

**Supporting Children's Learning Code of Practice
Consultation questions
Closes 14 Aug 2017**



Background

We broadly welcome the amendments to the Code of Practice ('the Code') following the amendments under the Education (Scotland) Act 2016. We appreciate the remit of the consultation is limited to understanding of the amended sections of the Code. This is welcomed, however, also regard this as a missed opportunity to revise the Code fully and reduce the length of the document. The document, in its current format, is cumbersome and inaccessible to stakeholders, particularly parents and children and young people. We have therefore touched on some recommended areas for improvement as part of our response.

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?

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.

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?

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.

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?

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.

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?

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.

Greater clarity around the status of support plans other than Co-ordinated Support Plans (CSP) is required to address this. We are aware of reports of wide variety in the accessibility of CSPs and better sharing of information with parents, children and young people is required to be

reflected within the Code. Further clarity within the Code on how the definition of 'significant additional support' should be interpreted by local authorities in terms of the requirement threshold for a CSP is also required. Reports from our members suggest that there is a gap between policy and practice in terms of interpretation and implementation of this threshold criteria.

We recommend that all deaf children should be provided with the necessary support to enable them to make good educational progress based on agreed standards. We are concerned that although many deaf children meet the criteria for CSPs, relatively few receive one in practice. Without guaranteed access to a statutory plan, offered by a CSP, fewer deaf children in Scotland have the statutory entitlements than elsewhere in the UK. A simple legal route must be in place to provide resolution in those instances where a deaf young person does not have a CSP in place. At present they have limited legal options.

Many deaf children should have a CSP in place. However, research commissioned by us in 2009 from the University of Edinburgh revealed that almost a quarter of deaf children within the sample survey group had no form of support plan whatsoever.¹

This means there are potentially large numbers of children with ASL needs who do not have statutory and legally binding support plans despite the entitlements of the Education (Additional Support for Learning) (Scotland) Act 2004.

A child who is profoundly deaf:

- Does have a need that has a significant adverse impact on their school education. The Scottish Government have acknowledged the educational attainment gap that deaf learners experience.
- Does require high level involvement from audiologists, Ear Nose and Throat specialists, Speech and Language Therapists as well as specialist education support; and
- Does have a long term need

Assessment of capacity

We welcome the development of non-statutory guidance referred to in the Code. Education authorities will require to be clear on how to make these assessments. This should indicate who should be involved in this process and what evidence should be used to make a decision about a child with or without capacity and how this will be applied consistently and appropriately.

To ensure children understand their rights, they will require support and accessible information and guidance. The additional needs of children and subsequent reasonable adjustments they are entitled to must be taken into account in the provision of this. Guidance will also have to clarify how disputes between children with capacity and their parents and carers will be resolved and how the views of children will be heard and regarded in this circumstance.

The role of independent advocacy will be crucial to ensure that children are empowered to exercise their rights, and receive impartial information and advice to ensure children's rights are safeguarded. We understand that the creation of a new national support service, including

¹ http://www.creid.ed.ac.uk/projects/ndcs/CREID_NDCS_execsummary.pdf

independent advocacy, is being explored by the Scottish Government for children exercising these new rights. We welcome this as currently there is a lack of independent children's advocacy services in Scotland, particularly of those with the knowledge and skills to support deaf children and their families. To make rights real for children and young people this service requires to be well resourced, accessible and provide for parity across local authorities.

Awareness raising activity around this new services also will be necessary.

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?

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.

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?

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 note the matrix eligibility criteria used for establishing whether an assessment of a child's additional support for learning needs meets the threshold for a CSP to be put in place.

We would emphasise that multi-agency support, which may not be deemed significant from each individual agency's perspective, can **combine to have a very significant cumulative additional input in terms of the support that an individual child receives.**

This is a 'service facing' test of significance rather than a 'user facing' one. This means the cumulative effect becomes significant, not because it is support which the child finds significant, but because the cumulative effect increases the requirement for the support to be co-ordinated between agencies. It is therefore significant from a provider's point of view as well. We are pleased that the Code refers to cumulative provision, we recommend this is more explicitly outlined within the Code. This would result in more CSPs being prepared for deaf children who need them.

