

Special Educational Needs and Disability Act 2001

2001 CHAPTER 10

Sweet & Maxwell Ltd.

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An Act to amend Part 4 of the Education Act 1996; to make further provision against discrimination, on grounds of disability, in schools and other educational establishments; and for connected purposes.

[11th May 2001]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

PART 1

SPECIAL EDUCATIONAL NEEDS

Mainstream education

1 Education in mainstream schools of children with special educational needs

In the Education Act 1996 (“the 1996 Act”), for section 316 substitute–

“316 Duty to educate children with special educational needs in mainstream schools

- (1) This section applies to a child with special educational needs who should be educated in a school.
- (2) If no statement is maintained under section 324 for the child, he must be educated in a mainstream school.
- (3) If a statement is maintained under section 324 for the child, he must be educated in a mainstream school unless that is incompatible with–
 - (a) the wishes of his parent, or
 - (b) the provision of efficient education for other children.
- (4) In this section and section 316A “mainstream school” means any school other than–
 - (a) a special school, or
 - (b) an independent school which is not–
 - (i) a city technology college,
 - (ii) a city college for the technology of the arts, or
 - (iii) a city academy.

316A Education otherwise than in mainstream schools

- (1) Section 316 does not prevent a child from being educated in—
 - (a) an independent school which is not a mainstream school, or
 - (b) a school approved under section 342,if the cost is met otherwise than by a local education authority.
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
 - (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
 - (i) the local education authority,
 - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
 - (iii) his parent, and
 - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;
 - (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;
 - (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
 - (i) the local education authority,
 - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
 - (iii) his parent;
 - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
 - (a) section 348, or
 - (b) paragraph 3 of Schedule 27.
- (4) If a local education authority decide—
 - (a) to make a statement for a child under section 324, but
 - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,they shall, in making the statement, comply with section 316(3).
- (5) A local education authority may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.
- (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
- (8) An authority must have regard to guidance about section 316 and this section issued—
 - (a) for England, by the Secretary of State,

(b) for Wales, by the National Assembly for Wales.

(9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).

(10) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.

(11) “Authority” –

(a) in relation to a maintained school, means each of the following –

- (i) the local education authority,
- (ii) the school's governing body, and

(b) in relation to a maintained nursery school or a pupil referral unit, means the local education authority.”

General duties of local education authorities

2 Advice and information for parents

In the 1996 Act, insert the following section –

“General duties of local education authorities

332A Advice and information for parents

(1) A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs.

(2) In making the arrangements, the authority must have regard to any guidance given –

- (a) for England, by the Secretary of State,
- (b) for Wales, by the National Assembly for Wales.

(3) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to –

- (a) the parents of children in their area,
- (b) the head teachers and proprietors of schools in their area, and
- (c) such other persons as they consider appropriate.”

3 Resolution of disputes

In the 1996 Act, insert the following section –

“332B Resolution of disputes

(1) A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other) about the exercise by authorities of functions under this Part.

- (2) A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.
- (3) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given—
 - (a) for England, by the Secretary of State,
 - (b) for Wales, by the National Assembly for Wales.
- (5) The authority must take such steps as they consider appropriate for making the arrangements made under subsections (1) and (2) known to—
 - (a) the parents of children in their area,
 - (b) the head teachers and proprietors of schools in their area, and
 - (c) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal.
- (7) In this section—

“authorities” means the governing bodies of maintained schools and the local education authority,

“relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.
- (8) For the purposes of this section a school is a relevant school in relation to a child if it is—
 - (a) a maintained school or a maintained nursery school,
 - (b) a pupil referral unit,
 - (c) a city technology college, a city college for the technology of the arts or a city academy,
 - (d) an independent school named in the statement maintained for the child under section 324, or
 - (e) a school approved under section 342.”

4 Compliance with orders

In the 1996 Act, insert the following section—

“336A Compliance with orders

- (1) If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.
- (2) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

Appeals

5 Unopposed appeals

In the 1996 Act, insert the following section–

“326A Unopposed appeals

- (1) This section applies if–
 - (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
 - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must–
 - (a) in the case of an appeal under section 325, make a statement under section 324 of the child's educational needs,
 - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child's educational needs,
 - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent's request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- (6) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

6 Maintenance of statement during appeal

In paragraph 11 of Schedule 27 to the 1996 Act (circumstances in which a local education authority may cease to maintain a statement), after sub-paragraph (4) insert–

- “(5) A local education authority may not, under this paragraph, cease to maintain a statement if–
- (a) the parent of the child has appealed under this paragraph against the authority's determination to cease to maintain the statement, and
 - (b) the appeal has not been determined by the Tribunal or withdrawn.”

Identification and assessment of educational needs

7 Duty to inform parent where special educational provision made

(1) In the 1996 Act, insert the following section–

“317A Duty to inform parent where special educational provision made

(1) This section applies if–

(a) a child for whom no statement is maintained under section 324 is a registered pupil at–

- (i) a community, foundation or voluntary school, or
- (ii) a pupil referral unit,

(b) special educational provision is made for him at the school because it is considered that he has special educational needs, and

(c) his parent has not previously been informed under this section of special educational provision made for him at the school.

(2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.

(3) In any other case, the governing body must inform the child's parent that special educational provision is being made for him there because it is considered that he has special educational needs.”

(2) After subsection (3) of section 123 of the School Standards and Framework Act 1998 (c. 31) (provision for children with special educational needs), insert–

“(3A) Subsection (3B) applies if–

(a) a local education authority or other person providing relevant nursery education for a child makes special educational provision for him because it is considered that he has special educational needs;

(b) no statement under section 324 of the Education Act 1996 is maintained for the child; and

(c) his parent has not previously been informed under subsection (3B) of the special educational provision made for him.

(3B) The local education authority or other person concerned must inform the child's parent that special educational provision is being made for him because it is considered that he has special educational needs.”

8 Review or assessment of educational needs at request of responsible body

In the 1996 Act, insert the following section–

“329A Review or assessment of educational needs at request of responsible body

(1) This section applies if–

- (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
 - (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
 - (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child's parent a notice informing him—
- (a) that they are considering whether to make an assessment of the child's educational needs,
 - (b) of the procedure to be followed in making the assessment,
 - (c) of the name of their officer from whom further information may be obtained, and
 - (d) of the parent's right to make representations, and submit written evidence, to them before the end of the period specified in the notice (“the specified period”).
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child's parent and to the responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—
- (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
 - (b) the parent may appeal to the Tribunal against the decision.
- (9) A notice given under subsection (8)(a) to the child's parent must—
- (a) inform the parent of his right to appeal, and
 - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may—
- (a) dismiss it, or
 - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means—
- (a) a maintained school,
 - (b) a maintained nursery school,

- (c) a pupil referral unit,
 - (d) an independent school,
 - (e) a school approved under section 342.
- (13) “The responsible body” means–
- (a) in relation to a maintained nursery school or a pupil referral unit, the head teacher,
 - (b) in relation to any other relevant school, the proprietor or head teacher, and
 - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.”

9 Duty to specify named school

In section 324 of the 1996 Act (statement of special educational needs), after subsection (4) insert–

“(4A) Subsection (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.”

Amendment of statement of special educational needs

10 Amendment of statement of special educational needs

Schedule 1 makes further provision concerning the rights of parents and others where a statement of special educational needs is amended.

PART 2

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER 1

SCHOOLS

Duties of responsible bodies

11 Discrimination against disabled pupils and prospective pupils

(1) In Part 4 of the Disability Discrimination Act 1995 (“the 1995 Act”), before section 29, insert the following section–

“CHAPTER 1 SCHOOLS

Duties of responsible bodies

28A Discrimination against disabled pupils and prospective pupils

(1) It is unlawful for the body responsible for a school to discriminate against a disabled person—

- (a) in the arrangements it makes for determining admission to the school as a pupil;
- (b) in the terms on which it offers to admit him to the school as a pupil; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.

(2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.

(3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being—

- (a) education; or
- (b) an associated service.

(4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.

(5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the “responsible body”.

(6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.”

(2) In the 1995 Act, insert the Schedule set out in Schedule 2.

12 Meaning of “discrimination”

In the 1995 Act, insert the following section—

“28B Meaning of “discrimination”

(1) For the purposes of section 28A, a responsible body discriminates against a disabled person if—

- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
- (b) it cannot show that the treatment in question is justified.

(2) For the purposes of section 28A, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with section 28C; and
- (b) it cannot show that its failure to comply is justified.

- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—
- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
 - (b) that its failure to take the step was attributable to that lack of knowledge.
- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (5) Subsections (6) to (8) apply in determining whether, for the purposes of this section—
- (a) less favourable treatment of a person, or
 - (b) failure to comply with section 28C,
- is justified.
- (6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.
- (7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (8) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but
 - (b) it fails without justification to comply with that duty, its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.”

13 Disabled pupils not to be substantially disadvantaged

In the 1995 Act, insert the following section—

“28C Disabled pupils not to be substantially disadvantaged

- (1) The responsible body for a school must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (2) That does not require the responsible body to—
- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
 - (b) provide auxiliary aids or services.
- (3) Regulations may make provision, for the purposes of this section—

- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
 - (b) as to steps which it is always reasonable for a responsible body to have to take;
 - (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
 - (d) as to steps which it is never reasonable for a responsible body to have to take.
- (4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.
- (6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person's disability to be treated as confidential and which satisfies either of the following conditions—
- (a) it is made by that person's parent; or
 - (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.
- (8) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

14 Accessibility strategies and plans

- (1) In the 1995 Act, insert the following section—

“28D Accessibility strategies and plans

- (1) Each local education authority must prepare, in relation to schools for which they are the responsible body—
- (a) an accessibility strategy;
 - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the schools' curriculums;
 - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
 - (c) improving the delivery to disabled pupils—
 - (i) within a reasonable time, and

- (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.
- (3) An accessibility strategy must be in writing.
- (4) Each local education authority must keep their accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) It is the duty of each local education authority to implement their accessibility strategy.
- (6) An inspection under section 38 of the Education Act 1997 (inspections of local education authorities) may extend to the performance by a local education authority of their functions in relation to the preparation, review, revision and implementation of their accessibility strategy.
- (7) Subsections (8) to (13) apply to—
 - (a) maintained schools;
 - (b) independent schools; and
 - (c) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996.
- (8) The responsible body must prepare—
 - (a) an accessibility plan;
 - (b) further such plans at such times as may be prescribed.
- (9) An accessibility plan is a plan for, over a prescribed period—
 - (a) increasing the extent to which disabled pupils can participate in the school's curriculum;
 - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
 - (c) improving the delivery to disabled pupils—
 - (i) within a reasonable time, and
 - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.
- (10) An accessibility plan must be in writing.
- (11) During the period to which the plan relates, the responsible body must keep its accessibility plan under review and, if necessary, revise it.
- (12) It is the duty of the responsible body to implement its accessibility plan.
- (13) An inspection under the School Inspections Act 1996 may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.
- (14) For a maintained school, the duties imposed by subsections (8) to (12) are duties of the governing body.
- (15) Regulations may prescribe services which are, or services which are not, to be regarded for the purposes of this section as being—

- (a) education; or
- (b) an associated service.

(16) In this section and in section 28E, “local education authority” has the meaning given in section 12 of the Education Act 1996.

(17) In relation to Wales—

- “prescribed” means prescribed in regulations; and
- “regulations” means regulations made by the National Assembly.

(18) “Disabled pupil” includes a disabled person who may be admitted to the school as a pupil.

(19) “Maintained school” and “independent school” have the meaning given in section 28Q(5).”

(2) [...] ¹

15 Accessibility strategies and plans: procedure

In the 1995 Act, insert the following section—

“28E Accessibility strategies and plans: procedure

(1) In preparing their accessibility strategy, a local education authority must have regard to—

- (a) the need to allocate adequate resources for implementing the strategy; and
- (b) any guidance issued as to—
 - (i) the content of an accessibility strategy;
 - (ii) the form in which it is to be produced; and
 - (iii) the persons to be consulted in its preparation.

(2) A local education authority must have regard to any guidance issued as to compliance with the requirements of section 28D(4).

(3) Guidance under subsection (1)(b) or (2) may be issued—

- (a) for England, by the Secretary of State; and
- (b) for Wales, by the National Assembly.

(4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.

(5) If the Secretary of State asks for a copy of—

- (a) the accessibility strategy prepared by a local education authority in England, or
- (b) the accessibility plan prepared by the proprietor of an independent school (other than a city academy) in England,

the strategy or plan must be given to him.

(6) If the National Assembly asks for a copy of—

¹ repealed subject to savings specified in SI 2005/2034 art.10 and Sch.1 para.2 by Education Act 2005 c. 18 Sch. 19(4) para. 1

- (a) the accessibility strategy prepared by a local education authority in Wales, or
- (b) the accessibility plan prepared by the proprietor of an independent school in Wales,

the strategy or plan must be given to it.

(7) If asked to do so, a local education authority must make a copy of their accessibility strategy available for inspection at such reasonable times as they may determine.

(8) If asked to do so, the proprietor of an independent school which is not a city academy must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.”

16 Residual duty of education authorities

In the 1995 Act, insert the following sections—

“Residual duty of education authorities

28F Duty of education authorities not to discriminate

(1) This section applies to—

- (a) the functions of a local education authority under the Education Acts; and
- (b) the functions of an education authority under—
 - (i) the Education (Scotland) Act 1980;
 - (ii) the Education (Scotland) Act 1996; and
 - (iii) the Standards in Scotland's Schools etc. Act 2000.

(2) But it does not apply to any prescribed function.

(3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against—

- (a) a disabled pupil; or
- (b) a disabled person who may be admitted to a school as a pupil.

(4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.

(5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

(6) In this section and section 28G, “local education authority” has the meaning given in section 12 of the Education Act 1996.

(7) “The Education Acts” has the meaning given in section 578 of the Education Act 1996.

(8) In this section and section 28G, “education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

28G Residual duty: supplementary provisions

(1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications—

- (a) references to a responsible body are to be read as references to an authority; and
 - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies–
- (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require the authority to–
- (a) remove or alter a physical feature; or
 - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.
- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) “Authority” means–
- (a) in relation to England and Wales, a local education authority; and
 - (b) in relation to Scotland, an education authority.”

Enforcement

17 Special Educational Needs and Disability Tribunal

- (1) In the 1995 Act, insert the following section–

“Enforcement: England and Wales

28H Special Educational Needs and Disability Tribunal

- (1) The Special Educational Needs Tribunal–
- (a) is to continue to exist; but
 - (b) after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.
- (2) It is referred to in this Chapter as “the Tribunal”.
- (3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.

- (4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.”
- (2) Section 10 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33) (consultation on appointments) is not to apply to appointments to the lay panel.
- (3) “The lay panel” has the meaning given in section 333(2)(c) of the 1996 Act.

