

EXTENDING THE RIGHTS OF CHILDREN WITH CAPACITY UNDER THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004 (AS AMENDED) AND REPEALING SECTION 70 OF THE EDUCATION (SCOTLAND) ACT 1980

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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	Individual	Group/Organisation
	<input type="checkbox"/>	<input checked="" type="checkbox"/> Please tick as appropriate
(a)	<p>Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p>Please tick as appropriate <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
(c)	<p>The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the</p>	

<p>(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p>Please tick ONE of the following boxes:</p> <p>Yes, make my response, name and address all available <input checked="" type="checkbox"/></p> <p>or</p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p>or</p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>		<p>Are you content for your response to be made available? Please tick as appropriate <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>(d) 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? Please tick as appropriate <input checked="" type="checkbox"/> Yes</p>		

CONSULTATION QUESTIONS

1(a) Do you think children with capacity should have their own rights in relation to Additional Support for Learning?

Yes.

1(b) Please offer comments to support your answer to 1(a).

As the national network and membership organisation for the children's sector in Scotland, we are concerned primarily with the impact that this extension of rights under the ASL Act may have on children and their families. Several of our member and partner organisations including Enquire, Together (The Scottish Alliance for Children's Rights), SCCYP, Enable and for Scotland's Disabled Children (fSDC) are responding to this consultation and we broadly endorse the principles on which their recommendations are made.

We believe that children with capacity should have their own rights in relation to Additional Support for Learning, particularly as this would bring the ASL Act more fully in line with the United Nations Convention on the Rights of the Child (UNCRC), thus strengthening the rights of children and young people in Scotland. However, it is essential that this extension should be based on the premise of accessibility, as there is a risk that these rights will rarely be exercised if measures are not taken to ensure their accessibility within the legislation.

This means that there would have to be clear, accessible information, advice and advocacy available to all children and young people with capacity to ensure equity of access to these proposed rights, and that children and young people should be made aware of how to access and use these services. We believe that children and young people should be empowered and educated at a national level towards an improved knowledge and understanding of their rights and how to access them. This type of education would have to be universally provided through schools.

We believe that further consideration needs to be given to the decision making process around who has and who doesn't have capacity. The Equality and Human Rights Commission should be involved in this discussion and provide advice.

2(a) Do you think Scottish Ministers should extend the right to enable children to make an appeal to the Additional Support Needs Tribunals for Scotland under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)?

Yes.

2(b) Please offer comments to support your answer to 2(a).

Children in Scotland support the principle of the 2008 UNCRC recommendation to strengthen the rights of children, including looked after children, by ensuring they have the opportunity to have their cases heard at the Tribunal and are not restricted by their circumstances. However, Children in Scotland, its partners, and members are concerned that the Additional Support Needs Tribunal (ASNT) is not a child-friendly mechanism, and furthermore, that the proposed extension of this right to appeal assumes maturity, negotiation skills and resilience of children and young people.

We believe there should be an advocacy service available to children and young people who wish to make an appeal. We are concerned that currently advocacy support is not available and accessible in an equitable way across Scotland. The Scottish Government funded national advocacy service (Let's talk ASN!) should be extended to be equipped to do this and children and young people should be made aware of their right to appeal.

Children in Scotland consulted with 28 S3 pupils from two local authorities, as commissioned by the Scottish Government, on this consultation paper. The groups comprised young people both with and without additional support needs. It is worth noting that none of the pupils consulted expressed an interest in alternative dispute resolution services above the level of mediation, with the majority stating a preference for sorting out any problems or disagreements within school, with the help of friends and family.

3(a) Do you think Scottish Ministers should extend the rights which are currently afforded to parents and young people (with capacity) under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children to enable them to take up their own rights where they have capacity to do so?

Yes.

3(b) Please offer comments to support your answer to 3(a).

While we support the extension of children's rights, particularly the incorporation of the UNCRC into Scots law, we have concerns that children having their own rights under the legislation could result in a divisive situation for families. Mechanisms to manage this sensitively must be considered at an early stage if this is to be successful.

