

These notes relate to the Standards in Scotland's Schools etc. Act 2000 (asp 6) which received Royal Assent on 14 July 2000

STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

EXPLANATORY NOTES

THE ACT

3. The Act is directed at raising standards in Scotland's schools. It will do this primarily by establishing new duties and rights in respect of education and a new framework for improvement. Sections 1 to 13 cover this.
4. Other provisions in the Act support this general focus on improvement and raising standards. The other main areas dealt with in the Act are –
 - abolition of self-governing schools (sections 17 to 23);
 - school boards (sections 26-31);
 - pre-school education (sections 32-39);
 - reform of the General Teaching Council (sections 45-54); and
 - abolition of the Scottish Joint Negotiating Committee (section 55).

Provision of school education : right of child and duty of education authority

Section 1 – Right of child to school education

5. In terms of section 1 of the Education (Scotland) Act 1980, education authorities are under a duty to provide education in their area. Section 1 of the Act establishes a complementary statutory right in favour of every child to have a “school education”. The establishment of the statutory right to education reflects in the domestic law of Scotland the right to education which is enshrined in the European Convention on Human Rights and in the UN Convention on the Rights of the Child, the United Kingdom being a signatory to these 2 instruments. “School education” is defined in section 1(5)(a) of the Education (Scotland) Act 1980. “School age” is defined in section 31 of the Education (Scotland) Act 1980, broadly in terms of a person being of school age if he has attained the age of 5 years and has not attained the age of 16 years. These definitions in the Education (Scotland) Act 1980 apply to the Standards in Scotland's Schools etc. Act 2000 by virtue of section 58(2) of the Act.

Section 2 – Duty of education authority in providing school education

6. The provision in section 2 adopts wording from Article 29(1)(a) of the UN Convention on the Rights of the Child. It describes a key aim towards which “school education” must be directed by the education authorities. The aim is to make the development of the personality, talents etc. of the child or young person central to the direction of school education. Section 1(1) of the Education (Scotland) Act 1980, which imposes a general duty on authorities to secure adequate and efficient provision of school education for their area, is left unamended. This new provision puts education authorities under a statutory duty to look beyond general provision to the development of the individual

child. Authorities will also be required, in carrying out their duty under this provision, to take account of the child's views when making decisions that would significantly affect them.

Raising Standards

Section 3 – Raising standards

7. This section is part of the improvement framework in the Act and places statutory duties on Scottish Ministers and education authorities in relation to the improvement in the quality of school education.
8. The duty imposed on the Scottish Ministers by section 3(1) covers both public provision of education by education authorities and provision by the independent sector.
9. The duties imposed on an education authority by section 3(2) extend only to schools managed by them. They do extend however to education provided outwith school by an authority in terms of section 14 of the 1980 Act (for children who are ill or excluded etc.) and also to provision of pre-school education under arrangements made by the education authority with other providers under section 35 (section 3(3)).
10. **Section 3(4)** provides that in relation to Scottish Ministers' and authorities' duties to endeavour to secure improvement in school education, what is being referred to is school education informed by the guiding philosophy of the development of the child to which it must now be directed under section 2 of the Act.

Section 4 – National priorities in education

11. The "national priorities" to be identified under section 4 are areas where improvement is desirable. Examples might be improvement in literacy, numeracy, mathematics, teaching, reduction in truancy or exclusions. They might also set a target for a particular percentage of improvement across the country.
12. Scottish Ministers will define by order what the priorities for education should be following consultation. The priorities will be subject to the approval of Parliament. In addition to imposing a duty on the Scottish Ministers to set "national priorities" this section gives them a discretion to define and publish "measures of performance" in respect of the priority. These "measures of performance" are prescribed methods of measuring what progress is being made across the country. They are set centrally so that improvement is measured on a uniform basis across the country.

Section 5 – Education authority's annual statement of improvement objectives

13. This section sets out the planning machinery which education authorities must now have in place to deliver improvement in education in their area in accordance with national priorities laid down by Scottish Ministers. Detailed plans setting out objectives in accordance with national priorities must be drawn up on an annual basis, by dates to be set by Scottish Ministers after consultation, setting out the improvement which the education authority is setting itself to deliver.
14. These plans must say how the authority intends to involve parents in their children's education. The authority must also say how it will encourage equal opportunities in schools and how it will provide and, if already provided, develop Gaelic medium education.
15. Section 5(3) requires education authorities to set objectives in respect of each of the national priorities set by the Scottish Ministers and approved by Parliament and by reference to published measures of performance. Although objectives must be set in respect of the national priorities, education authorities have the discretion to introduce further objectives of their own not covered by the national priorities and set out their own additional independent measures of performance.

Section 6 – School development plans

16. Section 6 requires, as part of the improvement planning process, education authorities to produce complementary documents additional to the annual statement of education improvement objectives. These “school development plans”, give the detailed planning in relation to each school as to how that school is to go about delivering the progress aimed at in the annual statement of education improvement objectives. By virtue of section 8(2)(a), preparation of the plan in respect of any school covered by a scheme under that section is delegated to the headteacher.
17. Section 6(3) requires the development plan to include an account of what proposals the headteacher has for consulting pupils at the school and involving them in decision making concerning the everyday running of the school. This subsection does not actually require consultation with the pupils or their involvement in decision making concerning the running of the school, but only that any intentions or proposals to do this are set out in the development plan.
18. The Scottish Ministers will determine the time-scales for the preparation of and reporting on school development plans after consulting education authorities.

Section 7 – Review of school performance

19. This section provides for education authorities to review schools’ performance in relation to quality of education and against “measures of performance”. This review must be published.
20. **Section 7(1)** places a duty on education authorities to publish a report on the performance of schools managed by them, indicating the quality of education provided and set against the objectives set down and measured according to measures of performance. Measures of performance may be different for different categories of schools. This differs from the measures of performance set nationally which have to be uniform throughout the country.
21. In terms of section 7(2), if an education authority concludes that a school is not performing satisfactorily, they are under a statutory duty to take steps to remedy the under performance.

Section 8 – Delegation schemes

22. This section gives a statutory framework to the delegation by education authorities of functions to schools. Schools do not have a separate legal personality to that of the education authority which manages them, and accordingly delegation is to be to the “headteacher”, who is an employee of the education authority. All education authorities must have a scheme drawn up for the delegation of functions to the headteachers of schools managed by them within their area. However, not all schools managed by them need to be covered by the scheme. For example, it may not be appropriate to delegate any functions to schools below a certain size or in the opinion of the education authority certain types of school may not have staff sufficiently qualified to perform the delegated tasks.
23. **Section 8(1)** makes it mandatory for education authorities to draw up schemes for delegating some of their functions to schools managed by them within their area. The key function which it is envisaged will be delegated is the spending of the school budget as allocated in each education authority’s annual budget. In some cases an education authority will want to retain the spending of some of the budget.
24. **Section 8(2)** provides that the preparation of the school development plan referred to in section 6 of the Act shall be delegated to the headteacher. This does not preclude local education authorities from delegating responsibility for the preparation of the school development plan to the headteacher of schools, which are not covered by the delegation scheme. In addition to the preparation of the school development plan,

education authorities may delegate any other functions which they think fit. This could include, for example, hiring staff and giving advice on major capital projects.

