

ANGUS COUNCIL

EDUCATION COMMITTEE

21 NOVEMBER 2000

STANDARDS IN SCOTLAND'S SCHOOLS ETC ACT 2000
GUIDANCE ON SECTION 15 – REQUIREMENT THAT EDUCATION BE PROVIDED IN
MAINSTREAM SCHOOLS

REPORT BY THE DIRECTOR OF EDUCATION

ABSTRACT

This report alerts the Education Committee to a truncated consultation exercise on guidance for making mainstream provision for as many children with Special Educational Needs as possible.

1 RECOMMENDATIONS

It is recommended that the Education Committee:

- a notes the contents of the enclosed letter and draft circular from the Scottish Executive (see Appendix);
- b authorises me to respond to the enclosed letter by 15 December 2000 as requested, and to report back to the Education Committee on the contents of this response at its first meeting in 2001

2 BACKGROUND

- 2.1 Reference is made to the meeting of the Education Committee on 10 October 2000 when the commencement dates of various Sections of the Standards in Scotland's Schools etc Act 2000 were noted (Article 2 of the minute of the meeting refers).
- 2.2 Section 15 of the 2000 Act is scheduled to commence at some point in the year 2001.
- 2.3 The enclosed letter and draft Circular from the Scottish Executive should be self-explanatory (see Appendix).

3 RESPONSE TO SCOTTISH EXECUTIVE

- 3.1 The opportunity to comment on the draft Circular before it is finalised is clearly helpful. However, the time available to prepare a considered response is

exceptionally short, particularly given the unremitting pressure created by the wide range of educational initiatives currently being pursued.

- 3.2 In the time available, it should be possible to prepare an officer response and to have that response submitted to the Scottish Executive by 15 December 2000 as requested.
- 3.3 In the circumstances, it is proposed that such a response should be prepared and sent on the understanding that it will be simply an officer response with the opportunity for the Education Committee to comment on and/or amend that response at its next meeting.

4 CONSULTATION

- 4.1 In accordance with the Standing Orders of the Council, this Report has been the subject of consultation with the Chief Executive, the Director of Finance and the Director of Law & Administration.

Jim Anderson
Director of Education

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

APPENDIX

JAA/CJ

Appendix 1

Education Department
Pupil Support Division

Victoria Quay
Edinburgh EH6 6QQ

Chief Executives of Local Authorities
Directors of Education

Telephone: 0131-244 7847
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Joan.fraser@scotland.gov.uk

Copy to:
ADES

Your ref:
Our ref:

24 October 2000

Dear Colleague

**STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000
GUIDANCE ON SECTION 15 – REQUIREMENT THAT EDUCATION BE PROVIDED IN
MAINSTREAM SCHOOLS**

As you will be aware section 15 of the *Standards in Scotland's Schools Etc. Act 2000* introduces a new duty on an education authority to provide education in mainstream schools, except under certain specified circumstances.

I enclose a copy of draft guidance which has been drawn up to assist authorities in implementing this new duty. You will note that Scottish Ministers propose that commencement of the new provision should be phased in over two years to ensure that local authorities have sufficient time to take full account of the new duty and to make any necessary arrangements.

I would be grateful if you would forward any comments you have on the draft guidance to John Bissett at the above address by noon on Friday 15 December.

Yours sincerely



JOAN FRASER

Education Department
Pupil Support Division

Victoria Quay
Edinburgh EH6 6QQ

Circular No X/XX

Chief Executives of Scottish Local Authorities
Directors of Education
Headteachers of Schools
Other interested organisations

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Your ref:
Our ref: JFL/A18/27

October 2000

Dear Sir or Madam

**STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000
GUIDANCE ON PRESUMPTION OF MAINSTREAM EDUCATION**

1. This circular has been written to help education authorities to review their policies for children with special educational needs in the light of the requirement in Section 15 of the *Standards in Scotland's Schools Act* that the education of all children should be provided in mainstream schools, unless certain, specified, exceptions apply.

Timescale

2. The new provision will apply to:
 - a) all children starting school, including nursery schools and classes, for the first time, moving to new schools, or moving from the pre-school to primary or primary to secondary stage within a special school, with effect from 1 August 2001; and
 - b) all other pupils, including those in non local-authority pre-school centres with whom the authority has an arrangement under section 35 of the 2000 Act, with effect from 1 August 2002.
3. Education authorities should start planning from the date of this circular to ensure that they are in a position to implement the terms of the new provision by these dates.

