



Education (Scotland) Act 1980

1980 CHAPTER 44

PART VII

MISCELLANEOUS PROVISIONS

General

132 Amendment of enactments.

- (1) ^{F1}
- (2) Any reference in an enactment passed before 2nd July 1945 to a school in receipt of a parliamentary grant shall, unless the context otherwise requires, be construed as a reference to a school other than an independent school.

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F1 Ss. 5, 28(2), 59, 66(2), 111(4)(5), 129(5)(6), 132(1), Sch. 2 paras. 1, 3 repealed by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 9](#)

133 Regulations, etc.

- (1) Any power conferred by this Act on the Secretary of State to make regulations shall be exercisable by statutory instrument.
 - (2) [^{F2}Subject to subsections (2A) and (2B) below,]any statutory instrument containing regulations made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [^{F3}(2A) Subsection (2) above shall not apply to the first regulations to be made under section 73(f) of this Act with respect to loans; and no such regulations shall be made (whether alone or with other regulations) unless a draft of the statutory instrument

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containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(2B) Subsection (2) above shall not apply to any regulations under section 73(f) of this Act with respect to loans, other than the regulations mentioned in subsection (2A) above, where a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.]

(3) Any direction given by the Secretary of State or an education authority under the provisions of this Act may be varied or revoked by a further direction given by the Secretary of State or that authority, as the case may be:

Provided that where the power to give any such direction is exercisable only upon the application or with the consent of any person, or after consultation with or intimation to any person or is otherwise subject to any conditions, no direction given under such power shall be varied or revoked except upon the like application, with the like consent, after the like consultation or intimation or subject to the like conditions, as the case may be.

(4) If it appears to the Secretary of State, on an application in that behalf made to him—

- (a) in relation to regulations made under section 2 or section 19(1) of this Act, by an education authority;
- (b) in relation to regulations made under section 74(1) of this Act, by any education authority or other person to whom any grant is payable under this Act;

that it is unreasonable that any provision of those regulations should apply in relation to that authority or person or to such educational establishment under the management of that authority or person as may be specified in the application, or should so apply without modification, he may, subject to subsection (5) below, direct that the said provision shall not apply in relation to that authority or person or that educational establishment or, as the case may be, shall so apply subject to such modification as may be specified in the direction.

(5) A direction under subsection (4) above—

- (a) may be given either unconditionally or subject to such conditions as may be specified in the direction;
- (b) shall not be given in respect of any provision of any regulations which is described in those regulations as not being subject to the giving of a direction under this section;
- (c) may be varied or revoked by a subsequent direction given by the Secretary of State either of his own accord or on the application of the education authority or other person on whose application the original direction was given.

Textual Amendments

F2 Words in s. 133(2) inserted (18.7.1998) by 1998 c. 30, s. 44(1), **Sch. 3 para. 4(a)** (with s. 42(8)); S.I. 1998/1729, **art. 2**.

F3 S. 133(2A)(2B) inserted (18.7.1998) by 1998 c. 30, s. 44(1), **Sch. 3 para. 4(b)** (with s. 42(8)); S.I. 1998/1729, **art. 2**.

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134 Notices.

- (1) Subject to the provisions of this section, any notice required or authorised by this Act to be served or given to any person may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it to him by post.
- (2) For the purposes of this section and of section 7 of the ^{M1}Interpretation Act 1978 (service by post) in its application to this section, the proper address of a person on or to whom any such notice as aforesaid is to be served or given shall, in the case of an education authority, be the address of any office of that authority and, in any other case, be the last known address of the person on or to whom the notice is to be served or given.
- (3) Any notice which, in accordance with the provisions of subsection (1) above, is left for a person at his proper address shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

Marginal Citations

M1 1978 c. 30.

135 Interpretation.

- (1) In this Act, unless the context otherwise requires,—
 - “the ^{M2}Act of 1882” means the Educational Endowments (Scotland) Act 1882;
 - “the ^{M3}Act of 1918” means the Education (Scotland) Act 1918;
 - “the Acts of 1928 to 1935” means the Educational Endowments (Scotland) Acts 1928 to 1935;
 - “the Act of 1937” means the ^{M4}Children and Young Persons (Scotland) Act 1937;
 - “the ^{M5}Act of 1946” means the Education (Scotland) Act 1946;
 - “the ^{M6}Act of 1962” means the Education (Scotland) Act 1962;
 - [^{F4} “additional support needs” and references to any child or young person having such needs shall be construed in accordance with section 1(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4);]
 - “attendance order” has the meaning assigned to it by section 38 of this Act;
 - ^{F5} ...
 - “central institution” means an educational establishment for the provision of further education recognised as a central institution by regulations made by the Secretary of State;
 - “child” means a person who is not
 - over school age;
 - “clothing” includes boots and other footwear;
 - ^{F6} ...
 - “dental examination” means examination by a registered dentist, so however that in conducting an examination of any such class as may be prescribed, such dentist may be assisted by other persons having such special qualifications or experience as may be prescribed;