18 Jurisdiction and powers of the Tribunal

In the 1995 Act, insert the following section–

“28I Jurisdiction and powers of the Tribunal

- (1) A claim that a responsible body–
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
 - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the Tribunal by A's parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) If the Tribunal considers that a claim under subsection (1) is well founded–
- (a) it may declare that A has been unlawfully discriminated against; and
 - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)–
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
 - (b) does not include power to order the payment of any sum by way of compensation.”

19 Procedure

- (1) In the 1995 Act, insert the following section–

“28J Procedure

- (1) Regulations may make provision about–
- (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
 - (b) the making of a claim.
- (2) The regulations may, in particular, include provision–
- (a) as to the manner in which a claim must be made;
 - (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal–
 - (i) for determining by which tribunal any claim is to be heard, and
 - (ii) for the transfer of proceedings from one tribunal to another;

- (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
 - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
 - (e) as to the persons who may appear on behalf of the parties;
 - (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
 - (g) requiring persons to attend to give evidence and produce documents;
 - (h) for authorising the administration of oaths to witnesses;
 - (i) for the determination of claims without a hearing in prescribed circumstances;
 - (j) as to the withdrawal of claims;
 - (k) for enabling the Tribunal to stay proceedings on a claim;
 - (l) for the award of costs or expenses;
 - (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
 - (n) for the registration and proof of decisions and orders; and
 - (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.
- (3) Proceedings before the Tribunal are to be held in private, except in prescribed circumstances.
- (4) Unless made with the agreement of the National Assembly, regulations made under this section do not apply to Wales.
- (5) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may, with the consent of the Treasury, determine.
- (6) In relation to Wales, the power conferred by subsection (5) may be exercised only with the agreement of the National Assembly.
- (7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.
- (8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996.
- (9) A person who without reasonable excuse fails to comply with—
- (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
 - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),
- is guilty of an offence.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.”

(2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 1 of Schedule 3.

20 Admissions

In the 1995 Act, insert the following section—

“28K Admissions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
 - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- (a) under section 94 of the School Standards and Framework Act 1998, or
 - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996, enabling an appeal to be made against the decision by A's parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Admissions decision” means—
- (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
 - (b) a decision as to the admission of a person to a city academy taken by the responsible body or on its behalf.”

21 Exclusions

In the 1995 Act, insert the following section—

“28L Exclusions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
 - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- (a) under section 67(1) of the School Standards and Framework Act 1998, or
 - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996, enabling an appeal to be made against the decision by A or by his parent.

- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Exclusion decision” means–
 - (a) a decision of a kind mentioned in section 67(1) of the School Standards and Framework Act 1998;
 - (b) a decision not to reinstate a pupil who has been permanently excluded from a city academy by its head teacher, taken by the responsible body or on its behalf.
- (6) “Responsible body”, in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under paragraph 4 of Schedule 11 to the School Standards and Framework Act 1998.
- (7) “Maintained school” has the meaning given in section 28Q(5).”

22 Roles of the Secretary of State and the National Assembly

In the 1995 Act, insert the following section–

“28M Roles of the Secretary of State and the National Assembly

- (1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body–
 - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or
 - (b) has failed to discharge a duty imposed by or under either of those sections,
 it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (2) Subsection (3) applies in relation to–
 - (a) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996; and
 - (b) city academies.
- (3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body–
 - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to–
 - (i) the provision to the appropriate authority of copies of that body's accessibility plan, or
 - (ii) the inspection of that plan, or
 - (b) has failed to discharge that duty,
 it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.
- (5) Subsection (6) applies if the Tribunal has made an order under section 28I(3).

- (6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
 - (b) has failed to comply with the order,
- he may give that body such directions as to compliance with the order as appear to him to be expedient.
- (7) Directions given under subsection (1), (3) or (6)—
- (a) may be varied or revoked by the directing authority; and
 - (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.
- (8) “Appropriate authority” means—
- (a) in relation to England, the Secretary of State; and
 - (b) in relation to Wales, the National Assembly.
- (9) “Directing authority” means—
- (a) the Secretary of State in relation to a direction given by him; and
 - (b) the National Assembly in relation to a direction given by it.”

23 Enforcement procedure: Scotland

In the 1995 Act, insert the following section—

“Enforcement: Scotland

28N Civil proceedings

- (1) A claim that a responsible body in Scotland—
- (a) has discriminated against a person in a way which is unlawful under this Chapter,
 - or
 - (b) is by virtue of section 58 to be treated as having discriminated against a person in such a way,
- may be made the subject of civil proceedings in the same way as any other claim for the enforcement of a statutory duty.
- (2) Proceedings in Scotland may be brought only in a sheriff court.
- (3) The remedies available in such proceedings are those which are available in the Court of Session other than an award of damages.
- (4) Part 3 of Schedule 3 makes further provision about the enforcement of this Chapter and about procedure.
- (5) In relation to civil proceedings in Scotland, in that Part of that Schedule—
- (a) references to sections 28I, 28K and 28L, or any of them, are to be construed as a reference to this section;
 - (b) references to the Tribunal are to be construed as references to the sheriff court.”

24 Validity and revision of agreements of responsible bodies

In the 1995 Act, insert the following section–

“Agreements relating to enforcement

28P Validity and revision of agreements of responsible bodies

- (1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to–
 - (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
 - (b) exclude or limit the operation of any provision of, or made under, this Chapter;or
 - (c) prevent any person from making a claim under this Chapter.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim–
 - (a) under section 28I or 28N; or
 - (b) to which section 28K or 28L applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order may be made unless all persons affected have been–
 - (a) given notice of the application; and
 - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.”

25 Interpretation

In the 1995 Act, insert the following section–

“Interpretation of Chapter 1

28Q Interpretation

- (1) This section applies for the purpose of interpreting this Chapter.
- (2) “Disabled pupil” means a pupil who is a disabled person.
- (3) “Pupil”–
 - (a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996; and
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

- (4) Except in relation to Scotland (when it has the meaning given in section 135(1) of the Education (Scotland) Act 1980) “school” means—
- (a) a maintained school;
 - (b) a maintained nursery school;
 - (c) an independent school;
 - (d) a special school which is not a maintained special school but which is approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996;
 - (e) a pupil referral unit.
- (5) In subsection (4)—
- “maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;
 - “maintained nursery school” has the meaning given in section 22(9) of the School Standards and Framework Act 1998;
 - “independent school” has the meaning given in section 463 of the Education Act 1996; and
 - “pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996.
- (6) “Responsible body” has the meaning given in section 28A(5).
- (7) “Governing body”, in relation to a maintained school, means the body corporate (constituted in accordance with Schedule 9 to the School Standards and Framework Act 1998) which the school has as a result of section 36 of that Act.
- (8) “Parent”—
- (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996; and
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) In relation to England and Wales “permitted form of selection” means—
- (a) if the school is a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, any form of selection mentioned in section 99(2) or (4) of that Act;
 - (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
 - (c) if the school is an independent school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (10) In relation to Scotland, “permitted form of selection” means—
- (a) if the school is managed by an education authority, such arrangements as have been approved by the Scottish Ministers for the selection of pupils for admission;
 - (b) if the school is an independent school or a self-governing school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

- (11) In subsection (10), “education authority”, “independent school” and “self-governing school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (12) “City academy” means a school which is known as a city academy as a result of subsection (3) or (3A) of section 482 of the Education Act 1996.
- (13) “Accessibility strategy” and “accessibility plan” have the meaning given in section 28D.
- (14) “The National Assembly” means the National Assembly for Wales.”

CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

26 Discrimination against disabled students and prospective students

- (1) In the 1995 Act, insert the following section—

“CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

28R Discrimination against disabled students and prospective students

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—
- (a) in the arrangements it makes for determining admissions to the institution;
 - (b) in the terms on which it offers to admit him to the institution; or
 - (c) by refusing or deliberately omitting to accept an application for his admission to the institution.
- (2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.
- (3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.
- (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) “Educational institution”, in relation to England and Wales, means an institution—
- (a) within the higher education sector;

- (b) within the further education sector; or
 - (c) designated in an order made by the Secretary of State.
- (7) “Educational institution”, in relation to Scotland, means –
- (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
 - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
 - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
 - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
 - (e) an institution designated in an order made by the Secretary of State.
- (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
- (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
- (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
- (11) “Student services” means services of any description which are provided wholly or mainly for students.
- (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.”
- (2) In the 1995 Act, insert the Schedule set out in Schedule 4.

27 Meaning of “discrimination”

In the 1995 Act, insert the following section–

“28S Meaning of “discrimination”

- (1) For the purposes of section 28R, a responsible body discriminates against a disabled person if–
- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
 - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if–
- (a) it fails, to his detriment, to comply with section 28T; and
 - (b) it cannot show that its failure to comply is justified.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows–
- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and

- (b) that its failure to take the step was attributable to that lack of knowledge.
- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (5) Subsections (6) to (9) apply in determining whether, for the purposes of this section–
 - (a) less favourable treatment of a person, or
 - (b) failure to comply with section 28T,
 is justified.
- (6) Less favourable treatment of a person is justified if it is necessary in order to maintain–
 - (a) academic standards; or
 - (b) standards of any other prescribed kind.
- (7) Less favourable treatment is also justified if–
 - (a) it is of a prescribed kind;
 - (b) it occurs in prescribed circumstances; or
 - (c) it is of a prescribed kind and it occurs in prescribed circumstances.
- (8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (9) If, in a case falling within subsection (1)–
 - (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
 - (b) fails without justification to comply with that duty,
 its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”

28 Disabled students not to be substantially disadvantaged

In the 1995 Act, insert the following section–

“28T Disabled students not to be substantially disadvantaged

- (1) The responsible body for an educational institution must take such steps as it is reasonable for it to have to take to ensure that–
 - (a) in relation to the arrangements it makes for determining admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to student services provided for, or offered to, students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.

(4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.

(6) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

29 Further education etc. provided by local education authorities and schools

(1) In the 1995 Act, insert the following section–

“Other providers of further education or training facilities

28U Further education etc. provided by local education authorities and schools

(1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to–

- (a) higher education secured by a local education authority;
- (b) further education–
 - (i) secured by a local education authority; or
 - (ii) provided by the governing body of a maintained school;
- (c) recreational or training facilities secured by a local education authority.

(2) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to–

- (a) further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980;
- (b) facilities whose provision is secured by an education authority under section 1(3) of that Act.”

(2) In the 1995 Act, insert the Schedule set out in Schedule 5.

Enforcement

30 Right of redress

(1) In the 1995 Act, insert the following section–

“Enforcement, etc.

28V Enforcement, remedies and procedure

- (1) A claim by a person—
- (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter,
 - (b) that a responsible body is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way, or
 - (c) that a person is by virtue of section 57 to be treated as having discriminated against him in such a way,
- may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales may be brought only in a country court.
- (4) Proceedings in Scotland may be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
- (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.”

- (2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 2 of Schedule 3.

31 Occupation of premises by educational institutions

- (1) In the 1995 Act, insert the following section—

“28W Occupation of premises by educational institutions

- (1) This section applies if—
- (a) premises are occupied by an educational institution under a lease;
 - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
 - (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T.
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—
- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;

- (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
 - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
 - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—
 “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and
 “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—
 (a) impose conditions which are to apply if the responsible body alters the premises, or
 (b) entitle the lessor to impose conditions when consenting to the responsible body's altering the premises,
 the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Part 3 of Schedule 4 supplements the provisions of this section.”
- (2) In Schedule 4 to the 1995 Act (premises occupied under leases), at the end insert the provisions set out in Schedule 6.

32 Validity and revision of agreements

In the 1995 Act, insert the following section—

“28X Validity and revision of agreements

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”.”

33 Interpretation

In the 1995 Act, insert the following section—

“Interpretation of Chapter 2

31A Interpretation

- (1) Subsections (2) to (4) apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.”

34 Removal of certain duties of funding bodies

- (1) In section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils), omit subsections (4A) and (4B).
- (2) In section 40 of the Further and Higher Education (Scotland) Act 1992 (c. 37), omit subsections (5) and (6).
- (3) Section 528 of the 1996 Act ceases to have effect.
- (4) Before section 30 of the 1995 Act, insert—

“Duties of funding councils”.
- (5) In section 30 of the 1995 Act (further and higher education of disabled persons), omit subsection (6).
- (6) In section 31 of the 1995 Act (further and higher education of disabled persons: Scotland), omit subsection (3).
- (7) In section 6 of the Learning and Skills Act 2000 (c. 21) (conditions imposed on financial resources in England), omit subsections (4) and (6).
- (8) In section 35 of that Act (conditions imposed on financial resources in Wales), omit subsections (4) and (6).

CHAPTER 3**MISCELLANEOUS****35** [...]²**36** [...]³**37** [...]⁴**38 Relationship with other Parts of the 1995 Act**

- (1) The 1995 Act is amended as follows.
- (2) In section 2 (past disabilities)—
 - (a) in subsection (1), for “and III” substitute “to 4” and
 - (b) in subsection (4), for “or Part III” substitute “, 3 or 4”.
- (3) In subsection (3) of section 3 (courts etc. to have regard to guidance), for “A tribunal or court” substitute “An adjudicating body”.
- (4) After that subsection, insert—

“(3A) “Adjudicating body” means –
 (a) a court;

² repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

³ repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

⁴ repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

- (b) a tribunal; and
 - (c) any other person who, or body which, may decide a claim under Part 4.
- (5) In section 19 (meaning of “discrimination” in Part 3) omit–
- (a) paragraphs (a) to (ab) of subsection (5); and
 - (b) subsection (6).
- (6) In that section, insert after subsection (5)–
- “(5A) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by section 28A, 28F or 28R.”
- (7) [...] ⁵
- (8) In that section, after subsection (3), insert–
- “(3A) For the purposes of Chapter 1 of Part 4–
- (a) references in subsection (2) to B include references to–
 - (i) a person who is, for the purposes of that Chapter, B's parent; and
 - (ii) a sibling of B; and
 - (b) references in that subsection to this Act are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), restricted to that Chapter.”
- (9) In subsection (1) of section 57 (aiding unlawful acts), for “act made unlawful by this Act” substitute “unlawful act”.
- (10) After subsection (5) of that section, insert–
- “(6) “Unlawful act” means an act made unlawful by any provision of this Act other than a provision contained in Chapter 1 of Part 4.”
- (11) In paragraph 2 of Schedule 2 (past disabilities) for “and III” substitute “to 4”.
- (12) After that paragraph, insert–
- “2A.**
References in Chapter 1 of Part 4 to a disabled pupil are to be read as references to a pupil who has had a disability.
- 2B.**
References in Chapter 2 of Part 4 to a disabled student are to be read as references to a student who has had a disability.”
- (13) After paragraph 4 of that Schedule, insert–
- “4A.**
In section 28B(3)(a) and (4), after “disabled” insert “or that he had had a disability”.
- 4B.**
In section 28C(1), in paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.

