



Education (Scotland) Act 1980

1980 CHAPTER 44

PART II

RIGHTS AND DUTIES OF PARENTS AND FUNCTIONS OF EDUCATION AUTHORITIES IN RELATION TO INDIVIDUAL PUPILS

General principle

28 Pupils to be educated in accordance with the wishes of their parents.

- (1) In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

(2) ^{F1}

Textual Amendments

F1 Ss. 5, 28(2), 59, 66(2), 111(4)(5), 129(5)(6), 132(1), Sch. 2 paras. 1, 3 repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

[^{F2}28A Duty to comply with parents' requests as to schools.

- (1) Where the parent of a child [^{F3}of school age] makes a written request to an education authority to place his child in the school specified in the request, being a school [^{F4}(other than a nursery school or a nursery class in a school)] under their management, it shall be the duty of the authority, subject to subsections (2) [^{F5}, (3) and (3A)] below, to place the child accordingly.

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”.

Status: Point in time view as at 13/10/2000.

Changes to legislation: Education (Scotland) Act 1980, Cross Heading: General principle is up to date with all changes known to be in force on or before 28 April 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)

[The education authorities shall—

- F6(1A) (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 under the management of the education authority to whom it was made, the duty imposed by subsection (1) above 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;
 - [be likely to be seriously detrimental to order and discipline in the
 - F7(iv) school; or
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;]
 - [assuming that pupil numbers remain constant, make it necessary, at
 - F8(vi) 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;]
 - (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 special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school; or
 - (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the M1Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,

but an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above.

[F10 . . . the duty imposed by subsection (1) above does not apply where the acceptance of F9(3A) 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.

F11(3B)

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(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.

^{F11}(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 28C of this Act to an appeal committee.

(5) 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** Ss. 28A–28G inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [s. 1\(1\)](#) (the insertion being in force on or before 1.1.1983 except as regards s. 28G which came into force for some purposes prior to that date and for all remaining purposes on 9.3.1983)
- F3** Words in [s. 28A\(1\)](#) inserted (13.10.2000) by [2000 asp 6](#), [s. 44\(2\)](#); [S.S.I. 2000/361](#), art. 3(1)(2), [Sch. Pt. I](#)
- F4** Words in [s. 28A\(1\)](#) inserted (13.10.2000) by [2000 asp 6](#), [s. 43\(2\)\(4\)](#); [S.S.I. 2000/361](#), art. 3(1)(2), [Sch. Pt. I](#)
- F5** Words in [s. 28A\(1\)](#) substituted (18.9.1996) by [1996 c. 43](#), [s. 33\(2\)](#); [S.I. 1996/2250](#), [art. 2](#).
- 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** [S. 28A\(3\)\(a\)\(iv\)\(v\)](#) and the word preceding it substituted (18.9.1996) for [s. 28A\(3\)\(a\)\(iv\)](#) by [1996 c. 43](#), [s. 33\(3\)](#); [S.I. 1996/2250](#), [art. 2](#).
- F8** [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](#)
- F9** [S. 28A\(3A\)–\(3E\)](#) inserted (18.9.1996) by [1996 c. 43](#), [s. 33\(4\)](#); [S.I. 1996/2250](#), [art. 2](#).
- F10** 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](#)
- F11** [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](#)

Marginal Citations

- M1** [1975 c. 65](#).

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28B Information as to placing in schools and other matters.

- (1) Every education authority shall—
- (a) publish or otherwise make available information as to—
 - (i) their arrangements for the placing of children in schools under their management;
 - (ii) such matters as may be prescribed by regulations;
 - (iii) such other matters as the authority consider necessary or expedient for the purposes of their functions under this Act;
 - (b) where a child falls, in accordance with those arrangements, to be placed in a school under their management—
 - (i) in a case where the authority propose to place the child in a particular school, inform his parent of the school; and
 - (ii) in every case, subject to subsection (4) below, inform the parent of the general effect of section 28A (1) and (2) of this Act and of his right to make a placing request;
 - (c) in making arrangements for the performance of their functions under this Act, formulate guidelines to be followed by them as respects placing in schools generally or, if they think it necessary, in any particular school in the event of there being more placing requests made in respect of certain schools or, as the case may be, that school or in respect of any stage or stages of school education provided there than there are places available;
 - (d) on a request to that effect made to them at any time by a parent of a child, supply the parent with any prescribed or determined information about any school under their management.

