



Scottish Law Commission

(SCOT. LAW COM. No. 58)

EDUCATION (SCOTLAND) BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO EDUCATION IN SCOTLAND

Presented to Parliament by the Lord Advocate

by Command of Her Majesty

April 1980

EDINBURGH

HER MAJESTY'S STATIONERY OFFICE

£1 net

Cmnd. 7688

The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, V.R.D., *Chairman*,
Mr. A. E. Anton, C.B.E.,
Mr. R. D. D. Bertram,
Mr. J. Murray, Q.C.,
Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. R. Eadie. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

THE SCOTTISH LAW COMMISSION

**REPORT ON THE CONSOLIDATION OF CERTAIN
ENACTMENTS RELATING TO EDUCATION IN
SCOTLAND**

*To The Right Honourable the Lord Mackay of Clashfern, Q.C.,
Her Majesty's Advocate*

The Education (Scotland) Bill which is the subject of this Report consolidates various enactments relating to education in Scotland. In order to facilitate a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report. All our recommendations are intended to remove anomalies.

The Scottish Education Department have been consulted and they agree with our recommendations.

J. O. M. HUNTER

Chairman of the Scottish Law Commission

20th March 1980

APPENDIX

RECOMMENDATIONS

1. Section 5(2) of the Education (Scotland) Act 1962, as substituted by paragraph 2 of Part I of Schedule 2 to the Education (Scotland) Act 1969, provides that 'regulations under section 2 of this Act may prescribe the requirements to be complied with by an education authority in providing special education for their area.'

Section 2 of the 1962 Act as substituted by the 1969 Act provides, however, that 'the Secretary of State may make regulations prescribing the standards and general requirements to which every education authority shall conform in discharging their functions under section 1 of this Act.' The functions of education authorities under section 1 of the 1962 Act include the provision of adequate and efficient school education, and by virtue of section 1(2)(a)(ii), 'school education' includes 'special education'. It seems, therefore, that the power to make regulations conferred by section 2 is quite wide enough to make regulations in respect of special education and that section 5(2) of the 1962 Act is unnecessary.

We therefore recommend that section 5(2) of the 1962 Act should not be re-enacted in the Bill.

2. Sections 25(2), 26(2) and 27(2) of the Chronically Sick and Disabled Persons Act 1970, as applied to Scotland, refer respectively to the arrangements made by an education authority for the special educational treatment of the deaf-blind, and of children suffering from autism and acute dyslexia. 'Special educational treatment' was defined in section 5 of the Education (Scotland) Act 1962 as originally enacted. That definition of special educational treatment, however, was replaced by paragraph 2 of Part I of Schedule 2 to the Education (Scotland) Act 1969 by a definition of 'special education', and by that Act all references in the 1962 Act to 'special educational treatment' were replaced by references to 'special education'. It seems, therefore, that sections 25(2), 26(2) and 27(2) of the 1970 Act should have referred to special education and not special educational treatment and we recommend that the re-enactment of those provisions should be in terms of special education.

Effect is given to this recommendation in Clause 5(2) of the Bill.

3. The said sections 25(2), 26(2) and 27(2) as applied to Scotland refer to any school maintained or assisted by the education authority. The Scottish Education Acts nowhere refer to a school maintained or assisted by an education authority, these being purely English expressions. The Scottish equivalent of a school maintained by an education authority is a school under the management of an education authority, e.g. sections 10 and 11 of the Education (Scotland) Act 1962. The concept of a school assisted by an education authority does not exist in Scotland nor is there any legal authority for such a school being brought into existence. We therefore recommend that the re-enactment of the said sections 25(2), 26(2) and 27(2) should, instead of referring to any school maintained or assisted by the education authority, refer to any school under the management of the education authority.

Effect is given to this recommendation in Clause 5(2) of the Bill.

4. Section 10(2) of the Education (Scotland) Act 1962 provides that 'any requirement prescribed by regulations made under section 2 of this Act with respect to special schools shall be such as to secure that a pupil shall in no case be compelled to take part in religious observance or to receive religious instruction contrary to the wishes of his parent.'

Section 9 of the 1962 Act provides that 'every public school and every grant-aided school shall be open to pupils of all denominations, and any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school; and no pupil shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such pupil or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects.'

Section 145(39) of the 1962 Act defines a public school as meaning any school under the management of an education authority, and the definition of 'school' in section 145(42) of that Act includes a special school.

Section 10(2) accordingly does not appear to add any safeguard in relation to children in special schools not already available to them under section 9, and seems to be unnecessary.

We therefore recommend that subsection (2) of section 10 of the 1962 Act should not be re-enacted, and the re-enactment of section 10 in Clause 10 of the Bill does not re-enact that subsection.

5. Section 7 of the Education (Scotland) Act 1962 provides in effect *inter alia* for the making of schemes for the provision of junior colleges for young persons, who are defined in section 145(49) of that Act as meaning persons who are over school age but who have not attained the age of 18 years. Until 1972 the school leaving age in Scotland was 15.

