These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

SCHOOL EDUCATION (MINISTERIAL POWERS AND INDEPENDENT SCHOOLS) (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill introduced in the Scottish Parliament on 29 March 2004:

   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 22–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The School Education (Ministerial Powers and Independent Schools) (Scotland) Bill introduces new ministerial powers covering education authorities and grant-aided schools, and revises and amends existing legislation governing independent schools.

5. Part 1 introduces new powers of direction for the Scottish Ministers to secure improvement in the quality of school education that is provided in education authority and grant-aided schools in Scotland. It also places new duties on Her Majesty’s Inspectorate of Education (HMIE), managers of grant-aided schools and education authorities. The new provisions build on the existing systems in place to deliver improvement. They integrate into the existing frameworks for HMIE inspection and for authority and school improvement in the Education (Scotland) Act 1980 (the “1980 Act”) and the Standards in Scotland’s Schools etc. Act 2000 (the “2000 Act”).

6. Part 2 amends the existing legislative provisions for independent schools contained in Part V of the 1980 Act. These cover the process of registration and procedures for addressing concerns and complaints about the operation of these schools. The Bill updates the provisions on applications for registration to include, in the matters considered, whether efficient and suitable education will be provided for pupils and whether those pupils will have their welfare safeguarded. Amendments are also made to the appeal system, in particular abolishing the Independent Schools Tribunal and providing that appeals will go before the sheriff principal.

7. The Bill implements proposals for change set out and discussed in Ensuring Improvement in our Schools: A consultation paper and draft Bill published on 6 November 2003.

THE BILL – AN OVERVIEW

8. The Bill is in 3 parts:

Part 1 – Power of Scottish Ministers to require action by schools and education authorities – provides the Scottish Ministers with powers to direct education authorities and the managers of grant-aided schools to take specific actions to secure improvements following inspections by HMIE;
Part 2 – Independent Schools – provides:

- for the amendment of the definition of an independent school;
- for the amendment of the existing provisions for registration of an independent school in the 1980 Act;
- for the amendment of the existing provisions for regulating independent schools in the 1980 Act;
- for the abolition of the Independent Schools Tribunal; and
- for appeals against decisions made by the Scottish Ministers in relation to independent schools to be made to the sheriff principal;

Part 3 – General – provides for the short title, commencement and minor amendments and repeals.

THE BILL – SECTION BY SECTION

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

9. Part 1 inserts sections 66B, 66C and 66D after section 66A of the 1980 Act and sections 10A, 10B and 10C after section 10 of the 2000 Act. It provides the Scottish Ministers with new powers to direct education authorities and managers of grant-aided schools to take specific action to secure improvement as identified after inspection by HMIE. It sets out the circumstances in which the Scottish Ministers may use these powers and the procedure that must be followed.

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

10. Section 1 inserts sections 66B, 66C and 66D after section 66A of the 1980 Act. Section 66B sets out the procedure to be followed where HMIE identify in relation to a grant-aided or local authority school that satisfactory action has not been taken to secure improvement. For the purposes of this section, “relevant person” when relating to a grant-aided school means the managers of the school, and when relating to an authority school, it means the education authority.

11. Section 66B(1) sets out that, before reaching such an opinion, HMIE must have inspected the school and, as a result, identified action that the relevant person should take to secure improvement in relation to either the school or the school education provided in it.

12. Section 66B(2) places a new duty on HMIE to refer the relevant person to the Scottish Ministers if they believe the relevant person has failed to take satisfactory steps to address the areas for improvement. It provides that HMIE can make a reference to the Scottish Ministers only if they believe that the relevant person has been given sufficient opportunity to take action to secure the improvement that HMIE has identified and that the issue is such that an enforcement direction would be justified.

13. Section 66C provides for the preliminary notice procedure that the Scottish Ministers must follow, on receipt of a reference by HMIE under section 66B(2), where they consider that further action is justified. Such a notice requires a written response from the relevant person.
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within a period of time, which Ministers will specify in the notice. The response should either detail the reasons why the relevant person considers they have not failed or accept that there has been a failure and give any reasons why an enforcement direction should not be issued.

14. Section 66D provides the Scottish Ministers with the power to direct the relevant person to take action to address, or prevent a recurrence of, the failure identified by HMIE in section 66B. Subsection (1) ensures that the Scottish Ministers will have the power to issue an enforcement direction only after the deadline for offering a response to the preliminary notice has passed (whether or not such a response has been sent). However, the preliminary notice procedure need not necessarily be followed by an enforcement direction if Ministers no longer consider a direction to be justified or if they consider that satisfactory action has been taken.