⁵ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

4C.

In section 28S(3)(a) and (4), after “disabled” insert “or that he had had a disability”.

4D.

In subsection (1) of section 28T, after “not disabled” insert “and who have not had a disability”.

4E.

In that subsection as substituted by paragraphs 2 and 6 of Schedule 4C, after “not disabled” insert “and who have not had a disability”.

(14) Omit paragraph 129 of Schedule 37 to the 1996 Act (amendment of section 19(5) of the 1995 Act).

(15) Omit section 38 of the Teaching and Higher Education Act 1998 (c. 30) (amendment of section 19(6) of the 1995 Act).

(16) Omit paragraph 49 of Schedule 9 to the Learning and Skills Act 2000 (c. 21) (amendment of section 19(5) of the 1995 Act).

39 Application to the Isles of Scilly

In the 1995 Act, insert the following section—

“31C Application to Isles of Scilly

This Part applies to the Isles of Scilly—

- (a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were a county council), and
- (b) with such other modifications as may be specified in an order made by the Secretary of State.”

40 Duty of Training and Development Agency for Schools

(1) In the 1995 Act, omit section 29 (education of disabled persons).

(2) [...] ⁶

PART 3**SUPPLEMENTARY****41 Expenses of Secretary of State**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other enactment.

⁶ repealed by Education Act 2005 c. 18 Sch. 19(3) para. 1

42 Minor amendments and repeals

- (1) Schedule 8 makes minor and consequential amendments.
- (2) [...] ⁷
- (3) If, as a result of any other amendment made by Part 1 of that Schedule, a power to make regulations is conferred, that power is exercisable so far as it relates to Wales by the National Assembly for Wales.
- (4) But each of the powers conferred as a result of subsection (3)–
 - (a) is to be treated as if it had been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38); and
 - (b) that transfer may be revoked by an Order in Council under that section.
- (5) For the purposes of section 22 of the Government of Wales Act 1998, an Order in Council made as a result of subsection (4)(b) is to be treated as if it were revoking a previous Order in Council.
- (6) The repeals set out in Schedule 9 have effect.

43 Short title, interpretation, commencement and extent

- (1) This Act may be cited as the Special Educational Needs and Disability Act 2001.
- (2) In this Act–
 - “the 1995 Act” means the Disability Discrimination Act 1995 (c. 50); and
 - “the 1996 Act” means the Education Act 1996 (c. 56).
- (3) Except as provided in subsections (4) and (6), this Act (apart from this section) comes into force on such day as the Secretary of State may appoint by order.
- (4) The following provisions of this Act come into force on the day on which it is passed–
 - (a) section 4,
 - (b) section 5,
 - (c) section 9,
 - (d) section 42(2) to (4), and
 - (e) paragraphs 6 to 10, 13(1) to (4) and 14(3) of Schedule 8 (and section 42(1) so far as relating to those provisions),
 but only so far as is necessary for enabling the making of any regulations for which they provide.
- (5) Nothing in subsection (4) affects the operation of section 13 of the Interpretation Act 1978 (c. 30) in relation to this Act.
- (6) The following provisions come into force as respects Wales on such day as the National Assembly for Wales may appoint by order–
 - (a) sections 1 to 3;
 - (b) sections 7 and 8;
 - (c) section 9 (so far as not brought into force by subsection (4));
 - (d) sections 14 and 15;

⁷ repealed by Education Act 2002 c. 32 Sch. 22(2) para. 1

- (e) section 22, so far as it gives the National Assembly for Wales power to give directions under section 28M(1) or (3) of the 1995 Act or makes provision in relation to such a direction;
 - (f) subsections (1) and (6) of section 42 (but only in so far as they relate to the provisions mentioned in paragraphs (g) to (i));
 - (g) in Part 1 of Schedule 8–
 - (i) paragraphs 1, 5, 11 and 12; and
 - (ii) paragraphs 6 to 10 and 14 (so far as not brought into force by subsection (4));
 - (h) in Part 2 of that Schedule, paragraphs 16 to 18; and
 - (i) in Schedule 9, the entries relating to–
 - (i) the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33); and
 - (ii) section 325(1) of, and Schedule 27 to, the 1996 Act.
- (7) Different days may be appointed for different provisions and for different purposes.
- (8) An order under this section–
 - (a) must be made by statutory instrument; and
 - (b) may contain incidental, supplemental, consequential or transitional provisions and savings.
- (9) Subsection (10) applies to an order bringing any provisions made by–
 - (a) section 28, or
 - (b) paragraph 2 or 6 of Schedule 5,into force.
- (10) The order may, in particular, include provision for the duty imposed by section 28T(1) of the 1995 Act to have effect with such modifications as may be specified in the order for a period which ends–
 - (a) on a date so specified; or
 - (b) on the making by the Secretary of State of an order made by statutory instrument bringing the period to an end.
- (11) Amendments made by this Act to the 1996 Act have the same extent as that Act.
- (12) Parts 2 and 3 do not extend to Northern Ireland.
- (13) Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.

SCHEDULE 1

AMENDMENT TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

Section 10

PART 1

PROCEDURE FOR MAKING AMENDMENT TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

1

Schedule 27 to the 1996 Act (making and maintenance of statement of special educational needs) is amended as follows.

2

For paragraph 1 substitute—

“1

In this Schedule—

“amendment notice” has the meaning given in paragraph 2A,

“statement” means a statement under section 324,

“periodic review” means a review conducted in accordance with section 328(5)(b),
and

“re-assessment review” means a review conducted in accordance with section 328(5)(a).”

3

For paragraph 2 substitute—

“2

(1) Before making a statement, a local education authority shall serve on the parent of the child concerned a copy of the proposed statement.

(2) But that is subject to sub-paragraphs (3) and (4).

(3) The copy of the proposed statement shall not specify any prescribed matter.

(4) The copy of the proposed statement shall not specify any matter in pursuance of section 324(4).

Amendments to a statement

2A

(1) A local education authority shall not amend a statement except—

(a) in compliance with an order of the Tribunal,

(b) as directed by the Secretary of State under section 442(4), or

(c) in accordance with the procedure laid down in this Schedule.

- (2) If, following a re-assessment review, a local education authority propose to amend a statement, they shall serve on the parent of the child concerned a copy of the proposed amended statement.
- (3) Sub-paragraphs (3) and (4) of paragraph 2 apply to a copy of a proposed amended statement served under sub-paragraph (2) as they apply to a copy of a proposed statement served under paragraph 2(1).
- (4) If, following a periodic review, a local education authority propose to amend a statement, they shall serve on the parent of the child concerned—
- (a) a copy of the existing statement, and
 - (b) an amendment notice.
- (5) If, at any other time, a local education authority propose to amend a statement, they shall proceed as if the proposed amendment were an amendment proposed after a periodic review.
- (6) An amendment notice is a notice in writing giving details of the amendments to the statement proposed by the authority.

Provision of additional information

2B

- (1) Sub-paragraph (2) applies when a local education authority serve on a parent—
- (a) a copy of a proposed statement under paragraph 2,
 - (b) a copy of a proposed amended statement under paragraph 2A, or
 - (c) an amendment notice under paragraph 2A.
- (2) The local education authority shall also serve on the parent a written notice explaining (to the extent that they are applicable)—
- (a) the arrangements under paragraph 3,
 - (b) the effect of paragraph 4, and
 - (c) the right to appeal under section 326.
- (3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.”

4

In paragraph 3, in sub-paragraph (1), for the words from “a parent” to “paragraph 2” substitute

“a parent—

- (a) on whom a copy of a proposed statement has been served under paragraph 2,
- (b) on whom a copy of a proposed amended statement has been served under paragraph 2A, or
- (c) on whom an amendment notice has been served under paragraph 2A which contains a proposed amendment about—
 - (i) the type or name of a school or institution, or
 - (ii) the provision made for the child concerned under arrangements made under section 319,
 to be specified in the statement;”.

5

In that paragraph, in sub-paragraph (2), for “paragraph 2(b)” substitute “paragraph 2B”.

6

In that paragraph omit sub-paragraph (4).

7

After that paragraph, insert–

“3A Consultation on specifying name of school in statement

- (1) Sub-paragraph (2) applies if a local education authority are considering–
 - (a) specifying the name of a maintained school in a statement, or
 - (b) amending a statement–
 - (i) if no school was specified in the statement before the amendment, so that a maintained school will be specified in it,
 - (ii) if a school was specified in the statement before the amendment, so that a different school, which is a maintained school, will be specified in it.
- (2) The local education authority shall–
 - (a) serve a copy of the proposed statement or amended statement, or of the existing statement and of the amendment notice, on each affected body, and
 - (b) consult each affected body.
- (3) “Affected body” means–
 - (a) the governing body of any school which the local education authority are considering specifying; and
 - (b) if a school which the local education authority are considering specifying is maintained by another local education authority, that authority.”

8

In paragraph 4, in sub-paragraph (1)–

- (a) after “paragraph 2” insert “, or on whom a proposed amended statement or an amendment notice has been served under paragraph 2A,”;
- (b) in paragraphs (a) and (b), for “statement” substitute “proposed statement or the statement as it will have effect if amended in the way proposed by the authority”.

9

In that paragraph, in sub-paragraph (2), after “sub-paragraph (1)(b)” insert

“in relation to–

- (c) a proposed statement, or
- (d) an amendment proposed following a re-assessment review,”

10

In that paragraph, in sub-paragraphs (4)(a) and (5), for “paragraph 2(b)” substitute “paragraph 2B”.

11

In paragraph 5, in sub-paragraph (1), after “make” insert “or amend”.

12

In that paragraph, in sub-paragraph (2), for “The statement” substitute “If a local education authority make a statement, it”.

13

After that sub-paragraph insert–

“(2A) If a local education authority amend a statement following service of a proposed amended statement under paragraph 2A, the amended statement made may be in the form proposed or in a form modified in the light of the representations.

(2B) If a local education authority amend a statement following service of an amendment notice, the amendments may be those proposed in the notice or amendments modified in the light of the representations.”

14

For paragraph 6, substitute–

“6

(1) Where a local education authority make or amend a statement they shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.

(2) They shall, at the same time, give the parent written notice of his right to appeal under section 326(1) against–

- (a) the description in the statement of the authority's assessment of the child's special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school specified in the statement), or
- (c) if no school is named in the statement, that fact.

(3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.”

15

In paragraph 8(1)(b)–

- (e) in sub-paragraph (ii), after “statement” insert “or amended statement”; and
- (f) omit sub-paragraph (iii).

16

In paragraph 9–

- (g) in sub-paragraph (1), omit “amend or” and “10 or”; and
- (h) in sub-paragraph (2)–
 - (i) after paragraph (a), insert “or”,
 - (ii) omit paragraph (b), the word “or” after paragraph (c) and paragraph (d).

17

Omit paragraph 10.

PART 2

APPEALS AGAINST AMENDMENTS TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

18

Section 326 of the 1996 Act is amended as follows.

19

For subsection (1) substitute—

“(1) The parent of a child for whom a local education authority maintain a statement under section 324 may appeal to the Tribunal—

- (a) when the statement is first made,
- (b) if an amendment is made to the statement, or
- (c) if, after conducting an assessment under section 323, the local education authority determine not to amend the statement.

(1A) An appeal under this section may be against any of the following—

- (a) the description in the statement of the local education authority's assessment of the child's special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school so specified),
- (c) if no school is specified in the statement, that fact.”

20

In subsection (2), for “paragraph 10” substitute “paragraph 2A”.

SCHEDULE 2

RESPONSIBLE BODIES FOR SCHOOLS

Section 11(2)

The following is the Schedule inserted into the 1995 Act.

“SCHEDULE 4A

RESPONSIBLE BODIES FOR SCHOOLS

Section 28A

1

(1) The bodies responsible for schools in England and Wales are set out in the following table.

(2) In that Table—

“the local education authority” has the meaning given by section 22(8) of the School Standards and Framework Act 1998; and

“proprietor” has the meaning given by section 579 of the Education Act 1996.

TABLE

<i>Type of school</i>	<i>Responsible body</i>
1. Maintained school.	The local education authority or governing body, according to which has the function in question.
2. Pupil referral unit.	The local education authority.
3. Maintained nursery school.	The local education authority.
4. Independent school.	The proprietor.
5. Special school not maintained by a local education authority.	The proprietor.

2

(1) The bodies responsible for schools in Scotland are set out in the following table.

(2) In that Table “board of management”, “education authority”, “managers” and “proprietor” each have the meaning given in section 135(1) of the Education (Scotland) Act 1980.

TABLE

<i>Type of school</i>	<i>Responsible body</i>
1. School managed by an education authority	The education authority.
2. Independent school.	The proprietor.
3. Self-governing school.	The board of management.
4. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.	The managers of the school.”

SCHEDULE 3

AMENDMENT OF SCHEDULE 3 TO THE 1995 ACT

Sections 19(2) and 30(2)

1

The following provisions are inserted in Schedule 3 to the 1995 Act as Part 3.

“PART 3**DISCRIMINATION IN SCHOOLS****9 Restriction on proceedings for breach of Part 4, Chapter 1**

- (1) Except as provided by sections 28I, 28K and 28L, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 1 of Part 4.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

10 Period within which proceedings must be brought

- (1) The Tribunal shall not consider a claim under section 28I unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 28I, the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.
- (3) The Tribunal may consider any claim under section 28I which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) But sub-paragraph (3) does not permit the Tribunal to decide to consider a claim if a decision not to consider that claim has previously been taken under that sub-paragraph.
- (5) For the purposes of sub-paragraph (1)–
- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
 - (b) any act extending over a period shall be treated as done at the end of that period; and
 - (c) a deliberate omission shall be treated as done when the person in question decided upon it.
- (6) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission–
- (a) when he does an act inconsistent with doing the omitted act; or
 - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

11 Evidence

- (1) In any proceedings under section 28I, 28K or 28L, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate–
- (a) were imposed by a Minister of the Crown, and
 - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.”

2

The following provisions are inserted in Schedule 3 to the 1995 Act as Part 4.

“PART 4**DISCRIMINATION IN FURTHER AND HIGHER EDUCATION INSTITUTIONS****12 Restriction on proceedings for breach of Part 4, Chapter 2**

(1) Except as provided by section 28V, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 2 of Part 4.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

13 Period within which proceedings must be brought

(1) A county court or a sheriff court shall not consider a claim under section 28V unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under section 28V, the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.

