



Consultation response

ASL Code of Practice

April 2026

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Children in Scotland response

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About Children in Scotland

Children in Scotland is a welcoming and dynamic charity that amplifies the voices, views and experiences of our members and children, families and professionals across Scotland. We achieve this through direct services, meaningful participation, policy work, inspiring communications and sector-leading events and learning opportunities.

We are a vibrant and inclusive community of dedicated individuals and organisations who use our skills and passion to bring evidence-based and fresh thinking together, with one shared aim of giving all children in Scotland an equal chance to flourish.

We are stronger together in driving lasting impact for Scotland's children.

Our response

Children in Scotland plays an important role in the implementation of additional support for learning (ASL) policy in Scotland. We have been a member of the ASL Project Board since its inception, supporting the delivery of the ASL Action Plan as reflected in the board's final update published in March 2026.¹ Through the Inclusion Ambassadors project, we continue to support the realisation of the group's Vision Statement and help ensure the views, voices and experiences of pupils with additional support needs are centred in additional support for learning implementation.

The range of services we manage - Enquire, Resolve and the Children's Views Services (My Rights, My Say and Under 12 Tribunal Support) - work directly with children, young people and families experiencing challenges with their additional support for learning provision. This provides us with an in-depth understanding of the emerging issues and the circumstances where current additional support for learning provision is delivering inadequate outcomes for children and young people.

¹ Scottish Government, (2026), Additional Support for Learning review action plan: final update

Our ability to provide accurate advice and information to children and their families as outlined in the 2004 Act is directly informed by the current Code of Practice. As such, we are a key stakeholder in the redevelopment of the statutory guidance towards its fourth edition and welcome the opportunity to share our views on where the Code of Practice could be improved to better support staff working on our own services and the broader additional support for learning professional community.

We welcomed the opportunity to inform the development of the fourth edition of the Code of Practice on the Scottish Government's designated Additional Support for Learning Code of Practice Working Group. However, we were disappointed at the lack of engagement with this working group and believe this has been a missed opportunity to meaningfully consult with the professional community prior to its draft publication.

Our response to this consultation makes use of the depth of our expertise in policy and service delivery relating to additional support for learning, and our participation work with children, young people and families. We understand that the scope of this consultation is to assess how effectively the draft fourth edition interprets the 2004 Act, primarily for its use by professionals involved in the delivery of additional support for learning, and for families to understand their rights and due process. Our response to the consultation questions draws on the strengths and limitations of the draft guidance, offering appropriate amendments and points of clarification throughout. It makes suggestions for where signposting to other guidance or good practice examples could help provide further clarity for the purposes of promoting best practice in the delivery of additional support for learning across Scotland.

We also provide broader comments in relation to the 2004 Act where we believe the legislation itself does not provide sufficient clarity to support the effective and equitable delivery of additional support for learning. These views indirectly relate to the Code of Practice and speak to the broader policy context in which the consultation is being delivered. With the current ASL Action Plan concluded and a new Scottish Government to begin in the next month; Children in Scotland is actively considering what the next review of additional support for learning should hope to achieve to ensure additional support for learning delivery is equitable, enhances the rights of children and their families, and ensures all children and young people can access the support they need to benefit from their education.

The refreshed guidance sufficiently makes clear that it is a statutory document, which is legally required to detail the 2004 Act's provisions and the secondary legislation that supports it.

The refreshed guidance sufficiently makes clear in its introduction that it is a statutory document and one that is legally required to detail the 2004 Act's provisions and the secondary legislation that supports it. This is clearly stated and explained under the 'Purposes of the code' section of the draft guidance.

The section also sufficiently states the duty of education authorities and 'appropriate agencies' to give due regard to the Code when exercising their functions under the 2004 Act and ensure that their related policies comply with the 2004 Act's legal requirement. For the purposes of the Act, this appropriately clarifies where legal duties and responsibility to deliver the primary functions of additional support for learning lie in Scotland.

This section further benefits from its explanation that while the guidance should be used to inform decision making, it should not dictate specific actions in individual cases. This helpfully clarifies that the guidance should be considered in its entirety when used to support decision making that aligns with the provisions included in the 2004 Act and secondary legislation.

The 'Who should read the code' subheading provides a list of organisations and individuals who are involved in supporting children and young people with additional support needs and for whom the Code is intended. The included list is sufficiently detailed but would benefit from clarification that it is not an exhaustive list. This could help recognise that the range of organisations and professionals who work with children and young people with additional support needs can evolve in line with changing forms of service delivery, governance structures and policy approaches at the local and national level.