Legislation

4. Section 15 of the Act (see Annex A) states that an education authority, in carrying out its duty to provide school education to a child of **school age**, shall provide that education in a school other than a special school unless one of a number of circumstances arises. (See paragraphs 13-21 below). A special school is defined under section 135 (1) of the Education (Scotland) Act 1980, as amended, as one making provision wholly or mainly for recorded children, i.e. children with Records of Needs; and includes special classes forming part of primary or secondary schools.
5. Pupils with Records of Needs make up the majority of the school roll for most special schools in Scotland. However there is a small number of schools, which are generally considered to be special schools by local authorities and parents, which make provision for pupils, many or most of whom may not have a Record of Needs. This is mainly the case with schools or units making provision wholly or mainly for pupils with social, emotional or behavioural difficulties. Local authorities are encouraged to include pupils attending these schools when updating their policies and practices to take account of the new mainstreaming section.
6. Section 15 of the Act also states that where an education authority provides school education to a child **under school age**, either in a school or through arrangements with other persons, then they shall provide that education in a school other than a special school unless one of the noted exceptional circumstances arise. As noted in paragraph 2 above, the section will apply to children attending pre-school other than at local authority schools from August 2002.

Aim

7. The intention behind the new duty is to establish the right of all children and young persons to be educated alongside their peers in mainstream schools unless there are good reasons for not doing so. It is based on the premise that most children with special educational needs benefit from inclusion in mainstream schools, and that their inclusion has a positive impact on these schools. Such inclusion helps schools to develop an ethos to the benefit of all children, and of society generally. It also helps meet the wishes of many parents that their children should be educated alongside their friends in a school as close to home as possible.
8. The new duty, however, also acknowledges that the needs of some children may be best met through alternative specialist provision.

Procedures

9. The new mainstreaming provision should build on existing procedures and good practice under which decisions are taken on educational provision for children. In the case of children starting school for the first time, or for children changing schools, the education authority, as it does now, should take account of all available information from parents, pre-school staff, childcare providers, teachers and other professionals, when considering what educational provision will best meet the child's needs.
10. For children already attending special schools or units existing good practice means that schools and education authorities should have arrangements in place regularly to review the progress of children and young people. This most commonly occurs by way of the annual reviews conducted by schools for all children. These reviews will continue to provide an appropriate opportunity to consider whether pupils in special schools might benefit from a move to mainstream education. Equally, for

children attending special units, the annual reviews provide the opportunity to consider whether the balance of attendance between mainstream and special classes continues to be appropriate.

Planning

11. By building on existing policy and practice the mainstreaming provision should not, in itself, add significantly to the time involved in assessments. Education authorities should begin planning from the date of this circular to ensure that their arrangements for considering placements for children starting or changing school in the new school year commencing in August 2001 take account of the mainstreaming provision in the Act. In doing so, they should pay particular attention to children approaching key transition points, e.g. moving from primary to secondary school or from one stage to another within "all-through" schools.
12. Education authorities should also from the date of this circular begin to consider the placements of children already attending special schools or special units when they undertake their annual reviews of children's progress during the 2000-01 school year.
13. Such consideration of existing placements should be a feature of all future annual reviews with assessments being conducted in sufficient time to allow preparations for any move to mainstream to occur at the start of a school year. However, it is recognised that arrangements for moving from one school to another take time to put in place. They involve one school in preparing the child for moving on while the other must ensure that appropriate provision is put in place for the child's arrival. To allow education authorities time to make arrangements for any change of placement the new provision for children and young people not covered by paragraph 2(a) above will take effect from the start of academic session 2002-03.

Exceptions

14. The new requirement on education authorities to provide mainstream education for all children is intended to strengthen the rights of children and young persons to education alongside their peers. Section 15(3) of the Act sets out a number of specific conditions under which this requirement will not apply, although it makes clear that these should be invoked only in exceptional circumstances. In addition, section 15(4) provides discretion to an education authority to provide education in a mainstream school even where one of these conditions does apply.

<p><i>a) where education in a school other than a special school would not be suited to the ability or aptitude of the child.</i></p>

15. A key assumption underlying the new provision is that the inclusion of a child with special educational needs in mainstream schooling, with appropriate support, will be in the child's best interests including its social and emotional wellbeing. For the majority of children or young persons with special educational needs, mainstream schooling should provide them with an appropriate education to enable the development of their personality, talents and mental and physical abilities to their fullest potential. Education alongside their peers will help prepare them to be fully integrated, when adult, into society.
16. However, for a small number of pupils, the experience of mainstream schooling in itself may not be the best means of developing their potential or providing them with

adequate preparation for adult life. For example, some children may require a low stimulus environment which does not provide the intensity of auditory or visual stimulation found in a mainstream class. Others may find small group settings more appropriate than the larger classes found in mainstream. Some may have needs so profound or complex that mainstream may not be able to provide the range of highly specialised services required to meet their needs.