(3) A court may consider any claim under section 28V which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)–

- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission–

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

14 Compensation for injury to feelings

In any proceedings under section 28V, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

15 Evidence

(1) In any proceedings under section 28V, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate–

- (a) were imposed by a Minister of the Crown, and

(b) were in operation at a time or throughout a time so specified, is conclusive evidence of the matters certified.

- (2) A document purporting to be such a certificate is to be—
- (a) received in evidence; and
 - (b) deemed to be such a certificate unless the contrary is proved.”

SCHEDULE 4

RESPONSIBLE BODIES FOR EDUCATIONAL INSTITUTIONS

Section 26(2)

The following is the Schedule inserted in the 1995 Act.

“SCHEDULE 4B

RESPONSIBLE BODIES FOR EDUCATIONAL INSTITUTIONS

Section 28R

1

(1) The bodies responsible for educational institutions in England and Wales are set out in the following table.

(2) In that Table “governing body” has the meaning given by section 90 of the Further and Higher Education Act 1992.

TABLE

<i>Type of institution</i>	<i>Responsible body</i>
1. Institution within the further education sector.	The governing body.
2. University.	The governing body.
3. Institution, other than a university, within the higher education sector.	The governing body.
4. Institution designated under section 28R(6)(c).	The body specified in the order as the responsible body.

2

(1) The bodies responsible for relevant institutions in Scotland are set out in the following table.

- (2) In that Table—
- “board of management” has the meaning given in section 36(1) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”);
- “central institution”, “education authority” and “managers” have the meaning given in section 135(1) of the Education (Scotland) Act 1980; and
- “governing body” has the meaning given in section 56(1) of the 1992 Act.

TABLE

<i>Type of institution</i>	<i>Responsible body</i>
1. Designated institution within the meaning of Part 2 of the 1992 Act.	The governing body.
2. University.	The governing body.
3. College of further education with a board of management.	The board of management.
4. Institution maintained by an education authority in the exercise of their further education functions.	The education authority.
5. Central institution.	The governing body.
6. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.	The managers of the school.
7. Institution designated under section 28R(7)(e).	The body specified in the order as the responsible body.”

SCHEDULE 5**MODIFICATIONS OF CHAPTER 2 OF PART 4 OF THE 1995 ACT****Section 29**

The following is the Schedule inserted in the 1995 Act.

“SCHEDULE 4C**MODIFICATIONS OF CHAPTER 2 OF PART 4****Section 28U****PART 1****MODIFICATIONS FOR ENGLAND AND WALES****1**

For section 28R, substitute—

“28R Further education etc. provided by local education authorities and schools

- (1) Subsections (2) and (3) apply in relation to—
- (a) any course of higher education secured by a local education authority under section 120 of the Education Reform Act 1988;
 - (b) any course of further education—

- (i) secured by a local education authority; or
 - (ii) provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998.
- (2) It is unlawful for the local education authority or the governing body to discriminate against a disabled person—
 - (a) in the arrangements they make for determining who should be enrolled on the course;
 - (b) in the terms on which they offer to enrol him on the course; or
 - (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.
- (3) It is unlawful for the local education authority or the governing body to discriminate against a disabled person who has enrolled on the course in the services which they provide, or offer to provide.
- (4) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.
- (5) It is unlawful for a local education authority to discriminate against a disabled person in the terms on which they provide, or offer to provide, recreational or training facilities.
- (6) In this Chapter “responsible body” means—
 - (a) a local education authority, in relation to—
 - (i) a course of further or higher education secured by them;
 - (ii) recreational or training facilities; and
 - (b) the governing body of a maintained school, in relation to a course of further education provided under section 80 of the School Standards and Framework Act 1998.
- (7) “Further education”—
 - (a) in relation to a course secured by a local education authority, has the meaning given in section 2(3) of the Education Act 1996; and
 - (b) in relation to a course provided under section 80 of the School Standards and Framework Act 1998 means education of a kind mentioned in subsection (1) of that section.
- (8) In relation to further education secured by a local education authority—
 - “course” includes each of the component parts of a course of further education if, in relation to the course, there is no requirement imposed on persons registered for any component part of the course to register for any other component part of that course; and
 - “enrolment”, in relation to such a course, includes registration for any one of those parts.
- (9) “Higher education” has the meaning given in section 579(1) of the Education Act 1996.
- (10) “Local education authority” has the meaning given in section 12 of the Education Act 1996.

(11) “Governing body” and “maintained school” have the same meaning as in Chapter 1.

(12) “Recreational or training facilities” means any facilities secured by a local education authority under subsection (1), or provided by it under subsection (1A), of section 508 of the Education Act 1996 (recreation and social and physical training).”

2

For subsection (1) of section 28T, substitute—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

- (a) in relation to its arrangements for enrolling persons on a course of further or higher education provided by it, and
 - (b) in relation to services provided, or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”

3

In section 28W(1)(a) for “by an educational institution” substitute “by a responsible body wholly or partly for the purpose of its functions”.

4

Omit section 31A.

PART 2

MODIFICATIONS FOR SCOTLAND

5

For section 28R, substitute—

“28R Further education etc. provided by education authorities in Scotland

(1) Subsections (2) and (3) apply to any course of further education secured by an education authority.

(2) It is unlawful for the education authority to discriminate against a disabled person—

- (a) in the arrangements they make for determining who should be enrolled on the course;
- (b) in the terms on which they offer to enrol him on the course; or
- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.

(3) It is unlawful for the education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide, or offer to provide.

- (4) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.
- (5) It is unlawful for an education authority to discriminate against a disabled person in the terms on which they provide, or offer to provide, recreational or training facilities.
- (6) In this Chapter “responsible body” means an education authority.
- (7) “Further education” has the meaning given in section 1(5) of the Education (Scotland) Act 1980.
- (8) “Education authority” has the meaning given in section 135(1) of that Act.”

6

For subsection (1) of section 28T, substitute—

- “(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”

7

In section 28W(1)(a) for “by an educational institution” substitute “by a responsible body wholly or partly for the purpose of its functions”.

8

Omit section 31A.”

SCHEDULE 6**AMENDMENT OF SCHEDULE 4 TO THE 1995 ACT****Section 31(2)**

The following provisions are inserted in Schedule 4 to the 1995 Act as Part 3.

“PART 3**OCCUPATION BY EDUCATIONAL INSTITUTIONS****10 Failure to obtain consent**

If any question arises as to whether a responsible body has failed to comply with the duty imposed by section 28T, by failing to make a particular alteration to premises, any constraint attributable to the fact that the premises are occupied by the educational institution under a lease is to be ignored unless the responsible body has applied to the lessor in writing for consent to the making of the alteration.

11 Reference to court

(1) If the responsible body has applied in writing to the lessor for consent to the alteration and—

- (a) that consent has been refused, or
- (b) the lessor has made his consent subject to one or more conditions,

that body or a disabled person who has an interest in the proposed alteration to the premises being made, may refer the matter to a county court or, in Scotland, to the sheriff.

(2) On such a reference the court must determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.

(3) If the court determines—

- (a) that the lessor's refusal was unreasonable, or
- (b) that the condition is, or any of the conditions are, unreasonable,

it may make such declaration as it considers appropriate or an order authorising the responsible body to make the alteration specified in the order.

(4) An order under sub-paragraph (3) may require the responsible body to comply with conditions specified in the order.

12 Joining lessors in proceedings under section 28V

(1) In proceedings on a claim under section 28V, in a case to which this Part of this Schedule applies, the claimant, the pursuer or the responsible body concerned may ask the court to direct that the lessor be joined or sisted as a party to the proceedings.

(2) The request must be granted if it is made before the hearing of the claim begins.

(3) The court may refuse the request if it is made after the hearing of the claim begins.

(4) The request may not be granted if it is made after the court has determined the claim.

(5) If a lessor has been so joined or sisted as a party to the proceedings, the court may determine—

- (a) whether the lessor has—
 - (i) refused consent to the alteration, or
 - (ii) consented subject to one or more conditions, and
- (b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—

- (a) make such a declaration as it considers appropriate;
- (b) make an order authorising the responsible body to make the alteration specified in the order;
- (c) order the lessor to pay compensation to the complainant.

(7) An order under sub-paragraph (6)(b) may require the responsible body to comply with conditions specified in the order.

(8) If the court orders the lessor to pay compensation it may not order the responsible body to do so.

13 Regulations

Regulations may make provision as to circumstances in which—

- (a) a lessor is to be taken, for the purposes of section 28W and this Part of this Schedule to have—
 - (i) withheld his consent;
 - (ii) withheld his consent unreasonably;
 - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

14 Sub-leases etc.

Regulations may make provision supplementing, or modifying, section 28W or any provision made by or under this Part of this Schedule in relation to cases where the premises of the educational institution are occupied under a sub-lease or sub-tenancy.”

SCHEDULE 7**AMENDMENTS TO THE DISABILITY RIGHTS COMMISSION ACT 1999****Section 35**

1 [...] ⁸

2 [...] ⁹

3 [...] ¹⁰

4 [...] ¹¹

5 [...] ¹²

6 [...] ¹³

7 [...] ¹⁴

8 [...] ¹⁵

⁸ repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

⁹ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

¹⁰ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

¹¹ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

¹² repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

¹³ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

¹⁴ repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

¹⁵ repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

9 [...] ¹⁶

SCHEDULE 8
MINOR AND CONSEQUENTIAL AMENDMENTS

Section 42(1)

PART 1
THE 1996 ACT

1
The 1996 Act is amended as follows.

The re-naming of the Tribunal

2 [...] ¹⁷

3
In section 333, for subsection (1) substitute—

“(1) The Tribunal shall exercise the jurisdiction conferred on it by this Part.”

4
In paragraph 118(3) of Schedule 37, omit paragraph (d).

Annual reports

5 [...] ¹⁸

Contents and service of notices

6
(1) In section 325 (appeal against decision not to make a statement), in subsection (1), omit “, and of the effect of subsection (2) below”.

(2) After subsection (2) of that section insert—

“(2A) A notice under subsection (1) must inform the parent of the right of appeal under subsection (2) and contain such other information as may be prescribed.

¹⁶ repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

¹⁷ repealed by Education Act 2002 c. 32 Sch. 22(2) para. 1

¹⁸ repealed subject to savings specified in SI 2005/2034 art.10 and Sch.1 para.2 by Education Act 2005 c. 18 Sch. 19(4) para. 1

(2B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.”

7

(1) In section 328 (reviews of educational needs), in subsection (3)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.

(2) After subsection (3) of that section insert–

“(3A) A notice under subsection (3)(a) must inform the parent of the right of appeal under subsection (3)(b) and contain such other information as may be prescribed.

(3B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.”

8

(1) In section 329 (assessment of educational needs at request of child's parent), in subsection (2)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.

(2) After subsection (2) of that section insert–

“(2A) A notice under subsection (2)(a) must inform the parent of the right of appeal under subsection (2)(b) and contain such other information as may be prescribed.”

9

(1) In paragraph 8 of Schedule 27 (change of name of school), in sub-paragraph (3)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.

(2) After sub-paragraph (3) of that paragraph insert–

“(3A) A notice under sub-paragraph (3)(a) must inform the parent of the right of appeal under sub-paragraph (3)(b) and contain such other information as may be prescribed.”

10

(1) In paragraph 11 of that Schedule (ceasing to maintain a statement), in sub-paragraph (2)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.

(2) After sub-paragraph (2) of that paragraph insert–

“(2A) A notice under sub-paragraph (2)(a) must inform the parent of the right of appeal under sub-paragraph (2)(b) and contain such other information as may be prescribed.”

Proposals to make an assessment

11

(1) In section 323(1)(a) (assessment of special educational needs), for “propose” substitute “are considering whether”.

(2) In paragraph 4(1) of Schedule 26 (making of assessments under section 323), for “propose” substitute “are considering whether”.

Statements: suitable arrangements made by parents

12

In section 347 (provision for children with special educational needs in independent schools), after subsection (5) insert–

“(5A) But that does not apply to a local education authority deciding, for the purposes of section 324(5), whether a parent has made suitable arrangements.”

Procedure regulations

13

(1) Section 336 is amended as follows.

(2) In subsection (2)–

(a) omit paragraph (d); and

(b) in paragraph (g), for “discovery” substitute “disclosure”.

(3) After subsection (2), insert–

“(2A) Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.”

(4) In subsection (4), for “that Act” substitute “that Part”.

(5) After that subsection, insert–

“(4A) The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter 1 of Part 4 of the Disability Discrimination Act 1995.”

Time limits with respect to assessments

14

(1) Paragraph 3 of Schedule 26 (manner and timing of assessments under section 323) is amended as follows.

(2) In sub-paragraph (2), for “paragraph 10” substitute “paragraph 2A”.

(3) For sub-paragraphs (3) and (4) substitute–

“(3) Regulations may provide–

(a) that where a local education authority are under a duty under section 323, 329 or 329A to serve any notice, the duty must be performed within the prescribed period,

- (b) that where a local education authority have served a notice under section 323(1) or 329A(3) on a child's parent, they must decide within the prescribed period whether or not to make an assessment of the child's educational needs,
 - (c) that where a request has been made to a local education authority under section 329(1), they must decide within the prescribed period whether or not to comply with the request, and
 - (d) that where a local education authority are under a duty to make an assessment, the duty must be performed within the prescribed period.
- (4) Provision made under sub-paragraph (3)–
- (a) may be subject to prescribed exceptions, and
 - (b) does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period.”

School attendance orders: amendment of statement of special educational needs

15

- (1) Section 441 (amendment of statement on service of school attendance order) is amended as follows.
- (2) In subsection (3)(a), omit “in accordance with paragraph 10 of Schedule 27”.
- (3) After that subsection, insert–

“(3A) An amendment to a statement required to be made under subsection (3)(a) shall be treated for the purposes of Schedule 27 as if it were an amendment proposed following a periodic review (within the meaning of that Schedule).”

PART 2

OTHER ENACTMENTS

The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

16

Section 5 of the Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows.

17

- In subsection (1) (requirement to obtain opinion of local authority officer as to whether child is a disabled person)–
- (a) in paragraph (a), omit “under the age of 14”; and
 - (b) in paragraph (b)–
 - (i) in sub-paragraph (i), for “the first annual review of the statement following the child's fourteenth birthday” substitute “a review of the statement prescribed for the purposes of this paragraph”; and
 - (ii) in sub-paragraph (ii), for “that birthday” substitute “they have carried out the review prescribed for the purposes of sub-paragraph (i)”.

18

In subsection (9) (interpretation), after the definition of “establishment of higher or further education” insert–

““prescribed” means prescribed in regulations made–

- (a) in relation to England, by the Secretary of State; and
- (b) in relation to Wales, by the National Assembly for Wales;”.

The Tribunals and Inquiries Act 1992 (c. 53)

19

The Tribunals and Inquiries Act 1992 is amended as follows.

