



Education (Scotland) Act 1945

1945 CHAPTER 37

PART II

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

Handicapped Children.

40 Duty of education authorities to ascertain what children are suffering from disability.

- (1) It shall be the duty of an education authority to ascertain what children in their area who have attained the age of five years—
 - (a) require special educational treatment ; or
 - (b) are suffering from a disability of mind of such a nature or to such an extent as to make them incapable of receiving education at school, or as to make it inexpedient that they should be educated in association with other children either in their own interests or in those of the other children.
- (2) If for the purpose of their duty under the last foregoing subsection an authority consider it necessary that a child should be medically examined, they shall by notice in writing served upon the parent of the child require him to submit the child for medical examination by a medical officer of the authority in order to obtain advice as to whether the child is suffering from any disability of mind or body and as to the nature and extent of any such disability ; and if a parent upon whom such a notice is served fails without reasonable excuse to comply with the requirements thereof he shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding five pounds.
- (3) Before any child is so medically examined as aforesaid, the authority shall cause notice to be given to the parent of the time and place at which the examination will be held, and the parent shall be entitled to be present at the examination if he so desires.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (4) If the parent of any child who has attained the age of two years requests the education authority for the area to cause the child to be so medically examined as aforesaid, the authority shall comply with the request unless in their opinion the request is unreasonable.
- (5) It shall be the duty of an education authority to disseminate in their area information as to the educational importance to any child suffering from disability of mind or body of the early ascertainment of his disability, and of the opportunity for medical examination available under this section.

41 Children requiring special educational treatment.

- (1) The education authority shall consider the advice given with respect to any child in consequence of the medical examination under the last foregoing section and any reports or information which they are able to obtain from teachers or other persons with respect to the ability and aptitude of the child, and if the authority decide that the child requires special educational treatment, they shall give to the parent notice of their decision and shall ensure that any education provided for the child is by means of special educational treatment.
- (2) The advice given with respect to any child in consequence of any such medical examination as aforesaid shall be communicated to the parent of the child, and the medical practitioner by whom the examination was made shall, if required by the parent or by the authority so to do, issue to the parent and to the authority a certificate in the prescribed form showing whether the child is suffering from any such disability as aforesaid and, if so, the nature and extent thereof, and any parent who is aggrieved by the terms of the certificate may refer the case to the Secretary of State :

Provided that an education authority shall not require the issue of such a certificate in respect of any child unless the certificate is, in their opinion, necessary for the purpose of securing that the child shall receive special educational treatment.

- (3) Any certificate issued under the last foregoing subsection may be withdrawn by the Secretary of State or by a medical officer of the education authority, and upon the withdrawal of such a certificate the decision of the education authority under subsection (1) of this section in regard to the child with respect to whom the certificate was issued shall be deemed to have been rescinded, and the education authority shall cease to provide special educational treatment for the child and shall notify the parent accordingly.
- (4) Where an education authority have decided under subsection (1) of this section that a child requires special educational treatment, and where such treatment is being provided for that child in a special school, by or with the approval of the authority, the child shall not while of school age be withdrawn from that school without the consent of the authority, provided always that if the parent of any child is aggrieved by the failure of the authority to reach a decision upon his application for their consent to such withdrawal within one month after the date of his application or by the refusal of the authority to comply with such application, he may within fourteen days after the expiry of the said period of one month or after such refusal, as the case may be, appeal to the sheriff, who shall give such direction as he thinks fit.

42 Duty of education authorities to report to local authorities under 3 and 4 Geo. 5. c. 38 in certain cases.

- (1) If, after considering, in accordance with the provisions of subsection (1) of the last foregoing section, advice, reports and information with respect to any child who has attained the age of five years, the authority decide that the child is suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education or training in a special school or as to make it inexpedient that he should be educated or trained in association with other children, it shall be the duty of the authority to issue to the local authority for the purposes of the Mental Deficiency Acts and to the General Board of Control for Scotland a report that the child has been found incapable of receiving education or training in a special school:

Provided that before issuing such a report with respect to any child the education authority shall give to the parent of the child not less than fourteen days' notice in writing of their intention to do so, and if within that period the parent refers to the Secretary of State the question whether such a report should be issued, the report shall not be issued except by direction of the Secretary of State.

- (2) If an education authority are of opinion that any child in attendance at a school in their area, or under their management, or at a special school is suffering from a disability of mind of such a nature or to such an extent that he may require to be dealt with under the Mental Deficiency Acts after leaving school, the authority shall, not earlier than the beginning of such period before the child ceases to be of school age as may be prescribed, issue to the local authority for the purposes of the Mental Deficiency Acts, to the General Board of Control for Scotland and to the parent of the child a report that by reason of a disability of mind the child may require to be dealt with under the Mental Deficiency Acts after leaving school.
- (3) Any report issued under this section to a local authority for the purposes of the Mental Deficiency Acts shall be accompanied by such records and other information relating to the child as may be prescribed ; and upon receiving such a report it shall be the duty of that- authority to consider whether the person in respect of whom the report was issued ought to be dealt with under these Acts.