

Education (Additional Support for Learning) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 28
Long Title

Schedules 1 to 3

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Lord James Douglas-Hamilton

61 In section 2, page 1, line 26, at end insert—

<() where the child is aged 2 or over but has not attained school age, likely to be responsible for the school education of the child,>

Euan Robson

4 In section 2, page 2, line 3, leave out <which> and insert—

<() those needs>

Fiona Hyslop

73 In section 2, page 2, line 3, after <year> insert <or to recur in the course of the child or young person's school education>

Lord James Douglas-Hamilton

5 In section 2, page 2, line 4, leave out <significant>

Fiona Hyslop

Supported by: Lord James Douglas-Hamilton

62 In section 2, page 2, line 4, at end insert—

<() by the education authority in the exercise of their functions relating to education alone,>

Lord James Douglas-Hamilton

6 In section 2, page 2, line 10, leave out <a significant> and insert <an>

Lord James Douglas-Hamilton

7 In section 2, page 2, line 14, leave out <a significant> and insert <an>

After section 2

Euan Robson

8 After section 2, insert—

<Children and young persons who lack capacity

- 5
- (1) For the purposes of this Act, a child or young person lacks capacity to do something if the child or young person is incapable of doing it by reason of mental illness or learning disability or of inability to communicate because of a physical disability.
 - (2) However, a child or young person is not to be treated as lacking capacity by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).>

Mr Kenneth Macintosh

8A As an amendment to amendment 8, in line 4, after <illness> insert <, developmental disorder>

Fiona Hyslop

63 [*Withdrawn*]

Section 2A

Lord James Douglas-Hamilton

64 In section 2A, page 2, line 21, after <responsible,> insert <or

- () (where the child is aged 2 or over but has not attained school age) likely to be responsible,>

Euan Robson

9 In section 2A, page 2, line 24, leave out from <such> to <appropriate> and insert <appropriate arrangements>

Lord James Douglas-Hamilton

10 In section 2A, page 2, line 27, after <adequacy> insert <and effectiveness>

Donald Gorrie

74 In section 2A, page 2, line 30, leave out from <, or> to end of line 31

Section 3

Ms Rosemary Byrne

11 In section 3, page 2, line 35, at end insert <and

- () the best interests of such children and young people.>

Euan Robson

- 12 In section 3, page 2, line 37, leave out <they consider> and insert <is>

Lord James Douglas-Hamilton

- 13 [*Withdrawn*]

Lord James Douglas-Hamilton

- 14* In section 3, page 3, line 7, at end insert <or the child's parent.>

Euan Robson

- 15 In section 3, page 3, line 8, leave out <they consider> and insert <is>

Section 4

Lord James Douglas-Hamilton

- 65 In section 4, page 3, line 18, after <responsible> insert <or (where the child is aged 2 or over but has not attained school age) are likely to be responsible>

Euan Robson

- 16 In section 4, page 3, line 35, leave out <is incapable> and insert <lacks capacity to make the request>

Section 5

Euan Robson

- 17 In section 5, page 4, line 31, leave out <is incapable> and insert <lacks capacity to make the request>

Euan Robson

- 18 In section 5, page 5, line 13, leave out <is incapable> and insert <lacks capacity to understand the information or advice>

Section 6

Euan Robson

- 19 In section 6, page 5, line 38, leave out <is incapable> and insert <lacks capacity to make the request>

Ms Rosemary Byrne

- 66 In section 6, page 6, line 2, leave out <as the education authority> and insert <or persons as the education authority and any other person or agency involved in the care or support of the child or young person (including the child or young person's parent)>

Ms Rosemary Byrne

- 67 In section 6, page 6, line 5, at end insert—
- <(6) Where an assessment request includes or is accompanied by a request for a multi-disciplinary assessment from—
 - (a) the appropriate person, and
 - (b) an appropriate professional,
- and the education authority comply with the assessment request, the authority must also comply with the request for the multi-disciplinary assessment.>

Section 7

Rhona Brankin

Supported by: Dr Elaine Murray

- 20 In section 7, page 6, line 11, leave out subsection (1A)

Fiona Hyslop

- 1 In section 7, page 6, line 11, after <However,> insert <subject to section 9(8A),>

Euan Robson

- 21 In section 7, page 6, line 17, leave out <is incapable> and insert <lacks capacity to enter into an agreement with the authority>

Euan Robson

- 22 In section 7, page 6, line 21, leave out <subsection (1)> and insert <this Act>

Euan Robson

- 23 In section 7, page 6, line 31, leave out from <any> to <section> in line 33 and insert—
- <() the officer of the authority responsible for the discharge of the authority's duty under subsection (5)(d) of section 9, or
 - () if the authority arrange under subsection (6) of that section for that duty to be discharged by another person, that other person,>

