

EDUCATION (DISABILITY STRATEGIES AND PUPILS' EDUCATIONAL RECORDS) (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

3. The Act will require education authorities, proprietors of independent schools, managers of grant-aided schools and boards of management of self-governing schools to prepare accessibility strategies to improve access to education for pupils with disabilities; require those authorities and proprietors or managers to review and implement these strategies; and empower the Scottish Ministers to make regulations in relation to the keeping, transferring and disclosure of pupils' educational records.
4. The provisions relating to accessibility strategies will complement the provisions inserted in the [Disability Discrimination Act 1995 \(c.50\)](#) (by sections 11, 12 and 13 of the [Special Educational Needs and Disability Act 2001 \(c.10\)](#)) which state that it is unlawful to discriminate against school pupils and prospective school pupils on grounds of disability. Provisions relating to accessibility strategies will bring in similar requirements in Scotland to those which will apply in England and Wales by virtue of provisions inserted in that Act of 1995 by sections 14 and 15 of that Act of 2001.

Sections 1 and 2 – Accessibility strategies

5. [Section 1](#) places a duty on responsible bodies to prepare a strategy to increase, over time, the physical accessibility of the school environment and the accessibility of the curriculum for pupils with disabilities and prospective pupils with disabilities. The strategy must also provide for the improvement of communication with pupils with disabilities, especially in relation to the provision of school information.
6. [Section 6](#) provides that a “responsible body” is—
 - in relation to schools managed by an education authority, that authority (an “education authority” is a local authority); and
 - in relation to independent, grant-aided and self-governing schools, the proprietor, the managers or the board of management respectively.
7. Each responsible body's accessibility strategy must set out their plans for increasing the accessibility of all the schools for which they have responsibility, including nursery schools. [Section 2](#) provides that an education authority's strategy must also include plans in relation to education provided to children under school age in non-school premises managed by that authority for improving communication and increasing access to the physical environment and the curriculum. The duty imposed by [section 2](#) does not require an education authority to provide a strategy in relation to places where education is provided by private and voluntary sector bodies operating in partnership with the authority.

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8. [Section 2](#) also provides that the accessibility strategy should cover any education which may be provided by the education authority to children, of under school age and of school age on gypsy/traveller sites.
9. Individual strategies need not be prepared in respect of each school. A local authority need prepare only one strategy in relation to all of the schools they manage. A responsible body does not have to produce a free-standing strategy. Instead, for example, a local authority could incorporate the strategy into their annual statement of improvement objectives under the National Priorities in Education. Section 1(5) places responsible bodies under a duty to implement their strategies once these are in place.
10. Responsible bodies will have to keep their strategies under review, and revise them if necessary in light of that review. The Scottish Ministers will prescribe, in regulations, the period that strategies must cover and will issue guidance as to the regularity with which a responsible body should review, and if necessary revise, their strategy.

Section 3 – Accessibility strategies: procedure

11. This section sets out what responsible bodies will have to consider when preparing their strategies and the duties they must comply with once the strategies are in place. They must have regard to the need to allocate adequate resources to implement their strategies and they will need to consult children, young persons and parents in preparing their strategies. They will also need to have regard to any guidance issued by the Scottish Ministers as regards the content and form of strategies and any additional groups or individuals who should be consulted in its preparation.
12. A responsible body will be required to send a copy of each accessibility strategy to the Scottish Ministers once it has been finalised and also to provide the Scottish Ministers with the most up-to-date copy of the strategy if this is requested. This will allow the Scottish Executive to maintain an overview of progress being made through accessibility strategies. Responsible bodies will also be required to make a copy of their strategy available for inspection at reasonable times and to make the strategy available in alternative forms on request. The Scottish Ministers may define in regulations what should be considered as an alternative form.
13. The existing powers of Her Majesty's Inspectorate of Education (contained in sections 9 to 12 of the [Standards in Scotland's Schools etc. Act 2000 \(asp 6\)](#)) will enable them to establish whether accessibility strategies are in place and whether they are being implemented and reviewed as required.

Section 4 - Educational records

14. This section gives the Scottish Ministers power to make regulations governing the keeping, transfer and disclosure of pupils' educational records. Regulations made under this section may provide for the supply of copies of pupils' educational records to such persons prescribed in those regulations, and may also authorise persons supplying those copies to charge a fee for them, which must not exceed the cost of supply. The regulations would apply to educational records held by local authority, grant-aided, self-governing and independent schools.

Section 6 - Interpretation

15. Subsection (2) provides that expressions used in the Act are to have the same meaning as is ascribed to those expressions in the [Education \(Scotland\) Act 1980 \(c.44\)](#) ("the 1980 Act"). This is unless it is apparent that this is not the intention, , for example, this Act in section 2 providing for children educated outwith schools, gives a specific definition of pupils and pupils with disabilities to include persons under school age or who are of school age and are travelling people.
16. The 1980 Act gives the following definitions—

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- “child” means a person who is not over school age;
- “education authority” means a council constituted under section 2 of the Local Government (Scotland) Act 1994 (a local authority);
- “managers”, in relation to an educational establishment, means the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority;
- “parent” includes guardian and any person who is liable to maintain or has parental responsibilities in relation to or has care of a child or young person;
- “proprietor” in relation to an independent school means the managers of such school [...];
- “prescribed” means prescribed by the Secretary of State [Note: this reference to the Secretary of State must now, by virtue of section 53(1) of the [Scotland Act 1998 \(c.46\)](#), be read as a reference to the Scottish Ministers];
- “pupil”, where used without qualification, means a person of any age for whom education is or is required to be provided under the 1980 Act; and a pupil shall be deemed to be attending or in attendance at a school if he is shown by the register of admission and withdrawal kept at the school in accordance with regulations made under the 1980 Act, or by any other register approved by the Secretary of State [now the Scottish Ministers] and kept for a similar purpose, to have been admitted to, but not to have been withdrawn from, or to have been readmitted to, and not thereafter to have been withdrawn from, the school;
- “school” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school; and the expression “school” where used without qualification includes any such school or all such schools as the context may require;
- “school age” means a person who has attained the age of five years and has not attained the age of sixteen years;
- “young person” means a person over school age who has not attained the age of eighteen years.