25. **Section 8(3)** requires that a local authority include as part of its delegation scheme the requirement that the headteacher should carry out the delegated functions in a way that is consistent with the local authority's obligations under section 3 to promote improvement.

Inspections

Section 9 – Inspection of education authority

26. **Section 9** complements the powers of inspection of schools contained in section 66(1) of the 1980 Act. It gives a new power to Scottish Ministers to request an inspection of a local authority in relation to their school education functions. Previously there had been no provision for the inspection of education authorities. The persons who may be requested to carry out the inspection are Her Majesty's Inspectors of Schools (HMI) as defined in section 135(1) of the 1980 Act, or any other person appointed by Scottish Ministers, or HMI and such other persons together. In allowing inspection by HMI and other persons together, this provision goes further than that in section 66(1) of the 1980 Act.
27. **Section 9(1)** provides for the inspection of education authorities, but only in relation to the exercise of their functions in relation to the provision of school education, which includes pre-school education. It is envisaged that the main focus of inspection would be on the quality of the management of schools and meeting the purposes of the Act and the 1980 Act. Inspection need not be limited to the education department of the authority but could cover activities of other departments which were relevant to the authority's school education functions. However, how local education authorities organise their finances and conduct their administration generally would not primarily be matters for HMI : these would be matters for audit and local commissioners to investigate.
28. **Section 9(2)** allows for inspections of the carrying out of the general function and in relation to aspects of the function. Accordingly, the teaching of primary education could be looked at generally, or literacy among primary pupils. These functions would not include review of an individual case or investigation of an individual case, unless that matter arose as incidental to the review of a function or aspect of a function.
29. **Section 9(3)** gives the education authority a duty to help those carrying out the inspection. This provision assumes co-operation between those inspecting and the education authority and, unlike section 66(3) of the 1980 Act, does not create a criminal offence of obstructing an investigation.

Section 10 – Code of practice as regards inspection of education authority

30. **Section 10** allows the Scottish Ministers to issue codes of practice as regards inspection of education authorities under section 9. These codes of practice would be primarily to give education authorities guidance as to how inspectors would properly conduct inspections. Also covered would be best practices as regards co-operation by education authorities with inspectors. The codes of practice would be reviewed from time to time and updated according to experience.

Section 11 – Inspection of educational establishment

31. **Section 11** amends section 66 of the 1980 Act to allow for joint inspections by HMI and other inspectors appointed by Scottish Ministers, as provided for in relation to the inspection of education authorities by section 9 of the Act. The newly inserted section 66(1AA) of the 1980 Act allows, in terms of paragraph (a) of that subsection, for inspections on specific matters rather than just general inspections. Paragraph (b) of the subsection extends the power of HMI and other inspectors to inspect establishments

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which are not schools but have an arrangement with education authorities to provide certain types of pre-school education under section 32 of the Act, i.e. publicly funded pre-school centres.

32. To help clarify the effect of this provision, it has been incorporated into section 66 of the 1980 Act for illustrative purposes, as shown in the annex.

Section 12 – Code of practice as regards inspection of educational establishment

33. This section allows the Scottish Ministers to issue codes of practice as regards inspection of schools, pre-schools and initial and in-service teacher training provided by higher education institutions. These codes of practice would be primarily to give guidance as to how inspectors would properly conduct these inspections. The codes of practice would be reviewed from time to time and updated according to experience.

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.

Ending of self-governing status of schools

Section 17 – Ending of self-governing status of schools

45. Self-governing schools were created under the Self-Governing Schools etc. (Scotland) Act 1989. They were formerly local authority schools that “opted out” following a ballot of parents. They are run by boards of management established under the 1989 Act. They are funded directly by the Scottish Ministers (although part of this funding is in turn recovered from the authority in whose area the school is situated).
46. In practice, Scottish Ministers’ power under section 17 to return a named self-governing school to local authority management may be exercised only in relation to St. Mary’s Episcopal Primary School, Dunblane which is currently the only self-governing school in Scotland.

Section 18 – Order supplementary to ending of self-governing status

47. **Section 18(1)** gives the Scottish Ministers – after making an order under section 17 – the power to make a further order in relation to the transfer of a school to local authority control following consultation with the authority. In general terms, the order-making power will be used as Scottish Ministers consider appropriate to facilitate the school’s return to local authority management.
48. **Section 18(3)** allows the Scottish Ministers, following consultation with the education authority, to recover funds where property originally purchased by a self-governing school out of money provided by government grant is sold by the local authority to whom it has transferred under section 17(3). The amount recoverable is the value of the grant or the amount received by the authority for the sale if that is less.

Section 19 – Transfer of staff of self-governing school

49. **Section 19** explains the legal effect of the transfer of staff to the employment of the authority. Subsection (1) identifies the staff to whom the section applies, i.e. those employed by the board of management in a self-governing school immediately prior to transfer to a local authority under an order made under section 17.

Sections 20 and 21 – Provision of information and educational endowments in relation to self-governing school

50. These sections deal with other ramifications of transferring self-governing schools into the local authority sector in relation to staff and the provision of information.

Section 22 – Interruption of process of transition to self-governing status

51. **Section 22** provides that if a school’s proposals for self-governing status have been approved by the Secretary of State or the Scottish Ministers, but that the school has not yet assumed full self-governing status, the school’s transition to self-governing status will be treated as if it had never started. The school will therefore remain within the local authority’s management.
52. In practice, this provision affects only Fort William Primary School, which is currently the only school in this transitional state, i.e. where their proposals for acquisition of self-governing status have been approved, but the school has not yet assumed that status.

Section 23 – Purported disposal of property of self-governing school

53. **Section 23** requires the board of management of a self-governing school to get the permission of the Scottish Ministers to any transfer of moveable property owned by the Board on or after the date this Act came into force i.e. 14 July 2000. Scottish Ministers must consult the relevant education authority before giving consent. Any transfer of

property is void if prior consent is not obtained. The intention is to prevent a Board's deliberate disposal of property in order to stop it passing to the authority.

