



# Education (Scotland) Act 1981

## 1981 CHAPTER 58

### *Special educational needs*

#### **4 Children and young persons with certain special educational needs**

- (1) For sections 60 to 65 of the principal Act there shall be substituted the following sections—

**“60 Functions education authority in relation to children and young persons with certain special educational needs.**

- (1) It shall be the duty of an education authority to disseminate in their area information as to the importance of the early discovery of special educational needs and as to the opportunity for assessment available under the following provisions of this Act.
- (2) An education authority—
- (a) shall have power, as regards—
    - (i) children in their area who have not attained school age; and
    - (ii) young persons belonging to their area (in accordance with section 23(3) of this Act) who are receiving school education; and
  - (b) shall be under a duty, as regards children belonging to their area (in accordance with section 23(3) of this Act) who are of school age, in accordance with the provisions of section 61 of this Act, to establish which of those children or, as the case may be, young persons have pronounced, specific or complex special educational needs which are such as require continuing review and to open and keep a Record of Needs of each such child or young person.
- (3) In this Act, unless the context otherwise requires, " Record ", when used as a noun, means a Record of Needs opened and kept under subsection (2) above and " recorded " and other cognate expressions shall be construed accordingly.

- (4) A Record shall not be disclosed by an education authority otherwise than in accordance with regulations made under section 65D(1)(e) of this Act.
- (5) The power of an education authority under subsection (2)(a)(ii) above shall be exercisable in relation to a young person only on a request to that effect being made to the authority by the young person or his parent.

### **61 Examination and assessment of children and young persons.**

- (1) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a child has pronounced, specific or complex special educational needs such as require continuing review and to record him unless he has undergone a process of assessment, including a medical examination and a psychological examination and a report by any teacher in their employment who is or has been concerned in his education, for the purpose of affording to the authority advice as to his special educational needs and whether or not they ought to record him ; and before doing so, an authority shall—
  - (a) invite the parent of that child by notice in writing 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 is of school age) if the parent fails without reasonable excuse 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 in pursuance of subsection (1) above or subsection (6) below shall be entitled to be present at that examination.
- (3) A notice under paragraph (a) or (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 his special educational needs and whether or not they ought to record the child;
  - (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 ;
  - (d) inform the parent of the name of the officer of the authority from whom advice and further information may be obtained;
  - (e) invite the parent to express in writing to the authority, within 21 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the child and the measures required to meet those needs;
 and a notice under the said paragraph (b) shall in addition inform the parent of the effect of subsection (4) below.
- (4) 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 summary conviction to a fine not exceeding £50.

- (5) The duty imposed by section 60(2) of this Act shall not apply if the parent of the child has had notice served upon him under subsection (1)(b) above and has failed to comply with that notice.
- (6) If the parent of any child requests the education authority for the area to which the child belongs (in accordance with section 23(3) of this Act) to make arrangements for the child to undergo such process of assessment as is mentioned in subsection (1) above for the purpose mentioned there, the authority shall comply with the request unless in their opinion the request is unreasonable.
- (7) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a young person has pronounced, specific or complex special educational needs such as require continuing review and to record him unless—
  - (a) that young person has undergone such process of assessment as the authority consider necessary for the purpose of affording to them advice as to his special educational needs and whether or not they ought to record him ; and
  - (b) that young person or, where the education authority are satisfied that a young person is not capable of expressing his views for the purposes of this section, his parent has been invited by the authority, by notice in writing, to express to the authority, within 14 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the young person and the measures required to meet those needs.

## **62 Recording of children and young persons.**

- (1) In deciding whether or not to record a child or young person an education authority shall take into consideration—
  - (a) in the case of a child, the advice given to them with respect to the child in consequence of the process of assessment undergone by him in pursuance of section 61(1) or (6) of this Act;
  - (b) in the case of a young person, the advice given to them with respect to the young person in consequence of the process of assessment undergone by him in pursuance of section 61(7) of this Act;
  - (c) any views expressed by the parent of the child, or by the young person or, where the education authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent;
  - (d) if he has been at any time in attendance at any school other than one under their management, any reports or other information with respect to him obtained by them from the managers of the school or from teachers at the school;
  - (e) any other reports or information relevant to his educational needs which they are able to obtain.
- (2) The decision of an education authority whether or not to record a child or young person, the reasons for that decision and the terms in which the education authority propose to record the child or young person shall be intimated forthwith by notice in writing to the parent of the child or, in a case

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where the authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, to his parent or, in any other case, to the young person, and the education authority shall, in recording the child or young person, have regard to any views expressed upon these terms by the parent of the child or of the young person or, as the case may be, the young person, within 14 days of the date of the notice, and thereafter notify him of—

- (a) their decision as to those terms ;
- (b) the right of appeal under section 63 of this Act; and
- (c) the name and address of the person to whom application may be made for advice and information about the child's or young person's special educational needs.

