



Education (Scotland) Act 1980

1980 CHAPTER 44

PART II

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

Children requiring special education

59 Classification and educational arrangements

The Secretary of State may make regulations defining the several categories of pupils requiring special education and making provision as to the special educational arrangements appropriate for pupils of each category.

60 Functions of education authority in relation to ascertainment of handicapped children

- (1) An education authority—
 - (a) shall have power, as regards children in their area who have not attained the age of five years, and
 - (b) shall be under a duty, as regards children in their area who have attained that age,
to ascertain which of those children require special education.
- (2) It shall be the duty of an education authority to disseminate in their area information as to the importance to any child who requires special education of the early ascertainment of his need, and of the opportunity for medical examination and psychological examination available under the following provisions of this Act

61 Examination of children

- (1) It shall not be lawful for an education authority to decide that a child requires special education, unless that child has undergone a medical examination and a psychological

examination for the purpose of affording to the authority advice as to whether or not they ought so to decide ; and accordingly, before so deciding in the case of any child, an education authority shall—

- (a) invite the parent of that child to submit the child for a medical examination and a psychological examination for the said purpose, and
 - (b) (in the case of a child who has attained the age of five years) if the parent fails to submit the child as aforesaid, by notice in writing served upon the parent require him to submit the child for a medical examination and a psychological examination for the said purpose.
- (2) A parent who submits his child for a medical examination under subsection (1) above shall be entitled to be present at that examination if he so desires.
- (3) 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, he shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding £10.
- (4) A notice served under paragraph (b) of subsection (1) above in respect of any child shall—
- (a) state that the purpose of the examinations is to afford to the education authority advice as to whether or not they ought to decide that that child requires special education;
 - (b) specify the times and places at which the examinations will be held;
 - (c) inform the parent of his right to be present at the medical examination if he so desires ;
 - (d) inform the parent of the penalty to which he will be liable if he fails without reasonable excuse to comply with the requirements of the notice.
- (5) If the parent of any child requests the education authority for the area to cause that child to be medically and psychologically examined for the purpose of affording to the authority advice as to whether or not they ought to decide that the child requires special education, the authority shall comply with the request unless in their opinion the request is unreasonable.

62 Ascertainment by education authority of children requiring special education

- (1) An education authority shall take into consideration—
- (a) the advice given to them with respect to any child in consequence of the medical and psychological examinations undergone by that child under section 61 of this Act;
 - (b) the views of the parent of the child, so far as these can be obtained;
 - (c) if the child has been at any time in attendance at any school, any reports or other information with respect to the child which they are able to obtain from the records of the school or from teachers at the school;
 - (d) any other reports or information which they are able to obtain with respect to the ability or aptitude of the child;
- and the education authority may thereafter decide that the child requires special education, and if they so decide shall—
- (i) forthwith give to the parent of the child notice in writing of their decision, and
 - (ii) thereafter ensure that any education provided by them for the child is special education.

- (2) A notice given by an education authority to a parent in pursuance of paragraph (i) of subsection (1) above shall inform the parent of his right under subsection (1) of section 64 of this Act to require the authority to issue to him a statement of the reasons for their decision, and of his right under that subsection to refer the case to the Secretary of State.

63 Review by education authority of cases of children requiring special education

- (1) It shall be the duty of an education authority to keep generally under consideration the cases of all children in their area who the authority have decided require special education, and—

- (a) when in the discharge of that duty in relation to such a child the education authority think it expedient, or
- (b) if the education authority are at any time requested to do so by notice in writing given to them by the parent of such a child,

the education authority shall review their decision that the said child requires special education:

Provided that the parent of a child who the education authority have decided requires special education shall not, by virtue of paragraph (b) above, be entitled to request the authority to review their decision earlier than the expiry of the period of 12 months from the date of that decision or more often than once in any period of 12 months subsequent to the expiry of the first-mentioned period.