Independent schools

Section 24 – Registration of independent school

54. Section 98(1) of the Education (Scotland) Act 1980 provides that an independent school may not be registered if the proprietor is already disqualified under the Act from being the proprietor of an independent school or if the premises to be used are disqualified from being used as a school. Section 24(1)(a) amends section 98 to provide a further ground for non-registration based on the unsuitability of the proprietor, a teacher at the school or the condition of the premises.
55. At present, independent schools are allowed to operate for one month before being provisionally registered. By virtue of the repeal of section 98(2A) of the 1980 Act by section 24(1)(b), prospective managers of new independent schools must be provisionally registered before the school opens. Operating a school which is not registered is a criminal offence under section 98(2) of the 1980 Act.
56. **Section 24(2)** adds a new section, section 98A, to the Education (Scotland) Act 1980. This requires that a proprietor and/or teacher must be told why the registration is being refused on this new ground and gives them the right to request that the refusal be referred to an Independent Schools Tribunal. The Tribunal may uphold the refusal or direct that the Registrar registers the school. If the refusal is upheld, the Tribunal may: disqualify the proprietor from being the proprietor of any independent school; disqualify the teacher from being a teacher in any school; or disqualify the premises or parts of the premises from being used as a school or as part of a school, as appropriate. A person may apply under section 102 of the 1980 Act for removal of any disqualification if, because of a change of circumstances, it is no longer necessary.

Section 25 – Welfare of pupil attending independent school

57. Section 99 of the 1980 Act imposes a duty on the Scottish Ministers to serve a notice of complaint on the proprietor of an independent school if they are satisfied that the school is objectionable on one of a number of grounds. If the appropriate steps are not taken to remedy the problem, as required by the notice, the ultimate sanction may be removal of the school from the register. Section 25 amends section 99 to add a further ground for serving a notice of complaint, namely failure to provide adequately for the welfare of any pupil attending the school.

School Boards

Section 26 – Role of School Board in raising standards and improving quality of education

58. The School Boards (Scotland) Act 1988 identifies the main functions of a School Board as: promoting contact between the school, parents and the community (section 12); taking part in the selection of headteachers and other senior staff (schedule 2); encouraging community use of school premises and, subject to the direction of the education authority, controlling their use outwith school hours (section 14); setting occasional holidays during term time after consultation with the education authority (section 14) and approving the headteacher's plans for use of the budget for the purchase of books and other materials (section 9). Section 26 of the Act amends section 1(2) of the School Boards (Scotland) Act 1988 to require that a School Board exercises its functions with a view to raising standards of education in the school and to support those managing the school to secure improvement in the quality of education provided by the school. In practice this should help focus the School Boards' activities and reaffirm what successful Boards already do.

Section 27 – Election to School Board after school ceases to be self-governing

59. **Section 27** amends section 2A of the School Boards (Scotland) Act 1988, which makes provision as respects elections for members of School Boards, by inserting a new subsection (3A). This provision is consequential on sections 17 to 23 of the Act dealing with abolition of self-governing schools.

Section 28 – Vacancies for parent members of School Board

60. Under section 2 of the School Boards (Scotland) Act 1988 each School Board consists of staff members, co-opted members and parent members, the latter being elected by parents of pupils in attendance at the school. Under sections 2A and 2B, parent members are elected at regular elections (held every two years). In the event of no parents, or not enough parents, being elected at such an election, a by-election is held. If not enough parents are elected at a by-election, the Board may co-opt up to two parent members from amongst the parents of pupils at the school. If a vacancy for a parent member arises in between regular elections, a by-election is held within three months if the Board requests it, or else at the next regular election period (which is between 1 September and 30 November each year). If no parent is elected at such a by-election, the Board may co-opt a parent member (as long as there are no more than two co-opted parent members on the Board at any one time).
61. **Section 28** of the Act amends the existing requirement to hold a by-election to fill parental vacancies on a School Board which arise either following a regular election of parent members, or during members' term of office.
62. Subsection (1) provides that if a vacancy arises during a parent member's term of office, a by-election shall not take place unless 30 parents, or a quarter of the electoral roll, whichever is the smaller number, sign a request for a by-election to fill the casual vacancy within two months of the vacancy being announced. If no request is made, the Board can co-opt a parent member under section 2B(3) of the 1988 Act, as substituted by paragraph 4 of schedule 1 to the Act. The subsection also provides that the education authority will take reasonable steps to notify parents that a vacancy has arisen and the circumstances in which a by-election will be held.
63. In relation to a regular election of parent members, which is held for half the parent members every two years, subsection (2) provides that a by-election shall no longer be held. This means that at a regular election, if not enough parents are elected to fill vacancies for parent members, the Board can go straight to co-opt up to two parent members in terms of section 2A(4) of the 1988 Act, as substituted by paragraph 3 of schedule 1 to the Act.
64. Necessary consequential amendments to the School Boards legislation are included in schedule 1.

Section 29 – Restriction on councillor's membership of School Boards

65. **Section 29** amends section 5(2) of the 1988 Act to prohibit a local councillor from being a member of any School Board which is within his or her Council's area. At present the prohibition under section 5(2) applies only to councillors whose electoral ward falls wholly or partly within the catchment area of the school. This change has been made to avoid a conflict of interest which might arise if a councillor was both a parent member of a Board and on the Education Committee making decisions related to that school.
66. To help clarify the effect of the amendments made by the Act to the 1988 Act, the main changes have been incorporated into the relevant sections of the 1988 Act for illustrative purposes. This is shown in the annex.

Section 30 – Involvement of School Board in preparing short leet for appointment of headteacher etc.

67. **Section 30** amends schedule 2 of the 1988 Act (which relates to the appointment of headteachers, deputy headteachers and assistant headteachers), by removing paragraphs 9 to 13 (which relate to the power of the Board to add or delete names on a short leet for headteacher appointments and the production of a short leet for other senior staff appointments), and inserting new paragraphs 9 and 10. These new paragraphs provide for a more streamlined procedure whereby the authority prepares a short leet in consultation with the School Board and the headteacher (if the post is that of deputy headteacher or assistant headteacher).

Section 31 – Delegation of education authority's functions to School Board

68. **Section 31** repeals paragraphs 2 to 13 of schedule 3 of the 1988 Act. These paragraphs allow a School Board to request the delegation of functions from the education authority and give the Board power (following a ballot of parents) to refer the request to the Scottish Ministers should the authority refuse. The functions that may be delegated are described in section 15 of the 1988 Act. While there remains a right for authorities to delegate functions to Boards if they so wish (under section 15 of the 1988 Act), and in practice they would do so in consultation with the Board, there are now no longer formal powers for the Board to challenge a refusal by the authority of the Board's request for delegation of functions. To date, no Board has successfully challenged a refusal to delegate functions.

Pre-school children

Section 32 – Provision of education for pre-school children etc.

