



School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004

2004 asp 12

VALID FROM 31/05/2005

PART 1

POWER OF SCOTTISH MINISTERS TO REQUIRE ACTION BY SCHOOLS AND EDUCATION AUTHORITIES

1 Power of Scottish Ministers to require action by managers of certain schools

After section 66A of the Education (Scotland) Act 1980 (c. 44) (in this Act referred to as the “1980 Act”) insert—

“66B Duty of Her Majesty’s Inspectors to make reference to Scottish Ministers

- (1) This section applies where, after an inspection under subsection (1) or (1AA) of section 66 of this Act of—
- (a) a public school; or
 - (b) a grant-aided school,

Her Majesty’s Inspectors identify that a relevant person requires to take action to secure improvement in a matter relating to the school or the school education provided in it.

- (2) If it appears to Her Majesty’s Inspectors that—
- (a) having been given sufficient opportunity to secure improvement in a matter identified under subsection (1) above, the relevant person is failing or has failed to take satisfactory action to do so; and
 - (b) having regard to the seriousness of that failure, an enforcement direction is justified,

they shall make a reference to the Scottish Ministers.

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- (3) A reference under subsection (2) above shall—
- (a) be in writing;
 - (b) specify the failure mentioned in subsection (2)(a) above; and
 - (c) include recommendations as to the action which, in the opinion of Her Majesty’s Inspectors, the relevant person requires to take to remedy or prevent the recurrence of that failure.
- (4) Where Her Majesty’s Inspectors make a reference under subsection (2) above, they shall inform the relevant person of the making of that reference.
- (5) In this section and in sections 66C and 66D of this Act, “relevant person” means—
- (a) in relation to a public school, the education authority; and
 - (b) in relation to a grant-aided school, the managers of the school.

66C Preliminary notice

- (1) Where, on a reference under section 66B(2) of this Act, it appears to the Scottish Ministers that—
- (a) the relevant person is failing or has failed to take satisfactory action to secure improvement in the matter mentioned in section 66B(2) (a) of this Act; and
 - (b) an enforcement direction is justified,
- they may serve a preliminary notice on the relevant person.
- (2) A preliminary notice is a notice which—
- (a) informs the relevant person of the apparent failure mentioned in subsection (1)(a) above; and
 - (b) requires the relevant person to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
 - (i) states that the person has not so failed and gives reasons supporting that statement; or
 - (ii) states that the person has so failed but gives reasons why an enforcement direction should not be given to that person.

66D Enforcement direction

- (1) Where, following service under section 66C(1) of this Act of a preliminary notice and the expiry of the time specified in it, it still appears to the Scottish Ministers that—
- (a) the relevant person is failing or has failed to take satisfactory action to secure improvement in the matter mentioned in section 66B(2) (a) of this Act; and
 - (b) having regard to the seriousness of that failure, action under this section is justified,
- they may give the relevant person an enforcement direction.
- (2) An enforcement direction is a direction in writing by the Scottish Ministers requiring the relevant person to whom it is given to take, within such time

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as is specified in the direction, such action as is so specified, being action calculated to remedy or prevent the recurrence of the failure mentioned in subsection (1)(a) above.

- (3) Where two or more courses of action are specified in an enforcement direction, the Scottish Ministers may specify for each a different time within which it is to be taken.
- (4) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the relevant person in relation to the school and the school education provided in it as are so specified.
- (5) The Scottish Ministers may vary an enforcement direction by giving a further such direction.
- (6) A further such direction need not proceed upon a further preliminary notice under section 66C(1) of this Act.
- (7) An enforcement direction may be revoked by the Scottish Ministers.
- (8) Before giving, varying or revoking an enforcement direction, the Scottish Ministers shall consult Her Majesty's Inspectors.
- (9) A relevant person to whom an enforcement direction is given shall comply with it.
- (10) The Scottish Ministers may, instead of or as well as giving an enforcement direction, make such recommendations to the relevant person as they think appropriate.
- (11) If the Scottish Ministers exercise their power to give, vary or revoke an enforcement direction they shall—
 - (a) prepare a report on their exercise of that power; and
 - (b) lay that report before the Scottish Parliament.”.

