

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

2004 asp 12

PART 2

INDEPENDENT SCHOOLS

3 Meaning of “independent school”

In section 135(1) of the 1980 Act (interpretation), in the definition of “independent school”, the words “five or more” are repealed.

4 Registration of independent schools

(1) For section 98(2) of the 1980 Act (offences in relation to conducting or being a proprietor of a school which is not registered or provisionally registered) substitute—

“(2) The Registrar shall record in the register—

- (a) in relation to every application under section 98A(1) of this Act for registration of an independent school, such information as the Scottish Ministers may direct;
- (b) in relation to any conditions imposed by virtue of this Part of this Act on the carrying on of a registered school, such information (including information relating to any variation and revocation of such conditions) as the Scottish Ministers may direct;
- (c) every order of an Independent Schools Tribunal or the Scottish Ministers imposing any disqualification under this Part of this Act; and
- (d) in relation to every registered school, such information relating to particulars prescribed under paragraph (a) of subsection (3) below—
 - (i) furnished by virtue of that paragraph; and
 - (ii) notified by virtue of paragraph (b) of that subsection, to the Registrar as the Scottish Ministers may direct.

- (2A) Where an order removing any disqualification under this Part of this Act is made by—
- (a) the Scottish Ministers; or
 - (b) the sheriff principal,
- the Registrar shall remove the order imposing that disqualification from the register.”.

- (2) For section 98A of the 1980 Act substitute—

“98A Application for registration of independent school

- (1) Any person proposing to carry on an independent school shall apply to the Scottish Ministers for registration of that school.
- (2) An application for registration shall—
 - (a) be in such form; and
 - (b) include such information,
 as the Scottish Ministers may, by regulations, prescribe.
- (3) The Scottish Ministers may, subject to subsection (4) below, grant an application for registration if they are satisfied that—
 - (a) efficient and suitable instruction will be provided at the school, having regard to the ages and sex of the pupils who shall be attending the school;
 - (b) the welfare of such pupils will be adequately safeguarded and promoted;
 - (c) subject to subsection (5)(a) below—
 - (i) the proprietor of the school is a proper person to be the proprietor of an independent school; and
 - (ii) every proposed teacher in the school is a proper person to be a teacher in any school;
 - (d) subject to subsection (5)(b) below, the proposed school premises are suitable for use as a school; and
 - (e) subject to subsection (5)(c) below, the accommodation to be provided at the school premises is adequate and suitable, having regard to the number, ages and sex of the pupils who shall be attending the school.
- (4) The Scottish Ministers may, on granting an application for registration, impose such conditions on the carrying on of the registered school as they think fit.
- (5) The Scottish Ministers shall not be satisfied that—
 - (a) the proprietor of an independent school is a proper person to be the proprietor of such a school or, as the case may be, that a proposed teacher in such a school is a proper person to be a teacher in any school if that proprietor or, as the case may be, proposed teacher—
 - (i) is, by virtue of this Part of this Act, disqualified from being such a proprietor or, as the case may be, such a teacher;
 - (ii) is disqualified from working with children; or
 - (iii) is a prescribed person;

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- (b) proposed school premises are suitable for use as a school if any part of such premises is, by virtue of this Part of this Act, disqualified from being so used; and
 - (c) accommodation to be provided at school premises is adequate and suitable if any such accommodation is, by virtue of this Part of this Act, disqualified from being used as such or from being used as such for pupils of—
 - (i) such number; or
 - (ii) such age or sex,for which it is proposed it be used.
- (6) In this Part of this Act—
- “disqualified from working with children” shall be construed in accordance with section 17 of the Protection of Children (Scotland) Act 2003 (asp 5);
- “prescribed person” means—
- (a) in relation to a proprietor of an independent school, a person falling within such class of persons as the Scottish Ministers may, by regulations, prescribe; and
 - (b) in relation to a teacher or proposed teacher in such a school, a person falling within such class of persons as may be so prescribed; and
- “proposed teacher” means a person that the proprietor of an independent school proposes will, on the registration of that school, be a teacher in it.

