



Education (Scotland) Act 1980

1980 CHAPTER 44

PART II

RIGHTS AND DUTIES OF PARENTS AND FUNCTIONS OF EDUCATION AUTHORITIES IN RELATION TO INDIVIDUAL PUPILS

General principle

28 Pupils to be educated in accordance with the wishes of their parents.

- (1) In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is 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.

(2) ^{F1}

Textual Amendments

F1 Ss. 5, 28(2), 59, 66(2), 111(4)(5), 129(5)(6), 132(1), Sch. 2 paras. 1, 3 repealed by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 9](#)

[^{F2}28A Duty to comply with parents' requests as to schools.

- (1) Where the parent of a child makes a written request to an education authority to place his child in the school specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2) and (3) below, to place the child accordingly.

Such a request so made is referred to in this Act as a "placing request" and the school specified in it is referred to in this Act as the "specified school".

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (2) Where a placing request relates to two or more schools under the management of the education authority to whom it was made, the duty imposed by subsection (1) above shall apply in relation to the first mentioned such school, which shall be treated for the purposes of this Act as the specified school.
- (3) The duty imposed by subsection (1) above does not apply—
- (a) if placing the child in the specified school would—
 - (i) make it necessary for the authority to take an additional teacher into employment;
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
 - (iii) be seriously detrimental to the continuity of the child's education; or
 - (iv) be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there;
 - (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
 - (c) if the education authority have already required the child to discontinue his attendance at the specified school;
 - (d) if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school; or
 - (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the ^{M1}Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,
- but an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above.
- (4) An education authority shall inform a parent in writing of their decision on his placing request and, where they decide to refuse it, shall give him written reasons for their decision and inform him of his right to refer it under section 28C of this Act to an appeal committee.
- (5) The Secretary of State may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with subsection (4) above within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes.]

Textual Amendments

F2 Ss. 28A–28G inserted by Education (Scotland) Act 1981 (c. 58), s. 1(I) (the insertion being in force on or before 1.1.1983 except as regards s. 28G which came into force for some purposes prior to that date and for all remaining purposes on 9.3.1983)

Marginal Citations

M1 1975 c. 65.

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28B Information as to placing in schools and other matters.

- (1) Every education authority shall—
- (a) publish or otherwise make available information as to—
 - (i) their arrangements for the placing of children in schools under their management;
 - (ii) such matters as may be prescribed by regulations;
 - (iii) such other matters as the authority consider necessary or expedient for the purposes of their functions under this Act;
 - (b) where a child falls, in accordance with those arrangements, to be placed in a school under their management—
 - (i) in a case where the authority propose to place the child in a particular school, inform his parent of the school; and
 - (ii) in every case, subject to subsection (4) below, inform the parent of the general effect of section 28A (1) and (2) of this Act and of his right to make a placing request;
 - (c) in making arrangements for the performance of their functions under this Act, formulate guidelines to be followed by them as respects placing in schools generally or, if they think it necessary, in any particular school in the event of there being more placing requests made in respect of certain schools or, as the case may be, that school or in respect of any stage or stages of school education provided there than there are places available;
 - (d) on a request to that effect made to them at any time by a parent of a child, supply the parent with any prescribed or determined information about any school under their management.

In paragraph (d) above, “prescribed or determined information” means information prescribed or determined under subsection (3)(c) below.

- (2) An education authority shall, in performing the duties imposed on them by subsection (1) above, comply with any regulations made under subsection (3) below.
- (3) The Secretary of State may by regulations prescribe or make provision for the determining of—
- (a) the procedure in accordance with which education authorities are to perform the duties imposed on them by subsection (1) above and when they are to do so;
 - (b) how education authorities are to go about publishing or otherwise making available information under subsection (1) above or informing parents under that subsection;
 - (c) the kind of information which is to be so published or which is to comprise the information so made available or supplied to parents.
- (4) The duty imposed by subsection (1)(b)(ii) above arises only when the existence of the child and the fact that he falls to be placed in a school under their management are known to the education authority.

28C Reference to appeal committee of refusal of placing request.

- (1) Subject to subsections (2) and (3) below, a parent who has made a placing request may refer a decision of the education authority refusing his request to an appeal committee set up under section 28D of this Act.

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- (2) Subsection (1) above does not apply to a decision of an education authority in respect of the placing of a child in a nursery school or nursery class.
- (3) Where a reference under this section has been made in respect of a child, no further such reference in respect of the child shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (4) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following), but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.

Modifications etc. (not altering text)

- C1 S. 28C excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

28D Appeal committees.

- (1) Every education authority shall—
 - (a) set up and maintain such number of appeal committees; and
 - (b) make such other arrangements
 as are necessary to enable references to be made under sections 28C, 28E(6), 28F(7), 28H and 63 of this Act and heard by the committees.
- (2) An appeal committee set up under subsection (1) above shall be constituted in accordance with Schedule A1 to this Act.
- (3) The Secretary of State may by regulations make provision for procedure in relation to references under section 28C of this Act and regulations made under this subsection may include provision—
 - (a) requiring the education authority to make information relevant to their decision available to the committee and to the parent referring that decision to the committee;
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority on a placing request in the event of the committee's not having complied with section 28E(3) of this Act within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes;
 - (c) ancillary to or consequential upon provision made under paragraphs (a) and (b) above.

28E Appeal committees: supplementary provisions.

- (1) An appeal committee may, on a reference under section 28C of this Act, confirm the education authority's decision if they are satisfied—

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- (a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and
- (b) that, in all the circumstances, it is appropriate to do so
- but otherwise shall refuse to confirm the authority's decision and shall, where they so refuse, require the education authority to place the child to whom the reference relates in the specified school.
- (2) Where, in considering a reference under section 28C of this Act of a decision to refuse a placing request where the specified school is a special school, an appeal committee refuse to confirm the decision, they shall have power, if the education authority have decided not to record the child to whom the reference relates, to require the education authority to reconsider their decision not to record him.
- (3) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they shall inform the parent of his right of appeal to the sheriff under section 28F of this Act.
- (4) Where, on a reference under section 28C of this Act, an appeal committee refuse to confirm an education authority's decision, the authority shall give effect to the placing request to which the reference relates.
- (5) Where a decision of an appeal committee under this section is inconsistent with any decision of the education authority refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the appeal committee's decision relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child in writing of their decision upon that review and the reasons for it.
- (6) The decision of an education authority upon a review under subsection (5) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.
- ^{X1}(7) In paragraph 36 of Schedule 1 to the Tribunals and Inquiries Act 1971 (tribunals under direct supervision of the Scottish Committee of the Council of Tribunals) after "36" there shall be inserted "(a)" and at the end there shall be inserted—
- “(b) appeal committees set up under section 28D of the Education (Scotland) Act 1980 (c. 44).”.
- ^{X1}(8) In section 23 of the Local Government (Scotland) Act 1975 (authorities subject to investigation by Local Commissioner), at the end of subsection (2), there shall be inserted the following paragraph—
- “(f) any appeal committee set up under section 28D of the Education (Scotland) Act 1980.”.

Editorial Information

- X1** The text of ss. 28E(7)(8), 136(2)(3), Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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Modifications etc. (not altering text)

- C2** S. 28E excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

28F Appeal to sheriff from appeal committee.

- (1) A parent who has made a reference under section 28C of this Act may appeal to the sheriff having jurisdiction where the specified school is situated against the decision of an appeal committee on that reference.
- (2) The education authority may, but the appeal committee shall not, be a party to an appeal under this section.
- (3) An appeal under this section—
 - (a) shall be made by way of summary application;
 - (b) shall be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted, except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following); and
 - (c) shall be heard in chambers.
- (4) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (3) above.
- (5) The sheriff may on an appeal under this section confirm the education authority's decision if he is satisfied—
 - (a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and
 - (b) that, in all the circumstances, it is appropriate to do so
 but shall otherwise refuse to confirm their decision and shall, where he so refuses, require the authority to give effect to the placing request to which the appeal relates.
- (6) Where the judgment of the sheriff on an appeal under this section is inconsistent with any decision of the education authority (whether confirmed by the appeal committee or not) refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the judgment relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child of their decision upon that review and the reasons for it.
- (7) The decision of an education authority upon a review under subsection (6) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.
- (8) The sheriff may make such order as to the expenses of an appeal under this section as he thinks proper.

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(9) The judgment of the sheriff on an appeal under this section shall be final.

Modifications etc. (not altering text)

C3 S. 28F excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

28G Application of sections 28A to 28F and Schedule A1 to young persons.

—Sections 28A to 28F of this Act and Schedule A1 to this Act shall apply in relation to a young person who is a pupil and in that application references in those sections to the parent of a child as well as references to the child himself shall be construed as references to the young person.

[^{F3}28H Reference to appeal committee, and appeal therefrom of decision to exclude pupil.

- (1) Where an education authority decide to exclude a pupil from a school under their management which he attends, the parent of the pupil or, where the pupil is a young person, the pupil may refer the decision to an appeal committee set up under section 28D of this Act.
- (2) An appeal committee may, on a reference under this section, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision of the authority to exclude a pupil until certain conditions stipulated by them are complied with, the committee may modify the conditions.
- (3) The decision of an appeal committee on a reference under this section and the reasons for it shall be notified by the committee in writing to the parent or, as the case may be, the pupil making the reference and to the education authority.
- (4) A decision of an appeal committee on a reference under this section annulling a decision of an education authority or modifying the conditions subject to which an education authority have excluded a pupil from a school shall be complied with by the authority.
- (5) The Secretary of State may by regulations make provision for procedure in relation to references under this section and regulations made under this subsection may include provision—
 - (a) requiring the education authority to make information relevant to their decision available to the appeal committee and to the parent or, as the case may be, pupil referring that decision to the committee;
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the education authority's decision to exclude a pupil from a school under their management which he attends in the event of the appeal committee's not having complied with subsection (3) above within such period as may be prescribed in the regulations and different periods may be so prescribed for different purposes.
- (6) The decision of an appeal committee confirming an education authority's decision to exclude a pupil or modifying conditions under subsection (2) above may be appealed against by the parent of the pupil or, where the pupil is a young person, the pupil to the

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sheriff having jurisdiction where the school from which the pupil has been excluded is situated, and subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this subsection.