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“dental inspection” and “dental supervision” mean, respectively, inspection and supervision by a registered dentist;

“dental treatment” includes prevention and treatment of dental diseases by or (so far as permitted by law) under the direction of any registered dentist, and the supply of appliances on the recommendation of such dentist, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at a school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil’s home;

“education authority” means a [^{F7}council constituted under section 2 of the Local Government etc. (Scotland) Act 1994], and “area” in relation to an education authority shall be construed accordingly;

“educational establishment”—

- (i) means a school ^{F8} and any ^{F9} institution for the provision of any form of further education and the premises of such school, ^{F8} or institution, and
- (ii) without prejudice to the foregoing generality, includes [^{F10}a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992,] a central institution, ^{F11}. . . a hostel used mainly by pupils attending such schools ^{F8} or institutions, and a residential institution conducted under a scheme under the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962 or Part VI of this Act, but
- (iii) does not include a university, a theological college, a hostel or other residence used exclusively by students attending a university or a theological college, or a club or other centre conducted by a voluntary society or body for the purpose of providing facilities for social, cultural or recreative activities or for physical education or training unless the society or body are in receipt of a grant from the Secretary of State or of a contribution from an education authority or have obtained the consent of the Secretary of State to the club or centre being treated in all respects as an educational establishment;

“employment” includes employment in any labour exercised by way of trade or for purposes of gain whether the gain be to the child or to the young person or to any other person, and a person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour; and “employ” shall be construed accordingly;

“employer” includes a parent who employs his children;

“enactment” includes an order, regulation, rule or other instrument having effect by virtue of an Act;

[^{F12}“enforcement direction” means a direction under section 66D(1) of this Act;]

“functions” includes powers and duties;

“further education” includes the forms of instruction, occupation and teaching described in section 1(5)(b) of this Act;

“grant-aided school” means a school in respect of which grants are made by the Secretary of State to the managers of the school other than [^{F13}(a)] grants in aid of the employers’ contributions provided for in Teachers (Superannuation) Regulations, [^{F14}and (b) sums paid under a scheme under section 75A of this Act, or by virtue of section 75B of this Act,] but does not include a public

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school ^{F5}[^{F15}... or a technology academy (within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989)];

“Health Board” means a Health Board constituted under section 2 of the ^{M7}National Health Service (Scotland) Act 1978;

“independent school” means a school at which full-time education is provided for five or more pupils of school age (whether or not such education is also provided for pupils under or over that age), not being a public school [^{F16}or a grant-aided school];

“Her Majesty’s inspectors” means the inspectors of schools appointed by Her Majesty ^{F17}. . . ;

^{F18}“managers”, in relation to an educational establishment, means the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority;

“medical examination” means examination by a registered medical practitioner: Provided that in conducting an examination of any such class as may be prescribed, such practitioner may be assisted by other persons having such special qualifications or experience as may be prescribed;

“medical inspection” and “medical supervision” mean, respectively, inspection and supervision by or under the directions of a registered medical practitioner;

“medical treatment” includes prevention and treatment of diseases by any registered medical practitioner, and the supply of appliances on the recommendation of such practitioner, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil’s home;

“nursery school” and “nursery class” have the respective meanings assigned to them by section 1(5)(a)(i) of this Act;

“officers” includes servants;

“parent” includes guardian and any person who is liable to maintain or has [^{F19}parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of] a child or young person;

[^{F20} “ placing request ” has the meaning assigned to it by section 28A(1) of this Act;]

[^{F21} “preliminary notice” means a notice under section 66C(1) of this Act;]

“premises” in relation to any educational establishment includes the site of such establishment, any building in which pupils attending such establishments are boarded whether managed by the managers of such establishment or by any other person by arrangement with such managers, and any playing fields used in connection with such establishment whether contiguous to or detached therefrom;

“prescribed” means prescribed by the Secretary of State;

“proprietor” in relation to an independent school means the managers of such school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools includes any person or body of persons proposing to be the managers;

“provisionally registered school” means an independent school registered in the register of independent schools whereof the registration is provisional only;

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F22
...