98B Refusal of application for registration: disqualifications

- (1) This section applies where the Scottish Ministers refuse an application for registration on the ground that they are not satisfied that—
 - (a) the proposed school premises are suitable for use as a school;
 - (b) accommodation to be provided at the proposed school premises is adequate and suitable, having regard to the number, ages and sex of the pupils who shall be attending the school;
 - (c) the proprietor of the independent school is a proper person to be the proprietor of such a school; or
 - (d) a proposed teacher in the school is a proper person to be a teacher in any school.
- (2) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(a) above they may make an order disqualifying the proposed school premises or any part of them from being used as a school.
- (3) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(b) above they may make an order disqualifying the accommodation from being used as such or from being used as such for pupils—
 - (a) exceeding such number; or
 - (b) of such age or sex,as they may specify.

- (4) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(c) above they may make an order disqualifying the proprietor from being the proprietor of an independent school.
- (5) Where the Scottish Ministers refuse an application for registration on the ground mentioned in subsection (1)(d) above they may make an order disqualifying the proposed teacher from being a teacher in any school.

98C Registration: notification and appeals

- (1) The Scottish Ministers shall give notice to the persons mentioned in subsection (2) below of their decision on an application for registration of an independent school.
- (2) The persons referred to in subsection (1) above are—
 - (a) the proprietor;
 - (b) where the application for registration is refused on the ground that the Scottish Ministers are not satisfied that a proposed teacher in the school is a proper person to be a teacher in any school, that proposed teacher;
 - (c) the Registrar; and
 - (d) any other person or body the Scottish Ministers think fit.
- (3) Where, under section 98A(3) of this Act, the Scottish Ministers grant an application for registration of an independent school, they shall direct the Registrar to register that school.
- (4) Where an order is made under section 98B(2), (3) or (4) of this Act, the Scottish Ministers shall, as soon as reasonably practicable after making the order, give notice to—
 - (a) the proprietor;
 - (b) the Registrar; and
 - (c) any other person or body the Scottish Ministers think fit,of the order.
- (5) Where an order is made under section 98B(5) of this Act, the Scottish Ministers shall, as soon as reasonably practicable after making the order, give notice to—
 - (a) the proposed teacher to whom the order relates;
 - (b) the Registrar; and
 - (c) any other person or body the Scottish Ministers think fit,of the order.
- (6) The proprietor of an independent school may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (1) above, appeal to the sheriff principal—
 - (a) where the application for registration of the school is, under subsection (3) of section 98A of this Act, refused, against that refusal;or

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(b) where such application is, under that subsection, granted and conditions are, under subsection (4) of that section, imposed on the carrying on of the school, against the imposition of any such condition.

(7) Where an order is made under section 98B(2), (3) or (4) of this Act, the proprietor may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (4)(a) above, appeal to the sheriff principal against the order.

(8) Where an order is made under section 98B(5) of this Act, the proposed teacher may, before the expiry of the period of 28 days beginning with the day on which that proposed teacher is given notice under subsection (5)(a) above, appeal to the sheriff principal against the order.

98D Removal from register where school no longer being carried on

(1) Where the Scottish Ministers are satisfied that a registered school is no longer being carried on as such, they may make an order directing the Registrar to remove the school from the register.

(2) Where an order is made under subsection (1) above, the Scottish Ministers shall, as soon as reasonably practicable after so doing, give notice to—

- (a) the proprietor;
 - (b) the Registrar; and
 - (c) any other person or body the Scottish Ministers think fit,
- of the order.

(3) The Registrar may, on the application of the proprietor of a registered school, remove that school from the register.

(4) Where, under subsection (3) above, the Registrar removes a school from the register, the Registrar shall give notice to—

- (a) the proprietor; and
 - (b) any other person or body the Registrar thinks fit,
- of that fact.”.

5 Regulation of registered schools

(1) After section 98D of the 1980 Act (as inserted by section 4(2) of this Act) insert—

“98E Imposition, variation and revocation of conditions

(1) The Scottish Ministers may, if they are satisfied that it is necessary to prevent a registered school from becoming objectionable upon any of the grounds mentioned in section 99(1A) of this Act—

- (a) impose any condition on the carrying on of that registered school; or
- (b) vary or revoke any such condition imposed by virtue of this Part of this Act,

as they think fit.

