

STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

EXPLANATORY NOTES

THE ACT

Guidance

Section 13 – Guidance to education authorities : raising standards and delegation schemes

34. This section empowers the Scottish Ministers to issue statutory guidance to education authorities in relation to their functions under sections 3 to 8. The Secretary of State previously issued guidance from time to time but this was non-statutory guidance. The education authorities are not under an absolute duty to comply with the guidance but must have regard to it. They could still be open to challenge for not following the guidance if it was shown that they acted wholly unreasonably in doing so.

Section 14 - Guidance to education authorities as to home education

35. This section empowers Scottish Ministers to issue statutory guidance to education authorities on the circumstances in which parents may choose to educate their children at home. As for the guidance issued under section 13, the education authorities are not under an absolute duty to comply with this guidance but must have regard to it.

Section 15 - Requirement that education be provided in mainstream schools

36. This section aims to establish what is effectively a presumption in favour of “mainstream education” for all children in Scotland. It will strengthen the rights of children with special educational needs to be included alongside their peers in mainstream schools. In this context “mainstream” refers to education in a school other than a special school. Subsection (2) applies the section to children under school age. For these children, the presumption in favour of “mainstream education” applies both to education provided by the local authority and education provided by non-local authority providers (by virtue of arrangements made under section 35 of this Act).
37. At the same time the provision recognises that a mainstream setting may not be appropriate for all children, or in all cases, and sets out circumstances in subsection (3) where a local authority may decide to offer education in a special school. Such circumstances are presumed to only arise exceptionally. A local authority will be required to take account of the views of the child and his parents where, after consideration of the circumstances specified in subsection (3), they still believe mainstream to be more appropriate than a special school.

Section 16 – No justification for corporal punishment

38. In terms of section 48A of the 1980 Act, as amended by section 294 of the [Education Act 1993 \(c.35\)](#), corporal punishment may not be administered to pupils attending state

schools or independent schools whose fees or costs are financed or supported by public funds. Section 48A further provides that corporal punishment generally may not be administered if the punishment is inhumane or degrading. The words “inhumane or degrading” follow wording in the European Convention on Human Rights.

39. The position in England and Wales was the same as in Scotland until section 131 of the School Standards and Framework Act 1998 substituted a new section 548 in the Education Act 1996. The effect of this new provision for England and Wales is to extend the abolition of corporal punishment to all pupils in all independent schools and to children receiving state supported nursery education in England and Wales. In a House of Lords written answer on 11 December 1998, Ministers stated that children in independent schools in Scotland should benefit from the same protection against corporal punishment as those in England and Wales. Scottish Ministers endorsed this and agreed that the ban should also extend to children receiving pre-school education which is provided by education authorities, or under arrangements with education authorities. Section 16 of the Act accordingly re-enacts section 48A of the 1980 Act with amendment to extend the categories of establishment where corporal punishment is no longer allowed.
40. At common law those lawfully in charge of children were entitled to administer reasonable chastisement in the form of corporal punishment. This gave a defence to any criminal or civil action based on assault. What section 48A did was to remove that common law entitlement and defence to civil and criminal action. Section 16 of the Act extends the categories of situation where there is no such common law defence available. In the residual category of private nurseries where there is no support given by the education authorities, in the home, and in child minding centres, the defence at common law is still available.
41. [Section 16\(1\)](#) sets out the new categories of establishment where corporal punishment is not allowed. Section 16(1)(a) covers school education provided by an education authority, whether at school or elsewhere, for example at home or in hospital. Section 16(1)(b) covers independent schools including nursery classes at independent schools. Section 16(1)(c)(i) covers independent nurseries where they are in receipt of grant under the Education (Scotland) Act 1996. Section 16(1)(c)(ii) covers nursery schools where there is an arrangement with the education authority under section 35 of the Act. The first category in section 16(1)(c) will in time be superseded by the second. State nursery schools or nursery classes in state schools are covered by the definition of “school education” in section 16(1)(a).
42. [Section 16\(2\)](#) covers corporal punishment given at an educational establishment or extramurally such as on a school trip.
43. [Section 16\(4\)](#) identifies 2 situations where assault would not be inferred: first, where the action towards the pupil was done for reasons which included averting an immediate danger of personal injury to any person, including the pupil; and, secondly, where the reasons for the action included averting an immediate danger to the property of any person, including the pupil. These specified reasons need not be the primary or only reason for the commission of an act towards the pupil. Provided one of those reasons is included, assault will not be inferred. These reasons will be subject to a *de minimis* rule, so that averting immediate danger to worthless property or immediate danger of trivial personal injury would not constitute a defence to assault.
44. [Section 16\(5\)](#) defines the categories of persons who would be “members of staff” giving them, prior to the enactment of this section and its predecessor in section 48A of the 1980 Act, a common law defence to an action for assault as specified in section 16(1). They must have had “lawful control or charge” of the pupil. Included are teachers, auxiliaries and other carers who would have lawful charge. Cleaners and other casual staff would never have been entitled to administer corporal punishment.