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

“pupil”, where used without qualification, means a person of any age for whom education is or is required to be provided under this Act; and a pupil shall be deemed to be attending or in attendance at a school if he is shown by the register of admission and withdrawal kept at the school in accordance with regulations made under this Act, or by any other register approved by the Secretary of State and kept for a similar purpose, to have been admitted to, but not to have been withdrawn from, or to have been readmitted to, and not thereafter to have been withdrawn from, the school; and similar expressions, whether relating to schools or to other educational establishments, shall be similarly interpreted;

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“registered school” means an independent school the registration of which in the register of independent schools is final;

“registered teacher” means a teacher registered under the ^{M8}Teaching Council (Scotland) Act 1965;

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...

[^{F24} “residential establishment” has the meaning given by paragraph (a) of the definition of that expression in section 93(1) of the Children (Scotland) Act 1995;]

“school” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school ^{F5}... or an independent school, and includes a nursery school and a special school; and the expression “school” where used without qualification includes any such school or all such schools as the context may require ^{F25};

“school age” shall be construed in accordance with section 31 of this Act;

[^{F26} “school board” has the meaning assigned to it by section 1 of the School Boards (Scotland) Act 1988;]

“school education” has the meaning assigned to it by section 1(5)(a) of this Act;

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...

^{F27}[^{F28} “special school” ^{F29}has the meaning given in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4);]

[^{F20} “specified school” has the meaning assigned to it by section 28A(1) and (2) of this Act;]

[^{F30} “supervision requirement” has the meaning given by section 70(1) of the said Act of 1995;]

“teachers’ superannuation regulations” means regulations made under section 9 of the ^{M9}Superannuation Act 1972;

“young person” means a person over school age who has not attained the age of eighteen years.

- (2) Any reference in any enactment or other instrument (including this Act and, unless the contrary intention appears, any enactment or other instrument passed or made after the commencement of this Act) to—

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- (a) primary education shall be construed as a reference to school education of a kind [^{F31}(i)] which is appropriate in the ordinary case to the requirements of pupils who have not attained the age of twelve years; [^{F32}; and (ii) which is, in the case of a pupil [^{F33}having additional support needs], within the provision made for the purpose of meeting [^{F34}those needs] until he is transferred to the stage of secondary education;]
- (b) secondary education shall be construed as a reference to school education of a kind [^{F35}(i)] which is appropriate in the ordinary case to the requirements of pupils who have attained that age; [^{F36}; and (ii) which is, in the case of a pupil [^{F37}having additional support needs], within the provision made for the purpose of meeting [^{F38}those needs] until he ceases to be of school age or to receive school education, whichever is the later.]

and any reference in any such enactment or other instrument as aforesaid to primary or secondary schools or departments or classes shall be construed accordingly.

Textual Amendments

- F4** Definition in s. 135(1) inserted (14.11.2005) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#), s. 35(1), **sch. 3 para. 3(13)(a)(i)**; S.S.I. 2005/564, art. 2
- F5** Words in s. 135(1) repealed (31.12.2004) by [Standards in Scotland's Schools etc. Act 2000 \(asp 6\)](#), s. 61(2), **sch. 3**; S.S.I. 2004/528, art. 2(b)
- F6** In s. 135(1) definition of 'college of education' repealed (16.5.1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\)](#), s. 62(3), **Sch. 10**; S.I. 1992/817, art. 3(2), **Sch. 1**
- F7** In s. 135(1) words in definition of "education authority" substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 118(9)**; S.I. 1996/323, **art. 4(1)(c)**.
- F8** Words repealed by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(2), **Sch. 11**
- F9** Word repealed by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(2), **Sch. 11**
- F10** In s. 135(1) words in definition of 'educational establishment' inserted (16.5.1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\)](#), s. 62(2), **Sch. 9 para. 7(7)**; S.I. 1992/817, art. 3(2), **Sch. 1**
- F11** In s. 135(1) words in definition of 'educational establishment' repealed (16.5.1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\)](#), s. 62(3), **Sch. 10**; S.I. 1992/817, art. 3(2), **Sch. 1**
- F12** Definition in s. 135(1) inserted (31.1.2005) by [School Education \(Ministerial Powers and Independent Schools\) \(Scotland\) Act 2004 \(asp 12\)](#), s. 9(2), **sch. 1 para. 1(8)(b)**; S.S.I. 2005/10, art. 3(c)
- F13** "(a)" inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), s. 5(2)(a)
- F14** Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), s. 5(2)(b)
- F15** Words inserted by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(1), **Sch. 10 para. 8(22)(b)**
- F16** In s. 135(1) words in definition of "independent school" substituted (31.12.2004) by [Standards in Scotland's Schools etc. Act 2000 \(asp 6\)](#), s. 61(2), **sch. 2 para. 3(9)**; S.S.I. 2004/528, art. 2(b)
- F17** Words in the definition of "Her Majesty's inspectors" repealed (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 17**, **Sch. 9**; S.I. 1998/3178, **art. 2(1)**.
- F18** Definition repealed by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(2), **Sch. 11**
- F19** Words in definition of "parent" substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 28(5)(a)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F20** Definition inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), s. 1(4)
- F21** Definition in s. 135(1) inserted (31.1.2005) by [School Education \(Ministerial Powers and Independent Schools\) \(Scotland\) Act 2004 \(asp 12\)](#), s. 9(2), **sch. 1 para. 1(8)(c)**; S.S.I. 2005/10, art. 3(c)
- F22** Definitions in s. 135(1) repealed (14.11.2005) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#), s. 35(1), **sch. 3 para. 3(13)(a)(ii)**; S.S.I. 2005/564, art. 2

