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## SUMMARY OF THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

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### 1. THE SPECIAL EDUCATIONAL NEEDS CLAUSES

The amendments to the 1996 Education Act follow on from the proposals in the Government's Green Paper and the subsequent Programme of Action. The proposals for legislation were subject to further consultation in March 2000, a consultation in which the NUT took a full part. In respect of special educational needs, the Act:

- amends Section 316 of the 1996 Act to change the conditions that currently limit the LEA's duty to provide a mainstream school place;
- requires schools to inform parents when they make special educational provision because they have identified their child as having SEN;
- permits schools to request a statutory assessment in the same way that parents can;
- requires LEAs to provide and advertise parent partnership services;
- requires LEAs to make arrangements for resolving disagreements between parents and schools and between parents and the LEA, without affecting parents' right of appeal to the SEN Tribunal; and
- tightens up arrangements for appeals to the Tribunal, including setting time limits for the implementation of the decisions of the Tribunal.

### 2. CLAUSE 1 : SECTION 316

Section 316 of the Act reads:

"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 parents; or
- (b) the provision of efficient education for other children."

The NUT pressed consistently for the Government to maintain Section (b) of Section 316. In the second reading of the Bill in the House of Commons, Teresa May referred to NUT policy when she stated that:

*"We must also ensure that teachers are involved in decisions on whether educating a particular child in the mainstream will affect the education of other children. It is important that teachers' professional*

*judgment is involved in that decision and in making such assessments.”*

Lord Baker of Dorking commented that:

*“In the past I have not often agreed with everything-or indeed, with anything- that the NUT has said. However, while the NUT welcomes the thrust of the Bill, which is inclusive, the brief makes it clear that the professional judgment of teachers has to be taken into account when deciding whether educating a particular child in a mainstream school would be incompatible with the provision of efficient education for other children. That is probably rights and it would be imprudent for the Committee to support the amendments”.*

Baroness Blackstone agreed:

*“Perhaps I may pick up what the noble Lord, Lord Baker of Dorking, said, in mentioning the briefing from the NUT. We must not ignore the concerns of teachers. After all, it is the teachers who must take up the challenge that inclusion presents. I am pleased to say that they support inclusion and want to make it work, but they know that inclusion can sometimes be far from easy. Like us, they believe that inclusion would not work if it were to jeopardise the interests of all children because of a doctrinaire position”.*

Throughout the debate, the Government reaffirmed its commitment to a continuing role for special schools. Virginia Bottomley reported that:

*“I support the comments made by Doug McAvoy...when he says, ‘There is a continuing role for special schools, not least as centres of expertise and as resource centres, as well as providing for each young person’s special needs’.”*

The NUT raised concerns about the removal of b(ii) of the second caveat of the original Section 316, i.e., “incurring unreasonable public expenditure”.

### 3. THE DISABILITY DISCRIMINATION CLAUSES

Part II of the Act amends the Disability Discrimination Act 1995 in the light of the recommendations of the Disability Rights Task Force (DRTF). In November 1999, the Disability Rights Task Force advised the Government on how they might extend the DDA to include education. In effect, the disability clauses of the Bill implement the recommendations of DRTF and are designed to ensure that children with a disability are not discriminated against in any aspect of school life. This part of the Act:

- makes it unlawful to discriminate against disabled pupils and prospective pupils;
- sets out a duty on schools not to treat disabled pupils less favourably than non-disabled pupils;

- sets out a duty on schools to take reasonable steps to ensure that they do not put disabled pupils at a substantial disadvantage;
- provides a remedy through the renamed SEN and Disability Tribunal (SENDIST), which will have an extended remit to hear disability discrimination cases;
- introduces the duty on LEAs and schools to plan to increase access to schools for disabled pupils; and
- introduces a power for the Disability Rights Commission to prepare codes of practice for providers and others on their new duties.

#### 4. AMENDMENTS TO THE SEN AND DISABILITY BILL

A number of amendments were incorporated into the original Bill. The amendments to the SEN clauses mean that:

- the operation of the framework for providing a mainstream place, where parents want it, will now be monitored by OFSTED;
- clear information will be given to parents, telling them that if they accept dispute resolution, this will not affect their entitlement to appeal to the SEN Tribunal; and
- amendments to a statement will be governed by new procedures which will involve proper consultation with parents and provide a right of appeal.

Amendments to the disability clauses mean that:

- the planning duties on schools and LEAs will now include improved access to the curriculum and the provision of information in alternative formats for pupils, in addition to improvements to the physical environment of the school, which were in the Bill from the start;
- disability accessibility plans and strategies will be inspected by OFSTED; and
- in considering what 'reasonable steps' they should take to avoid discrimination, schools will have regard to the Code of Practice issued by the Disability Rights Commission.

In addition to these amendments and before the Bill left the Lords, significant commitments were made by ministers on a number of issues:

- early years providers of education to three and four year olds would have to have an SEN and disability policy as a condition of Government grant;
- there will be multi-agency good practice guidance on very young children with SEN and disabilities;

- the voice of the child in decision-making would be strengthened in the SEN Code of Practice;
- in reviewing initial teacher training, SEN and disability issues will be taken into account; and
- the Government will introduce regulations to require greater clarity on the respective responsibilities of schools and LEAs.