- (7) The sheriff may, on an appeal under subsection (6) above, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision excluding the pupil until certain conditions stipulated by them are complied with, he may modify the conditions.]

Textual Amendments

F3 S. 28H inserted (5.4.1983) by Education (Scotland) Act 1981 (c. 58), s. 1(1)

Modifications etc. (not altering text)

C4 S. 28H extended (13.10.2000) by 2000 asp 6, s. 41; S.S.I. 2000/361, art. 3((1)(2), Sch. Pt. I

Information as to schools and pupils

VALID FROM 01/05/1993

[^{F4}28I Information as to schools.

- (1) The Secretary of State may by regulations make provision requiring—
 - (a) in respect of every school for the management of which an education authority is responsible, the education authority; and
 - (b) in respect of every other school—
 - (i) where the school has a board of management, the board of management;
 - (ii) in any other case, the managers,
 to provide to him and to such persons (including education authorities) as may be prescribed such information as regards the school and pupils attending the school as may be prescribed.
- (2) For the purposes of this section information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (3) Where the Secretary of State exercises his power to make regulations under this section he shall do so with a view to making available information which is likely to—
 - (a) assist parents in choosing schools for their children;
 - (b) increase public awareness of the quality of the education provided by the schools concerned and the educational standards achieved in those schools; or
 - (c) assist in assessing the degree of efficiency with which the financial resources of those schools are managed.
- (4) Information which is required by virtue of regulations made under this section shall be provided—
 - (a) in such form and manner; and

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- (b) on such occasions,
as may be prescribed.
- (5) No information provided in accordance with regulations made under this section shall name any pupil to whom it relates.
- (6) The Secretary of State may—
- (a) publish information provided in accordance with regulations made under this section in such form and manner as he considers appropriate;
 - (b) require an education authority to publish such information at such times and in such form and manner as he may specify for the purposes of this section; or
 - (c) make arrangements for such information to be published in such form and manner, and by such persons, as he may specify for the purposes of this section.
- (7) The powers given to the Secretary of State by this section and section 28J of this Act may be exercised so as to make different provision in relation to different areas.
- (8) This section and sections 28J and 28K of this Act are not to be taken as restricting, or otherwise affecting, any other powers that the Secretary of State may have to make regulations with respect to, or otherwise require, the provision of information by any person.
- (9) Regulations made under this section and sections 28J and 28K of this Act may make different provision for different cases or classes of case.
- (10) This section does not apply to nursery schools.]

Textual Amendments

- F4** Ss. 28I-28K inserted (1.5.1993) by Education (Schools) Act 1992 (c. 38), s.17; S.I. 1993/1190, art.3 (with art. 4)

VALID FROM 01/05/1993

28J ^{F5} Requirement to provide information as to school education.

- (1) The Secretary of State may make regulations requiring education authorities, boards of management and managers of grant-aided schools to provide to prescribed persons such information or documents or categories of information or documents relating to school education as may be prescribed.
- (2) Information or documents provided in pursuance of regulations made under subsection (1) above shall be provided—
 - (a) in such form and manner; and
 - (b) on such occasions,
as may be prescribed.

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Textual Amendments
F5 Ss. 28I-28K inserted (1.5.1993) by Education (Schools) Act 1992 (c. 38), s.17; S.I. 1993/1190, art.3 (with art. 4)

VALID FROM 01/05/1993

28K ^{F6} **Information as to pupils.**
(1) The Secretary of State may by regulations make provision requiring that such information and reports as may be prescribed as regards pupils attending schools to which this section applies shall be supplied to the parents of such pupils at such times and in such form and manner as may be determined by or in accordance with the regulations.
(2) This section applies to any school which is not a grant-aided school, an independent school or a nursery school.
(3) Regulations made under this section may contain provision as to—
(a) the means of involvement of parents in consideration of such reports; and
(b) the extent to which any information relating to general standards of performance in examinations or other forms of assessment of any group of pupils shall be supplied to parents of other pupils.

Textual Amendments
F6 Ss. 28I-28K inserted (1.5.1993) by Education (Schools) Act 1992 (c. 38), s.17; S.I. 1993/1190, art.3 (with art. 4)

F729

Textual Amendments
F7 S. 29 repealed with saving by Education (Scotland) Act 1981 (c. 58), s. 8(2)(3), Sch. 9

Duty of parents to provide education for their children

30 Duty of parents to provide education for their children.

It shall be the duty of the parent of every child of school age to provide efficient education for him suitable to his age, ability and aptitude either by causing him to attend a public school regularly or by other means.

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31 School age.

Subject to sections 32(3) and 33(2) and (4) of this Act, a person is of school age if he has attained the age of five years and has not attained the age of sixteen years.

Modifications etc. (not altering text)

- C5** S. 31 applied (1.11.1996) by 1995 c. 36, s. 93(1); S.I. 1996/2203, art. 3(3), **Sch.**
S. 31 applied (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 10(a)** (which substituted definition in 1961 c. 34, s. 176(1)); S.I. 1996/3201, **art. 3(7)** (Sch. 4 para. 10(a) was repealed (1.9.1997) by 1996 c. 56, s. 582(2), **Sch. 38 Pt. II**).
- C6** S. 31 applied (1.9.1997) by 1996 c. 56, ss. 582(1)(4), 583(2), **Sch. 37 Pt. II para. 135**(substituting the definition of "child" in 1961 c. 34, s. 176(1)), Sch. 40 para. 1 (with ss. 1(4), 561, 562, Sch. 39); S.I. 1997/1623, **art. 2**.
- C7** S. 31 applied (1.11.1998) by 1998 c. 39, s. 55(4) (with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**.

32 Dates for commencement of school attendance.

- (1) Subject to subsection (7) below, an education authority shall fix a date or dates (any such fixed date being hereinafter referred to as a “school commencement date”) for the commencement of attendance at primary schools in their area; and any such date may be either a calendar date or fixed by reference to the occurrence of a particular annual event.
- (2) Subject to subsection (7) below, an education authority may, under subsection (1) above—
 - (a) fix different school commencement dates for different primary schools in their area;
 - (b) at any time fix a different school commencement date in substitution for any date previously fixed by them under the said subsection (1).
- (3) A child who does not attain the age of five years on a school commencement date shall, for the purposes of section 31 of this Act, be deemed not to have attained that age until the school commencement date next following the fifth anniversary of his birth.
- (4) Subject to subsection (7) below, an education authority shall, in respect of each school commencement date fixed by them under subsection (1) above and applicable to a public primary school, fix the latest following date (any such fixed date being hereinafter referred to as an “appropriate latest date”) on or before which a child must attain the age of five years in order to come within the category of children whom the authority consider of sufficient age to commence attendance at a public primary school at that school commencement date.
- (5) Subject to subsection (7) below, an education authority may, under subsection (4) above—
 - (a) where a school commencement date is applicable to more than one public primary school in their area, fix in respect of that school commencement date different appropriate latest dates for those different schools;
 - (b) at any time fix a different appropriate latest date in substitution for any date previously fixed by them under the said subsection (4).
- (6) The education authority shall carry out their duty under section 1 of this Act as if a child who is under school age on a school commencement date, but who will attain

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the age of five years on or before the next following appropriate latest date fixed in respect of the school commencement date, has attained the age of five years on the school commencement date; but nothing in this subsection or in subsection (4) above shall, in respect of a child under school age,—

- (a) impose any duty on his parent; or
- (b) require an education authority to take any action under section 36 or 37 of this Act.

- (7) The period between an appropriate latest date applicable to a school and the next following school commencement date applicable to that school (whether or not the school commencement date is that in respect of which the appropriate latest date is fixed) shall not, except with the approval of the Secretary of State on an application to him by the education authority, exceed six months by more than seven days:

Provided that no such application shall be made, nor approval given, in respect of any such period which commences after 31st December 1979.

- (8) In relation to any child, “school commencement date”—
- (a) in subsection (3) above—
 - (i) means, where the child is a pupil in attendance at a primary school, a school commencement date of that school;
 - (ii) in any other case has the same meaning as in subsection (6) above;
 - (b) in subsection (6) above means a school commencement date of the public primary school to which a child of his religious denomination and from his place of residence would normally be admitted.
- (9) In this section, “primary school” does not include a nursery school or a nursery class.

33 School leaving dates.

- (1) The last day of May (hereinafter referred to as the “summer leaving date”) and the appropriate day in December (hereinafter referred to as the “winter leaving date”) shall be the school leaving dates in each year.
- (2) Subject to subsection (4) below, for the purposes of section 31 of this Act a person shall, if the date of his attaining the age of sixteen years is—
- (a) on or after 1st March but before the next summer leaving date, be deemed not to have attained that age until the summer leaving date;
 - (b) after the summer leaving date but before 1st October next following that date, be deemed to have attained that age on the summer leaving date;
 - (c) on or after 1st October but before the next winter leaving date, be deemed not to have attained that age until the winter leaving date;
 - (d) after the winter leaving date but before 1st March next following that date, be deemed to have attained that age on the winter leaving date.
- (3) In subsection (1) above, “the appropriate day in December” means—
- (a) in the case of a person who is a pupil in attendance at a school, the first day of the Christmas holiday period;
 - (b) in any other case, 21st December,
- and in paragraph (a) of this subsection, “Christmas holiday period” means a period of consecutive days which includes 25th December and in which the school does not meet for the purpose of providing school education.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Education (Scotland) Act 1980, Part II is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(4) F8

Textual Amendments

F8 S. 33(4) repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**

Modifications etc. (not altering text)

C8 S. 33 applied (1.11.1998) by 1998 c. 39, s. 55(4) (with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**.

