

NORTH LANARKSHIRE COUNCIL
REPORT

To: Education Committee	Subject SEN and Disability Rights in Education Bill Consultation
From: Director of Education	
Date: 2 May 2000	
Ref: m MON/RM/RM	

Purpose of Report

This report provides members with information on SEN and Disability Rights in Education Bill Consultation and details the proposed response for the authority to recommendations contained therein.

Recommendations

The education committee is asked to:

- (i) note the contents of the report which is a joint one involving community services, education and social work
- (ii) approve the report as the formal authority response for submission to the Scottish Executive.
- (iii) Refer the report to the Social Work, Social Inclusion and Community Services Committees for consideration.

Chestine Pollock

Members wishing further information about this report should contact:

Michael O'Neill, Director of Education on 01236-812336
Dan Sweeney, Head of Quality Development on 01236-812291

NORTH LANARKSHIRE COUNCIL - DEPARTMENT OF EDUCATION**SEN and Disability Rights in Education Bill Consultation****Report by Director****1. BACKGROUND**

1.1 The Department for Education and Employment (DfEE) plans to introduce a Bill during the current Parliamentary Session to take forward proposals in relation to special educational needs (in England and Wales) and rights for disabled people in education (across Great Britain). The Government wishes to consult those with an interest before that legislation is introduced into Parliament.

1.2 In the context of Scotland, therefore, the consultation – and the forthcoming Bill – will cover:

Rights for disabled people in education (in Great Britain):

- In schools; and
- In post-16 education, i.e. in further, higher and adult education and youth services provision and, in Scotland, community education

2. A Guide to the Consultation Document

2.1 The provision of many educational services to the public is currently exempted from Part III of the Disability Discrimination Act (DDA) 1995 (access to goods, facilities, services and premises). The Government believes that this exemption is unjust and indefensible. The Government therefore proposes that new duties should be applied to education in schools (including nursery schools), further education, higher education, adult education, youth service provision and, in Scotland, community education. The new legislation is intended to ensure that people in education receive protection from unfair discrimination as disabled people in other areas of society now enjoy.

2.2 The Government announced a three strand strategy in October 1997 to take forward its manifesto commitment to “comprehensive, enforceable civil rights for disabled people”. It undertook to:

- a. establish a Disability Rights Commission (DRC)
- b. implement the later rights under Part III of the Disability Discrimination Act (Access to Goods and Services); and

- c. establish a Disability Rights Task Force (DRTF) to advise the Government on how to implement its manifesto commitment.

2.3 The DRC becomes operational in April 2000. New rights under Part III of the DDA were implemented in October 1999 and the final rights will be implemented in 2004. The DRTF was established in December 1997 and its final report was published in December 1999 with over 150 recommendations. The Government announced its intention to legislate to address the education recommendations immediately and is considering other recommendations.

2.3 The definition of disability to be used with the new duties is that given in the Disability Discrimination Act 1995. The DDA defines a disabled person as someone who has:

“a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”.

It also provides protection for people who have had a disability in the past.

2.5 Not all disabled children will have a special educational need or a learning difficulty, although many will. The Scottish Executive is preparing advice for education providers in Scotland.

2.6 An education provider will not be required to do anything under the new duties that will result in a breach of legal obligations under other legislation or enactment.

2.7 In many cases, the need to make adjustments for disabled children and students arises because their needs have not been considered in advance. The new duties will include a requirement for institutions to think about the needs of disabled students in advance.

2.8 Education providers will be considered to know of a pupil's or student's disability when a member of staff is told or where the provider would be reasonably expected to know the pupil or student is disabled. Otherwise, if a student fails to declare a disability or asks a member of staff or counsellor to keep it confidential, then the education provider cannot be expected to make adjustments to meet their particular needs.

2.9 The Government wishes to implement the duties as soon as is reasonably practical. It recognises that some of the duties carry greater implications for education providers and will therefore need to consider whether to stage the implementation so that the timetable for the introduction of the new duties is realistic. For the duties to be implemented, the rights of redress mechanisms will need to have been established.

