

# SCHOOL EDUCATION (MINISTERIAL POWERS AND INDEPENDENT SCHOOLS) (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Independent schools**

##### *Section 5 – Regulation of registered schools*

37. [Section 5](#) revises the provisions for regulating independent schools. It inserts a new section 98E and makes amendments to sections 99, 100 and 101 of the 1980 Act.
38. Section 98E gives the Scottish Ministers power to impose, vary or revoke any condition on a registered school if they are satisfied that it is necessary in order to prevent that school becoming objectionable on any of the grounds set out in section 99(1A). Scottish Ministers can also vary or revoke conditions on the application by the proprietor of the school. Provision is also made for appeal by the proprietor, to the sheriff principal, against the imposition or variation of a condition or against a refusal to vary or revoke a condition.
39. [Section 5\(2\)](#) amends section 99 of the 1980 Act and specifies the grounds on which the Scottish Ministers can serve a notice of complaint, the circumstances in which they do not require to serve such a notice, the contents of a notice, and the rights of appeal attached to it.
40. Section 99(1A) adds a number of new grounds to those contained within section 99 of the 1980 Act. Those existing grounds are as follows: that efficient and suitable instruction is not being provided at the school; that the welfare of a pupil attending the school is not adequately safeguarded and promoted; that the premises or any part of them are unsuitable for a school; and that the accommodation provided is inadequate or unsuitable for the number, ages and sex of the pupils attending the school.
41. The additional grounds are set out in paragraphs (d) to (j) of section 99(1A). Under paragraphs (d), (e) and (f), notices of complaint require to be served in the event that the Scottish Ministers are satisfied that any condition imposed on the carrying on of the school has not been complied with; that any part of the school premises has been disqualified from being used as a school; that any accommodation at the school premises is disqualified from being used as such, or is being used for a number of pupils or pupils of an age or sex for which it has been disqualified.
42. Paragraphs (g) and (h) require a notice of complaint to be served where Scottish Ministers are satisfied that the proprietor of, or a teacher at, the school has been disqualified under the Act, is disqualified from working with children, is a prescribed person or is otherwise not a proper person to be a proprietor or a teacher.

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43. Paragraph (j) requires a notice of complaint to be served where the proprietor of a school has not provided the Registrar with information required under section 98(3), or has not notified the Registrar of any change in information previously submitted.
44. Section 99(1B) allows the Scottish Ministers to act without serving a notice of complaint if they are satisfied that the circumstances require urgent action, for example, where the welfare of the pupils is at risk. This section allows Ministers to make an order under section 100(2) without first serving a notice of complaint.
45. Section 99(1C) outlines the form which a notice of complaint is to take. It is to specify the ground of the complaint, with a full description of the matter complained of, the remedial measures to be taken, and the period for compliance. Section 99(2) remains, although the wording is amended by paragraph 1(3) of schedule 1 to the Act, and provides for a copy of the notice to be served on the teacher, where the notice is served on the grounds that the teacher is disqualified, is a prescribed person or is not a proper person. Section 99(3) provides for an appeal by a proprietor to the sheriff principal against a notice of complaint.
46. Section 100 of the 1980 Act deals with the determination of complaints. It specifies the circumstances in which the Scottish Ministers can make orders as a result of a notice of complaint having been served against a registered school, and the rights of appeal open to proprietors and teachers against any such order.
47. The new section 100(1) which the Act introduces describes the circumstances in which the Scottish Ministers can make an order as the result of a notice of complaint. There are three such circumstances. Firstly, an order can be made after a notice of complaint has been served on the proprietor and no appeal has been made, or alternatively where an appeal has been made but refused, and the period in the notice has expired and the Scottish Ministers are not satisfied that the proprietor has taken satisfactory action to remedy the matter. Secondly, an order can be made where a notice of complaint has been served, an appeal has been lodged but no decision has yet been made and where, pending that decision, the Scottish Ministers are satisfied that there is a serious risk of harm to any pupil attending the school. Finally, there is also provision for the Scottish Ministers to make an order without a prior notice of complaint if they are satisfied that urgent action is required.
48. Subsection (2) details the different forms of order which the Scottish Ministers may make. They can make an order directing the Registrar to remove the school from the register. Disqualification orders can also be made with regard to premises, accommodation, proprietors or teachers. In addition, orders can be made imposing, or varying conditions on the school.
49. Subsection (3) details the persons who are to be notified by Scottish Ministers when they make an order under subsection (2). They are required to notify the proprietor, the Registrar and any other person or body they think fit. Where the order is one to disqualify a teacher, Scottish Ministers must also notify that teacher.
50. Subsections (3A) to (3C) deal with appeals which can be made against disqualification orders.
51. Section 100(4) of the 1980 Act remains, although modified to remove the reference to the Tribunal and the Secretary of State, substituting reference to an order made under this Part of the Act. This provides that any proprietor disqualified from being a proprietor, or any teacher disqualified from being a teacher, will unless specifically stated otherwise, be disqualified from being both a proprietor of an independent school and a teacher at any school.
52. Section 101 of the 1980 Act covers the enforcement of orders and describes the penalties available. The penalties relating to each offence remain the same: the individual will be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for up to three months, or to both. The offences apply in relation

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to the following: under subsection (1), any person running an independent school that is not registered; under subsection (2), a person using school premises, any part of such premises, or accommodation subject to a disqualification order made under this Act; under subsection (3), any person acting as the proprietor of an independent school when disqualified from doing so by an order; and, under subsection (3A), any person disqualified from being a teacher in any school if they endeavour to get a position as a teacher, accept such a position or teach in any school.

53. [Section 101\(4\)](#) is amended and updated (by schedule 1 to the Act) to refer to the current provision on disqualification in England and Wales, so that a person disqualified in England and Wales would automatically be disqualified for the purposes of this Part of the 1980 Act.