Attainment of pupils with a sensory impairment

The Equality and Human Rights Commission is the National Equality Body (NEB)\(^1\) for Scotland, England and Wales, and works to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A Status”\(^2\) National Human Rights Institution (NHRI)\(^3\), and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

The Commission welcomes the opportunity to comment on the issue of attainment of pupils with sensory impairments. The provision—or lack of—tailored support for pupils with sensory impairments can contribute significantly to attainment and future life chances and outcomes\(^4\). In our role as an NEB and NHRI, we feel it would be useful to place the Committee’s inquiry in the context of Scotland’s domestic and international equality and human rights obligations. In particular, the Committee should consider:

- How well schools are meeting their statutory duties in relation to reasonable adjustments and the provision of auxiliary aids and services.
- The extent to which education authorities are aligning work to support pupils with sensory impairments with the strategic priorities set out in their equality outcomes.
- The extent to which national and local policies are taking account of, and seeking to realise, international human rights obligations.

Scotland’s Schools and the Equality Act 2010

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\(^1\) [www.equinet-europe.org/Equality-bodies](http://www.equinet-europe.org/Equality-bodies)

\(^2\) [www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)


Every school in Scotland, regardless of how it is funded or managed, has duties under the Equality Act 2010. Under the Act, it is unlawful for a school to discriminate against a disabled applicant or pupil in relation to:

- Admissions
- The provision of education
- Access to any benefit, facility or service
- Exclusions
- Any other detriment\(^5\)

Schools and education authorities also have a duty to provide reasonable adjustments for disabled pupils under the Act\(^6\). The reasonable adjustments duty is triggered where there is a need to avoid ‘substantial disadvantage’. Substantial is defined as being anything more than minor or trivial. For example, a visually impaired pupil who can only see material in 16 point font would be at a substantial disadvantage compared to non-disabled pupils by the provision of written materials in smaller print.

From 1 September 2012 the reasonable adjustments duty for schools and education authorities includes a duty to provide auxiliary aids and services for disabled pupils. Some disabled children and young people will have additional support needs and the necessary auxiliary aids may already be being provided under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). In these cases the schools will be under no obligation to duplicate that support. However some disabled pupils may not have additional support needs and they may require auxiliary aids to prevent them being at a substantial disadvantage. An auxiliary aid or service for a pupil with a sensory impairment might take the form of a piece of specialist reading software, or an induction loop.

**The Public Sector Equality Duty** requires all public authorities to have due regard to the need to

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• Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
• Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
• Foster good relations between people who share a protected characteristic and those who do not.

The duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:

• Take effective action on equality
• Make the right decisions, first time around
• Develop better policies and practices, based on evidence
• Be more transparent, accessible and accountable
• Deliver improved outcomes for all.7

In Scotland key public authorities, including Education Authorities, are subject to the specific devolved equality duties which set out the steps they must take to meet the requirements of the general duty8. These include the requirement to set equality outcomes (using evidence gathered from the involvement of groups who share one or more protected characteristic), and to assess the equality impact of any proposed new or revised policy.

Education authorities should therefore be taking a strategic approach to advancing equality in education in their areas, with evidence-based outcomes developed from the involvement of groups who share one or more protected characteristic. The deadline for authorities’ first round of reporting on progress against equality outcomes is May 2015.

International human rights obligations

7 Extensive guidance is available at www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-public-authorities/
8 www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties
The United Kingdom is also a state party to a number of international human treaties. The International Covenant on Economic, Cultural and Social Rights (ICESCR)\(^9\) requires state parties – “to the maximum of its available resources” (Art 2) to progressively achieve the full realisation of the rights contained in the convention. These rights include the right to education (Art 13).

The UN Convention on the Rights of the Child (CRC)\(^10\) requires states “to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development” (Art 23).

Finally, Article 24 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)\(^11\) requires state parties to ensure that “persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live”. Article 7 of the Convention requires states to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”

“Is Britain Fairer?” – the EHRC 2015 Quinquennial Review
The EHRC has a statutory duty under Section 12 of the equality Act 2006 to monitor progress towards equality and human rights and to report on this progress every five years. To fulfil this statutory duty, the Commission has developed its measurement framework to collect evidence on equality and human rights. The Framework, which covers England, Scotland and Wales, formed the basis of the first of these reports in 2010 – “How Fair is Britain?”.

The 2015 report “Is Britain Fairer?” and subsequent publication “Is Scotland Fairer?” will incorporate updated evidence from the EHRC's Measurement

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\(^9\) [www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx)

\(^10\) [www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx)

Framework and other sources. It will also integrate evidence on human rights. The findings of the report will inform the Commission's strategic plan and influence the priorities of other organisations.

The evidence gathered and analysed for the report covers England, Scotland and Wales and will be analysed at GB and country level. It has been structured in 10 domains, which focus directly on those things in life that people say are important for them to actually do and be. One of these domains will cover education and learning.

The mix of qualitative and quantitative evidence gathered will be presented in a paper covering

- Structure: Overview of legislative and regulatory frameworks
- Process: Analysis of evidence and effectiveness of systems
- Outcomes: Key indicators of people's treatment, experiences and outcomes

The Commission would be delighted to share the findings of the education and learning paper with the committee when it is published.

I hope this information is of use to the Committee. If I can be of further help, please do not hesitate to get in touch.

Yours sincerely

Alastair Pringle
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