



## SCOTTISH EXECUTIVE

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Education Department  
Pupil Support and Inclusion Division

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Circular No 3/2002

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Dear Sir or Madam

### **STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000 GUIDANCE ON PRESUMPTION OF MAINSTREAM EDUCATION**

1. This circular has been written to help education authorities to review their policies for children with special educational needs in the light of the requirement in Section 15 of the *Standards in Scotland's Schools etc. Act 2000* that the education of all children should be provided in mainstream schools, unless certain, specified, exceptions apply.

#### **Timescale**

2. The new provision will apply to all children starting or attending school, nursery schools and classes, (including those in other local-authority managed centres and non local-authority pre-school centres with whom the authority has an arrangement under section 35 of the 2000 Act), with effect from **1 August 2003**.

3. Education authorities should start planning from the date of this circular to ensure that they are in a position to implement the terms of the new provision by this date.

#### **Legislation**

4. Section 15 of the Act (see Annex A) states that an education authority, in carrying out its duty to provide school education to a child of **school age**, shall provide that education in a school other than a special school unless one of a number of circumstances arises. (See paragraphs 14-19 below). Section 15 of the Act also states that where an education authority provides school education to a child **under school age**, either in a school or through arrangements with other persons, then they shall provide that education in a school other than a special school unless one of the noted exceptional circumstances arises.

5. Special schools are legally defined in the Education (Scotland) Act 1980, as amended. Under section 135 (1) of the Act, a special school is defined as one making provision wholly or mainly for recorded children, i.e. children with a Record of Needs; and includes special classes forming part of primary or secondary schools. The legislation places a duty on an education authority to mainstream all pupils (subject to exceptions), including those children attending special schools or classes as defined in the 1980 Act. However, there are some schools which are generally known as special schools, but most of whose pupils do not have a Record of Needs. This is mainly the case with schools making provision wholly or mainly for pupils with social, emotional or behavioural difficulties. Education authorities are encouraged to review also the placement of children in these schools, or in similar units or classes attached to mainstream schools.

### **Aim**

6. The intention behind the new duty is to establish the right of all children and young persons to be educated alongside their peers in mainstream schools unless there are good reasons for not doing so. It is based on the premise that there is benefit to all children when the inclusion of pupils with special educational needs with their peers is properly prepared, well-supported and takes place in mainstream schools within a positive ethos. Such inclusion helps schools to develop an ethos to the benefit of all children, and of society generally. It also helps meet the wishes of many parents that their children should be educated alongside their friends in a school as close to home as possible.

7. The new duty should also be seen in the wider policy and legislative context. In particular, a decision to mainstream or not, should take account of section 2 of the *Standards in Scotland's Schools etc. Act 2000* which places a duty on an education authority to secure that the education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. This section also requires an authority to have due regard to the views of children and young persons. In addition, it is a national priority of Scottish Ministers to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs. Decisions should take account of the implications of the new duties under Part IV of the Disability Discrimination Act 1995. Account should also be taken of planning for improvements through accessibility strategies under the new Education (Disability Strategies and Pupils' Educational Records) Bill.

8. The new duty acknowledges that the needs of some children may be best met through specialist provision. Effective inclusion should not be seen solely in terms of physical location but must take account of what provision works for each child. In addition, it is important that parents' views are taken into account when it comes to the issue of school placement and that there continues to be an element of choice in provision.

## **Procedures**

9. The new mainstreaming provision should build on existing procedures and good practice under which decisions are taken on educational provision for children. In the case of children starting school or pre-school for the first time, or for children changing schools, the education authority should, as now, take account of all available information from parents, pre-school and childcare staff, teachers and other professionals, when considering what educational provision will best meet the child's needs. Similarly, the initial assessment and preparation of a Record of Needs provides an opportunity and mechanism for considering whether mainstream provision is appropriate for children with the most complex needs. Wherever possible, education authorities should consider how support for such pupils can be provided alongside their peers, perhaps on a split placement basis.

10. For pupils already attending special schools existing good practice means that schools and education authorities should have arrangements in place to review regularly the progress of children and young people. This most commonly occurs by way of the annual reviews conducted by schools for all pupils. These reviews will continue to provide an appropriate opportunity to consider whether pupils in special schools would benefit from a move to mainstream education. Equally, for children attending special units, regular reviews, including the updating of Individualised Educational Programmes (IEPs), provide the opportunity to consider whether the balance of attendance between mainstream and special classes continues to be appropriate.

## **Planning**

11. Education authorities should begin planning from the date of this circular to ensure that their arrangements for considering placements for children starting or changing school (including pre-school education) in the new school year commencing in August 2003 take account of the mainstreaming provision in the Act. They may wish to ask their mainstream schools to conduct an audit of their policies for inclusive education. This could assist schools to ensure certain key measures are in place; for example a positive ethos policy, ensuring more in-class support for learning and behaviour; and establishing a whole school policy for behaviour support and effective teaching and learning.

12. Education authorities should pay particular attention to children approaching key transition points, e.g. moving from pre-school to primary; primary to secondary school or from one stage to another within "all-through" schools. Issues which should be considered include how the current school (or pre-school provider) prepares the child for moving on while ensuring that appropriate provision is put in place for the child's arrival in the new setting. Other issues may relate to staff allocation and deployment, staff development and training, building adaptations, contracts with other agencies, etc.

