



CONSULTATION

Scottish Government
Learning Disabilities, Autism and Neurodivergence Bill
21 April 2024

Introduction

1. NASUWT welcomes the opportunity to comment on the Learning Disabilities, Autism and Neurodivergence Bill consultation.
2. NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education and across all 32 local authorities in Scotland.

GENERAL

3. NASUWT is in favour of a framework which would provide protection and support for autistic and neurodiverse individuals and people with learning disabilities. It is important that a clear message is given that diversity and inclusion are strengths and Scotland has an opportunity to be world-leading in terms of visible support and messaging. Indeed, NASUWT has been utilising a training programme to support our cohort of union representatives in their role to campaign for neuro-inclusive workplaces and to promote neurodiversity at work.
4. People with learning disabilities, autistic people and neurodivergent people make up around 15% of our society and any stigma or disadvantage must be addressed to ensure their rights are respected. It is equally important to ensure that the voice and experience of those

people with lived experience is embedded within the consultation process and any future reviews.

Part 1: Reach and definitions: who should the Bill include?

5. NASUWT agrees that language associated with the social model of disability, rather than a medical model, should be used and, further, that people should be able to be recognised even if they do not have a formal diagnosis.
6. While the union is not in favour of listing certain specific conditions to which the bill will apply, it is equally important that any definition is clear and easily understood. Already within the education sector there is some confusion and conflation between Additional Support Needs (ASN) and disability, as legally defined under the Equality Act – with ASN having greater familiarity.
7. Of the three options, NASUWT would prefer Proposal 2: 'People who are Neurodivergent/'Neurodivergent People' as this is similar to the approach taken by the Education (Additional Support for Learning) (Scotland) Act 2004, where a child or young person does not require a diagnosis to be able to receive support

Part 2: Overarching Themes

- **Which of these proposals do you agree with (if any), please tell us why?**
- **Which of these proposals do you not agree with (if any), please tell us why?**
- **Is there anything else that we should consider in relation to this topic?**

Proposal 1: Introduce a requirement for a national strategy on learning disabilities and neurodivergence to be produced by the Scottish Government.

Proposal 2: Introduce a requirement for local strategies to be produced by some public bodies, for example health and social care partnerships, local authorities, and other public bodies.

Proposal 3: Introduce guidance that could cover a range of topics to be included in national and local strategies.

Proposal 4: Ensure that there is a requirement to review strategies, for example every 5 years.

Proposals 5: Ensure that people with lived experience have to be involved in the development of the strategies.

Proposal 6: Consider whether any new accountability mechanism introduced by the Bill should have a duty to review national and local strategies and their effectiveness.

8. There is a significant risk in many of these proposals that they will be bureaucracy-heavy and action-light. We have seen with the Public Sector Equality Duty that national and local reporting can easily become a performative tick-box exercise.
9. A national strategy, informed by lived experience and supported by guidance, as outlined in proposals 1, 3 and 5, with a review in the first instance would allow for a longer lead-in time for individual public bodies.
10. Any new accountability mechanism should be able to undertake targeted reviews – it may be too onerous to ask them to review all national and local strategies alongside their effectiveness. It would be better to be more strategic and in-depth. This might also include consideration of the role of the voluntary sector (e.g. Scouts groups, Girl Guides, etc...) and their provision for young people in their care.

Section 2: Mandatory Training in the Public Sector

11. NASUWT does not believe it is appropriate to have an approach to training/professional learning which applies uniformly across the public sector. Teaching is a profession which requires GTCS registration. In order to maintain registration, teachers are required to undertake

professional learning and review against the GTCS Professional Standards, which describe teacher professionalism in Scotland.

12. Any training or professional learning approach will need to be set within a framework that does not privilege particular needs and disabilities over others. For example, during the progress of the Westminster Bill looking at the rights of those with Down's Syndrome, as members of the Special Education Consortium (SEC), NASUWT and other organisations, including those representing the Down's Syndrome community, were concerned that the Bill was too narrowly focused, and did not introduce any new rights or requirements in respect of education. The changes that were being sought could have been met if existing legislation and regulations were actually implemented.
13. So it is really important to the Union that this bill bridges Autism and learning disabilities broadly and that we are alive to any narrowing of perception, curriculum or training within education.

Section 3: Inclusive Communications

14. While broadly in favour of embedding inclusive communication, it is very difficult to comment in any detail without a clear definition of what communicating in an inclusive way is intended to mean.
15. As part of any definition, the Scottish Government should consider the medium for communication, the language used, the length and formality of communication, the accessibility of translations, larger print, accessible script size and font, BSL and captions, as well as timing. The consultation document omits any reference of timing when discussing inclusive communication, but this is, in fact, a critical component.
16. There are, however, a plethora of statutory sources set out within the consultation document mandating compliance. Rather than adding further statutory requirements, the Bill might be better to focus on ways

to provide exemplification and support rather than duplication.
Therefore, only Proposal 4 would seem to be a workable way forward.