20

In section 11(1) (appeals from certain tribunals)–

- (a) for “15(a), (d) or (e)” substitute “15(a) or (d)”; and
- (b) after “40A” insert “, 40B”.

21

In paragraph 15 of Schedule 1 (bodies subject to the supervision of the Council) omit sub-paragraph (e).

22

After paragraph 40A of that Schedule, insert–

“Special educational needs and disability discrimination.

40B. The Special Educational Needs and Disability Tribunal.”.

The School Standards and Framework Act 1998 (c. 31)

23

(1) The School Standards and Framework Act 1998 is amended as follows.

(2) [...] ¹⁹

(3) In paragraph 6 of Schedule 5 (duty of adjudicators to have regard to anti-discrimination duties of other bodies)–

- (a) omit “or”, at the end of sub-paragraph (a); and
- (b) after sub-paragraph (b), insert

“or

(c) Chapter 1 of Part 4 of the Disability Discrimination Act 1995,”.

(4) In Schedule 30 (minor and consequential amendments), omit paragraph 186(2)(b).

¹⁹ repealed by Education and Inspections Act 2006 c. 40 Sch. 18(3) para. 1

SCHEDULE 9**REPEALS****Section 42(6)**

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)	In section 5(1)(a), the words “under the age of 14”.
The Further and Higher Education Act 1992 (c. 13)	In section 65, subsections (4A) and (4B).
The Further and Higher Education (Scotland) Act 1992 (c. 37)	In section 40, subsections (5) and (6).
The Tribunals and Inquiries Act 1992 (c. 53)	In Schedule 1, paragraph 15(e).
The Disability Discrimination Act 1995 (c. 50)	Section 19(5)(a) to (ab) and (6). Section 29. Section 30(6). Section 31(3).
The Education Act 1996 (c. 56)	In section 53A(8), the words after first “proceedings”. In section 325(1), the words “, and of the effect of subsection (2) below,”. In section 336(2), paragraph (d). In section 441(3)(a), the words “in accordance with paragraph 10 of Schedule 27”. Section 528. In Schedule 27, paragraph 3(4), paragraph 8(1)(b)(iii), in paragraph 9(1), the words “amend, or” and “10 or”, and paragraph 10. In Schedule 37, paragraphs 118(3)(d) and 129.
The Teaching and Higher Education Act 1998 (c. 30)	Section 38.
The School Standards and Framework Act 1998 (c. 31)	In paragraph 8 of Schedule 4, the word “or” after sub-paragraph (a). In paragraph 6 of Schedule 5, the word “or” after sub-paragraph (a). In Schedule 30, paragraph 186(2)(b).
The Disability Rights Commission Act 1999 (c. 17)	In section 6(5), the words “of a court or tribunal”.
The Learning and Skills Act 2000 (c. 21)	In section 6, subsections (4) and (6). In section 35, subsections (4) and (6). In Schedule 9, paragraph 49.

EXPLANATORY NOTES

(This note is not part of the Order)

INTRODUCTION

1. *These explanatory notes relate to the Special Educational Needs and Disability Act 2001 which received Royal Assent on 11 May 2001. They have been prepared by the Department for Education and Employment (DfEE) in order to assist the reader of the Act and help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.*

2. *The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.*

SUMMARY

Territorial coverage

3. *The provisions in the Act relating to special educational needs (SEN) extend to England and Wales only.*

4. *The provisions on rights for disabled people in education extend to England, Wales and Scotland since equal opportunities issues are matters reserved to the UK Parliament under the Scottish and Welsh settlements. The exception is the duty to produce an accessibility strategy or plan, which, although intended to help disabled pupils, primarily relates to the organisation and administration of schools and hence is a devolved matter. This aspect of the Act therefore does not extend to Scotland, and it will be for Scottish Executive Ministers to consider whether to apply this policy in Scotland. This planning duty does extend to Wales though it will be for the National Assembly for Wales (NAW) to consider implementation.*

5. *This Act does not extend to Northern Ireland since responsibility for equal opportunities matters has been transferred and is now a matter for the Northern Ireland Assembly.*

Part 1: *Special Educational Needs*

6. *The Government published a Green Paper in October 1997 entitled Excellence for All Children: Meeting Special Educational Needs (Cm 3785) (in Wales, The BEST for Special Education (Cm 3792)). Following consultation on the proposals set out in the Green Paper, the document Meeting Special Educational Needs: A Programme of Action was published in November 1998 in England, and Shaping the Future for Special Education was published in January 1999 in Wales. These documents set out the steps to be taken over a period of 3 years to implement the changes recommended in the Green Paper. Part 1 of the Act fulfils those undertakings made in the Programme of Action that required primary legislation and applies to England and Wales only.*

7. *Part 1 makes changes to the existing legislation, in Part 4 of the Education Act 1996 (EA), for children with SEN. In summary, Part 1:*

- *strengthens the right of children with SEN to be educated in mainstream schools where parents want this and the interests of other children can be protected;*

- requires Local Education Authorities (LEAs) to make arrangements for services to provide parents of children with SEN with advice and information, and a means of resolving disputes with schools and LEAs;
- requires LEAs to comply, within prescribed periods, with orders of the Special Educational Needs Tribunal (SENT) and make other technical changes in support of the SENT appeals process and the statementing process; and
- requires schools to inform parents where they are making special educational provision for their child and allow schools to request a statutory assessment of a pupil's SEN.

8. The SENT, by virtue of the amendments made in Part 2 of this Act, becomes the Special Educational Needs and Disability Tribunal (SENDIST).

Part 2: **Disability Discrimination in Education**

9. The Government announced, in October 1997, that it would establish a Disability Rights Task Force (DRTF) to advise it on how to secure comprehensive and enforceable civil rights for disabled people.

10. The DRTF was established in December 1997, comprising representatives of disability organisations, business, trade unions, local government and the health service, from across the UK.

11. The DRTF reported on the role and function of a Disability Rights Commission (DRC) in April 1998. In October 1998, the Government published a White Paper entitled *Promoting Disabled People's Rights: Creating a Disability Rights Commission fit for the 21st Century* (Cm 3977). The Disability Rights Commission Bill received Royal Assent in July 1999. The DRC has been up and running since 25 April 2000.

12. The final report of the DRTF *From Exclusion to Inclusion* was published on 13 December 1999 and covered all aspects of disabled people's lives: defining disability, education, employment, access to goods and services, travel, housing and the environment, participation in public life and local government, health and social services. Part 2 of the Act addresses the key education recommendations of the report that required primary legislation and amends Part 4 of the Disability Discrimination Act 1995 (DDA) to introduce rights for disabled people in education.

13. Publicly-funded providers of education services and private schools are currently exempted from Part 3 of the DDA by virtue of sections 19(5)(a) to (ab) and 19(6) of that Act. These provisions are repealed by this Act and the exemption removed. The effect of this is that any provider of education previously exempted from Part 3 and not covered by the new Part 4 duties becomes subject to the duties in Part 3 of the DDA.

Chapter 1 of Part 2: **Schools**

14. This Chapter places new duties on LEAs and schools (including independent schools and non-maintained special schools) in England and Wales and on Local Authorities (LAs), independent schools, self-governing schools and grant-aided schools in Scotland. The new duties are explained in the commentary on sections 11–16. What follows is an overview of the new provisions:

In England, Scotland and Wales

- a duty not to treat disabled pupils less favourably, without justification, for a reason which relates to their disability;

- a duty to make reasonable adjustments so that disabled pupils are not put at a substantial disadvantage compared to pupils who are not disabled (but there is no duty to remove or alter physical features or provide auxiliary aids and services); and

In England & Wales only

- a duty to plan strategically and make progress in increasing accessibility to schools' premises and to the curriculum, and in improving the ways in which written information provided to pupils who are not disabled is provided to disabled pupils.

Chapter 2 of Part 2: **Further & Higher Education**

15. This Chapter places new duties on further education institutions, higher education institutions, and LEAs in respect of adult education and youth services provision secured by them. The new duties are explained in the commentary on sections 26–29. What follows is an overview of the new provisions:

- a duty not to treat disabled students less favourably, without justification, for a reason which relates to their disability; and
- a duty to make reasonable adjustments to ensure that people who are disabled are not put at a substantial disadvantage compared to people who are not disabled in accessing further, higher and LEA secured education.

Chapter 3 of Part 2: **Miscellaneous**

16. The DRC has functions in respect of the new legislation akin to those conferred upon it, by virtue of the Disability Rights Commission Act 1999 (DRCA), in respect of Parts 2 and 3 of the DDA. The DRC will prepare new Codes of Practice to explain the legislation to providers of education, disabled people and others.

BACKGROUND

17. The following paragraphs provide a brief description of the legislative framework before this Act comes into force as it applies to SEN and disability discrimination.

Special Educational Needs (England and Wales)

18. The legislation relating to SEN is contained in Part 4 of the EA (ss.312–349, Schedules 26 and 27). This has been amended by the School Standards and Framework Act 1998 (SSFA) to amend the references to the categories of schools. There is a statutory code of practice (the Code of Practice on the Identification and Assessment of Special Educational Needs) to which LEAs, governing bodies, health and social services and the SEN must have regard when exercising their functions under Part 4 of the Act. There was a consultation on a revised draft of this Code from 7 July to 13 October 2000. The aim is to publish the final version of this Code to come into force from September 2001.

19. A child has SEN if he has a learning difficulty which calls for special educational provision to be made for him (s.312). A child, for the purposes of the SEN provisions, includes any person under the age of 19 who is a registered pupil at a school.

20. About 20% of children will have some form of SEN at some time. Most of these children will have their needs met by their school, but around 3% of children will have severe or complex needs which will require the LEA to determine and arrange for the special educational provision for the child by means of a statutory statement of SEN.

21. *It has always been intended that as many children with SEN as possible can be included within mainstream rather than special schools, whilst recognising the importance of the specialist sector. There is a duty in section 316 of the EA to secure that a child is educated in a mainstream school, unless that is incompatible with the wishes of the parent, provided that three conditions are satisfied: that this is compatible with (i) his receiving the special educational provision his learning difficulty calls for; (ii) the provision of efficient education for the children with whom he will be educated; and (iii) the efficient use of resources.*

22. *School governing bodies have a duty (s.317) to use their best endeavours to see that pupils with SEN at their schools receive the special educational provision their learning difficulties call for.*

23. *The LEA must keep their arrangements for special educational provision under review (s.315). They have a duty (s.321) to secure that they identify children within their area who have SEN and the LEA need to determine the special educational provision for which their learning difficulty calls.*

24. *Where an LEA are of the opinion that a child has SEN and that it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for, the LEA will make an assessment of the child, to decide whether a statement of SEN should be made for the child (s.323).*

25. *Once the assessment of the child's needs has been completed, the LEA will decide whether it is necessary for them to make and maintain a statement of the child's SEN (s.324).*

26. *If the LEA decide to make a statement, the statement must be in the form prescribed by the Schedule to the Education (Special Educational Needs) Regulations 1994 (revised regulations are planned to come into force at the same time as the revised SEN Code of Practice). Any statement made by the LEA must give details of the assessment of SEN and specify the special educational provision to be made. The special educational provision must include the type of school, or other institution, which the LEA considers would be appropriate, the name of the school preferred by the parents if this has to be named in accordance with Schedule 27 or, if none, the name of any school the LEA considers should be specified, and any provision for which arrangements are made otherwise than in a school, for example, occupational therapy.*

27. *The SEN Tribunal considers parents' appeals against the decisions of LEAs in England and Wales about their children's SEN, if parents cannot agree with the LEA. The SEN Tribunal considers appeals about refusals to assess, refusals to make statements, the contents of statements and decisions to cease to maintain statements. The constitution of the SEN Tribunal is provided for in section 333 of the EA. There is a President and a chairmen's panel appointed by the Lord Chancellor and a lay panel appointed by the Secretary of State for Education and Employment or (as appropriate) the NAW. Each Tribunal consists of a chairman and two lay members. The procedure of the Tribunal is set out in the Special Educational Needs Tribunal Regulations 1995 made under section 336 of the EA. The Special Educational Needs Tribunal Regulations 2001 have been laid before Parliament and will, unless annulled, come into force on 1 September 2001.*

Disability Discrimination in Education

28. *The DDA makes it unlawful to discriminate against disabled people in relation to employment, the provision of goods, facilities and services, buying or renting land or property and certain aspects of transport. The DDA applies to the whole of the United Kingdom.*

29. *The DDA excludes publicly-funded education and private schools from the scope of the goods and services provisions. Private providers of education and training do, however, fall within the scope of these provisions, although voluntary organisations providing activities designed to promote personal or educational development are excluded by the Disability Discrimination (Services and Premises) Regulations 1996. Nonetheless, these providers of education services still have duties to disabled people in three main areas:*

- *employing staff (Part 2);*
- *providing non-educational services to the public (Part 3);*
- *publishing information about arrangements for disabled pupils and students.*

30. *Part 2 of the DDA applies to employers with 15 or more employees and provides that discrimination occurs when:*

- *a disabled person is treated less favourably than someone else and the treatment is for a reason relating to the person's disability and that reason does not, or would not, apply to others; and*
- *this treatment cannot be justified.*

31. *Less favourable treatment will be justified only if the reason for it is material and substantial and there is no adjustment which would enable the disabled person to do the job concerned or take up another vacant position. To enable a disabled person to do their job, employers may have to make reasonable adjustments to their employment arrangements or premises if these substantially disadvantage a disabled person compared to a person who is not disabled.*

32. *Under Part 3 of the DDA, unlawful discrimination against disabled people occurs when:*

- *a service provider refuses them service; or*
- *provides them service on worse terms; or*
- *provides a lower standard of service; or*
- *fails to comply with a duty to make a reasonable adjustment if it is impossible or unreasonably difficult for a disabled person to access any such service; and*
- *in each case this treatment or failure to make an adjustment cannot be justified.*

33. *Less favourable treatment will be justified only if the reason for it is: to avoid endangering the health and safety of any individual; that the disabled person is incapable of entering into an enforceable agreement or of giving informed consent; that the service provider would otherwise be unable to provide their service to the disabled person and/or other members of the public. In each case, it must also be reasonable for the service provider to hold that opinion. Service providers must take reasonable steps to change policies, practices or procedures which make it impossible or unreasonably difficult for a disabled person to use a service, provide auxiliary aids or services to enable them to use a service and overcome physical barriers by providing a service by a reasonable alternative method.*

34. *There are also obligations on LEAs, in relation to further education (s.528EA) and governing bodies of LEA maintained schools (s.317(6) EA) to give information about facilities for disabled people and*

- *the Learning and Skills Council (LSC) in England and the National Council for Education and Training in Wales (CETW) may require institutions in the further education sector to give such information as a condition of grant (sections 6 and 35 of the Learning and Skills Act 2000(LSA)); and*

- *Higher Education Funding Councils must require institutions in the higher education sector to give such information as a condition of grant (section 65 of the Further & Higher Education Act 1992).*

It is also possible for the LSC in England and the CETW in Wales to impose conditions on further education institutions relating to their provision for disabled pupils.

