
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 90

EDUCATION

The Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002

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| <i>Made</i> | - - - - | <i>4th March 2002</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>7th March 2002</i> |
| <i>Coming into force</i> | - - | <i>1st April 2002</i> |

The Scottish Ministers, in exercise of the powers conferred by sections 1(1A) and 1(1B) of the Education (Scotland) Act 1980⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 and shall come into force on 1st April 2002.

(2) In this Order—

“primary school” does not include a nursery class in such a school;

“school year” means a period of 12 months commencing on 1st August of any year;

“starting point”, in relation to a child, means—

- (a) where a child’s third birthday falls on or between 1st March and 31st August, the autumn term immediately following that birthday;
- (b) where a child’s third birthday falls on or between 1st September and 31st December, the spring term immediately following that birthday; and
- (c) where a child’s third birthday falls on or between 1st January and the last day of February, the summer term immediately following that birthday;

“the 1980 Act” means the Education (Scotland) Act 1980.

(3) For the purposes of this Order the terms of a school year shall be taken to commence during the following periods—

as respects the autumn term, the period 1st August to 31st December;

(1) 1980 c. 44. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Sections 1(1A) and 1(1B) were inserted by section 32(3) of the [Standards in Scotland’s Schools etc. Act 2000](#) (asp 6).

as respects the spring term, the period 1st January to the last day of February; and
as respects the summer term, the period 1st March to 31st July.

Description of children entitled to be provided with school education

2.—(1) A child is of a prescribed description for the purposes of section 1(1A) of the 1980 Act (power to prescribe a description of children under school age who are entitled to be provided with school education) if the child—

- (a) has attained the starting point; and
- (b) subject to paragraphs (2) and (3) below has not commenced attendance at a primary school.

(2) Where—

- (i) a child's fifth birthday falls on or between the day after the date of commencement of the school year immediately preceding the child's fifth birthday and 31st December; and
- (i) by virtue of section 32(3) of the 1980 Act, the child commences attendance at a primary school on the date of commencement of the school year next following the child's fifth birthday,

the child shall cease to be of a prescribed description from the date of commencement of the school year immediately preceding the child's fifth birthday.

(3) Where a child is aged 5 years and does not commence attendance at a primary school on the date of commencement of the school year next following the child's fifth birthday, the child shall cease to be of a prescribed description on that date of commencement of the school year.

Amount of school education to be provided for children of a prescribed description

3.—(1) The amount of school education with which a child of a prescribed description is to be provided, for the purposes of section 1(1B) of the 1980 Act, is 412.5 hours of school education during the school year where the child is of a prescribed description for all of the school year.

(2) Where a child is not of a prescribed description for all of the school year the amount of school education provided for in paragraph (1) above shall be reduced in proportion to the period of the school year during which the child is of a prescribed description.

St Andrew's House,
Edinburgh
4th March 2002

CATHY JAMIESON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

Section 32 of the Standard in Scotland's Schools Act 2000 amends section 1 of the Education (Scotland) Act 1980 ("the 1980 Act") by imposing a duty on an education authority to secure the provision of school education for categories of children as may be prescribed by the Scottish Ministers. Sub-sections (1A) and (1B) of the 1980 Act provide the power to describe the categories of eligible children and the amount of school education they are to receive.

Article 2 describes eligible children. Children are eligible from the start of the term following their third birthday until the end of the term immediately before they are first eligible to attend primary school (generally between the ages of 3 and 5).

Article 2(2) and (3) deal with the situations where children do not attend primary school when they are first eligible to do so.

Article 2(2) applies to children who have their fifth birthday after the start of the school year and whose parents opt to defer entry to primary school to the following school year. For those children whose fifth birthday falls in September to December an education authority is not under a duty to provide school education for the deferred year. (Those whose fifth birthday falls in January or February are eligible for school education during the deferred year).

Article 2(3) excludes from the scope of an education authority's duty children who, for example, may not be educated at a primary school on reaching 5 years old, or who may seek to defer entry for second or subsequent years.

Article 3 provides that eligible children are to receive 412.5 hours of school education during the school year. Article 3(2) covers those 3 year olds whose birthdays fall between September and February and who become eligible for school education after the school year has begun, commencing either in the spring or summer terms. The amount of school education they receive that year will be reduced pro-rata with the period in which they are eligible to receive school education.