To help promote consistency in the application of the ASL Act in all local authorities, it would be helpful to have examples within the Code of thresholds for different levels of support/intervention (or criteria for CSPs) and the type of support to be provided at the IEP stage if the pupil is to make satisfactory progress.

The Code currently details the need for quantification and specification, in NDCS' experience this often does not happen. Considerable investment is put into assessing a child for a CSP and establishing how services should support the child. The agreed support should be quantified and specified within a CSP so that it is ensured the child gets the support required. The focus of this consultation is to ensure the system is better understood and operates effectively. When the type and amount of support a child receives from each key service is detailed in the CSP, it provides clarity for parent, child and professional and help promote consistency in the application of CSPs in all Local Authorities. It would be helpful to have case studies in the Code detailing when a child should received a CSP and how Quantification / Specification should be detailed within that. We have included two illustrative case studies in the appendix. In both these cases the support to be provided to the child should be quantified and specified in a CSP by dealing with the frequency nature and intensity of support.

Example A - A P3 Profoundly deaf pupil

A was born profoundly deaf and received a cochlear implant at the age of two. She has made good progress with it but as it does not replace normal hearing school provides her with a number of challenges both socially and academically. It is essential to ensure that A's equipment is functioning optimally at all times and that she is educated within an acoustically appropriate environment. If there is background noise she finds it difficult to follow the teacher's input or group discussions. A has a more limited vocabulary and poorer language skills than her peers because her access to language is more limited. A requires more time than her peers to process oral and written language because of this. A is functioning within the range of the children within her class as once she has fully accessed the information she is able to process it. Social situations and friendships can be difficult for A as communication with peers is difficult as breaks often occur in noisy or acoustically poor environments such as the dining room or playground. Consequently A's social skills are immature and she has had difficulty establishing strong friendships.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type - personnel, learning and teaching approaches (L&T) – degree of individualisation/differentiation, Specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? over weeks/terms/years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a CSP - if they are to be achieved?]	Is a CSP required?
Audiological Scientist	Yearly (unless there is a problem with technology)	Specialist able to undertake audiological testing to establish the detail of the programme for A's speech processor. Liaise with local professionals technology is able to function effectively in school.	Usually involves 2 scientists and at a remote centre	Life	Support is essential to ensure use of the technology and that it is carefully adapted to suit the particular needs which will alter as she grows.	
Teacher of	Twice weekly	Specialist teacher qualified	Because of the wide range of	A will require support	Support is needed to	Yes and the frequency,

<p>the Deaf</p>		<p>to monitor use of technology, liaise with CI centre; Support mainstream staff through training and advise; provide deaf awareness tuition for A's Peers; Assess and monitor A's listening and language skills; develop and deliver listening and language programme; Support staff and peers with A's social and emotional well being. Coordinate input of specialists and liaise with family regarding all educational matters and functioning of equipment.</p>	<p>support this may be 1-1, small group or large group work.</p>	<p>throughout her schooling as she will always be accessing the curriculum via technology, however as she becomes settled with a member of staff this may reduce. She will require increased support at times of transition and through examination periods</p>	<p>ensure that she continues to fully access her education.</p>	<p>nature, intensity and duration of support should be detailed within the CSP</p>
<p>Educational audiologist</p>	<p>Termly</p>	<p>Assess and monitor the Acoustic environment; advise school on adjustments; provide and maintain an FM and or sound field system. Liaise with CI centre with regards</p>	<p>1-1 and liaison with other professionals.</p>	<p>Support will be required throughout A's school career.</p>	<p>Support required to ensure she is able to maximize the use of her CI.</p>	

		to accessories and upgrades.				
Speech and Language therapist	Weekly	SLT experienced in working with deaf children and can liaise with TOD and mainstream staff to develop and implement a programme to support A's speech and language development through CI technology.	1-1 direct work with child that needs to be practiced as part of A's daily routine.	Likely to require input from a SLT for a number of years.	Support is required to maximize A's language development and speech production.	
Learning support assistant	Daily	An experienced LSA who is able to support A's access to Literacy, MFL, Numeracy and Science ensuring material is accessible, differentiated and to consolidate her understanding.	In class support and 1-1 input as required	Likely to require input throughout her schooling but this may vary depending on the Educational placement and subject being delivered.	Support is required to ensure A is able to fully access the curriculum on a day to day basis so maintaining her academic progress as well as self esteem and confidence.	

