

*These notes relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12) which received Royal Assent on 12 November 2004*

# SCHOOL EDUCATION (MINISTERIAL POWERS AND INDEPENDENT SCHOOLS) (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Power of Scottish Ministers to require action by managers of certain schools**

8. **Part 1** inserts sections 66B, 66C and 66D after section 66A of the 1980 Act and sections 10A, 10B and 10C after section 10 of the Standards in Scotland's Schools etc. Act 2000 (the "2000 Act"). It provides the Scottish Ministers with new powers to direct education authorities and managers of grant-aided schools to take specific action to secure improvement as identified after inspection by HMIE. It sets out the circumstances in which the Scottish Ministers may use these powers and the procedure that must be followed.

#### ***Section 1 – Power of Scottish Ministers to require action by managers of certain schools***

9. **Section 1** inserts sections 66B, 66C and 66D after section 66A of the 1980 Act. Section 66B sets out the procedure to be followed where HMIE identify in relation to a grant-aided or local authority school that satisfactory action has not been taken by the relevant person to secure improvement. For the purposes of this section, "relevant person" when relating to a grant-aided school means the managers of the school, and when relating to an authority school, means the education authority.
10. Section 66B(1) provides that, before reaching that view, HMIE must have inspected the school and, as a result, identified action that the relevant person should take to secure improvement in relation to the school, or the school education provided in it.
11. Section 66B(2) places a duty on HMIE to make a reference to the Scottish Ministers if it appears to them that the relevant person has failed to take satisfactory steps to address the matters where a need for improvement has been identified. It provides that HMIE can make such a reference only if the relevant person has had sufficient opportunity to take action to secure improvement, and if HMIE consider that, having taken into account the seriousness of the failure, an enforcement direction is justified.
12. Section 66C provides for a preliminary notice procedure, to be followed by the Scottish Ministers on receipt of a reference by HMIE under section 66B(2), where Ministers consider that further action is justified. Such a notice requires a written response to be provided by the relevant person within the period which is specified in the notice. The response should detail the reasons why the person considers they have not failed in taking action to secure improvement or, alternatively, accept that there has been a failure but give reasons why an enforcement direction should not be issued.

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13. Section 66D provides the Scottish Ministers with the power to direct the relevant person to take action to address, or prevent a recurrence of, the failure identified by HMIE in section 66B. Subsection (1) provides that the Scottish Ministers will have the power to issue an enforcement direction only after the deadline for offering a response to the preliminary notice has expired. However, the preliminary notice procedure need not necessarily be followed by an enforcement direction if Ministers no longer consider a direction to be justified or if they consider that satisfactory action has been taken.
14. Subsections (5) and (6) allow the Scottish Ministers to vary any enforcement direction and to do so without having to repeat the preliminary notice procedure.
15. Subsection (9) places a duty on the relevant person to comply with any direction made to them by the Scottish Ministers. Failure to do so, being a breach of statutory duty, would enable Ministers to take action, in an appropriate case, under section 70 of the 1980 Act. Subsection (11) imposes an obligation on Scottish Ministers, where they give, vary or revoke an enforcement direction, to lay a report on the exercise of that power before the Scottish Parliament.

### ***Section 2 – Power of Scottish Ministers to require action by education authorities***

16. **Section 2** inserts sections 10A, 10B and 10C after section 10 of the 2000 Act. These new sections set out the procedure to be followed where HMIE identify through their inspection of an education authority that the authority has failed to take satisfactory action to secure improvement in the way they exercise their functions in relation to the provision of school education.
17. The provisions contained within sections 10A, 10B and 10C are in similar terms to those contained within sections 66B, 66C and 66D of the 1980 Act.