

These notes refer to the Special Educational Needs And Disability Act 2001 (c.10) which received Royal Assent on 11 May 2001

SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

EXPLANATORY NOTES

SUMMARY

Territorial coverage

3. The provisions in the Act relating to special educational needs (SEN) extend to England and Wales only.
4. The provisions on rights for disabled people in education extend to England, Wales and Scotland since equal opportunities issues are matters reserved to the UK Parliament under the Scottish and Welsh settlements. The exception is the duty to produce an accessibility strategy or plan, which, although intended to help disabled pupils, primarily relates to the organisation and administration of schools and hence is a devolved matter. This aspect of the Act therefore does not extend to Scotland, and it will be for Scottish Executive Ministers to consider whether to apply this policy in Scotland. This planning duty does extend to Wales though it will be for the National Assembly for Wales (NAW) to consider implementation.
5. This Act does not extend to Northern Ireland since responsibility for equal opportunities matters has been transferred and is now a matter for the Northern Ireland Assembly.

Part 1: Special Educational Needs

6. The Government published a Green Paper in October 1997 entitled *Excellence for All Children: Meeting Special Educational Needs* (Cm 3785) (in Wales, *The BEST for Special Education* (Cm 3792)). Following consultation on the proposals set out in the Green Paper, the document *Meeting Special Educational Needs: A Programme of Action* was published in November 1998 in England, and *Shaping the Future for Special Education* was published in January 1999 in Wales. These documents set out the steps to be taken over a period of 3 years to implement the changes recommended in the Green Paper. Part 1 of the Act fulfils those undertakings made in the Programme of Action that required primary legislation and applies to England and Wales only.
7. **Part 1** makes changes to the existing legislation, in Part 4 of the Education Act 1996 (EA), for children with SEN. In summary, Part 1:
 - strengthens the right of children with SEN to be educated in mainstream schools where parents want this and the interests of other children can be protected;
 - requires Local Education Authorities (LEAs) to make arrangements for services to provide parents of children with SEN with advice and information, and a means of resolving disputes with schools and LEAs;
 - requires LEAs to comply, within prescribed periods, with orders of the Special Educational Needs Tribunal (SENT) and make other technical changes in support of the SENT appeals process and the statementing process; and

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- requires schools to inform parents where they are making special educational provision for their child and allow schools to request a statutory assessment of a pupil's SEN.
8. The SEND, by virtue of the amendments made in Part 2 of this Act, becomes the Special Educational Needs and Disability Tribunal (SENDIST).

Part 2: Disability Discrimination in Education

9. The Government announced, in October 1997, that it would establish a Disability Rights Task Force (DRTF) to advise it on how to secure comprehensive and enforceable civil rights for disabled people.
10. The DRTF was established in December 1997, comprising representatives of disability organisations, business, trade unions, local government and the health service, from across the UK.
11. The DRTF reported on the role and function of a Disability Rights Commission (DRC) in April 1998. In October 1998, the Government published a White Paper entitled *Promoting Disabled People's Rights: Creating a Disability Rights Commission fit for the 21st Century* (Cm 3977). The Disability Rights Commission Bill received Royal Assent in July 1999. The DRC has been up and running since 25 April 2000.
12. The final report of the DRTF *From Exclusion to Inclusion* was published on 13 December 1999 and covered all aspects of disabled people's lives: defining disability, education, employment, access to goods and services, travel, housing and the environment, participation in public life and local government, health and social services. Part 2 of the Act addresses the key education recommendations of the report that required primary legislation and amends Part 4 of the Disability Discrimination Act 1995 (DDA) to introduce rights for disabled people in education.
13. Publicly-funded providers of education services and private schools are currently exempted from Part 3 of the DDA by virtue of sections 19(5)(a) to (ab) and 19(6) of that Act. These provisions are repealed by this Act and the exemption removed. The effect of this is that any provider of education previously exempted from Part 3 and not covered by the new Part 4 duties becomes subject to the duties in Part 3 of the DDA.

Chapter 1 of Part 2: Schools

14. This Chapter places new duties on LEAs and schools (including independent schools and non-maintained special schools) in England and Wales and on Local Authorities (LAs), independent schools, self-governing schools and grant-aided schools in Scotland. The new duties are explained in the commentary on sections 11 – 16. What follows is an overview of the new provisions:

In England, Scotland and Wales

- a duty not to treat disabled pupils less favourably, without justification, for a reason which relates to their disability;
- a duty to make reasonable adjustments so that disabled pupils are not put at a substantial disadvantage compared to pupils who are not disabled (but there is no duty to remove or alter physical features or provide auxiliary aids and services); and

In England & Wales only

- a duty to plan strategically and make progress in increasing accessibility to schools' premises and to the curriculum, and in improving the ways in which written information provided to pupils who are not disabled is provided to disabled pupils.

Chapter 2 of Part 2: Further & Higher Education

15. This Chapter places new duties on further education institutions, higher education institutions, and LEAs in respect of adult education and youth services provision secured by them. The new duties are explained in the commentary on sections 26 – 29. What follows is an overview of the new provisions:
- a duty not to treat disabled students less favourably, without justification, for a reason which relates to their disability; and
 - a duty to make reasonable adjustments to ensure that people who are disabled are not put at a substantial disadvantage compared to people who are not disabled in accessing further, higher and LEA secured education.

Chapter 3 of Part 2: Miscellaneous

16. The DRC has functions in respect of the new legislation akin to those conferred upon it, by virtue of the Disability Rights Commission Act 1999 (DRCA), in respect of Parts 2 and 3 of the DDA. The DRC will prepare new Codes of Practice to explain the legislation to providers of education, disabled people and others.