34 Exemption from school attendance.

- (1) Where after due inquiry an education authority are satisfied that by reason of any circumstances existing at his home it would cause exceptional hardship to require a child over fourteen years of age to attend school, they may grant exemption from the obligation to attend school to enable the said child to give assistance at home upon such conditions, if any, as to the amount and manner of further attendance at school until the child reaches the upper limit of the school age as the authority think fit.
- (2) No exemption granted under subsection (1) above shall extend beyond the date for commencing school attendance next following the date upon which the exemption was granted:

Provided that the authority may if they think fit renew an exemption, so however that the provisions of this section shall apply to such renewal in like manner as they apply to the original grant.
- (3) An exemption granted under this section shall exempt the parent of the child concerned from any prosecution or other proceeding under this Act for neglecting to provide for the education of the said child.
- (4) The education authority shall keep a register of exemptions granted under this section wherein shall be entered the name of each child so exempted and a statement of the circumstances in which and the conditions upon which such exemption was granted.

Failure of parents to provide education for their children

35 Failure by parent to secure regular attendance by his child at a public school.

- (1) Where a child of school age who has attended a public school on one or more occasions fails without reasonable excuse to attend regularly at the said school, then, unless the education authority have consented to the withdrawal of the child from the school (which consent shall not be unreasonably withheld), his parent shall be guilty of an offence against this section.
- (2) For the purposes of this section, a child who has been required to discontinue for any period his attendance at a school on account of his parent's refusal or failure to comply with the rules, regulations or disciplinary requirements of the school, shall, unless the court otherwise determines, be deemed to have failed without reasonable excuse to attend regularly at the school.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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36 Power of education authority in relation to irregular attendance of child at a public school.

- (1) It shall be the duty of the education authority if they consider that a parent has committed an offence against section 35 of this Act in respect of a child resident in their area, to serve a notice on the parent requiring him, within such time as may be specified in the notice (not being less than forty-eight hours or more than seven days from the service thereof) to appear (with or without the child) before the authority and explain the reason for the absence of the child from school. If the parent fails to satisfy the authority that he had a reasonable excuse, the authority may instruct that he be prosecuted forthwith under section 43 of this Act, or may warn the parent and postpone for a period not exceeding six weeks a decision as to whether to prosecute.
- (2) Where an education authority in the exercise of the powers conferred upon them by subsection (1) above postpone a decision as to whether to prosecute a parent, they may, if the child is still of school age, make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act requiring the parent to cause the child to attend the public school which he has been attending, or, if the child has changed his residence, a school attended by children residing in the same neighbourhood as the child.
- (3) Without prejudice to the institution of proceedings for an offence against section 35 of this Act or the exercise of the power conferred by section 44(1) of this Act, where a child of school age has failed to attend a public school regularly, the education authority may refer the child to the reporter of the appropriate local authority; and in this subsection “local authority” has the same meaning as in the ^{M2}Social Work (Scotland) Act 1968.

Marginal Citations

M2 1968 c.49.

37 Power of education authority where not satisfied that parent is providing efficient education for his child.

- (1) Where a child of school age has not attended a public school in the area in which his parent is residing, or has attended such a school and has been withdrawn therefrom with the consent of, or excluded by, the education authority, then, if the authority are not satisfied that the parent is providing efficient education for him suitable to his age, ability and aptitude, it shall be the duty of the authority to serve a notice on the parent requiring him within such time as may be specified in the notice (not being less than seven or more than fourteen days from the service thereof) either—
 - (a) to appear (with or without the child) before the authority and give such information as the authority may require regarding the means, if any, he has adopted for providing education, or
 - (b) in the option of the parent, to give such information to the authority in writing.
- (2) If a parent on whom a notice has been served in pursuance of subsection (1) above fails to satisfy the authority that he is providing efficient education for the child suitable to his age, ability and aptitude or that there is reasonable excuse for his failure to do so, the authority shall make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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Attendance orders

38 Making of attendance orders.

- (1) References in sections 36 and 37 of this Act, and in the following provisions of this Act, to an attendance order in respect of a child are references to an order in writing requiring the parent of the child to cause the child to attend a school named in the order, being either a public school, or a school (other than a public school) the managers of which are willing to receive the child.
- (2) In an attendance order in respect of a child—
 - (a) a school at which the parent will be required to pay fees shall not be named except at the request of the parent; and
 - [^{F9}(b) a special school shall not be named unless the child is a recorded child.]
- (3) Before making an attendance order under section 36 or 37 of this Act, the education authority shall consider any views expressed by the parent as to the school which he desires his child to attend.
- (4) The authority shall cause a copy of any attendance order made by them under section 36 or 37 of this Act to be served upon the parent, and it shall thereupon be the duty of the parent, subject to an appeal to the sheriff under subsection (5) below, to cause the child to attend regularly at the school named in the order.
- (5) A parent aggrieved by the making of an attendance order by an education authority may within fourteen days after the date upon which a copy of the order was served upon him under subsection (4) above appeal against it to the sheriff, who may confirm, vary or annul the order and whose decision shall be final.

Textual Amendments

F9 S. 38(2)(b) substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. II para. 5, Sch. 8

39 Amendment and revocation of attendance orders.

- (1) An education authority who have made an attendance order in respect of any child may at any time while the order is in force serve upon the parent of the said child a notice of their intention to amend the order by substituting the name of another school for that named in the order.
- (2) Where a child in respect of whom an attendance order is in force moves his residence, the education authority of the area to which the child has moved may serve upon the parent of the said child a notice of their intention to amend that order by substituting for the name of the school appearing in the order the name of a school attended by children residing in the same neighbourhood as the child.
- (3) The parent may within fourteen days of the service of a notice under subsection (1) or (2) above intimate in writing to the authority any objections he may have to the proposed amendment. After the expiry of the said period of fourteen days and after considering any objections made by the parent, the authority may amend the attendance order, and subsections (2), (4) and (5) of section 38 of this Act shall apply in the case of the amended attendance order as they apply in the case of an attendance order.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (4) If at any time while an attendance order is in force with respect to any child the parent of the child makes application to the authority by whom the order was made or amended requesting—
- (a) that another school be substituted for that named in the order, or
 - (b) that the order be revoked on the ground that arrangements have been made for the child to receive efficient education suitable to his age, ability and aptitude at a school other than that named in the order or elsewhere than at school,
- the authority shall amend or revoke the order in compliance with the request unless they are of opinion that the proposed change of school is unreasonable or inexpedient in the interests of the child, or that the arrangements made for the education of the child at a school other than that named in the order or elsewhere than at school are not satisfactory, as the case may be; and, if a parent is aggrieved by a failure of the authority to reach a decision upon his application within one month after the date thereof or by refusal of the authority to comply with any such request, he may appeal to the sheriff, who shall give such direction as he thinks fit.

40 Period of operation of attendance orders.

An attendance order made in respect of any child shall, subject to any amendment thereof made by an education authority or variation made by the sheriff, and unless revoked by an authority or annulled by the sheriff, continue in force so long as the child is of school age:

[^{F10}Provided that if the Record in relation to a recorded child is or falls to be discontinued by virtue of any enactment any attendance order requiring the attendance of that child at a special school shall be deemed to be annulled.]

Textual Amendments

F10 S. 40 proviso substituted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), Sch. 2 Pt. II para. 6, Sch. 8

41 Failure to comply with attendance order.

Where an attendance order has been made and is in force in respect of any child, and a copy of such order has been served on the parent of the child, the parent shall, if the order is not complied with, be guilty of an offence against this section unless he satisfies the court that he has a reasonable excuse.

Reasonable Excuses

42 Reasonable excuses.

- (1) For the purposes of sections 35, 36, 37, 41 and 44 of this Act, there shall [^{F11}, subject to subsection (1A) below,] be deemed to be a reasonable excuse if—
- (a) there is within walking distance of the child's home measured by the nearest available route no public or other school the managers of which are willing to receive the child and to provide him with free education, and either—
 - (i) no arrangements have been made by the education authority under section 50 or 51 of this Act with regard to the child; or

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- (ii) any arrangements so made are such as to require the child to walk more than walking distance in the course of any journey between his home and school; or
 - (b) the child has been prevented by sickness from attending school or receiving education as the case may be; or
 - (c) there are other circumstances which in the opinion of the education authority or the court afford a reasonable excuse.
- [^{F12}(1A) Subsection (1) above shall not apply in a case where—
- (a) the education authority have, in accordance with their arrangements as published or otherwise made available under section 28B(1)(a) of this Act, proposed to place the child in a particular school or in one of a number of schools named by them and, where the particular or named school is more than walking distance from the pupil’s home measured by the nearest available route, they have offered to make for him suitable arrangements of the kind referred to in section 50 or 51 of this Act under which he would not require to walk more than walking distance, so measured, in the course of any journey between his home and the school; but
 - (b) in consequence of a placing request, the child has been placed by them in a school other than a school referred to in paragraph (a) above,
- and in such a case, for the purposes of sections 35, 36, 37, 41 and 44 of this Act, there shall be deemed to be a reasonable excuse if—
- (i) the child has been prevented by sickness from attending school or receiving education as the case may be; or
 - (ii) there are other circumstances which in the opinion of the education authority or the court afford a reasonable excuse.]
- (2) The fact that an application to an education authority, or an appeal to the sheriff, has been made under section 39(4) of this Act in relation to an attendance order in respect of a child shall not be deemed to be a reasonable excuse for failure to cause the child to attend regularly at the school named in the order.
- (3) Where a parent alleges that his child has been prevented by sickness from attending school or receiving education as the case may be, the parent shall, if required by the education authority, permit a medical officer of the appropriate Health Board to examine the child, and any parent who fails to do so shall be guilty of an offence against this section.
- (4) In this section—
- “walking distance” means, in the case of a child who has not attained the age of eight years, two miles, and in the case of any other child, three miles;
 - “the appropriate Health Board”, in relation to any child, means—
- (a) where an attendance order is in force in respect of the child, the Health Board in whose area the school named in the order is situated;
 - (b) in any other case, the Health Board in whose area the place of residence of the child is situated.