Section 4: Data

17. Scotland's Equality Evidence Strategy (2023 to 2025) was published only last year. It acknowledges gaps in the evidence-base but includes a three year plan to make improvements. Adding additional statutory data requirements at this time would, therefore, be duplication and bureaucracy-heavy.

18. Any duty must be proportionate and, of the listed options, Proposal 2 seems the most reasonable: placing duties on some relevant public bodies to collect data on neurodivergent people and people with learning disabilities where this would be helpful for better understanding of the needs of these groups and their experiences; this then informing service design and improvement and allowing for an evaluation of measures to improve outcomes for these groups.

Part 3: Specific Themes (respond only to certain sections)

Section 8: Employment

19. NASUWT agrees that disabled people face some of the most persistent labour market barriers and fully support the Scottish Government commitment to at least halve the disability employment gap by 2038.

20. While more needs to be done to support people with learning disabilities and neurodivergent people to access fair and sustainable employment, particularly in light of the available data which suggests these groups achieve some of the poorest labour market outcomes, even compared to wider disability groups, this Bill is not the place to achieve that. The Union agrees with the current proposal to avoid legislative changes.

Section 11: Restraint and Seclusion

21. NASUWT agrees that this Bill would not be the right place to explore seclusion and restraint.
22. The Union would, however, like to take this opportunity to remind Government that there has, to date, been a clear and complete abdication of responsibility on the part of the Scottish Government in failing to provide new advice on seclusion and the use of restraint. Statistics published from a survey last year showed four in 10 Scottish teachers reported experiencing violence or physical abuse in the previous 12 months, while 93% said the issue had increased. Draft guidance was published by ministers in 2020, however, the Scottish Government pledged to publish more concrete guidance by the end of 2023: this deadline has not been met. Why are we still waiting for this essential guidance 18 months after the Scottish Government consultation closed?

Section 13: Education

23. NASUWT agrees that existing ASN legislation is not deficient, rather, there is a gap between the policy intention of the legislation and its implementation. We have the ASL Review Action Plan and the Morgan Review recommendations to work through – there is a risk any further legislation in this area will muddy further the already cluttered legislative landscape.
24. Proposal 1 references the National Improvement Framework (NIF). A key question which requires to be asked is whether the NIF, as an improvement activity, has had the desired impact and supported

meaningful improvement? Despite repeated calls from the Union, the NIF has not yet taken time to evaluate its own impact. We need the NIF to be sufficiently reflective to realise that measuring a thing does not automatically improve it – indeed, where resources are limited, it can cause a detriment because the time and effort of teachers is diverted from their core role of teaching and learning towards potentially unnecessary and certainly ineffective bureaucracy.

25. The NIF is unpopular among teachers and has been described by some as *'an absolute waste of teachers' time and energy'* while others in their feedback to NASUWT have suggested *'the NIF rambles on, shambling its way through hours of meetings and meaning very little to classroom teachers - sooo many words - sooo little effect'*.

26. The Union believes that gathering more data via NIF would not currently be proportionate or reasonable. Schools are still within the recovery phase of the pandemic and any additional workload burdens should be avoided at this time.

27. Proposal 2 discusses mandatory training for teachers. In December 2021, the Union responded to the Parliamentary petition PE1870: Ensure teachers of autistic pupils are appropriately qualified¹ setting out that:

'The NASUWT receives feedback from members indicating the variability of training experience between ITE providers in many areas, including ASN, equalities, and behaviour management. It is agreed that student teachers are entitled to high-quality baseline training which prepares them to assist pupils with a range of additional needs, including those of autistic children. However, it is equally important that the Committee recognises the limitations inherent within that training. It is impossible for any institution to cover all potential ASN within their syllabus.'

¹ <https://www.nasuwt.org.uk/static/605af5e9-a51b-4f69-887cc9aae06c59f2/Consultation-Response-Scotland-Citizen-Participation-and-Public-Petitions-Committee-Ensure-Teachers-of-Autistic-Pupils-are-Appropriately-Qualified.pdf>

The NASUWT is not in favour of an identified prescriptive list of conditions which ITE students must address, as this will not support teachers to assist all their pupils, many of whom may have complex and nuanced needs. This is especially true in the context of the policy aim of Getting it Right for Every Child (GIRFEC). Any list would necessarily be limited in range and could exclude other conditions that may be regarded legitimately as at least as important as those included on such a list. Training at ITE on ASN cannot be viewed in isolation. It is but one element of support to complement a range of whole-school and targeted approaches to help support the mental, emotional, social and physical wellbeing of children and young people. It is important to also recognise that while striving to ensure consistency across a provider, improved ITE training on ASN will not provide a quick fix on its own to guarantee that appropriate ASN support is available to all schools, teachers and learners across Scotland'.