Section 45(1) of the 1962 Act provides in effect for the compulsory attendance at junior colleges of every young person who is not exempt from compulsory further education. Such exemption is granted by section 45(8)(f) of that Act to any persons who become 15 (that is over school age) before the scheme for the provision of junior colleges came into force. No such scheme has in fact been made.

By S.I. 1972/59, the school leaving age in Scotland was raised to 16 years. Section 45(8)(f) of the 1962 Act with its reference to 15 years therefore no longer makes sense. We accordingly recommend that, in re-producing that provision, 16 years should be substituted for 15 years in order that the original purpose of the provision may be kept alive—namely that those who have reached school leaving age before the scheme for the provision of junior colleges comes into force shall be exempt from compulsory attendance at them.

Effect is given to this recommendation in Clause 45(8)(f) of the Bill.

6. Subsection (7) of section 66 of the Education (Scotland) Act 1962 provided that in that section and in sections 66B, 66C, 66D and 66E of that Act 'local authority' had the same meaning as in the Social Work (Scotland) Act 1968. The said subsection (7) and sections 66B, 66C and 66D (but not 66E) were repealed by the Education (Mentally Handicapped Children) (Scotland) Act 1974. The definition of 'local authority' for section 66E was therefore repealed and we are sure that this was simply an error. We therefore recommend that the definition of 'local authority' should be resuscitated for the purposes of section 66E and effect is given to this recommendation in Clause 65(5) of the Bill.

7. Section 85(4) of the Education (Scotland) Act 1962 provides *inter alia* that an education authority may 'suspend any teacher from the exercise of his duties in any school under their management'. Subsections (1) to (3) of that section are in terms of education authorities dismissing teachers from their service and education authorities have teachers in their service not only in schools but also in further educational establishments. Moreover, section 18(2) of the Education (Scotland) Act 1969 provides that subsections (1) and (2) of the said section 85 shall continue to apply to certificated teachers employed in an institution providing any form of further education. We therefore think that the reference to 'school' in section 85(4) was an error and that it should have referred instead to any educational establishment under their management. 'Educational establishment' is defined in section 145(17) of the 1962 Act as including a school and institution for the provision of further education. We therefore recommend that this change should be made.

Effect is given to this recommendation in Clause 88(3) of the Bill.

8. Section 118 of the Education (Scotland) Act 1962 provides that the Secretary of State shall have power to prepare draft schemes in respect of educational endowments, but university endowments are excluded from this power by subsection (4) of that section. Subsection (5) of that section, however, provides that in certain circumstances the Scottish Universities Committee of the Privy Council may prepare draft schemes for university endowments.

Before the enactment of the Education (Scotland) Act 1969, the procedure for the preparation of draft schemes for all educational endowments was set out in section 125 of the 1962 Act, and by virtue of subsection (7) of that section as read with section 118(5) as originally enacted, all schemes (including university schemes) had to be approved by Order in Council.

Section 128 of the 1962 Act provides for a shortened procedure (simply involving approval by the Secretary of State) for the making of schemes for educational endowments where the annual value is less than £500. Before the enactment of the 1969 Act, that section provided that a scheme for a small endowment 'when approved by the Secretary of State, shall have effect as if it were a scheme approved by Order in Council under this Part of this Act.'. As noted above, all schemes prior to 1969 (except where the shortened procedure applied) had to be approved by Order in Council and it is therefore clear that the shortened procedure applied to small university endowments as it applied to other small educational endowments.

Section 19 of the 1969 Act, however, substituted new sections 125 and 126 for the original section 125 of the 1962 Act—the new section 125 dealing with the procedure in schemes other than university schemes, and section 126 providing the procedure for university schemes. Two consequential amendments to the 1962 Act were also made by the 1969 Act—

- (a) section 128 was amended by paragraph 36 of Schedule 2 so that it now reads that a scheme made following the shortened procedure 'shall have effect as if it were a scheme made under section 125 of this Act'; and
- (b) a provision was inserted into section 118(5) to the effect that section 126 of the Act was to apply in place of section 125 to the procedure to be followed by the Scottish Universities Committee in preparing a university endowment scheme.

We think that the reference to section 125 in section 128 as read with the substitution of 126 for 125 by virtue of the modification made by section 118(5)(b) ensures that the shortened procedure still applies to small university endowments. We believe, however, that this could have been made much clearer if the amendment made to section 128 by paragraph 36 of Schedule 2 to the 1969 Act had referred to a scheme made under section 125 or 126 of the 1962 Act, as the case may be, and we recommend that this amendment should now be made.

Effect is given to this recommendation in the re-enactment of section 128 in Clause 115 of the Bill.

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

13a Castle Street, Edinburgh EH2 3AR
49 High Holborn, London WC1V 6HB
41 The Hayes, Cardiff CF1 1JW
Brazennose Street, Manchester M60 8AS
Southey House, Wine Street, Bristol BS1 2BQ
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

*Government publications are also available
through booksellers*

ISBN 0 10 176880 X