

EQUAL OPPORTUNITIES SCOTTISH EXECUTIVE POLICY DISABILITY

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This paper has been prepared for the Scottish Parliament Equal Opportunities Committee and is an overview of Scottish Executive policy and practice developments on disability equality from 1999 to 2006. It is one of a series of briefings on the six “equality strands” of age, disability, gender, race, religion and belief and sexual orientation and gender identity. There is also a separate paper on generic equal opportunities policy.

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KEY POINTS

- following the European Year of Disabled People in 2003, the Scottish Executive established a Disability Working Group which is due to report in 2006
- from December 2006 public bodies will have a duty to promote disability equality and certain public bodies will have to publish equality schemes
- devolved legislation relating to disabled people has covered education, community care and transport
- in the Scottish Executive Communities portfolio, issues which have been addressed include adaptations, inclusive design and access to the built environment
- under Section 72 of the Transport (Scotland) Act 2001 (asp 2) disabled people have been eligible for free local bus travel since 2002 and this has been extended nationally since April 2006
- in Health, policies have looked at the needs of particular groups such as those with autistic spectrum disorders, physical impairment, learning disabilities, sensory impairment and mental ill health
- the '[Fair for All - Disability](#)' from the Disability Rights Commission has been developed to improve access to health services and increase disability awareness among NHS staff
- eligibility for direct payments was extended to those aged 16 or above in 2001. The Adult Support and Protection (Scotland) Bill proposes enabling payments to close relatives in exceptional circumstances
- in Education, the system for those with additional support needs was reformed in 2004. Prior to this, in 2002 the education system was required to ensure that the curriculum was accessible to all
- post school transitions for those with learning difficulties were addressed by the Beattie Committee in 2000

INTRODUCTION

This paper looks at the main areas of devolved legislation relating to disability issues before looking at the key policy areas of communities, health and education. It also briefly considers proposals for tackling hate crime, policy to improve employment accessibility and some key research commissioned by the Scottish Executive.

POLICY DEVELOPMENT

Policy on disability has been developed in the context of the expansion of UK anti-discrimination law in 1995 to cover disability and the phased introduction of the provisions. Legislation in the first session of the Scottish Parliament introduced a presumption of mainstreaming in school education extended the eligibility for direct payments and introduced free bus travel. Major reviews were undertaken of services to people with learning difficulties (The Same as You?) and post school transitions (the Beattie Committee). The second session included a substantial reform to the system for additional support needs in education and policy consideration of access to the built environment through housing adaptations and good design. More recently, the Scottish Executive has launched the 'Employability Framework' aimed at finding effective ways of helping people into work, particularly those who face barriers to gaining employment.

The European Commission organised the [European Year of Disabled People 2003 \(EYDP\)](#) with the aim of highlighting barriers and discrimination faced by disabled people, through a programme of activities and events. The Scottish Executive convened a steering group to organise a programme of activities in Scotland. At the end of the year the group published a review and indicated a number of priorities to be taken forward, such as engaging with young disabled people and engaging with employers. It was also recommended that a short life working group be established to prioritise action for the current session of the Parliament. This was established in 2004 with a membership drawn from organisations "of and for disabled people". Its remit was:

"To establish priorities for the Scottish Executive and partner organisations to promote equality for disabled people in Scotland; and to develop proposals on longer term mechanisms for engagement with the disability sector."

The working group is made up of a core group of members, as well as satellite groups focusing on:

- employment
- public sector duty to promote disability equality: mainstreaming disability equality; corporate responsibility; engaging public authorities
- communication; consultation; education and training; citizenship; disability equality training; public attitudes; access to information
- social inclusion; poverty; independent living; direct payments; care and support services; rehabilitation

A report of the Disability Working Group is forthcoming.

Under the Disability Discrimination Act 2005 (c. 13) the disability equality duty comes into force in December 2006. It will require all public bodies to promote equality for disabled people. A listed number of public bodies will be required to publish a Disability Equality Scheme.

LEGISLATION

Devolved legislation in this area relates primarily to education, mental health and community care. UK-wide anti-discrimination legislation has developed through the gradual bringing into force of the Disability Discrimination Act in 1995 and some extensions to it - most recently through the introduction of a duty on public bodies to promote equality.