Euan Robson

- 24 In section 7, page 6, line 38, leave out <is incapable> and insert <lacks capacity to seek advice or information>

Section 8

Lord James Douglas-Hamilton

- 25 In section 8, page 7, line 5, after <adequacy> insert <and effectiveness>

Euan Robson

- 26 In section 8, page 7, line 29, leave out <is incapable> and insert <lacks capacity to make the request>

Section 9

Euan Robson

- 27 In section 9, page 8, line 14, leave out <is incapable> and insert <lacks capacity to understand the information>

Euan Robson

- 28 In section 9, page 8, line 20, leave out <section 7(1)> and insert <this Act>

Euan Robson

- 29 In section 9, page 8, line 29, leave out from <were> to <incapable> in line 31 and insert <are satisfied that the young person lacks capacity to understand the plan>

Euan Robson

- 30 In section 9, page 9, line 5, leave out <(whether or not an officer of the authority)>

Rhona Brankin

- 91* In section 9, page 9, line 11, leave out subsection (8)

Fiona Hyslop

- 2 In section 9, page 9, line 11, at beginning insert <Subject to subsection (8A),>

Euan Robson

- 31 In section 9, page 9, line 17, leave out <is incapable> and insert <lacks capacity to enter into an agreement with the authority>

Fiona Hyslop

- 3* In section 9, page 9, line 19, at end insert—
<(8A) Where an education authority are the parent of a child or of a young person who they are satisfied lacks capacity to enter into an agreement with the authority, the authority must not—
(a) decide, under section 7(1A), not to comply with the duty in section 7(1), or
(b) discontinue a co-ordinated support plan under section 9(8),
without first obtaining approval to do so from the President.>

Euan Robson

- 32 In section 9, page 9, line 34, leave out from beginning to <(2),>

After section 9

Euan Robson

33 After section 9, insert—

<Agreements under sections 7(1A) and 9(8): further provision

(1) Where an education authority enter into an agreement under section 7(1A) or 9(8) with any parent or young person, the authority must—

5 (a) record the terms of the agreement—

(i) in writing, or

(ii) in such other form as the parent or young person may reasonably require, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

10

(b) give a copy of the agreement to the parent or, as the case may be, young person.

(2) Either party to such an agreement may at any time revoke it.

(3) Where such an agreement is revoked, the education authority must prepare a co-ordinated support plan for the child or young person.

15 (4) However, if—

(a) the agreement is revoked after the expiry of the period of 12 months beginning with the date on which the agreement was entered into, or

(b) where it is revoked within that period, there has been a significant change in the circumstances of the child or young person,

20 the authority are not required to prepare a co-ordinated support plan for the child or young person but must, in accordance with the arrangements made by them under section 4(1), establish again whether the child or young person requires such plan.

(5) An education authority must provide the Scottish Ministers with such information as to agreements entered into by the authority under section 7(1A) or 9(8) as the Scottish Ministers may require.

25

(6) Such information must be provided by the education authority—

(a) by such time, and

(b) in such form,

as the Scottish Ministers may require.>

Rhona Brankin

33A* As an amendment to amendment 33, in line 3, leave out <7(1A) or>

Rhona Brankin

33B* As an amendment to amendment 33, in line 3, leave out <or 9(8)>

Rhona Brankin

33C* As an amendment to amendment 33, in line 24, leave out <7(1A) or>

Rhona Brankin

33D* As an amendment to amendment 33, in line 24, leave out <or 9(8)>

Section 10

Euan Robson

34 In section 10, page 10, line 17, leave out <is incapable> and insert <lacks capacity to express a view>

Euan Robson

35 In section 10, page 10, line 19, leave out <is incapable> and insert <lacks capacity to express a view>

Dr Elaine Murray

68 In section 10, page 10, line 39, leave out <comply> and insert <have complied>

Euan Robson

36 In section 10, page 11, line 7, leave out <is incapable> and insert <lacks capacity to express a view>

Euan Robson

37 In section 10, page 11, line 9, leave out <is incapable> and insert <lacks capacity to express a view>

Ms Rosemary Byrne

76 In section 10, page 11, line 19, leave out from <considering> to <support> and insert <ensuring that adequate support is co-ordinated or>