Textual Amendments

F11 Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\), s. 2\(1\)\(a\)](#)

F12 [S. 42\(1A\)](#) inserted by [Education \(Scotland\) Act 1981 \(c. 58\), s. 2\(1\)\(b\)](#)

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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Prosecutions

43 Prosecutions and penalties.

- (1) Any person guilty of an offence against section 35, 41 or 42 of this Act shall be liable, on conviction by a court of summary jurisdiction, [^{F13}to a fine not exceeding level 3 on the standard scale] or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.
- (2) Proceedings under this section may be taken at the instance either of the public prosecutor of the court of summary jurisdiction in which the proceedings are to be taken or of another person authorised by the education authority to institute proceedings on their behalf.

Textual Amendments

F13 Words from “to a fine” to “scale” substituted (11.4.1983) for words from “in the case” to “£50” by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 289H, **Sch. 7D** item 53 (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), ss. 54, 56(2), **Sch. 6**) (which substitution fell (1.4.1996) by reason of the repeal of Sch. 6 of that 1982 Act).

44 Powers of Courts in relation to child.

- (1) If the court before which a prosecution is brought for an offence against section 35, 41 or 42 of this Act is satisfied that the child has failed without reasonable excuse to attend regularly at school, then, whether or not the parent is convicted, the court may direct that the case be referred to the reporter of the appropriate local authority and if so referred shall certify the said failure as a ground established for the purposes of Part III of the ^{M3}Social Work (Scotland) Act 1968; and in this subsection “local authority” has the same meaning as in the said Act of 1968.
- (2) If the court before which a prosecution is brought for an offence against section 35 of this Act is satisfied that a child has failed without reasonable excuse to attend regularly at school, but does not, in the exercise of the powers conferred upon it by subsection (1) above, make a direction, the court may, if the child is still of school age, make an attendance order in respect of the child requiring the parent to cause the child to attend the public school which he has been attending or, if the child has changed his residence, a school attended by children residing in the same neighbourhood as the child; and subsections (2) and (3) of section 38 and sections 39 to 41 of this Act shall apply with any necessary modifications to an attendance order made by a court under this section as they apply to an attendance order made by an education authority.

Marginal Citations

M3 [1968 c. 49.](#)

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

F14 Ss. 45–48 repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), Sch. 11

[^{F15} Corporal Punishment]

Textual Amendments

F15 S. 48A inserted by Education (No. 2) Act 1986 (c. 61, SIF 41:2), s. 48

48A Abolition of corporal punishment of pupils.

- (1) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified on the ground that it was done in pursuance of a right exercisable by the member of the staff by virtue of his position as such.
- (2) Subject to subsection (3) below, references in this section to giving corporal punishment are references to doing anything for the purposes of punishing the pupil concerned (whether or not there are also other reasons for doing it) which, apart from any justification, would constitute physical assault upon the person.
- (3) A person is not to be taken for the purposes of this section as giving corporal punishment by virtue of anything done for reasons which include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).
- (4) A person does not commit an offence by reason of any conduct relating to a pupil which would, apart from this section, be justified on the ground that it was done in pursuance of a right exercisable by a member of the staff by virtue of his position as such.
- (5) In this section “pupil” means a person—
 - (a) for whom education is provided—
 - (i) at a public [^{F16}, or self-governing,] school,
 - (ii) at a grant-aided school, or
 - (iii) at an independent school, maintained or assisted by a Minister of the Crown, which is a school prescribed by regulations made under this section or falls within a category of schools so prescribed.
 - (b) for whom school education is provided by an education authority otherwise than at a school, or
 - (c) to whom subsection (6) below applies and for whom education is provided at an independent school which does not fall within paragraph (a)(iii) above.
- (6) This subsection applies to a person if—
 - (a) he holds an assisted place under a scheme operated by the Secretary of State under section 75A of this Act.
 - (b) any of the fees or expenses payable in respect of his attendance at school are paid by the Secretary of State under section 73(f) of this Act.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (c) any of the fees payable in respect of his attendance at school are paid by an education authority under section 24(1)(c), 49(2)(b), 50(1) or 64(3) of this Act, or
 - (d) he falls within a category, prescribed by regulations made under this section, of persons appearing to the Secretary of State to be persons in respect of whom any fees are paid out of public funds.
- (7) In this section “member of the staff” means—
- (a) in relation to a person who is a pupil by reason of the provision of education for him at any school, any teacher who works at the school and any other person who has lawful control or charge of the pupil and works there, and
 - (b) in relation to a person who is a pupil by reason of the provision of school education for him by an education authority at a place other than a school, any teacher employed by the authority who works at that place and any other person employed by the authority who has lawful control or charge of the pupil and works there.
- (8) The Secretary of State may, by order made by statutory instrument, prescribe—
- (a) schools or categories of school for the purposes of subsection (5)(a)(iii) above; and
 - (b) categories of persons for the purposes of subsection (6)(d) above.
- (9) A person shall not be debarred from receiving education (whether by refusing him admission to, or excluding him from, a school or otherwise) by reason of the fact that this section applies in relation to him, or if he were admitted might so apply.
- (10) The power conferred on the Secretary of State by paragraph 4 of Schedule 1A to this Act to revoke a determination under section 75A of this Act if he is not satisfied that appropriate educational standards are being maintained includes power to do so if he is not satisfied that subsection (9) above is being complied with.

Textual Amendments

F16 Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(1), [Sch. 10 para. 8\(8\)](#)

Provision to assist pupils to take advantage of educational facilities

VALID FROM 25/03/1991

49 Power of education authorities to assist persons to take advantage of educational facilities.

- (1) Subject to the following provisions of this section, an education authority shall have power to grant, on such conditions as may be prescribed, and make payments in pursuance of, bursaries, scholarships or other allowances to persons over school age attending courses of full-time or part-time education (whether held in Scotland or elsewhere) which are not courses of school education or (in the case of courses held outside Scotland) are not courses of education comparable to school education in Scotland.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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(2) Subject to the following provisions of this section, an education authority shall have power, for the purpose of enabling persons to take advantage without hardship to themselves or their parents of the facilities for school education available to them, to grant, on such conditions as may be prescribed, and make payments in pursuance of, allowances for the purpose of defraying in whole or in part—

- (a) such expenses of persons attending any school as may be expedient to enable them to take full part in the activities of the school;
- (b) the fees and expenses payable in respect of persons attending schools at which fees are payable;
- (c) the maintenance expenses of persons over school age who are attending schools.

[^{F17}(2A) In subsection (2) above, references to attending school are to so attending not only where the school is in Scotland, but also where it is in England and Wales or in Northern Ireland (“school education” being construed accordingly).]

(3) The Secretary of State may make regulations providing that the powers conferred on an education authority by subsections (1) and (2) above—

- (a) shall be exercised in accordance with such provisions as may be prescribed by or under the regulations; and
- (b) shall not be exercised in relation to a person who does not fulfil such requirements as to residence in the area of the authority, or as to other matters, as may be specified in the regulations;

and regulations made under this subsection may contain provision for the determination by the Secretary of State of any question whether any such requirements are fulfilled in any particular case.

Textual Amendments

F17 S. 49(2A) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(9)**

Modifications etc. (not altering text)

C9 S. 49(1) modified (1.8.1995) by S.I. 1995/1739, **reg. 3(1)(a)**.

S. 49(1) restricted (1.8.1995) by S.I. 1995/1739, **reg. 3(1)(b)**.

C10 S. 49(2) modified (1.8.1995) by S.I. 1995/1739, **reg. 3(1)(a)**.

S. 49(2) restricted (1.8.1995) by S.I. 1995/1739, **reg. 3(1)(b)**.

50 Education of pupils in exceptional circumstances.

(1) Where in the opinion of an education authority—

- (a) any pupil is, owing to the remoteness of his home or the conditions under which he is living or other exceptional circumstances, unable to receive the full benefit of school education unless special arrangements are made for him, or
- (b) school education suitable to the age, ability and aptitude of any pupil can best be provided for him at any particular school, ^{F18}
- (c) ^{F19}

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the authority [^{F20}, in a case where subsection (3) applies, may and, in any other case, subject to subsection (4) below,] shall, after consultation with the parent ^{F21}, make such arrangements of either a temporary or a permanent character as they think best suited to the purpose of enabling that pupil to attend [^{F22}, in any case falling under—

- (i) paragraph (a) of this subsection, an appropriate school; and
- (ii) paragraph (b) thereof, the particular school.]

[^{F23}(1A) In subsection (1) above, references to an appropriate school and to a particular school are references not only to schools in Scotland but also to schools in England and Wales or in Northern Ireland (“school education” being construed accordingly).]

(2) The arrangements made under subsection (1) above may include—

- (a) the provision of travelling facilities or the payment of travelling expenses under [^{F24}subsection (1) of section 51 of this Act (for the purposes of this paragraph, any reference in that section to a school being construed as a reference not only to a school in Scotland but also to a school in England and Wales or in Northern Ireland)]; or
- (b) the accommodation of the pupil at a boarding school ^{F21} or in a hostel, home or other institution; or
- (c) other provision of board and lodging, provided that the education authority shall, so far as practicable, give effect to the wishes of the parent with respect to the religious denomination of the person with whom the pupil will reside; or
- (d) provision for the travelling, board and lodging of teachers.

[^{F25}(3) This subsection applies where—

- (a) the education authority have, in accordance with their arrangements as published or otherwise made available under section 28B(1)(a) of this Act, proposed to place the pupil in a particular school or in one of a number of schools named by them and have, in connection with that proposal, made or offered to make for the pupil suitable arrangements of the kind referred to in subsection (2) above; but
- (b) in consequence of a placing request, the pupil has been placed by them in a school other than a school referred to in paragraph (a) above.

(4) The duty imposed by subsection (1)(a) or (b) above does not apply where the pupil belongs (in accordance with section 23(3) of this Act) to the area of some other education authority or of a local education authority in England and Wales.]

