preparation and planning of a training programme to support staff in the implementation the 2009 Act
- Updating the Council's website
- Updating guidance on the preparation of school handbooks
- Liaison with Social Work Resources and the Scottish Children's Reporter Administration to ensure information regarding looked after children is accurate
- Consideration of the implications of the 2009 Act in respect to placing requests
- The reissue of the Future Planning Protocol to educational establishments and other appropriate agencies

5.2. It is proposed that the Education Resources Committee agrees that these arrangements be established across South Lanarkshire in order to implement the provisions of the 2009 Act from 14 November 2010.

6. Employee Implications

6.1. Appropriate employees, including those in other agencies, require suitable training and development opportunities to enable them to assist in implementing the 2009 legislation.

7. Financial Implications

7.1. There are no new financial resources available for the implementation of the 2009 Act. The provisions of the 2009 Act must, therefore, be contained within existing resources. There may be additional costs arising from some of the new provisions, for example in relation to placing requests, the wider publication of information and the requirement to provide information to the Scottish Government. Education Resources will keep this under review.

8. Other Implications

8.1. There are no direct risks associated with this report.

8.2. There are no significant sustainability issues in connection with the recommendations contained within this report.

9. Equality Impact Assessment and Consultation Arrangements

9.1. An equality impact assessment has been carried out on the recommendations contained in this report. The proposals will have differential impact as the recommendations are intended to target a specific sector of the community. However, it is considered that this impact is justifiable and the results of the assessment will be published on the Council's website.

9.2. Consultation arrangements have included raising awareness of the implications of the 2004 Act with schools, agencies and parents/carers. Information sharing on the implications of the 2009 Act has taken place with schools, other agencies,

parents/carers, trade unions and other resources. Training and development opportunities will be offered to employees.

Larry Forde
Executive Director (Education Resources)

18 October 2010

Link(s) to Council Objectives/Improvement Themes/Values

- ◆ Raise educational attainment for all

Previous References

None

List of Background Papers

- ◆ Education (Additional Support for Learning) (Scotland) Act 2009
- ◆ Education (Additional Support for Learning) (Scotland) Act 2004

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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Changes made by The Education (Additional Support for Learning) (Scotland) 2009 Act

The 2009 Act makes the following adjustments to the 2004 Act:

Placing Requests

1. It permits parents of children with additional support needs and young people with additional support needs, including those with co-ordinated support plans, to make out of area placing requests.
2. Following the refusal of an out of area placing request in respect of a child or young person who has a co-ordinated support plan, is being considered for a co-ordinated support plan, or in respect of whom the education authority have decided does not require a co-ordinated support plan and that decision has been referred to the Tribunal, a parent or young person is able to appeal the decision to refuse the request to the Tribunal. Where the placing request is to a special school the decision to refuse the request will be referable to the Tribunal whether or not a co-ordinated support plan is involved.
3. Following the submission of an out of area placing request, a parent or young person is able to access mediation from the potential host authority regarding the placing request.
4. Following a successful out of area placing request, parents or a young person are able to access mediation and/or dispute resolution from the host authority regarding that authority's functions under the 2004 Act.
5. Following a successful out of area placing request for a child or young person with a co-ordinated support plan, the new host authority is under a duty to seek and take account of information and advice from the education authority from which the co-ordinated support plan was transferred as well as any agencies or persons involved in providing support under the co-ordinated support plan prior to its transfer.
6. It enables the decision of an education authority refusing a placing request in respect of a place in a Scottish special school to be referred to the Tribunal and also allows the decision of an education authority refusing a placing request in respect of a place in a school in England, Wales and Northern Ireland which is a school making provision mainly or wholly for children or young people with additional support needs to be referred to the Tribunal whether or not a co-ordinated support plan is involved.
7. It provides that when hearing a placing request appeal in respect of a place in a special school, the Tribunal has the power to confirm the decision of the authority or overturn the decision of the authority and specify when the placing request should commence and make any amendments to a co-ordinated support plan.
8. It extends the power of the Tribunal, when considering a placing request appeal, to enable it to specify a time scale for placing the child in the school specified in the placing request.
9. It ensures that any reference transferred back to the sheriff from the Tribunal will be treated as if it were an appeal made directly to the sheriff in the first instance

10. Where a child is being educated outwith the area in which he or she lives as a result of a successful out of area placing request, it prevents the education authority (the host authority) from recovering the cost of providing any mediation and/or dispute resolution services from the authority for the area in which the child lives (the home authority).
11. Where a child is being educated outwith his or her home authority as a result of a successful out of area placing request, responsibility for the child's or young person's education and carrying out all of the duties under the 2004 Act transfers to the host authority.
12. Where a child is being educated outwith his or her home authority as a result of arrangements made or entered into by the authority for the area to which the child or young person belongs with another authority, responsibility for the school education of the child or young person remains with the authority for the area to which the child belongs.

