

# **Guidance on the presumption to provide education in a mainstream setting**

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**Scottish Government**  
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## MINISTERIAL FOREWORD

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Scottish education has an inclusive ethos. Everyone involved in the education of Scotland's children and young people is working towards a single, clear vision for Scottish education – excellence and equity for every child and young person in Scotland.



Each and every child and young person should be involved in their own education and have a voice to shape their experience. They should be provided with the support they need to reach their full learning potential.

We have made extensive policy and legislative changes over the past 15 years to enable those with additional support needs to thrive as part of their class, their school and their wider community. We must continue to make sure that all of our children and young people feel included and can participate and achieve to their full potential.

An inclusive approach affords all children and young people the opportunity to be a part of a community, boosting their emotional wellbeing and aiding the development of social skills. Scotland's inclusive approach celebrates diversity and allows all children and young people to develop an understanding and recognition of differences, contributing to the development of an increasingly inclusive, empathetic and more just society.

We are committed to mainstreaming as a central pillar of our inclusive approach to education. The Scottish approach to inclusion is already world-leading; our legislative and policy commitments are amongst the most extensive in the world. However, we must improve the *experience* of inclusion for all pupils if we are to deliver on the promise of such an ambitious framework. Being present in a mainstream school should not be the primary marker of successful inclusion.

This guidance aims to bridge the gap between legislation, policy and day-to-day experience, ensuring that children and young people have equitable access to a quality education which meets their needs and helps them achieve their full potential. I would like to thank the Advisory Group on Additional Support for Learning and the Advisory Group on the Guidance of Presumption of Mainstreaming for their efforts in bringing this piece of work to fruition.

A handwritten signature in black ink, appearing to be 'JS', written on a white background.

**JOHN SWINNEY MSP**  
DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR EDUCATION  
AND SKILLS

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# 1 INTRODUCTION

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1. This document is to provide guidance to education authorities on their duty to provide education in a mainstream school or early learning and childcare setting unless certain exceptions apply. This guidance sets this duty within the context of other policies and related duties. It also sets the presumption of mainstreaming within inclusive practices. This guidance is for policy and decision makers in education authorities, education authority officers, senior management teams in schools and early learning and childcare settings and all school and early learning and childcare staff.

2. The Scottish Government believes that mainstreaming must be delivered within an inclusive approach. The Scottish vision for inclusive education, which applies to all settings, is set out below:

‘Inclusive education in Scotland starts from the belief that education is a human right and the foundation for a more just society. An inclusive approach which recognises diversity and holds the ambition that all children and young people are enabled to achieve to their fullest potential is the cornerstone to achieve equity and excellence in education for all of our children and young people.’<sup>1</sup>

3. In Scotland, the right to an education which is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential is enshrined in law.

4. This guidance aims to support:

- improved outcomes and the delivery of excellence and equity for all children and young people
- meeting the learning needs of all children and young people
- an inclusive approach which identifies and addresses barriers to learning for all children
- and empowers children and young people, parents and carers, teachers, practitioners and communities

5. Inclusive practice is considered in this document through four key features of inclusion. These can be used to evaluate whether or not inclusive practices are in place. These are:

- Present
- Participating
- Achieving
- Supported

These features will be explored further throughout this document.

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<sup>1</sup> This definition builds on research by Professors Mel Ainscow and Susie Miles

6. Since the duty to provide education in a mainstream school or early learning and childcare setting was introduced in 2003, the legislative and policy landscape in Scotland has changed. Annex A sets this out in detail.

7. There is a clear, single vision for Scottish education – excellence and equity for every child and young person in Scotland.

8. To realise this ambitious vision and the legislation and policy that underpins it, more needs to be done to get it right for every child and to ensure that they are all experiencing equity and excellence.

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## 2 KEY FEATURES OF INCLUSION AND DEVELOPING INCLUSIVE PRACTICE

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9. Inclusive practice is important whatever the setting, whether it be within a mainstream or special school. There are four key features of inclusion which can be used to set expectations and evaluate inclusive practice in schools and early learning and childcare settings. These are present, participating, achieving and supported. Together these four features support the delivery of inclusive learning environments for all children and young people that enable them to reach their full potential.

10. Some aspects of the four features may interlink. For example, children and young people must be present in order to participate, as a result, elements of practice associated with the key features may also overlap.



### PRESENT

Key expectations:

- **All** children and young people should learn in environments which best meet their needs
- **All** children and young people should be fully engaged in the life of their school, through the inclusive ethos, culture and values of the school
- **All** children and young people should receive a full time education including flexible approaches to meet their needs

11. The presumption of mainstreaming enshrines the right of all children and young people with additional support needs to learn in mainstream schools and early learning and childcare settings. Children and young people must be present, in person or engaged via virtual means, in order to benefit from learning. Presence is a fundamental requirement of inclusive practice.

12. Presence is also evidenced by attendance at school. [Included, Engaged and Involved – Part 1: Attendance in Scottish schools](#) provides guidance to education authorities and schools on the promotion of attendance and reduction of absence. The guidance explores attendance in relation to a range of circumstances, including additional support for learning and absence due to ill health. The use of technology may assist where a child is unable to attend school due to ill health or other factors, [Guidance on the education of children unable to attend school due to ill health](#) provides further guidance. Presence is also evidenced by a reduced level of exclusions from school, where exclusion is the last resort in the context of promoting positive relationships and behaviour. Education authorities and schools are guided in this by [Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions](#)

13. The wellbeing indicators within the [Getting it Right For Every Child approach](#) are of particular relevance to practitioners in this context. The wellbeing indicator [‘Included’](#) reflects the need for children and young people to have the opportunity, and be encouraged, to play an active part in the communities in which they live and learn. The [‘Achieving’](#) Indicator is also relevant, enabling children and young people to be supported to help them to progress and develop the skills, ambition and know how that will help create a positive future for them.