Within this list, we welcome recognition of the fact that parents, children and young people may benefit from referring to the Code and the inclusion of Enquire as the national advice and information service supporting these groups.

The draft guidance is clear, accessible, and reader-friendly for the wide audience it is intended to support.

The presentation of information in the draft guidance has also improved, contributing to a Code which is simplified, and easier to read and interpret.

This has clear positive implications for the range of professionals who will be required to engage with the statutory guidance. When completed, the glossary of key terms and the inclusion of their related statutory references will support better legal comprehension of the 2004 Act and related legislation among the professional community delivering additional support for learning.

Considering the challenges and complexity of the previous edition of the Code, related to the volume of information, we welcome this version which favours accessibility and simplification. We believe this approach supports understanding of the 2004 Act among the professional community, and the intention of the guidance to support effective decision making, not dictate the outcomes of individual cases.

However, it is important to recognise that simplification can come with the risk of losing important clarification and legislative detail. We highlight this later in our response.

The refreshed guidance accurately reflects existing additional support for learning legislation and key policies affecting children and young people with additional support needs.

Overview

The 'Overview of the legislation' section of the draft guidance provides a generally sufficient overview of existing additional support for learning legislation and key policies affecting children and young people with additional support needs.

Education (Additional Support for Learning) (Scotland) Act 2004

The 'Education (Additional Support for Learning) (Scotland) Act' subheading provides detail on many key aspects of the legal framework introduced by the 2004 Act and how this seeks to support children and young people with additional support needs school education. Throughout the points included under this subheading, the language used is consistent with that included in the original 2004 Act, ensuring legal alignment across the two publications. This also supports professionals to adequately cross-reference between the statutory guidance and the published legislation when they may be required to do so.

Paragraph 3 under this subheading appropriately refers to 'looked after' children and young people, in addition to those that are care experienced, as being considered to have additional support needs. This helpfully recognises that while there may be considerable overlap in experience, the legal definition for these terms is separate, with not every care experienced

person meeting the legal definition of looked after. It also reflects much of what we have heard from children and young people through the promise on the importance of language and definitions to ensure policy adequately reflects and accounts for the range of experiences of those who have experience of care.

As outlined in the 2004 Act, looked after children are automatically considered to have support needs. Clarity, or removal, is required of the section in paragraph 8 which states 'the education authority determines that they have additional support needs' as this could be interpreted to be at odds with the Act.

The phrasing included in paragraph 10 explaining the interaction of Getting it right for every child and the 2004 Act could be softened to provide clarity of the fact that not every child with additional support needs will require a Child's Plan.

Rights of children, young people and parents

The subheading on 'Rights of children, young people and parents' presents the range of rights afforded under the 2004 Act with consideration to who exercises rights, assessing capacity and wellbeing. This section proportionately outlines the required detail on these rights, and the duties of authorities in relation to meeting these rights.

Alongside this detail, Paragraph 12 includes additional information on support to ensure the rights of families are accessed and upheld. Inclusion of the My Rights, My Say statutory service in relation to the dedicated information, advice, advocacy and views gathering services for 12 – 15-year-olds would further strengthen this. Moreover, we would value a broader view than is currently outlined in paragraph 15 on the role of advocacy to support children to exercise their rights individually and separate from their parents. This consideration is important to provide clarity and uphold rights in cases where a parent's view may contradict or not align with that of their child.

Un Convention on the Rights of the Child

Paragraph 27 helpfully outlines the robust framework of rights under the United Nations Convention on the Rights of the Child (UNCRC), granted through the 2004 Act in combination with the 2024 UNCRC (Incorporation) (Scotland) Act. The ascension of the 2024 UNCRC (Incorporation) (Scotland) Act is the most significant legislative change to take place since the publication of the third edition of the Code of Practice, and it is positive to see full consideration given in this draft guidance. This section also helpfully

presents detail on the key articles included in the convention that most significantly relate to additional support for learning. While drawing focus to these rights is valuable for the purpose of this section, it could be beneficial to include prior to paragraph 32 that all rights included in the convention are interdependent and that consideration should be given to the convention's full range of rights when making decisions related to a child's education.

Guidance related to the UNCRC could also be strengthened with further consideration given to how the mechanisms of redress detailed in the 2024 Act can be used in an additional support for learning context. It would be valuable to provide clarity on what legislation and associated rights would take priority if, and when, rights under the UNCRC are used to seek redress under the available forms of dispute resolution and tribunals.