35. *Statutory guidance about the DDA can be found in the following publications:*

- *“DDA 1995: Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability.” ISBN 0-11-270955-9.*
- *“DDA 1995: Code of Practice for the Elimination of Discrimination in the Field of Employment Against Disabled Persons or Persons who have had a Disability.” ISBN 0-11-270954-0.*
- *“DDA 1995: Code of Practice: Rights of Access — Goods, Facilities, Services and Premises.” ISBN 0-11-271055-7.*

OVERVIEW

36. *The Act is in three Parts and has 43 sections and 9 Schedules:*

37. *Part 1 makes changes to the existing SEN framework in Part 4 of the EA.*

38. *Part 2 deals with disability discrimination in education and amends Parts 3 and 4 of the DDA.*

Part 2 contains three chapters:

- *Chapter 1: Schools*
- *Chapter 2: Further and Higher Education*
- *Chapter 3: Miscellaneous*

39. *Part 3 deals with matters supplementary to Parts 1 and 2 of the Act.*

INTERPRETATION

40. *There are a number of defined words and expressions in the Act.*

41. *Where there is no indication that a definition is intended to apply to a group of provisions, a Part of the Act or the Act as a whole, it applies only for the purposes of the section or Schedule in which it appears.*

42. *Some of the words and expressions that are defined just for the purposes of the particular provision in which the definition occurs are used (and defined separately) in other provisions — where they may have a different meaning. For example “relevant school” is defined separately for the purposes of the provisions inserted in the EA by sections 3 and 8.*

43. *Chapters 1 and 2 of Part 2 of the Act (sections 25 and 33 respectively) insert separate interpretation sections into each of Chapters 1 and 2 of Part 4 of the DDA which define words and expressions which apply across each of those Chapters respectively.*

44. *ANNEX 1 contains a glossary of terms and abbreviations used in these notes.*

COMMENTARY ON SECTIONS

PART 1 — SPECIAL EDUCATIONAL NEEDS

Sections 1 to 10 and Schedules 1 & 8

Section 1: ***Education in mainstream schools of children with special educational needs***

45. The section replaces the existing section 316EA and strengthens the right to a mainstream place for children with SEN. This seeks to enable greater inclusion and safeguard the efficient education of all pupils.

46. Section 316(2) ensures that pupils with SEN but without a statement are educated in mainstream schools. Section 316(3) ensures that pupils with SEN and a statement are educated in mainstream schools unless this would be incompatible with parental choice or with the provision of efficient education for other children. This means an LEA does not have to provide a mainstream place where parents do not want one. In practice, incompatibility with the efficient education of others is likely to be where pupils present severe challenging behaviour that would significantly disrupt the learning of other pupils or place their safety at risk. Section 316(4) defines what constitutes a mainstream school. For the purposes of this section, City Technology Colleges (CTCs), City Colleges for the Technology of the Arts (CCTAs) and City Academies (CAs) (which are independent schools) are mainstream schools.

47. The section also inserts a new section 316A in the EA which ensures that the new provisions work alongside the existing provisions of the EA. Section 316A(1) allows a child with SEN to be educated at an independent school (whether or not it is a mainstream school), or a non-maintained special school where the LEA are not funding the placement. Without this sub-section parents of children with SEN but without statements would not be able to choose to send their child with SEN to an independent or non-maintained school special school at their own expense. This would be incompatible with the Human Rights Act 1998. Section 316A(2) sets out the exceptional circumstances in which a child with SEN but without a statement can be educated at a special school. The section reflects existing arrangements for maintained special schools i.e. children without statements can be placed in special schools if they are being assessed for a statement, or their circumstances have changed suddenly and the head teacher (or governing body in Wales), parents, LEA and (when the child is admitted for an assessment) those providing advice agree, or if a child is in hospitals and so is attending a hospital special school. Section 316A(2)(b) provides that regulations can prescribe circumstances in which a child, admitted for the purpose of assessment, can remain in a special school after the assessment is carried out. It is envisaged that these regulations will deal with the child's position in the period after the assessment is carried out but before any decision is taken about whether a statement is necessary, and once any decision about a statement is made.

48. Sections 316A(3) and (4) explain how the new section 316 interacts with Schedule 27 to the EA (making and maintenance of statements). Section 316A(3) ensures that section 316 does not affect the operation of paragraph 3 of Schedule 27 (parent's right to express a preference for a maintained school) or section 348 (provision of special education at non-maintained schools). LEAs will not be prevented from naming independent or non-maintained special schools in statements by the requirement to educate children with SEN in mainstream schools. Parents continue to have the right to make representations for a non-maintained school to be named in their child's statement and, where the LEA agree, they must fund the placement in a non-maintained school. Section 316A(4) makes it clear that if an LEA do not name the parent's choice of maintained school in a statement their choice of school is governed by the provisions of section 316. Sections 316A(5) and (6) further strengthen the right to a mainstream place by requiring schools and LEAs, when seeking to demonstrate that inclusion would be incompatible with the efficient education of other children, to show that there are no reasonable steps they could take to prevent the inclusion of a child with a statement from having that effect. Section 316A(7) means that if an LEA have named a maintained school in a statement (and so the child must be admitted in accordance with section 324) the school cannot subsequently rely on the exception in section 316(3), i.e. that the child's inclusion would be

incompatible with the efficient education of other children. Section 316A(8) requires schools and LEAs to heed guidance about section 316 and section 316A to be provided by the Secretary of State in England and, in Wales, the NAW. Section 316A(9) provides that the guidance must in particular include advice on reasonable steps maintained schools and LEAs should consider to prevent inclusion being incompatible with the efficient education of other pupils. The effect of Section 316A(10) is that regulations for Wales made under section 316A will be made by the NAW. Section 316A(11) explains what “authority” means in the section.

Section 2: Advice and information for parents

49. This section amends the EA by inserting a new section 332A to place a duty on LEAs to make arrangements for providing information on SEN matters to parents of children in their area who have SEN. These are normally known as parent partnership services. Most LEAs already provide such services but there is no legal requirement on them to do so. The new duty does not mean that LEAs will have to provide the services themselves; they might, for example, decide to contract with a provider from the voluntary sector.

50. In making these arrangements LEAs must heed guidance issued by the Secretary of State or, in Wales, the NAW. The revised SEN Code of Practice will give guidance on parent partnership services. LEAs must publicise to parents and schools, in their area, the fact that the services are available and must inform other interested parties.

Section 3: Resolution of disputes

51. This section amends the EA by inserting a new section 332B and provides an additional means of resolving disagreements between parents and the LEA and/or schools. It also introduces a new mechanism to seek to prevent such disputes. The new arrangements are intended to provide an informal forum for exploring differences, identifying points of agreement and disagreement and to find a way forward that all parties accept. Section 332B(3) requires LEAs to appoint an independent person (not part of the school or LEA decision-making process) to facilitate the avoidance or resolution of disputes. In practice, this will often be someone from the voluntary sector. Section 332B(4) requires LEAs to take heed of any guidance issued by the Secretary of State or, in Wales, the NAW when making the arrangements. It is intended that Chapter 2 of the revised SEN Code of Practice will provide this guidance.

52. Section 332B(5) requires LEAs to ensure that parents and schools in their area are made aware of dispute prevention and resolution arrangements. LEAs must also inform such other interested parties as they deem appropriate. Section 332B(6) provides that parents who take advantage of these new arrangements will not lose any existing legal rights to lodge an appeal with the SENT.

Section 4: Compliance with orders

53. This section provides for regulations to be made to prescribe the period within which an LEA must comply with orders of the SENT.

Section 5: Unopposed appeals

54. This section amends the EA by inserting a new section 326A and applies where an LEA decide to concede to a parent who has appealed to the SENT.

55. Certain types of appeals are to be treated as determined in favour of the parent where the LEA has notified the SENT that they are conceding. Where an appeal is treated as determined in favour of the parent, the Tribunal need not make an order. LEAs will be required to meet the parents'

wishes within a period to be set out in regulations. The appeals are those against a decision by an LEA:

- not to make a statement of SEN (under s.325 EA); or
- not to make a reassessment of SEN where the child already has a statement (under s.328 EA); or
- not to make an assessment of SEN (under s.329 or s.329A EA); or
- not to substitute a school named in a statement for a different school named by the parents (under paragraph 8(3) of Schedule 27 EA).

56. Appeals against the contents of statements (under s.326 EA) and appeals against a decision to cease to maintain a statement (under paragraph 11 of Schedule 27 to the EA) have been excluded. This is because in these types of appeal, where the statement could be amended in a number of ways, deciding the appeal without a hearing is not always suitable. These types of appeal, even if the LEA does not contest them, will go to a hearing at which the parent, but not the LEA, will be able to be present.

Section 6: Maintenance of statement during appeal

57. One of the grounds on which parents can appeal to the SENT is where an LEA proposes to cease maintaining a statement of the child's SEN. This section amends the EA by adding a new sub-paragraph (5) to paragraph 11 of Schedule 27 obliging the LEA to continue to maintain the child's statement until the outcome of this type of appeal is known.

Section 7: Duty to inform parents where special educational provision made

58. This section amends the EA by inserting a new section 317A. This requires governing bodies in respect of community, foundation and voluntary schools, and the LEA (through the head teacher) in respect of Pupil Referral Units (PRUs), to inform parents of children without statements of SEN that special educational provision is being made for their child because it is considered that he has SEN.

59. The section also amends section 123 of the SSFA so that providers of relevant nursery education are under the same duty. Relevant nursery education is defined in section 123(4) of the SSFA so as to include nursery education provided by the LEA or by any other person who receives financial assistance from an LEA and whose nursery education is taken into account in the LEA's Early Years Development Plan.

60. Although they are not covered by this section, the Government intends that CAs will be required under their funding agreements to inform parents when they are making special educational provision for a child.

Section 8: Review or assessment of special educational needs at request of responsible body

61. This section amends the EA by inserting a new section 329A. This gives maintained schools, maintained nursery schools, nursery education providers (in receipt of financial assistance from LEAs and included in the proposals for providing nursery education in accordance with section 118 of the SSFA in Early Years Development Plans), PRUs, independent schools (including CAs, CTCs and CCTAs) and non-maintained special schools the formal right to ask the LEA to carry out a statutory assessment or re-assessment of a registered pupil at the school to determine whether that child needs a statement of SEN, in cases where no such assessment or re-assessment has taken place within the previous six months. At present only parents have that right.

62. It places a duty on the LEA to decide whether to make an assessment or re- assessment in response to a request from a school and it places a duty on the LEA, before deciding whether to comply with the request, to send a notice to the parent informing them that a request from the school has been made, of the procedure to be followed when making an assessment, the name of an officer at the LEA who can provide further information, and, of their right to make representations and provide written comments within a minimum of 29 days.

63. Should the LEA decide to assess the child's educational needs, section 329A requires them to notify the child's parent and the school which made the request. If they decide not to make an assessment, they are required to notify the parent and school of that decision, and the reasons for it. They also have to inform the parent of his right to appeal to the SENT, and give him any further information required by regulations (which might include details of the conciliation service available under section 332B).

Section 9: Duty to specify named school

64. This section amends the EA by inserting a new section 324(4A) to allow an LEA not to name a particular school in a child's statement of SEN where the child's parents have made suitable arrangements (typically by paying for a place at an independent school). It avoids, in those circumstances, the LEA naming a school in the child's statement and having to keep open a place for him at that school, where they know that the child will not be attending that school, potentially allowing that place to be taken up by another child.

Section 10 & Schedule 1: Amendment of statement of special educational needs

65. This section amends schedule 27 to the EA to revise the procedures which must be followed by LEAs when making, maintaining and amending statements of special educational needs. It gives parents new rights to a meeting with the LEA when the LEA propose to amend their child's statement; and to express a preference for a maintained school when the LEA propose to amend their child's statement following a reassessment or when changes are proposed relating to the type or name of the school or non-school provision in the statement. It requires LEAs to send copies of proposed statements, proposed amended statements and proposed changes to statements to maintained schools which LEAs are considering naming in a child's statement, and to other LEAs if those schools are in their areas.

Schedule 8: Minor and consequential amendments

66. This Schedule makes a number of amendments to the EA which are minor or consequential, arising from this Act.

67. Paragraphs 6, 7 and 8 amend sections 325, 328 and 329 respectively to provide for regulations to prescribe what information is to be included by the LEA in notices to parents informing them of their right of appeal against a decision:

- not to make a statement of SEN for their child (s.325);
- not to comply with a request from a parent to make an assessment or re-assessment of a child with a statement (s.328); and
- not to comply with a request from a parent to make an assessment of a child without a statement (s.329).

They also allow regulations to make provisions about time limits for serving notices under sections 325 and 328; time limits in relation to service of notices under section 329 will be dealt with by

regulations under paragraph 3 of Schedule 26 to the EA as amended by paragraph 14 of Schedule 8.

68. Paragraphs 9 and 10 amend paragraphs 8 and 11 respectively of Schedule 27 to the EA to provide for regulations to be made prescribing the information to be provided by the LEA in notices to a parent when:

- informing a parent of his right to appeal against the refusal to substitute a maintained school named in a statement (paragraph 8); and
- informing a parent of his right to appeal against a decision to cease to maintain a statement (paragraph 11).

69. Paragraph 11 amends section 323(1)(a) and paragraph 4(1) of Schedule 26 to the EA to require an LEA to inform parents when it is considering whether to make an assessment. LEAs are currently required to do this when they are proposing to make an assessment. Parents often assume this to mean that the LEA is definitely going ahead with an assessment when this may not be the case. The new wording clarifies the situation.

70. Paragraph 12 makes a technical change to clarify the law. It makes it clear that under section 347 of the EA an LEA does not have to obtain the Secretary of State's consent to a child being educated in an independent school, if the child's parents are themselves making the arrangements to send their child to that school.

71. Paragraph 13 makes a number of changes to section 336 of the EA, ensuring that the power to regulate SENDIST procedure for SEN appeals is the same as that in respect of DDA claims. In particular it provides for hearings before the Tribunal to be in private except in prescribed circumstances, and for an SEN appeal to be heard with a DDA claim.

72. Paragraph 14(2) makes changes to paragraph 3 of Schedule 26 to the EA as a result of the changes made to Schedule 27 by section 10 of and Schedule 1 to the Act.