69. As currently drafted, section 1(2) of the 1980 Act empowers an education authority to make provision for nursery education for its area, but does not require it to do so. Section 32 of the Act now imposes a duty on the authority in relation to nursery provision, in terms of requiring it to secure the provision of pre-school education for such categories of children as may be prescribed by the Scottish Ministers. In practice, the categories that will be prescribed under this new provision will broadly be 3 and 4 year olds.
70. The policy intention is that authorities should work in partnership with providers in the voluntary and private sectors to ensure that adequate and appropriate provision is made. Specific provision is made in section 35 to enable an authority to contract with third parties for the provision of nursery education that would be paid for by the authority. Effectively, the authority would commission places in private and voluntary pre-school centres to ensure that adequate and appropriate provision was available for all children coming within the prescribed category. Provision would therefore be a mix of local authority and voluntary/private sector provision, but the exact mix would be determined by the authority on whom the duty to secure provision is imposed in the first place.
71. **Section 32(3)** adds three new subsections after section 1(1) of the 1980 Act. Subsections (1A) and (1B) require local authorities to secure pre-school education for such categories of children and duration as may be identified by the Scottish Ministers by order.
72. Subsection (1C) gives local authorities the power to secure additional provision for all pre-school children beyond the requirements of the pre-school duty – for example – full-time provision for four year olds or provision for two year olds.
73. To help clarify the effect of these provisions, they have been incorporated into section 1 of the 1980 Act for illustrative purposes, as shown in the annex.

Section 33 – Fees

74. **Section 33(1)** prevents authorities from charging fees in respect of pre-school provision provided under the duty in section 1 of the 1980 Act (as amended by section 32 of this Act).
75. **Section 33(2)** allows authorities to charge for pre-school education where the provision secured goes beyond that required by the statutory duty.
76. **Section 33(4)** adds new subsection (7) to section 3 of the 1980 Act (which sets out exceptions to the general rule that authorities may not charge for school education). This additional subsection prevents a local authority from making use of the general exceptions to the rule against charging for school education where they provide pre-school education under section 1 of the 1980 Act (as amended by section 32 of this Act) either under the duty or the discretionary power. This is to avoid any confusion between this section and section 3 of the 1980 Act.

Section 34 – Guidance to education authorities as respects discharge of certain functions

77. **Section 34** gives the Scottish Ministers the power to issue guidance to local authorities about their functions in relation to pre-school education. This covers their power under section 33(2) of the Act to charge fees, as well as their pre-school functions under the 1980 Act.

Section 35 – Provision of school education by persons other than education authorities

78. **Section 35** allows local authorities to secure pre-school provision by entering into arrangements with other persons, for instance private or voluntary pre-school centres. This section gives a statutory base to the pre-school partnership arrangements which involve private and voluntary providers in public-funded pre-school education.

Section 36 – Inspection of establishments other than schools

79. **Section 36** substitutes a new section 66(1A) of the Education (Scotland) Act 1980. The present section 66(1A) links the power of inspection to the receipt of pre-school grant, which will in due course become redundant. The revised section 66(1A) gives Scottish Ministers the power to require inspection of all establishments that provide publicly funded school education to pre-school children, including those in the private and voluntary sector where there is an arrangement under section 35 of the Act.

Section 37 – Provision of transport etc. by education authority

80. **Section 37** gives education authorities the power to make arrangements for children receiving publicly-funded pre-school education to receive transport from home to their pre-school class (whether by providing transport or by offering assistance with transport costs). The discretion in section 37 is absolute and authorities are free, if they choose, to provide no transport.

Section 38 – Admission of children under school age to primary school

81. **Section 38(1)** requires an education authority to provide primary school education for a child under school age if their parents request it, and if it is appropriate to the aptitude and ability of that child. The authority has a discretion as to the school in which they place the child.

Section 39 – Repeal of Part II of Education (Scotland) Act 1996

82. **Section 39** repeals Part II of the Education (Scotland) Act 1996, which gave the Scottish Ministers powers to make grants for the education of children under school age. These

provisions are the statutory base for the present pre-school grant system and will not be necessary when the funds for this service are re-integrated into general local government resources and the new pre-school duty is brought into force.

Section 40 – Education outwith school

83. Section 14 of the 1980 Act gives an education authority a discretionary power to educate a pupil elsewhere than at an educational establishment if they are satisfied that by reason of any extraordinary circumstances, the pupil is unable to attend a suitable educational establishment. Section 40 re-enacts that provision in a substituted new section 14 of the 1980 Act as section 14(1)(a). The ambit of that provision is extended to include also circumstances where it would be unreasonable to expect the pupil to attend a suitable educational establishment. In addition, the new section 14 introduces a new statutory duty on education authorities to educate “without undue delay” pupils who are not receiving education in the usual way at an educational establishment.
84. There are 3 categories of pupil covered by this new duty inserted in the re-enacted section 14:
- (i) pupils suffering from prolonged ill-health;
 - (ii) pupils exempted under section 34(1) of the 1980 Act from attending school because they are required to give assistance as carers to ill or infirm members of their families; and
 - (iii) pupils who have been excluded from school by the education authority.
85. In the case of the first 2 categories, the education authority is under a duty to make special arrangements to educate these children away from an educational establishment, which would normally be at home. In the second category, where pupils are caring for a family member, the duty is to make arrangements “in so far as is practicable”. This is to ensure that the arrangements made will fit with the pupil’s caring responsibilities. In the case of excluded children, the duty is without undue delay to find an alternative educational establishment to provide education, failing which to educate them under similar special arrangements to the first 2 categories.

Section 41 – Rights of appeal against exclusion from school

86. At present, the parent of the pupil, or the pupil where the pupil is a young person, can appeal against exclusions. Section 41 extends the right to appeal to include pupils with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991. In effect, it allows pupils under 16, as long as they have legal capacity, to appeal on their own behalf, independently of their parents.

Section 42 – Grants in respect of activities relating to school education

87. Section 73 of the Education (Scotland) Act 1980 gives the Scottish Ministers power to give grants to fund training and development. However, it does not cover grants to fund projects where there may be a non-education element. This provision would allow slightly greater flexibility in grant giving which may be needed in relation to funding, especially in respect of the early years sector.

Placing requests

Section 43 – Placing requests: extent of education authority’s duty

88. The statutory placing request regime contained in sections 28A to 28G of the Education (Scotland) Act 1980 enables a person to make a written request to an authority to place his child at a particular school. That request must be granted unless one of a number of specified grounds of refusal apply. Section 43(1) and (2) of the Act makes it clear that a placing request may not be made for entry to a particular nursery school or class. By

virtue of subsection (4), this limitation on the scope of the placing request regime does not apply where a child has a record of special educational needs.