In paragraph (d) above, “prescribed or determined information” means information prescribed or determined under subsection (3)(c) below.

- (2) An education authority shall, in performing the duties imposed on them by subsection (1) above, comply with any regulations made under subsection (3) below.
- (3) The Secretary of State may by regulations prescribe or make provision for the determining of—
 - (a) the procedure in accordance with which education authorities are to perform the duties imposed on them by subsection (1) above and when they are to do so;
 - (b) how education authorities are to go about publishing or otherwise making available information under subsection (1) above or informing parents under that subsection;
 - (c) the kind of information which is to be so published or which is to comprise the information so made available or supplied to parents.
- (4) The duty imposed by subsection (1)(b)(ii) above arises only when the existence of the child and the fact that he falls to be placed in a school under their management are known to the education authority.

28C Reference to appeal committee of refusal of placing request.

- (1) Subject to subsections (2) and (3) below, a parent who has made a placing request may refer a decision of the education authority refusing his request to an appeal committee set up under section 28D of this Act.

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F12(2)

- (3) Where a reference under this section has been made in respect of a child, no further such reference in respect of the child shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (4) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority (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.

Textual Amendments

F12 S. 28C(2) repealed (13.10.2000) by 2000 asp 6, s. 43(3); S.S.I. 2000/361, art. 3(1)(2), **Sch. Pt. I**

Modifications etc. (not altering text)

C1 S. 28C excluded (during period of 3 years beginning with 1.1.1983) by Education (Scotland) Act 1981 (c. 58), **Sch. 8 para. 4(d)**

28D Appeal committees.

- (1) Every education authority shall—
- (a) set up and maintain such number of appeal committees; and
 - (b) make such other arrangements
- as are necessary to enable references to be made under sections 28C, 28E(6), 28F(7), 28H and 63 of this Act and heard by the committees.
- (2) An appeal committee set up under subsection (1) above shall be constituted in accordance with Schedule A1 to this Act.
- (3) The Secretary of State may by regulations make provision for procedure in relation to references under section 28C of this Act and regulations made under this subsection may include provision—
- (a) requiring the education authority to make information relevant to their decision available to the committee and to the parent 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 on a placing request in the event of the committee's not having complied with section 28E(3) 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;
 - (c) ancillary to or consequential upon provision made under paragraphs (a) and (b) above.

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28E Appeal committees: supplementary provisions.

(1) An appeal committee may, on a reference under section 28C of this Act, confirm the education authority’s decision if they are satisfied—

(a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and

(b) that, in all the circumstances, it is 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 to whom the reference relates in the specified school.

(2) Where, in considering a reference under section 28C of this Act of a decision to refuse a placing request where the specified school is a special school, an appeal committee refuse to confirm the decision, they shall have power, if the education authority have decided not to record the child to whom the reference relates, to require the education authority to reconsider their decision not to record him.

(3) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority’s decision, they shall inform the parent of his right of appeal to the sheriff under section 28F of this Act.

(4) Where, on a reference under section 28C of this Act, an appeal committee refuse to confirm an education authority’s decision, the authority shall give effect to the placing request to which the reference relates.

(5) Where a decision of an appeal committee under this section is inconsistent with any decision of the education authority refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the appeal committee’s decision relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child in writing of their decision upon that review and the reasons for it.

(6) The decision of an education authority upon a review under subsection (5) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.

^{F13}(7)

^{X1}(8) In section 23 of the Local Government (Scotland) Act 1975 (authorities subject to investigation by Local Commissioner), at the end of subsection (2), there shall be inserted the following paragraph—

“(f) any appeal committee set up under section 28D of the Education (Scotland) Act 1980.”.

