

Early Support (Helping every child succeed)

Developmental Journal

The legislation in this journal refers to legislation which applied to the United Kingdom at the date of publication. On occasion, there is reference to specific legislation which is not applicable to Scotland.

Below is a list of legislation which is applicable to Scotland. It is advised that professionals using this journal have, as a minimum requirement, a 'working knowledge' of the following legislation.

The list compiled from Annex A, "Supporting Children's Learning" Code of Practice", links to other legislation, policies and guidance relating to The Education (Additional Support for Learning) (Scotland) Acts 2004 & 2009 and Supporting Children's Learning Code of Practice.

EQUALITY ISSUES

Equality for all underpins the Act. It allows schools, local authorities and other agencies to address additional support needs which may arise as a result of inequality and discrimination. A number of pieces of legislation outlaw discrimination on grounds of disability, sex, race, sexual orientation and religion and belief.

The **Human Rights Act 1998** incorporates the European Convention on Human Rights into Scots law. It supports the requirement for local authorities and other bodies not to discriminate on grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in securing the enjoyment of any of the rights set out in the European Convention on Human Rights (ECHR). The right to education is set out in Article 2 of the First Protocol to the Convention.

The **Disability Discrimination Act 1995**, as amended, outlaws discrimination against disabled people and requires local authorities and schools not to treat disabled pupils less favourably and to make reasonable adjustments to avoid putting them at a substantial disadvantage. The disability equality duty, introduced through the above Act places a general duty on public bodies, including education authorities in respect of schools they manage.

The **Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005** requires that education authorities and managers of grant-aided schools promote equality of opportunity for disabled people and publish a Disability Equality Scheme every 3 years. Authorities and the managers of grant-aided schools must also make arrangements for each school under their management to: assess the impact of their policies and practices on equality for disabled pupils; gather information on the opportunities available to, and on the achievements of disabled pupils.

The **Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002** places a duty on education authorities, managers of grant-aided schools and the owners of independent schools 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.

The race equality duty, introduced through the **Race Relations (Amendment) Act 2000**, places a general duty on public bodies, including education authorities in respect of schools they manage, to eliminate unlawful racial discrimination and to promote equality and good race relations. Education authorities must publish a race equality scheme setting out their race equality policy and the arrangements for schools to monitor and assess the impact of their policies on pupils, staff and parents from different racial groups, including in relation to attainment.

The gender equality duty, introduced through the **Equality Act 2006**, places a general duty on public bodies, including education authorities in respect of schools they manage, to eliminate unlawful discrimination and harassment, and promote equality of opportunity between men and women. Education authorities must publish a gender equality scheme and make arrangements for schools to monitor and assess the impact of their policies on male and female pupils, staff and parents, including in relation to attainment.

The **Equality Act 2006** also makes it unlawful to discriminate on grounds of religion or belief (including lack of religion or belief) when goods, facilities and services are being provided. These provisions extend to the delivery of education and other services by schools.

The **Equality Act 2006 (Sexual Orientation) Regulations 2007** make discrimination on the grounds of sexual orientation unlawful in a number of areas including education in schools. Schools therefore need to make sure that gay or lesbian pupils, or the children of gay or lesbian parents do not receive different and less favourable treatment from that given to other pupils.

The **Children (Scotland) Act 1995** establishes the responsibilities of services, providers and parents in matters affecting children's care and welfare. Local authorities must provide services designed to minimise the impact of disabilities on children and to allow them to lead lives which are fulfilling. Children's views must be sought and taken account of in key decisions that affect them.

SCHOOL EDUCATION

Under the **Education (Scotland) Act 1980** education authorities must provide adequate and efficient school education for children of school age within their area. The **Standards in Scotland's Schools etc Act 2000** places education authorities under a duty to secure that the education provided is directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

Education authorities should provide education to school age pupils in a mainstream setting unless certain exceptions apply. Education authorities must make special arrangements for pupils who are unable, or where it would be unreasonable to expect them, to attend school through prolonged ill health.

Education legislation gives certain rights to parents and young people rather than to **children** in their own right. However, the 2000 Act recognises that children should have the right to express views on issues that affect them. (Chapter 6 of the code describes where children's views should be taken into account under the 2004 and 2009 Acts.) The 2004 Act, as amended by the 2009 Act, also sits alongside legislation which recognises that children with legal capacity are able to make some decisions on their own behalf. For example, a child over 12 may consent to any medical procedure or treatment and instruct a solicitor in relation to civil matters so long as he or she is considered capable of understanding the nature and possible consequences.

Young people (young persons in legislation) have similar rights to parents regarding school education. They may also express their views on, and take decisions about, their school education.

Adults with Incapacity (Scotland) Act 2000. The law provides for decisions to be made on behalf of adults who lack legal capacity to do so themselves because of mental disorder or inability to communicate. Adults are defined as being over 16 years of age. The decisions concerned may be about the adult's property or financial affairs, or about their personal welfare, including medical treatment. Professionals carrying out functions under the 2004 Act as amended should have due regard to the provisions of the Adults with Incapacity Act.

The Schools (Health Promotion and Nutrition) (Scotland) Act 2007 places education authorities under a duty to ensure that all schools are health promoting. A school is health promoting if it provides activities and an environment and facilities which promote the physical, social, mental and emotional health and wellbeing of pupils. Guidance on the provisions of the Act is available at:

<http://www.scotland.gov.uk/Publications/2008/05/08160456/0>

Nutritional guidelines to support schools in meeting nutritional requirements are available from:

<http://www.scotland.gov.uk/Publications/2008/09/12090355/0>

Parents, under the 1980 Act, must ensure that their children of school age receive adequate education suitable for the age, ability and aptitude of their child, either by sending their child to a school managed by the education authority, or by other means, for example an independent school or home education.