89. In general terms, education authorities will be expected to take some account of parental preferences in the way in which they discharge their duty under section 1(1) and (1A) of the 1980 Act to secure adequate and efficient provision of pre-school education. That may be either at their own hand or in partnership with other providers. In discharging this duty, authorities will continue to be bound by section 28 of the 1980 Act, which requires them to have regard to the general principle that, "so far as compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

Section 44 – Further provisions as respects placing requests

90. Subsection (2) amends section 28A(1) of the 1980 Act to the effect that placing requests can be made only for children over school age. Separate provision dealing with parental requests for early entry to primary 1 is made in section 38 of the Act.
91. Subsection (3) empowers Scottish Ministers to issue statutory guidance to education authorities on section 28A(1) of the 1980 Act. Education authorities are not under an absolute duty to comply with the guidance but must have regard to it.
92. Subsection (4) adds two additional grounds on which an authority may refuse a placing request. The first is that granting the request would require the formation of an additional class or the appointment of an additional teacher at a future stage of the child's education at primary school. This reflects the recent introduction of lower maximum class sizes for primaries 1 to 3 than currently apply for primaries 4 to 7. The reconfiguration of classes within primaries 1 to 3 to comply with the reduced maximum size can result in the creation of a whole new class. This gives greater scope to accept placing requests for pupils at this stage of education. It can, however, cause problems at later stages where that spare capacity does not exist. This provision enables an authority to refuse a placing request for primary 1 to 3 in this kind of circumstance.
93. The second additional ground on which an authority may refuse a placing request is if accepting it would mean that the school's maximum capacity would be breached. This could be the case even if the first two grounds for refusing a placing request set out in section 28A(3a) are not met (that placing a child in the specified school would make it necessary for the authority to take an additional teacher into employment or give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school).
94. Subsections (5) and (6) relate to authorities' ability to refuse a placing request in order to reserve places at schools for children moving into the catchment area. Subsection (6) repeals subsections (3B) and (3E) of section 28A, which restrict an authority's ability to reserve places for catchment area children at a school to cases where there is an equivalent school within walking distance. This repeal has the effect of allowing authorities to reserve places on this basis at all schools. In accordance with section 28(3C), which defines "reserved places", authorities can reserve only as many places as are in their opinion reasonably required to accommodate pupils likely to become resident in the catchment area of the school. A consequential amendment is also made to subsection (3A).
95. Subsection (7) applies subsections (3) to (6) (described above) to schedule A2 of the Education (Scotland) Act 1980, which relates to placing requests for recorded children. It also ensures that parents of children with a record of special educational needs may make a placing request for a school or a centre with which the authority has an arrangement for the provision of pre-school education, as well as schools under the direct management of the authority.

The General Teaching Council

General

96. Sections 45 to 54 amend the Teaching Council (Scotland) Act 1965 (the “1965 Act”) which established the General Teaching Council for Scotland (GTC). To help clarify the effect of the provisions they have been incorporated into the Act for illustrative purposes, as shown in schedule 3 annexed.

Section 45 – Functions of the Council

97. Section 45 inserts new provisions into the sections of the 1965 Act which deal with the setting up of the GTC and their general functions. It sets out the aims of the Council in statute for the first time, although the Council have had aims of this nature for some time. The aims as expressed in new section 2A(a) and (b) recognise both the GTC’s role in relation to standards within the teaching profession and their wider interest in the quality of teaching and learning. The purpose of the insertion of the words “career development” into section 2(3) of the 1965 Act is to make clear that the GTC are able to consider and provide advice on issues relating to teachers’ continuing professional development and staff development and review. New section 4A of the 1965 Act allows Scottish Ministers to confer additional functions on the GTC, by order. An example might be executive functions in the area of teachers’ continuing professional development, supplementary to the advisory role already added to section 2(3).
98. The 1965 Act currently empowers the GTC to provide advice only to the Scottish Ministers and to teacher education institutions. In practice the Council also provide advice informally to other bodies, particularly education authorities. New section 5A puts that wider advisory role on a statutory basis. New section 5B requires the GTC to supply the new General Teaching Councils for England and Wales (and for Northern Ireland when it is set up) with the information that is necessary or desirable for those Councils to have in carrying out their functions.

Section 46 – Constitution of the Council

99. Section 46 makes a number of changes to the current membership of the GTC, by amending Schedule 1 to the 1965 Act. The overall size of the Council will increase from 49 to 50 members.

Elected members

100. At present, 30 members are registered teachers elected by the profession, as follows:
- 11 primary teachers
 - 11 secondary teachers
 - 3 teachers in further education (FE) colleges
 - 5 teachers in teacher education institutions (TEIs), 4 of whom must be principals
101. In terms of the amendment made by section 46(2)(a)(i), 26 members will now be registered teachers elected by the profession, in the different categories identified in the provision set out in section 46(2)(b).
102. No stipulation is attached to the level of teacher to be elected from a TEI. The TEIs also have 4 places on the Council as appointed members (see below).
103. Teachers are currently registered with the GTC in one (or more) of the following categories: primary; secondary; FE. This will be unaffected by the extension of the categories, as set out above, for membership and voting purposes.

Appointed members

104. At present there are 15 appointed members, as follows:
- 3 appointed by CoSLA
 - 1 appointed by the boards of management of colleges of further education
 - 3 appointed by the Association of Directors of Education in Scotland
 - 4 appointed by the universities of Scotland
 - 2 appointed by the governing bodies of the central institutions and institutions in the higher education sector (other than universities) which are not teacher education institutions
 - 1 appointed by the Education Committee of the General Assembly of the Church of Scotland
 - 1 appointed by the Scottish Hierarchy of the Roman Catholic Church.
105. The amendment made by section 46(2)(a)(ii) provides for a total of 18 appointed members, in the different categories specified there.

Nominated members

106. At present, 4 members of the Council are nominated by the Scottish Ministers. This power has been used to secure coverage of interests unlikely to be reflected in the elected and appointed members. In exercising this power, Scottish Ministers must have regard to the desirability of the membership of the Council reflecting the interests of persons concerned with teaching those with special educational needs, but this is the only stipulation currently in legislation. The amendment made by section 46(2)(a)(iii) provides that 6 members will be nominated by Scottish Ministers, in accordance with the requirements specified in the new provision set out in section 46(2)(f).
107. [Section 46\(2\)\(c\)\(i\)](#) makes a consequential amendment to the definition of the institutions described in the constitution of the GTC, to take account of the removal of the reference to central institutions as bodies which can appoint members.
108. At present, elected teacher members must be in full-time employment when elected. Section 46(2)(c)(ii) amends the definition of “employed” in the 1965 Act to allow teachers who work for at least 20% of the normal working hours of a full time-teacher to stand for election to the GTC. In relation to continuing membership of the GTC, the amendments made by section 46(4) provide that part-time teachers will be required to vacate office on one of the anniversaries of their election if they have not met the 20% requirement averaged out over the preceding year. Part-time teachers will be required to provide the GTC, no later than each anniversary of their election, with satisfactory evidence that they are eligible to remain in office for the following year. Section 46(2) (f), (g) and (h) requires the GTC’s electoral scheme to provide that only headteachers will be able to vote for candidates standing in the headteacher categories in the GTC elections.
109. [Section 46\(3\)](#) repeals the provision in the 1965 Act which prohibits people aged 70 or over from taking up appointment on the GTC.
110. The current members of the GTC have terms of office which run until January 2003. The amendment made by section 46(5) provides transitional arrangements to allow the new composition to be introduced before then and by 31 October 2001 at the latest.
111. [Section 46\(6\)](#) makes a consequential amendment, following the removal of the stipulation that 4 elected members must be principals of teacher education institutions. Paragraph 6(1) of the 1965 Act, which it amends, relates to the balance between elected and other members on the Council which must be preserved in any change to the

constitution of the Council which Scottish Ministers may make by order under this paragraph.