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- (2) The Scottish Ministers may, on the application of the proprietor of a registered school, vary or revoke any condition imposed by virtue of this Part of this Act on the carrying on of that school.
- (3) An application such as is mentioned in subsection (2) above shall—
- (a) be in writing; and
 - (b) specify the variation or revocation sought together with the reasons for seeking it.
- (4) Where, under this section, the Scottish Ministers impose, vary, revoke or refuse to vary or revoke a condition on the carrying on of a registered school, they shall, as soon as reasonably practicable after so doing, give notice to—
- (a) the proprietor;
 - (b) the Registrar; and
 - (c) any other person or body the Scottish Ministers think fit,
- of that imposition, variation, revocation or, as the case may be, refusal.
- (5) The proprietor of a registered school may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (4)(a) above, appeal to the sheriff principal against the imposition, variation or, as the case may be, refusal to vary or revoke.”.
- (2) In section 99 of the 1980 Act (notice of complaint)—
- (a) in subsection (1)—
 - (i) for the words “following grounds” substitute “grounds mentioned in subsection (1A) below, the Scottish Ministers shall, subject to subsection (1B) below, serve on the proprietor of the school a notice of complaint.
 - (1A) The grounds referred to in subsection (1) above are”; and
 - (ii) for the words from the beginning of paragraph (d) to the end substitute—
 - “(d) that a condition imposed by virtue of this Part of this Act on the carrying on of the school is not being or has not been complied with;
 - (e) that any part of the school premises is, by virtue of this Part of this Act, disqualified from being used as a school;
 - (f) that any accommodation provided at the school premises is, by virtue of this Part of this Act, disqualified from being used as such or is being used as such for pupils of—
 - (i) such number; or
 - (ii) such age or sex,
 from which use it is so disqualified;
 - (g) that the proprietor of the school is—
 - (i) by virtue of this Part of this Act, disqualified from being the proprietor of an independent school;
 - (ii) disqualified from working with children;

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- (iii) a prescribed person; or
 - (iv) otherwise not a proper person to be the proprietor of an independent school;
 - (h) that a teacher in the school is—
 - (i) by virtue of this Part of this Act, disqualified from being a teacher in any school;
 - (ii) disqualified from working with children;
 - (iii) a prescribed person; or
 - (iv) otherwise not a proper person to be a teacher in any school; or
 - (j) that the proprietor of the school has not, in relation to particulars prescribed under paragraph (a) of section 98(3) of this Act—
 - (i) furnished information required by virtue of that paragraph; or
 - (ii) notified, by virtue of paragraph (b) of that subsection, a change in such particulars, to the Registrar.
- (1B) The Scottish Ministers need not serve a notice of complaint under subsection (1) above where they are satisfied that they urgently require to make an order under section 100(2) of this Act.
- (1C) A notice of complaint is a notice—
 - (a) stating the ground of the complaint together with the full particulars of the matter complained of; and
 - (b) specifying—
 - (i) the measures which, in the opinion of the Scottish Ministers, are necessary to remedy the matter complained of; and
 - (ii) the period, beginning with the day on which the notice is served, before the expiry of which such measures require to be taken.”; and
- (b) for subsection (3) substitute—
 - “(3) The proprietor of a registered school may, before the expiry of the period mentioned in subsection (4) below, appeal to the sheriff principal against a notice of complaint.
 - (4) The period referred to in subsection (3) above is—
 - (a) the period of 28 days beginning with the day on which the notice of complaint is served; or
 - (b) the period specified under subsection (1C)(b)(ii) above, whichever is the shorter.”.
- (3) In section 100 of the 1980 Act (determination of complaints), for subsections (1) to (3) substitute—
 - “(1) This section applies—

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- (a) in a case where—
 - (i) a notice of complaint has been served under section 99(1) of this Act;
 - (ii) no appeal under section 99(3) of this Act has been made or such an appeal has been made and refused;
 - (iii) the period specified in the notice has expired; and
 - (iv) the Scottish Ministers are not satisfied that the proprietor of the school on whom the notice is served has taken satisfactory action to remedy the matter complained of;
 - (b) in a case where—
 - (i) such a notice has been served;
 - (ii) such an appeal has been made but not determined; and
 - (iii) pending such determination, the Scottish Ministers are satisfied that there is a serious risk of harm to a pupil attending the school; or
 - (c) where, by virtue of section 99(1B) of this Act, no such notice has been served.
- (2) The Scottish Ministers may—
- (a) make an order directing the Registrar to remove the school from the register;
 - (b) if satisfied that the school premises are or any part of them is unsuitable for use as a school, make an order disqualifying those premises or any part of them from being so used;
 - (c) if satisfied that any accommodation provided at the school premises is inadequate or unsuitable, having regard to the number, ages and sex of the pupils attending the school, make an order disqualifying that accommodation from being used as such or from being used as such for pupils—
 - (i) exceeding such number; or
 - (ii) of such age or sex,as the Scottish Ministers may specify;
 - (d) make an order—
 - (i) imposing such conditions on the carrying on of the school; or
 - (ii) varying any such conditions imposed by virtue of this Part of this Act,as the Scottish Ministers think fit; or
 - (e) if satisfied that—
 - (i) the proprietor is not a proper person to be the proprietor of an independent school; or
 - (ii) a teacher in the school is not a proper person to be a teacher in any school,make an order disqualifying that proprietor from being the proprietor of an independent school or, as the case may be, that teacher from being a teacher in any school.
- (3) Where the Scottish Ministers make an order under subsection (2) above, they shall, as soon as reasonably practicable after so doing, give notice to—
- (a) the proprietor;

