

SCHOOL EDUCATION (AMENDMENT) (SCOTLAND) ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT

3. This Act has two separate but related purposes, in that they both deal with aspects of school education. Section 1 amends section 28A of the Education (Scotland) Act 1980 ("the 1980 Act") so as to ensure that parents have a statutory right to make placing requests for all children who have either started school, or are eligible to start school at the next intake. When section 44(2) of the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act") came into force, it restricted the making of placing requests to children of school age, even though some children are eligible to start school before they are of school age. This had the effect that placing requests could not be made for children who were under school age, whether they were about to start school or whether they were already at school. It was competent before section 44(2) of the 2000 Act came into force, to make placing requests for all such children.
4. [Section 2](#) amends the School Boards (Scotland) Act 1988 in connection with the abolition of the post of assistant headteacher. To enable existing assistant headteachers to be regraded as deputy headteachers without following the advertisement and appointment procedures required by that Act, the provisions in that Act requiring posts to be advertised and an appointment committee to be set up are disapplied. The section also removes references to assistant headteachers from that Act. These changes complement the introduction of a new career structure for the teaching profession from April 2002 and the abolition of the post of assistant headteacher.

Section 1 - Placing requests: children under school age

5. The statutory placing request regime contained in sections 28A to 28G of the 1980 Act enables a person to make a written request to an education authority to place his or her child in a particular school. Section 31 of the 1980 Act defines "school age" as being 5 years of age and over, but under 16 years of age. Section 32 of the 1980 Act also provides that children who are not 5 years of age by the "school commencement date" (as defined in that section), but whose 5th birthday falls before the next "appropriate latest date" (also as defined in that section), can be treated as if they were 5 years of age and be admitted to school on the commencement date before their

5th birthday. In practice, this means that the annual August intake includes children from 4 years and 6 months to 5 years and 11 months old.

6. Section 44(2) of the 2000 Act amended section 28A(1) of the 1980 Act by providing that placing requests may be made only for children of “school age”. As a result, parents were unable to make placing requests for children under school age who had started school, or who were eligible to start school at the next intake since their children were not deemed to be of "school age" until the school commencement date following their 5th birthday.
7. Subsection (1) remedies this while at the same time continuing to allow placing requests by parents of children of school age. The subsection provides for the substitution of the expression “qualifying child” for “child of school age” in section 28A(1) of the 1980 Act and inserts new subsection (6) into that section to define what is meant by that expression.
8. The definition of “qualifying child” is broken down into three parts as follows: first, a child who is of school age at the time of the placing request in August; second, a child who has started school, but who is not yet of school age; and third, a child who is not of school age, but who is entitled under the 1980 Act to start school on the next school commencement date by virtue of section 32(6) of the 1980 Act.
9. Subsection (1) also provides for the insertion of a new subsection (3F) into section 28A of the 1980 Act to clarify that, where a placing request is made for a child who is due to commence school for the first time but will be under school age, and where that request is granted, the education authority will place the child in the specified school only on the next school commencement date following the request. Where a decision on a placing request is not made in time for the child to be placed on the next school commencement date, the education authority must place the child in the specified school as soon as is reasonably practicable.
10. Subsection (1B) provides for an amendment of section 28G of the 1980 Act in consequence of the introduction of the expression "qualifying child". Section 28G enables "young persons" (that is, those over school age but under 18) to make placing requests in their own right.

Section 2 - Provisions relating to the abolition of the post of assistant headteacher

11. The School Boards (Scotland) Act 1988 confers functions on School Boards in relation to the selection of headteachers and other senior school staff (see sections 11 and 15 and Schedule 2). Following the McCrone Report (*A Teaching Profession for the 21st Century - the report of the Committee of Inquiry into professional conditions of service for teachers*), an agreement was reached among the Scottish Executive, education authorities and teachers’ representatives (outlined in a document entitled *A Teaching Profession for the 21st Century*) which aims to provide an improved and simplified career structure for the teaching profession, to be introduced from April 2002. As part of this new structure the grade of assistant headteacher will no longer exist and will be subsumed into the grade of deputy headteacher.
12. **Section 2** of the Act removes all references to assistant headteachers from the School Boards (Scotland) Act 1988. It also disapplies the requirements set out in paragraph 1 of Schedule 2 to that Act (which oblige education authorities to advertise the post of deputy headteacher and to set up a committee to consider a short list of candidates and make recommendations as to the filling of such a post) which would otherwise apply where an existing assistant headteacher is being regraded to the post of deputy headteacher.