Euan Robson

38 In section 10, page 11, line 19, after <support> insert <to be>

Section 11

Ms Rosemary Byrne

77 In section 11, page 11, line 25, leave out <6> and insert <12>

Ms Rosemary Byrne

92* In section 11, page 11, line 30, leave out <6> and insert <12>

Euan Robson

39 In section 11, page 12, line 15, leave out <is incapable> and insert <lacks capacity to give consent>

After section 11

Euan Robson

40 After section 11, insert—

<Supporters and advocacy

Supporters and advocacy

- 5 (1) Where, in connection with the exercise of an education authority's functions under this Act in relation to any child or young person, the relevant person wishes—
- (a) to have another person (referred to as a “supporter”) present at any discussions with the authority for the purpose of supporting the relevant person in the course of those discussions, or
 - 10 (b) another person (referred to as an “advocate”) to—
 - (i) conduct such discussions or any part of them, or
 - (ii) make representations to the authority,on the relevant person's behalf,
- the education authority must comply with the relevant person's wishes, unless the wishes are unreasonable.
- 15 (2) In subsection (1), “the relevant person” means—
- (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - 20 (ii) if the authority are satisfied that the young person lacks capacity to participate in discussions or make representations as referred to in subsection (1), the young person's parent.
- (3) Nothing in subsection (1) is to be read as requiring an education authority to provide or pay for a supporter or advocate.>

Ms Rosemary Byrne

40A As an amendment to amendment 40, leave out subsection (3) and insert—

<() It is the duty of an education authority to secure the availability of independent advocacy to children and young people with additional support needs and the parents of such children or young people.>

Section 16

Euan Robson

41 In section 16, page 12, line 37, leave out <are incapable> and insert <lack capacity to express a view or make a decision for those purposes>

Section 17

Lord James Douglas-Hamilton

- 42 In section 17, page 13, line 14, after <resolution> insert <, to be facilitated by an independent person,>

Euan Robson

- 43 In section 17, page 13, line 18, leave out <is incapable> and insert <lacks capacity to express a view or make a decision for the purposes of resolving such disputes>

Lord James Douglas-Hamilton

- 44 In section 17, page 13, line 20, at end insert—
<() An independent person is independent for the purposes of subsection (1) if that person has no involvement in the exercise by or on behalf of the authority of their functions under this Act (apart from this section).>

Euan Robson

- 45 In section 17, page 13, line 25, at end insert—
<() However, such regulations, and any provision made in pursuance of such regulations—
(a) must not require any parent or young person—
(i) to use any procedure established in accordance with the regulations for the resolution of any dispute with an education authority, or
(ii) to pay any fee or charge for using any such procedure, and
(b) do not affect the entitlement of any parent or young person to refer any matter to a Tribunal.>

Section 12

Donald Gorrie

- 78 In section 12, page 13, line 38, leave out <may> and insert <shall>

Donald Gorrie

- 79 In section 12, page 13, line 39, at end insert <including provision to secure the availability of independent advocacy services to persons making a reference to a Tribunal under section 13(1) and to such persons when appearing before a Tribunal.>

Section 13

Euan Robson

- 46 In section 13, page 14, line 9, leave out from <education> to end of line 11 and insert <young person lacks capacity to make the reference, the young person's parent.>

Robert Brown

80 In section 13, page 14, line 11, at end insert—

<(2A) The right to make a reference arising from a failure of the type specified in subsection (3)(ba) does not arise unless—

(a) the person making the reference has detailed the grounds of reference in—

(i) writing, or

(ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

(b) the President of the Tribunal, being satisfied that prima facie a substantial issue arises, grants leave to make the reference.>

Mr Adam Ingram

81 In section 13, page 14, line 12, at end insert—

<() a decision of the education authority that a child or young person has additional support needs of a type that the person making the referral considers are not an accurate reflection of the child or young person's additional support needs,>

Mr Adam Ingram

82* In section 13, page 14, line 12, at end insert—

<() a decision of the education authority to refuse an assessment request referred to in section 6(1)(b),>

Euan Robson

47 In section 13, page 14, leave out lines 20 to 24

Robert Brown

83 In section 13, page 14, line 20, leave out <(3A)> and insert <(2A)>

Rhona Brankin

93* In section 13, page 14, line 27, leave out from <and> to end of line 29

Mr Adam Ingram

84 In section 13, page 14, line 42, at end insert—

<(v) failure by the education authority, any person identified in the plan as a person by whom additional support should be provided, or a combination of these persons, to provide the additional support set out in the plan as being required by the child or young person,>

Robert Brown

85 In section 13, page 15, line 32, at end insert—

<() The Scottish Ministers may by regulations make provision as to the interpretation of “substantial issue” in subsection (2A)(b) or the circumstances when a substantial issue may arise.>

Section 14

Euan Robson

48 In section 14, page 15, line 41, leave out <(3)(ba), (c)> and insert <(3)(c)>

Mr Adam Ingram

86 In section 14, page 15, line 41, leave out <or (iii)> and insert <, (iii) or (v)>

Mr Adam Ingram

87 In section 14, page 15, line 42, after <authority> insert <or any other person identified in the plan as a person by whom additional support should be provided>