## **Evaluation**

14. The [How Good is Our Early Learning and Childcare?](#) and [How Good is Our School? \(4<sup>th</sup> edition\)](#) Quality Indicators provide a framework for the evaluation of the effectiveness of educational establishments on improving outcomes for children and young people. The Quality Indicators 2.4 Personalised Support and 2.5 Family Learning are particularly relevant in relation to presence. They focus on how well children and young people are supported to overcome barriers to learning and how families are engaged in learning. Quality Indicator 3.1 Ensuring Wellbeing, Equality and Inclusion is of key importance due to its focus on fulfilment of statutory duties and the impact of the school’s and early learning and childcare setting’s approaches to wellbeing to support inclusion and equality.

15. [How Good is Our School part 2](#) helps children and young people to have a say in how well their school is helping them be fully engaged and is relevant across all the key features. Theme 5 is especially helpful: Our relationships includes friendships, relationships with teachers and other adults who support us, opportunities to influence things, equality and fairness, ethos and culture, feeling supported and cared for.

## PARTICIPATING

### Key expectations:

- **All** children and young people should have their voices heard in decisions about their education. Including decisions on where they learn
- **All** children and young people will have the opportunity to participate and engage as fully as possible in all aspects of school or early learning and childcare life, including trips and extracurricular activity
- **All** children and young people should be enabled and supported to participate in their learning
- Children and young people with additional support needs, who are aged 12-15, also have extended rights within the ASL framework to use rights on their own behalf to affect decisions made about them

16. Participation does not only refer to school work, homework and involvement in subjects which may pose challenges for individual children and young people. Participation is also about addressing involvement in the wider school and local community; it is about feeling included as a peer, forming firm relationships and friendships and developing the skills for lifelong learning and success. Participation is full involvement in the life of the school through events, trips, school plays, sports and community events; it is about finding an avenue for children and young people to contribute and feel that their contribution is valued. All opportunities to participate in the life of the school should be available to all pupils, including those requiring additional support, and these should be appropriately supported.

17. In schools and early learning and childcare settings, learner participation is core to a good education. As part of all educational experiences, it is a child and young person's right to have a say in matters that affect them. It is intended that children and young people have the opportunity to learn about participation; participating through expressing their views; help shape educational provision; participating in decisions leading to meaningful impacts and outcomes, and monitor and evaluate their participation and impact. Education Scotland have developed [Learner Participation in Educational Settings \(3-18\)](#) to guide practice in this area.

18. Article 12 of the United Nations Convention on the Rights of the Child sets out children's rights to respect for their views. The Children and Young People's Commissioner Scotland has developed resources to support the participation of children and young people. The [7 Golden Rules for Participation](#) are a set of principles that anyone working with children and young people can use to ensure that children and young people's participation is meaningful.

19. Within the Getting it Right For Every Child approach the Wellbeing Indicators '[Included](#)' and '[Respected](#)' are relevant. In addition to being encouraged to play an active part in the communities in which they live and learn, children and young people should be being treated with dignity and respect, feel listened to and taken seriously by those around them and be treated as individuals in their own right with their own needs, expectations and aspirations.

## Evaluation

20. Quality Indicators 2.4 Personalised Support and 2.5 Family Learning from the How Good is Our Early Learning and Childcare and How Good Is Our School? 4 are relevant to the Participating feature of Inclusion. These indicators focus on the provision of high-quality support to enable all children and young people to achieve success and how well their outcomes are improving as a result of participation in family learning. Quality Indicator 3.1 from these frameworks is important both in relation to the fulfilment of statutory duties and inclusion and equality.

## ACHIEVING

### Key expectations:

- **All** children and young people should be achieving to their full potential
- **All** children and young people should have access to a varied curriculum tailored to meet their needs

21. This guidance is very clear on the ambition the Scottish Government has for each and every child and young person in Scotland – all children and young people should receive the support that they need to reach their full potential, in learning, life and work. Curriculum for Excellence sets out children and young people’s entitlements to education through both the [Broad General Education](#) and the [Senior Phase](#). These entitlements apply equally to all children and young people, including those who have additional support needs. The [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(as amended\)](#) (“the 2004 Act”) and the [Experiences and Outcomes of Curriculum for Excellence](#) enable a tailored approach to meeting the learning needs of all pupils. The delivery of the experiences and outcomes are supported by the [Curriculum for Excellence Benchmarks](#) which set out clear statements about what learners need to know and be able to do to achieve a level across all curriculum areas. Children and young people can also have their learning recognised through approaches to wider achievements. This includes approaches such as the [Duke of Edinburgh Award](#) and [ASDAN](#) which contribute to children and young people’s learning achievements as part of Curriculum for Excellence.

22. Within the Getting it Right For Every Child approach the Wellbeing Indicators ‘[Achieving](#)’ and ‘[Respected](#)’ are relevant. The Achieving Indicator is about enabling children and young people to be supported to help them progress and develop the skills, ambition and know how that will help create a positive future for them. The Respected Indicator is about children and young people being treated with dignity and respect, feeling listened to and taken seriously by those around them and be treated as individuals in their own right with their own needs, expectations and aspirations.