## 5. THE SEN AND DISABILITY TRIBUNAL (SENDIST)

The SEN and Disability Tribunal, renamed and with an extended remit, will have the power to provide remedy where there has been 'unlawful discrimination'. Debates in the Lords have clarified that it will be possible for the SENDIST to order: training for staff; changes to policies; practices and procedures; or a replacement trip or additional tuition for a child who has missed out on a school experience. In addition, the SENDIST will be able to order a written apology to the child or young person. OFSTED will inspect LEA accessibility strategies and school accessibility plans. The Secretary of State has overall responsibility for the planning duties and will, if necessary, be able to order changes, should he or she consider these necessary, for example, where it was apparent that plans would not address discrimination.

The Disability Rights Commission has powers to investigate cases of disability discrimination. These powers can be used to look at patterns of discrimination, whether geographical or relating to particular aspects of school life, such as the provision of or, more precisely, exclusion from, school trips.

## 6. FUNDING

The Government is allocating £220 million over the next three years to the Schools' Access Initiative. Combined with smaller amounts allocated over the past five years, this amount will make a significant impact on the accessibility of schools.

In addition, in 2001-02, there will be £82 million made available for SEN work in schools and LEAs through the Standards Fund. This represents an increase of about 50 per cent on what was available during the previous year.

The NUT believes that the Government should audit all the costs involved in implementing the SEN provisions in the Act. The NUT will press the Government on how they envisage Standards Fund being used to support the implementation of the Act's provisions, as there is far more flexibility with how LEAs spend their Standards Fund allocation than in previous years. The NUT is also asking for information on the Special Educational Needs Small Programmes Fund 2001-02.

During the second reading of the Bill in the House of Commons, the NUT was quoted by Tim Boswell, who stated that:

*"I shall not let this occasion pass without referring to the comments in the brief provided by the National Union of Teachers, which states:*

*'The positive measures in the Bill will only be successful if they are backed by adequate funding. The SEN provisions in the Bill are not without significant resource implications. The Union believes that the Government should audit all the costs involved in implementing those provisions'.*

*The NUT has also expressed concern about the need to obtain an assurance in the House of Commons 'that special schools have a continuing role and future.'* “

The NUT has asked the Government about the costs in terms of time and money for schools and LEAs to plan to increase accessibility. The DfEE does not see this planning duty as a stand-alone duty and they envisage that it could be incorporated within other plans, such as Asset Management Plans.

7. SCHEDULE THREE OF THE SEN REGULATIONS (STATEMENT OF SPECIAL EDUCATIONAL NEEDS)

Lord Lucas, in the Committee stage on the House of Lords, referred to the NUT, and stated that: “Perhaps I may continue the practice of quoting with approval from the National Union of Teachers from the Conservative benches - long may it last! It says in the brief that:

*'The Union would welcome an assurance that LEAs would be expected to draft SEN statements that are precisely worded and which clearly define the additional resources and support that each child requires'.*”

The Government has decided to retain the requirement in the SEN Regulations to specify provision and to enhance the guidance and the Code of Practice. The revised Code would emphasise the need for statements to provide a full description of the child's special educational needs and to detail clear and specific provision, quantified as necessary, to meet those needs. There would be published guidelines for teachers on measuring the progress of pupils with special educational needs.

8. CLAUSE 14 : ACCESSIBILITY STRATEGIES AND PLANS – PROCEDURE (PARAGRAPH 82)

The NUT raised concerns about Clause 14. This section outlines what LEAs and schools have to consider when preparing their strategies and plans and the duties they must comply with once the strategies and plans are in place. It states also that, “LEAs and schools will be required to allocate adequate resources to implement their strategies and plans”. The NUT has pressed the Government to place limits on expectations of schools with regard to accessibility plans. The NUT has made it clear also that OFSTED should not inspect the application of accessibility plans outside that which is reasonable to expect schools to deliver. The DfES should produce clear guidance for governing bodies and headteachers about their duties and requirements and make it clear that schools will not immediately be expected to make their schools fully accessible. This will take time and resources and that changes to the physical features of schools or auxiliary aids are not required to be included in this plan.

In addition, the NUT is concerned about what will constitute adequate resources. The DfES has responded by saying that they will be looking at LEA guidance on strategic planning and that schools will need to flag up what they are doing already on inclusion as part of their Annual Report and this would fulfil their planning duties. The DfES are expecting much of the Schools' Access Initiative funding to pay for greater inclusion. Hopefully, this would also result in some form of partnership between LEAs and schools on increasing the inclusion, with the lead taken by LEAs.

The joint NUT/Scope report on the effects of the Schools' Access Initiative, 'Within Reach', received favourable reports during the Bill's second reading in the House of Lords. Roger Berry, MP for Kingswood, stated that:

*"...let me congratulate Scope and the National Union of Teachers. One of the first documents that I read on becoming a Member of Parliament in 1992 was a report produced by Scope and the NUT, entitled 'Within Reach'. It basically said, 'We really do not know very much about access'. A year later, the two organisations produced a report telling us rather more about the subject and, I am delighted to say, the Schools Access Initiative was established by the last Government as a result."*

Tom Levitt, MP for High Peak, similarly congratulated the NUT:

*"I commend the report by Scope and the National Union of Teachers. 'Within Reach 3' says that, in 90 per cent of schools where access initiatives have been implemented and schools have become more inclusive by introducing into the mainstream disabled children and children with special needs, attitudes towards children with disability have improved. There is less bullying, less exclusion and more physical inclusion"*

## 9. OFSTED

OFSTED will now have the power to monitor the effects of the implementation of Clause 1 of the SEN Act. They will also have their powers extended to include the planning duty for the first time. For schools, this will mean inspecting schools' accessibility plans.