Section 47 – Further provision as to keeping of register of teachers

112. The 1965 Act is not prescriptive about the contents of the register and it is left to the GTC to prescribe, in rules, what information it contains. It is proposed that the information held on the register be increased, after consultation by the GTC with teachers and their employers. Section 47(1) enables Scottish Ministers to prescribe in regulations, if necessary, information which should be held on the register and the form and manner in which it should be kept. Before exercising such a power, Scottish Ministers would request the GTC to amend their rules in a particular way. If the Council did not respond to such a request, Scottish Ministers would consult the GTC on draft regulations.
113. The GTC have power to prescribe the information required from applicants for registration. The amendment made by section 47(2)(b) allows the GTC to prescribe new or updated information required from teachers already on the register and requires teachers to provide this information. An example might be current or past employment details or details about postgraduate qualifications. The amendment made by section 47(2)(a) incorporates an existing provision which allows the GTC to remove a teacher's name from the register if he has not paid the prescribed fee, and to re-register the person if he makes an application and pays the fee. That amendment also enables the GTC to include in their rules provision for the removal of a teacher's name from the register if he does not supply information, or a change in information, (as required by new section 6(5C) of the 1965 Act, inserted by section 47(2)(b)), and to re-register the person if he makes an application and pays the fee.

Section 48 – Provision of information by the Council

114. **Section 48** inserts a new section 9A into the 1965 Act, which places a duty on the GTC to make rules about the availability of information from the register. The GTC's rules will be able to differentiate between the kinds of information to be made available to the public generally and to employers or potential employers of teachers, and the way in which information will be available, e.g. by providing on-line access, by making a copy of the register (or a section of the register) available for inspection, or by responding to a request for information.

Section 49 – Provision of information to Council

115. New section 9B places a requirement on the employers of registered teachers to notify the GTC about cases of misconduct or incompetence by teachers. The reason for notification is to enable the GTC to consider whether de-registration, or an intermediate sanction in the case of misconduct, would be appropriate. In the case of incompetence the GTC's locus will be to consider cases where an employer has dismissed a teacher for incompetence, or the teacher has resigned from or left a post after receiving notice of a hearing which could have led to dismissal. The notification requirement on employers reflects this position.
116. In the case of misconduct, it is open to any person to draw a case to the notice of the GTC and there is no stipulation as to the point at which the GTC becomes involved in a case. Under current arrangements, employers of registered teachers involve the GTC in misconduct cases at as early a point as they consider appropriate, and, at the latest, when dismissal takes place or the teacher resigns or retires in circumstances where dismissal was under consideration. The requirement on employers provides for notification where a teacher resigns from or leaves a post, and dismissal for misconduct would have been considered. This would not preclude an employer from notifying the GTC at an earlier stage, e.g. where a teacher had been suspended pending investigation.

117. New section 9C, which requires the employers of registered teachers to provide the GTC with information needed by the Council to enable them to carry out their functions, is most likely to relate to information relevant to the disciplinary functions of the Council.

Section 50 – Professional Conduct Committee and Investigating and Disciplinary Sub-committees

118. **Section 50** replaces sections 10 and 11 of the 1965 Act, which deal with disciplinary provisions, with new sections 10, 10A, 10B, 10C, 11, 11A and 11B. At present the GTC's disciplinary role relates to cases of misconduct and relevant criminal convictions. They consider and deal with these through their Investigating and Disciplinary Committees. New section 11(2) requires the GTC to consider also cases of teachers dismissed for serious professional incompetence, or who resign after notice of a hearing which could lead to dismissal on that ground.
119. New section 10A provides for the creation of a new Professional Conduct Committee (the "PCC"), to oversee this expanded role. The PCC will have 2 sub-committees: the Investigating Sub-committee (the "ISC") and the Disciplinary Sub-committee (the "DSC"). These sub-committees will essentially assume the current duties of the Investigating and Disciplinary Committees, expanded to take account of incompetence cases.
120. The PCC itself will deal with ill-health cases. Under section 10A(2), the PCC will be able to direct that the name of a registered person who is ill, or has a medical condition, will be removed from the register where it is satisfied that the nature of the illness or condition, and its effect on the person, warrant this. Such consideration by the PCC will take place after notification by a person's employer or former employer, or by the Scottish Ministers, that a registered person is ill or has a medical condition. The reference to Scottish Ministers relates to the interest of the Scottish Public Pensions Agency in cases of premature retirement on health grounds. Provision about the procedure to be followed in such cases is made in new section 10A(4) which applies Schedule 2 to the 1965 Act, with suitable modifications.
121. The effect of new section 10(6) is that the Disciplinary Sub-committee will follow the same procedures as the existing Disciplinary Committee. New section 10B replicates existing provisions, except in the following respects:
- At the moment, in relation to applicants for registration, the GTC are empowered to conduct investigations into misconduct or convictions in the case of applicants "recommended for registration", i.e. who have completed a teacher education course at an institution in Scotland. This does not include teachers who have trained outwith Scotland and who apply for registration under the GTC's "exceptional admissions" procedure. The GTC does screen such applicants for criminal convictions under its rules for exceptional admission, but new section 10B(1)(b)(iii) now puts this on a clearer statutory footing. Section 10B(1)(b)(ii) similarly gives the Investigating Sub-committee a remit to consider misconduct or convictions in the case of applicants who fulfil other specific requirements prescribed by the Scottish Ministers (none has in fact been prescribed).
 - Section 10B(1)(b) makes clear that that the ISC can take into account convictions and misconduct which have taken place outwith Scotland.
 - Under the 1965 Act the Investigating Committee looks into allegations of "serious misconduct" or convictions for a "serious offence" and the Disciplinary Committee judges whether a person is guilty of "infamous conduct in any professional respect" or has been convicted of an offence which "renders him unfit to be registered". None of these terms is defined in the 1965 Act. Under new section 10B, the ISC will look into any case where it appears that a relevant offence or relevant misconduct may have been committed. Under new section 11(1) the DSC will

determine whether that is indeed the case. "Relevant misconduct" and "relevant offence" are defined in new section 10B(3).