15. Subsections (5) and (6) allow the Scottish Ministers to vary any enforcement direction and to do so without having to repeat the preliminary notice procedure.

16. Subsection (9) places a duty on the relevant person to comply with any direction made to them by the Scottish Ministers. Failure to do so, being a breach of statutory duty, would enable Ministers to take action, in an appropriate case, under section 70 of the 1980 Act.

Section 2 – Power of Scottish Ministers to require action by education authorities

17. Section 2 inserts sections 10A, 10B and 10C after section 10 of the 2000 Act. It sets out the procedure to be followed where HMIE identify through their inspection of an education authority that the authority has failed to take satisfactory action to secure improvement in the way they exercise their functions in relation to the provision of school education.

18. Subsection (2) places a duty on HMIE to refer the education authority to the Scottish Ministers if they believe the authority has failed to take satisfactory action to address the areas for improvement. It provides that HMIE can make such a reference only if the education authority has had sufficient opportunity to take action to secure improvement and if they consider that an enforcement direction would be justified.

19. Subsections (5) and (6) allow the Scottish Ministers to vary any enforcement direction and to do so without having to repeat the preliminary notice procedure.

20. Sections 10B and 10C mirror the provisions in sections 66C and 66D respectively.

Part 2 – Independent schools

21. Part 2 amends the legislation relating to independent schools in Part V of the 1980 Act. Section 3 amends the definition of an independent school in section 135(1) of the 1980 Act and has the effect of extending the definition to schools having less than five pupils receiving full-time education.
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22. The provisions for registration of an independent school are in section 4, which makes amendments to section 98 of the 1980 Act, substitutes a new section 98A and inserts sections 98B, 98C and 98D. Section 5 makes provision for regulating independent schools by inserting a new section 98E and by making amendments to sections 99, 100 and 101. The Independent Schools Tribunal is abolished and appeals will now go to the sheriff principal as detailed in section 6. This section makes amendments to section 102 and substitutes a new section 103. Section 7 inserts two new sections: 103A and 103B. Section 103A applies the provisions on independent schools to proprietors who are not individuals. Section 103B provides for the dates on which the registration of schools or their removal from the register will come into effect.

Section 3 – Meaning of “independent school”

23. Section 3 extends the existing definition of an independent school in section 135(1) of the 1980 Act by removing the words “five or more” where it appears before “pupils”. The definition of an independent school will now read: “a school at which full-time education is provided for pupils of school age (whether or not such education is also provided for pupils under or over that age), not being a public school, a grant-aided school or a self-governing school”. As a result, any establishment meeting these criteria is subject to the legislation governing independent schools, whatever the number of pupils on the school roll.

Section 4 – Registration of independent schools


25. Subsection (1) of section 4 replaces section 98(2) and makes provision for the information that the Registrar of Independent Schools in Scotland (the Registrar) must record in the Register of Independent Schools in Scotland.

26. New section 98(2)(a) specifies that the Scottish Ministers will direct which elements of the information given by schools at the time they apply to become an independent school should be recorded on the register. Subsection (2)(b) provides that the Scottish Ministers will also direct what information concerning any conditions imposed on a school, including variations and revocations, should be recorded. Subsection (2)(c) makes provision for every order imposing a disqualification of a proprietor, teacher, premises or accommodation by the Independent Schools Tribunal, the Scottish Ministers or the sheriff principal to be recorded, subject to removal of that disqualification as required under subsection (2A). The Independent Schools Tribunal is referred to in this provision to ensure that any orders which have been made by that Tribunal before its abolition and which are still in force are still recorded. Subsection (2)(d) provides that the Scottish Ministers will direct which elements of the information submitted to the Registrar by registered schools will require to be placed on the register.

27. Section 98A sets down the procedure for proprietors to apply for registration of a proposed independent school. It outlines the basis on which the Scottish Ministers will reach a decision about whether or not to grant an application for registration.
28. Subsection (1) stipulates that any person intending to open and run an independent school must apply to the Scottish Ministers for such registration. Section 101(1) outlines the penalties to which any person running an independent school that is not registered will be liable.

29. Under subsection (2), the Scottish Ministers will define by regulations what form an application to become an independent school will take, and what information will have to be included. The information provided will be sufficient to allow the Scottish Ministers to decide whether or not they are satisfied that the grounds on which independent schools will be registered have been met.

