

Draft Regulations laid before the Scottish Parliament under section 133(2C)(b) of the Education (Scotland) Act 1980, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

EDUCATION

**The Registration of Independent Schools
(Prescribed Person) (Scotland) Regulations 2017**

Made - - - - 2017
Coming into force - - 1st October 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 98A(6) and 133(2D)(a) and (b) of the Education (Scotland) Act 1980⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 133(2C)(a) of that Act, the Scottish Ministers have consulted such persons as they think fit on a draft of this instrument.

In accordance with section 133(2C)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017 and come into force on 1st October 2017.

(2) In these Regulations—

“the 1980 Act” means the Education (Scotland) Act 1980; and

“registered teacher” means a teacher whose particulars are recorded in the register maintained by the General Teaching Council for Scotland under the Public Services Reform (General Teaching Council for Scotland) Order 2011⁽²⁾ and includes a teacher—

- (a) whose registration has been marked as restricted; and
- (b) who, for the duration of that teacher’s registration being marked as restricted, is only employed as a teacher—
 - (i) by their existing employer; and
 - (ii) in their existing teaching post.

(1) 1980 c.44. Section 98A was relevantly amended by section 4(2) of the School Education (Ministerial Powers and Independent Schools) Act 2004 (asp 12). Section 133 was relevantly amended by section 26 of the Education (Scotland) Act 2016 (asp 8).
(2) S.S.I. 2011/215.

Prescribed Person

2. In relation to a teacher or proposed teacher in an independent school, the class of persons prescribed under section 98A(6) of the 1980 Act, for the purposes of Part V (Independent Schools) of the 1980 Act, is any person who is not a registered teacher.

Transitory provision – teacher at an independent school who is not a registered teacher

3. Where a person is employed by an independent school as a teacher on or before 1st October 2017, but is not a registered teacher, then that person is to be treated as not being in the class of persons prescribed by regulation 2 until 1st October 2020.

Transitory provision – application for registration of independent school made but not yet determined

4. Where an application for the registration of an independent school under section 98A(1) of the 1980 Act—

- (a) is made before 1st October 2017;
- (b) is granted on, or after, 1st October 2017 but before 1st April 2018; and
- (c) includes the full name and date of birth of a person as a teacher or proposed teacher in the school,

that person is to be treated as not being in the class of persons prescribed by regulation 2 until the day occurring 3 years after the day on which that application for registration as an independent school is granted by Scottish Ministers.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part V of the Education (Scotland) Act 1980 (“the 1980 Act”) deals with Independent Schools. Section 98A (Application for registration of independent school) requires that any person proposing to carry on an independent school shall apply to the Scottish Ministers for registration of that school. Section 98A(3) provides certain requirements which the Scottish Ministers must satisfy themselves of if they wish to grant the registration of a school. These include that every proposed teacher in the school is a proper person to be a teacher in any school (section 98A(3)(c)(ii)).

Section 98A(5) provides that the Scottish Ministers shall not be satisfied that a proposed teacher in such a school is a proper person to be a teacher in any school if that proposed teacher is disqualified under Part V of the 1980 Act from being a teacher; is barred from regulated work with children or is a prescribed person. These Regulations prescribe what is a “prescribed person” for the purposes of section 98A(5).

Regulation 2 of these Regulations prescribes a class of persons for the purposes of Part V (Independent Schools) of the 1980 Act, under section 98A(6) of that Act as any person who is not a registered teacher. A registered teacher is defined as a teacher whose particulars are recorded in the register maintained by the General Teaching Council for Scotland.

The effect of these Regulations is that from 1st October 2017 only a teacher who is registered with the General Teaching Council for Scotland can be a teacher in an independent school. If an independent school were to employ a teacher who is not a registered teacher after the coming into force of these regulations, the Scottish Ministers could serve a notice of complaint under section 99 (Complaints) of the 1980 Act as the registered school would be objectionable upon the ground - set out in section 99(1A)(h)(iii) of the 1980 Act - that a teacher in the school is a prescribed person.

Regulation 3 of these Regulations makes transitory provision for existing teachers at existing independent schools. The requirement to register with the General Teaching Council for Scotland for an existing teacher at an existing independent schools will take effect on 1st October 2020.

Regulation 4 of these Regulations makes transitory provision where an application has been made to register a school as an independent school before 1st October 2017 and the application is granted on or after 1st October 2017 and before 1st April 2018. Where such an application includes the full name and date of birth of a person as a teacher or proposed teacher in the school, the requirement to register with the General Teaching Council for Scotland for that teacher or proposed teacher will take effect 3 years from the date of registration of that school.