122. New section 10C replicates existing provisions and gives the DSC the following duties:
- to consider any cases referred by the ISC;
 - to consider applications for re-registration (other than in routine cases involving removal of a name from the register for non-payment of the registration fee or failure to provide information, or where the teacher's name has been removed from the register on ill-health grounds by the PCC);
 - to consider second or subsequent applications for registration from people whose original application was rejected because the DSC (or previously the Disciplinary Committee) decided they had been convicted of a relevant offence or had committed relevant misconduct and issued a direction under section 11(7);
 - to look at any applications for registration from teachers whose teaching certificate was withdrawn or suspended on the grounds of misconduct, and not restored, prior to the commencement of the 1965 Act. (Teaching certificates were issued by the Secretary of State before the GTC was established).
123. New section 11 deals with decisions of the DSC, effected through directions, and the range of sanctions available to it. Section 11(1)(a) makes clear that a direction of the DSC against a registered teacher, on the grounds of conviction for a relevant offence, can relate to an offence committed outwith Scotland or before the person became a registered teacher. In practice, offences in the latter category will be relevant only if they come to light after the person has become registered since they will otherwise already have been considered by the ISC and DSC when that person first applied for registration. There is doubt about whether such an offence would be covered by the existing provisions.
124. The 1965 Act allows only the following options in dealing with discipline cases: removal from the register or dismissal of the case. Also, under its procedural rules, the GTC may defer a decision in a case for up to 2 years. Section 11(1), as substituted by section 50 of the Act, provides for additional sanctions in conviction and misconduct cases of conditional registration (e.g. restrictions on age of pupils to be taught) and the recording of a reprimand on the register. Under section 11(4), a person who is subject to a conditional registration order may apply to the PCC to have the condition varied or revoked. Provision about the procedure to be followed in such proceedings is made in section 11(6) which applies Schedule 2 to the 1965 Act, with suitable modifications. The only sanction available in incompetence cases and ill-health cases will be removal from the register – sections 11(2) and 10A(2) respectively.
125. Under new section 11A, the PCC, ISC and DSC will be able to suspend a teacher from the register while a case is under consideration, if there is prima facie evidence that the outcome of the case might be that the teacher's name will be removed from the register. By virtue of the requirement in the Schools (Scotland) Code 1956 that an education authority employ only registered teachers, an authority would have to dismiss a teacher who was temporarily suspended from the register of the GTC. The Scottish Executive intends to amend the Code to allow authorities to continue to employ teachers while they are suspended from the register. This will mean that a teacher could be suspended from his job with pay as at present, pending the outcome of investigations, and he would not be able to work as a teacher elsewhere. If the ultimate decision is that a teacher's name should not be removed from the register, no indication will be left on the register than the person had been suspended.
126. Under new section 11(9), where an application has been refused because the applicant has been convicted of a relevant offence or has been guilty of relevant misconduct, that person cannot be registered thereafter, other than through a direction from the DSC. The same applies in relation to a person whose name has been removed from the register on

grounds of criminal offence, misconduct or incompetence (or who was a certificated teacher whose certificate had been withdrawn and who applied unsuccessfully for registration).

127. Under new section 11B, the GTC has to notify a teacher's employer of the outcome of any case referred to the DSC by the ISC, or considered by the PCC.

Section 51 – Appeals

128. This section amends section 12 of the 1965 Act, which provides for appeals.
129. In any case where a decision of the DSC or the PCC results in permanent removal of a person's name from the register (subject only to his reapplying), or a person's application for registration or re-registration is refused, the person will have a right of appeal to the Court of Session. This replicates existing provisions.
130. Under the 1965 Act, applications for registration from teachers trained outwith Scotland are considered by the GTC's committee on Exceptional Admission to the Register (EAR). Applicants refused registration can at the moment appeal to the Council against a decision of the EAR committee. New section 12(1) provides a right of appeal to the Court of Session against a decision of the EAR committee. This is partly for consistency with the other cases mentioned above where a person's name is removed from the register or his application is refused. It is also considered appropriate in light of the requirements of Article 6(1) of the European Convention on Human Rights (ECHR). Article 6(1) requires that, in the determination of his civil rights and obligations, a person is entitled to a fair and public hearing by an independent and impartial tribunal established by law. This includes determination of rights to enter or remain in a profession.
131. As in the existing provisions, appeals to the Court of Session will be governed by rules made by the Court by Act of Sederunt. The appeal period is 28 days in these cases.
132. New section 12 (1A) provides a right of appeal to the Council in the case of:
- decisions by the DSC in relation to:
 - conditional registration;
 - a reprimand being recorded against the person's name in the register;
 - decisions by the PCC in relation to:
 - refusal of an application for variation or revocation of the condition specified in a conditional registration order;
 - decisions by the PCC, DSC or ISC in relation to:
 - temporary suspension.
133. Rules made by the GTC to govern the proceedings of appeals to the Council will require to be approved by the Lord President of the Court of Session. The rules will provide for time limits for appeal in these cases. By virtue of substituted section 12(4), decisions made by the PCC, DSC or ISC will take effect only on expiry of the relevant time limit or, if an appeal is made, on dismissal or withdrawal of the appeal.

Section 52 – Amendment of section 17 of the 1965 Act

134. Section 17(1) of the 1965 Act provides definitions of terms used in the Act. This provision amends the definition of "registered" to include conditionally registered, to take account of the new sanction of conditional registration which will be available to the GTC. For the sake of completeness, it also provides clarification that "registered" includes provisionally registered, although this does not effect any change to the existing position under the Act.

Section 53 – Power of Council to borrow money

135. **Section 53** substitutes a new paragraph 8 of Schedule 1 to the 1965 Act for the existing one. New paragraph 8(1)(a) replicates an existing provision. Paragraph 8(1)(b) and (2) confer a new power on the GTC to borrow money, with the consent of the Scottish Ministers. This power could, for example, be used by the GTC to obtain a short-term bank overdraft to assist with any cash flow difficulties that might arise because of the timing of payment of registration fees.

Section 54 – Power of Scottish Ministers to require Council to establish committees

136. Under paragraph 17 of Schedule 1 to the 1965 Act the GTC are empowered to appoint whatever committees they think are necessary, subject to the requirement to have a committee on exceptional admission to the register and now the PCC, DSC and ISC. This discretion will remain but, under new paragraph 16A, Scottish Ministers will be able to stipulate, through regulations, that a committee should be established and what its membership should be. The intention is not to empower Scottish Ministers to identify named individuals as members of committees, but rather to allow them to ensure, if necessary, that a committee has adequate representation of relevant interests.