Section 15 of the **Standards in Scotland's Schools etc Act 2000** (asp 6) (in force August 2003) introduced the presumption of mainstreaming for children and young people with special educational needs, so that where possible they should be educated in mainstream schools rather than special schools, except where it:

- would not be suited to the ability or aptitude of the child
- would be incompatible with the provision of efficient education for the children with whom the child would be educated
- would result in unreasonable public expenditure being incurred which would not ordinarily be incurred and it shall be presumed those circumstances arise only occasionally

Section 40 of the 2000 Act made provision for children too ill to attend school, ensuring that education authorities make special arrangements for the pupil to receive education elsewhere than at the educational establishment.

The 2000 Act set out a School Improvement Framework, and provides for [National Priorities](#) to be set in regulations. Of the five priorities, the third priority on inclusion and equality is:

To promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs and to Gaelic and other lesser used languages.

Under **Section 72 of the Transport (Scotland) Act 2001** (asp 2) disabled people have been eligible for free local bus travel since 2002 and this has been extended nationally since April 2006.

Regulation of Care (Scotland) Act 2002 (asp 8) puts a duty on the Scottish Ministers, the Care Commission and the local authority to comply with various principles including promoting the independence of people receiving care and offering them a choice of care services.

Community Care and Health (Scotland) Act 2002 (asp 5) from 1 June 2003 it became a duty for local authorities to offer direct payments, in place of providing services, to all eligible disabled people aged 16 and over, and to parents for disabled children aged 15 and under.

The **Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002** (asp 12) requires education authorities to ensure that strategies are in place to improve access to the curriculum and to the physical environment, and to improve communication with disabled pupils.

The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) updated the legal framework which determines the delivery of care and treatment of people with mental disorders. It aimed to deliver the best possible support to patients and families; to provide professionals with the tools to do their jobs properly; and to provide clearer, fairer and safer mental health legislation.

The **Education (Additional Support for Learning) (Scotland) Act 2004** (asp 4) changed the system of assessment and recording of special educational needs. Its provisions included a change in terminology from special educational needs to additional support needs. The aim of the Act was to allow for a wider group of children to benefit from education, such as those experiencing temporary setbacks, gifted children, children with social, emotional and

behavioural difficulties, and those for whom English is an additional language. The policy behind the legislation was set out in [Moving Forward – Additional Support](#) for Learning (Scottish Executive 2003a).

The Adult Support and Protection (Scotland) Bill 2006, includes provision for decision taking on behalf of adults who may lack the capacity to do so themselves. It also makes provision for close relatives to receive direct payments in some circumstances. Section 63 of the Bill would provide Scottish Ministers with the powers to introduce regulations that would allow local authorities to disapply the prescribed category list in exceptional cases. This list is of those who are currently prevented from receiving direct payments – such as close relatives.

RESERVED LEGISLATION

The **Special Educational Needs and Disability Act 2001** (c. 10) made it unlawful for schools, colleges and other education providers to discriminate against disabled people. Since September 2003, colleges and universities have been required to provide 'auxiliary aids and services' such as information in accessible formats, and since September 2005 they have been required to make 'reasonable adjustments' to physical features.

Disability Discrimination Act 2005 (c 13) – The Disability Equality Duty for the public sector comes into effect on 4 December 2006. This is similar in structure to the race equality duties which came into force in 2002. It requires all public bodies to have due regard to:

- promoting equality for disabled people
- eliminating unlawful discrimination and harassment
- promoting positive attitudes towards disabled people
- encouraging participation by disabled people in public life
- taking steps to meet disabled people's needs, even if this requires more favourable treatment

In addition, certain listed public bodies will need to produce a Disability Equality Scheme by 4 December 2006. The Disability Rights Commission (DRC) has produced guidance (DRC, 2006a) and there is a statutory code of practice for Scotland (DRC, 2006b).

DEVOLVED POLICY AREAS

CHALLENGING ATTITUDES

The '[see me](#)' campaign was launched by the Scottish Executive in October 2002 with the intention of challenging stigma and discrimination around mental ill-health in Scotland. The campaign is run by an alliance of five Scottish mental health organisations, and is funded by the Scottish Executive as part of its National Programme to Improve Mental Health and Wellbeing.

