2018

# Statutes relating to Support for Learning

## A practical guide

Moray council

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# Introduction

This booklet has been designed for staff and parents to provide summaries of four key pieces of legislation relating to supporting learners with additional support needs in Moray schools. We hope that you find it helpful.

# Standards in Scotland's Schools Act 2000

Every child has the right to receive school education and it is the duty of education authorities to secure education directed towards the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

The views of the child or young person in decisions that affect them must be taken into account wherever possible.

It is the duty of the education authorities to secure adequate and efficient provision of school education.

There is a presumption of mainstream education for all children in Scotland.

## Principles

1. Every child of school age has the right to school education or to education by virtue of arrangements made or entered into by the Education Authority.

2. Pupils are to be educated, as far as it is reasonable, in accordance with the wishes of their parents.

3. Parents are to provide efficient education by ensuring that their children regularly attend school or by other means.

4. Education Authorities must secure adequate and efficient provision of school education.

5. Activities in school and classes are suitable for pupils with regard to their age, ability and aptitude. This includes:

    - Provision for additional support needs
    - Teaching of Gaelic in Gaelic-speaking areas

## Presumption of mainstream education

originally from Education (Scotland) Act 1980

School education should be provided in mainstream unless particular circumstances apply.

These are:

- where mainstream school would not be suited to the ability or aptitude of the child.
- where mainstream would be incompatible with the provision of efficient education to those with whom the child would be educated.
- unreasonable public expenditure would be required that would not ordinarily be incurred.

## Education outwith school

Education authorities have to make other arrangements for pupils in certain circumstances where:

- due to ill health the pupil is unable to, or it would be unreasonable to expect the pupil to, attend school.
- the pupil has been given permission to stay off as he/she is caring for an ill or infirm family member.
- the pupil has been excluded from school.

## Placing requests

Parents are able to request their child attend a particular school unless:

- granting the request would mean forming an extra class or appointing an additional teacher.
- there would be unreasonable amounts of public expenditure not otherwise incurred. e.g. extending or altering accommodation.
- the maximum capacity of the school has been reached.
- it would be seriously detrimental to the good order and discipline in the school and to the wellbeing of other pupils.
- it would not be suited to the age, ability, or aptitude of the child.

# Main Features of the Additional Support for Learning (Scotland) Act 2004

The Education (Additional Support for Learning) (Scotland) Act 2004 came into force in November 2005 and was amended by the Education (Scotland) Act in 2009 and in 2016. The ASL Act provides the legal framework for supporting children and young people with additional support needs in their school education. It applies to those who, for whatever reason, require additional support to help them make the most of their school education.

Children and young people may need extra help for a variety of reasons and may include those who:

- are being bullied
- have motor or sensory impairments
- are particularly able or talented
- have experienced a bereavement
- have a learning difficulty, such as Dyslexia
- are interrupted learners
- have emotional or social difficulties
- are young carers

This list is not exhaustive, however the 2009 Act automatically deems all looked after children and young people to have additional support needs unless the education authority determine that they do not need additional support to benefit from their education.

It is the duty of education authorities to take account of those children for whose education they are responsible, and any children and young people who have additional support needs and to make provision to meet these needs as appropriate. The ASL Act states that:

*"Every education authority must: in relation to each child and young person having additional support needs for whose education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person, and make appropriate arrangements for keeping under consideration the additional support needs of, and the adequacy of the additional support provided for, each such child and young person."*

The specific form and level of support provided will depend on the individual case and is not covered by legislation; in order to determine what provision

will be required for a particular child the authority must arrange for assessments to be carried out. The authority should then make provision based on the recommendations of the professionals administering these, such as educational psychologists, but it also has a duty to take into account the views of the child and his/her parents, and any information that a parent may bring to their attention.

Parents have a right to request the authority to formally identify whether a child has additional support needs and to request an assessment be carried out. The 2009 Act gave parents the right to request a specific assessment at any time for a child or young person identified as having additional support needs.

