

Briefing Note Template

Elected Member Briefing – Additional Support Needs & Parental Choice

Elected Member Briefing Note Ref. No. 2025-08

About this Briefing Note

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Date: 01/10/2025

Subject: Additional Support Needs & Parental Choice

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if exempt or confidential explain risks and consequences.

Purpose

This briefing note is to provide a summary of the Council's statutory duties in relation to meeting the additional support needs of pupils depending on which school they are attending in the local authority area.

Background

At Education & Families Committee on 1 September 2025, there was a question put to officers regarding the statutory obligations to meet the needs of children whatever school they attend.

Subsequently, the following question was received by the Legal Team from a Member of the Education & Families Committee:

Should a child with additional support needs attend a school, either within their catchment area, or out-with their catchment area, (which, hypothetically, is not an enhanced provision school), can you confirm that the SIC are legally bound to meet this child's additional support needs, even if the child does not wish to attend the nearest 'Enhanced provision school'?

This Briefing Note has been prepared by the Team Leader – Legal alongside the Director of Children's Services.

Key points

This area is largely governed by two key pieces of legislation, the Education (Scotland) Act 1980 ("the 1980 Act") and the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") alongside the Council's Admissions

Policy which sets out the catchment areas for Shetland (link:[admissions-policy-2023](#)).

The Council has identified geographical catchment areas which determine a child's school, known as their catchment area school. Children are automatically entitled to attend their catchment area school and will be provided with school transport where required. However, there are two situations where a child does not attend their catchment area school:

1. The child and/or their parents have submitted an application to attend another school, which has been agreed by the Council. This is known as a placing request. The parents become responsible for school transport in these circumstances.
2. Due to the child's additional support needs, the Council can nominate a school that is not the child's catchment area school on the basis that the nominated school can meet the child's additional support needs and the catchment area school cannot. The Council remains responsible for school transport in this situation.

Officers work closely with parents and children to determine the most appropriate school to meet the additional support needs of pupils.

If the Council nominated any other school or a school with an additional support needs unit, but the parent/child wished to remain in their original catchment area school, officers would engage with the parent/child to resolve the situation and find a workable solution.

However, if the Council's decision is that the child should be placed in another school or a school with an additional support needs unit then the parent/child would have to submit a placing request to remain in their original catchment area school. If that placing request was successful as a result of further consideration by the Council, an Education Appeal Committee or ASN Tribunal and the child remained in their original catchment area school, then that pupil's additional support needs would have to be met at that school.

Overview

This section provides more detail regarding the statutory duties described above.

Section 28(1) of the 1980 Act provides that (emphasis added):

'In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.'

The responsibility of an education authority (in this case Shetland Islands Council) towards an individual child is based upon residence in the local authority area. Education authorities will determine how children are allocated between schools and it is commonly decided that a particular school will receive pupils living in a particular part of the local authority area, known as the "catchment area". Children are automatically entitled to attend the school in their catchment area.

However, should a parent wish for their child to attend a school out with their catchment area, they have a right to request a place at a different school. This is known as a "placing request". The Council as education authority cannot refuse a placing request unless one of the statutory grounds for refusal exist, set out in s.28A(3) of the 1980 Act. The statutory grounds for refusal can be summarised as follows:

1. If it would be necessary for the authority to employ an additional teacher
2. If it would result in significant expenditure on extending/altering the facilities provided in the school
3. If it would be seriously detrimental to order and discipline within the school
4. If it would be seriously detrimental to the educational well-being of pupils attending the school
5. If it would be necessary to create an additional class in future
6. If it would result in the capacity of the school exceeding in terms of pupil numbers
7. If the education normally provided at that school is not suited to the age/ability or aptitude of that child.

These statutory grounds for refusal are also broadly similar for children who have additional support needs and those grounds are set out in the 2004 Act.

Therefore, in relation to a child with additional support needs, placing requests can be refused if the school nominated in the placing request could not meet the child's needs and the child's needs would be better met by attending another school.

The Admissions Policy referred to above sets out the process for parents to follow when making a placing request.

Where the Council determines that a child's additional support needs cannot be met at the child's catchment area school, the child can be placed by the Council

in a school which better meets their educational needs – e.g. any other school or a school with an additional support needs unit. If a child is placed in that school, that becomes their catchment area school regardless of where they reside in Shetland and the Council as education authority become responsible for the school transport.

Ultimately, it is the aim of all involved in the child's education, including the child's parents, to agree on where the child should receive an education. Whilst parental choice should always be taken into account, what is in the best interests of the child is the paramount consideration.

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