Example B - A P3 Profoundly deaf pupil

B was born profoundly deaf and uses two digital hearing aids. He communicates using BSL as his first language and is developing his oral language skills which are significantly below those of his hearing peers. School provides him with a number of challenges both socially and academically because of communication challenges. It is essential to ensure that B's hearing aids and fm system are functioning optimally at all times and that he is educated within an acoustically appropriate environment. If there is background noise he finds it difficult to follow the teacher's input or group discussions. B requires access to BSL interpretation at all times, as well as specialists to develop his oral and written language skills. B requires more time than his peers to process oral and written language because of his more limited skills. B is functioning within the range of the children within his class as once he has fully accessed the information he is able to process it. Social situations and friendships can be difficult for B as communication with peers is difficult. Breaks often occur in noisy or acoustically poor environments such as the dining room or playground and his peers BSL skills are limited. Consequently B's social skills are immature and he has had difficulty establishing strong friendships.

Agency/ies involved in addition to education	Frequency [How often is the support provided?]	Nature [Type - personnel, learning and teaching approaches (L&T) – degree of individualisation/differentiation, specialist resources]	Intensity [Degree of involvement: 1-1, small group, large group]	Duration [How long for? Over weeks/terms/years]	Test [Is the support significant and necessary to enable educational objectives (EOs) to be met? Do the objectives require the coordination of services - and a CSP - if they are to be achieved?]	Is a CSP required?
Audiologist	Yearly	Specialist able to undertake audiological testing to establish the detail of the programme for B's hearing aids. Liaise with local professionals	1-1 at a clinic	As long as B uses hearing aids.	Support is essential to ensure use of the technology and that it is carefully adapted to suit the particular	

		with regards the aids being effective in school.			needs which may alter as he grows.	
Teacher of the Deaf	Twice weekly	Specialist teacher qualified to monitor use of technology; Support mainstream staff through training and advice; provide deaf awareness tuition for B's Peers; Assess and monitor B's listening and language skills; monitor development of BSL skills; develop and deliver listening and language programmes; Support staff and peers with B's social and emotional well being. Coordinate input of specialists and liaise with family regarding all educational matters and functioning of equipment.	Because of the wide range of support this may be 1-1, small group or large group work.	B will require support throughout his schooling as he will be accessing the curriculum through an interpreter and or hearing aids, however as he becomes settled with a member of staff this may reduce. He will require increased support at times of transition and through examination periods.	Support is needed to ensure that he continues to fully access his education and his differing language needs are met.	Yes and the frequency, nature, intensity and duration of support should be detailed within the CSP.
Educational audiologist	Termly	Assess and monitor the acoustic environment and advise school on necessary adjustments; provide and maintain an FM	1-1 and liaison with other professionals.	Support will be required throughout B's school career.	Support required to ensure he is able to maximize the use of his hearing aids	

		and or sound field system. Liaise with audiologist with regards to spares and repairs.				
Speech and Language therapist	Weekly	SLT experienced in working with deaf children and can liaise with TOD and mainstream staff to develop and implement a programme to support B's speech and language.	1-1 direct work with child that needs to be practiced as part of B's daily routine.	Likely to require input from a SLT for a number of years.	Support is required to maximize B's oral language development and speech production.	
Learning support assistant	Daily	An experienced LSA who is able support B's access to the full school curriculum by providing BSL support, helping to differentiate materials, monitor equipment, check understanding and support the delivery of specific language programmes.	In class support and 1-1 input as required.	Will require fulltime support throughout school career.	Support is required to ensure B is able to fully access the curriculum on a day to day basis so maintaining his academic progress as well as self esteem and confidence.	

Child's Plan

We would also welcome more detail within the Code about how the CSPs will fit within the Child's Plan framework. We have a number of concerns around practical elements such as: how duplication will be avoided between CSPs, IEPs and the Child's Plan under the CYP Act; who will be responsible for assessing wellbeing and learning needs of pupils and how will these be reflected in both types of planning; how the Named Person role will oversee the planning processes for CSPs and IEPs and what their exact remit will be, with regard to the additional role of the Lead Professional. In addition, we recommend further detail around how these planning processes will be quality assured, including the steps that will be taken to ensure education authorities understand what a good quality Child's Plan looks like and what the implications will be when planning does not meet these standards.