## Evaluation

23. Quality Indicators 2.2 Curriculum, 2.3 Learning, Teaching and Assessment and 3.2 Raising attainment and achievement from the How Good is Our Early Learning and Childcare and How Good Is Our School? 4 are relevant to the Achieving feature of Inclusion. QI 2.2 focusses on learning pathways and skills for learning, life and work; this is complemented by QI 2.3 which focusses on learning and engagement,

effective use of assessment, and planning, tracking and monitoring. QI 3.2 evaluates learners' attainment, quality of learners' achievements and equity for all learners.

## SUPPORTED

### Key expectations:

- **All** children and young people should benefit from the ethos and culture of the school, inclusive learning and teaching practices and relationships
- **All** children and young people should be given the right help, at the right time, from the right people, to support their wellbeing in the right place
- **All** children and young people should be supported to participate in all parts of school life
- **All** children and young people should be supported to overcome barriers to learning and achieve their full potential

24. Support is primarily about how children and young people are enabled to achieve their full potential. To achieve their full potential, barriers to learning must be identified through robust assessment and addressed for all children and young people through the provision of flexible learning pathways and to enable them to participate in all parts of school life.

25. In order to support the wellbeing of all children and young people it is important to consider the [wellbeing indicators](#) of Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included. Children and young people's wellbeing needs should be considered against these indicators and appropriate support provided. The 2004 Act requirements to identify, provide for and to review the additional support needs of children and young people aligns well with this framework. Whilst the Getting it Right For Every Child approach is focussed on the wellbeing needs of the child or young person, the 2004 Act focusses on the support needed to overcome barriers to their learning arising from disability or health; family circumstances; learning environment or social and emotional factors.

26. Within the Getting it Right For Every Child approach [all eight of the wellbeing indicators](#) are relevant to the 'Supported' feature.

### **Evaluation**

27. The How Good is Our Early Learning and Childcare? and How Good is Our School? (4) Quality Indicators provide a framework for the evaluation of the effectiveness of educational establishments on improving outcomes for children and young people. The Quality Indicators 2.4 Personalised Support and 2.5 Family Learning are particularly relevant. They focus on how well children and young people are supported to overcome barriers to learning and how families are engaged in learning. Quality Indicator 3.1 Ensuring Wellbeing, Equality and Inclusion is of key importance due to its focus on fulfilment of statutory duties and the impact of the school's and early learning and childcare setting's approaches to support inclusion and equality.

## INCLUSIVE PRACTICE

28. The core expectations of our inclusive approach in Scotland focus on children and young people being present, participating, achieving and supported. To support practitioners, Education Scotland have developed a free online learning module '[An introduction to Inclusive Education](#)'. The module is relevant for all educational practitioners and also supports teachers to meet the General Teaching Council for Scotland (GTCS) standards for registration, Career-Long Professional Learning, and Leadership and Management; as well as supporting the Professional Update process.

29. There are eight key areas that are crucial in helping to develop inclusive practice in schools and early learning and childcare settings:

- Inclusive school values and ethos;
- Leadership;
- Constructive challenge to attitudes;
- Evaluation of planning process;
- Capacity to deliver inclusion;
- Parental and carer engagement;
- Early intervention, prevention and strong relationships;
- Removal of barriers to learning.

30. **Inclusive school values and ethos** are essential to the delivery of inclusive educational practice. Values and ethos which recognise and value diversity and include a strong commitment to enabling and supporting all children and young people to learn and be part of school life are fundamental.

31. Strong **Leadership** is needed to promote inclusive ethos and values throughout the school community. Leadership does not only rest with the Headteacher or Manager in an early learning and childcare setting – distributed leadership at all levels is needed to deliver change and progress. Staff must be empowered and challenged to use their knowledge of the children and young people to drive inclusive practice. As the classroom leader, or ELC practitioner, their approach, their attitude and their vision will be the one predominately experienced by the children and young people in their class.

32. **Constructive challenge to attitudes** is essential to ensure that inclusion and equality lead to improved outcomes for all children and young people and that diversity is understood, valued and celebrated. It is essential that high expectations are in place for all pupils.

33. **Evaluation of planning process** is fundamental to ensuring improved learning outcomes for all pupils. Tracking and monitoring of learning outcomes over time, aligned to review of support and teaching and learning strategies will ensure progress in learning for all pupils.

34. **Capacity to deliver inclusion** is an important focus across education, not just in the context of mainstreaming and inclusion. Working with partners to deliver joint training and services builds capacity of those in schools and other services. Special schools can provide key support to their mainstream colleagues through experience of a range of highly personalised approaches including personalised learning, behavioural strategies and tailored support which may be beneficial for all pupils.

35. **Parental and carer engagement** supports improvement in learning and achievement. Strong, positive relationships are essential to this work – not only between partners but with families themselves. Just as the voice of children and young people should be listened to in their learning plans, ‘families should be consulted in a meaningful way when staff are looking at progression from their service.’ [The National Improvement Framework driver of Parental Engagement](#) reflects further on how to engage parents and carers.

36. **Early intervention, prevention and strong relationships** can have a positive impact particularly as regards the impact of socio-economic circumstances. Staff, in tandem with partners, should be informed and proactive, working to mitigate the impacts of socio-economic circumstances as part of removing barriers to learning.

