

Status: Point in time view as at 31/12/2004.

Changes to legislation: Education (Scotland) Act 1980, SCHEDULE A2 is up to date with all changes known to be in force on or before 13 July 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)

SCHEDULES

[^{F1}SCHEDULE A2] S

APPLICATION OF CERTAIN PROVISIONS OF THIS ACT TO RECORDED CHILDREN AND YOUNG PERSONS

Textual Amendments

F1 Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

- 1 Sections 28B and 28D of this Act and Schedule A1 to this Act shall apply in relation to a recorded child.
- 2 Sections 28C, 28E(1) to (6) and 28F(1) and (5) to (7) of this Act shall not apply in relation to a recorded child (corresponding provision being made in sections 63 to 65 of this Act).
- 3 In relation to a recorded child, for section 28A of this Act there shall be substituted the following section—

“**28A**(1) Where the parent of a recorded child makes a written request to an education authority to place his child in the school specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2) [^{F2}, (3) and (3A)] below, to place the child accordingly; and where the parent of a recorded child makes a written request to the education authority for the area to which the child belongs (in accordance with section 23(3) of this Act) to place his child in the school specified in the request, not being a public school but being

 - [^{F3}(a) a special school the managers of which are willing to admit the child],
 - [^{F4}(b) a school in England and Wales or in Northern Ireland, the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) with pronounced, specific or complex special educational needs][^{F5}; or
 - (c) a school at which education is provided—
 - (i) by a person to whom any payment is made under section 23 of the Education (Scotland) Act 1996 (c.43); or
 - (ii) in pursuance of arrangements entered into under section 35 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6),]

it shall be the duty of the authority, subject to subsections (2) and (3) below, to meet the fees and other necessary costs of the child’s attendance at the specified school.

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Such a request so made is referred to in this Act as a “placing request” and the school specified in it is referred to in this Act as the “specified school”.

- [^{F6}(1A) The education authorities shall—
- (a) in carrying out the duty imposed on them by subsection (1) above; and
 - (b) in deciding when that duty does not apply,
- have regard to such guidance as the Scottish Ministers may give in that respect.]
- (2) Where a placing request relates to two or more schools being schools under the management of the education authority to whom it is made or [^{F7}schools mentioned in paragraph (a) or (b) of subsection (1) above] the managers of which are willing to admit the child in respect of whom the request is made, the duty imposed by [^{F7}that subsection] shall apply in relation to the first mentioned such school, which shall be treated for the purposes of this Act as the specified school.
- (3) The duty imposed by subsection (1) above does not apply—
- (a) if placing the child in the specified school would—
 - (i) make it necessary for the authority to take an additional teacher into employment;
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
 - (iii) be seriously detrimental to the continuity of the child’s education;
 - [^{F8}(iv) be likely to be seriously detrimental to order and discipline in the school; ^{F9}...
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;]
 - [^{F10}(vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child’s primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school;][^{F11}or
 - (vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;]
 - (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
 - (c) if the education authority have already required the child to discontinue his attendance at the specified school;
 - (d) if, where the specified school is a [^{F7}school mentioned in paragraph (a) or (b) of subsection (1) above], the child does not have special educational needs requiring the education or special facilities normally provided at that school;

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- (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school; or
- (f)
 - (i) the specified school is not a public school;
 - [^{F12}(ii) the authority are able to make provision for the special educational needs of the child in a school under their management;
 - (iia) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the special educational needs of the child in the specified school and in the school under the authority’s management, to place the child in the specified school; and]
 - (iii) the authority have offered to place the child in the school referred to in sub-paragraph (ii) above,

but an education authority may place a child in the specified school notwithstanding paragraphs (a) [^{F13}to (e)] above.

[^{F14}(3A) ^{F15} . . . the duty imposed by subsection (1) above does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school; but nothing in this subsection shall prevent an education authority from placing a child in the specified school.

^{F16}(3B)

(3C) In subsection (3A) above, “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as may be prescribed by regulations) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1 August to which the placing request relates; and different numbers or, as the case may be, percentages may be prescribed under this subsection for the purpose of different cases or circumstances.