- (3) An education authority shall ensure that the provision made by them under this Act for a recorded child or a recorded young person includes provision for his special educational needs.

### **63 Appeals against decisions about recorded children or young persons.**

- (1) The parent of a recorded child may refer to an appeal committee set up under section 28D of this Act—
- (a) a decision of an education authority to record the child or, following a review under section 65A of this Act, to continue to record him;
  - (b) their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in his Record or any such decision following a review under section 65A of this Act;
  - (c) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by him or any such decision following a review under section 65A of this Act;
  - (d) subject to subsection (4) below, their decision refusing his placing request in respect of the child.
- (2) Where the education authority were satisfied that a young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent and, in any other case, the young person himself may refer to an appeal committee set up under section 28D of this Act—
- (a) a decision of the education authority, in accordance with section 62 of this Act or following a review under section 65A of this Act, as to the terms in which the matters specified in section 65D (2)(a) or (b) of this Act are recorded in the young person's Record;
  - (b) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the young person or any such decision following a review under section 65A of this Act;
  - (c) subject to subsection (4) below, their decision refusing a placing request in respect of the young person.
- (3) A decision of an education authority as to nomination of a school to be attended by a recorded child or recorded young person may be referred under subsection (1)(c) or (2)(b) above only if the parent or, as the case may be, the young person has made a placing request.

- (4) Where a reference under subsection (1)(c) or (d) or (2)(b) or (c) above has been made in respect of a recorded child or recorded young person, no further such reference in respect of him shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (5) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent or, as the case may be, the young person of the notification of the decision of the education authority as to the terms in which they have recorded the child or young person (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following), but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.
- (6) The Secretary of State may by regulations make provision for procedure in relation to references made under this section and regulations made under this section may include provision—
  - (a) requiring the education authority to make information relevant to their decision available to the committee and to the parent or, as the case may be, young person referring that decision to the committee ;
  - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority in relation to which a reference to the committee was made in the event of the committee's not having complied with section 64(10) of this Act 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.

#### **64 Provisions supplementary to section 63.**

- (1) Where—
  - (a) an appeal committee are satisfied that a reference to them under section 63 of this Act is made under subsection (1)(a) or (b) or (2)(a) of that section ; or
  - (b) an appeal committee consider that, without having the decision of the Secretary of State on the question whether or not a child should be recorded or on the matters specified in section 65D(2)(a) or (b) of this Act in relation to a child or young person, they cannot deal with a reference made under section 63(1)(c) or (2)(b) of this Act which relates to the education authority's decision as to the nomination for the purposes of section 65D(2)(d) of this Act of a school to be attended by the child or young person,  
they shall in turn refer the reference or, as the case may be, that question or so much of the reference as relates to matters specified in section 65D(2)(a) or (b) of this Act to the Secretary of State.
- (2) Subject to subsection (1) above, an appeal committee may, on a reference made to them under section 63(1) or (2) of this Act, confirm the education authority's decision as to nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the child or young person to whom

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the reference relates or refusing a placing request in respect of him if they are satisfied that—

- (a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act as it applies to recorded children or, as the case may be, recorded young persons exists or exist; and
- (b) it is, in all the circumstances, appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where they so refuse, require the education authority to place the child or young person in the specified school.

In this subsection, the reference to a placing request includes a reference to a placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made ; and the reference to the specified school includes a reference to the school specified in such a placing request.

- (3) Where, in the case of a recorded child or recorded young person—
  - (a) an appeal committee refuse to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing a placing request in respect of him ; and
  - (b) the specified school is an independent or grant-aided special school, the committee shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school, and the authority shall comply with that requirement.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

- (4) On a reference to him under subsection (1) above the Secretary of State shall, subject to subsection (7) below—
  - (a) confirm or refuse to confirm the education authority's decision to record or to continue to record the child ;
  - (b) confirm, with or without modification, the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of the child or young person.
- (5) Where the Secretary of State refuses, under paragraph (a) of subsection (4) above, to confirm an education authority's decision to record a child or to continue to record a child, he shall direct the authority to discontinue the Record of the child and the authority shall comply with such a direction.
- (6) Where the Secretary of State, under subsection (4)(b) above, confirms with modifications an education authority's decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of a child or young person, he shall direct the authority to modify the Record accordingly and the authority shall comply with such a direction.
- (7) Where a reference has in turn been made to the Secretary of State under paragraph (b) of subsection (1) above, the Secretary of State shall not—

- (a) refuse to confirm the decision of the education authority to record or to continue to record the child ; or
- (b) confirm, with modifications, their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) are recorded in the Record of the child or young person

unless he has first obtained and taken into consideration the views of the parent or young person who made the reference to the appeal committee.