37. **Removal of barriers to learning** are essential to ensure that all children and young people reach their full potential. All children with a disability, health issue or social or emotional needs benefit from high-quality targeted support. Schools and early learning and childcare settings working in partnership with others in the community can enhance support for families and, therefore, enhance outcomes in key areas. Partners are crucial in this process to provide targeted and specialist support in all environments and to ensure the improvement work being undertaken in school and early learning and childcare is also being supported at home.

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## 3 DECIDING ON THE RIGHT PROVISION FOR A CHILD OR YOUNG PERSON

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38. This chapter is primarily aimed at education authority decision makers and looks to support local authorities in making decisions on where a child should learn.

39. Information for parents and carers can be found on the [Enquire](#) website. This includes [fact sheets](#) on Choosing a School and Placing Requests.

### LEGAL CONTEXT

40. Under the legislative framework there are three core elements – education, support and wellbeing. Taken together, these frameworks require education authorities to consider a wide range of issues for children and young people. Education authorities need to:

- Make provision that is directed toward the development of the personality, talents and mental and physical abilities of the child to their fullest potential;<sup>2</sup>
- Have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities, prevent discrimination against pupils with disabilities and make reasonable adjustments for individual children to ensure equality of opportunity in learning. The technical guidance for Schools in Scotland provides guidance on the requirements under the Equality Act 2010;<sup>3,4</sup>
- Plan for accessibility of the curriculum, school information and physical access<sup>5</sup>;
- Identify and provide the support required to enable individual children and young people to overcome barriers to their learning, including looked after children and young people<sup>6</sup>;
- Consider the wellbeing of children and young people<sup>7</sup>.

41. Annex A provides more detail about the legislative and policy landscape. The table attached at Annex B sets out the main pieces of legislation related to deciding where a child should learn and areas that should be considered when making these decisions.

### PRESUMPTION TO PROVIDE EDUCATION IN A MAINSTREAM SETTING

42. The presumption to provide education in a mainstream setting has been in legislation since 2003 reflecting a move towards a children's rights based approach. Section 15 of the Standards in Scotland's Schools etc. Act 2000 provides that a preschool and school aged child should be educated in a mainstream school unless one of three circumstances set out in section 15 apply. The three exceptions are

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<sup>2</sup> Standards in Scotland's Schools etc. Act 2000

<sup>3</sup> Equality Act 2010

<sup>4</sup> Technical guidance for Schools in Scotland

<sup>5</sup> Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002

<sup>6</sup> Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

<sup>7</sup> Children and Young People (Scotland) Act 2014

that it would not be suited to the ability and aptitude of the child; would be incompatible with the provision of efficient education for the children with whom the child would be educated or would result in unreasonable public expenditure being incurred which would not ordinarily be incurred. Section 15 provides that it shall be presumed that those circumstances only arise exceptionally and that if one or more of them do arise, that the education authority may still provide education in a mainstream school but that they won't do this without taking into account the views of the child and the child's parents.

43. Section 15 is a continuing duty and can apply at any time there are decision making points about where a child should learn. Children and young people usually attend the school within their catchment area or the early learning and childcare setting of their parent or carers' choice. However, in some circumstances the education authority may propose that another school, including a special school, may be more appropriate to meet the needs of the child or young person. This decision can happen before starting at an early year and childcare setting, primary school or secondary school or any point in between if there are concerns that the current setting isn't meeting the child or young person's needs. Parents and carers can make placing requests to education authorities to ask for their child to be admitted to a particular school. Placing requests are usually made when a child is starting primary or secondary school, but they may also be made at any other point in a child's learning journey. This reflects the circumstances in which a child attends a school, but it is found that the school is unable or becoming unable to meet the child's learning needs. The different types of school are described in more detail below.

44. The legislative and policy landscape has evolved over time, reflecting increasing aspirations for Scotland's children and young people and changes in practice. This is also the case in the way in which learning is delivered across the country. In Scotland, there is a range of provision available to meet children and young people's additional support needs.

45. These include:

- **Mainstream** school provision;
- **Special** school provision;
- Provision where the pupils' needs are met through a mixture of provision, either within a unit within a mainstream school or through a mix of two different provisions. This forms a package of learning and support to meet individual needs, often referred to as **flexible provision or shared provision**.

46. **Mainstream schools** are organised by catchment area, and consist of primary and secondary schools. Some mainstream schools also have a unit or base within them.

47. **Special schools** are defined in law as schools whose sole or main purpose is to provide education especially suited to pupils with additional support needs<sup>8</sup>. Units or

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<sup>8</sup> Section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004

bases which are attached to mainstream schools (and which are wholly or mainly for pupils with additional support needs) are in law, captured within the definition of a special school.

48. The balance of provision varies from local authority to local authority and has developed due to local contexts, geography and communities and in line with the duty to provide adequate and efficient provision.

49. Schools are often organised into clusters consisting of local primary schools and the associated secondary school. This provides an opportunity for schools to learn from each other in relation to provision of support for pupils. Special schools have a wealth of experience in differentiated learning which may be shared with other schools in the cluster.

50. The glossary referenced in Annex A provides definitions for mainstream schools, special schools and other terms such as grant-aided special schools and independent schools.