3. Key DRT Recommendations for Schools

- 3.1 The proposed legislation would make it unlawful for education providers to discriminate against a disabled child by:
- a. treating a disabled child less favourably on the grounds of their disability than a non-disabled child, without justification, in the arrangements made for the provision of education;
 - b. failing to take reasonable steps to change any policies, practices or procedures which place a disabled child at a substantial disadvantage compared to a non-disabled child; and
 - c. failing to take reasonable steps to provide education using a reasonable alternative method where a physical feature places a disabled child at a substantial disadvantage compared to a non-disabled child.
- 3.2 Disabled children will have new rights of redress in relation to these duties. In Scotland, it is proposed that the Sheriff Court would hear cases.
- 3.3 The Disability Rights Commission will produce a code of practice for education providers in relation to the new rights.
- 3.4 In England and Wales, there will also be a new duty on education providers to plan systematically to increase the accessibility of schools for disabled children. The Scottish Executive will consider proposals to introduce this measure in due course.
- 3.5 The general principle is that the disabled child should never be discriminated against (on the grounds of their disability) in the arrangements made for the provision of education. However, less favourable treatment may be justifiable in some circumstances, though each case would be judged on its merits.
- 3.6 School policies, practices and procedures should not put a disabled child at a substantial (i.e. more than minor or trivial) disadvantage to non-disabled children. The duty is that schools should review their policies, practices and procedures to ascertain whether they are likely to have such an effect in their application to disabled pupils and, if the answer is yes, change those policies and practices unless they are justified.
- 3.7 Where physical features of premises place a disabled pupil at a disadvantage with non-disabled children, the school should be required to do everything it reasonably can to mitigate the effects of the feature and provide the pupil with educational service. The school will not be required to remove or alter the physical features of the premises.

- 3.8 There should be rights of redress for disabled children and their parents where they feel that they have suffered unfair discrimination in schools on the grounds of the child's disability.
- 3.9 Schools are covered currently by Part III of the DDA in respect of the right of access to goods, facilities, services and premises for the non-educational services that they provide.
- 3.10 It is intended that the new duties will apply to teaching during school hours and all other teaching, activities and other opportunities offered to pupils by or with the authority of the school.
- 3.11 The duties should apply to:
- a. children of compulsory school age;
 - b. children who are below compulsory school age if they receive nursery education in a school;
 - c. children who exceed compulsory school age if they are pupils at a school.
- 3.12 The new duties not to discriminate against disabled children in schools will apply to the admissions arrangements for publicly-funded, grant-aided and independent schools in Scotland. The current systems of admissions for publicly funded schools (of catchment areas of feeder primaries, and placing requests) will not change; rather, authorities will be under a new duty to avoid discrimination against disabled children in the way in which they operate admissions to schools.
- 3.13 This general right of action in the Sheriff Court in cases of disability discrimination in Scotland will also apply to cases of disability discrimination in relation to school admissions in publicly-funded, grant-aided and independent schools. In practice, on appeals in relation to placing requests, the Government would expect that Education Appeal Committees take claims of discrimination on grounds of disability into account when making their decisions.
- 4. Disability Rights Task Force (DRTF) recommendations on post-16 education**
- 4.1 The Government proposes new duties that would cover further and higher education sector institutions and local authorities in Scotland in relation to the further education (including local authority community education services in Scotland) they secure.

- 4.2 The legislation would make it unlawful for these education providers, in relation to the provision of education and services provided primarily for students, to discriminate against a disabled person by:
- a. failing to make a reasonable adjustment, where any arrangements, including physical features of premises, place him at a substantial disadvantage in comparison to person who are not disabled; or
 - b. unjustifiably treating him less favourably, for a reason which relates to his disability, than the provider treats others to whom that reason does not apply.
- 4.3 A Code of Practice prepared by the Disability Rights Commission would be issued in relation to the new duties. A disabled person complaining of discrimination would have redress through the Sheriff Court. The Government proposes that voluntary conciliatory arrangements are available in relation to complaints under these new duties.
- 4.4 These provisions, together with the schools provisions, will form new duties on education providers.
- 4.5 It is clear that local authority community education services raise some issues in relation to duties: for example, more learners are likely to be part-time or attend short courses, less of the provision is likely to be selective and courses take place on a range of premises rather than dedicated LEA centres. One option might be to place local authority community education services in Scotland – along with the Youth Service and voluntary providers – under Part III of the current DDA.