- (8) The Secretary of State shall notify his decision under this section to the appeal committee, the person who made the reference to the appeal committee and the education authority.
- (9) Where, on a reference to an appeal committee under section 63 of this Act, the committee have in turn referred the reference or any part thereof to the Secretary of State under subsection (1)(a) or (b) above, they shall not dispose of so much of the reference as relates to the school to be attended by the child or young person until the Secretary of State's decision upon the matter referred in turn to him is notified to the appeal committee and they shall reach their decision as respects the school to be attended by the child or young person in the light of the Secretary of State's decision.
- (10) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent or, as the case may be, young person who made the reference to them and to the education authority and, where they confirm the education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, they shall inform the parent or, as the case may be, the young person who made the reference to them of his right of appeal to the sheriff under section 65 of this Act.
- (11) Where, on a reference under section 63(1) or (2) of this Act, an appeal committee refuse to confirm an education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, the authority shall place him in the specified school and shall amend accordingly any nomination in his Record of a school to be attended by him.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

### **65 Appeal to sheriff on the placing in a school of a recorded child or young person.**

- (1) A parent or young person who has made a reference to an appeal committee under section 63(1)(c) or (d) or 1(b) or (c) of this Act may appeal to the sheriff against the decision of the appeal committee on that reference.
- (2) Subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this section.
- (3) Where the sheriff considers that, without having the decision of the Secretary of State on the question whether or not the child should be recorded or on

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the matters specified in section 65D(2)(a) or (b) of this Act in relation to the child or young person, he cannot deal with an appeal under this section against the decision of an appeal committee confirming the decision of an education authority as to the nomination of a school to be attended by the child or young person, he may, subject to subsection (5) below, on the motion of a party to the appeal, refer that question or those matters to the Secretary of State.

- (4) The Secretary of State shall deal with a reference made to him under subsection (3) above as if it were a reference made to him under section 64(1) of this Act.
- (5) The sheriff shall not make a reference to the Secretary of State under subsection (3) above if the appeal committee, in reaching the decision appealed against, have already referred the reference to them to the Secretary of State under section 64(1) of this Act.
- (6) Subject to subsection (3) above, the sheriff may, on an appeal made to him under this section, confirm the education authority's decision if he is satisfied that—

- (a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act, as it applies to recorded children, or as the case may be, recorded young persons, exists or exist; and
- (b) it is, in all the circumstances, appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where he so refuses, require the education authority to place the child or young person in the specified school and to amend accordingly any nomination in the Record of the child or young person of a school to be attended by him.

In this subsection, the reference to the placing request includes a reference to the placing request the making of which enabled, by virtue of section 63(3) of this Act, the reference to the appeal committee whose decision thereon has been appealed to the sheriff, to be made; and the reference to the specified school includes a reference to the school specified in such a placing request.

- (7) Where, in the case of a recorded child or recorded young person—
- (a) the sheriff refuses to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing the placing request made in respect of him; and
- (b) the specified school is an independent or grant-aided school,
- the sheriff shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school.

In this subsection the references to the placing request and the specified school shall be construed in the same way as in subsection (6) above.

- (8) The sheriff shall dispose of—
- (a) any appeal against the decision of an appeal committee on a reference which was, in turn, referred to the Secretary of State under section 64(1) of this Act;
- (b) any appeal in relation to which he has referred any matter or question to the Secretary of State under subsection (3) above
- in the light of the Secretary of State's decision on the reference to him.



### **65A Review by education authority of decision to record and information in Record.**

- (1) Subject to subsection (2) below, it shall be the duty of an education authority to keep under consideration the cases of all recorded children and recorded young persons belonging to their area (in accordance with section 23(3) of this Act), and—
  - (a) when in the discharge of their duty in relation to such a child or young person the authority think it expedient; or
  - (b) if the authority are at any time requested to do so by notice in writing given to them by the parent of such a child or by such a young person or, where the authority are of the opinion that such a young person is not capable of expressing his views, by his parent,the authority shall review their decision to record the said child or young person and the information entered in the Record of that child or young person.
- (2) The parent of a recorded child, a recorded young person or, as the case may be, the parent of a recorded young person shall not, by virtue of subsection (1) (b) above, be entitled to request the authority to review—
  - (a) their decision to record the child or young person earlier than the expiry of the period of 12 months from the date of that decision or the most recent review of that decision, whichever is the later ;
  - (b) the information entered in the Record for the purposes of section 65D(2)(a), (b) or (c) of this Act earlier than the expiry of the period of 12 months from the date of commencement of the Record or the most recent review of the information entered therein, whichever is the later.
- (3) Sections 61 and 62 of this Act shall apply to a review by an education authority of their decision to record a child or young person and of the information contained in the Record of a child or young person with such modifications as the Secretary of State may by regulations prescribe.