JUSTICE

Hate Crime

A survey by the Disability Rights Commission found that:

Hate Crime is a significant issue for disabled people. Previous studies have suggested that a significant minority of disabled people have been victims of it.

Approximately half the disabled people (47%) who responded to the survey have experienced hate crime because of their disability.

(DRC and Capability Scotland 2004)

An unsuccessful amendment to the Criminal Justice (Scotland) Bill 2003, proposed creating an offence in which crimes aggravated by prejudice against social groups on the basis of age, disability, gender or sexual orientation received a higher sentence or punishment. The Scottish Executive set up a Hate Crime Working Group with a remit to 'look at the current criminal justice system and consider improvements, including legislation, which might be made to deal with crimes based on hatred towards social groups.' Their report, published in 2004 recommended that the Executive introduce a statutory aggravation from crimes motivated by homophobic or transphobic prejudice or by prejudice towards disabled people (Scottish Executive 2004a).

In June 2006 Jack McConnell said that the proposed sentencing bill would not include proposals to tackle hate crime through the introduction of an aggravated offence.

"The First Minister: The working group—whose work was supported by all sides in the chamber—never suggested that the only way in which to deal with hate crimes was to treat them as aggravated offences. As the Minister for Justice confirmed to members of that working group today, the other measures that were contained in the group's report will help to ensure that agencies respond properly to hate crime and that individuals are punished for hate crime in a way that is appropriate. At the same time, there is an issue about the need to ensure that we have a consistent approach to aggravated sentencing and other related matters. Therefore, it would be inappropriate for us to legislate on one issue in the sentencing bill and it would be far more appropriate for us to await the report of the Sentencing Commission, which will appear in August, and to respond thereafter." (Scottish Parliament 2006a)

In a written answer in June 2006, Cathy Jamieson, Minister for Justice, had highlighted other work that was being undertaken on the issue.

"A number of the recommendations made by the Working Group have resulted in action being taken. For example, since 1 April this year the Vulnerable Witnesses (Scotland) Act 2004 has offered the possibility that some of those at risk from hate crime may benefit from special measures and other provisions designed to help vulnerable witnesses who may be in fear or distress in connection with giving evidence to give the best evidence they can. The act currently applies to vulnerable adults and children where cases are being heard in the High Court or in solemn proceedings in the sheriff court including Children's Hearings Court Proceedings. These provisions will be rolled out to sheriff court summary and all Civil Proceedings including fatal accident inquiries proceedings next year. A formal response to the report will be issued in the near future." (Scottish Parliament 2006b)

COMMUNITIES

Housing

Supporting People is a Scottish Executive policy and funding framework for housing support services, and was introduced in April 2003. The policy aims to provide good quality services, focusing on the needs of users, to enable vulnerable people (including disabled people) to live independently in the community, in different types of accommodation and tenure.

Equipment and Adaptations

The Scottish Executive has been working on the provision of equipment and adaptations through the Strategy Forum, which carried out a review of provision and outlined a future strategy – ‘[Equipped for Inclusion](#)’ (2003b). The 35 recommendations of the strategy were consulted on and are now being considered by the Equipped for Inclusion Advisory Group. The group will advise Ministers on how to take the strategy forward.

Access Panels

The purpose of Access Panels is to give local advice on access to the built environment, and provide an opportunity for disabled people to have a say on access issues. In 2002 the Scottish Executive commissioned research by the [Scottish Council for Voluntary Organisations](#) (SCVO) (2002) into the current status and needs of Access Panels in Scotland. SCVO recommended that an umbrella body should be set up, funded by the Scottish Executive, to offer support to Access Panels and act as an advisory body on access issues. A steering group consulted on the recommendations and set out how they could be put into practice ([SCVO 2003](#)).

In February 2004 the Minister for Communities announced, at a meeting with the Equal Opportunities Committee, that Access Panels would receive a funding boost of £525,000 (Scottish Executive 2004b). The [Scottish Disability Equality Forum](#) has been the umbrella body for Access Panels since April 2004.

Inclusive design

In March 2006 the Scottish Executive published a [Planning Advice Note](#) on inclusive design.

