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STATUTORY INSTRUMENTS

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**1999 No. 1080 (S. 86)**

**EDUCATION, SCOTLAND**

**The Education (Lower Primary Class Sizes) (Scotland) Regulations 1999**

<i>Made</i>	- - - -	<i>31st March 1999</i>
<i>Laid before Parliament</i>		<i>7th April 1999</i>
<i>Coming into force</i>	- -	<i>28th April 1999</i>

The Secretary of State, in exercise of the powers conferred on him by section 2 of the Education (Scotland) Act 1980(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Education (Lower Primary Class Sizes) (Scotland) Regulations 1999 and shall come into force on 28th April 1999.

**Interpretation**

2.—(1) In these Regulations—

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

“placing arrangements” in relation to a school means, so far as relevant, the education authority’s arrangements for the placing of pupils in schools, including any relevant guidelines as respects placing in schools, both as mentioned in section 28B(1) of the 1980 Act(2);

“first school year” in relation to a pupil in a lower primary class at any school means the school year in which he first attends that school on being placed there;

“class” means a group in which pupils are taught in an ordinary teaching session;

“lower primary class” means a class containing pupils in the first, second or third yearly stage of primary education;

“ordinary teaching session” does not include a school assembly or other school activity usually conducted with large groups of pupils;

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(1) 1980 c. 44; section 2 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 69(1) and by the Education (Scotland) Act 1996 (c. 43), Schedule 6.  
(2) Section 28B was inserted by the Education (Scotland) Act 1981 (c. 58), section 1(1).

“Primary 1 class”, “Primary 2 class” and “Primary 3 class” mean a class containing pupils in respectively the first, second or third yearly stage of primary education;

“qualified teacher”, in relation to a lower primary class, means a person who is a registered teacher holding the qualifications required by the Schools (Scotland) Code 1956(3) to be a teacher employed in a primary school or who, in accordance with that Code, may be otherwise so employed;

“school” means any school under the management of an education authority;

“school year” means a period of 12 months beginning on 1st August in any year;

“special school” means a special school under the management of an education authority;

“suitable education”, in relation to a child means efficient education suitable to his age, ability and aptitude and any special educational needs he may have.

“yearly stage” has the same meaning as in regulation 14 of the Schools (Scotland) Code 1956.

(2) For the purposes of these Regulations a child shall be treated as having been placed in a school outside a normal placing round where the decision to place him in the school was taken after 30th April immediately preceding the start of his first school year.

(3) Children placed in a school for nursery education and subsequently transferred to a Primary 1 class at the school shall be regarded for the purposes of these Regulations as placed in the school on being so transferred.

### **Limit on lower primary class sizes**

3.—(1) No lower primary class at a school shall contain more than 30 pupils while an ordinary teaching session is conducted by a single qualified teacher.

(2) Where an ordinary teaching session in the case of any such class is conducted by more than one qualified teacher, paragraph (1) shall be taken to prohibit the class from containing more than 30 pupils for every one of those teachers.

(3) Where a lower primary class at a school contains any excepted pupil (as defined by regulation 4), paragraph (1) or (2) shall apply as if he were not included in the class.

(4) Any limit imposed by this regulation shall apply—

- (a) in relation to a Primary 1 class, from 1st August 1999;
- (b) in relation to a Primary 2 class, from 1st August 2000; and
- (c) in relation to a Primary 3 class, from 1st August 2001.

### **Excepted pupils**

4.—(1) For the purposes of regulation 3, a child to whom any of paragraphs 2 to 7 of the Schedule applies is an excepted pupil in relation to a lower primary class at a school unless suitable education could be provided for him in another lower primary class at that school without relevant measures having to be taken.

(2) In paragraph (1) “relevant measures” means measures which would—

- (a) be required to be taken to ensure compliance with any limit imposed by regulation 3, and
- (b) prejudice the provision of efficient education or the efficient use of resources.

St Andrew's House,  
Edinburgh  
31st March 1999

*Helen Liddell*  
Minister of State, Scottish Office

## SCHEDULE

Regulation 4

### EXCEPTED PUPILS

**1.** In this Schedule—

“child” means a child who is a pupil in any lower primary class; and

“the school” means the school of which that class forms part.