Textual Amendments

F18 Word repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**

F19 S. 50(1)(c) repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39, SIF 41:2), s. 82(2), **Sch. 11**

F20 Words inserted by Education (Scotland) Act 1981 (c.58), s. 2(2)(a)

F21 Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**

F22 Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(10)(a)**

F23 S. 50(1A) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(10)(b)**

F24 Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(10)(c)**

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F25 S. 50(3)(4) inserted by Education (Scotland) Act 1981 (c. 58), s. 2(2)(b)

51 Provision of transport and other facilities.

(1) An education authority [^{F26}, in a case to which subsection (2A) [^{F27} or (2AB)] below applies, may and, in any other case, subject to subsection (2B) below] shall make such arrangements as they consider necessary for the provision of any of the following facilities in respect of pupils attending schools or other educational establishments—

- (a) for their conveyance without charge for the whole or part of the journey between their homes and the schools or other educational establishments which they are attending;
- (b) for making bicycles or other suitable means of transport available to the pupils, or to their parents for the use of the pupils, upon such terms and conditions as may be arranged, or for paying money allowances in lieu thereof;
- (c) for paying the whole or any part, as the authority think fit, of their reasonable travelling expenses,

and any such arrangement may in respect of any pupil make provision for more than one of the facilities specified in the foregoing paragraphs of this subsection.

(2) Where the requirements of pupils, for the conveyance of whom arrangements have been made by an education authority under subsection (1)(a) above, have been met, it shall be the duty of that authority, where there are any vacant places in any vehicle used for such conveyance, to allow such vacant places to be used without charge by other pupils to be selected by the authority.

[^{F28}(2A) This subsection applies where—

- (a) the education authority have, in accordance with their arrangements as published or otherwise made available under section 28B(1)(a) of this Act, proposed to place the pupil in a particular school or in one of a number of schools named by them and, where the particular or named school is more than walking distance from the pupil's home measured by the nearest available route, they have offered to make for him suitable arrangements of the kind referred to in subsection (1) above under which he would not require to walk more than walking distance, so measured, in the course of any journey between his home and the school; but
- (b) in consequence of a placing request, the pupil has been placed by them in a school other than a school referred to in paragraph (a) above.

In this subsection “walking distance” has the same meaning as in section 42 of this Act.

[This subsection applies—

- ^{F29}(2AB)
- (a) where the pupil is in attendance at a self-governing school but lives outwith an area for the time being specified in relation to that school by the Secretary of State by order under this subsection; or
 - (b) where the pupil lives within that area and either—
 - (i) his parent has not applied to the board of management, under paragraph 2(1) of Schedule 2 to the Self-Governing Schools etc. (Scotland) Act 1989, for the pupil's admission to the school; or
 - (ii) his parent has so applied and they are prepared to admit the pupil, but the pupil is not in such attendance;

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and paragraph 8 of the said Schedule 2 shall apply in relation to references in this subsection as that paragraph applies to references in paragraphs 2 to 7 of that Schedule.

- (2AC) An order under subsection (2AB) above may be revoked, and a new area specified in relation to the school, by a further order under that subsection; but before making any such order, or further order, the Secretary of State shall consult the board of management of the school and the education authority within whose area the school is situated.]
- (2B) The duty imposed by subsection (1) above does not apply where the pupil belongs (in accordance with section 23(3) of this Act) to the area of some other education authority or of a local education authority in England and Wales.]
- (3) Where as a condition of admission to any educational institution a person is required to attend for examination or interview at a particular place, the education authority may pay the whole or part of the expenses necessarily incurred by that person in respect of such attendance.

Textual Amendments

- F26** Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\), s. 2\(3\)\(a\)](#)
- F27** Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\), s. 25\(3\), Sch. 6 para. 1\(2\)\(a\)](#)
- F28** [S. 51\(2A\)\(2B\)](#) inserted by [Education \(Scotland\) Act 1981 \(c. 58\), s. 2\(3\)\(b\)](#)
- F29** [S. 51\(2AB\)\(2AC\)](#) inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\), s. 25\(3\), Sch. 6 para. 1\(2\)\(b\)](#)

52 Recovery of cost of board and lodging.

—Where an education authority have provided a pupil with board and lodging, whether at a school, ^{F30} hostel or elsewhere, the authority may, in their discretion, require the parent to pay to them in respect thereof such sums if any not exceeding the cost of such board and lodging as in the opinion of the authority he is able without financial hardship to pay:

Provided that—

- (i) where the board and lodging provided for any pupil were so provided under arrangements made by the authority for any of the reasons specified in section 50(1) of this Act, no sum shall be recoverable in respect thereof under this section; and
- (ii) where the board and lodging have been so provided for a young person ^{F30} under section 13 of this Act, at [^{F31}an] educational establishment, the authority, if satisfied that he is in a financial position to pay the whole or any part of a sum recoverable from his parent under this section, may recover that sum or that part thereof from the young person instead of from the parent.

Textual Amendments

- F30** Words repealed by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\), s. 82\(2\), Sch. 11](#)

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F31 Word substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(11)**

Provision of food and clothing

53 Provision of school meals.

(1) An education authority—

- (a) may provide milk, meals or other refreshment for pupils in attendance at public schools and other educational establishments under their management [^{F32}and may do so either on the premises or at any place other than the school premises where education is being provided]; and
- (b) shall provide such facilities as the authority consider appropriate for the consumption of any meals or other refreshment brought to the school or other educational establishment by such pupils.

[^{F33}(2) Subject to subsection (3) below, an authority must charge for anything provided by them under subsection (1)(a) above and must charge every pupil the same price for the same quantity of the same item.

(3) In relation to a pupil whose parents are in receipt of income support or who is himself in receipt of it an authority shall so exercise the power conferred by subsection (1) (a) above as to ensure that such provision is made for him in the middle of the day as appears to the authority to be requisite and shall make that provision for him free of charge.]

[^{F34}(3A) Subsections (1) to (3) above apply in relation to pupils in attendance at a self-governing school and the board of management of that school as they apply in relation to pupils in attendance at a public school and the education authority under whose management the public school is.]

(4) For the purposes of this section, a pupil for whom an education authority have made special arrangements under section 14 of this Act may, at the discretion of the authority, be deemed to be in attendance at a public school under their management.

Textual Amendments

F32 Words inserted by Social Security Act 1986 (c. 50, SIF 113:1), s. 77(1)(b)

F33 S. 53(2)(3) substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 77(2)

F34 S. 53(3A) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(12)**

54 Provision of clothing for pupils at public schools.

(1) When it is brought to the notice of an education authority that a pupil attending a school under their management [^{F35}, or a self-governing school,] is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided, the education authority shall make such provision for the pupil for the purpose of ensuring that he is sufficiently and suitably clad as they may deem necessary during such period while the pupil is attending school (including days when the school does not meet) as they may determine.

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- (2) Where an education authority make provision for a pupil in pursuance of this section, they shall be entitled to recover from the parent of the pupil the expense thereby incurred or, if the authority are satisfied that the parent is unable without financial hardship to pay the whole of that expense, such part thereof, if any, as he is, in the opinion of the authority, able without financial hardship to pay.
- (3) Without prejudice to any powers conferred upon them by subsections (1) and (2) above, an education authority may provide clothing free of charge—
- (i) for any pupil who is a boarder at a school, or
 - (ii) for any pupil in attendance at a nursery school or a nursery class, under the management of the authority [^{F36}; or for any pupil who is a boarder at a self-governing school].
- (4) For the purposes of this section—
- (a) a pupil on attaining the age of five years shall, pending his admission to school, be deemed to be attending a school under the management of the education authority in whose area he is ordinarily resident; and
 - (b) [^{F37}a recorded child or recorded young person in respect of whom an education authority are, under section 62(3) of this Act, under a duty] shall be deemed to be attending a school under the management of that authority.

Textual Amendments

- F35** Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 25(3), [Sch. 6 para. 1\(3\)\(a\)](#)
- F36** Words added by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 25(3), [Sch. 6 para. 1\(3\)\(b\)](#)
- F37** Words substituted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 2 Pt. II para. 7](#), [Sch. 8](#)

55 Provision of food and clothing for pupils at schools other than public schools.

An education authority may, with the consent of the managers of any school in their area which is not a public school, and upon such financial and other terms, if any, as may be determined by agreement between the authority and the managers, make arrangements for securing—

- (a) the provision of milk, meals and other refreshment for pupils in attendance at the school; and
- (b) [^{F38}except in relation to a school which is a self-governing school,] the provision, for any pupil in attendance at the school who is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education (including physical exercise) provided by the school, of such clothing as is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school.

Textual Amendments

- F38** Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 25(3), [Sch. 6 para. 1\(4\)](#)

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56 Condition of provision of clothing by education authorities.

Save as may be otherwise prescribed, provision of clothing by an education authority under any of the powers conferred by this Act may be made in such a way as to confer, at the option of the authority, either a right of property in the clothing or a right to use it only.

Health and cleanliness of pupils

57 Medical and dental examination and inspection.

- (1) The Secretary of State may make regulations as to the conduct of medical and dental examinations and medical and dental inspections for the purposes of the performance of his duties under section 39 of the ^{M4}National Health Service (Scotland) Act 1978.
- (2) For the purpose of securing the proper medical or dental inspection of the pupils and young persons for whom it is the duty of the Secretary of State under the said section 39 to provide such
 - [^{F39}(a) an education authority may require the parent of any pupil in attendance at any school under their management; and
 - (b) a board of management of a self-governing school may require the parent of any pupil in attendance at that school,
 - to submit the pupil for medical or dental inspection in accordance with arrangements made by the appropriate Health Board in agreement with the authority, or as the case may be board of management; and—
 - (i) an education authority may require any young person in attendance at any educational establishment under their management;
 - (ii) a board of management of a self-governing school may require any young person in attendance at that school,
 - to submit himself for such medical or dental inspection.]
- (3) If any person fails without reasonable excuse to comply with a requirement made by an education authority [^{F40}or board of management] under subsection (2) above, he shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding [^{F41}£10][^{F41}level 1 on the standard scale].
- (4) In this section “the appropriate Health Board”, in relation to any pupil or young person, means the Health Board in whose area is situated the school, ^{F42} or other educational establishment at which the pupil or young person is in attendance.