Definition of Additional Support

13. It clarifies the definition of additional support by specifying that it is not limited to support provided in an educational environment.
14. It requires authorities to apply the wider definition of 'additional support' to children under school age other than prescribed pre-school children who have additional support needs arising from a disability within the meaning of the Disability Discrimination Act 1995.

Advocacy, Mediation and Dispute Resolution

15. It requires Scottish Ministers to secure the provision of an advocacy service to be available on request and free of charge to support parents and young people in Tribunal proceedings.
16. It provides that the education authority are required to make arrangements for the provision of independent mediation services which cannot include in-house mediation services.
17. It provides that, where a parent or young person makes an application for dispute resolution the Scottish Ministers may by regulations provide that application must be made, to the Scottish Ministers.
18. It enables Scottish Ministers to make an order specifying certain persons from whom parents and young people can obtain further advice, information and support in relation to the provision for additional support needs, including support and advocacy services as referred to in section 14 of the 2004 Act and places education authorities under a duty to publish information as to those persons.

Assessment and Examination

19. It extends the rights of parents of children with additional support needs and young people with additional support needs to enable them to request a specific assessment, such as an educational, psychological or medical assessment, at any time.

Looked After Children

20. It automatically deems all looked after children and young people to have additional support needs unless they do not require additional support in order to benefit from education.

Children Under School Age and Additional Support Needs

21. It provides that if a child under school age (generally under 5 years old), who belongs to the authority's area, is brought to the attention of the authority as appearing to have additional support needs arising from a disability, then the authority must provide additional support as appropriate.

Provision of Published Information

22. It requires education authorities to provide parents of children with additional support needs (and young persons with additional support needs), for whose school education the authority are responsible, with all the information authorities are required to publish under section 26 of the 2004 Act.
23. It provides that, when carrying out their duties under section 26 of the 2004 Act, the test to be used by authorities in establishing whether a young person lacks capacity should relate solely to the young person's ability to understand the information published under subsection 26(1) (d).
24. It places authorities under a duty to ensure that a summary of the published information is available, on request, from each place in the authority's area where school education is provided and in any handbook or other publications provided by the school that is for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and on any website maintained the school or the authority for that purpose.
25. It extends the list of matters on which authorities are required to publish information to include any procedures established for the resolution of disputes.

Transition and Child's Views

26. It places authorities under a duty to seek and take account of the child's views in relation to any information to be provided to an appropriate agency or agencies in relation to a child leaving school.

Tribunal

27. It permits the Tribunal to consider any placing request appeal, where a co-ordinated support plan has been prepared or is being considered, at any time before final determination by an education appeal committee or sheriff.
28. It extends the types of references that may be made to the Tribunal to include failure by the education authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives.

29. It extends the power of the Tribunal to enable it to require the education authority to take action to rectify a failure by the authority to provide, or make arrangements for the provision of, the additional support contained in a co-ordinated support plan which is necessary for the child or young person to achieve their educational objectives. It also enables the Tribunal to specify a timescale within which such action must be taken.
30. It extends the circumstances in which the decision of an education authority to refuse a placing request can be referred to a Tribunal, to include those decisions where an education authority have issued their proposal to establish whether a co-ordinated support plan is required.
31. It extends the circumstances in which parents and young persons can make references to the Tribunal consequent on certain procedural failures of the education authority.
32. It extends the jurisdiction of the Tribunal to allow it to consider references in relation to an authority's failure to comply with its duties in terms of post-school transitions.
33. It enables Scottish Ministers to make rules to allow a convener sitting alone to consider certain references and to allow the Tribunal to review its decisions in certain specified circumstances.
34. It provides that following a decision of a Tribunal that requires an education authority to do anything, the President of the Tribunal will have the power to require the authority to provide him or her with information about the authority's implementation of the Tribunal decision.
35. It provides the President of the Tribunal with the power to refer the matter to Scottish Ministers where he or she is satisfied that the authority are not complying with the Tribunal decision.

Availability of Information on Additional Support Needs

36. It requires that for the first five years after commencement of the Act, the Scottish Ministers must report to the Scottish Parliament on what progress has been made in ensuring that sufficient information relating to children and young people with additional support needs is available to monitor the implementation of the 2004 Act.

Collection of Data on Additional Support Needs

37. It specifies the information that must be collected from education authorities and published on an annual basis by the Scottish Ministers. This information must include the number of children and young people with additional support needs for whose school education the authority are responsible, the principal factors giving rise to those additional support needs, the types of support provided and the cost of providing that support.