

# Policy Briefing



## Special Educational Needs and Disability Bill Tuesday 19<sup>th</sup> December 2000, Second Reading Debate

Children in Scotland warmly welcomes the extension of the Disability Discrimination Act 1995 to education. Scottish implications, however, have been insufficiently considered to date.

- **No Scottish planning duty** The Bill does not place a planning duty on Scottish local authorities, as it does for English and Welsh authorities (Clause 13), to plan systematically for physical accessibility of schools. An announcement is urgently required of *when* such a duty will be introduced for Scotland and assurances that it will match this Bill's implementation timetable.
- **Schools are exempt from having to make physical alterations** (Clause 12). Yet such a requirement is placed on further and higher education. Children living in Scotland do not necessarily have a choice of schools, particularly if they live in remote and rural areas, and their inclusion may be dependent on altering physical features.
- **Insufficient rights of redress**
  1. Financial compensation is not proposed for cases of discrimination by schools, yet it is for further and higher education. Consistency is required, to avoid age discrimination against children. (Clauses 17 and 29) A staged approach could be taken whereby a range of solutions are available both at school and higher and further education. This could include a financial remedy.
  2. As Scotland as yet does not have special needs tribunals, cases will go the Sheriff Courts (Clause 22). These courts can be intimidating for families and difficult for many to access. Further detail is required on how access can be properly facilitated; the Disability Rights Commission could play a helpful role in taking up cases and offering conciliation services to minimise disputes.
- **A Scottish Code of Practice** Given the considerable differences in Scottish education law and practice, an official commitment should be made to a separate Code for Scotland.
- **Confusion over definitions, across Scottish children's legislation** A commitment should be made to providing legally-informed guidance on how definitions might fit together. A particular concern is whether children with 'social, emotional and behavioural difficulties' will be covered by this Bill.

### FURTHER DETAILS

#### **No Scottish planning duty (Clause 13)**

Clause 13 requires education providers to plan systematically to increase the accessibility of schools – but only England and Wales. Such a duty is a devolved matter, for the Scottish Parliament. The Scottish Executive have promised a matching duty. An announcement is urgently

required on the proposed timetable for consulting upon, proposing and implementation of such a duty, for Scotland.

### **Schools are exempt from having to make physical alterations (Clause 12)**

Children in Scotland is concerned that the Bill does not place a duty on schools to alter physical features or to provide auxiliary aids or services. However the Bill does place this duty on further and higher education providers. This has been previously justified by stating that students may have only one option for a particular course in further and higher education but have school choices at primary and secondary levels. School choice, however, is not available in many rural and remote areas in Scotland which may only have one school. Clause 12 subsection 2 should be deleted for schools to ensure consistency with Clause 27 for further and higher education.

### **Insufficient rights of redress**

1. No financial remedies are proposed for discrimination in school education but they are proposed for further and higher education. While financial remedies are insufficient to ensure inclusion in either school or further and higher education, they can be important levers for change and of practical help to students. It is inconsistent to argue for financial remedies for further and higher education and not for children at school. This could be seen as a form of age discrimination. It is worth giving consideration to the ECHR implications of this.
2. The Bill proposes rights of redress to be heard by the Scottish Sheriff Courts (Clause 22). These are more formal and less conciliatory than the SEN Tribunals in England and Wales. Very few families choose to go to Sheriff Courts at present, under special education legislation. No systematic study has been undertaken but anecdotal information suggests that families can find such a process intimidating and difficult to access.

Consideration should be given to providing for conciliation services in Scotland. Children in Scotland note that the Disability Rights Commission Act 1999 empowers the DRC to arrange for conciliation services for cases under Part 3 of the DDA. This could provide a model for conciliation relating to the new education duties.

Support should be provided to help families, who require it, to access justice.

### **A Scottish Code of Practice.**

The new provisions for schools and further and higher education will have associated codes of practice, to be prepared by the DRC and approved by the Secretary of State. Given the considerable differences in Scottish education law and practice, an official commitment should be made to a separate Code for Scotland. Extensive consultation should be undertaken of this, in Scotland, with Scottish service providers, parents and young people.

### **Confusion over definitions, across Scottish children's legislation**

Service providers, parents and young people have expressed confusion how definitions across Scottish legislation fit together. For example, the Education (Scotland) Act 1980 as amended uses the category 'special educational needs', whereas the Children (Scotland) Act 1995 contains categories of 'children in need' and a subset of children 'affected by disabilities'. Disability, under the Children (Scotland) Act 1995 has yet a different definition from 'disability' under the Disability Discrimination Act. Service providers, parents and young people need legally-based advice on how these definitions fit together and the rights students and parents have as a result.

A particular concern is whether children with 'social, emotional and behavioural difficulties', who are frequently those excluded from school, will be considered 'disabled' under this Bill.