Textual Amendments

- F39** Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(5)(a)**
- F40** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(5)(b)**
- F41** Words from “level 1” to “scale” substituted (11.4.1983) for word “£10” by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21), ss. 289F, 289G** (as inserted by **Criminal Justice Act 1982 (c. 48), s. 54**)
- F42** Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**

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Marginal Citations

M4 1978 c. 29.

58 Power to ensure cleanliness.

- (1) An education authority may, by directions in writing issued with respect to all schools, ^{F43} and other educational establishments under their management or with respect to any of such schools, ^{F44} or establishments named in the directions [^{F45}, and the board of management of any self-governing school may by notice in writing issued with respect to that school], authorise a medical officer of the appropriate Health Board to cause examinations to be made of the bodies and clothing of all or any of the pupils in attendance at such schools [^{F46}(or as the case may be at that school)] and young persons in attendance at such ^{F43} establishments whenever in his opinion such examinations are necessary in the interests of cleanliness.
- (2) Any such examination as aforesaid shall be made by such medical officer or by a person authorised in writing by him to make such examinations (in this section referred to as an “authorised person”), and, if the body or clothing of any pupil or young person is found upon such an examination to be infested with vermin or in a foul condition, the authority [^{F47}, or in the case of a self-governing school, the board of management,] may serve upon the parent of such pupil or upon the young person a notice requiring the parent to cause the body and clothing of the pupil to be cleansed or the young person to cause himself and his clothing to be cleansed as the case may be.
- (3) A notice served under subsection (2) above shall inform the person upon whom it is served that, unless within the period limited by the notice, not being more than twenty-four hours after the service thereof, the body and clothing of the pupil or young person to whom the notice relates are cleansed to the satisfaction of the medical officer or an authorised person as may be specified in the notice, the cleansing thereof will be carried out under arrangements made by the education authority [^{F48}, or in the case of a self-governing school the board of management]; and, if at the expiration of that period the medical officer or an authorised person is not satisfied that the body and clothing of the pupil or young person have been properly cleansed, the medical officer or an authorised person may issue an order directing that the body and clothing of the pupil or young person be cleansed under such arrangements. The order shall be sufficient to authorise any officer of the authority [^{F49}, or in the case of a self-governing school any officer appointed by the board of management,] to cause the body and clothing of the pupil or young person named in the order to be cleansed in accordance with such arrangements, and for that purpose to convey him to the premises where the cleansing is to be carried out and to detain him there until such time as the cleansing has been completed.
- (4) It shall be the duty of the education authority [^{F50}, or as the case may be the board of management] to make arrangements for securing that any cleansing under this section, whether at the request of a parent or young person or in pursuance of an order issued under this section, may be carried out in suitable premises by suitable persons and with suitable appliances.
- (5) If after the cleansing of the body or clothing of any pupil or young person has been carried out under this section his body or clothing is again found to be infested with vermin or in a foul condition at any time while he is in attendance at such school, ^{F43} or other educational establishment, and it is proved that the condition of his body or clothing is due to neglect on the part of his parent, or, in the case of a young person in

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attendance at ^{F51}an] educational establishment, to his own neglect, the parent or the young person, as the case may be, shall be liable on conviction by a court of summary jurisdiction in the case of a first conviction to a fine not exceeding £1, in the case of a second conviction to a fine not exceeding £5, and in the case of a third or subsequent conviction to a fine not exceeding £10 or to a term of imprisonment not exceeding one month or to both such fine and such imprisonment.

- (6) Where such a medical officer or authorised person has reason to believe that the body or clothing of any pupil or young person in attendance at such school, ^{F43} or other educational establishment is infested with vermin or in a foul condition, but action for the examination or cleansing thereof cannot immediately be taken, he shall so advise the authority [^{F52}, or as the case may be the board of management], who may, if they consider it necessary so to do in the interests either of the pupil or young person or of other children or young persons in attendance at the school, ^{F44} or other educational establishment, direct that the pupil or young person be excluded from the school, ^{F44} or other educational establishment until such action has been taken; and such a direction shall be a defence to any proceedings under this Act in respect of the failure of the pupil or young person to attend school or to comply with the requirements of an attendance notice, as the case may be, on any day on which he is excluded in pursuance of the direction, unless it is proved that the issue of the direction was necessitated by the wilful default of the parent or of the young person.
- (7) No female shall be examined or cleansed under the powers conferred by this section except by a registered medical practitioner or by a woman authorised for that purpose by a medical officer of a Health Board.
- (8) In this section “the appropriate Health Board” has the same meaning as in section 57 of this Act.

Textual Amendments

- F43** Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**
- F44** Word repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**
- F45** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(a)(i)**
- F46** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(a)(ii)**
- F47** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(b)**
- F48** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(c)(i)**
- F49** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(c)(ii)**
- F50** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(d)**
- F51** Word substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(13)**
- F52** Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 25(3), **Sch. 6 para. 1(6)(d)**

Modifications etc. (not altering text)

- C11** S. 58(5): **Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289E** (in relation to liability on first and subsequent convictions) (as inserted by **Criminal Justice Act 1982 (c. 48), s. 54**) applies (11.4.1983)

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Children requiring special education

59 F53

Textual Amendments

F53 Ss. 5, 28(2), 59, 66(2), 111(4)(5), 129(5)(6), 132(1), Sch. 2 paras. 1, 3 repealed by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 9](#)

[^{F54}60 Functions of education authority in relation to children and young persons with certain special educational needs.

- (1) It shall be the duty of an education authority to disseminate in their area information as to the importance of the early discovery of special educational needs and as to the opportunity for assessment available under the following provisions of this Act.
- (2) An education authority—
 - (a) shall have power, as regards—
 - (i) children in their area who have not attained school age [^{F55}and are not children in respect of whom the authority is under a duty by virtue of subparagraph (ii) of paragraph (b) below]; and
 - (ii) young persons belonging to their area (in accordance with section 23(3) of this Act) who are receiving school education; and
 - (b) shall be under a duty, as regards children belonging to their area (in accordance with section 23(3) of this Act) who
 - [are of school age][^{F57}; or]
 - ^{F56}(i) [have not attained school age but, being at least two years of age, have
 - ^{F58}(ii) come to the attention of the authority as having, or appearing to have, special educational needs,]

in accordance with the provisions of section 61 of this Act, to establish which of those children or, as the case may be, young persons have pronounced, specific or complex special educational needs which are such as require continuing review and to open and keep a Record of Needs of each such child or young person.
- (3) In this Act, unless the context otherwise requires, “Record”, when used as a noun, means a Record of Needs opened and kept under subsection (2) above and “recorded” and other cognate expressions shall be construed accordingly.
- (4) A Record shall not be disclosed by an education authority otherwise than in accordance with regulations made under section 65D(1)(e) of this Act.
- (5) The power of an education authority under subsection (2)(a) (ii) above shall be exercisable in relation to a young person only on a request to that effect being made to the authority by the young person or his parent.]

Textual Amendments

F54 Ss. 60–65F substituted for ss. 60–65 by [Education \(Scotland\) Act 1981 \(c. 58\)](#), s. 4(1), [Sch. 8](#)

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- F55** Words added by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 72(1)(a)
- F56** Words “are of school age” have become subparagraph (i) of s. 60(2)(a)(i) by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 72(1)(b)
- F57** “; or” added by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 72(1)(b)
- F58** S. 60(2)(b)(ii) added by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 72(1)(b)

Modifications etc. (not altering text)

- C12** S. 60 modified (during period of 3 years beginning with 1.1.1983) by Education (Scotland) Act 1981 (c. 58), Sch. 8 para. 4(b)

61 Examination and assessment of children and young persons.

- (1) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a child has pronounced, specific or complex special educational needs such as require continuing review and to record him unless he has undergone a [F59]process of observation and assessment (including educational, psychological and medical assessments)], for the purpose of affording to the authority advice as to his special educational needs and whether or not they ought to record him; and before doing so, an authority shall—
- (a) invite the parent of that child by notice in writing to submit the child for [F60]assessment] for the said purpose, and
 - (b) (in the case of a child [F61]in respect of whom the authority is under a duty under section 60(2) of this Act]) if the parent fails without reasonable excuse to submit the child as aforesaid, by notice in writing served upon the parent require him to submit the child for [F60]assessment] for the said purpose.
- (2) A parent who submits his child for [F62]assessment] in pursuance of subsection (1) above or subsection (6) below shall be entitled to be present at [F63]any medical examination held in connection with the assessment].
- (3) A notice under paragraph (a) or (b) of subsection (1) above in respect of any child shall—
- (a) state that the purpose of the [F64]assessment] is to afford to the education authority advice as to his special educational needs and whether or not they ought to record the child;
 - (b) specify the times and places at which [F65]any examinations held in connection with the assessment] will be held;
 - (c) inform the parent of his right to be present at [F66]any medical examination held in connection with the assessment];
 - (d) inform the parent of the name of the officer of the authority from whom advice and further information may be obtained;
 - (e) invite the parent to express in writing to the authority, within 21 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the child and the measures required to meet those needs;
- and a notice under the said paragraph (b) shall in addition inform the parent of the effect of subsection (4) below.
- (4) If any parent on whom a notice has been served under paragraph (b) of subsection (1) above fails without reasonable excuse to comply with the requirements of the notice,

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he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F67}£50][^{F67}level 2 on the standard scale].

- (5) The duty imposed by section 60(2) of this Act shall not apply if the parent of the child has had notice served upon him under subsection (1)(b) above and has failed to comply with that notice.
- (6) If the parent of any child requests the education authority for the area to which the child belongs (in accordance with section 23(3) of this Act) to make arrangements for the child to undergo such process of [^{F68}observation and] assessment as is mentioned in subsection (1) above for the purpose mentioned there, the authority shall comply with the request unless in their opinion the request is unreasonable.
- (7) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a young person has pronounced, specific or complex special educational needs such as require continuing review and to record him unless—
- (a) that young person has undergone such process of [^{F69}observation and] assessment as the authority consider necessary for the purpose of affording to them advice as to his special educational needs and whether or not they ought to record him; and
 - (b) that young person or, where the education authority are satisfied that a young person is not capable of expressing his views for the purposes of this section, his parent has been invited by the authority, by notice in writing, to express to the authority, within 14 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the young person and the? measures required to meet those needs.