51. In addition to these two main types of provision, there is in practice, within a number of local authorities, a further approach whereby a child or young person needs are met between two types of provision. For the purposes of this guidance, we will use the term **flexible provision**. Flexible provision can be, for example:

- Where a pupil attends a mainstream school and a unit within another school or learning establishment (for example a third sector service);
- Where a pupil attends a special school and also has some time in a mainstream setting;
- Where an older pupil attends school and college as part of a full-time timetable;
- Where an older pupil attends school and also benefits from vocational opportunities as part of their full-time education.

52. This list provides examples of different types of flexible provision and is not exhaustive. It should be tailored to the individual circumstances, needs and strengths of each child and young person.

53. In all circumstances these provisions are about meeting the identified needs of the individual child or young person concerned. Placement decisions should be part of a wider consideration starting from the child's needs, what supports will enable them to develop and then where this can be provided. Children and young people and their parents/carers have the right to express their views in relation to decisions that affect their education. This includes the decision on the type of provision made to meet the pupil's learning needs although ultimately decisions on placement are for local authorities to make. The education authority has to consider those views alongside professional assessments and recommendations regarding the child's needs.

54. In good practice, this would be informed by key partners such as health, social care and third sector organisations where appropriate. There should be a partnership, multi-agency approach to meeting the needs of all children and young

people under the Getting it Right For Every Child approach. Deciding on the provision that best meets the needs of the child is a complex task that requires everyone involved to take the time to get to know the child well and make a decision on a timely basis, reflecting the legally defined timescales for placing request decisions.

55. The decision should also be reviewed on a regular basis to ensure that it is still meeting the needs of the child. Assessment and planning is a dynamic process and whether current provision is still suitable for a child must be reviewed on a regular basis. Particular care should be taken with transitions into and out of different provisions. [The Supporting Children's Learning Code of Practice](#) sets out the statutory guidance on the duties around transitions.

56. The table at **Annex B** includes suggested considerations to be taken into account when assessing the most appropriate provision for an individual child or young person. This should prompt a greater focus on the learning environment and the extent to which it can support the child or young person to be present, participating, achieving and supported. If these questions highlight that there are concerns about whether mainstream is the right setting for the child then there should be an in-depth exploration of the duties under section 15 and the exceptions set out in section 4 of this document. The further questions under the exceptions at section 4 should help to increase the transparency of the decision making process, particularly for children, young people and their parents or carers.

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## 4 HOW AND WHY COULD THE EXCEPTIONS BE APPLIED?

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57. This section provides further considerations for education authority decision makers if it becomes clear that one of the exceptions might apply. Where a child or young person is in school, during the decision making process the education authority will work with the school(s) and/or early learning and childcare provider(s), parents or carers and other partners to see what further adjustments can be made to ensure that the child or young person is getting the best possible support within their current provision. Where the child or young person is not in school or an early learning and childcare setting, the decision making process will be informed by the information available about the needs of the child and young person, and information from parents and partners.

58. If there is doubt about the suitability of mainstream provision, it is the role of the education authority to use the legislation to weigh up a range of matters including the child or young person's wellbeing, in order to reach a conclusion on the application of the three exceptions outlined in the Standards in Scotland's Schools etc. Act 2000. A summary of section 15 can be found in paragraph 42 and Annex A of this document. In best practice, this process should be completed with input from all those that know the child (see paragraphs 53 and 54 of the document). The exceptions do not automatically apply and the onus is on the education authority to demonstrate that the exception should apply.

59. The decision on placement and the use of exceptions is for the education authority. Children and young people and parents or carers must be involved in this process and in good practice the decision should be informed by the class teacher and the range of professionals involved in the child's life. The planning and assessment processes used for additional support for learning and set out within the Code of Practice should be seen as providing the structure for these discussions. It should be a transparent process with timescales attached. Education authorities should be mindful of the timescales which are provided by statute in relation to placing request decisions, by way of provisions for deemed decisions. Earliest possible decisions should be made to allow for appropriate planning of any transition to a new educational setting.

60. The three exceptions set out in section 15(3) of the 2000 Act are that mainstream education:

- (a) would not be suited to the ability or aptitude of the child;
- (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
- (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred

The provision further states that it shall be presumed that those circumstances arise only exceptionally.

61. These terms deliberately do not overprescribe what the presumption to provide education in a mainstream school or early learning and childcare setting means in practice. Local circumstances can be very different and how efficient education can be provided will vary widely across local authorities. A difficult but essential role of local authorities is to strike a balance for the presumption of mainstream education for as many children and young people as possible and the use of specialist provision. Special schools are defined in law as schools whose sole or main purpose is to provide education especially suited to pupils with additional support needs. Units or bases which are attached to mainstream schools (and which are wholly or mainly for pupils with additional support needs) are in law, captured within the definition of a special school.

62. Guidance on how these exceptions could be interpreted is included in this section, but it is important that local authorities take account of their local circumstances and priorities when arriving at decisions. To assist authorities in their decision making process, there are a number of reflective questions in this section. If authorities have answered these questions before deciding which provision best suits a child or young person, then the decision making process is more transparent for everyone involved, including parents and carers and the children and young people at the centre of the process. As set out in the previous section, consideration should also be given to ensuring that thought is given to the key features of inclusion.

63. If the education authority considers that the child or young person cannot be supported within a mainstream environment it may be that the best option for that child or young person is a flexible placement within a unit or a base or a placement in a special school. Where one or more of the exceptions is considered to apply, the reasons for this must be clearly demonstrated.