30. Subsection (3) outlines the five aspects of the application which the Scottish Ministers will consider in deciding whether or not a school should be registered: these are detailed in paragraphs (a) to (e). The Scottish Ministers will consider whether the school will provide efficient and suitable instruction for the age and sex of the pupils who are to attend the school; whether the welfare of the pupils will be safeguarded and promoted; if the proprietor of the school and every proposed teacher in the school is a proper person (subject to the provisions in subsection (5)); whether the school premises are suitable for use as a school; and whether the accommodation will be adequate and suitable for the number, age and sex of the pupils. If the Scottish Ministers are satisfied as to these matters they may grant an application for registration. However, subsection (5) details the circumstances where the Scottish Ministers will not grant an application, namely, where the proprietor or teacher is not a proper person because they fall into the description in paragraph (a), or where the proposed premises or the accommodation to be provided at those premises is disqualified from being used as such, or for the proposed numbers, age or sex of the pupils.

31. Subsection (4) allows the Scottish Ministers to register an independent school subject to conditions. This may be appropriate, for example, where teachers at the school may require particular training or where certificates are required to verify the suitability and adequacy of premises and accommodation for a particular group of pupils.

32. Subsection (6) defines “disqualified from working with children” and provides the Scottish Ministers with the power to prescribe in regulations what a “prescribed person” is in relation to both a proprietor and a teacher.

33. Section 98B covers the disqualification orders that the Scottish Ministers may make if they decide to refuse an application to register an independent school under section 98A. Subsection (1) sets down that disqualification orders may be made if the refusal to register is on the grounds that the Scottish Ministers are not satisfied that the proposed premises are suitable for a school; that the accommodation is adequate and suitable for the number, sex and ages of the pupils; or the proprietor or a proposed teacher is a proper person.

34. Subsection (2) allows the Scottish Ministers to disqualify school premises. Subsection (3) covers disqualification of accommodation. Subsections (4) and (5) allow the Scottish Ministers to disqualify a proprietor from being a proprietor of an independent school on the grounds that the proprietor is not a proper person, or to disqualify a teacher from being a teacher at any school, if that teacher is not a proper person.
35. Section 98C covers the system of notification and appeals with regard to applications for registration of an independent school. Subsections (1) and (2) make provision for the Scottish Ministers to notify the proprietor and the Registrar of any decision they make on an application. If the application is refused on the grounds that a proposed teacher is not a proper person, the Scottish Ministers must also notify that proposed teacher of their decision.

36. Subsections (4) and (5) specify those persons whom the Scottish Ministers should notify if they decide to make any disqualification orders under section 98B. Subsection (4) states that the Scottish Ministers must notify the proprietor and the Registrar if they make an order disqualifying the proposed premises or part of them from being used as a school (under section 98B(2)); the accommodation from being used or from being used as such for pupils over a certain number, or of specified age or sex (under section 98B(3)); or the proprietor from being the proprietor of an independent school (under section 98B(4)). Section 98C(5) states that if the Scottish Ministers make an order disqualifying a proposed teacher from being a teacher at any school (under section 98B(5)), they will notify the proposed teacher and the Registrar.

37. Subsections (6) and (7) set down the appeals open to proprietors against decisions made by the Scottish Ministers to refuse an application, to set conditions on registration or to make a disqualification order; and subsection (8) provides for an appeal by a proposed teacher against a disqualification order relating to that teacher.

38. Section 98D sets out the procedure for removing a school from the register when it is no longer operating.

Section 5 – Regulation of registered schools

39. Section 5 revises the provisions for regulating independent schools. It inserts a new section 98E and makes amendments to sections 99, 100 and 101 of the 1980 Act.

40. Section 98E gives the Scottish Ministers the power to impose, vary or revoke any condition on a registered school as they think fit. They can do so if they think it is necessary or on application by the proprietor of the school.

41. Section 5(2) amends section 99 of the 1980 Act and specifies the grounds on which the Scottish Ministers can serve a notice of complaint, the circumstances in which they do not require to serve such a notice, what a notice will contain and the rights of appeal attached to it.

42. Section 99(1A) adds a number of new grounds to the existing grounds. These existing grounds are: that efficient and suitable instruction is not being provided at the school; that the welfare of a pupil attending the school is not adequately safeguarded and promoted; that the premises or any parts thereof are unsuitable for a school; and that the accommodation provided is inadequate or unsuitable for the number, ages and sex of the pupils attending the school.

43. The additional grounds are set out in paragraphs (d) to (j). Under paragraphs (d), (e) and (f), notices of complaint can be served if the Scottish Ministers are satisfied that any condition imposed on the carrying on of the school has not been complied with; if any part of the school premises has been disqualified from being used as a school; or any accommodation on the school
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premises is disqualified from being used as such, or is being used for a number of pupils or pupils of an age or sex for which it has been disqualified.