“There are a number of key drivers which require design to be more inclusive. These include an ageing population; a growing awareness of the need to bring disabled people into the mainstream of society and growing anti-discrimination legislation.” (Scottish Executive 2006a)

The aim of the guidance note is to provide advice on inclusive design to those involved in the industry, such as building owners, developers, design professionals, local authority officers, Access Panels and building occupiers. The note also emphasises the legal requirements to be considered under the Disability Discrimination Act 2005 (c. 13) such as the duty on public bodies to actively promote disability equality.

Transport

Set up in May 2002 the [Mobility and Access Committee for Scotland](#) is an advisory non-departmental public body established through statutory regulations (under Section 72 of the Transport (Scotland) Act 2001 (asp 2)) to advise Scottish Ministers on the transport needs of disabled people in Scotland and how to improve the accessibility of transport. Disabled people have been eligible for free local bus travel since 2002 and this has been extended nationally since April 2006.

HEALTH

Adult Support and Protection

The [Adult Support and Protection Unit](#) in the Scottish Executive is responsible for developing policy for people who have autistic spectrum disorder, physical or learning disabilities, or a sensory impairment. It also covers adult survivors of sexual abuse, policy on Direct Payments

for self-directed care and progressing the Adult Support and Protection (Scotland) Bill. Key policies in these areas include the following:

[Autistic Spectrum Disorder](#)

The Scottish Executive commissioned the Public Health Institute of Scotland - now NHS Health Scotland - to carry out an Autism Spectrum Disorders Needs Assessment. To implement the recommendations of the report, a reference group was set up, as well as three sub groups focusing on initial priorities. A number of projects have been funded by the Executive as a result, including the Scottish Autism Service Network which will allow for an exchange of information and specialist knowledge, and two pilot projects to develop 'one-stop' shops for adults with autism.

[Physical Impairment](#)

A [scoping review](#) on the needs of younger people with physical disabilities and/or early onset dementia was commissioned by the Scottish Executive to identify key emerging themes and gaps in service provision (Stalker et al 2005).

[Learning Disabilities](#)

The Scottish Executive began a national review of services for people with learning disabilities in May 2000. The report '[Same as you?](#)', which involved statutory agencies, service users, carers and people who deliver services, drew up a blueprint for the next ten years. Twenty nine recommendations were agreed, these included:

- each local authority or group of authorities and health boards should draw up a 'partnership in practice' agreement by 1 June 2001
- by 2003, anyone who wants direct payments should be able to have them, and local authorities should be included in the list of possible providers
- local authorities should review their local transport services, to make sure that people with learning disabilities can use public transport wherever possible

The Same as You Implementation Group was set up in 2001, to take forward the recommendations. The group published reports on [employment](#) (2003) and [hospital closures](#) (2004). Three further reports were published in April 2006 on services for people with learning disabilities, which cover [advocacy](#), (2006a) [children's services](#) (2006b) and [day services](#) (2006c). These reports provide examples of good practice or show how services have developed since the original report in 2000.

[Sensory Impairment](#)

The Sensory Impairment Action Plan was written in consultation with voluntary organisations and contains seven recommendations aimed at improving access to community care services for everyone with a sensory impairment. A steering group has been established to take the work forward (Scottish Executive 2004c).

The Scottish Executive also intends to issue statutory guidance under Section 5(1) of the Social Work (Scotland) Act 1968 (c 49).

Mental Health

The [National Programme to Improve Mental Health and Wellbeing](#), launched in October 2001, has four key aims: to raise awareness; eliminate stigma; prevent suicide; and promote and support recovery from poor mental health. The Scottish Executive helps to shape, fund and

support a series of initiatives (such as the see me campaign referred to above) and support partnerships in order to meet the aims ([Well Scotland](#)).

Health and Community Care

'[Fair for All - Disability](#)' from the Disability Rights Commission has been developed to improve access to health services and increase disability awareness among NHS staff. It is a partnership between the Scottish Executive Health Department and the Disability Rights Commission. The team is made up of health service, voluntary sector and Disability Rights Commission staff is funded to support NHSScotland until March 2007.

Direct Payments

Direct payments are for self-directed community care where those eligible purchase and manage some or all of the care they have been assessed as needing. Direct payments have been available to disabled people aged 18-64 since April 1997, and to disabled people aged 65 and over since July 2000. Since the end of 2001, they have also been available to young disabled people aged 16 and 17, and to the parents of disabled children for obtaining children's services.