## Supporting Children's Learning Code of Practice (Third Edition 2017)

The Code of Practice was updated in 2017 to reflect the changes to the ASL Act. It gives guidance for the Act's provisions as well as on the supporting framework of secondary legislation. This is a key document that should be used as a reference point for all staff in schools who play a key role in supporting young people with additional support needs. It can be found at:
**https://www.gov.scot/Resource/0052/00529411.pdf**

Examples of additional support provided from within education services to children and young people are the following:

- an educational auxiliary working with a child with additional support needs in a nursery
- a class teacher supporting a child by following a behaviour management programme drawn up in consultation with a behaviour support teacher/ SfL teacher
- support from a support for learning teacher to help with a reading difficulty
- use of communication symbols by a child with an autism spectrum condition
- designated support staff working with Gypsy/Traveller children on their site to help them improve their literacy and numeracy skills
- in-class support provided by an English as Additional Language (EAL) teacher for a child whose first language is not English
- a highly able child at the later stages of primary school receiving support to access the secondary mathematics curriculum

## Coordinated Support Plan

A CSP is a statutory plan prepared by the education authority when a child or young person requires significant additional support from the education authority and from at least one other 'appropriate agency' from outwith education in order to benefit from school education and when the difficulties experienced by the child last longer than a year.

There should be an integrated plan of action for a child or young person where more than one agency or service is involved and the aim should be to have one plan in line with the principles of **Getting It Right For Every Child** e.g. an Individual Education Plan included as part of a child's plan for a looked after child.

# The Equality Act 2010

## Disability

This act clarifies and improves the definition of disability discrimination and will make it easier for individuals to challenge discrimination when it occurs.

The Equality Act 2010 replaces the Disability Discrimination Act, 2005, where greater duties were placed on public authorities to eliminate discrimination and required authorities to positively discriminate for children and young people with disability. It defined disability as:

*"A physical or mental impairment, which has a substantial and long term adverse affect on a person's ability to carry out normal day to day activities. There is an expectation that public authorities should positively discriminate to promote equality through implementing duties such as ensuring that robust anti- bullying strategies are in place."*

The Equality Act 2010 applies to admissions, providing education, access to any benefit, facility or service, exclusions or any other detriment.

## Protected characteristics in schools

Particular groups are covered against discrimiation as they have "protected characteristics". They are:

- Age
- Sex
- Religion or belief, includes non-belief
- Disability
- Race
- Sexual orientation
- Pregnancy and maternity (up to 26 weeks after giving birth)
- Gender reassignment

Unlawful discrimination can take various forms:

- **Direct Discrimination**

Direct discrimination is fairly straightforward. You treat someone less favourably because of a protected characteristic, for example because they have a disability, because they're male or female, because of their race, religion, because they're breastfeeding, etc.

It is also direct discrimination if you treat someone less favourably because they have a friend or sibling who has a protected characteristic or because you think they have a protected characteristic, even if they haven't.

- **Indirect Discrimination**

Indirect discrimination occurs when we treat everyone the same. We may not always be aware of it. In the late 1990s, the MacPherson enquiry into the death of Stephen Lawrence came to the conclusion that the Metropolitan police was institutionally racist. The way it conducted itself resulted in poor outcomes for minority ethnic groups, not because individual police officers were racist nor were they ordered to behave in such a way. It was an unintended outcome of the way in which policies, practices and procedures were designed and unquestioningly implemented. As a result of this we now carry out Equality Impact Assessments.

These assessments help us to achieve equality amongst people and help to eliminate discrimination and foster good relations.

## Reasonable adjustments

Normally, reasonable adjustments consist of three requirements:

- A change in the way things are done
- Making changes to overcome barriers created by physical features
- Providing extra equipment e.g. a person to support the child or a hoist

For schools, the second requirement does not apply as these should be covered in the planning stage. However, given the physical layout that a school has, it must plan to improve access for disabled pupils. If, for example, a school was built to have an assembly hall on the first floor, it will need to ensure that disabled pupils can still participate in assemblies and other activities organised by the school.

The duty to make reasonable adjustments is anticipatory, so schools must think in advance what disabled pupils may need. It also means that if new provisions, criteria and practices are introduced, the schools need to think about how this would affect disabled pupils and what measures,