Fiona Hyslop

88 In section 14, page 16, line 24, at end insert—

<() Ministers may by regulations empower Tribunals to impose sanctions where an education authority or other appropriate agency (as specified in section 19(2)) has failed to comply with a Tribunal decision.>

Section 14A

Fiona Hyslop

49 In section 14A, page 17, line 9, at end insert—

<() The Scottish Ministers must, by order, extend the categories of decision or failure in respect of which a reference to the Tribunal under section 13(1) may be made so as to include the categories set out in subsections (1)(a) and (b) by no later than two years after the appointed day in terms of section 28(1).>

Robert Brown

89 In section 14A, page 17, line 13, at end insert <; and such an order may also make provision as to the interpretation of “substantial issue” or the circumstances when a substantial issue may arise.>

Euan Robson

50 Leave out section 14A

Section 19

Euan Robson

51 In section 19, page 18, line 21, at beginning insert <unduly>

After section 19

Ms Rosemary Byrne

70 After section 19, insert—

<Monitoring of implementation of Act

(1) The Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on the operation and implementation of this Act—

5 (a) within 12 months of the appointed day in terms of section 28(1),

(b) on or before any subsequent date decided by the Scottish Ministers after consultation with HM Inspectorate of Education.

10 (2) A report under subsection (1) must include an assessment of whether the Act is being implemented in such a way that children and young persons with similar types of additional support needs are being provided with the same level of support in each education authority area.

15 (3) If an assessment carried out in pursuance of subsection (2) shows that the level of support being provided to such children and young persons varies between education authority areas, the report under subsection (1) must specify what action the Scottish Ministers intend to take to ensure that the same level of support is provided in each education authority area (that level being at least the minimum standard of support required to be provided under this Act).>

Fiona Hyslop

70A As an amendment to amendment 70, leave out lines 6 and 7 insert <and annually thereafter>

Section 23

Ms Rosemary Byrne

71 In section 23, page 20, line 12, at end insert—

<() appropriate professionals to request a multi-disciplinary assessment under section 6(6)(b), including provision as to any necessary professional qualifications of such persons,>

Ms Rosemary Byrne

52* In section 23, page 20, line 23, after <after> insert—

<() the code has been approved by resolution of the Parliament, and>

Section 23A

Mr Adam Ingram

90 In section 23A, page 21, line 20, leave out from <request> to <8(4)> and insert <refusal of the request gives rise to a right of referral under section 13(1)>

Euan Robson

- 53 In section 23A, page 21, line 20, after <section> insert <4(2)(b) or>

Section 24

Euan Robson

- 54 In section 24, page 22, leave out lines 1 to 6

Lord James Douglas-Hamilton

- 72 In section 24, page 22, line 16, at end insert—
<“school age” is to be construed in accordance with section 31 of the 1980 Act,>

After section 24A

Euan Robson

- 55 After section 24A, insert—
<**Duty to inform in writing or alternative permanent form**
Where an education authority are, under this Act, to inform a parent or young person of any matter, they must do so—
(a) in writing, or
(b) in such other form as the parent or young person may reasonably require, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording).>

Section 27

Euan Robson

- 56 In section 27, page 24, line 23, leave out <sections 14A and> and insert <section>

Schedule 1

Euan Robson

- 57 In schedule 1, page 27, line 31, leave out <may> and insert <must>

Euan Robson

- 58 In schedule 1, page 28, line 1, at end insert—
<() the persons who may be present at proceedings alongside any party or witness to support the party or witness,>

Schedule 2

Euan Robson

- 59 In schedule 2, page 35, line 20, leave out <is incapable> and insert <lacks capacity to do anything which the parent of a child may do under the provision concerned>

Schedule 3

Euan Robson

- 60 In schedule 3, page 36, line 15, at end insert—
- <() In section 23 (provision by education authority for education of pupils belonging to areas of other authorities)—
- (a) in subsection (1), after “Act” insert “or additional support within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 00) (referred to in this section as “the 2004 Act””,
 - (b) in subsection (1A)—
 - (i) after “Act” in the first place where it occurs insert “or any provision of the 2004 Act”,
 - (ii) after “Act” in the second place where it occurs insert “or their functions under sections 2A and 3 of the 2004 Act”,
 - (iii) after “education” in the fourth place where it occurs insert “or additional support within the meaning of the 2004 Act”,
 - (c) in subsection (1B), after “Act” insert “or the 2004 Act”,
 - (d) in subsection (2), after “authority” in the second place where it occurs insert “or have provided additional support within the meaning of the 2004 Act for any such pupil”,
 - (e) in subsection (3)—
 - (i) the words from “1(5)(c)” to “Act)” are repealed,
 - (ii) for the words “51 and 60 to 65F” substitute “and 51”,
 - (iii) after “Act” in the second place where it occurs insert “and for the purposes of the 2004 Act”.>

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