- (2) For the purpose of obtaining advice in connection with a review, under subsection (1) above, of their decision that a child requires special education, an education authority may—
- (a) invite the parent of that child to submit the child for a medical examination and a psychological examination, and
 - (b) (in the case of a child who has attained the age of five years) if the parent fails to submit the child as aforesaid, by notice in writing served upon the parent require him to submit the child for a medical examination and a psychological examination.
- (3) Subsections (2) to (4) of section 61 of this Act (examination of children) shall apply for the purposes of this section as they apply for the purposes of that section, with the substitution, for the references to subsection (1) of that section, of references to subsection (2) of this section, and subject to any other necessary modifications.
- (4) In reviewing, under subsection (1) above, their decision that a child requires special education an education authority shall take into consideration—
- (a) the advice given to them with respect to that child in consequence of medical and psychological examinations undergone by the child ;
 - (b) if either the review is being carried out in pursuance of a request made to them by the parent of the child by virtue of paragraph (b) of subsection (1) above or the parent was invited, under paragraph (a) of subsection (2) above, to submit the child for medical and psychological examination in connection with the review, the views of the parent of the child, so far as these can be obtained;
 - (c) if the child has been at any time in attendance at any school, any reports or other information with respect to the child which they are able to obtain from the records of the school or from teachers at the school;

- (d) any other reports or information which they are able to obtain with respect to the ability or aptitude of the child;
- and the education authority shall thereafter either—
- (i) revoke the said decision, in which case they shall forthwith give to the parent of the child notice in writing of its revocation, and their duty to ensure that any education provided by them for the child is special education shall thereupon cease; or
- (ii) determine not to revoke the decision, in which case, if either the review was carried out in pursuance of a request made to them by the parent of the child by virtue of paragraph (b) of subsection (1) above or the parent was invited, under paragraph (a) of subsection (2) above, to submit the child for medical and psychological examination in connection with the review, they shall forthwith give to the parent such notice of their determination as is mentioned in subsection (5) below.
- (5) A notice given by an education authority to a parent in pursuance of paragraph (ii) of subsection (4) above shall be in writing and shall inform the parent of his right under subsection (1) of section 64 of this Act to require the authority to issue to him a statement of the reasons for their determination, and of his right under that subsection to refer the case to the Secretary of State.

64 Reference to Secretary of State of cases under ss. 62 and 63

- (1) Where an education authority—
- (a) decide under section 62 of this Act that a child requires special education, or
- (b) determine under section 63 of this Act not to revoke a decision made by them that a child requires special education and give to the parent of that child, in pursuance of paragraph (ii) of section 63(4) of this Act notice in writing of their determination,
- the education authority shall, if so required by the parent of the child, issue to the parent a statement of the reasons for their decision or determination, as the case may be, and where such a statement is so issued the parent may, if he is aggrieved by the decision or determination—
- (i) in the case of a decision, within the period of twenty-eight days from the date on which the statement was issued or such longer period therefrom as the Secretary of State may, either during or after the expiry of the twenty-eight days, allow,
- (ii) in the case of a determination, within the said period of twenty-eight days, refer the case to the Secretary of State.
- (2) On any reference under subsection (1) above the Secretary of State shall either confirm or refuse to confirm the decision or determination of the education authority.
- (3) Where under subsection (2) above the Secretary of State refuses to confirm the decision or determination of an education authority with respect to any child, the authority shall be deemed to have revoked their decision that that child requires special education, and—
- (a) they shall forthwith give to the parent of the child notice in writing of the revocation of the decision, and
- (b) their duty to ensure that any education provided by them for the child is special education shall thereupon cease.

65 Children who may benefit by local authority services after leaving school

- (1) Where an education authority decide that a child to whom this section applies is suffering from mental deficiency to such an extent that he may, on leaving school, benefit from services which it is the function of a local authority to provide or secure the provision of, it shall be the duty of the education authority to issue, not earlier than six months, or later than one month, before the child ceases to be of school age—
 - (a) to the parent of the child, a report of their decision, and
 - (b) to the local authority, a report of their decision together with a copy of any document which was taken into account in making the decision.
- (2) For the purpose of obtaining advice as to the carrying out of the duty imposed on them by subsection (1) above in relation to any child, an education authority may—
 - (a) invite the parent of the child to submit the child for a medical examination and (if the education authority think it expedient) a psychological examination, and
 - (b) if the parent fails to submit the child for any examination on being invited to do so under paragraph (a) above, by notice in writing served upon the parent require him to submit the child for such an examination.
- (3) Subsections (2) to (4) of section 61 of this Act (examination of children) shall apply for the purposes of this section as they apply for the purposes of that section, with the substitution, for the references to subsection (1) of that section, of references to subsection (2) of this section, and subject to any other necessary modifications.
- (4) This section applies to—
 - (a) any child in attendance at a school under the management of the education authority concerned;
 - (b) any child in attendance at a school (other than such a school as is mentioned in paragraph (a) above) in the area of the education authority concerned;
 - (c) any child who is receiving education at a school by virtue of arrangements made by the education authority concerned with the managers of that school.
- (5) In this section "local authority" has the same meaning as in the Social Work (Scotland) Act 1968.