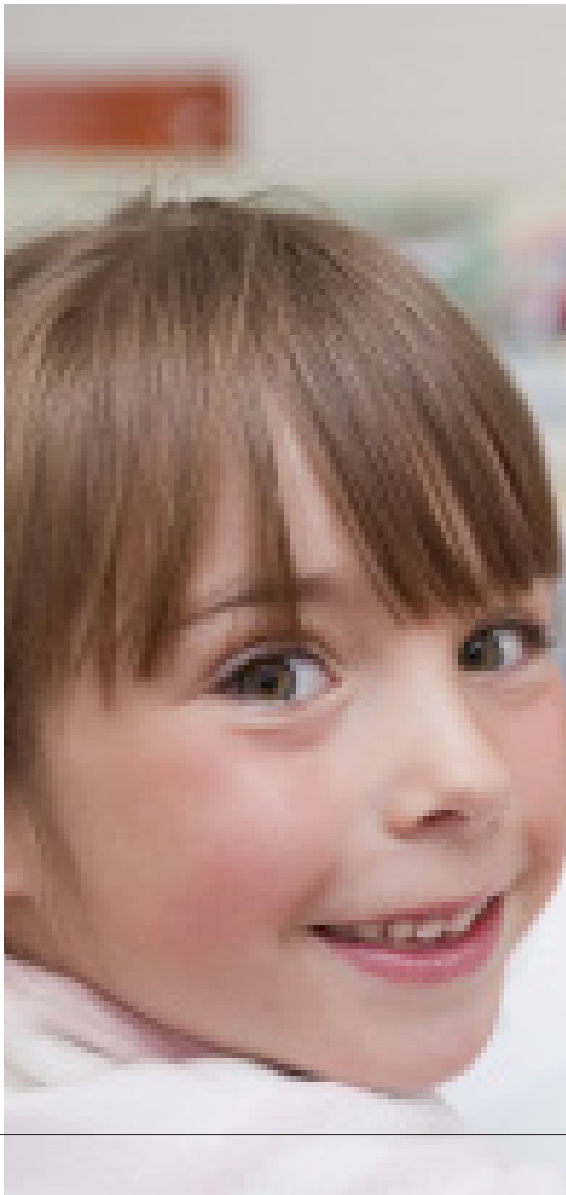
if any, can be taken to overcome any disadvantage they may have. If such measures cannot be taken, the school may have to withdraw such proposed provisions, criteria and practices.

Reasonable adjustments must be considered in cases that could amount to discrimination arising from disability.

Many disabled pupils may receive additional support in school. In some cases the substantial disadvantage that they experience may be overcome by this support and so there will be no obligation under the Act for the school to make reasonable adjustments. However, when the school is organising a school trip such support may not be sufficient and the school will need to look at additional adjustments to ensure that a disabled pupil can take part in the trip. e.g. ensuring that the child has sufficient adult support, during the trip, all activities are suitable / can be adjusted for that child.

The Equality Act does not override health and safety legislation. If an adjustment increases the risk to health and safety of any person (including the pupil in question) then this must be considered, following a risk assessment.

It also doesn't prevent a school from choosing its best footballers, singers or mathematicians where a consideration of standards is relevant; for example in interschool competitions. However, it should not be assumed that this means barring a disabled person from an activity.



# Children and Young People Scotland Act 2014

This will change how children and young people in Scotland will be cared for. It covers 4 major themes:

1. Children's Rights

2. Getting It Right For Every Child

3. Early Learning and Childcare

4. Looked After Children

## The Act seeks to:

- strengthen the rights of children and young people in Scotland and create a statutory definition of wellbeing
- create joint Children's Services Plans (NHS and Local Authority)
- create new systems to support children and young people so that potential issues can be identified sooner
- increase the power of Scotland's Commissioner for Children and Young People
- provide free school meals for P1-3 pupils
- extend the time ministers have to decide whether to close a school, especially in rural areas
- give rights of appeal against secure accommodation orders
- require Local Authorities to provide administrative support to Children's Hearings Area Support Teams
- offer free childcare to 3 and 4 year olds and some Looked After 2 year olds or who are in kinship care with 600 instead of 475 hours care
- give the Looked After Child the right to stay in care up to 21 years
- extend the number of bodies subject to a legal duty in relation to the Looked After Child / formally Looked After Child by introducing corporate parents in order to advise, guide, assist and counsel the Looked After Child up to the age of 26
- provide assistance to kinship carers who have or are applying for residence orders
- place Scotland's national adoption register in statute thus improving prospects for finding homes for vulnerable children

## Implement GIRFEC principles namely:

- working together to ensure that each child has the best start in life
- each child has a Named Person who can be approached if there are any concerns about Health and Wellbeing (Health Visitor up to 5 years, Head Teacher from 5 years onwards or Principal Teacher of Guidance)

A Child's Plan, to be used when a pupil needs a lot of support. The plan will contain information about the nature of the support; including

- why support is needed
- type of support required
- how long support is required for

*"To help secure a widely held ambition for Scotland to be the best place in the world for children to grow up."*

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This guide is not intended as legal advice and is for information purposes only. If you need advice about legal matters please contact Legal Services, the Moray Council, directly.