13. Education authorities should also from the date of this circular begin to consider the placements of children already attending special schools or special units when they undertake their annual reviews of children's progress during the 2001-02 school year. Such consideration of existing placements should be a feature of all future annual reviews with assessments being conducted in sufficient time to allow preparations for any move to mainstream to occur at the start of a school year, wherever possible.

## Exceptions

14. The new requirement on education authorities to provide mainstream education for all children is intended to strengthen the rights of children and young persons to education alongside their peers. Section 15(3) of the Act sets out a number of specific circumstances where this requirement will not apply, although it makes clear that these would be expected to arise only exceptionally. In addition, section 15(4) provides discretion to an education authority to provide education in a mainstream school even where one of these conditions does apply.

*a) where education in a school other than a special school would not be suited to the ability or aptitude of the child;*

15. For a small number of pupils, the experience of mainstream schooling may not be the best means of developing their potential or providing them with adequate preparation for adult life. For example, some children may require a low stimulus environment which does not provide the intensity of auditory or visual stimulation found in a mainstream class. Others may find small group settings more appropriate than the larger classes found in mainstream. Some children with complex needs require a range of highly specialised services required to meet their needs, for example, specialist paramedical therapies or continuing high levels of health surveillance. The education authority should discuss with health and other agencies how these services can be provided, wherever possible, within mainstream provision.

*(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated;*

16. Occasionally, the inclusion of a child with special educational needs may be incompatible with an education authority's duty towards all of the children in its care. Children regularly displaying severely challenging behaviour, for example, can have negative effects on the education of children around them and, in doing so, also on their own education. An education authority should consider appropriate support strategies before making alternative arrangements for any pupil.

17. A decision to provide education outwith mainstream should be subject to regular review and children should have the opportunity to move to mainstream where a change in need or behaviour patterns makes this feasible. The identification and provision of appropriate support, together with regular reviews, should mean that a long-term special school setting will occur under this condition in only a very limited number of cases. For older children approaching the end of their school career a decision on a return to mainstream should be taken in the light of what provision can best prepare the young person for life after school. This provision may include continued attendance in a special school or attendance based on a placement split between mainstream and a specialist setting.

*(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,*

18. The Scottish Executive encourages and supports the inclusion of children with special educational needs in mainstream schooling through general funding of education authorities. In addition, the Executive's Inclusion Programme and future general funding for the Education (Disability Strategies and Pupils' Educational Records) Bill is available to assist authorities to develop accessibility strategies. These strategies may include planning for the physical modification of school facilities; the provision of equipment and the adaptation of the curriculum to the requirements of children with special educational needs. Furthermore, the extension of the Disability Discrimination Act 1995 to education will make it unlawful for education providers to discriminate unfairly against children with disabilities.

19. In view of these policy trends it is expected that this condition should only be invoked in exceptional circumstances. This might arise, for example, where the expenditure to be incurred was completely out of scale with the benefits to the wider educational community. However, education authorities should also consider whether expenditure incurred in including a particular child in mainstream will make it easier and more cost effective to include other children in future.

### **Children's and families' views**

20. Section 15(4) allows local authorities to set aside any of the circumstances in section 15(3) and to provide education for the child in question in a school other than a special school. However in the event that an education authority chooses to exercise discretion under section 15(4), they should not do so without taking into account the views of both the child and the child's parents in that regard.

21. In addition, under section 2 of the 2000 Act, an education authority is required to have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity. Education authorities should therefore make arrangements for hearing the views of children and young persons whenever decisions on which school they should attend are being considered.

### **Placing decisions**

22. The new mainstreaming provision will operate alongside the placing request procedures as set out in the Education (Scotland) Act 1980. Where a parent disagrees with an education authority decision to place a child in a special school or in mainstream education, they may continue to make a placing request under section 28A of that Act to place the child in a school of their choice. The new mainstreaming provision will be part of the legal framework governing any decision by a local authority's appeal committee and subsequently if appropriate, in an appeal to the Sheriff Court. Local authorities should therefore update their procedures for handling placing requests to take account of the new duty. In addition, they should ensure that information material provided for parents is revised to reflect these new procedures.

## **Monitoring**

23. The Scottish Executive wishes to monitor the impact of this new duty on the special educational needs policies of education authorities, schools and pre-school centres. Inspections by HM Inspectorate of Education will include consideration of the effect that the new mainstreaming duty has on policy and practice. The Executive, following consultation with its School Education Information Advisory Group, will make arrangements for monitoring the number of pupils refused mainstream education under the conditions in section 15(3) of the new Act. In addition, the Executive will conduct research into the impact of the new legislation.

Yours sincerely



**JOAN FRASER**

## **Queries Concerning This Circular**

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**STANDARDS IN SCOTLAND'S SCHOOLS ACT 2000**

**Section 15 - Requirement that education be provided in mainstream schools**

- (1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.
- (2) If a child is under school age, then unless one of the circumstances mentioned in subsection (3) below arises in relation to the child, an education authority shall, where they-
  - (a) provide school education in a school to the child, provide it in; or
  - (b) under section 35 of this Act, enter into arrangements for the provision of school education in a school to the child, ensure that the arrangements are such that the education is provided in,  
  
a school other than a special school.
- (3) The circumstances are, that to provide education for the child in a school other than a special school-
  - (a) would not be suited to the ability or aptitude of the child;
  - (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
  - (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,  
and it shall be presumed that those circumstances arise only exceptionally.
- (4) If one of the circumstances mentioned in subsection (3) above arises, the authority may provide education for the child in question in a school other than a special school; but they shall not do so without taking into account the views of the child and of the child's parents in that regard.