Children (Scotland) Act 1995. Parents must, where it is the interests of the child and is practicable, safeguard and promote their child's health, development and welfare. This also applies to anyone over 16 who has care or control of a child under the age of 16. In addition, parents can provide their children who are under 18 years of age, with appropriate direction and guidance. They should maintain personal relations and direct contact with their son or daughter on a regular basis, if they do not live with their child. Parents can also act as their child's legal representative. Where a person takes a major decision in fulfilling a parental responsibility or right under the 1995 Act they must have regard to the views of the child, taking account of the child's age and maturity and whether the child wishes to express a view.

The **Scottish Schools (Parental Involvement) Act 2006** places a duty on Scottish Ministers to promote parents' involvement in their child's education. Because parents have such a vital role to play in their children's education, the Act aims to make it easier for parents to become involved in their own child's education and in their child's school more generally. To help achieve these aims, all parents will automatically be members of the parents forum at their child's school and will be entitled to have a say in what happens at the school.

The Act made changes to the arrangements for parental representation in all schools. Since August 2007 Parent Councils have been the representative body for parents. The Act also places a duty on education authorities to promote the involvement of parents in school education. This includes authorities giving advice and information to parents about their own child in response to reasonable requests.

OTHER LEGISLATION

The **United Nations Convention on the Rights of the Child** (UNCRC) applies to everyone under 18. It is an international law that recognises that all children and young people have rights. There are 42 articles that describe specific rights, 4 of which are described as the underpinning principles: non-discrimination (article 2); commitment to the best interests of the child (article 3); the right to life, survival and development (article 6); and respect for the views of the child (article 12). The UNCRC is reflected in legislation relating to children and young people, eg, the Children (Scotland) Act 1995 and the Scottish Government has made clear its ongoing commitment to the UNCRC and to promoting and supporting the rights of all children in Scotland as a key strand of our activity to improve outcomes for all. On 1 September 2009 the Scottish Government published its response to the 2008 recommendations from UN Committee on the Rights of the Child. This publication, 'Do the Right Thing', set out specific actions the Scottish Government will take in 21 priority areas relating to children's rights.

POLICY

The Scottish Government has a wide range of policies which supports the development and well being of Scotland's children and young people. The broad definition of additional support needs (which has been widened by the 2009 Act) means that application of the Act's provisions requires effective interaction across policies in a number of areas. The following paragraphs describe some of these policy areas.

OVERVIEW

The Act complements Scottish Ministers' high expectations and aspirations for all of Scotland's children and young people. These expectations and aspirations apply across agency, service and professional boundaries. Ministers' aspiration for all children and young people in Scotland is that they should be successful learners, confident individuals, responsible citizens and effective contributors to society and at work. Ministers believe that children and young people should be:

Healthy ... experiencing the highest standards of physical and mental health, and supported to make healthy safe choices.

Achieving ... receiving support and guidance in their learning - boosting their skills, confidence and self-esteem.

Nurtured ... having a nurturing and stimulating place to live and grow.

Active ... offered opportunities to take part in a wide range of activities - helping them to build a fulfilling and happy future.

Respected ... to be given a voice and involved in the decisions that affect their well-being.

Responsible ... taking an active role within their schools and communities.

Included ... receiving help and guidance to overcome social, educational, physical and economic inequalities; accepted as full members of the communities in which they live and learn.

And above all, to be safe ... protected from abuse, neglect or harm.

The Getting it right for every child (GIRFEC) programme builds from universal health and education services to achieve these outcomes for children. It drives developments to change the way adults think and act to help all children and young people grow, develop and reach their full potential. It requires a positive shift in culture, systems and practice across services for children, young people and adults. It is a fundamental way of working that builds on research and practice evidence to help practitioners focus on what makes a positive difference for children and young people and act to deliver these improvements. Getting it right for every child threads through existing policy, practice, strategy and legislation affecting children, young people and families. The Getting it right for every child approach with its emphasis on meeting the needs of the child is entirely congruent with the additional support needs agenda.

Information relating to Teachers of the Visually Impaired for Parents, Teachers and other Professionals using the journal

On 30 September 2005, The Requirements for Teachers (Scotland) Regulations 2005 (Scottish Statutory Instrument 2005/355) came into force. These Regulations set out the requirements to be met by education authorities in employing teachers in the course of discharging their duty under section 1 of the Education (Scotland) Act 1980, as amended, and section 2(1) of the Standards in Scotland's Schools etc Act 2000. In particular, the Regulations require that where an education authority employs a teacher wholly or mainly to teach pupils who are hearing impaired, visually impaired or both hearing and visually impaired, then that teacher must possess an appropriate qualification to teach such pupils. The qualification is defined in terms of specific competences: these comprise the specialist knowledge, understanding and skills required of teachers to enable them to teach pupils who are hearing impaired, visually impaired or both hearing and visually impaired. Guidance on appropriate qualifications for teachers of children and young people who are hearing impaired, visually impaired, or both hearing and visually impaired can be found by following this link:

<http://www.scotland.gov.uk/Publications/2007/01/29163203/1>

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

A Bill to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children's hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

Current Status of the Bill

The Bill was introduced to the Scottish parliament on 17th April 2013. Further details can be found by following the link below. Currently, this Bill is at stage 1 of the lead committee.

www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx

This information was revised from a previous document compiled by Dr John Ravenscroft in 2007.

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