While we are not aware of any current non-statutory guidance on the application of UNCRC articles in the Additional Support Needs tribunal, it would be valuable to include reference to any guidance in development that could provide clarity for education authorities and families who seek to use these rights in support of a case to be considered by the tribunal.

Duties of education authorities and other agencies

Paragraph 35 outlines the duties of education authorities relating to education provision under the 2004 Act. The duty to '*provide parents (and eligible children or young people) with all legally required information regarding additional support needs and the services available*' is included, however, clarification on what this legally required information is, is missing. Staff delivering our Enquire service tell us that the information available to families varies significantly across different local authorities and there appears to be a lack of understanding of what information is considered legally required. Clarity on this within the draft guidance would support consistency across local authorities and ensure equitable access to information and rights for families in Scotland.

Towards its conclusion, this chapter provides a general explanation of what could be considered 'unreasonable public expenditure' in paragraph 53. The language around how decisions should be made has been softened from the previous edition of the Code of Practice which stated, '*cost should not be the primary consideration in determining what provision is to be made*'. There is a risk that this phrasing may result in financial factors increasing in status in decisions made about additional support for learning provision, thereby effectively contradicting the principles and aims of the 2004 Act.

We hear often from families who contact our Enquire helpline about incidents where they are told their child cannot access the level of support they need locally due to local authority funding issues. Whilst we must acknowledge that local authorities and schools are under significant financial pressure in a context of rising need among pupils, we believe the revised phrasing could result in more decisions being made based on finance and funding rather than need. Stating that cost '*should not be the only consideration*' implies that it can be the main reason for refusing to provide appropriate support. As such, we suggest that phrasing in this section is returned to that included in the third edition.

The refreshed guidance provides sufficient detail on each section of the 2004 Act.

Our response to this question covers each of the sections included in the draft guidance and their interpretation of the 2004 Act. Where appropriate, we have also highlighted aspects of the draft guidance that would be helpful to clarify to support the effective and equitable delivery of additional support for learning, but that may not directly refer to instructions, duties or requirements as laid out in the 2004 Act.

Understanding additional support needs

This section intends to outline the broad and inclusive definition of 'additional support needs' as reflected in the 2004 Act. It does so effectively for the most part, demonstrating the legal definitions and common factors affecting learners with additional support needs. However, as we outline below, there are several aspects that could be strengthened to better support implementation.

Under the 'Legal definition' subheading, clarification on the relationship between care experience and additional support needs could enhance the draft guidance by noting that many care experienced children and young people who are not considered 'looked after' will have some form of additional support need. This could be further clarified through a case study or example that effectively demonstrates how a child or young person that was previously looked after and is no longer, can still need additional support related to aspects of their care experience.

We welcome the inclusion of paragraph 10 that states that in order to benefit from education under Scottish legislation, pupils are not required to physically attend school. This could be due to circumstances including ill health or factors as outlined in paragraph 24 that indicate a child or young person

may be better supported to benefit from their education in alternative provision, for example, remotely at home or in hospital.

Under the common factors affecting learning subheading, there is valuable guidance for professionals on embedding strengths-based approaches to better understand children and young people's needs. While it is positive to read examples of where strengths can sit alongside a pupil's additional support needs, the guidance on strengths-based work could be enhanced with additional practical examples of planning support that starts with a child identifying their strengths and interests.

We welcome the positive framing at the start of the 'Working with children, young people and families' subheading with paragraph 39 stating that '*children and young people must be actively involved in decisions about their support*' and the valuable detail on what this means in practice for education authorities.

Paragraph 43 importantly recognises that children can communicate in different ways and will require different levels of support to share their views. This point could be further expanded to include behaviour as a named form of communication, given the professional communities' shared understanding that all behaviour is communication. Paragraph 44 also provides helpful clarification of the distinction between views expressed by children and interpretation of those views – this is especially important when working with children and young people communicating in methods best suited and adapted to their individual needs. The list of resources provided in paragraph 52 to support professionals to meaningfully engage with children who have barriers to communication or communicate in alternative ways will prove useful.

In our view, the guidance in this section does not place enough emphasis on the role of trusting and positive relationships between children and adults who are engaging with them to gather their views. Adults who have positive relationships with children will be more likely to gather a fuller range of views through a child's communications and are more likely to provide accurate interpretation of those views. The significance of positive relationships with children and young people in planning for additional support needs in schools has been explored on several occasions with our Inclusion Ambassadors.^{2,3}

² Children in Scotland, Inclusion Ambassadors, (2024), Relationships and behaviour summary paper.

