

## SENDA 2001 in Scotland: Legislation for Disabled Children: ICT

Because education is devolved to the Scottish Parliament but disability discrimination is a reserved matter, and therefore dealt with by the UK Parliament, different provisions of the Special Educational Needs and Disability Act 2001 (SENDA 2001) apply in Scotland. It is not so much that the provisions of SENDA 2001 are different as to how they apply in Scotland. It is more that, in Scotland some areas of SENDA 2001 are covered in a separate piece of legislation. This ICT Advice sheet deals only with SENDA 2001 as it applies in Scotland. A separate advice sheet produced by Becta describes how SENDA 2001 applies in England and Wales.

SENDA 2001 inserts a new Part IV to the Disability Discrimination Act 1995, preventing discrimination against disabled people in their access to education. SENDA 2001 duties are placed on bodies responsible for education, including independent and grant-aided schools, local authorities, colleges, universities and providers of adult education. The part of this Act relating to discrimination duties applies to Scotland but duties in relation to the SEN framework apply only to England and Wales, and those relating to planning are taken up by Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 [for more information on the implications of this Act see *ICT Strategies to improve accessibility for disabled children and young people: planning duties and ICT*].

### What are the new duties?

There are two key duties involved in ensuring that education establishments do not discriminate against disabled learners:

- a duty on education providers not to treat disabled pupils and students less favourably than non-disabled pupils and students, unless the less favourable treatment can be justified
- a duty on responsible bodies to make reasonable adjustments to avoid putting disabled learners at a substantial disadvantage compared with other disabled learners

This duty is owed to:

- all disabled learners
- prospective disabled learners, so the duty not to discriminate is anticipatory

Anti-discrimination duties apply to:

- admissions arrangements
- education and associated services provided for, or offered to, learners at the school or other education establishment
- exclusions

Discrimination would occur where:

- a learner experienced less favourable treatment for a reason relating to his or her disability,

or

- the responsible body failed to comply with the reasonable adjustments duty, which is to the disabled learner's detriment

... on both these counts disability discrimination is only considered to occur if the treatment cannot be justified.

There is a duty to make reasonable adjustments in admission arrangements and in education and associated services at the school or other education establishment. The trigger for reasonable adjustments is "substantial disadvantage". The duty does not apply to:

- the provision of auxiliary aids and services (as it is argued that the Education Act covers this for school pupils and the disabled student's allowance for further and higher education)
- the removal or alteration of physical features (the Education (Disability Strategies) (Scotland) Act 2002 touches on this in its accessibility strategies provisions)

Factors which can be taken into account when deciding if an adjustment is reasonable are:

- the need to maintain academic, musical, sporting and other standards
- the financial resources available to the responsible body
- the cost of taking a particular step
- the extent to which it is practicable to take a particular step
- the extent to which aids or services will be provided to disabled pupils at the school under the Education (Additional Support for Learning) Act 2004
- health and safety requirements
- the interests of other pupils and persons who may be admitted to the school as pupils.

The responsible body will not be discriminating against someone if it can show it didn't know that the person was disabled and could not reasonably have known that the person was disabled.

The Disability Rights Commission has funded an independent conciliation service which can deal with disputes arising from responsible bodies' duties under the Act. The purpose of the conciliation service is to promote the settlement of disputes without going to the courts. Disputes may be referred to conciliation if both the claimant and the responsible body agree. However, it does not have power to impose a settlement on either party.

### Implications for ICT provision

Confusion can arise about what the SENDA 2001 Act means in practice versus the Education (Additional Support for Learning) Act 2004 and the Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002. An example might help to clarify the various responsibilities under each. We'll use the example of ICT.

*A pupil finds it difficult to use a standard keyboard and would benefit from an adapted keyboard. The pupil will need to use the adapted keyboard with more than one computer.*

In this example other pupils in the class can use a standard keyboard. It might seem therefore that the disabled pupil is discriminated against by not being able to access the standard keyboard the others use. It **could** be a reasonable adjustment to attach the adapted keyboard, or even to have both attached using a keyboard splitter. As we'll see it isn't quite as simple.

If the pupil doesn't already have an adapted keyboard, SENDA 2001 doesn't require the education authority to provide one. The relevant legislation under which the education authority would provide the equipment would be the ASL Act 2004<sup>i</sup>, as a way of addressing the pupil's additional support needs.

Let's assume the pupil has been provided with an adapted keyboard. Would SENDA 2001 now apply? Not to attach it to the computer would place the child at a substantial disadvantage. The child would be being discriminated against on the grounds of disability. The next question is whether attaching the adapted keyboard would be a reasonable adjustment for the education authority (in this case the responsible body) to make. The answer is, it depends and could be affected by, among other things, whether the computer is on a network which might make it problematic to attach peripherals to computers on that network.

At this point the Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002 enters the picture. All local authorities in Scotland have a planning duty to increase the extent to which disabled pupils can participate in the school's curriculum. ICT offers a range of tools to enable access, whether through access devices or through software. Where pupils of any age are expected to use the same machines as other pupils, then there must be a reasonable provision of machines with access technology such as switches, keyboard alternatives, keyguards, trackerballs or joysticks. Similarly pupils with impaired vision or literacy difficulties may expect to have some access to enlarged text or a speech facility.

It may be that the education authority has included measures that will improve access to the curriculum using ICT in its accessibility plans, but that they are not yet due to take effect. As a result it's possible that what could be seen as reasonable adjustments in one setting may prove not to be as straightforward in another setting.

### **Progress, what Progress?**

From the above it might appear that SENDA 2001 has not moved things further forward for disabled pupils, in Scotland at least. This is not the case. Not only will individual solutions have to be looked at, but the framework for improvement provided through local authority Accessibility Strategies planning means that we will see continued improvement taking place across schools and authorities. For example, authorities are already beginning to write in to their contracts with managed network service providers various accessibility requirements.

### **Where can I find out more?**

- See examples of the sorts of things that should feature in local authority accessibility strategies contained in the ICT Advice Sheet *Strategies to improve accessibility for disabled children and young people: planning duties and ICT*.
- Disability Rights Commission  
<http://www.drc-gb.org/drc/default.asp>
- Special Educational Needs and Disability Act 2001  
<http://www.hms.gov.uk/acts/acts2001/20010010.htm>
- World Wide Web Consortium (W3C) – Web Content Accessibility Guidelines  
<http://www.w3.org/TR/WAI-WEBCONTENT/>

<sup>i</sup> Just to complicate things a bit more, until the ASL (Scotland) Act is fully implemented the provisions will come via the Education (Scotland) Act 1980 (as amended, 1981). For the sake of simplicity we don't refer to this in the text.