### **65B Future provision for recorded children.**

- (1) It shall be the duty of an education authority in accordance with this section to consider in relation to each recorded child belonging to their area (in accordance with section 23(3) of this Act) what provision would benefit him after he ceases to be of school age and to make a report thereon.
- (2) The education authority shall perform the duty imposed on them under subsection (1) above during the period beginning 2 years before the child ceases to be of school age and ending 9 months before then.
- (3) Sections 61 and 62 of this Act shall apply to the process of consideration under this section with such modification as the Secretary of State may by regulations prescribe.
- (4) The duty of consideration imposed by subsection (1) above may be performed in conjunction with a review in relation to the child under section 65A of this Act.

- (5) The education authority's report under subsection (1) above shall include their recommendation as to—
- (a) whether the child would benefit from school education after he ceases to be of school age; and
  - (b) if the recommendation under paragraph (a) above is that he would benefit therefrom, whether or not his Record should be discontinued in accordance with section 65C(3) of this Act after he ceases to be of school age,
- and they shall send a copy of the report to the child's parent and inform him of the right to have the Record discontinued under section 65C(3) of this Act.
- (6) In any case where they consider it appropriate to do so, the education authority shall, in accordance with subsection (7) below, send a copy of their report to—
- (a) the local authority for the purposes of the Social Work (Scotland) Act 1968 falling to perform functions under that Act in relation to the child ;
  - (b) the health board for the area in which the child resides; and
  - (c) with the consent of the child's parent, any other body being a body making provision from which, in their opinion, he might benefit.
- (7) The education authority shall, where possible, perform their duty under subsection (6) above not later than 6 months before the child or young person to whom the report referred to in that subsection relates is expected to cease receiving school education.

#### **65C Continuance of Record of young persons.**

- (1) Where a recorded child ceases to be of school age but, as a young person, receives school education, the education authority shall, subject to subsection (3) below, continue his Record for so long as he receives such education.
- (2) If and for so long as a Record is continued under subsection (1) above, the provisions of this Act relating to the opening and keeping of Records of recorded young persons (other than section 60 (5) of this Act) shall apply in relation to it, and the child whose Record is so continued shall be deemed to be a recorded young person.
- (3) An education authority shall discontinue the Record of a young person if he requests them to do so or, where the authority are of the opinion that he is not capable of expressing a request for the purposes of this section, his parent so requests.

#### **65D Regulations regarding Records.**

- (1) The Secretary of State shall by regulations prescribe—
  - (a) the form of a Record ;
  - (b) the nature of the information to be entered therein;
  - (c) the procedure to be followed in relation to the keeping, discontinuance and destruction of a Record and its transfer on the recorded child or recorded young person moving from the area of one education authority to that of another;

- (d) the period for which a Record must be preserved after its discontinuance;
  - (e) the persons to whom an education authority—
    - (i) shall, at the request of such a person, disclose a Record ; and
    - (ii) may disclose a Record, and the manner of such disclosure ;
  - (f) such other matters relating to Records as are in his opinion necessary or expedient, and the Secretary of State may—
    - (i) under paragraph (c) of this subsection, prescribe different procedures in different circumstances;
    - (ii) under paragraph (d) of this subsection, prescribe different periods in different circumstances; and
    - (iii) under paragraph (e) of this subsection, prescribe different persons and different manners of disclosure for different purposes.
- (2) Regulations under subsection (1) above shall provide that a Record shall include four parts containing respectively—
- (a) a summary of the child's or young person's impairments;
  - (b) a statement of the special educational needs arising from those impairments;
  - (c) a statement of the measures proposed by the education authority to be taken to meet those needs; and
  - (d) where appropriate, the nomination of a school to be attended by him.

**65E Application of certain provisions of this Act to recorded children and young persons.**

Schedule A2 to this Act (which modifies certain provisions of this Act in their application to recorded children and young persons) shall have effect.

**65F Secretary of State may prescribe standards etc. for special schools.**

Without prejudice to section 2 of this Act, the Secretary of State may make regulations prescribing standards and general requirements relating to the conduct of schools making provision for recorded children or recorded young persons.”.

- (2) The enactments specified in Part II of Schedule 2 to this Act shall have effect subject to the amendments specified there.
- (3) There shall be inserted before Schedule 1 to the principal Act the Schedule set out in Schedule 3 to this Act which shall form Schedule A2 to the principal Act.