## **ABILITY AND APTITUDE:**

64. This exception<sup>9</sup> applies where mainstream education would not be suited to the ability or aptitude of the child. This guidance frequently refers to 'achievement' as being one of the key features of successful inclusion. The terms ability and aptitude are narrower than achievement but reference to achievement reflects recent learning developments. Therefore when reflecting on achievement, ability and aptitude will be considered. It is essential that ambition is retained for all children and young people to enable them to fulfil their full learning potential. Achievement for children and young people with additional support needs is best realised through following a personalised learning pathway. It can be progress towards personal goals or the opportunity to exceed ability and aptitude with challenging and ambitious curricular and wellbeing targets. Achievement can also be more practical, and involve developing skills such as relationship-building and wider life skills. Ideally, achievement is a combination of the two, utilising the mainstream environment to include those with additional support needs alongside other learners and to aid the development of a more inclusive and just society. Achievement is about each and every child and young person fulfilling their full potential and if a child or young person is meeting learning targets and has a full experience of school life then they

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<sup>9</sup> Section 15(3)(a) of the 2000 Act

are being well supported by a mainstream education system. If they are not, or it appears that appropriate progress is not being made, then consideration should be given to whether they could be better supported in their current environment or whether the exception applies.

## REFLECTIVE QUESTIONS ON ABILITY AND APTITUDE

### Identifying and assessing additional support needs

The Getting it Right For Every Child Practice Model provides the framework for considering the needs of all children and young people. At the core of the Practice Model are the following 5 key questions staff should use when assessing the needs of children and young people:

1. What is getting in the way of this child or young person's wellbeing?
2. Do I have all the information I need to help this child or young person?
3. What can I now do to help this child or young person?
4. What can my department/school do to help this young person?
5. What additional help, if any, may be needed from others?

The bullets below provide further prompts when considering achievement.

- Does the school have effective assessment systems in place to identify the ever increasing diverse needs of children?
- Are there robust arrangements in place to ensure all learners have regular communication and discussions with a key adult to review their learning and plan next steps?
- What information about the strengths, specific needs and support systems required for each learner requiring additional support do staff have access to? Have children and young people been able to contribute to this information?
- Do children and young people and their parents or carers have curricular learning targets to work on at home and at school?
- How are children and young people encouraged to become independent learners, expressing their views and making choices?
- How are children and young people encouraged to be as involved as possible in all aspects of the school and community?
- Has the child or young person been able to make appropriate progress building on prior levels of achievement? How has that been evidenced?
- How does the school assess, track and monitor progress in learning for all children and young people including those on individual programmes?
- How are children and young people improving their wellbeing? How do the school know they are making progress?
- Is the child or young person beginning to or continuing to make progress using the wellbeing indicators?

## INCOMPATIBLE WITH THE EFFICIENT EDUCATION FOR OTHER CHILDREN:

65. This exception<sup>10</sup> recognises that the inclusion of a child or young person with additional support needs within a particular classroom or learning environment may be incompatible with the provision of efficient education for the children with whom the child would be educated. This is particularly likely to be the case where a child or young person's additional support needs include particular behaviours which could be disruptive to other children or young people, or where behaviours are a signal of concern or the child or young person's distress. These behaviours may lead to disruption for other learners, but are beyond the control of the child or young person and therefore are likely to occur regularly or frequently. Also the learning of others may be impacted where the child or young person receives support from an adult within the classroom, for medical matters, keeping the child or young person focussed and on task, or to support positive behaviour. Education authorities must consider whether the placement of the individual child or young person within a particular mainstream environment would be incompatible with the provision of efficient education for the children with whom the child would be educated. This will require careful consideration, taking the full circumstances, evidence and options for provision of proactive support to address the pupil's needs into account prior to reaching a conclusion. [Included, Engaged and Involved Part 2](#) sets out the range of supports and strategies that can be put in place to support children and young people in developing and maintaining positive relationships and behaviour. Education authority staff will need to handle discussions on these matters with parents/carers with sensitivity and honesty, recognising that consideration of this exception may feel like a rejection of their child by the school or early learning and childcare setting.

## REFLECTIVE QUESTIONS ON EFFICIENT EDUCATION FOR OTHER CHILDREN

- To what extent is the placement an inclusive learning environment?
- How well does curriculum planning meet the needs of different groups of learners?
- How has or would the placement of this child or young person positively impact on the education, wellbeing and wider experience of other children and young people?
- Will the placement of this child or young person adversely impact on the education, wellbeing and wider experience of other children or young people? Can any adverse impact be overcome?
- How will the placement of this child or young person support the learning and wellbeing of the other children and young people? Equally, how might the placement of this child or young person present barriers to the learning of other children or young people?
- How will you balance the needs of all children and young people within the school or early learning and childcare setting?

<sup>10</sup> Section 15(3)(b) of the 2000 Act

## UNREASONABLE PUBLIC EXPENDITURE:

66. The exception<sup>11</sup> applies where mainstream education would result in unreasonable public expenditure being incurred that would not normally be incurred. Each local authority also has to consider what a reasonable level of public expenditure is within the context of their commitments. These commitments range from their legislative duties to the political commitments made by their elected members who are accountable to the communities they serve. The scale of resource available to adapt to a child or young person's needs must also be considered in light of the other exemptions, particularly as regards efficient education for other children and whether this expense would be ordinarily be incurred.

67. Ultimately the delicate balancing of differing priorities is a complex and necessary task undertaken by local authorities. Local authorities must take into account a range of factors relating to the child or young person, their parents or carers, their teachers, their school leaders, their school(s) and their early learning and childcare settings. They should carefully weigh the variables and produce an outcome that they are satisfied is the best option for the child, their classmates and does not result in unreasonable public expenditure being incurred that would not normally be incurred. The questions below are designed to aid that process.

