EDUCATION (DISABILITY STRATEGIES AND PUPILS’ RECORDS) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Education (Disability Strategies and Pupils’ Records) (Scotland) Bill introduced in the Scottish Parliament on 18 December 2001:
   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 45–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill will require local authorities, proprietors of independent schools and managers of grant-aided schools to prepare accessibility strategies to improve access to education for children with disabilities; require those authorities and proprietors to review and implement these strategies; and empower the Scottish Ministers to make regulations in relation to the keeping, transferring and disclosure of pupils’ educational records.

5. The provisions relating to accessibility strategies will complement the provisions inserted in the Disability Discrimination Act 1995 (c.50) (by sections 11, 12 and 13 of the Special Educational Needs and Disability Act 2001 (c.10)) which state that it is unlawful to discriminate against school pupils and prospective school pupils on grounds of disability. Provisions relating to accessibility strategies will bring in similar requirements in Scotland to those which will apply in England and Wales by virtue of provisions inserted in that Act of 1995 by sections 14 and 15 of that Act of 2001.

Sections 1 and 2 – Accessibility strategies

6. Section 1 places a duty on responsible bodies 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. The strategy must also provide for the improvement of communication of school information to pupils with disabilities.

7. Section 6 provides that a “responsible body” is—
   - in relation to schools managed by an education authority, that authority (an “education authority” is a local authority); and
   - in relation to independent schools and grant-aided schools, the governing body, trustees, or other person or body of persons responsible for the management of the school.

8. Each responsible body’s accessibility strategy must set out their plans for increasing the accessibility of all the schools for which they have responsibility, including nursery schools. Section 2 provides that a local authority’s strategy must also include plans for increasing access
to the physical environment, the curriculum and information in relation to education provided to children under school age in non-school premises managed by the local authority.

9. Individual strategies need not be prepared in respect of each school. For example, a local authority need prepare only one strategy in relation to all of the schools they manage. A responsible body does not have to produce a free-standing strategy. Instead, for example, a local authority could incorporate the strategy into their annual statement of improvement objectives. Section 1(5) places responsible bodies under a duty to implement their strategies once these are in place.

10. Responsible bodies will have to keep their strategies under review, and revise them if necessary in light of that review. The Scottish Ministers will prescribe, in regulations, the period that strategies must cover and will issue guidance as to the regularity with which a responsible body should review, and if necessary revise, their strategy.

Section 3 – Accessibility strategies: procedure

11. This section sets out what responsible bodies will have to consider when preparing their strategies and the duties they must comply with once the strategies are in place. They will need to have regard to the need to allocate adequate resources to implement their strategies and they will need to consult children, young persons and parents in preparing their strategies. They will also need to have regard to any guidance issued by the Scottish Ministers as regards the content and form of strategies and any additional groups or individuals who should be consulted in its preparation.

12. A responsible body will be required, on request, to make a copy of their strategy available to the Scottish Ministers; and will be required to make a copy of their strategy available for inspection at reasonable times. The existing powers of Her Majesty’s Inspectorate of Education (contained in sections 9 to 12 of the Standards in Scotland’s Schools etc. Act 2000) will enable them to establish whether accessibility strategies are in place and whether they are being implemented and reviewed as required.

Section 4 – Educational records

13. This section gives the Scottish Ministers power to make regulations governing the keeping, transfer and disclosure of pupils’ educational records. Regulations made under this section may provide for the supply of copies of school records to such persons prescribed in those regulations, and may also authorise persons supplying copies of school records to charge a fee for those copies, which must not exceed the cost of supply. The regulations would apply to educational records held by local authority, grant-aided and independent schools.

Section 6 – Interpretation

14. Subsection (2) provides that expressions used in the Bill are to have the same meaning as is ascribed to those expressions in the Education (Scotland) Act 1980 (c.44) (“the 1980 Act”). The 1980 Act gives the following definitions—
These documents relate to the Education (Disability Strategies and Pupils’ Records) (Scotland) Bill (SP Bill 45) as introduced in the Scottish Parliament on 18 December 2001

- “child” means a person who is not over school age;
- “education authority” means a council constituted under section 2 of the Local Government (Scotland) Act 1994 (a local authority);
- “managers”, in relation to an educational establishment, means the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority;
- “parent” includes guardian and any person who is liable to maintain or has parental responsibilities in relation to or has care of a child or young person;
- “proprietor” in relation to an independent school means the managers of such school […];
- “prescribed” means prescribed by the Secretary of State [Note: this reference to the Secretary of State must now, by virtue of section 53(1) of the Scotland Act 1998 (c.46), be read as a reference to the Scottish Ministers];
- “pupil”, where used without qualification, means a person of any age for whom education is or is required to be provided under the 1980 Act; and a pupil shall be deemed to be attending or in attendance at a school if he is shown by the register of admission and withdrawal kept at the school in accordance with regulations made under the 1980 Act, or by any other register approved by the Secretary of State [now the Scottish Ministers] and kept for a similar purpose, to have been admitted to, but not to have been withdrawn from, or to have been readmitted to, and not thereafter to have been withdrawn from, the school;
- “school” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school; and the expression “school” where used without qualification includes any such school or all such schools as the context may require;
- “school age” means a person who has attained the age of five years and has not attained the age of sixteen years;
- “young person” means a person over school age who has not attained the age of eighteen years.