2 Power of Scottish Ministers to require action by education authorities

After section 10 of the Standards in Scotland's Schools etc. Act 2000 (asp 6) (in this Act referred to as the “2000 Act”) insert—

“10A Duty of Her Majesty's Inspectors to make reference to Scottish Ministers

- (1) This section applies where, after an inspection under section 9 of this Act, Her Majesty's Inspectors identify that an education authority require to take action to secure improvement in the way the authority exercise a function in relation to the provision of school education.
- (2) If it appears to Her Majesty's Inspectors that—
 - (a) having been given sufficient opportunity to secure improvement in the way they exercise a function identified under subsection (1) above, the education authority are failing or have failed to take satisfactory action to do so; and

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(b) having regard to the seriousness of that failure, an enforcement direction is justified,

they shall make a reference to the Scottish Ministers.

(3) A reference under subsection (2) above shall—

- (a) be in writing;
- (b) specify the failure mentioned in subsection (2)(a) above; and
- (c) include recommendations as to the action which, in the opinion of Her Majesty's Inspectors, the education authority require to take to remedy or prevent the recurrence of that failure.

(4) Where Her Majesty's Inspectors make a reference under subsection (2) above, they shall inform the education authority of the making of that reference.

10B Preliminary notice

(1) Where, on a reference under section 10A(2) of this Act, it appears to the Scottish Ministers that—

- (a) the education authority are failing or have failed to take satisfactory action to secure improvement in the way they exercise the function mentioned in section 10A(2)(a) of this Act; and
- (b) an enforcement direction is justified,

they may serve a preliminary notice on the authority.

(2) A preliminary notice is a notice which—

- (a) informs the education authority of the apparent failure mentioned in subsection (1)(a) above; and
- (b) requires the authority to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
 - (i) states that the authority have not so failed and gives reasons supporting that statement; or
 - (ii) states that the authority have so failed but gives reasons why an enforcement direction should not be given to them.

10C Enforcement direction

(1) Where, following service under section 10B(1) of this Act of a preliminary notice and the expiry of the time specified in it, it still appears to the Scottish Ministers that—

- (a) the education authority are failing or have failed to take satisfactory action to secure improvement in the way they exercise the function mentioned in section 10A(2)(a) of this Act; and
- (b) having regard to the seriousness of that failure, action under this section is justified,

they may give the authority an enforcement direction.

(2) An enforcement direction is a direction in writing by the Scottish Ministers requiring the education authority to which it is given to take, within such time as is specified in the direction, such action as is so specified,

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being action calculated to remedy or prevent the recurrence of the failure mentioned in subsection (1)(a) above.

- (3) Where two or more courses of action are specified in an enforcement direction, the Scottish Ministers may specify for each a different time within which it is to be taken.
- (4) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the exercise of such functions of the education authority in relation to the provision of school education as are so specified.
- (5) The Scottish Ministers may vary an enforcement direction by giving a further such direction.
- (6) A further such direction need not proceed upon a further preliminary notice under section 10B(1) of this Act.
- (7) An enforcement direction may be revoked by the Scottish Ministers.
- (8) Before giving, varying or revoking an enforcement direction, the Scottish Ministers shall consult Her Majesty's Inspectors.
- (9) An education authority to which an enforcement direction is given shall comply with it.
- (10) The Scottish Ministers may, instead of or as well as giving an enforcement direction, make such recommendations to the education authority as they think appropriate.
- (11) If the Scottish Ministers exercise their power to give, vary or revoke an enforcement direction they shall—
 - (a) prepare a report on their exercise of that power; and
 - (b) lay that report before the Scottish Parliament.”.

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