³ Children in Scotland, Inclusion Ambassadors, (2026), Principles of support planning.

Where the guidance refers to the involvement of parents and carers, paragraph 53 should be amended to more accurately reflect that there are incidents where parents and carers must be involved in planning and decision making, e.g., the age of a child. Additionally, information on running effective meetings as outlined in paragraph 56 should make clear reference to a parent's right to bring an advocate to meetings with education authorities and associated professionals.

Under the guidance for education authorities on their statutory duties on publishing information, as outlined in paragraph 59, it is positive to see that contact details for education officers should be made available to families. We hear often from families in contact with our Enquire helpline that they are provided with generic or organisation-wide contact details that are infrequently responded to; this can damage relationships and trust between families and staff in education authorities who are making decisions about their child's support.

We welcome the inclusion of the 'principles for additional support for learning' outlined in paragraph 65 to 74 and their alignment with the broader Getting it Right for Every Child principles and values. This will support staff managing our services to provide advice and information to families in circumstances where the statutory guidance and 2004 Act does not provide clear or decisive answers.

Identifying and assessing needs

This chapter effectively builds on the information and duties outlined in the previous section. The format of this chapter is helpful and clearly outlines the range of professional groups, organisations and the rights of parents and children in relation to identifying and assessing additional needs.

Under the section's subheading on 'How schools, education authorities and agencies identify additional support needs' paragraph 7 should remove the point that refers to home local authority as the place '*where the child or young person lives with their parents*'. This explanation is not inclusive of children and young people who are looked after or who may be care experienced. This is particularly important in the context of additional support for learning where care experienced children and young people are automatically considered to have additional support needs unless otherwise determined.

Paragraph 54 under the subheading of 'Steps involved in assessments' effectively reaffirms the narrative outlined in previous sections about the child's right to be heard and the need for their views to be meaningfully

considered in decisions made about identifying and assessing their needs. We welcome the correct approach to reiterating the rights of the child at any opportunities where it is relevant throughout the guidance, ensuring their rights as outlined in the 2004 Act and 2024 Act frame the overall implementation of additional support for learning.

With this considered, we are unsure of the exceptional circumstances referenced in paragraph 56 that would make it inappropriate to include the views of the child in discussions about their support needs. Failing to meaningfully seek the views of the child or young person could contradict their right to be heard, unless it was determined that doing so would not be in their best interest.

In our view, the circumstances where this would be considered the appropriate approach would be so exceptional that it is not helpful including this caveat in the draft guidance. Doing so may risk the child's right to be heard not being fulfilled for a range of reasons that education authorities could deem 'exceptional', without robust clarification. If this is to remain a part of the draft guidance, a clear explanation of what could be considered 'exceptional' must be provided.

In the subheading 'Role of different professionals', paragraph 71 could be improved by providing clarity on what could be considered 'specialist' healthcare as opposed to 'general' medical services. From our understanding this is a new addition to the statutory guidance and further explanation is required to ensure decision making is equitable.

Paragraphs 75 to 84 outlines parents and children's rights in the process of assessing needs and provides a brief outline of the process and parent's rights in relation to submitting placing requests. Children in Scotland has published a policy briefing outlining the range of issues families can experience when submitting placing requests, with the lack of guidance in the current edition of the Code of Practice a significant factor contributing to these issues.⁴

The guidance under this section mostly provides concise and clear information on placing requests as it relates to identifying and assessing needs. Further guidance is provided in the school placements section of the draft guidance where we provide more developed comments. Paragraphs 75 to 84 should include signposting to the forthcoming section on school placements where fuller guidance is provided.

⁴ Children in Scotland, (2026), ASL policy briefing – School placements.

Planning and providing support

The experience of families who contact our services tells us that there can be significant challenges for children and families in terms of planning the provision of support to meet their additional support needs. We understand the current approach to support planning across local authorities can be complex and confusing for families and professionals alike.

The draft statutory guidance's section on planning and providing support, while improved from the previous third edition, does not yet provide the clarity required to facilitate simplified and robust planning processes for children and young people with additional support needs. This is particularly true of the draft guidance on coordinated support plans.