**2.** This paragraph applies at any time during the first school year to any recorded child who is placed, outside a normal placing round, in the school nominated in his Record of Needs.

**3.** This paragraph applies at any time during the first school year to a child placed in the school outside a normal placing round who—

(a) was initially refused a place at the school owing to a failure properly to implement the education authority’s placing arrangements applicable to the school;

(b) was subsequently offered a place there by virtue of a decision made by the education authority that there had been such a failure in relation to the child.

**4.** This paragraph applies at any time during the first school year to a child placed in the school outside a normal placing round by virtue of a decision of an appeal committee under section 28E of the 1980 Act or of the sheriff under section 28F of that Act<sup>(4)</sup>.

**5.—(1)** This paragraph applies at any time during the first school year to a child placed in the school outside a normal placing round—

(a) in relation to whom that school is the only school (apart from any school at which he has been refused a place or from which he has been permanently excluded) which—

(i) is within a reasonable distance from his home, and

(ii) provides suitable education; and

(b) who did not, at the relevant date, ordinarily reside at a place which was within a reasonable distance from that school.

(2) In sub-paragraph (1)(b) “the relevant date” means the date referred to in regulation 2(2).

**6.** This paragraph applies to a child—

(a) who is a pupil at a special school, and

(b) who, by arrangement with another school which is not a special school, receives part of his education at the other school,

at any time when he is in a lower primary class at the other school.

**7.—(1)** In this paragraph, “designated pupil” means a pupil with special educational needs who—

(a) is a pupil at a school which is not a special school; and

(b) is normally educated in a unit which—

(i) forms part of that school, and

(ii) is specially organised to provide education for pupils with special educational needs.

(2) This paragraph applies to a child who is a designated pupil at any time when he is in a lower primary class which does not form part of the unit referred to in sub-paragraph (1)(b).

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(4) Sections 28E and 28F were inserted by the Education (Scotland) Act 1981 (c. 58), section 1(1).

(3) Where this paragraph applies to a child, regulation 4(1) shall have effect in relation to that child as if after “in another lower primary class at that school” there were inserted “(other than a class which comprises or forms part of a unit referred to in paragraph 7(1)(b) of the Schedule)”.

8. Paragraphs 3 to 5 do not apply to a recorded child.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations impose a limit on class sizes for Primary 1, 2 and 3 classes at schools managed by education authorities in Scotland.

The limit imposed is a maximum of 30 pupils in a class at any time while an ordinary teaching session is conducted by a single qualified teacher (or, where the session is conducted by more than one qualified teacher, a maximum of 30 pupils for every teacher). It will take effect as from 1st August 1999 for Primary 1 classes; from 1st August 2000 for Primary 2 classes and from 1st August 2001 for Primary 3 classes (regulation 3).

However, where certain types of children (“excepted pupils”) cannot be provided with education at the school in another class in which the limit is not exceeded without measures being taken which would prejudice efficient education or the efficient use of resources, those children are not to be counted for the purposes of ascertaining whether or not the limit of 30 is exceeded (regulation 4 and the Schedule). Excepted pupils are—

- (a) children whose record of special educational needs specify that they should be educated at the school concerned, and who are placed in the school outside a normal placing round;
- (b) children initially refused a place at a school, but subsequently on appeal offered a place outside a normal placing round or because the education authority recognise that an error was made in implementing their placing arrangements for the school;
- (c) children who cannot gain a place at any other suitable school within a reasonable distance of their home because they move into the area outside a normal placing round;
- (d) children who are pupils at special schools, but who receive part of their education at a mainstream school; and
- (e) children with special educational needs who are normally educated in a special unit in a mainstream school, but who receive part of their lessons in a non-special class.

Children in categories (a) to (c) will be treated as excepted pupils only during the school year in which they are first placed in the school. Children in category (d) or (e) will be treated as excepted pupils only when they are in a Primary 1, 2 or 3 class at the mainstream school or outside the special unit (as the case may be).

For the purposes of these exceptions, a child is placed in a school (whether by placing request or otherwise) outside the normal placing arrangements if the decision to place him at the school is taken after 30th April in the year in which he is to start attending the school.