



# School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004

## 2004 asp 12

### PART 2

#### INDEPENDENT SCHOOLS

#### 4 Registration of independent schools

(1) For section 98(2) of the 1980 Act (offences in relation to conducting or being a proprietor of a school which is not registered or provisionally registered) substitute—

“(2) The Registrar shall record in the register—

- (a) in relation to every application under section 98A(1) of this Act for registration of an independent school, such information as the Scottish Ministers may direct;
- (b) in relation to any conditions imposed by virtue of this Part of this Act on the carrying on of a registered school, such information (including information relating to any variation and revocation of such conditions) as the Scottish Ministers may direct;
- (c) every order of an Independent Schools Tribunal or the Scottish Ministers imposing any disqualification under this Part of this Act; and
- (d) in relation to every registered school, such information relating to particulars prescribed under paragraph (a) of subsection (3) below—
  - (i) furnished by virtue of that paragraph; and
  - (ii) notified by virtue of paragraph (b) of that subsection,to the Registrar as the Scottish Ministers may direct.

(2A) Where an order removing any disqualification under this Part of this Act is made by—

- (a) the Scottish Ministers; or
- (b) the sheriff principal,

the Registrar shall remove the order imposing that disqualification from the register.”

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**Changes to legislation:** *There are currently no known outstanding effects for the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004, Section 4. (See end of Document for details)*

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(2) For section 98A of the 1980 Act substitute—

**“98A Application for registration of independent school**

- (1) Any person proposing to carry on an independent school shall apply to the Scottish Ministers for registration of that school.
- (2) An application for registration shall—
  - (a) be in such form; and
  - (b) include such information,
 as the Scottish Ministers may, by regulations, prescribe.
- (3) The Scottish Ministers may, subject to subsection (4) below, grant an application for registration if they are satisfied that—
  - (a) efficient and suitable instruction will be provided at the school, having regard to the ages and sex of the pupils who shall be attending the school;
  - (b) the welfare of such pupils will be adequately safeguarded and promoted;
  - (c) subject to subsection (5)(a) below—
    - (i) the proprietor of the school is a proper person to be the proprietor of an independent school; and
    - (ii) every proposed teacher in the school is a proper person to be a teacher in any school;
  - (d) subject to subsection (5)(b) below, the proposed school premises are suitable for use as a school; and
  - (e) subject to subsection (5)(c) below, the accommodation to be provided at the school premises is adequate and suitable, having regard to the number, ages and sex of the pupils who shall be attending the school.
- (4) The Scottish Ministers may, on granting an application for registration, impose such conditions on the carrying on of the registered school as they think fit.
- (5) The Scottish Ministers shall not be satisfied that—
  - (a) the proprietor of an independent school is a proper person to be the proprietor of such a school or, as the case may be, that a proposed teacher in such a school is a proper person to be a teacher in any school if that proprietor or, as the case may be, proposed teacher—
    - (i) is, by virtue of this Part of this Act, disqualified from being such a proprietor or, as the case may be, such a teacher;
    - (ii) is disqualified from working with children; or
    - (iii) is a prescribed person;
  - (b) proposed school premises are suitable for use as a school if any part of such premises is, by virtue of this Part of this Act, disqualified from being so used; and
  - (c) accommodation to be provided at school premises is adequate and suitable if any such accommodation is, by virtue of this Part of this Act, disqualified from being used as such or from being used as such for pupils of—

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(i) such number; or  
(ii) such age or sex,  
for which it is proposed it be used.

(6) In this Part of this Act—

“disqualified from working with children” shall be construed in accordance with section 17 of the Protection of Children (Scotland) Act 2003 (asp 5);

“prescribed person” means—

- (a) in relation to a proprietor of an independent school, a person falling within such class of persons as the Scottish Ministers may, by regulations, prescribe; and
- (b) in relation to a teacher or proposed teacher in such a school, a person falling within such class of persons as may be so prescribed; and

“proposed teacher” means a person that the proprietor of an independent school proposes will, on the registration of that school, be a teacher in it.