We recognise that while the draft guidance can be improved to provide further clarity on education authorities' legal duties, changes to national policy on the support planning scaffolding will be required to ensure that equity in access to support and rights of redress is achieved in the long term. We expect and encourage this to become a focus of future additional support for learning reviews undertaken by the next Scottish Government.

Turning to consider the draft guidance, information included under the 'Staged approach' subheading helpfully outlines what key stages and considerations are involved in an education authorities' approach to planning support. It is helpful to include the core components of staged intervention as detailed in paragraph 10. Paragraph 4 refers to an integrated 'multi-agency integrated support plan' without clear indication to what type of plan this is referring to, or how this plan overlaps with a coordinated support plan. Further clarity should be given here or clearer links made to information given later in the guidance.

The 'planning tools' subheading in the guidance outlines definitions of the key plans available to provide support for children and young people with additional support needs including Individualised Education Programmes, Child's Plan and Co-ordinated Support Plans. Paragraph 22 should provide further clarity to explain that the assessment of needs can take account of a range of aspects. This can be an ongoing process where professionals' understanding of a child's needs evolves as they continue to take into account the child and parent's views, use their own professional judgements, review a child's progress in class and with school work, and more. Therefore, professionals should not wait for needs assessment to be considered 'complete' before developing an Individualised Educational Programme. In a circumstance where a child is on a waiting list to be assessed for a

condition related to their support needs, planning should not be delayed until these needs have been formally assessed e.g., by a medical specialist. This would also then be in line with the fact that the definition of having an additional support need in the Act is not dependent on having a formal diagnosis – it is about needs (even if those needs are not fully understood yet).

Paragraph 37 outlines an example of when an appropriate agency may not be required to assist in delivering support for a child or young person under the 2004 Act. There could be value in moving this example further down or linking to the information in paragraph 46, as it currently does not instruct those engaging with the guidance on what steps should be taken in the case where an education authority have identified a need for assessment, but this has been refused by an appropriate agency.

The 'co-ordinated support plan' subheading provides the majority of information for this section of the guidance, but there are several amendments that can be made to this information to ensure that it provides better clarity for education authorities, professionals and families.

Paragraph 62 could be enhanced to explain that the complex and multiple criteria for a co-ordinated support plan is not necessarily about support that is already in place. This ensures that the co-ordinated support plan criteria are not affected by external factors like the diagnosis waiting list, which may be contributing to their significant additional support needs not currently being met. Paragraph 72 and the Court of Session example that follow are helpful additions; staff delivering our services tell us that there can be confusion about what is considered significant support in the context of co-ordinated support plans.

Paragraph 87 provides detail on seeking and taking account of views and providing information, but we believe greater emphasis should be placed here on the requirement to actively seek the views of children and young people in planning support. This could be achieved through establishing clear links to previous sections of the guidance that detail processes for gathering their views or by providing a good practice example. In its current format, there is a risk that the draft guidance implies that parental views should be given priority in support planning given its emphasis in this guidance.

While it is helpful to see the example decision-making framework outlined in paragraph 81, this could be strengthened through including detail on the interaction between co-ordinated support plans, including Child's Plan and

Individualised Education Plans. How these plans operate and interact in practice is missing and not adequately explained, despite this being a considerable issue faced by education authorities making decisions about the provision of support.

Paragraph 90 outlines the legal requirement for authorities to develop a co-ordinated support plan even in the event of a parent's refusal to engage. This section should include direct reference to the fact that a child over 12 years of age can also refer themselves to a tribunal and that there are statutory services in place to help them do this, namely, My Rights, My Say (aged 12-15).

On guidance covering the objectives of a co-ordinated support plan, paragraph 144 includes examples of what statements of support to meet a specific need should look like. Whilst the guidance correctly identifies that goals or objectives in a co-ordinated support plan should be long-term, the examples included refer to short and medium-term objectives. To ensure better alignment between the draft guidance and the examples used, this should include examples with long-term support objectives.

As the draft guidance correctly states, support outlined in a co-ordinated support plan should be detailed and focused. This enhances the strength of the plan as a legally binding and enforceable document. Under the detail outlining the contents of a co-ordinated support plan, there is a note to avoid as much duplication with other plans as possible. While we understand the rationale behind this point from the perspective of privacy and professional capacity, we have concerns about the implications of this in practice.

Co-ordinated support plans need to be detailed enough to ensure support providers are held accountable in cases where agreed support is not adequately provided for. The co-ordinated support plan serves as the legal document that outlines what that support should be and how it will be provided. Removing detail from co-ordinated support plans in efforts to reduce duplication across plans could in effect weaken the legal strength of the document and the ability for families and children to use the co-ordinated support plan as the evidential basis of a tribunal case.

