



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

## 2004 asp 12

### PART 2

#### INDEPENDENT SCHOOLS

#### 5 Regulation of registered schools

(1) After section 98D of the 1980 Act (as inserted by section 4(2) of this Act) insert—

##### **“98E Imposition, variation and revocation of conditions**

- (1) The Scottish Ministers may, if they are satisfied that it is necessary to prevent a registered school from becoming objectionable upon any of the grounds mentioned in section 99(1A) of this Act—
  - (a) impose any condition on the carrying on of that registered school; or
  - (b) vary or revoke any such condition imposed by virtue of this Part of this Act,as they think fit.
- (2) The Scottish Ministers may, on the application of the proprietor of a registered school, vary or revoke any condition imposed by virtue of this Part of this Act on the carrying on of that school.
- (3) An application such as is mentioned in subsection (2) above shall—
  - (a) be in writing; and
  - (b) specify the variation or revocation sought together with the reasons for seeking it.
- (4) Where, under this section, the Scottish Ministers impose, vary, revoke or refuse to vary or revoke a condition on the carrying on of a registered school, they 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 that imposition, variation, revocation or, as the case may be, refusal.

(5) The proprietor of a registered school 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 imposition, variation or, as the case may be, refusal to vary or revoke.”.

(2) In section 99 of the 1980 Act (notice of complaint)—

(a) in subsection (1)—

(i) for the words “following grounds” substitute “grounds mentioned in subsection (1A) below, the Scottish Ministers shall, subject to subsection (1B) below, serve on the proprietor of the school a notice of complaint.

(1A) The grounds referred to in subsection (1) above are”; and

(ii) for the words from the beginning of paragraph (d) to the end substitute—

“(d) that a condition imposed by virtue of this Part of this Act on the carrying on of the school is not being or has not been complied with;

(e) that any part of the school premises is, by virtue of this Part of this Act, disqualified from being used as a school;

(f) that any accommodation provided at the school premises is, by virtue of this Part of this Act, disqualified from being used as such or is being used as such for pupils of—

(i) such number; or

(ii) such age or sex,

from which use it is so disqualified;

(g) that the proprietor of the school is—

(i) by virtue of this Part of this Act, disqualified from being the proprietor of an independent school;

(ii) disqualified from working with children;

(iii) a prescribed person; or

(iv) otherwise not a proper person to be the proprietor of an independent school;

(h) that a teacher in the school is—

(i) by virtue of this Part of this Act, disqualified from being a teacher in any school;

(ii) disqualified from working with children;

(iii) a prescribed person; or

(iv) otherwise not a proper person to be a teacher in any school; or

(j) that the proprietor of the school has not, in relation to particulars prescribed under paragraph (a) of section 98(3) of this Act—

(i) furnished information required by virtue of that paragraph; or

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*Status: This is the original version (as it was originally enacted).*

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(ii) notified, by virtue of paragraph (b) of that subsection, a change in such particulars,  
to the Registrar.

(1B) The Scottish Ministers need not serve a notice of complaint under subsection (1) above where they are satisfied that they urgently require to make an order under section 100(2) of this Act.

(1C) A notice of complaint is a notice—

- (a) stating the ground of the complaint together with the full particulars of the matter complained of; and
- (b) specifying—
  - (i) the measures which, in the opinion of the Scottish Ministers, are necessary to remedy the matter complained of; and
  - (ii) the period, beginning with the day on which the notice is served, before the expiry of which such measures require to be taken.”;

(b) for subsection (3) substitute—

“(3) The proprietor of a registered school may, before the expiry of the period mentioned in subsection (4) below, appeal to the sheriff principal against a notice of complaint.

(4) The period referred to in subsection (3) above is—

- (a) the period of 28 days beginning with the day on which the notice of complaint is served; or
- (b) the period specified under subsection (1C)(b)(ii) above, whichever is the shorter.”.

(3) In section 100 of the 1980 Act (determination of complaints), for subsections (1) to (3) substitute—

“(1) This section applies—

- (a) in a case where—
  - (i) a notice of complaint has been served under section 99(1) of this Act;
  - (ii) no appeal under section 99(3) of this Act has been made or such an appeal has been made and refused;
  - (iii) the period specified in the notice has expired; and
  - (iv) the Scottish Ministers are not satisfied that the proprietor of the school on whom the notice is served has taken satisfactory action to remedy the matter complained of;
- (b) in a case where—
  - (i) such a notice has been served;
  - (ii) such an appeal has been made but not determined; and
  - (iii) pending such determination, the Scottish Ministers are satisfied that there is a serious risk of harm to a pupil attending the school; or

- (c) where, by virtue of section 99(1B) of this Act, no such notice has been served.
- (2) The Scottish Ministers may—
- (a) make an order directing the Registrar to remove the school from the register;
  - (b) if satisfied that the school premises are or any part of them is unsuitable for use as a school, make an order disqualifying those premises or any part of them from being so used;
  - (c) if satisfied that any accommodation provided at the school premises is inadequate or unsuitable, having regard to the number, ages and sex of the pupils attending the school, make an order disqualifying that accommodation from being used as such or from being used as such for pupils—
    - (i) exceeding such number; or
    - (ii) of such age or sex,
 as the Scottish Ministers may specify;
  - (d) make an order—
    - (i) imposing such conditions on the carrying on of the school; or
    - (ii) varying any such conditions imposed by virtue of this Part of this Act,
 as the Scottish Ministers think fit; or
  - (e) if satisfied that—
    - (i) the proprietor is not a proper person to be the proprietor of an independent school; or
    - (ii) a teacher in the school is not a proper person to be a teacher in any school,
 make an order disqualifying that proprietor from being the proprietor of an independent school or, as the case may be, that teacher from being a teacher in any school.
- (3) Where the Scottish Ministers make an order under subsection (2) above, they shall, as soon as reasonably practicable after so doing, give notice to—
- (a) the proprietor;
  - (b) where, under paragraph (e) of that subsection, an order is made disqualifying a teacher, that teacher;
  - (c) the Registrar; and
  - (d) any other person or body the Scottish Ministers think fit,
- of the order.
- (3A) Subject to subsection (3C) below, 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 (3)(a) above, appeal to the sheriff principal against an order under subsection (2) above.
- (3B) A teacher disqualified by an order under subsection (2)(e) above may, before the expiry of the period of 28 days beginning with the day on which that teacher is given notice under subsection (3)(b) above, appeal to the sheriff principal against the order.

- (3C) The proprietor of an independent school may not appeal against an order under subsection (2)(e) above disqualifying a teacher from being a teacher in any school.”.
- (4) In section 101 of the 1980 Act (enforcement of orders)—
- (a) for subsection (1) substitute—
- “(1) Any person who carries on an independent school which is not registered shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.”; and
- (b) after subsection (3) insert—
- “(3A) If any person who is, by virtue of this Part of this Act, disqualified from being a teacher in any school—
- (a) endeavours to obtain a position as a teacher;
- (b) accepts such a position; or
- (c) teaches,
- in any school, that person shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.”.