44. Paragraphs (g) and (h) allow a notice of complaint to be served if the Scottish Ministers are satisfied that either the proprietor or a teacher at the school has been disqualified under this Act, is disqualified from working with children, is a prescribed person or is otherwise not a proper person to be a proprietor or a teacher.

45. Paragraph (j) provides that a notice of complaint can be served if the proprietor of a school has not provided the Registrar with information required under section 98(3), or has not notified the Registrar of any changes to information previously submitted.

46. Section 99(1B) allows the Scottish Ministers to act without serving a notice of complaint if they are satisfied that the circumstances require urgent action, for example if the welfare of the pupils is at risk. This section allows Ministers to make an order under section 100(2) without first serving a notice of complaint.

47. Section 99(1C) outlines what form a notice of complaint will take. In particular, a notice of complaint will specify the ground of the complaint, with a full description of the matter complained of. Section 99(2) remains although the wording is amended by paragraph 1(3) of schedule 1 to this Bill, and allows a copy of the notice to be served on the teacher, where the notice is served on the grounds that the teacher is not a proper person. Section 99(3) provides for an appeal by a proprietor against a notice of complaint.

48. Section 100 deals with the determination of complaints. It specifies the circumstances in which the Scottish Ministers can make orders as a result of complaints against a registered school, and the rights of appeal open to proprietors and teachers against any such order.

49. New subsection (1) describes the circumstances in which the Scottish Ministers can make an order as the result of a complaint. There are three such circumstances. Firstly, an order can be made after a notice of complaint has been served on the proprietor and either no appeal has been made or an appeal has been made but refused; the period in the notice has expired and the Scottish Ministers are not satisfied that the proprietor has taken satisfactory action to remedy the matter. Secondly, an order can be made if a notice of complaint has been served, an appeal has been lodged but no decision has as yet been made but, pending that decision, the Scottish Ministers are satisfied that there is a serious risk of harm to any pupil attending the school. Finally, there is also provision for the Scottish Ministers to make an order without a prior notice of complaint if they are satisfied that urgent action is required.

50. Subsection (2) details the orders that the Scottish Ministers may make. They can make an order directing the Registrar to remove the school from the register. Disqualification orders can be made with regard to premises, accommodation, the proprietor and teachers. Orders can also be made imposing, or varying conditions on the school.

51. Subsections (3A) to (3C) deal with appeals.
52. The previous provision in 100(4) of the 1980 Act remains, although modified to remove the reference to the Tribunal and the Secretary of State, and to substitute a reference to an order made under this Part of the Act. This provides that any proprietor disqualified from being a proprietor, or any teacher disqualified from being a teacher, will unless specifically stated otherwise, be disqualified from being both a proprietor of an independent school and a teacher at any school.

53. Section 101 covers the enforcement of orders and describes the penalties applicable under this Part of the Act. The penalties relating to each offence are the same: the individual will be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for up to three months, or to both. The offences apply to: under subsection (1), any person running an independent school that is not registered; under subsection (2), a person using school premises, any part of such premises, or accommodation subject to a disqualification order made under this Act; under subsection (3), any person acting as the proprietor of an independent school when disqualified from doing so by an order; and, under subsection (3A), any person disqualified from being a teacher in any school if they endeavour to get a position as a teacher, accept such a position or teach in any school.

54. Subsection (4) is amended and updated (by schedule 1 of the Bill) to refer to the current provision on disqualification in England and Wales, so that a person disqualified in England and Wales would automatically be disqualified for the purposes of this Part of the 1980 Act.

Section 6 – Appeals

55. Section 6 contains provisions for the removal of disqualifications by the Scottish Ministers and then provides for the powers the sheriff principal has in relation to any appeal made under this Part of the Act.

56. Section 102 provides for the removal of disqualifications. There are existing provisions for any person to apply to the Scottish Ministers for the removal of any disqualification order. A new subsection (1A) provides that the Scottish Ministers must inform the person and the Registrar of any decision they reach on an application to remove a disqualification. Under subsection (2), any person who is aggrieved by the decision of the Scottish Ministers to refuse to remove a disqualification can appeal to the sheriff principal within 28 days of the applicant being notified of the decision.

57. A new section 103 provides 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.

58. Subsection (2) sets down the orders the sheriff principal can make if allowing an appeal against a decision by the Scottish Ministers to refuse to register a school.