Moreover, reducing duplication could harm the delivery of support in practice. We understand that there are circumstances where it would be inappropriate to include details in health or social work plans into a co-ordinated support plan for education staff, in part due to concerns about privacy but also due to the number of teachers who would be required to view the plan in secondary school.

However, there may be instances where details included in a health or social work plan have a direct link to a pupil's support needs and therefore a summary (considered a duplication) should be included in co-ordinated support plans for education staff. As an example, a co-ordinated support plan may outline that a pupil is care experienced and requires specific adjustments in the classroom to meet associated needs, however, the details of the pupil's family history would be inappropriate to include on a plan related to their education provision.

We hear regularly from families and teachers alike that teaching staff can be unaware of the detail of support needs for their pupils in the classroom, contributing to negative classroom experiences for children and young people with additional support needs. Ensuring there is sufficient detail across co-ordinated support plans, and any other education-focused plans would help ensure individual support needs are met consistently. Removing detail across plans for the purposes of avoiding duplication could exacerbate this issue.

School placements

Children in Scotland is acutely aware that school placements and placing requests are a considerable issue for the families we engage with through our services. The range of issues experienced by these families have been presented in our school placements policy briefing. They include the complexity of the current placing request system, communications between professionals and families, the appeals system, transport and transitions.⁵

This policy briefing made clear calls for what needs to improve in the statutory guidance to bring clarity for professionals and families, reduce complexity and better enable good practice across all local authorities that operate different systems of school placements and placing requests.

While the information included in the draft guidance has improved, there remain several points in need of clarification and opportunities to reduce complexity. Across the school placement section of the guidance, insufficient detail is provided to clarify the distinction between internal local authority procedures for school placement decisions and placing requests. This is an important distinction for clarity as each is treated differently in terms of rights of appeal.

We hear frequently from families who contact our Enquire helpline about incidents where professionals and families are unclear on what should

⁵ Children in Scotland, (2026), ASL policy briefing – School placements.

happen when an alternative school placement may need to be considered for a child with additional support needs.

For example, if the professionals, family and child agree that one or more of the three exceptions set out in section 15(3) of the 2000 Act apply - and the current mainstream provision feels unable to meet their legal duties to provide a child with a suitable education and support, the local authority should ensure they are offering a suitable school placement rather than requiring the parent to make a placing request. However, some families are told they need to make one.

Similarly, some families wish to make a placing request because they have a specific school in mind which they wish to apply for, because they are in disagreement with the local authority about the best setting for their child, or because they want to ensure they have a legal right to appeal if the application for a new school placement is refused. But there can be instances where families are unclear on whether or not they have made a 'placing request' when they have asked for another school place to be considered in a formal minuted meeting with the school or local authority, but not used the forms some local authorities provide. Guidance on the definition of what constitutes 'in writing' could help avoid confusion for this last example.

Clarity on legal thresholds should be provided as much as feasibly possible in the draft guidance; however, we recognise that the 2004 Act itself may not provide the legal definitions to do so. We support the Scottish Government taking steps to remedy this in future additional support for learning review and actions beyond 2026.

Paragraph 20 could be expanded to include the fact that parental requests can also be made to certain additional support for learning units in schools and that education authorities should make it clear what units or bases can accept placing requests and which cannot.

Confusion and concerns related to decision making around transport costs and placing requests is a common enquiry raised through our services.

Guidance related to financial responsibilities as outlined in paragraphs 29 and 30, and throughout this section, would benefit from additional information around costs associated with successful placing requests outside the home authority. Examples of unique scenarios could be used here to effectively to support decision making and understanding for families navigating this issue. For example, the guidance could consider situations where a host school is able to provide additional support comfortably for a

child – are they expected to recuperate costs associated with that support, or is it considered granted due to the support already being in place?

We welcome further clarification in the draft guidance provided in relation to refusal processes. This should support the establishment of clearer communication between local authorities and families about decisions, and their rights to appeal in the event of a refusal. It is also helpful to see the inclusion that authorities have a legal duty to inform parents about their right to appeal.

The summary table included in paragraph 54 outlining the refusal and appeal committee timelines is helpful but should be amended to ensure that the final stage of *'failure to meet deadline'* is moved above *'appeal committee must hold hearing'* to reflect an accurate chronological timeline in refusal and appeal processes.