Textual Amendments

- F59** Words substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(a\)\(i\)](#)
- F60** Word substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(a\)\(ii\)](#)
- F61** Words substituted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\), s. 72\(2\)](#)
- F62** Word substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(b\)\(i\)](#)
- F63** Words substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(b\)\(ii\)](#)
- F64** Word substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(c\)\(i\)](#)
- F65** Words substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(c\)\(ii\)](#)
- F66** Words substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(c\)\(iii\)](#)
- F67** Words from “level” to “scale” substituted (11.4.1983) for word “£50” by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), s. 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\), s. 54](#))
- F68** Words inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(d\)](#)
- F69** Words inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(3\)\(e\)](#)

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Education (Scotland) Act 1980, Part II is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C13** S. 61 modified (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(b\)](#)
- C14** Power to modify s. 61 (during period of 3 years beginning with 1.1.1983), as originally enacted and as applied by s. 63, conferred by [Education \(Scotland\) Act 1981 \(c. 58\)](#) Sch. 8 para. 4(c)
- C15** S. 61 modified by [S.I. 1982/1734](#), [regs. 3, 5](#), [Schs. 1, 3](#)

62 Recording of children and young persons.

- (1) In deciding whether or not to record a child or young person an education authority shall take into consideration—
- in the case of a child, the advice given to them with respect to the child in consequence of the process of [^{F70}observation and] assessment undergone by him in pursuance of section 61(1) or (6) of this Act;
 - in the case of a young person, the advice given to them with respect to the young person in consequence of the process of [^{F70}observation and] assessment undergone by him in pursuance of section 61(7) of this Act;
 - any views expressed by the parent of the child, or by the young person or, where the education authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent;
 - if he has been at any time in attendance at any school other than one under their management, any reports or other information with respect to him obtained by them from the managers of the school or from teachers at the school;
 - any other reports or information relevant to his educational needs which they are able to obtain.
- (2) The decision of an education authority whether or not to record a child or young person, the reasons for that decision and the terms in which the education authority propose to record the child or young person shall be intimated forthwith by notice in writing to the parent of the child or, in a case where the authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, to his parent or, in any other case, to the young person, and the education authority shall, in recording the child or young person, have regard to any views expressed upon these terms by the parent of the child or of the young person or, as the case may be, the young person, within 14 days of the date of the notice, and thereafter notify him of—
- their decision as to those terms;
 - the right of appeal under section 63 of this Act; and
 - the name and address of the person to whom application may be made for advice and information about the child's or young person's special educational needs [^{F71}unless the parent of the child or of the young person or, as the case may be, the young person has requested the education authority not to appoint such a person].
- (3) An education authority shall ensure that the provision made by them under this Act for a recorded child or a recorded young person includes provision for his special educational needs [^{F72}; and they shall in any event, as regards each such child belonging to their area as is mentioned in section 60(2)(b)(ii) of this Act, make provision for any special educational needs recorded in respect of the child which are not being met by other suitable arrangements].

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Textual Amendments

- F70** Words inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(4\)\(a\)](#)
- F71** Words added by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(4\)\(b\)](#)
- F72** Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\), s. 72\(3\)](#)

Modifications etc. (not altering text)

- C16** [S. 62](#) modified (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 8 para. 4\(b\)](#); modified by [S.I. 1982/1734, regs. 4, 6, Schs. 2, 4](#)

63 Appeals against decisions about recorded children or young persons.

- (1) The parent of a recorded child may refer to an appeal committee set up under section 28D of this Act—
- (a) a decision of an education authority to record the child or, following a review under section 65A of this Act, to continue to record him;
 - [^{F73}(aa) a decision of an education authority not to record the child or, following a review under section 65A of this Act, not to continue to record him;]
 - (b) their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in his Record or any such decision following a review under section 65A of this Act;
 - (c) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by him or any such decision following a review under section 65A of this Act;
 - (d) subject to subsection (4) below, their decision refusing his placing request in respect of the child.
- (2) Where the education authority were satisfied that a young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent and, in any other case, the young person himself may refer to an appeal committee set up under section 28D of this Act—
- [^{F74}(aa) a decision of an education authority not to record the young person or, following a review under section 65A of this Act, not to continue to record him;]
 - (a) a decision of the education authority, in accordance with section 62 of this Act or following a review under section 65A of this Act, as to the terms in which the matters specified in section 65D (2)(a) or (b) of this Act are recorded in the young person's Record;
 - (b) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the young person or any such decision following a review under section 65A of this Act;
 - (c) subject to subsection (4) below, their decision refusing a placing request in respect of the young person.
- (3) A decision of an education authority as to nomination of a school to be attended by a recorded child or recorded young person may be referred under subsection (1)(c) or (2)(b) above only if the parent or, as the case may be, the young person has made a placing request.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (4) Where a reference under subsection (1)(c) or (d) or (2)(b) or (c) above has been made in respect of a recorded child or recorded young person, no further such reference in respect of him shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (5) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent or, as the case may be, the young person of the notification of the decision of the education authority as to the terms in which they have recorded the child or young person (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following), but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.
- (6) The Secretary of State may by regulations make provision for procedure in relation to references made under this section and regulations made under this section may include provision—
- (a) requiring the education authority to make information relevant to their decision available to the committee and to the parent or, as the case may be, young person referring that decision to the committee;
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority in relation to which a reference to the committee was made in the event of the committee's not having complied with section 64(10) of this Act within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes.

Textual Amendments

F73 S. 63(1)(aa) inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\)](#), [s. 14\(5\)\(a\)](#)

F74 S. 63(2)(aa) inserted before paragraph s. 63(2)(a) by virtue of [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\)](#), [s. 14\(5\)\(b\)](#)

Modifications etc. (not altering text)

C17 Power to modify s. 63 (during period of 3 years beginning with 1.1.1983), as originally enacted, conferred by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(c\)](#)

C18 S. 63 modified by [S.I. 1982/1734, reg. 7](#), [Sch. 5](#)

C19 S. 63 excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

64 Provisions supplementary to section 63.

- (1) Where—
- (a) an appeal committee are satisfied that a reference to them under section 63 of this Act is made under subsection (1)(a) [^{F75}, (aa)] or (b) or [^{F76}(2)(aa) or (a)] of that section; or
 - (b) an appeal committee consider that, without having the decision of the Secretary of State on the question whether or not a child should be recorded or on the matters specified in section 65D(2)(a) or (b) of this Act in relation

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to a child or young person, they cannot deal with a reference made under section 63(1)(c) or (2)(b) of this Act which relates to the education authority's decision as to the nomination for the purposes of section 65D(2)(d) of this Act of a school to be attended by the child or young person,

they shall in turn refer the reference or, as the case may be, that question or so much of the reference as relates to matters specified in section 65D(2)(a) or (b) of this Act to the Secretary of State.

- (2) Subject to subsection (1) above, an appeal committee may, on a reference made to them under section 63(1) or (2) of this Act, confirm the education authority's decision as to nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the child or young person to whom the reference relates or refusing a placing request in respect of him if they are satisfied that—

(a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act as it applies to recorded children or, as the case may be, recorded young persons exists or exist; and

(b) it is, in all the circumstances, appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where they so refuse, require the education authority to place the child or young person in the specified school.

In this subsection, the reference to a placing request includes a reference to a placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made; and the reference to the specified school includes a reference to the school specified in such a placing request.

- (3) Where, in the case of a recorded child or recorded young person—

(a) an appeal committee refuse to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing a placing request in respect of him; and

(b) the specified school is an independent or grant-aided special school,

the committee shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school, and the authority shall comply with that requirement.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

- (4) On a reference to him under subsection (1) above the Secretary of State shall, subject to subsection (7) below—

(a) confirm or refuse to confirm the education authority's decision to record or to continue to record the child;

(b) confirm, with or without modification, the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of the child or young person.

- (5) Where the Secretary of State refuses, under paragraph (a) of subsection (4) above, to confirm an education authority's decision to record a child or to continue to record a child, he shall direct the authority to discontinue the Record of the child and the authority shall comply with such a direction.

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- (6) Where the Secretary of State, under subsection (4)(b) above, confirms with modifications an education authority's decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of a child or young person, he shall direct the authority to modify the Record accordingly and the authority shall comply with such a direction.
- (7) Where a reference has in turn been made to the Secretary of State under paragraph (b) of subsection (1) above, the Secretary of State shall not—
- (a) refuse to confirm the decision of the education authority to record or to continue to record the child; or
 - (b) confirm, with modifications, their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) are recorded in the Record of the child or young person
- unless he has first obtained and taken into consideration the views of the parent or young person who made the reference to the appeal committee.
- (8) The Secretary of State shall notify his decision under this section to the appeal committee, the person who made the reference to the appeal committee and the education authority.
- (9) Where, on a reference to an appeal committee under section 63 of this Act, the committee have in turn referred the reference or any part thereof to the Secretary of State under subsection (1)(a) or (b) above, they shall not dispose of so much of the reference as relates to the school to be attended by the child or young person until the Secretary of State's decision upon the matter referred in turn to him is notified to the appeal committee and they shall reach their decision as respects the school to be attended by the child or young person in the light of the Secretary of State's decision.
- (10) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent or, as the case may be, young person who made the reference to them and to the education authority and, where they confirm the education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, they shall inform the parent or, as the case may be, the young person who made the reference to them of his right of appeal to the sheriff under section 65 of this Act.
- (11) Where, on a reference under section 63(1) or (2) of this Act, an appeal committee refuse to confirm an education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, the authority shall place him in the specified school and shall amend accordingly any nomination in his Record of a school to be attended by him.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

Textual Amendments

- F75** “,(aa)” inserted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c.33, SIF 113:1\), s. 14\(6\)\(a\)](#)
- F76** Words substituted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\), s. 14\(6\)\(b\)](#)

