



# Education (Scotland) Act 1980

## 1980 CHAPTER 44

### PART II

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

##### *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
  - [<sup>F1</sup>(b) a special school shall not be named unless the child [<sup>F2</sup>has additional support needs requiring the education or special facilities normally provided at the school].]
- (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

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*Changes to legislation: Education (Scotland) Act 1980, Cross Heading: Attendance orders is up to date with all changes known to be in force on or before 25 June 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) View outstanding changes*

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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

- F1** S. 38(2)(b) substituted by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 2 Pt. II para. 5, Sch. 8](#)  
**F2** Words in s. 38(2)(b) substituted (14.11.2005) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\), s. 35\(1\), sch. 3 para. 3\(9\)](#); [S.S.I. 2005/564, art. 2](#)

### 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.
- (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:

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F3

**Textual Amendments**

**F3** S. 40 proviso repealed (14.11.2005) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#), s. 35(1), [sch. 3 para. 3\(10\)](#); S.S.I. 2005/564, art. 2

**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.

**Changes to legislation:**

Education (Scotland) Act 1980, Cross Heading: Attendance orders is up to date with all changes known to be in force on or before 25 June 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 48A(5)(a)(I) words repealed by [2000 asp 6 Sch. 3](#)
- s. 53(3)(b)(i)-(iia) repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 53(3)(b)(iii) words repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 53ZA inserted by [2016 asp 8 s. 22\(3\)](#)
- s. 54A inserted by [2016 asp 8 s. 23](#)
- s. 98DA inserted by [2016 asp 8 s. 28\(2\)](#)
- s. 99(1A)(g)(ii) word substituted by [2020 asp 13 sch. 5 para. 8\(3\)](#)
- s. 99(1A)(h)(ii) word substituted by [2020 asp 13 sch. 5 para. 8\(3\)](#)