

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

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Independent schools**

##### ***Section 4 – Registration of independent schools***

21. **Section 4** revises the provisions for registering independent schools. It makes amendments to section 98 of the 1980 Act, substitutes a new section 98A and inserts sections 98B, 98C and 98D into the 1980 Act.
22. Subsection (1) of section 4 replaces section 98(2) and sets out the information that the Registrar of Independent Schools in Scotland (the Registrar) must record in the Register of Independent Schools in Scotland.
23. The new section 98(2)(a) provides that the Registrar is required to record in the register, in relation to an application for registration of an independent school, such information as Scottish Ministers direct. Subsection (2)(b) provides that the Scottish Ministers will also direct what information concerning any conditions imposed on a school, including variations and revocations, should be recorded. Subsection (2)(c) makes provision for every order imposing a disqualification of a proprietor, teacher, premises or accommodation by the Independent Schools Tribunal, or by the Scottish Ministers, to be recorded. The Independent Schools Tribunal is referred to in this provision to ensure that any orders which have been made by that Tribunal before its abolition and which are still in force are still recorded. Subsection (2)(d) provides that the Scottish Ministers will direct which elements of the information (relating to particulars prescribed under subsection (3)(a)) provided to the Registrar by registered schools require to be placed on the register. Subsection (2A) provides that where an order removing a disqualification is made by Scottish Ministers or by the sheriff principal the Registrar is required to remove the order imposing the disqualification from the register.
24. Section 98A sets out the procedure for persons to apply for registration of a proposed independent school. It details the basis on which Scottish Ministers will reach a decision about whether or not to grant an application for registration.
25. Subsection (1) stipulates that any person intending to open and run an independent school must apply to the Scottish Ministers for registration.
26. Subsection (2) provides for Scottish Ministers to define by regulations the form which an application for registration of an independent school is to take, and the information which it is to include.

27. Subsection (3) outlines the matters on which Scottish Ministers will require to be satisfied when considering an application for registration: these are detailed in paragraphs (a) to (e). The Scottish Ministers must be satisfied that the school will provide efficient and suitable instruction, taking account of the age and sex of the pupils who are to attend the school; that the welfare of the pupils will be adequately safeguarded and promoted; that the proprietor of the school and every proposed teacher in the school is a proper person to be a proprietor or teacher (subject to the provisions in subsection (5)); that the school premises are suitable for use as a school; and that the accommodation at the school will be adequate and suitable taking account of the number, age and sex of the pupils. When determining, in relation to an application for registration, whether a person is a proper person to be a proprietor or teacher consideration will be had to whether that person is disqualified from being such a proprietor or teacher, under Part 2 of the Act. Regard will also be had, for example, to the Protection of Children (Scotland) Act 2003 (the “2003 Act”) which makes provision in respect of all people working with children, and requires Scottish Ministers to keep a list of individuals whom they consider to be unsuitable to work with children, and prohibits those on that list from working with children. Similarly, compliance with the 2003 Act will be one of the factors which Scottish Ministers will have regard to in considering the adequacy of the arrangements, generally, to safeguard the welfare of pupils in the school.
28. If the Scottish Ministers are satisfied as to these matters they may then grant an application for registration. However, subsection (5) details the circumstances in which the Scottish Ministers would not be satisfied and would not therefore grant an application, namely, where the proprietor or teacher is not a proper person, either because they are disqualified from being a proprietor or teacher, disqualified from working with children, or because they are a “prescribed person”; where the proposed premises or the accommodation to be provided at those premises is disqualified from being used as such; or where that accommodation is disqualified for the proposed number, age or sex of the pupils.
29. Subsection (4) allows the Scottish Ministers to register an independent school subject to conditions. This may be appropriate, for example, where teachers at the school require particular training, or where certificates are required to verify the suitability and adequacy of premises and accommodation for a particular group of pupils.
30. Subsection (6) provides that “disqualified from working with children” is to be construed in accordance with section 17 of the 2003 Act, and provides Scottish Ministers with the power to prescribe in regulations what a “prescribed person” is, in relation to a proprietor and a teacher, or proposed teacher. Scottish Ministers are required to consult such persons as they think fit on these regulations, which are also to be subject to affirmative Parliamentary procedure (see section 133 of the 1980 Act as amended by schedule 1 to this Act).
31. Section 98B covers the disqualification orders that the Scottish Ministers may make if they decide to refuse an application to register an independent school under section 98A. Subsection (1) provides that a disqualification order may be made where the refusal to register is on the grounds that the Scottish Ministers are not satisfied in regard to any of the following, namely that the proposed premises are suitable for use as a school; that the accommodation is adequate and suitable taking account of the number, sex and ages of the pupils; or that the proprietor, or a proposed teacher in the school, is a proper person.
32. Subsection (2) allows the Scottish Ministers to disqualify school premises. Subsection (3) covers disqualification of accommodation. Subsections (4) and (5) allow the Scottish Ministers to disqualify a proprietor from being a proprietor of an independent school on the grounds that the proprietor is not a proper person, or to disqualify a teacher from being a teacher in any school, if that teacher is not a proper person.

*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*

33. Section 98C covers the system of notification and appeals with regard to applications for registration of an independent school. Subsections (1) and (2) make provision for the Scottish Ministers to notify the proprietor and the Registrar of any decision they make on such an application. If the application is refused on the grounds that Scottish Ministers are not satisfied that a proposed teacher is a proper person, the Scottish Ministers must also notify that proposed teacher of their decision. In addition, Scottish Ministers are required to notify any other person or body they think fit.
34. Subsections (4) and (5) specify those persons whom the Scottish Ministers are required to notify should they make a disqualification order under section 98B. In terms of subsection (4) they are required to notify the proprietor, the Registrar and any other person or body they think fit, if they make a disqualification order under section 98B(2), (3) or (4). Section 98C(5) provides that where the Scottish Ministers make an order disqualifying a proposed teacher from being a teacher at any school (under section 98B(5)), they are required to notify the proposed teacher, the Registrar, and any other person or body they think fit of that order.
35. Subsections (6) and (7) provide for appeals to the sheriff principal by a proprietor against a decision made by the Scottish Ministers to refuse an application, to set conditions on registration, or to make a disqualification order; and subsection (8) provides for an appeal by a proposed teacher against a disqualification order relating to that teacher.
36. Section 98D details the procedure for removing a school from the register when it is no longer operating.