From 1 June 2003 it became a duty for local authorities to offer direct payments in place of providing services to all eligible disabled people aged 16 and over, and to parents for disabled children aged 15 and under. Circular [CCD 4/2003](#) gives policy and practice guidance on direct payments to local authorities, health and social work, and the voluntary sector (Scottish Executive 2003c).

In 2004 the Scottish Executive [consulted](#) on whether to allow direct payments to be used to pay for relatives to provide care, where there are exceptional circumstances. The current legislation Community Care (Direct Payments) (Scotland) Regulations 2003 prevents people using direct payments to secure services from their spouse or partner or certain categories of close relative living in the same household – such as parent or parent-in-law, son or daughter, brother or sister. However, the legislation does not prevent the employment of a close relative who lives at a different address.

The drawbacks of employing a relative to provide care included conflicts of interest, power imbalances, upsetting family dynamics, and scope for family members to abuse the situation. An advantage in employing relatives, where there are exceptional circumstances, would mean that there is more choice for individuals and carers who are not able to receive the services they need through mainstream services.

The consultation received 37 responses, and the majority supported preventing employment of close relatives, whether they live at the same or a different address to the direct payments recipient, (i.e. to remove the distinction of the place of residence of the close relative in whether they are eligible for employment through direct payments or not); but in exceptional circumstances to allow local authorities the flexibility to employ close relatives, regardless of their place of residence (Scottish Executive 2004d).

A short life working group on [Direct Payments for Older People](#) met to consider barriers to uptake and how to overcome them. Two other working groups on how to increase uptake for users of mental health services and disabled children's services, will lead to further guidance being updated in January 2007.

Section 63 of the Adult Support and Protection (Scotland) Bill would provide Scottish Ministers with the powers to introduce regulations that would allow local authorities to disapply the prescribed category list in exceptional cases. This is a list of people who cannot currently

receive direct payments, such as close relatives. The Bill is currently under Stage 1 consideration.

EDUCATION

Changes in relation to school education have developed through legislation (see previous section). In relation to further education and training, the [Beattie Committee](#) was set up to consider the needs of young people who require additional support to make the transition to post-school education and training, or employment, such as those with few or no qualifications, poor attitude or motivation, and young disabled people. A core recommendation was the notion of inclusiveness which was defined as young people having their needs met within a supportive environment, which encourages them to achieve goals and make progress. It focuses support on the individual rather than on the provision.

Specific recommendations included the introduction of key worker support and the development of inclusiveness projects. £22.6 million was made available by the Scottish Executive, over the period March 2001 to April 2004, to take forward the recommendations.

EMPLOYMENT

The Scottish Executive has been working with key stakeholders to develop the [Employability Framework](#). The aim is to find effective ways of helping people into work, particularly those who face barriers to gaining employment. Employability has been defined as:

...the combination of factors and processes which enable people to progress towards or get into employment, to stay in employment and to move on in the workplace. (Scottish Executive 2006b)

Working groups were set up to look at different aspects of the 'employability service' - workless client groups, the employment demand side, the intervention supply side, the low paid, low skilled, and those not in education, employment and training. Workforce Plus - an Employability Framework for Scotland was launched on 12 June 2006 and it includes targets for reducing the number of Department for Work and Pensions benefit claimants and developing sustainable employment for those groups who have traditionally faced barriers to work. This is a broad framework but does include disability.

RESEARCH

DATA ON SCOTLAND'S DISABLED POPULATION

In 2004, the Scottish Executive published a [Social Focus on Disability](#) which provides statistics on the position of disabled people in Scotland. It collates a range of material from various surveys to provide information such as, housing tenure and homelessness, education, employment, health, income and benefits, and transport (Scottish Executive 2004d).

EMPLOYMENT AND DISABILITY

A review of [Disability and Employment in Scotland](#) was commissioned by the Scottish Executive to consider the employment position of disabled people and highlight the role of policy interventions to promote their labour market participation, and to identify gaps in current research. The authors identified a number of areas for future research such as, the employment experiences of disabled people, employers' perspectives, and the gap in qualifications between disabled people and non disabled people (Riddell et al 2005).