## REFLECTIVE QUESTIONS ON UNREASONABLE PUBLIC EXPENDITURE

- How do we ensure that our resources are used most effectively? How do we ensure transparency and equity?
- How do we allocate resources to sustain improvement priorities effectively?
- What would the general benefit be to other pupils, in the long and short term, of the resource currently being proposed for the child or young person?

## CONCLUSION

68. This section sets out a range of information and advice to support decision making. It is recognised that these decisions are complex, and require to take account a wide variety of factors and considerations. The key principle is that the decision that is reached, regardless of whether that decision is for placement in a mainstream, special school or for the use of flexible provision, must be about meeting the child or young person's needs, with a continued focus on reaching that individual pupil's full potential.

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<sup>11</sup> Section 15(3)(c) of the 2000 Act

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# ANNEX A – LEGISLATIVE AND POLICY LANDSCAPE

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## KEY LEGISLATION

Education is provided at pre-school, primary and secondary levels in both mainstream and special schools. The key pieces of legislation are set out below.

### [Education \(Scotland\) Act 1980](#)

This Act requires Education Authorities to secure the provision of adequate and efficient education for their area, and sets out the rights and duties of parents in relation to their children's education, among other things.

Section 30 places a duty on the parent to provide efficient education suitable to age, ability and aptitude of the child either by causing him to attend a public school regularly or by other means.

### [Children \(Scotland\) Act \(1995\)](#)

This Act regulates parental responsibilities and parental rights and establishes the responsibilities of service providers in matters affecting children's care and welfare. Local authorities must provide services designed to minimise the impact of disabilities on children and to allow them to lead lives which are fulfilling. Children's views must be sought and taken account of in key decisions that affect them.

### [European Convention on Human Rights](#)

The UK is a party to the European Convention on Human Rights (ECHR), an international treaty to protect human rights and political freedoms in Europe. Article 14 covers prohibition of discrimination when exercising the right and freedoms under the ECHR and article 2 of the first additional Protocol sets out rights to education.

### [Human Rights Act 1998](#)

This Act incorporates most provisions of the European Convention on Human Rights into Scots law.

### [United Nations Convention on the Rights of the Child](#)

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty that sets out the civil, political, economic, social and cultural rights of children. Article 12 sets out right to respect the views of children and articles 28 and 29 set out educational rights for all children and young people.

As the UK has ratified the UNCRC, the Scottish Government has sought to incorporate the spirit of the convention in our own laws and our policy approach in Scotland. For example, section 1 of the Children and Young People (Scotland) Act 2014 requires Scottish Ministers to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration.

## **UN Convention on the Rights of Persons with Disabilities (UNCRPD)**

The UK is a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Article 24 of this convention outlines the rights of disabled children and young people in education.

## **Standards in Scotland's Schools etc. Act 2000**

This Act is about the provision of school education specifically relating to children's rights and the duty of the education authority. The education authority has a duty to make provision that is directed toward the development of the personality, talents and mental and physical abilities to their fullest potential. This also reflects article 29 of the UNCRC. Education authorities are also required to have regard to the views of the child in decisions that significantly affect them in the exercise of that duty.

Section 15 of the 2000 Act provides that a preschool and school aged child should be educated in a mainstream school or early learning and childcare establishment unless one of three circumstances set out in the section apply. The three exceptions are that it would not be suited to the ability and aptitude of the child; would be incompatible with the provision of efficient education or would result in unreasonable public expenditure. The section provides that it shall be presumed that those circumstances only arise exceptionally and that if one or more of them do arise, that the education authority may still provide education in a mainstream school but that they won't do this without taking into account the views of the child and of the child's parents.

## **Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002**

This Act places a duty on education authorities, managers of grant- aided schools and the owners of independent schools to prepare a strategy to increase, over time, the physical accessibility of the school environment and the accessibility of the curriculum for pupils with disabilities and prospective pupils with disabilities.

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

The Education (Additional Support for Learning) (Scotland) Act 2004 provides the legal framework for identifying and addressing the additional support needs of children and young people who face a barrier, or barriers, to learning. The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It sets out the duties on education authorities to identify, provide for and to review the additional support needs of their pupils. Education authorities will plan for children's learning using a range of planning mechanisms including (non-statutory) individual educational plans and where there is significant support from education and another agency to meet the complex or multiple needs, a coordinated support plan under the 2004 Act.

[The Supporting Children's Learning Code of Practice](#), to accompany the Education (Additional Support for Learning) (Scotland) Act 2004, supports the effective

implementation of the above legislation. All of the sections of the code are relevant but particularly the sections on –

[Meeting additional support needs](#)

[School attendance: Rights, responsibilities and placing requests](#)

[Co-ordinated support plan](#)

[Transitions](#)

[Working with children and families](#)

[Resolving disagreements](#)

### **[Equality Act 2010](#)**

The Equality Act 2010 prohibits discrimination and harassment based on certain specified protected characteristics. It further places duties on public authorities to challenge discrimination, advance equality of opportunity and foster good relations for a range of protected characteristics. These protected characteristics are defined in the Equality Act as race, sex, disability, sexual orientation, religion or belief, age, gender reassignment, pregnancy and maternity, and marriage and civil partnership. The provisions of the Act for schools do not apply in relation to age and marriage and civil partnership.