The 'practical considerations' subheading provides a generally accurate account of the key aspects that should inform decision making under the 2004 Act. While paragraph 63 correctly interprets the legislation in relation to transport costs, we believe it would be valuable to make clear links here to the expanded financial considerations aspect of the draft guidance, ensuring there is consistency across the whole document as to how decisions about funding transport will be made. Moreover, this practical consideration would benefit from a good practice example to demonstrate the nuance in decision making and how factors are weighted to make a decision.

Transitions

Issues related to planning for transitions was highlighted as a concern in our school placement policy briefing, particularly issues related to the lack of clarity in the current guidance. Beyond a lack of guidance related to the interaction between placing requests and transitions, information to support professionals to deliver effective transitions and for families to understand fair expectations is not addressed in the third edition of the Code.

Considering the draft guidance, there are a number of significant changes that are required to ensure professionals and families are provided with the necessary information on supporting and managing transitions for pupils with additional support needs in Scotland.

Over the entirety of the draft guidance in the transitions section, guidance lacks depth and tends to provide information conceptually rather than specific to the implementation of positive practice, as is done in other sections of the guidance. The guidance does outline the relevant legal duties

on education authorities related to transitions and provides some helpful principles to inform decision making on when transitions should commence for pupils. However, it offers little in terms of practical guidance for the professional community managing and supporting children and young people with additional support needs through periods of transition in their education.

Paragraph 11 of the section outlines the circumstances in which an education authority's duties to support transitions must commence, yet omits the most common group of pupils with additional support needs who are covered by this duty – those moving between mainstream primary and secondary schools who, due to the range of their needs, are at risk of struggling with transitions. The draft guidance in its current form risks implying that transition support is not required to effectively meet the needs of *most* pupils with additional support needs, i.e. those in mainstream settings.

In our experience, the majority of pupils with additional support needs will be at risk of struggling with transitions between schools and beyond. We believe the guidance should be amended to reflect this fact and provide sufficient practical guidance for professionals to manage the scale of transition support effectively.

As outlined above, we know there is significant confusion and concern from professionals and families related to the interaction and overlap of placing request and transition timelines. We hear regularly from families who contact our services about issues arising from timelines not aligning, leading to situations where a transition process has begun for a pupil without them knowing what school they will be transitioning to. Paragraphs 14 and 15 makes acknowledgement to this conflict without expanding on what alternative steps professionals should take to manage this uncertainty, how to safely share notes on support with potential schools and how to communicate about this effectively to parents and carers.

Paragraph 26 outlines guidance on the approach to be taken when a parent and eligible child disagree about a placing request, suggesting that education authorities should take account of the child's best interest and their capacity to reflect their views in their decision. In our view, this framing is problematic as it does not proportion enough weight to the views of the child in such a way that it upholds their rights as outlined in the 2004 Act and the 2024 UNCRC Act. Placing emphasis on the consideration to a child's capacity to share their views also conflicts with the valuable emphasis on ensuring children's views are gathered utilising their chosen communication method as outlined in the 'Understanding additional support needs' section.

We can affirm this point when we consider the UNCRC Article 12, general comment 12, section 20 'States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.'

While the transitions timelines provided in paragraph 30 offer some information on expectations of when professionals should initiate transition processes for pupils, it fails to appropriately address the nuance involved in planning transitions for pupils with differing types and levels of support need. Beyond suggesting when it may be best advised to commence transition processes, the draft guidance offers little practical guidance for professionals to plan for the needs of children and young people they work with.

Resolving disagreement

Children in Scotland manages the Resolve mediation service, which is used by many local authorities across Scotland to support their disagreement resolution offer to children, young people and families, supporting us to develop a sound understanding of the issues brought to mediation and the challenges families face trying to access resolution and mediation. It is positive to see guidance on resolving disagreement and independent adjudication given more focus in the draft guidance than previous versions, appropriately recognising the important role of provision to resolve disagreements in the wider delivery of additional support for learning in Scotland. However, there are several key points that could benefit from further clarification or amendment to strengthen the guidance presented in this section.

From the outset of this section, it is positive to see an increased focus on raising awareness of the available formal routes to resolving disagreements. This accurately reflects the intentions outlined in the 2004 Act regarding the available routes to resolving disagreement, while placing increased focus on the value in attempting to resolve issues at a lower level in practice.