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Research was commissioned by the Scottish Executive to look into the employment support available to people with learning disabilities and/or autistic spectrum disorders - "[Go for it!": Supporting people with learning disabilities and/or autistic spectrum disorder in employment](#) (Ridely et al 2005) . The research covered a wide range of provision, including 'supported employment' which was defined in the research as real work for 16 hours or more in an integrated setting with ongoing support.

The findings of the study pointed to the need to build on the practice, skills and expertise of the 'supported employment' services in Scotland. The authors suggested that some practical developments would be helpful in making improvements in this field. These included the strategic development of a national definition, framework and standards for 'supported employment' in Scotland, and targeting school leavers to expand expectations and options for the future.

TRANSPORT PROVISION FOR DISABLED PEOPLE

In 1998 the Scottish Office commissioned research "[Transport provision for disabled people in Scotland](#)". The findings of the research included the fact that service provision varies widely, and that while the Disability Discrimination Act addresses some transport issues, some forms of transport and many policy issues are not covered by the legislation. The authors made a number of recommendations including that a national group be set up to consider the transport needs of disabled people, and that awareness of transport and disability issues should be developed through the use of a range of media and organisations (Henderson and Henderson 1999).

In 2003 the Scottish Executive commissioned further [research](#) to identify and assess progress made by policy makers and transport operators since 1998 in providing accessible transport for disabled people in Scotland. Overall, it was found while there had been considerable progress in some areas, it had been patchy and inconsistent. Some of the improvements made included the establishment of the [Mobility and Access Committee for Scotland](#) which advises Scottish Ministers on policy affecting the travel needs of disabled people and is a means by which good practice can be disseminated. The gaps remaining in transport provision included the lack of transport to meet disabled people's needs across Scotland, and the lack of training for public transport staff on the needs of disabled people (Reid Howie 2004).

More recently the Scottish Executive commissioned further research on '[Improved transport for disabled people](#)' to consider not only the transport needs of disabled people, but also why previously identified solutions have not been universally and successfully implemented, identify previous barriers to implementation, and identify priorities in relation to the introduction of initiatives in order to inform targeting and phasing in relation to funding (TNS System 3 et al 2006).

The authors recommend that a coherent and comprehensive strategy for achieving equality of mobility should be an integral part of National, Regional and Local Transport Strategies rather than being separate 'add-ons'. They recognise that unless the strategy is integrated, developments will only be piecemeal. Additionally, the cost of implementing some of the necessary changes has to be recognised by government, as otherwise required outcomes will not be achieved (TNS System 3 et al 2006).

TRANSLATING AND INTERPRETING PROVISION

In January 2006 the Scottish Executive published research on the [translating and interpreting services](#) provided by public bodies in Scotland. This covered support for users of spoken languages other than English and those with hearing impairments. The authors found that public

bodies were more likely to make use of interpreting services, this was due to the more immediate need of interpreting support. Other findings included a lack of awareness from public bodies on the needs of certain user groups such as those with combined communication needs, and a view that the provision of interpreting/translation services is often associated with low status and lack of career prospects.

The authors recommended that there is a need for a language strategy in Scotland as well as accurate information on communication needs to inform policies. It was also recommended that investment should be made in the training of translators and interpreters (Perez et al 2006).

ACCESS TO PUBLIC SERVICES IN SCOTLAND USING BRITISH SIGN LANGUAGE

This [study](#) (Kyle et al 2005) was designed to assess the extent of access to public services in British sign language (BSL) by deaf people. It found that deaf people have very limited access to public services in BSL, and that no public services are provided in BSL, and the use of interpreters is limited due to insufficient numbers of interpreters. The researchers suggest that there should be an increase in the training and provision of interpreters, and the use of BSL materials on video, on television and online.

CONSULTATION

In addition to consultation with a wide range of groups on specific proposals, the Executive has established the following forums for discussion:

- the Disability Rights Commission sits on the Equalities Co-ordinating Group which brings together the six 'equality strands'
- the Disability Working Group includes membership from a wide range of disability groups
- the Mobility and Access Committee advises ministers on transport issues
- the Access Panel network looks at access to the built environment and provides an opportunity for disabled people to have their say on access issues. The [Scottish Disability Equality Forum](#) has been the umbrella body for access panels since April 2004

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