

**ANGUS COUNCIL
EDUCATION COMMITTEE**

20 NOVEMBER 2001

**EDUCATION (DISABILITY STRATEGIES AND PUPILS' RECORDS) (SCOTLAND) BILL:
CONSULTATION PAPER**

REPORT BY THE DIRECTOR OF EDUCATION

ABSTRACT

The purpose of this report is to advise the Education Committee of the Scottish Executive's proposals for a draft Bill to provide for new legislation in two aspects of educational provision. These are: firstly, the duty to plan for access to school buildings and the provision of a full educational curriculum for pupils with disabilities, and secondly, the right of parents to have access to their children's school records.

1 RECOMMENDATIONS

It is recommended that the Education Committee:

- i) notes the terms of this report;
- ii) approves and authorises me to submit a response to this draft legislation to the Scottish Executive by the deadline of 22 November 2001 (the proposed response is provided in Section 4 of this report).

2 INTRODUCTION

- 2.1 The draft Bill is welcomed as it complements the provisions made in earlier legislation for children with special educational needs. The thrust of the new proposals also supports the Council's existing policy for the development of localised provision and it is hoped that funds from central government will continue to be provided in order to assist the Council to meet the rising demand from parents for the creation of high quality, accessible, local services.
- 2.2 A brief response to the draft Bill has been produced for consideration by the Education Committee (see Section 4 below).

3 BACKGROUND

3.1 Access to School/Curriculum

- 3.1.1 Scottish Ministers believe that revisions to the existing legislation are necessary to ensure that education providers in Scotland adopt a more proactive approach to planning for improved access for children with disabilities - both to the school environment itself and to the curriculum. The new duties will apply to education authorities in relation to provision in schools and nursery schools as well as to the provision of pre-school education in partner provider centres for which they are responsible.
- 3.1.2 The new duties have been designed to ensure that authorities take positive steps to give children with disabilities the same opportunities as all others enabling them to achieve their full educational potential and to ensure that they are not subject to unfair discrimination.

- 3.1.3 A duty will be placed on education authorities to prepare and publish an accessibility strategy with the aim of increasing, over time, the physical accessibility to schools along with greater accessibility to the curriculum for pupils (including prospective pupils) with disabilities. The authority's published accessibility strategy will describe its plans for increasing the accessibility to all the schools for which it has a responsibility including nursery schools. This strategy will include planning for access both to the building and the curriculum. Information for pre-school education which is provided in partner provider centres will also be required. It will not be necessary, however, to produce a free-standing strategy as these plans can be incorporated into the Annual Statement of Improvement Objectives. Further guidance on the format of the accessibility strategy will be issued by the Scottish Executive in due course.
- 3.1.4 Individual schools will not be required to produce their own strategies but school development plans should take account of the education authority's accessibility strategy.
- 3.1.5 Authorities will need to have regard to the need to allocate adequate resources to implement their strategies and plans and will be under a duty to have regard to guidance issued by Scottish Ministers about reviewing and revising strategies. It is envisaged that guidance will set out what an accessibility strategy should contain, the form in which it should be produced and who should be consulted in its preparation.
- 3.1.6 The authority will be required to make a copy of its strategy available for inspection to anyone who asks to see it at a reasonable time, and to make a copy of its strategy available for inspection. The existing powers of Her Majesty's Inspectorate of Education (HMIE) will enable them to establish that accessibility strategies are in place and are implemented and reviewed as required.

3.2 Access to Records

- 3.2.1 These new duties complement and support the requirements of the Disability Discrimination Act 1995 as Amended by the Special Educational Needs and Disability Act 2001 which make it unlawful for education authorities to discriminate against a pupil (or prospective pupil) on the grounds of his/her disability. The Data Protection Act 1998, and the secondary legislation required to support this Act, was brought into force on 1 March 2000. The Act applies across the UK and provides for the regulation of the processing of information relating to individuals. It applies to all personal information held in electronic form and manual information held in structured files.
- 3.2.2 The Data Protection Act 1998 does not, however, provide for parents to have access to their children's schools records and new regulations are required to make that provision. Therefore, Ministers require to introduce new regulations and provision has been made in this Bill to provide them with that power. Draft regulations will be issued for consultation as soon as possible after this new legislation comes into force.
- 3.2.3 Regulations made under section 4 of this Bill will comply with the principles of the Data Protection Act 1998 and any secondary legislation which supports it. However, it should be noted that parents will not have right to access sensitive personal data which the education authority holds about their child. Sensitive personal data is defined in section 2 of the Data Protection Act and includes information about a person's physical and mental health or condition, and about their sexual life.

4 **PROPOSED RESPONSE**

- 4.1 The draft Bill is accepted without any suggested alterations and the intention of the Scottish Ministers to define "educational records" is particularly welcome. Such clarification is long overdue and will be of specific importance in a number of areas such as Child Protection and Guidance.
- 4.2 The Council already has in place a ten-year rolling programme to tackle issues of accessibility to public buildings but the Executive must understand how difficult it will be to ensure that **all** current school buildings will be able to provide for all children without very significant investment.
- 4.3 The Executive should also note the potentially heavy cost (particularly in terms of ever more sophisticated technology) of ensuring that all children have access to the curriculum in all schools in ways which will fully address the special needs of some pupils.
- 4.4 Given the government's current financial allocations to Councils, there will be considerable financial challenges to be addressed in implementing these proposed changes.
- 4.5 The process would be enormously assisted if the Council were to be guaranteed additional funding from the Executive, based on a published accessibility strategy.

5 FINANCIAL IMPLICATIONS

- 5.1 A comprehensive survey of all schools has almost been completed and an Asset Management Plan is now available for most of the schools in Angus. It would be possible to ensure that each of these plans contains specific reference to enhancing accessibility arrangements and toilet provision for children/adults with a disability. Since these were not specific requirements made of the staff who carried out the surveys it would be necessary to revisit each of the plans in turn with a view to providing detailed costs for each school location.
- 5.2 If the draft Bill comes into effect it will be necessary to undertake this task and to prepare an accessibility programme for the Council indicating how each building will be upgraded in turn. In these circumstances, it would be useful to consider any proposed developments in the light of the Best Value survey of primary education in order to determine the most effective use of monies.

6 HUMAN RIGHTS

There are no human rights implications arising directly from consideration of this report. However, as a consequence of developing effective access arrangements for children with special educational needs it is envisaged that the Council's services in this area will be further strengthened.

7 CONSULTATION

- 7.1 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

BACKGROUND PAPERS

Note: 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.

JAA/JN/RB
November 2001