Children in Scotland's partner organisation Enquire have found through practice that parents often experience difficulty in understanding the range of dispute resolution mechanisms available to them under the ASL Act. We therefore endorse their view that it is essential to learn from this moving forward if we are to extend the rights to these processes to children, ensuring that children with capacity are fully supported to understand and exercise their rights in a meaningful way.

While the majority of pupils consulted by Children in Scotland said 'Yes' to the proposed extension of these rights, only two felt confident that they would understand and be able to use them. The majority of pupils said they would need someone to talk them through the rights and explain each one clearly, in order for them to feel equipped to properly utilise them. This consultation highlighted a need for clear and accessible information, tailored to individual needs and professional, human support in order to enable young people to understand their rights.

While Children in Scotland and its members welcome the Scottish Government's consultation of young people so far on these proposed changes, we would urge the Scottish Government to consult more widely as the proposals are further developed and to take into account young people's views, ideas and experiences at every step as this legislation progresses. We feel this is crucial in order to ascertain specifically how children and young people with capacity would like to receive information, advocacy and advice as detailed above, and would suggest that these consultations should be followed with trials of their recommendations.

Children in Scotland would like to offer to facilitate a series of further discussions on the issues raised above regarding the proposed changes with the various groups who would be directly affected, namely, education professionals, service providers, children and young people, parents and families. We would hope that these discussions would provide the much needed further consideration of how these proposals would impact on children and families, and how information, advocacy and advice could best be provided both through mainstream services, and others.

4(a) Do you think the Scottish Ministers should amend the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to ensure that disagreements are resolved at as local a level as possible, therefore ensuring that a complainant has attempted independent mediation?

Yes.

4(b) Please offer comments to support your answer at 4(a).

Children in Scotland and its members agree that it is usually preferable for disagreements to be resolved at a local level where possible and appropriate. However, in many cases parents are not fully informed of the options open to them under the ASL Act and are not aware of the existence of mediation. Therefore, Children in Scotland recommend that if the Act is to be amended to ensure local level resolution, anyone with an education related complaint should be fully informed of all dispute resolution options available to them, including independent mediation, and should be encouraged to take up mediation as a first step before considering more formal options.

In the same sense, we would also recommend that parents, children with capacity and young people are informed of their entitlement to the support of an advocate at any meetings.

Children in Scotland is also concerned with the wording of the proposal, regarding the suggestion that a complainant would be required to attempt independent mediation. This is conflicting with the principle of successful mediation, whereby *both* parties need to agree to take part on a voluntary basis.

5(a) Do you think the Scottish Ministers should repeal section 70 of the Education (Scotland) Act 1980, removing the opportunity to complain directly to the Scottish Ministers with the exception of provisions of the Schools (Consultation) (Scotland) Act 2010?

Yes.

5(b) If yes, do you agree that, in future, the Scottish Public Service Ombudsman should consider failure of duty complaints which are currently considered under section 70 of the Education (Scotland) Act 1980?

No.

(c) With the exception of provisions of the Schools (Consultation) (Scotland) Act 2010, do you think that the Ministerial powers under section 70 to make an order to carry out a duty should be transferred to the Scottish Public Service Ombudsman?

No.

5(d) Please offer comments to support your answer to 5(a) and (b)

Children in Scotland would like to refer to responses from both Enquire and Enable which suggest that the Section 70 complaints process is ineffective and unsatisfactory as a route of redress for parents and young people, with complaints often taking months to be dealt with, and in turn, we support its repeal.

We believe the Additional Support Needs Tribunal would be best served to hear complaints in place of Scottish Ministers under Section 70. The existing ASNT settlement approach of using mediation and resolving issues before the case goes to hearing will be a preferable and better route of redress than the current situation or suggested alternative. The additional support needs expertise and knowledge of tribunal members, conveners and president would be advantageous in hearing these complaints.