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- (b) where, under paragraph (e) of that subsection, an order is made disqualifying a teacher, that teacher;
 - (c) the Registrar; and
 - (d) any other person or body the Scottish Ministers think fit, of the order.
 - (3A) Subject to subsection (3C) below, the proprietor of an independent school may, before the expiry of the period of 28 days beginning with the day on which that proprietor is given notice under subsection (3)(a) above, appeal to the sheriff principal against an order under subsection (2) above.
 - (3B) A teacher disqualified by an order under subsection (2)(e) above may, before the expiry of the period of 28 days beginning with the day on which that teacher is given notice under subsection (3)(b) above, appeal to the sheriff principal against the order.
 - (3C) The proprietor of an independent school may not appeal against an order under subsection (2)(e) above disqualifying a teacher from being a teacher in any school.”.
- (4) In section 101 of the 1980 Act (enforcement of orders)—
- (a) for subsection (1) substitute—
 - “(1) Any person who carries on an independent school which is not registered shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.”; and
 - (b) after subsection (3) insert—
 - “(3A) If any person who is, by virtue of this Part of this Act, disqualified from being a teacher in any school—
 - (a) endeavours to obtain a position as a teacher;
 - (b) accepts such a position; or
 - (c) teaches,in any school, that person shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.”.

6 Appeals

- (1) In section 102 of the 1980 Act (removal of disqualifications), after subsection (1) insert—
- “(1A) The Scottish Ministers shall, as soon as reasonably practicable after making a decision under subsection (1) above, give notice to—
 - (a) the applicant;
 - (b) the Registrar; and
 - (c) any other person or body the Scottish Ministers think fit, of that decision.”.
- (2) For section 103 of the 1980 Act substitute—

“103 Appeals under this Part

- (1) An appeal—
- (a) made under—
 - (i) section 98C(6) of this Act;
 - (ii) section 98C(7) against an order made under section 98B(2) or (3) of this Act;
 - (iii) section 98E(5) of this Act;
 - (iv) section 99(3) of this Act;
 - (v) section 100(3A) against an order made under section 100(2) (a) to (d) of this Act; or
 - (vi) section 102(2) of this Act against a refusal to remove a disqualification relating to school premises or accommodation provided at such premises,

shall be to the sheriff principal of the sheriffdom in which the school to which the appeal relates is situated; and
 - (b) made under—
 - (i) section 98C(7) against an order made under section 98B(4) of this Act;
 - (ii) section 98C(8) of this Act;
 - (iii) section 100(3A) against an order made under section 100(2) (e) of this Act disqualifying a proprietor;
 - (iv) section 100(3B) of this Act; or
 - (v) section 102(2) of this Act against a refusal to remove a disqualification relating to a proprietor or a teacher,

shall be to the sheriff principal of the sheriffdom in which the appellant resides or, if the appellant resides outwith Scotland, the sheriff principal of Lothian and Borders at Edinburgh.
- (2) Where the sheriff principal allows an appeal under section 98C(6)(a) of this Act, the sheriff principal—
- (a) shall make an order directing the Registrar to register the school; and
 - (b) may make an order imposing such conditions on the carrying on of the school as the sheriff principal thinks fit.
- (3) On an appeal under section 98C(6)(b) or 98E(5) of this Act, the sheriff principal may, whether or not the sheriff principal allows or refuses the appeal, make an order—
- (a) imposing any condition on the carrying on of the school; or
 - (b) varying or revoking any such condition imposed by virtue of this Part of this Act,
- as the sheriff principal thinks fit.
- (4) On an appeal under section 99(3) of this Act—
- (a) where the sheriff principal allows the appeal, the sheriff principal shall make an order annulling the notice of complaint; and
 - (b) where the Scottish Ministers have, pending the determination of the appeal, made an order under section 100(2) of this Act, the sheriff principal may make an order—