5. The Authority Response

The response of the authority is detailed in Appendix 1 where the questions posed in the consultation document are recorded with the relevant replies

6 RECOMMENDATIONS

The education committee is asked to:

- (i) Approve as the authority response the information contained in Appendix 1.
- (ii) Instruct the Chief Executive to submit this on behalf of the council
- (iii) Refer the report to the Social Work, Social Inclusion and Community Services Committees for consideration.

Annex A: Rights for disabled people in education

Do you agree that it is necessary, where it is not obvious that a student is disabled, for a student to disclose his/her disability to the institution in order to benefit from the new duties?

Agree

What do consultees consider would be a reasonable and realistic timetable for introducing the new duties which are set out in annexes A1 and A2?

Beginning of financial year 2002-2003

Annex A1: Disability Rights Task Force (DRTF) recommendations for schools

Do consultees see any difficulties in implementing the new duties on education providers in the schools sector?

There are likely to be very significant financial implications for authorities in implementing the new duties. In addition, it is not clear that there are agreed established standards for refurbishing buildings in relation to issues such as visual impairment. It would be better if advice/guidelines were made available to providers regarding such matters.

Do consultees agree that the new rights of redress for pupils should mirror the proceedings of the existing SEN Tribunal with its emphasis on remedy through educational means?

In Scotland, the appropriate recourse is through the Sheriff Court. It is debatable as to whether this is the best forum for addressing what are sometimes complex and difficult issues.

Annex A2: Disability Rights Task Force (DRTF) recommendations on post-16 education

Should the new duties apply to publicly funded higher and further educational institutions and Part III to the private and voluntary sectors?

This merits further consideration e.g would private providers commissioned by the education authority to provide nursery places to 3 and 4 year olds find themselves governed by different duties to those relating to the local authority provision?

Do you agree that LEA-secured adult education and, in Scotland, local authority community education services should be treated together with further and higher education sector institutions and covered by the new duties?

Yes, placing new duties on education authorities but not on adult and youth services offered by community education would seem inconsistent.

Should education providers be covered by the new duties in relation to only their own provision? Or should this be extended to any provision on their behalf?

On balance it would seem preferable to maintain a commonality of approach, for example in the provision of nursery education. However where the provider lay in the private sector then the requirements of the contractor side would need to be clearly spelt out to the provider via any contract or service level agreement.

Should education and services provided by an institution primarily for students fall within the new duties and other services remain in Part III? Is such a division workable?

The paper does highlight difficulties at the margin and the exemplars provided in paragraph 16 seem reasonable. However it would seem preferable if an institution as a whole was able to relate entirely to a single set of duties rather than to find itself in doubt, even "at the margins".

Are there other types of reasonable adjustments that providers should have to consider?

"How long is a piece of string?" The only comment here is to note that very few of the illustrative examples relate to community education settings such as residential experiences, international exchanges, community volunteering etc.

Although the list at paragraph 21 ('assessing what is a reasonable adjustment') is not complete, are there other factors that should be taken into consideration?

Similar comments apply as with previous question.

Are there any other factors that should be considered in justifying less favourable treatment?

This seems reasonably comprehensive.

Should the remedies and court used for these discrimination cases be the same as for Part III and other discrimination cases in education?

Again, it is debatable whether the Sheriff Court is the most effective mechanism for dealing with redress. Some form of conciliation arrangement might offer a more effective means of gaining effective and positive outcomes.

What conciliation arrangements would be appropriate?

Some form of local appeals procedure, such as is employed for SEN pupils under the education act, might be appropriate.