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- F23** Definition of “reporter of the appropriate local authority” repealed (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 28(5)(b), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**.
- F24** Definition of “residential establishment” substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 28(5)(c)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**.
- F25** Words repealed by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), **s. 2(2)**
- F26** Definition inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 8(22)(e)**
- F27** Definition repealed by Education (Scotland) Act 1981 (c. 58), **Sch. 9**
- F28** Definition substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. I para. 4(a)(iii), **Sch. 8**
- F29** Words in s. 135(1) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **sch. 3 para. 3(13)(a)(iii)**; S.S.I. 2005/564, art. 2
- F30** Definition of “supervision requirement” substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 28(5)(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**.
- F31** “(i)” inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 2 Pt. I para. 4(b)(i)**
- F32** Words inserted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. I para. 4(b)(ii), **Sch. 8**
- F33** Words in s. 135(2)(a)(ii) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **sch. 3 para. 3(13)(b)(i)**; S.S.I. 2005/564, art. 2
- F34** Words in s. 135(2)(a)(ii) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **sch. 3 para. 3(13)(b)(ii)**; S.S.I. 2005/564, art. 2
- F35** “(i)” inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 2 Pt. I para. 4(b)(iii)**
- F36** Words inserted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. I para. 4(b)(iv), **Sch. 8 para. 1**
- F37** Words in s. 135(2)(b)(ii) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **sch. 3 para. 3(13)(b)(i)**; S.S.I. 2005/564, art. 2
- F38** Words in s. 135(2)(b)(ii) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **sch. 3 para. 3(13)(b)(ii)**; S.S.I. 2005/564, art. 2

Modifications etc. (not altering text)

- C1** S. 135(1) applied (1.9.1996) by 1996 c. 26, s. 4(3) (which inserted 1995 c. 39, **ss. 49A, 49B**); S.I. 1996/2071, **art. 2**.

Marginal Citations

- M2** 1882 c. 59.
M3 1918 c. 48.
M4 1937 (1 Edw. 8 & 1 Geo. 6 c. 37).
M5 1946 c. 72.
M6 1962 c. 47.
M7 1978 c. 29.
M8 1965 c. 19.
M9 1972 c. 11.

136 Transitional and savings provisions, amendments and repeals.

- (1) The transitional and savings provisions set out in Schedule 3 to this Act shall have effect.
- ^{XI}(2) The enactments specified in Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the consolidation under this Act.
- ^{XI}(3) The enactments set out in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

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Editorial Information

- X1** The text of s. 136(2)(3) 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.

137 Short title, commencement and extent.

- (1) This Act may be cited as the Education (Scotland) Act 1980.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on the expiry of the period of one month beginning with the date on which it is passed.
- (3) The provisions of this Act set out in Schedule 6 shall, to the extent there specified, come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (4) Subsections (5) to (7) of section 23 of this Act shall come into force on such date as the Secretary of State may by order appoint.
- (5) Any order under subsection (4) above may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or of any other provision mentioned in that subsection then in force, as appear to him to be necessary or expedient for the purpose or in consequence of the operation of any such provision before the coming into force of any other such provision.
- (5) This Act extends to Scotland only.

Subordinate Legislation Made

- P1** Power of appointment conferred by s. 137(3) not exercised
P2 1.9.1980 appointed under s. 137(4) by [S.I. 1980/1287](#), [art. 2](#)

Status:

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