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- (i) directing the Registrar to register the school;
 - (ii) imposing such conditions on the carrying on of the school as the sheriff principal thinks fit;
 - (iii) varying or revoking such conditions imposed by virtue of this Part of this Act as the sheriff principal thinks fit; or
 - (iv) removing any disqualification imposed under section 100(2) (b), (c) or (e) of this Act.
- (5) Where, on an appeal under section 100(3A) of this Act—
 - (a) the sheriff principal allows the appeal, the sheriff principal may make an order—
 - (i) directing the Registrar to register the school;
 - (ii) imposing such conditions on the carrying on of the school as the sheriff principal thinks fit;
 - (iii) varying or revoking such conditions imposed by virtue of this Part of this Act as the sheriff principal thinks fit; or
 - (iv) removing any disqualification imposed under section 100(2) (b), (c) or (e) of this Act; or
 - (b) the sheriff principal refuses the appeal, the sheriff principal may make any order—
 - (i) imposing such conditions on the carrying on of the school as the sheriff principal thinks fit; or
 - (ii) varying or revoking such conditions imposed by virtue of this Part of this Act as the sheriff principal thinks fit.
- (6) Where the sheriff principal allows an appeal under section 98C(7) or (8), 100(3B) or 102(2) of this Act, the sheriff principal shall make an order removing the disqualification.
- (7) A person to whom an order made by the sheriff principal under subsections (2) to (6) above relates may, before the expiry of the period of 28 days beginning with the day on which the order is made, appeal on point of law only to the Court of Session.”.

7 Supplementary

After section 103 of the 1980 Act insert—

“103A Proprietor which is body corporate etc.

- (1) This section applies where the proprietor of an independent school is not an individual.
- (2) Any power in this Part of this Act, by virtue of which the Scottish Ministers may disqualify the proprietor of an independent school from being the proprietor of such a school, includes power to so disqualify a relevant person.
- (3) For the purposes of any provision in this Part of this Act relating to the disqualification of the proprietor of an independent school from being the proprietor of such a school, the proprietor shall be so disqualified if a relevant person is so disqualified.

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- (4) Any reference in this Part of this Act to the disqualification of the proprietor of an independent school from working with children shall be construed as a reference to any relevant person's being so disqualified.
- (5) Any reference in this Part of this Act to the proprietor of an independent school's being (or not being) a proper person to be the proprietor of such a school shall be construed as including a reference to any relevant person's being (or not being) such a proper person.
- (6) In this section, "relevant person", in relation to the proprietor of an independent school, means—
 - (a) in the case of such a proprietor which is a body corporate, any person who—
 - (i) is a director, manager or secretary of the body corporate; or
 - (ii) purports to act in any such capacity;
 - (b) in the case of such a proprietor which is a Scottish partnership, any person who—
 - (i) is a partner; or
 - (ii) purports to act in that capacity; and
 - (c) in the case of such a proprietor which is an unincorporated association other than a Scottish partnership, any person who—
 - (i) is concerned in the management or control of the association; or
 - (ii) purports to act in the capacity of a person so concerned.

103B Date of registration or removal from register

- (1) Where, under section 98A(3) of this Act, the Scottish Ministers grant an application for registration of an independent school, the registration of that school shall, unless the Scottish Ministers otherwise direct, have effect from the beginning of the day on which the proprietor is, under section 98C(1) of this Act, given notice of the grant of the application.
- (2) Where, under section 103(2)(a), (4)(b)(i) or (5)(a)(i) of this Act, the sheriff principal makes an order directing the Registrar to register an independent school, the registration of that school shall, unless the sheriff principal otherwise directs, have effect from the beginning of the day on which such an order is made.
- (3) Where, under section 98D(3) of this Act, the Registrar removes a registered school from the register, that removal shall have effect from the beginning of the day following the day on which notice under section 98D(4) of this Act is given.
- (4) Where, under section 98D(1) or 100(2)(a) of this Act, the Scottish Ministers make an order directing the Registrar to remove an independent school from the register that removal shall, unless the Scottish Ministers otherwise direct, have effect from the beginning of the day following the day on which the order is made."