The guidance under the 'early resolution' subheading in paragraphs 3 and 4 has been shortened from the previous third edition of the Code. We understand that this is largely due to information on gathering the views of children and parents being presented in the earlier section on understanding additional support needs. We suggest including clear reference to the guidance in these early sections at this point to ensure consistency in meaningful engagement with children and families is not lost as a result of this change.

Given the requirement for access to independent adjudication relies on families and professionals to demonstrate efforts at early resolution, we believe the draft guidance could be enhanced here by expanding to cover what expectations around good practice in early resolution could look like. This could take the form of a prompt list of questions for professionals to consider, or reference to existing non-statutory guidance to support good practice.

Paragraphs 8 to 13 outline the role of a supporter or advocate in helping children or parents to share their views when resolving disputes. Reflecting the 2004 Act, it states that education authorities must allow a supporter or advocate to attend meetings unless such request is considered unreasonable. Further clarification should be provided here on the factors that contribute to a request being deemed unreasonable, for example, what situations would be considered a 'conflict of interest'. We are aware of cases of families contacting our Enquire helpline who have been told their request for an advocate or supporter was considered unreasonable, despite our staff's understanding that this should not be the case.

The mediation subheading starting from paragraph 20 outlines duties placed on education authorities to provide for mediation services. We understand that some local authorities do not have an agreed mediation provider that is shared publicly with families, leading to situations where families who have had a disagreement with a local authority need to re-engage with them to source a mediation provider. This can harm the perception of mediation being fair, independent and impartial. To prevent such cases, we believe there could be value in providing guidance directing authorities to provide families with information about mediation services and to ensure any contact related to mediation is separated from contact about their additional support needs case.

The most substantial amendment we believe is necessary to the draft guidance's resolving disputes section relates to how it discusses 'dispute resolution' to talk about independent adjudication. 'Dispute resolution' is commonly understood to be an umbrella term for different ways that people can try to resolve things when disagreements arise; it is therefore inaccurate and potentially confusing to use this term to describe only one option of formal dispute resolution. Moreover, given the scale of the draft guidance we have concerns that professionals and families may only engage with the section on dispute resolution for guidance on the matter and only engaging with independent adjudication as one feasible option. This may be

counterintuitive to the draft guidance's emphasis on early and low-level resolution presented under a previous subheading.

The guidance document sufficiently signposts or provides links to further guidance and support where necessary.

There are several key points in the draft guidance where signposts to further guidance or support would provide necessary clarity, as have been identified in the above response. A list of these points is included below. This list is not intended to be exhaustive, and we encourage the Scottish Government to include signposts to further guidance wherever this could support better practice.

As outlined in our response, we also encourage the Scottish Government to make the appropriate links across the draft guidance to ensure the guidance is applied consistently, especially with regard to promoting rights-respecting practice and meaningfully engaging children and young people in decisions made about their education.

Overview of legislation

- Under 'United Nations Convention on the Rights of the Child' section, should include any available guidance on how the application of UNCRC articles in the ASN tribunal system.

Which areas of the refreshed guidance would most benefit from practical case studies to help school staff in supporting children and young people with additional support needs?

As outlined above, we support the inclusion of more good practice examples or case studies throughout the guidance where it would serve to bring further clarification or information to the areas we have identified in our response. A non-exhaustive list of where good practice examples could be used throughout the guidance is provided below.

Understanding additional support needs

- Under subheading 'Common factors affecting learning' a case study of child-led support planning would be beneficial
- Under subheading 'Legal definition' a case study of a young person who was once considered 'looked after' but is no longer could help

demonstrate the nuances in this experience as it relates to understanding additional support needs.

Planning and providing support

- Under subheading 'Decision-making framework' additional practice examples would be beneficial
- Under subheading 'Contents of a co-ordinated support plan', further examples on how long-term objectives should be written in a co-ordinated support plan.

School placements

- Under 'Placing requests' subheading, case studies could be used to demonstrate the considerations on financial responsibilities.
- Under 'Practical considerations' subheading, case studies or good practice examples could be used to better demonstrate decision-making factors related to transport costs and approved placing requests.

Please provide any further comments you may have on the guidance document.

We are working on the presumption that the glossary section of the draft guidance will be finalised following this consultation. We ask that the following terms are included and detailed explanations are provided to offer the necessary clarity.

Definition of 'school' to include ASL/ASN units and bases to help make clear that placing requests to units and bases can be made for children and young people with additional support needs.

Definition of 'parent' to include carers to provide clarity to foster or kinship carers that they have rights under education and additional support for learning legislation.