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?

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 welcome the reference to collaborative work and initiatives in the revised Code. The issue of transitions into adult life is challenging for all young people, but particularly for those who require additional support. Research commissioned by us from the University of Edinburgh has raised concern about the consistency of transitional planning for deaf school leavers and disabled young people more widely. Despite their statutory right to these arrangements under the Code, it is seemingly uncommon to have a plan in place. For example, only four out of the 30 young people who took part in the research had a transitional plan in place, three of whom had additional complex needs and were educated in a special school. This is despite all deaf children and young people leaving school, being entitled to transition planning in terms of sections 12 and 13 of the 2004 Act. Work needs to be undertaken to ensure professionals have the understanding of their requirement to deliver this planning.

We recommend the Code is strengthened by outlining how education authorities are to plan and implement appropriate transition plans for learners with additional support needs and how young people and their families should be involved in this process.

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?

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.

Chapter 8 – Resolving Disagreements

This chapter considers provisions under the Act for resolving disputes.

Is the information provided in Chapter 8 appropriate?

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.

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?

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 recommend provision of communication support for BSL users is highlighted within this section of the Code, in line with the BSL (Scotland) Act 2015 promotional duties, and in order that all information produced and published about ASL policies are fully accessible.

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?

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.

Format

Is the format of the document appropriate?

Yes **No Don't know**

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

We recommend the Code is revised and reduced in size to improve the accessibility of the document to stakeholders, especially parents and children and young people. This would promote better understanding of how the legislation should be implemented and promote parity amongst local authorities. An easy read version should also be available.

Additional Comments

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

Please provide comments in the box below.

The Section 70 (Procedure) (Scotland) Regulations 2017

Is the draft regulation appropriate?

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

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

While 105 working days is a realistic timescale in which to resolve difficult education matters and conflicts it is critical to remember that the primary focus during this time should be the child at the centre of this process. Around six months is a significant length of time for the child who may well be prevented from attending school during that time. Guidance should highlight that the matter should be resolved with highest sense of urgency and be resolved within 105 working days.

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

Is the draft regulation appropriate?

Yes **No** Don't know

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

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

Is the draft regulation appropriate?

Yes **No** Don't know

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

The extension of rights in itself will not make rights real for children. A significant amount of work is still required to ensure children understand and are able to exercise their rights.

NDCS would welcome further detail around how assessments on capacity will be made and who will be responsible for making these decisions. In the case of deaf children with communication support needs, language preferences or language deficits, specialist assessments will be required to ensure these are carried out effectively. NDCS recommends that this issue addressed on the face of the Bill, with Education Authorities having due regard to the communication needs of children in assessments.

Consideration must be given to areas where young people have conflicting views with their parents and carers. With rights extended to both groups guidance must be clear on how services are to mediate any conflicts which arise. Assessment of capacity has the potential to become a real barrier to children making use of their rights, coupled with the further hurdle of assessing wellbeing. There is a particular risk that deaf children, and others with communication barriers will have their capacity under-estimated. We recommend the Code stipulates that authorities should take a light touch approach to these tests, with a *de facto* presumption of capacity in use.

In many cases it will be unlikely that children would have the skills to mediate, negotiate and compromise in pressured situations where there is a clear unfavourable power dynamic. Access

to independent advocacy will therefore be critical for children who wish to exercise their rights under Additional Support for Learning. We welcome the creation of these services which should be child-centred and involve educating children about rights and responsibilities.

The provision of independent advocacy services for children is currently patchy across Scotland and will need to be strengthened to meet the aspirations of the Bill. In addition, it will be critical to ensure that separate advocacy services are able to meet the needs of children and parents/carers respectively in order to **mitigate potential conflicts of interest**.

To ensure children have access to effective, and genuinely independent advocacy, this service should be commissioned nationally. Attaching independent advocacy provision to local authorities could create a number of challenges and potentially undermine impartiality.

With the extension of rights for children under Additional Support for Learning it should be clarified whether parents and children will be able to exercise their rights to effectively pursue the same issue twice. As the legislation is silent on this matter, a strong line from the Code would be particularly welcome.