#### **98B Refusal of application for registration: disqualifications**

(1) This section applies where the Scottish Ministers refuse an application for registration on the ground that they are not satisfied that—

- (a) the proposed school premises are suitable for use as a school;
- (b) accommodation to be provided at the proposed school premises is adequate and suitable, having regard to the number, ages and sex of the pupils who shall be attending the school;
- (c) the proprietor of the independent school is a proper person to be the proprietor of such a school; or
- (d) a proposed teacher in the school is a proper person to be a teacher in any school.

(2) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(a) above they may make an order disqualifying the proposed school premises or any part of them from being used as a school.

(3) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(b) above they may make an order disqualifying the accommodation from being used as such or from being used as such for pupils—

- (a) exceeding such number; or
- (b) of such age or sex,

as they may specify.

(4) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(c) above they may make an order disqualifying the proprietor from being the proprietor of an independent school.

(5) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(d) above they may make an order disqualifying the proposed teacher from being a teacher in any school.

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### **98C Registration: notification and appeals**

- (1) The Scottish Ministers shall give notice to the persons mentioned in subsection (2) below of their decision on an application for registration of an independent school.
- (2) The persons referred to in subsection (1) above are—
  - (a) the proprietor;
  - (b) where the application for registration is refused on the ground that the Scottish Ministers are not satisfied that a proposed teacher in the school is a proper person to be a teacher in any school, that proposed teacher;
  - (c) the Registrar; and
  - (d) any other person or body the Scottish Ministers think fit.
- (3) Where, under section 98A(3) of this Act, the Scottish Ministers grant an application for registration of an independent school, they shall direct the Registrar to register that school.
- (4) Where an order is made under section 98B(2), (3) or (4) of this Act, the Scottish Ministers shall, as soon as reasonably practicable after making the order, give notice to—
  - (a) the proprietor;
  - (b) the Registrar; and
  - (c) any other person or body the Scottish Ministers think fit,of the order.
- (5) Where an order is made under section 98B(5) of this Act, the Scottish Ministers shall, as soon as reasonably practicable after making the order, give notice to—
  - (a) the proposed teacher to whom the order relates;
  - (b) the Registrar; and
  - (c) any other person or body the Scottish Ministers think fit,of the order.
- (6) The proprietor of an independent school may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (1) above, appeal to the sheriff principal—
  - (a) where the application for registration of the school is, under subsection (3) of section 98A of this Act, refused, against that refusal; or
  - (b) where such application is, under that subsection, granted and conditions are, under subsection (4) of that section, imposed on the carrying on of the school, against the imposition of any such condition.
- (7) Where an order is made under section 98B(2), (3) or (4) of this Act, the proprietor may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (4)(a) above, appeal to the sheriff principal against the order.

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- (8) Where an order is made under section 98B(5) of this Act, the proposed teacher may, before the expiry of the period of 28 days beginning with the day on which that proposed teacher is given notice under subsection (5)(a) above, appeal to the sheriff principal against the order.

**98D Removal from register where school no longer being carried on**

- (1) Where the Scottish Ministers are satisfied that a registered school is no longer being carried on as such, they may make an order directing the Registrar to remove the school from the register.
- (2) Where an order is made under subsection (1) above, the Scottish Ministers shall, as soon as reasonably practicable after so doing, give notice to—
- (a) the proprietor;
  - (b) the Registrar; and
  - (c) any other person or body the Scottish Ministers think fit, of the order.
- (3) The Registrar may, on the application of the proprietor of a registered school, remove that school from the register.
- (4) Where, under subsection (3) above, the Registrar removes a school from the register, the Registrar shall give notice to—
- (a) the proprietor; and
  - (b) any other person or body the Registrar thinks fit, of that fact.”.

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**Commencement Information**

**II** S. 4 in force at 31.12.2005 by S.S.I. 2005/570, art. 2(a) (with art. 3)

**Changes to legislation:**

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