FINANCIAL MEMORANDUM

COSTS ON THE SCOTTISH ADMINISTRATION

Accessibility strategies

15. The Scottish Executive will include £9 million in grant aided expenditure for 2003-04 to enable local authorities to implement their accessibility strategies by undertaking improvements to buildings, equipment and staffing to increase access for pupils with disabilities. The
preparation of accessibility strategies will assist local authorities in identifying what improvements are needed.

16. As part of the Scottish Executive Excellence Fund, the Inclusion Programme promotes inclusion and equality in Scottish schools by providing funding to enable local authorities to improve access to school buildings and the curriculum for pupils with special educational needs, including those with disabilities. The Scottish Executive is providing local authorities with £51 million through the Inclusion Programme over the 3 years 2001-02 to 2003-04. This funding is ring-fenced and is distributed on the basis of the population of persons aged between 2 and 19 attending schools in each local authority area. This Inclusion Programme funding is expected to continue in following years.

**Pupils’ educational records**

17. There will be no significant increase in the costs on the Scottish Administration attributable to the power to make provision regarding pupils’ educational records.

**COSTS ON LOCAL AUTHORITIES**

**Accessibility strategies**

18. Local authorities should already consider access for children with disabilities when preparing Improvement Plans, which they submit to the Scottish Executive to indicate what they propose to spend their Inclusion Programme funding on.

19. The costs associated with preparing accessibility strategies will be the staff time required to read future guidance issued by the Scottish Ministers on the preparation, content, implementation and review of strategies; to examine the content and monitor the implementation of existing plans relating to accessibility; to consult relevant stakeholders; and to prepare and arrange for the implementation of the strategy. The amount of time required will therefore vary in different authorities, according to the level of planning currently carried out and the number of schools, nursery schools and non-school centres providing pre-school education for which they are responsible.

20. The implementation of accessibility strategies is expected to cost local authorities at least the amount available to them through the £9 million dedicated to implementation of accessibility strategies and a significant proportion of resources received through the Inclusion Programme. Approximately three-quarters of Inclusion Programme funding in 2001-02 is believed to be directed towards pupils who, under the Bill, are considered as having a disability. The remaining one-quarter is directed towards benefiting children who have special educational needs, but would not be “pupils with a disability” within the meaning ascribed to that expression by the Bill.

21. On this basis, the Bill will be expected to cost the 32 local authorities approximately £12-14 million of Inclusion Programme funding in 2002-03 (this being approximately 75% of the £17.5 million allocated for the Programme) on continuing their improvements to access to education for pupils with disabilities and in preparing their accessibility strategies. In 2003-04,
the Bill will be expected to cost local authorities approximately £22-24 million directly on implementing accessibility strategies (this being approximately 75% of the £19.5 million allocated for the Inclusion Programme, along with the £9 million dedicated to assist the implementation of the Bill). Inclusion Programme funding is expected to be allocated in future years and review and implementation of their accessibility strategies would be expected to continue to cost local authorities a similar amount to the 2003-04 cost over the next few years, with continuing central grant support being made available.

**Pupils’ educational records**

22. The provisions relating to regulation of pupils’ educational records should not result in any additional costs on local authorities. Parents previously had a right to access their child’s records, and procedures were put in place by authorities to process such requests before the Data Protection Act 1998 came into force. The regulations to be made under the Bill will not require any significant changes to those processes. By reinstating the independent rights of access that parents previously had, and the circumstances in which they may exercise those rights, regulations will save authorities any time they may otherwise have spent in establishing the competence of requests received from parents.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

**Accessibility strategies**

23. The costs to proprietors of independent schools and managers of grant-aided schools which will arise from the duties imposed in relation to accessibility strategies are difficult to estimate because these costs will vary widely from school to school.

24. There are, at present, 105 independent schools in Scotland, 33 of which are special schools. There are also currently 8 schools with grant-aided status. Of these 113 schools, few already have written plans for access for pupils with disabilities and those schools responding to the consultation felt unable to put a figure on the cost of preparing and reviewing an accessibility strategy (they felt it was more important to consider the costs of implementation of the strategy). Further details are contained in a Regulatory Impact Assessment, which is available on the Scottish Executive website at [www.scotland.gov.uk](http://www.scotland.gov.uk).

**Pupils’ educational records**

25. Proprietors and managers of such schools should not incur any significant additional costs as a result of the provision made in relation to the regulation of pupils’ educational records. In fact, independent and grant-aided schools already give parents access to certain records held about their children. There would be no costs on other bodies, individuals or businesses.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

26. On 18 December 2001, the Minister for Education and Young People (Cathy Jamieson) made the following statement:

“In my view, the provisions of the Education (Disability Strategies and Pupils’ Records) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

27. On 14 December 2001, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Education (Disability Strategies and Pupils’ Records) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
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