

STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

EXPLANATORY NOTES

THE ACT

Pre-school children

Section 32 – Provision of education for pre-school children etc.

69. As currently drafted, section 1(2) of the 1980 Act empowers an education authority to make provision for nursery education for its area, but does not require it to do so. Section 32 of the Act now imposes a duty on the authority in relation to nursery provision, in terms of requiring it to secure the provision of pre-school education for such categories of children as may be prescribed by the Scottish Ministers. In practice, the categories that will be prescribed under this new provision will broadly be 3 and 4 year olds.
70. The policy intention is that authorities should work in partnership with providers in the voluntary and private sectors to ensure that adequate and appropriate provision is made. Specific provision is made in section 35 to enable an authority to contract with third parties for the provision of nursery education that would be paid for by the authority. Effectively, the authority would commission places in private and voluntary pre-school centres to ensure that adequate and appropriate provision was available for all children coming within the prescribed category. Provision would therefore be a mix of local authority and voluntary/private sector provision, but the exact mix would be determined by the authority on whom the duty to secure provision is imposed in the first place.
71. **Section 32(3)** adds three new subsections after section 1(1) of the 1980 Act. Subsections (1A) and (1B) require local authorities to secure pre-school education for such categories of children and duration as may be identified by the Scottish Ministers by order.
72. Subsection (1C) gives local authorities the power to secure additional provision for all pre-school children beyond the requirements of the pre-school duty – for example – full-time provision for four year olds or provision for two year olds.
73. To help clarify the effect of these provisions, they have been incorporated into section 1 of the 1980 Act for illustrative purposes, as shown in the annex.

Section 33 – Fees

74. **Section 33(1)** prevents authorities from charging fees in respect of pre-school provision provided under the duty in section 1 of the 1980 Act (as amended by section 32 of this Act).
75. **Section 33(2)** allows authorities to charge for pre-school education where the provision secured goes beyond that required by the statutory duty.

76. **Section 33(4)** adds new subsection (7) to section 3 of the 1980 Act (which sets out exceptions to the general rule that authorities may not charge for school education). This additional subsection prevents a local authority from making use of the general exceptions to the rule against charging for school education where they provide pre-school education under section 1 of the 1980 Act (as amended by section 32 of this Act) either under the duty or the discretionary power. This is to avoid any confusion between this section and section 3 of the 1980 Act.

Section 34 – Guidance to education authorities as respects discharge of certain functions

77. **Section 34** gives the Scottish Ministers the power to issue guidance to local authorities about their functions in relation to pre-school education. This covers their power under section 33(2) of the Act to charge fees, as well as their pre-school functions under the 1980 Act.

Section 35 – Provision of school education by persons other than education authorities

78. **Section 35** allows local authorities to secure pre-school provision by entering into arrangements with other persons, for instance private or voluntary pre-school centres. This section gives a statutory base to the pre-school partnership arrangements which involve private and voluntary providers in public-funded pre-school education.

Section 36 – Inspection of establishments other than schools

79. **Section 36** substitutes a new section 66(1A) of the Education (Scotland) Act 1980. The present section 66(1A) links the power of inspection to the receipt of pre-school grant, which will in due course become redundant. The revised section 66(1A) gives Scottish Ministers the power to require inspection of all establishments that provide publicly funded school education to pre-school children, including those in the private and voluntary sector where there is an arrangement under section 35 of the Act.

Section 37 – Provision of transport etc. by education authority

80. **Section 37** gives education authorities the power to make arrangements for children receiving publicly-funded pre-school education to receive transport from home to their pre-school class (whether by providing transport or by offering assistance with transport costs). The discretion in section 37 is absolute and authorities are free, if they choose, to provide no transport.

Section 38 – Admission of children under school age to primary school

81. **Section 38(1)** requires an education authority to provide primary school education for a child under school age if their parents request it, and if it is appropriate to the aptitude and ability of that child. The authority has a discretion as to the school in which they place the child.

Section 39 – Repeal of Part II of Education (Scotland) Act 1996

82. **Section 39** repeals Part II of the Education (Scotland) Act 1996, which gave the Scottish Ministers powers to make grants for the education of children under school age. These provisions are the statutory base for the present pre-school grant system and will not be necessary when the funds for this service are re-integrated into general local government resources and the new pre-school duty is brought into force.

Section 40 – Education outwith school

83. Section 14 of the 1980 Act gives an education authority a discretionary power to educate a pupil elsewhere than at an educational establishment if they are satisfied that by reason

of any extraordinary circumstances, the pupil is unable to attend a suitable educational establishment. Section 40 re-enacts that provision in a substituted new section 14 of the 1980 Act as section 14(1)(a). The ambit of that provision is extended to include also circumstances where it would be unreasonable to expect the pupil to attend a suitable educational establishment. In addition, the new section 14 introduces a new statutory duty on education authorities to educate “without undue delay” pupils who are not receiving education in the usual way at an educational establishment.

84. There are 3 categories of pupil covered by this new duty inserted in the re-enacted section 14:
- (i) pupils suffering from prolonged ill-health;
 - (ii) pupils exempted under section 34(1) of the 1980 Act from attending school because they are required to give assistance as carers to ill or infirm members of their families; and
 - (iii) pupils who have been excluded from school by the education authority.
85. In the case of the first 2 categories, the education authority is under a duty to make special arrangements to educate these children away from an educational establishment, which would normally be at home. In the second category, where pupils are caring for a family member, the duty is to make arrangements “in so far as is practicable”. This is to ensure that the arrangements made will fit with the pupil’s caring responsibilities. In the case of excluded children, the duty is without undue delay to find an alternative educational establishment to provide education, failing which to educate them under similar special arrangements to the first 2 categories.

Section 41 – Rights of appeal against exclusion from school

86. At present, the parent of the pupil, or the pupil where the pupil is a young person, can appeal against exclusions. Section 41 extends the right to appeal to include pupils with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991. In effect, it allows pupils under 16, as long as they have legal capacity, to appeal on their own behalf, independently of their parents.

Section 42 – Grants in respect of activities relating to school education

87. Section 73 of the Education (Scotland) Act 1980 gives the Scottish Ministers power to give grants to fund training and development. However, it does not cover grants to fund projects where there may be a non-education element. This provision would allow slightly greater flexibility in grant giving which may be needed in relation to funding, especially in respect of the early years sector.