17. For a small number of children specialist provision will continue therefore to be the only education suited to their ability or aptitude insofar as it ensures that they receive a quality of education suitable to their needs. This may be in special schools, either local authority funded or independent; or in special units or classes within mainstream primary and secondary schools with children spending varying amounts of time in either setting. Decisions in all cases should be based upon a full assessment of pupils' educational, emotional and social needs, and taking full account of the views of children and their parents.

<p><i>(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated;</i></p>

18. Underlying the new requirement for mainstream education is the belief that inclusion of children with special educational needs in mainstream schools can often be a positive and enriching experience, not just for the individual child, but for other children around them. Schools which can provide a high-quality educational experience for children with special educational needs will be better equipped to provide this for all children.
19. Occasionally, however, the inclusion of a child with special educational needs may be incompatible with an education authority's duty towards all of the children in its care. Children regularly displaying severely challenging behaviour, for example, can have negative effects on the education of children around them and, as well as in doing so, on their own education. Education authorities and schools should take steps to ensure that the needs of children are properly assessed with a view to identifying what support they require to be fully included in the life and work of the school. Where, despite such support, a child's behaviour prevents the provision of efficient education for other children, an education authority should consider alternative arrangements. A decision to provide education outwith mainstream should be subject to regular review and children should have the opportunity to move to mainstream where a change in behaviour patterns makes this feasible. The identification and provision of appropriate support, together with regular reviews, should mean that a long-term special school setting will occur under this condition in only a very limited number of cases.

(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

20. The Scottish Executive encourages and supports the inclusion of children with special educational needs in mainstream schooling through general funding of education authorities. In addition, the Executive's Inclusion Programme assists authorities to develop inclusion strategies. These strategies may include the physical modification of school facilities; the provision of equipment and the adaptation of the curriculum to the requirements of children with special educational needs. Furthermore, the intention to extend the Disability Discrimination Act to education will require education providers to plan systematically to make schools as accessible as possible.
21. In view of these policy trends it is expected that this condition should only be invoked in the most extreme circumstances. This might arise, for example, where the expenditure to be incurred in including a child with special educational needs in a mainstream school would have a disproportionate impact on the local authority's wider educational budget.
22. Section 15(4) allows local authorities to set aside any of the circumstances in section S.15(3) and to provide education for the child in question in a school other than a special school. Local authorities may consider, for example, that expenditure incurred in including a particular child in mainstream will make it easier and more cost effective to include other children in future. However in the event that an education authority chooses to exercise discretion under section 15(4) to provide mainstream education even where one of the circumstances in 15(3) applies, they should not do so without taking into account the views of both the child and the child's parents in that regard.

Disagreements

23. The new mainstreaming provision will operate alongside the placing request procedures as set out in the Education (Scotland) Act 1980. Where a parent disagrees with an education authority decision to place a child in a special school or in mainstream education, they may continue to make a placing request under section 28A of that Act to place the child in a school of their choice. The new mainstreaming provision will be part of the legal framework governing any decision by local authority's appeal committee and subsequently if appropriate, in an appeal to the Sheriff Court. Local authorities should therefore update their procedures for handling placing requests to take account of the new duty. In addition, they should ensure that information material provided for parents is revised to reflect these new procedures.

Monitoring

24. The Scottish Executive wishes to monitor the impact of this new duty on education authorities', schools and pre-school centres' policies on special educational needs. Inspections by HM Inspectors of Schools will include consideration of the effect that the new mainstreaming duty has on policy and practice. In addition, the Executive will be considering arrangements for monitoring the number of pupils excepted from mainstream education under the conditions in section 15(3) of the new Act.

Yours sincerely

JOAN FRASER

Appendix 2

Queries Concerning This Circular

Any queries concerning this circular should be directed to:

John Bissett
3-A (North)
Pupil Support Division (Branch 3)
Scottish Executive Education Department
Victoria Quay
Edinburgh EH6 6QQ
Telephone: (0131) 244 0947

STANDARDS IN SCOTLAND'S SCHOOLS ACT 2000

Section 15 - Requirement that education be provided in mainstream schools

- (1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.
- (2) If a child is under school age, then unless one of the circumstances mentioned in subsection (3) below arises in relation to the child, an education authority shall, where they-
 - (a) provide school education in a school to the child, provide it in; or
 - (b) under section 35 of this Act, enter into arrangements for the provision of school education in a school to the child, ensure that the arrangements are such that the education is provided in,

a school other than a special school.
- (3) The circumstances are, that to provide education for the child in a school other than a special school-
 - (a) would not be suited to the ability or aptitude of the child;
 - (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
 - (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,and it shall be presumed that those circumstances arise only exceptionally.
- (4) If one of the circumstances mentioned in subsection (3) above arises, the authority may provide education for the child in question in a school other than a special school; but they shall not do so without taking into account the views of the child and of the child's parents in that regard.