Section 55 – Abolition of Scottish Joint Negotiating Committee for School Education

137. The Scottish Joint Negotiating Committee (SJNC) is established under section 91 of the Education (Scotland) Act 1980. It has a remit to negotiate and agree national terms and conditions of service of school teachers employed by education authorities. It is made up of representatives of education authorities (17 members), teacher organisations (19 members) and 2 representatives of the Scottish Ministers who act as observers. By virtue of section 97A(2) of the 1980 Act, SJNC agreements form part of teachers' contracts of employment and can be changed only by further SJNC agreements.
138. Repeal of the relevant provisions of the 1980 Act removes the statutory basis on which the SJNC operates. It leaves the way open for any new arrangements for determining teachers' pay and conditions following the report of the Committee of Inquiry into teachers' professional conditions of service. In the meantime, it does not preclude the establishment of national voluntary collective bargaining arrangements between teacher organisations and local authorities.
139. **Section 55(2)** ensures that current agreements of the SJNC remain in force until superseded by other arrangements.

Sex education and medical matters

Section 56 - Guidance to education authorities as to manner of conducting sex education

140. This section gives the Scottish Ministers the power to issue guidance to education authorities in relation to the manner in which sex education is conducted. If local authorities do not comply with the guidance they may be open to challenge if it was shown that they acted unreasonably in doing so.

Section 57 – Consent of child to medical procedures

141. Section 57(2) of the Education (Scotland) Act 1980 empowers an education authority in certain circumstances to require the parent of any pupil at one of their schools to submit the pupil for medical or dental inspection (or to require a 16 or 17 year old at any other educational establishment run by them to submit himself for such inspection). Section 58 of the Act gives education authorities the powers likewise to ensure cleanliness of pupils and young persons. Since the 1980 Act was introduced there have been changes to the age of legal capacity whereby a child under the age of 16 with sufficient

understanding to consent to medical or dental treatment has the right to do so. The new section 131A of the Education (Scotland) Act introduced by section 52 ensures that in the case of such a child any inspection or treatment under section 57 or 58 of the 1980 Act can only be carried out with the child's consent.

General

Section 59 – Regulations

142. The regulation-making power conferred by section 59 is similar to that contained in section 2 of the Education (Scotland) Act 1980, in relation to authorities' functions under that Act.

Section 61 – Short title and commencement

143. Subsection (2) of this section provides that section 23 (disposal of moveable property owned by a self-governing school) and the repeals of those sections of the Self-Governing Schools etc. (Scotland) Act 1989 under which self-governing status is acquired, come into force on Royal Assent. That subsection also provides a power to bring the other provisions of the Act into force by order.

Schedule 1 – Amendments of 1988 Act consequential on ending of by-elections for parent members of School Boards

144. The necessary amendments to the School Boards legislation to give effect to section 28 are included in Schedule 1.
145. Sub-paragraph (a) of paragraph 3 amends section 2A of the 1988 Act (which deals with elections) so as to remove the requirement to hold a by-election following a failed regular election of parent members or in order to fill a casual parental vacancy arising during a member's term of office. It also replaces subsection (4) with a new subsection which allows up to two parent members to be co-opted should the Board have an insufficient number of parent members elected at a regular election. Such co-options have to be made within three months of the election.
146. That sub-paragraph also replaces subsection (5) of section 2A with a new subsection which requires the authority to hold a by-election to fill a casual vacancy, where one is requested under section 28(1) of the Act, within three months of that request.
147. Sub-paragraph (b) of paragraph 3 makes a consequential amendment of section 2A(8), under which it is not necessary to hold a by-election if a parent member resigns within 6 months of the end of his or her term of office.
148. Paragraph 4 makes consequential amendments of section 2B of the 1988 Act dealing with co-option of Board members and removes references to the by-election process. New subsection (3) will allow Boards to co-opt a parent member of the Board in the event of a casual vacancy within three months of the vacancy arising, where no by-election falls to be held. Where a by-election does fall to be held, but it does not produce a new parent member, the Board has three months from the date of the by-election to co-opt instead.
149. Paragraph 5(a) amends section 3 of the 1988 Act (which deals with terms of office of members). It inserts into that section a new subsection (4A) which provides that the term of office of parent members who are co-opted after a regular election will run to the end of the second regular election after the election which gave rise to the co-option (which would be for four years). It also inserts a new section 4B which provides that the term of office of a member co-opted as a result of a casual vacancy shall expire at the end of the next regular election period, i.e. the person co-opted would be a member for up to two years.

150. Paragraph 6(a) repeals section 20(5) of the 1988 Act which provides for a by-election should the regular election process produce insufficient numbers. It also replaces subsection (6) with a new subsection dealing with the circumstances in which a Board is not established, or in the case of an existing Board, is disestablished following an unsuccessful by-election, where held, and a failure of the Board to co-opt.

Schedule 2 – Minor and consequential amendments and repeals

151. Most of the amendments in paragraph 1 to the Teaching Council (Scotland) Act 1965 are consequential on the changes to the GTC's committee structure made by section 46 of the Act. The amendments in paragraph 2 to the Sex Discrimination Act 1975 and in paragraphs 3(3), (4), (6)(a) and (8) to the Education (Scotland) Act 1980 are consequential on the abolition of self-governing schools.
152. Paragraph 3(6)(b) amends section 57(3) of the 1980 Act which makes it a criminal offence for a person, without reasonable excuse, not to comply with a requirement made by an education authority for the medical or dental inspection of a pupil or young person. The amendment restricts the application of this offence to parents of pupils, to take account of the fact that a young person aged 16 or 17 is entitled to refuse his consent to the inspection and should not therefore be subject to any criminal penalty for doing so. In the case of a pupil whose parent is obliged to submit him for inspection, it would be a reasonable excuse for the parent not to do so where the child was capable of giving his own consent to the inspection but refused to give it.
153. The amendment to section 66(3) of the 1980 Act made by paragraph 3(7) makes it an offence for anyone wilfully to obstruct a person carrying out an inspection of an educational establishment under this section. Unintentional obstruction is no longer an offence.
154. The amendment to section 70 of the 1980 Act by paragraph 3(7A) ensures that the powers available to the Scottish Ministers to enforce education authorities' statutory duties apply also in relation to authorities' duties under or by virtue of Acts of the Scottish Parliament dealing with school education.

Schedule 3 – Further repeals

155. Most of the repeals in schedule 3 relate to the abolition of self-governing schools.
156. Section 7(2)(c) of the Teaching Council (Scotland) Act 1965 enables the Scottish Ministers to confer functions on the GTC in connection with the provision of education and training for teachers. This provision is repealed as no longer necessary, being superseded by a more general power to confer functions on the GTC under new section 4A of the 1965 Act, inserted by section 45(3) of the Act.