73. Paragraph 14(3) replaces paragraphs 3(3) and (4) of Schedule 26 to the EA to provide for regulations to be made prescribing time limits within which an LEA must:

- inform parents that it is considering whether to make an assessment or re- assessment, whether in response to a request from a parent or school, or otherwise;
- reach its decision on whether or not to make such an assessment; and
- carry out an assessment or re-assessment where it has decided to do so.

At present, regulations on time limits only become effective when an LEA has made a decision to make an assessment or re-assessment.

74. Paragraph 15 amends section 441 of the EA so that an amendment to a statement required as a result of a school attendance order will be made following the new procedures for amendments made after periodic reviews set out in Schedule 27 to the EA as amended by section 10 of and Schedule 1 to the Act.

PART 2— DISABILITY DISCRIMINATION IN EDUCATION

Chapter 1— Schools

Sections 11 to 25 with Schedule 2 and paragraph 1 of Schedule 3

Section 11: Discrimination against disabled pupils and prospective pupils

75. Section 11 should be read in conjunction with Schedule 2. It amends the DDA by adding a new section 28A prohibiting all schools from discriminating against disabled children in their admissions

arrangements, in the education and associated services provided by the school or in relation to exclusions from the school.

76. The section also enables the Secretary of State to prescribe in regulations the education and services which should and should not be subject to these duties. It is intended that all teaching during school hours, other teaching, and activities such as after school clubs, school trips, and school orchestras are covered by the duties. The following are not intended to be covered by these duties: adult education provided by schools (which is covered by Chapter 2 of Part 4 of the DDA) and services to parents (which is covered by Part 3 of the DDA).

Section 12: Meaning of “discrimination”

77. This section amends the DDA by inserting a new section 28B defining the meaning of discrimination. It works in the same way as the definition in section 5 of the DDA, except in the respects set out below. An explanation of section 5 of the DDA is set out in paragraph 30 of these Explanatory Notes.

78. The reasonable adjustments duty under section 13 is owed to pupils at large, unlike the duty owed to employees under section 6 of the DDA. For the parents of a pupil to bring proceedings, therefore, it is necessary for them to show not only that the general duty is breached but also that this breach was to the pupil's detriment. Provision is also made for responsible bodies not to be liable where they do not know (and could not reasonably be expected to know) of a pupil's or prospective pupil's disability, both in relation to the less favourable treatment duty and the reasonable adjustment duty. Although the anticipatory nature of the latter duty means that a responsible body would have to consider what reasonable adjustments it might make generally to meet the needs of disabled pupils whether or not it knew of an individual pupil's needs, it may need to know that a particular pupil was disabled, for example, in order to apply a policy to him. In those circumstances, a responsible body would not be liable for failure to take a particular step where it did not know of the disability.

Section 13: Disabled pupils not to be substantially disadvantaged

79. This section amends the DDA by adding a new section 28C placing a duty on schools to take reasonable steps to ensure disabled pupils are not placed at a substantial disadvantage, in comparison to pupils who are not disabled, in relation to education and associated services provided to pupils, and to ensure disabled prospective pupils are not placed at a substantial disadvantage, compared to prospective pupils who are not disabled, in relation to the admission arrangements for the school. This mirrors the general approach in section 6 of the DDA, but, unlike section 6, this section is anticipatory. This section also provides exceptions to the duty. Schools will not be required to make physical alterations to premises (including removing a physical feature) or to provide auxiliary aids. The statement of SEN (in Scotland, the Record of Needs) already provides for the identification and provision of educational auxiliary aids and adaptations for pupils in school.

Section 14: Accessibility strategies and plans

80. This section amends the DDA by inserting a new section 28D to place a duty on LEAs and schools in England and Wales to plan, over time, to:

- increase the extent to which disabled pupils can participate in the curriculum;
- increase the physical accessibility of school premises for disabled pupils; and
- improve the delivery to disabled pupils of information which is provided in writing for pupils who are not disabled, within a reasonable time, and in ways which are determined

after taking account of their disabilities and any preferences expressed by them or their parents.

81. The LEA's accessibility strategy will set out its plans in respect of the maintained schools in the area. The LEA does not have to produce a self-standing strategy, it can choose the format it feels most appropriate to record its strategy, for example by dovetailing it with another of its plans.

82. A school's accessibility plan will be on a far smaller scale than that of the LEA. Maintained schools are already under a duty to include certain information about their arrangements and facilities for disabled pupils in their governors' annual report. This section places an additional duty to include their accessibility plans in that report. The Government intends that CAs will be required, through their funding agreements, to include information on their accessibility plans in their annual report to parents. LEAs and schools will be under a duty to implement their strategies and plans. The normal inspection frameworks for LEAs and schools may include inspection of their strategies and plans.

83. Regulations will prescribe the period to be covered by the strategy or the plan as well as when LEAs and schools should produce new strategies and plans. LEAs and schools will have to keep their strategies and plans under review, and revise them if necessary in light of that review.

Section 15: Accessibility strategies and plans: procedure

84. This section amends the DDA by inserting a new section 28E which sets out what LEAs and schools will have to consider when preparing their strategies and plans, and the duties they must comply with once the strategies and plans are in place. LEAs and schools will be required to allocate adequate resources to implement their strategies and plans. LEAs will be under a duty to have regard to guidance issued by the Secretary of State and, for Wales, the NAW, about reviewing and revising their strategies. It is envisaged that the guidance will specify when LEAs should review their strategies.

85. Independent schools, other than CAs, will be required by the Act to make a copy of their plans available for inspection to anyone who asks to see it at a reasonable time. Maintained schools and CAs will not be covered by this duty in the Act as they will have to publish their plans in their annual governors' report to parents.

Section 16: Residual duty of education authorities

86. This section amends the DDA by inserting new sections 28F & 28G. This makes it unlawful for an LEA in England and Wales, or an education authority in Scotland, to discriminate against a disabled pupil or disabled prospective pupil in the discharge of its functions under various Acts relating to education. These are intended to cover the general education related functions of authorities that affect pupils or prospective pupils generally. An authority will already be under certain duties in Part 4 (where it is the responsible body for a school). When considering which anti-discrimination duties apply to its schools functions, an authority should first look at whether the duties not to discriminate under section 28A apply. If they do not, then the duty under this section — known as the “residual duty” — will apply.

Section 17: Special Educational Needs and Disability Tribunal

87. Subsection (1) of this section amends the DDA by inserting a new section 28H to change the name of the SENT to the SENDIST and extend the jurisdiction of the SENT to hear cases of disability discrimination in schools. The jurisdiction of the SENDIST will only extend to England and Wales (as does the jurisdiction of the SENT). Rights of redress in Scotland will be through the

sheriff court. Cases of disability discrimination under Part 3 of the DDA are heard through the courts and cases under Chapter 2 (further and higher education) of the new Part 4 will also be heard through the courts.

88. Subsection (2) provides that there is no requirement to consult disability organisations on appointments to the lay panel. The lay panel is a panel of persons who may serve as the other two members of the Tribunal with the legally qualified chairman (subsection (3)).

Section 18: Jurisdiction and powers of the Tribunal

89. This section amends the DDA by inserting a new section 28I to set out the circumstances in which a parent can make a claim to SENDIST and the powers that SENDIST will have if it finds that there has been unlawful discrimination. The alleged discrimination may have been committed by the responsible body of the institution in breach of section 28A of the DDA, or be treated under section 58 of the DDA as having been done by the responsible body if committed by its employees or agents.

90. Section 28I(2) prevents claims of discrimination being made to SENDIST in relation to admissions to, and permanent exclusions from, maintained schools and CAs. Arrangements for these schools will be through admissions appeals panels or exclusions appeals panels and are described under sections 20 and 21 respectively. SENDIST will hear claims of discrimination in relation to admissions to, and permanent exclusions from, all other schools. SENDIST will hear claims of discrimination in relation to temporary exclusions from all schools because temporary exclusions are not covered in the existing arrangements for exclusion appeals panels.

91. Sections 28I(3) & (4) gives SENDIST wide powers to order any remedy it thinks appropriate with the exception of financial compensation. Although SENDIST will not be able to award financial compensation it will be able to order schools and LEAs to take compensatory action to take account of past discrimination and shape the future prospects of the disabled child. Examples of the kind of orders that SENDIST might make are:

- that the LEA or school provide disability awareness training for some or all staff;
- that the LEA or school prepare guidance on combating disability discrimination for issue to all staff;
- that an LEA Equal Opportunities Officer arrange and attend, at specified times, meetings between the school and the child's parents to review what reasonable adjustments (short of adjustments to the physical premises or provision of auxiliary aids) might be required;
- that the school/LEA change policies, for example, those that prevent visually impaired pupils going into the science laboratory, those that prevent disabled pupils going on certain school trips and anti-bullying policies so that they deal with bullying on the grounds of disability;
- that additional tuition is provided to enable a child to catch up on things he has missed due to discrimination (such as science lessons in the example above);
- that a library is relocated to the ground floor (short of requiring an adjustment to the physical premises), or if not possible, that the school provides a list of available books and ensures that they are brought down to the child for him to read in a quiet room;
- that an independent school must admit a disabled pupil (where the school had previously refused) or must admit the pupil on the same terms as pupils who are not disabled (where, for example, the school had offered a place but at an increased fee); or
- that a maintained school which has temporarily excluded a disabled pupil must provide additional tuition to enable the pupil to catch up on education missed due to discrimination.

92. SENDIST will be able to set rigorous deadlines when directing action by schools and LEAs. If a responsible body fails to comply within the deadlines, the parent can ask the Secretary of State to make a direction to require compliance.

Section 19 and paragraph 1 of Schedule 3: **Procedure**

93. Subsection (1) amends the DDA by inserting a new section 28J which enables procedural regulations to be made in relation to SENDIST which reflect the powers already in existence in relation to the SENT appeal procedure. The major difference is the new power to make regulations allowing the Tribunal to hear a disability claim with an SEN claim.

94. Subsection (2) and Schedule 3 insert a new Part 3 into Schedule 3 of the DDA. This sets out further procedural provisions, similar to those for claims under Parts 2 and 3 of the DDA, the major difference being that there is no provision to submit a certificate as conclusive evidence that an act was done to safeguard national security.

Section 20: **Admissions**

95. This section amends the DDA by inserting a new section 28K providing for rights of redress for claims of disability discrimination in admission decisions, against a maintained school or CA, to be made through admission appeals panels — the arrangements set up to consider admission appeals.

Section 21: **Exclusions**

96. This section amends the DDA by inserting a new section 28L providing for rights of redress for claims of disability discrimination in permanent exclusion decisions, against a maintained school or CA, to be made through exclusion appeals panels — the arrangements set up to consider appeals against permanent exclusions.

Section 22: **Roles of the Secretary of State and the National Assembly**

97. This section amends the DDA by inserting a new section 28M, and gives the Secretary of State or, as appropriate, the NAW the power to direct an LEA or a school if satisfied that they have not complied with, or have acted unreasonably in carrying out, their duties to plan under sections 28D or 28E. It also gives the Secretary of State the power to direct LEAs and schools in England and Wales if satisfied that they have not complied with, or have acted unreasonably in complying with an order made by SENDIST. These are similar powers to those in sections 496 and 497 of the EA.

Section 23: **Enforcement Procedure: Scotland**

98. This section amends the DDA by inserting a new section 28N providing that all claims of disability discrimination under this chapter will, in Scotland, be heard in the sheriff court. The remedies available will not include financial compensation.

Section 24: **Validity and revision of agreements of responsible bodies**

99. This section amends the DDA by inserting a new section 28P, to apply to contracts and agreements with schools, so that discriminatory terms are made void. This works similarly to section 26 of the DDA.

Chapter 2— **Further and Higher Education Institutions**

Sections 26 to 34 with paragraph 2 of Schedule 3, Schedule 4, Schedule 5 and Schedule 6

Section 26 and Schedule 4: **Discrimination against disabled students and prospective students**

100. This section amends the DDA by adding a new section 28R making it unlawful for institutions to discriminate against disabled students in their admission, exclusion or suspension arrangements and in the services they provide to students. This section should be read in conjunction with Schedule 4 which sets out the responsible bodies for the institutions covered by these duties.

101. Only services provided wholly or mainly for students (described as “student services” in the Act) are covered by these duties. These include the provision of education and services related to teaching and learning and also the wider services, such as accommodation and leisure facilities, that institutions offer mainly to students. In order to provide clarity about which services are covered by these duties, the Secretary of State has the power to make regulations to set out whether particular services are covered.

102. Institutions within the further education sector (i.e. those conducted by further education corporations and those designated for the purposes of Part 1 of the Further and Higher Education Act 1992) and institutions within the higher education sector (i.e. publicly-funded universities, institutions conducted by higher education corporations and those designated for the purposes of Part 2 of the Further and Higher Education Act 1992) will be covered by the new duties. In Scotland, the relevant institutions are colleges of further education having a board of management within the meaning of section 36 of the Further and Higher Education (Scotland) Act 1992, institutions within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992, any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980 and colleges of further education maintained by an education authority in the exercise of their further education functions within the meaning of section 1(5)(b)(ii) of that Act.

103. Private institutions will generally be covered by Part 3 of the DDA. However, the Secretary of State will have a power to designate by order institutions in Great Britain that receive some public funds. These institutions will, in that event, be covered by the duties in Part 4 of the DDA which is amended by this Act.

Section 27: Meaning of “discrimination”

104. This section amends the DDA by adding a new section 28S defining the meaning of discrimination. It works in the same way as the definition in section 5 of the DDA, except in the respects set out below. An explanation of section 5 of the DDA is set out in paragraph 30 of these Explanatory Notes.

105. As well as the general justification there are two specific justifications relating to the less favourable treatment duty. Less favourable treatment will be justified if it is necessary to maintain academic standards or other prescribed standards. It will also be justified in certain cases which will be set out in regulations.

106. Provision is also made for responsible bodies not to be liable where they do not know (and could not reasonably be expected to know) of a person's disability (subsections (3) and (4)), both in relation to the less favourable treatment duty and the reasonable adjustment duty. Although the anticipatory nature of the latter duty means that an institution would have to consider what reasonable adjustments it might make generally to e.g. meet the needs of dyslexic students so that knowledge would not be relevant, it may need to know that a particular student was dyslexic in order to apply the policy to him. For example, if the policy was that dyslexic students would have extra time to finish their exams, the institution would need to know which students should benefit from that extra time. In those circumstances, an institution would not be liable for failure to provide the extra time where it did not know of the disability.

107. The reasonable adjustment duty under section 28 below is owed to students at large, unlike the duty owed to employees under section 6 of the DDA. For any particular student to bring an action, therefore, it is necessary for them to show not only that the general duty is breached but also that this breach was to their detriment.