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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Modifications etc. (not altering text)

- C20** Power to modify s. 64 (during period of 3 years beginning with 1.1.1983), as originally enacted, conferred by [Education \(Scotland\) Act 1981 \(c. 58\)](#), **Sch. 8 para. 4(c)**
- C21** [S. 64](#) modified by [S.I. 1982/1734, reg. 8](#), **Sch. 6**
- C22** [S. 64](#) excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), **Sch. 8 para. 4(d)**

65 Appeal to sheriff on the placing in a school of a recorded child or young person.

- (1) A parent or young person who has made a reference to an appeal committee under section 63(1)(c) or (d) or 2(b) or (c) of this Act may appeal to the sheriff against the decision of the appeal committee on that reference.
- (2) Subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this section.
- (3) Where the sheriff considers that, without having the decision of the Secretary of State on the question whether or not the child should be recorded or on the matters specified in section 65D(2)(a) or (b) of this Act in relation to the child or young person, he cannot deal with an appeal under this section against the decision of an appeal committee confirming the decision of an education authority as to the nomination of a school to be attended by the child or young person, he may, subject to subsection (5) below, on the motion of a party to the appeal, refer that question or those matters to the Secretary of State.
- (4) The Secretary of State shall deal with a reference made to him under subsection (3) above as if it were a reference made to him under section 64(1) of this Act.
- (5) The sheriff shall not make a reference to the Secretary of State under subsection (3) above if the appeal committee, in reaching the decision appealed against, have already referred the reference to them to the Secretary of State under section 64(1) of this Act.
- (6) Subject to subsection (3) above, the sheriff may, on an appeal made to him under this section, confirm the education authority's decision if he is satisfied that—
 - (a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act, as it applies to recorded children, or as the case may be, recorded young persons, exists or exist; and
 - (b) it is, in all the circumstances, appropriate to do so
 but otherwise shall refuse to confirm the authority's decision and shall, where he so refuses, require the education authority to place the child or young person in the specified school and to amend accordingly any nomination in the Record of the child or young person of a school to be attended by him.

In this subsection, the reference to the placing request includes a reference to the placing request the making of which enabled, by virtue of section 63(3) of this Act, the reference to the appeal committee whose decision thereon has been appealed to the sheriff, to be made; and the reference to the specified school includes a reference to the school specified in such a placing request.

- (7) Where, in the case of a recorded child or recorded young person—
 - (a) the sheriff refuses to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing the placing request made in respect of him; and

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(b) the specified school is an independent or grant-aided school, the sheriff shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school.

In this subsection the references to the placing request and the specified school shall be construed in the same way as in subsection (6) above.

- (8) The sheriff shall dispose of—
- (a) any appeal against the decision of an appeal committee on a reference which was, in turn, referred to the Secretary of State under section 64(1) of this Act;
 - (b) any appeal in relation to which he has referred any matter or question to the Secretary of State under subsection (3) above
- in the light of the Secretary of State's decision on the reference to him.

Modifications etc. (not altering text)

C23 S. 65 excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

65A Review by education authority of decision to record and information in Record.

- (1) Subject to subsection (2) below, it shall be the duty of an education authority to keep under consideration the cases of all recorded children and recorded young persons belonging to their area (in accordance with section 23(3) of this Act), and—
- (a) when in the discharge of their duty in relation to such a child or young person the authority think it expedient; or
 - (b) if the authority are at any time requested to do so by notice in writing given to them by the parent of such a child or by such a young person or, where the authority are of the opinion that such a young person is not capable of expressing his views, by his parent,
- the authority shall review their decision to record the said child or young person and the information entered in the Record of that child or young person.
- (2) The parent of a recorded child, a recorded young person or, as the case may be, the parent of a recorded young person shall not, by virtue of subsection (1)(b) above, be entitled to request the authority to review—
- (a) their decision to record the child or young person earlier than the expiry of the period of 12 months from the date of that decision or the most recent review of that decision, whichever is the later;
 - (b) the information entered in the Record for the purposes of section 65D(2)(a), (b) or (c) of this Act earlier than the expiry of the period of 12 months from the date of commencement of the Record or the most recent review of the information entered therein, whichever is the later.
- (3) Sections 61 and 62 of this Act shall apply to a review by an education authority of their decision to record a child or young person and of the information contained in the Record of a child or young person with such modifications as the Secretary of State may by regulations prescribe.

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65B Future provision for recorded children.

- (1) It shall be the duty of an education authority in accordance with this section to consider in relation to each recorded child belonging to their area (in accordance with section 23(3) of this Act) what provision would benefit him after he ceases to be of school age and to make a report thereon.
- (2) The education authority shall perform the duty imposed on them under subsection (1) above during the period beginning 2 years before the child ceases to be of school age and ending 9 months before then.
- (3) Sections 61 and 62 of this Act shall apply to the process of consideration under this section with such modification as the Secretary of State may by regulations prescribe.
- (4) The duty of consideration imposed by subsection (1) above may be performed in conjunction with a review in relation to the child under section 65A of this Act.
- (5) The education authority's report under subsection (1) above shall include their recommendation as to—
 - (a) whether the child would benefit from school education after he ceases to be of school age; and
 - (b) if the recommendation under paragraph (a) above is that he would benefit therefrom, whether or not his Record should be discontinued in accordance with section 65C(3) of this Act after he ceases to be of school age,
 and they shall send a copy of the report to the child's parent and inform him of the right to have the Record discontinued under section 65C(3) of this Act.
- (6) In any case where they consider it appropriate to do so, the education authority shall, in accordance with subsection (7) below, send a copy of their report to—
 - (a) the local authority for the purposes of the ^{M5}Social Work (Scotland) Act 1968 falling to perform functions under that Act in relation to the child;
 - (b) the health board for the area in which the child resides; and
 - (c) with the consent of the child's parent, any other body being a body making provision from which, in their opinion, he might benefit.
- (7) The education authority shall, where possible, perform their duty under subsection (6) above not later than 6 months before the child or young person to whom the report referred to in that subsection relates is expected to cease receiving school education.

Modifications etc. (not altering text)

C24 S. 65B(1) restricted by [Disabled Persons \(Services, Consultation and Representation\) Act 1986 \(c. 33, SIF 113:1\)](#), [s. 13\(1\)](#)

Marginal Citations

M5 1968 c. 49.

65C Continuance of Record of young persons.

- (1) Where a recorded child ceases to be of school age but, as a young person, receives school education, the education authority shall, subject to subsection (3) below, continue his Record for so long as he receives such education.

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- (2) If and for so long as a Record is continued under subsection (1) above, the provisions of this Act relating to the opening and keeping of Records of recorded young persons (other than section 60(5) of this Act) shall apply in relation to it, and the child whose Record is so continued shall be deemed to be a recorded young person.
- (3) An education authority shall discontinue the Record of a young person if he requests them to do so or, where the authority are of the opinion that he is not capable of expressing a request for the purposes of this section, his parent so requests.

65D Regulations regarding Records.

- (1) The Secretary of State shall by regulations prescribe—
 - (a) the form of a Record;
 - (b) the nature of the information to be entered therein;
 - (c) the procedure to be followed in relation to the keeping, discontinuance and destruction of a Record and its transfer on the recorded child or recorded young person moving from the area of one education authority to that of another;
 - (d) the period for which a Record must be preserved after its discontinuance;
 - (e) the persons to whom an education authority—
 - (i) shall, at the request of such a person, disclose a Record; and
 - (ii) may disclose a Record,
 and the manner of such disclosure;
 - (f) such other matters relating to Records as are in his opinion necessary or expedient,
 and the Secretary of State may—
 - (i) under paragraph (c) of this subsection, prescribe different procedures in different circumstances;
 - (ii) under paragraph (d) of this subsection, prescribe different periods in different circumstances; and
 - (iii) under paragraph (e) of this subsection, prescribe different persons and different manners of disclosure for different purposes.
- (2) Regulations under subsection (1) above shall provide that a Record shall include four parts containing respectively—
 - (a) a summary of the child's or young person's impairments;
 - (b) a statement of the special educational needs arising from those impairments;
 - (c) a statement of the measures proposed by the education authority to be taken to meet those needs; and
 - (d) where appropriate, the nomination of a school to be attended by him.

65E Application of certain provisions of this Act to recorded children and young persons.

Schedule A2 to this Act (which modifies certain provisions of this Act in their application to recorded children and young persons) shall have effect.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Education (Scotland) Act 1980, Part II is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

65F Secretary of State may prescribe standards etc. for special schools.

Without prejudice to section 2 of this Act, the Secretary of State may make regulations prescribing standards and general requirements relating to the conduct of schools making provision for recorded children or recorded young persons.

[^{F77}65G Attendance of certain children and young persons with special educational needs at establishments outwith United Kingdom.

- (1) Without prejudice to sections 49 (power of educational authorities to assist persons to take advantage of educational facilities) and 50 (education of pupils in exceptional circumstances) of this Act, an education authority shall have power to make such arrangements as they think fit to enable a child or young person to whom subsection (2) below applies to attend an establishment (whether or not a school) outwith the United Kingdom if that establishment makes provision wholly or mainly for persons with pronounced, specific or complex special educational needs.
- (2) This subsection applies to a child or young person if he has such needs as are mentioned in subsection (1) above whether or not a record of those needs is kept in respect of him under section 60 of this Act.
- (3) Without prejudice to the generality of subsection (1) above, the arrangements mentioned in that subsection may include defraying, whether or wholly or partly—
 - (a) the fees payable for the child's or young person's attendance and his travelling, maintenance and other expenses in respect of that attendance; and
 - (b) where in the opinion of the authority it would be to the advantage of the child or young person were one (or both) of his parents, or some other person, to be present with him at the establishment during the period of the attendance, such expenses of, as the case may be, the parent, parents or other person.]

Textual Amendments

F77 S. 65G inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 71(2)

Status:

Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

Education (Scotland) Act 1980, Part II is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.