28. A multifaceted approach is required to ensure pupils can access appropriate support both within and outwith schools. This includes: appropriate Career-Long Professional Learning (CLPL); teachers being able to access sufficient time for learning, professional dialogue with colleagues, and reflection; workload that is manageable; appropriate levels of support staff to be made available; and appropriate advice and guidance from central support services.

29. Simply put, without investing in appropriate provision, it is to be anticipated that the education and mental health and wellbeing of children with ASN will continue to be compromised.

30. Rather than collecting even more data on ASN within schools, we need to agree to reduce class sizes. The work of the SNCT ASN Working Group should be fast-tracked to conduct and conclude a major investigation and research into the current definitions and class size maxima as outlined in Part 2: Appendix 2.9 of the SNCT Handbook in

order to refresh them for teaching and learning in the twenty-first century. A Bill is not required to gather this data, rather, the political will of COSLA and Scottish Government is more urgently necessary.

Section 14: Children and Young people – Transitions to Adulthood

31. NASUWT responded to the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill in October 2022² and therein stated:

The Union agrees that the families of disabled children and young people are experiencing real difficulties in transitioning from children's to adult services and are feeling isolated fighting for services with their own local authority. It is accepted that genuine concerns have been raised around transparency and accountability of decision-making. Rather than push responsibility for securing successful onward transition onto schools, might it not be more straightforward to overhaul and standardise across Scotland the provision and access to adult services for disabled young people? Creating graduation within the current system and ensuring every young person is fully included in decision-making and experiences a positive, collaborative person-centred approach to their support could be done without enacting the provisions of the Bill. If the reticence to overhaul and review adult services within Scotland is due to an unspoken acceptance that this would require considerable investment which is not able to be guaranteed, then we are designing a system which is destined to fail: schools cannot be responsible for fixing all societal ills.

32. NASUWT agreed with the Education and Skills Committee's subsequent report, which set out that the current legislative landscape is complex, cluttered, and difficult to navigate for young people and their families, and, in some instances, for the professionals working to support them. It is clear that introducing further legislation in an

² <https://www.nasuwat.org.uk/static/85e8f524-4f41-441e-bebcd45eb6533e45/Consultation-Response-Education-Committee-Disabled-Children-and-Young-People-Bill.pdf>

already cluttered and complex legislative and policy landscape would not resolve systemic issues.

Part 4: Accountability

33. NASUWT would support the role of an Autism Commissioner in raising the profile of autism and the importance of ensuring that pupil and staff needs are identified and met, particularly in respect of work and the workplace.

34. The following motion was passed at the 2023 NASUWT Scotland Conference:

COMPOSITE B: ADDITIONAL SUPPORT NEEDS (ASN)

Conference notes that in some areas:

- (i) CAMHS no longer has involvement with children and young people after providing a diagnosis of autism despite having a legal obligation;*
- (ii) additional support staff, promised in August, have still not been provided.*

Conference believes that local authorities which do not have any specialists for Additional Support Needs, but assume that mainstream provision is suitable for everyone are not meeting the needs of all their pupils and putting additional strain on the workload of classroom teachers.

Conference further notes time spent dealing with a small percentage of ASN children is disproportionate to their peers because of the lack of ASN specialists and limited for those specialists to support mainstream colleagues. Conference condemns the continued assumption of the mainstream and the expectations that all high tariff learners can be integrated into mainstream classes. The resultant behaviour of the learners whose needs are not being met affects the health and well-being of colleagues, causing injury, harm and long-term health problems.

Conference calls on the Scotland Executive Council to:

- (a) continue its investigation into ASN budgets and the loss of skilled ASN staff;*

- (b) step up its campaign ensuring transparency and honesty in the provision of ASL across sectors and that provision is meeting pupil needs;*
- (c) campaign to promote the effective, needs-based deployment of skilled and qualified ASN teachers to provide a varied and flexible service which meets the needs of learners and is supportive of mainstream colleagues;*
- (d) campaign to have adequate time within the school day for ASN teachers to support mainstream colleagues by carrying out the 5 roles of ASN;*
- (e) campaign for COSLA and the Scottish Government to improve resourcing and training for all teachers and support staff working with learners who have a developmental condition, so that schools and the curriculum can be accessible for all learners;*
- (f) support the campaign for an Autism Champion so that all of us who support young people with developmental issues can provide the services and learning needed.*

For further information, please contact:

nasuwt@mail.nasuwt.org.uk

www.nasuwt.org.uk

Dr Patrick Roach

General Secretary

NASUWT

35 Young Street North Lane

Edinburgh

EH2 4JD

Tel: 0131 226 8480

NASUWT is happy for this response to be published with our name and to be contacted again by the Scottish Government in relation to this consultation exercise. We confirm that the privacy policy has been read and consent to the data we have provided being used as set out in the policy.