Section 28: Disabled students not to be substantially disadvantaged

108. This section amends the DDA by inserting a new section 28T to place a duty on responsible bodies for further and higher education institutions to take reasonable steps to ensure that disabled students are not placed at a substantial disadvantage, in comparison to students who are not disabled, in their access to education and associated services to students.

109. The approach mirrors that in section 6 of the DDA, except that the duty under section 6 is owed to particular employees, and therefore involves no element of anticipation. The duty under this new section, in contrast, is owed at large to disabled students, and will therefore require educational institutions to consider the provision which they make for disabled students generally. The duty covers all aspects of a student's life, including academic activities and access to services which are available to him as a student.

Section 29 and Schedule 5: Further education etc. provided by local education authorities and schools

110. These provisions amend the DDA by inserting a new section 28U and a new Schedule 4C, which modify the effect of the rest of the Chapter as it applies, in England and Wales, to higher education secured by LEAs, further education for adults secured by LEAs, further education provided by the governing bodies of maintained schools, the activities of the statutory youth service and, in Scotland, to community education facilities provided by local authorities or voluntary organisations. Because of differences in arrangements, Schedule 5 makes separate provision for England and Wales on the one hand and for Scotland on the other.

111. The modifications from the formal further and higher education sector reflect the different nature of such education provision. The types of activities covered by this provision tend to be much more informal and are organised in a wide variety of community settings, rather than on an institutional model. The notion of an overall course being a programme of learning rests with the provider of this programme of learning not necessarily the individual. Learners will be covered by the duties whether they participate in a complete programme of learning or just an individual activity on which they would register.

112. Part 1 of Schedule 4C modifies the rest of the Chapter in relation to England and Wales, so that, where further and higher education secured by LEAs or the governing bodies of schools is concerned, it would be unlawful for them to discriminate against disabled persons enrolled on a course, rather than against disabled students. Similarly, it would be unlawful for them to discriminate in the provision of services provided wholly or mainly for persons enrolled on a course, rather than in the provision of "student services". The activities of the statutory youth service are covered by the duty in modified section 28R(4). Part 2 of Schedule 4C modifies the rest of the Chapter in the same way in relation to those community education facilities in Scotland which are broadly comparable to the services in England and Wales covered by Part 1 of Schedule 4C. Community education in Scotland ranges across youth work, adult education and informal education in a broad sense.

Section 30 and paragraph 2 of Schedule 3: Rights of Redress

113. These provisions amend the DDA by inserting a new section 28V and adding a new Part 4 to Schedule 3. A disabled student who has been discriminated against by an educational institution will have a right to sue that institution through civil proceedings. The alleged discrimination may be by the responsible body of the institution under section 28R of the DDA, or by employees or agents of the responsible body acting in the course of their employment or by the responsible body's authority as defined by sections 57 and 58 of the DDA. These sections of the DDA apply to the duties under Chapter 2 of the new Part 4 of the DDA.

114. Claims are brought in the same way as claims under Parts 2 and 3 of the DDA, except that there will be no provision to submit a certificate as conclusive evidence that an act was done to safeguard national security. County courts in England and Wales and sheriff courts in Scotland will hear cases brought under this Chapter. Where a disabled person is both a student at an institution and is also employed by that institution they will have rights under the employment provisions (Part 2) of the DDA, which are enforceable through an employment tribunal, as well as rights under this Chapter, enforceable through the courts.

Section 31 and Schedule 6: Occupation of premises by educational institutions

115. These provisions amend the DDA by inserting a new section 28W and adding a new Part 3 to Schedule 4. They set out how further and higher education institutions should comply with the duty to make reasonable adjustments to physical features of premises which place disabled students at a substantial disadvantage where they occupy premises under a lease. These provisions mirror those in sections 16 and 27 of the DDA. Section 31 should be read with Schedule 6 to the Act.

116. The effect is that, where the lease of a property occupied by a further and higher education institution forbids an occupier from making the alterations needed to comply with section 28T or puts conditions on those alterations, the occupier can nonetheless make the alterations required under this Act, if he has the written consent of the owner/lessor; but he must apply to the landlord in writing if he wants to make the alteration. If the occupier does apply in writing, the landlord cannot refuse consent unreasonably, although he can attach reasonable conditions to the consent.

117. Regulations will outline what will be regarded as withholding consent and when it is reasonable or unreasonable to do so.

118. Schedule 6 inserts a provision for circumstances when parties fail to obtain consent and there is a breach of the duty under section 28T. It provides for the owner/lessor to be joined in any action against an educational institution.

Section 32: Validity and revision of agreements

119. This section amends the DDA by inserting a new section 28X, to provide for new section 28P to apply to contracts and agreements with further and higher education providers, so that discriminatory terms are made void. The section will apply with amendments to reflect the fact that the further and higher education duties are enforced through the county or sheriff courts rather than through the SENT and admission and exclusion appeals panels.

Section 33: Interpretation

120. This section defines terms used within Chapter 2 to assist interpretation of that Chapter.

121. Specifically, section 31A(3) defines the term "student" as meaning a person who is attending, or undertaking a course of study at, an educational institution.

Section 34: Removal of certain duties of funding bodies

122. This section removes the power from the LSC in England, the CETW in Wales and the duty from the Higher Education Funding Councils in England, Scotland and Wales to require providers of learning to publish disability statements by imposing a condition of grant. It also removes from LEAs in England the existing statutory duty to publish disability statements. It also removes the power of the LSC to make conditions of grant which impose duties on institutions in relation to the provision that they make for disabled students. This is because these duties will be superseded by the new anti-discrimination duties introduced by the Act.

Chapter 3— **Miscellaneous**

Sections 35 to 40 and Schedule 7

Section 35 and Schedule 7: **Extension of Role of Disability Rights Commission**

123. This section extends the role of the DRC in respect of the provisions of this Act to the extent provided for in Schedule 7, including, for example, allowing the DRC to: issue non-discrimination notices and make agreements in lieu of enforcement action; apply for an injunction or interdict in respect of persistent discrimination; and, give assistance in relation to proceedings under this Act, at SENDIST, the county court or the sheriff court. The DRC has similar powers and duties in respect of the provisions of Parts 2 & 3 DDA, conferred by sections 2 to 8 of the DRCA.

Section 36: **Codes of Practice**

124. This section amends section 53A of the DDA to allow the DRC to prepare Codes of Practice in respect of the new duties in Part 4 of the DDA, apart from those duties inserted into the DDA by sections 14 & 15 of this Act which place LEAs and schools under a duty to plan. It is intended that there will be two Codes of Practice — one for schools (Chapter 1) and one for further and higher education (Chapter 2), which will be modelled on the DDA Part 3 Code in that they will explain and illustrate how the legislation aims to stop disability discrimination and how service providers can comply with the duties. The DRC already has the power, by virtue of section 9 of the DRCA, to prepare Codes in respect of Parts 2 & 3 DDA.

Section 37: **Conciliation for Disputes under Part 4 of the 1995 Act**

125. This amends the DDA by inserting a new section 31B to extend the DRC's power to make arrangements for the provision of conciliation services. The DRC already has power to make these arrangements in respect of disputes under Part 3 of the DDA. Disputes under Part 2 of the DDA are dealt with by ACAS.

Section 38: **Relationship with other Parts of the 1995 Act**

126. This section amends the DDA to establish the relationship of the new Part 4 duties with other sections of the DDA.

127. Subsections (5) and (6) remove the exemption of education from Part 3 of the DDA and provide that nothing in Part 3 applies to services that are now covered by Part 4.

Section 39: **Application to the Isles of Scilly**

128. This section inserts a new section 31C in the DDA. This modifies the application of Part 4 of the DDA (as amended by the Act) to the Isles of Scilly. Under section 581 of the EA the Isles are treated, for the purposes of that Act, as a separate non-metropolitan council, and the Council of the Isles of Scilly is treated as a County Council. This allows the Council of the Isles of Scilly to be treated as an LEA for the purposes of the EA. An equivalent provision is needed to allow the Council of the Isles of Scilly to be caught by the disability duties imposed on LEAs by the Act.

Section 40: Duty of Teacher Training Agency

129. This section makes no substantive changes to the law, but re-enacts the duty on the Teacher Training Agency since that duty has no place in the restructured Part 4.

DELEGATED POWERS AND DEREGULATION REPORT

130. DfEE submitted a memorandum on the powers to make delegated legislation under the Bill to the Delegated Powers and Deregulation Committee of the House of Lords. The Committee reported its view in the 3rd Report (HL Paper 9; Printed 20 December 2000).

COMMENCEMENT

131. The Act will come into force on the date or dates specified by order by the Secretary of State. However, the regulation making powers in the following provisions came into force on the day Royal Assent to this Act was given: sections 4, 5, 42(2) to (4); and paragraphs 6 to 10, 13(1) to (4) and 14(3) of Schedule 8, and section 42(1) so far as it relates to those provisions. In addition the National Assembly of Wales, rather than the Secretary of State, has the power to commence by order various specified provisions in respect of Wales.

132. It is intended that the SEN provisions in Part 1 will come into force in September 2001 and the disability provisions in Chapter 1 of Part 2 (schools) in September 2002. It is intended that the disability provisions in Chapter 2 of Part 2 (further and higher education) will come into force in stages: in September 2002 in respect of the duty not to treat less favourably and the duty to make reasonable adjustments in so far as this does not involve physical alterations or the provision of, broadly, auxiliary aids and services; in September 2003 in respect of the rest of the duty to make reasonable adjustments other than the duty to make adjustments requiring the removal or alteration of physical features; with full commencement of the physical features aspect of the duty to make reasonable adjustments in September 2005.

HANSARD REFERENCES

133. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	7 December 2000	Vol. 620, Col. 31
Second Reading	19 December 2000	Vol. 620, Cols. 634–710
Committee	23 January 2001	Vol. 621, Cols CWH1–CWH62
	29 January 2001	Vol. 621, Cols CWH63–CWH138
	30 January 2001	Vol. 621, Cols. CWH139–CWH210
	6 February 2001	Vol. 621, Cols. CWH211–CWH284
Report	20 February 2001	Vol. 622, Cols. 598–667 &
	21 February 2001	Vol. 622, Cols. 683–752
		Vol. 622, Cols. 753–808
Third Reading	1 March 2001	Vol. 622, Cols. 1283–1354
House of Commons		
Introduction	5 March 2001	Votes & Proceedings, 5 March 2001
Second Reading	20 March 2001	Vol. 365, Cols. 215–305

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

Stage	Date	Hansard Reference
Committee	27 March to 5 April 2001 (7 sessions)	Standing Committee B
Report and Third Reading	26 April 2001	Vol. 367, Cols. 477–541
Royal Assent	11 May 2001	
House of Lords	11 May 2001	Vol. 624, Col. 2282
House of Commons	11 May 2001	Votes & Proceedings, 11 May 2001

ANNEX 1

GLOSSARY OF TERMS AND ABBREVIATIONS

ACAS Advisory, Conciliation and Arbitration Service — provides a conciliation service in employment tribunal cases under discrimination as well as general employment law.

CA City Academy — a type of independent school established under section 482 of the EA as amended by section 130 of the LSA. Intention is that CAs, to replace seriously failing schools, will be established by partnerships involving the Government, and voluntary sector, church and business sponsors.

CCTA City College for the Technology of the Arts — a type of independent school established under section 482 of the EA with a curricular emphasis on technology in its application to the performing and creative arts.

CETW National Council for Education and Training for Wales — established under section 30 of the LSA with broadly similar functions to the LSC in England.

CTC City Technology College — a type of independent school established under section 482 of the EA with a curricular emphasis on science and technology.

DDA Disability Discrimination Act 1995

DDA Part 3 Code Code of Practice: *Rights of Access Goods, Facilities, Services and Premises* — gives practical guidance on how to avoid discrimination against disabled people in their access to services or premises.

disabled person Section 1 of the DDA defines a disabled person as someone who has “a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”. This definition is expanded elsewhere in the DDA and in The Disability Discrimination (Meaning of Disability) Regulations 1996. There is also statutory guidance on the meaning of disability (see paragraph 35 of these notes).

DRC Disability Rights Commission — a body established by the DRCA which has similar functions in relation to disability issues as the Commission for Racial Equality and the Equal Opportunities Commission have in relation to race and sex issues respectively. One of the DRC's broad objectives is to work towards the elimination of discrimination against disabled people.

DRC Act Disability Rights Commission Act 1999

DRTF Disability Rights Task Force (described at paragraphs 9–12 of these notes)

EA Education Act 1996

FEFC Further Education Funding Council

FEFCW Further Education Funding Council for Wales

independent school A school which falls within the definition contained in section 463 of the EA. In particular, these schools are not maintained by LEAs.

LA Local Authority (in terms of the provision of education, the broad equivalent, in Scotland, of the LEA in England and Wales).

LEA Local Education Authority — the local government organisation responsible for providing education.

LSA Learning and Skills Act 2000

LSC Learning and Skills Council for England — a non-departmental public body, established under section 1 of the LSA which is responsible for post-16 learning, other than higher education. It will take over the functions performed by the FEFC and have the general oversight of the provision of adult education, although LEAs will continue to provide adult education under that oversight.

maintained school A community, voluntary, foundation, community special or foundation special school, except, in relation to Part 4 of the EA, special schools established in a hospital. These are all schools maintained by an LEA.

maintained nursery school A nursery school funded by an LEA which is not a special school (See s.22(9) of the SSFA).

NAW National Assembly for Wales

parent In relation to England and Wales, section 576 of the Education Act 1996 provides that ‘a parent’ in relation to a child or young person includes somebody who has care of him or, who is not a parent of his, but has parental responsibility for him. Parental responsibility has the same meaning as in the Children Act 1989. In relation to Scotland, ‘parent’ has the meaning given in section 135 of the Education (Scotland) Act 1980. ‘Parent’ includes guardian and any person who is liable to maintain or has the actual custody of a child or young person.

PRUs Pupil Referral Units — schools established and maintained by LEAs which are specially organised to provide education for children of compulsory school age who, because of illness, exclusion from school or other reasons, might not otherwise receive suitable education. (see s.19(2) EA).

SEN Special Educational Needs — a child has special educational needs if he or she has learning difficulties that need special educational help. The legal definition is in section 312 EA.

SEN Code of Practice Code of Practice on the Identification and Assessment of Special Educational Needs.

SENT Special Educational Needs Tribunal — a tribunal established under section 333 EA to consider parents' appeals against decisions of LEAs in England and Wales about assessment and statements of their children's SEN.

SENDIST Special Educational Needs and Disability Tribunal — the SENT will, by virtue of this Act, become the SENDIST and also hear cases of disability discrimination in schools in England and Wales.

Special schools Schools which are specially organised to make special educational provision for pupils with special educational needs. Special schools are either maintained schools or non-maintained special schools approved under section 342 EA.

SSFA School Standards and Framework Act 1998