(3D) In subsections (3A) and (3C) above, “catchment area” means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of this Act.

^{F16}(3E)]

(4) An education authority shall inform a parent in writing of their decision on his placing request and, where they decide to refuse it, shall give him written reasons for their decision and inform him of his right to refer it under section 63 of this Act to an appeal committee.

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- (5) On complying with a placing request an education authority shall modify accordingly the nomination in the child's Record of a school to be attended by him.
- (6) The Secretary of State may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with subsection (4) above within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes."

Textual Amendments

- F2** Sch. A2 para. 3: words in s. 28A(1) substituted (18.9.1996) by 1996 c. 43, s. 33(2); S.I. 1996/2250, art. 2
- F3** Sch. A2 para. 3: words "a special school the managers of which are willing to admit the child" have become paragraph (a) of s. 28A(1) as substituted by Sch. A2 by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c.39, SIF 41:2), s. 71(1)
- F4** Sch. A2 para. 3: s. 28A(1)(b) inserted by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c.39, SIF 41:2), s. 71(1)
- F5** Sch. A2 para. 3: s. 28A(1)(c) and the preceding word inserted (13.10.2000) by 2000 asp 6, s. 44(7); S.S.I. 2000/361, art. 3(1), Sch. Pt. I
- F6** S. 28A(1A) inserted (13.10.2000) by 2000 asp 6, s. 44(3); S.S.I. 2000/361, art. 3(1)(2), Sch. Pt. I
- F7** Words substituted by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c.39, SIF 41:2), s. 71(1)
- F8** S. 28A(3)(a)(iv)(v) substituted for s. 28A(3)(a)(iv) and the preceding word (18.9.1996) by 1996 c. 43, s. 33(3); S.I. 1996/2250, art. 2
- F9** Word in Sch. A2 para. 3 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)
- F10** S. 28A(3)(a)(vi) added (13.10.2000) by 2000 asp 6, s. 44(4); S.S.I. 2000/361, art. 3(1)(2), Sch. Pt. I
- F11** Words in Sch. A2 para. 3 added (31.12.2004 in so far as not already in force) by Standards in Scotland's Schools etc. Act 2000 (asp 6), ss. 44(4), 61(2); S.S.I. 2004/528, art. 2(b)
- F12** Subparagraphs (ii)(ia) substituted for subparagraph (ii) of S. 28A(3)(f) (as substituted by Sch. A2) by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 71(1)
- F13** Words substituted by virtue of Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 71(1)
- F14** Sch. A2: s. 28A(3A)-(3E) inserted (18.9.1996) by 1996 c. 43, s. 33(4); S.I. 1996/2250, art. 2
- F15** Words in s. 28A(3A) repealed (13.10.2000) by 2000 asp 6, s. 44(5); S.S.I. 2000/361, art. 3(1)(2), Sch. Pt. I
- F16** S. 28A(3B)(3E) repealed (13.10.2000) by 2000 asp 6, s. 44(6); S.S.I. 2000/361, art. 3(1)(2), Sch. Pt. I

- 4 (1) Sections 28A, 28B and 28D of this Act and Schedule A1 to this Act shall, subject to the provisions of this paragraph, apply in relation to a recorded young person as they apply in relation to a recorded child.
- (2) For the purposes of the application of those provisions to recorded young persons, references therein to the parent of a recorded child as well as references to the child himself shall, subject to sub-paragraph (3) below, be construed as references to the recorded young person.
- (3) Sub-paragraph (2) above does not apply in a case where, for the purposes of section 61(7) of this Act, the education authority were satisfied that the young person was not capable of expressing his views for the purposes of that section.

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- 5 Sections 28C, 28E(1) to (6) and 28F(1) and (5) to (7) of this Act shall not apply in relation to a recorded young person (corresponding provision being made in sections 63 to 65 of this Act).
- 6 Section 28G of this Act shall not apply in relation to a recorded young person (corresponding provision being made in paragraph 4 of this Schedule).

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