

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Independent schools

Section 6 – Appeals

54. **Section 6** contains provisions for the removal of disqualifications by the Scottish Ministers and also deals with the sheriff principal's powers in relation to appeals.
55. **Section 6(1)** amends section 102 of the 1980 Act, dealing with the removal of disqualifications. There are existing provisions in section 102 enabling any person to apply to the Scottish Ministers for the removal of a disqualification order. The new subsection (1A) provides that the Scottish Ministers must inform the person, the Registrar and any other person or body they think fit of any decision they reach on an application to remove a disqualification. Subsection (2) provides for an appeal by a person who is aggrieved by the decision of the Scottish Ministers to refuse to remove a disqualification. Such an appeal is to be made to the sheriff principal within 28 days of the applicant being notified of the decision.
56. The Act substitutes a new section 103 of the 1980 Act, providing for the appeals that may be made to the sheriff principal and the orders available to the sheriff principal when considering any such appeal. Subsection (1) deals with the jurisdiction for appeals.
57. Subsection (2) details the orders the sheriff principal can make if allowing an appeal against a decision by the Scottish Ministers to refuse an application to register a school.
58. Subsection (3) details the orders the sheriff principal can make after hearing an appeal against a decision by the Scottish Ministers with regard to the imposition, variation or revocation of conditions. Whether or not the sheriff principal grants or refuses the appeal, the sheriff principal can make an order imposing any condition on the school, or an order varying or revoking a condition previously imposed on the school.
59. Subsection (4) sets out the orders the sheriff principal can make after hearing an appeal against a notice of complaint.
60. Subsection (5) sets out the orders that the sheriff principal can make after hearing an appeal by the proprietor of an independent school against any order made against the school under section 100(2) (whether or not as a result of a notice of complaint being served).
61. Subsection (6) provides that where the sheriff principal allows an appeal against any of the disqualifications imposed when registration is refused (under section 98B(2)

These notes relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12) which received Royal Assent on 12 November 2004

to (5)), or when a teacher is disqualified following a notice of complaint (under section 100(2)(e)), or when an application to remove a disqualification is refused (under section 102(2)), the sheriff principal must in any of those circumstances make an order removing the disqualification.