Editorial Information

X1 The text of s. 28E(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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Textual Amendments

F13 S. 28E(7) repealed (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(2), 19(2), [Sch. 4 Pt. I](#)

Modifications etc. (not altering text)

C2 S. 28E excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

28F Appeal to sheriff from appeal committee.

- (1) A parent who has made a reference under section 28C of this Act may appeal to the sheriff having jurisdiction where the specified school is situated against the decision of an appeal committee on that reference.
- (2) The education authority may, but the appeal committee shall not, be a party to an appeal under this section.
- (3) An appeal under this section—
 - (a) shall be made by way of summary application;
 - (b) shall be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee (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); and
 - (c) shall be heard in chambers.
- (4) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (3) above.
- (5) The sheriff may on an appeal under this section confirm the education authority's decision if he is satisfied—
 - (a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and
 - (b) that, in all the circumstances, it is appropriate to do so
 but shall otherwise refuse to confirm their decision and shall, where he so refuses, require the authority to give effect to the placing request to which the appeal relates.
- (6) Where the judgment of the sheriff on an appeal under this section is inconsistent with any decision of the education authority (whether confirmed by the appeal committee or not) refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the judgment relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child of their decision upon that review and the reasons for it.
- (7) The decision of an education authority upon a review under subsection (6) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this

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Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.

- (8) The sheriff may make such order as to the expenses of an appeal under this section as he thinks proper.
- (9) The judgment of the sheriff on an appeal under this section shall be final.

Modifications etc. (not altering text)

- C3** S. 28F excluded (during period of 3 years beginning with 1.1.1983) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 8 para. 4\(d\)](#)

28G Application of sections 28A to 28F and Schedule A1 to young persons.

—Sections 28A to 28F of this Act and Schedule A1 to this Act shall apply in relation to a young person who is a pupil and in that application references in those sections to the parent of a child as well as references to the child himself shall be construed as references to the young person.

[^{F14}28H Reference to appeal committee, and appeal therefrom of decision to exclude pupil.

- (1) Where an education authority decide to exclude a pupil from a school under their management which he attends, the parent of the pupil or, where the pupil is a young person, the pupil may refer the decision to an appeal committee set up under section 28D of this Act.
- (2) An appeal committee may, on a reference under this section, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision of the authority to exclude a pupil until certain conditions stipulated by them are complied with, the committee may modify the conditions.
- (3) The decision of an appeal committee on a reference under this section and the reasons for it shall be notified by the committee in writing to the parent or, as the case may be, the pupil making the reference and to the education authority.
- (4) A decision of an appeal committee on a reference under this section annulling a decision of an education authority or modifying the conditions subject to which an education authority have excluded a pupil from a school shall be complied with by the authority.
- (5) The Secretary of State may by regulations make provision for procedure in relation to references under this section and regulations made under this subsection may include provision—
 - (a) requiring the education authority to make information relevant to their decision available to the appeal committee and to the parent or, as the case may be, pupil referring that decision to the committee;
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the education authority's decision to exclude a pupil from a school under their management which he attends in the event of the appeal committee's not having complied with subsection (3) above within such period as may be

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prescribed in the regulations and different periods may be so prescribed for different purposes.

- (6) The decision of an appeal committee confirming an education authority's decision to exclude a pupil or modifying conditions under subsection (2) above may be appealed against by the parent of the pupil or, where the pupil is a young person, the pupil to the sheriff having jurisdiction where the school from which the pupil has been excluded is situated, and subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this subsection.
- (7) The sheriff may, on an appeal under subsection (6) above, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision excluding the pupil until certain conditions stipulated by them are complied with, he may modify the conditions.]

Textual Amendments

F14 S. 28H inserted (5.4.1983) by Education (Scotland) Act 1981 (c. 58), s. 1(1)

Modifications etc. (not altering text)

C4 S. 28H extended (13.10.2000) by 2000 asp 6, s. 41; S.S.I. 2000/361, art. 3((1)(2), Sch. Pt. I

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