It includes admission to school, the way education is provided, access to a benefit, facility or service, and exclusion. They must not treat pupils with disabilities less favourably and must take reasonable steps to avoid putting these pupils at a substantial disadvantage. The duty related to aids and services means that, since September 2012, schools (including independent schools) have to make reasonable adjustments.

### **[Children and Young People \(Scotland\) Act 2014](#)**

This Act concerns the provision of services and support for children and young people; it includes sections related to the rights of children, children's services planning, early learning and child care, looked after children, adoption, children's hearings, detention in secure accommodation and consultation on certain proposals in relation to schools.

The 2014 Act includes direction on the Assessment of Wellbeing (section 96), specifically in relation to use of the 8 wellbeing indicators: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included. These requirements in relation to the Assessment of Wellbeing are referred to in other legislation and guidance and mean that wellbeing must be assessed in line with section 96 (see annex B).

The attached [glossary](#) provides definitions for different terms including mainstream schools and special schools.

## KEY POLICY DEVELOPMENTS

Key policy developments have included, but are not limited to:

- the introduction of [Curriculum for Excellence \(CfE\)](#)
- the introduction of [Getting it Right for Every Child \(GIRFEC\)](#)
- [The keys to life – Improving quality of life for people with learning disabilities](#)
- [Technical guidance for Schools in Scotland](#) - requirements of Equality Act 2010
- [Included, Engaged, Involved – Part 1: Attendance in Scottish Schools](#)
- [Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions](#)
- [Developing the young workforce](#)
- [Guidance on the education of children unable to attend school due to ill health](#)
- [Supporting children and young people with healthcare needs in schools](#)
- [Respect for All: The National Approach to Anti-bullying for Scotland's Children & Young People 2017](#)
- [Scottish Strategy for Autism: outcomes and priorities 2018-2021](#)
- [National Improvement Framework](#)
- [Scottish Attainment Challenge and Pupil Equity Fund](#)

Services have developed to provide parents, carers and young people on all of the rights and responsibilities in relation to additional support for learning:

[Enquire](#) provides independent and impartial advice for teachers, parents, local authorities and others caring for or working with children and young people with additional support needs.

[Let's Talk ASN](#) is an advocacy and legal representation service that provides help to parents, carers and young people in securing their rights.

[My Rights, My Say](#) is a children's service which provides advice and information, advocacy support, legal representation and a service to seek children's views independently about their support.

The following resources have also been referred to within the guidance –

The Self Evaluation Frameworks for Early Learning and Childcare and Schools -

[How Good is Our Early Learning and Childcare](#)

[How Good Is Our School 4](#)

[How good is our early learning and childcare?: Correlation of quality indicators and themes between How good is our early learning and childcare? and How good is our school? \(4th edition\)](#)

[How Good is OUR School part 2](#)

The Children and Young People's Commissioner Scotland 7 Golden Rules for Participation –

[7 Golden Rules for Participation – Children](#)

[7 Golden Rules for Participation – Young People](#)

[7 Golden Rules for Participation – Accessible versions](#)

## ANNEX B – DECIDING ON THE RIGHT PROVISION – RELEVANT DUTIES

Legislation	Duties	Suggested considerations
Standards in Scotland's Schools etc. Act 2000	<p>Education authority has a duty to make provision that is directed toward the development of the personality, talents and mental and physical abilities of the child to their fullest potential. Also required to have regard to the views of the child in decisions that significantly affect them. (section 2)</p> <p>Education authority in carrying out duty to provide education for preschool and school aged child they shall, unless the three circumstances set out in the section apply, be educated in a mainstream school. (section 15)</p>	<p>Could one or more of the three circumstances set out in section 15 apply:-</p> <ul style="list-style-type: none"> <li>- Not suited to the ability or aptitude of the child</li> <li>- incompatible with the provision of efficient education</li> <li>- would it result in unreasonable public expenditure</li> </ul>
Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)	<p>Education authority has a duty to assess if a child or young person needs additional support and to provide that additional support if they do. (section 4,5)</p> <p>Education authority has a duty to keep under review whether a child's additional support needs continue to be met. (section 10)</p> <p>Education authority has a duty to place a child in the school specified in a placing request, subject to a number of exceptions, including that doing so would breach the section 15 requirement to provide education in a mainstream school. (Schedule 2, paragraphs 2 and 3)</p>	<ul style="list-style-type: none"> <li>-What steps have been taken to make sure the needs of each child or young person have been correctly identified?</li> <li>- Are those identified needs being adequately addressed?</li> <li>- Would different provision or placement provide a better outcome for this child or young person?</li> </ul>

<p>Children (Scotland) Act 1995</p>	<p>When a local authority is considering the promotion of the welfare of children in need and assessing the needs of children who may be affected by a disability they must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing. This should be done in line with the assessment of wellbeing as described in section 96 of the 2014 Act. (section 23A)</p>	<ul style="list-style-type: none"> <li>- How is the wellbeing of the child or young person being safeguarded, supported and promoted in their education provision?</li> <li>- How would a different provision provide better safeguarding, support and promotion of wellbeing?</li> </ul>
<p>Children and Young People (Scotland) Act 2014</p>	<p>The local authority when considering alternative early learning and childcare arrangements to meet wellbeing needs of looked after 2 year olds must assess their wellbeing in line with section 96 of the 2014 Act. (section 96)</p>	



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