59. Subsection (3) details the orders that the sheriff principal can make after hearing an appeal against the decision by the Scottish Ministers with regard to imposing, varying and revoking 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.

60. Subsection (4) lays down the orders that the sheriff principal can make after hearing an appeal against a notice of complaint.

61. Subsection (5) sets down 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).

62. 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) 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 will make an order removing the disqualification.

Section 7 – Supplementary

63. Section 7 makes provision for the application of this Part of the 1980 Act to proprietors of independent schools who are not individuals, and also makes provision for the dates on which registrations and removals from the register will come into effect.

64. Section 103A specifies that all the powers and provisions within this Act relating to the proprietor of an independent school relate also to a “relevant person”. Subsection (6) defines “relevant person” in relation to the proprietor of an independent school so that where the proprietor is a body corporate, the relevant person will be any person who is a director, manager or secretary of the body corporate or any person who purports to act as such. Where the proprietor is a partnership, the “relevant person” will be any person who is a partner, or purports to be such. Where the proprietor is an unincorporated association other than a partnership, the “relevant person” will be any person who is concerned in the management or control of the association, or any person who purports to act in such a capacity.

65. Section 103B sets out the dates on which registrations of independent schools and removals of independent schools from the register come into effect.

Part 3 – General

66. Section 8 brings into effect the minor amendments contained in schedule 1 and the repeals contained in schedule 2. Section 9 allows the Scottish Ministers to bring the Act into force by order made by statutory instrument and allows for transitional provisions and savings to be made in that order.

EFFECT OF PART 2 OF THE BILL ON PART V OF THE EDUCATION (SCOTLAND) ACT 1980

67. Part V of the 1980 Act as amended by the provisions in Part 2 of this Bill is set out below. This is attached into the explanatory notes to assist the reader to understand the
68. The functions of Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and therefore any reference to the Secretary of State should be taken to be references to the Scottish Ministers.

PART V

INDEPENDENT SCHOOLS

98 Registration of independent schools

(1) The Secretary of State shall appoint one of his officers to be the Registrar of Independent Schools in Scotland (hereinafter in this Part of this Act referred to as "the Registrar"), and it shall be the duty of the Registrar to keep a register of independent schools, which shall be open to public inspection at all times,

[…]  
[(1A)…]

(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

\[1\text{ Text amended by section 4(1) and schedule 1 of the Bill.}\]
(b) the sheriff principal,

the Registrar shall remove the order imposing that disqualification from the register.

(3) The Secretary of State shall make regulations—

(a) prescribing the particulars information as to which is to be furnished to the Registrar by the proprietors of registered schools and the manner in which it shall be so furnished;

(b) requiring the notification to the Registrar of any changes in such particulars;

(c) […]; and

(d) dealing with such incidental matters as the Secretary of State may deem expedient.

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.

2 Text amended by section 4(2) of the Bill.
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(4) The Scottish Ministers may, on granting an application for registration, impose such conditions on the carrying on of a 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;

(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;

\(^3\) Text inserted by section 4(2) of the Bill.
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

(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; and

(c) the Registrar.

(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; and

(b) the Registrar,
of the order.

4 Text inserted by section 4(2) of the Bill.
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 notice relates; and  
(b) the Registrar, 

of the order.

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  
(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.

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.

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; and  
(b) the Registrar, 

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 the proprietor of that fact.

98E Variation and revocation of conditions

5 Text inserted by section 4(2) of the Bill.
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

(1) The Scottish Ministers may—
   (a) impose any condition on the carrying on of a registered school; or
   (b) vary or revoke any such condition imposed by virtue of this Part of this Act, as they think fit.

(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; and
   (b) the Registrar,
   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.

99 Complaints

(1) If at any time the Secretary of State is satisfied that any registered school is objectionable upon all or any of the grounds mentioned in subsection (1A) below, the Scottish Ministers shall, subject to subsection (1B) below, serve upon the proprietor of the school a notice of complaint.

(1A) The grounds referred to in subsection (1) above are—
   (a) that efficient and suitable instruction is not being provided at the school, having regard to the ages and sex of the pupils attending thereat;
   (aa) that the welfare of a pupil attending the school is not adequately safeguarded and promoted there;
   (b) that the school premises or any parts thereof are unsuitable for a school;
   (c) that the accommodation provided at the school premises is inadequate or unsuitable, having regard to the number, ages and sex of the pupils attending the school;

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6 Text inserted by section 5(1) of the Bill
7 Text amended by section 5(2) and schedule 1 of the Bill
(d) that a condition imposed by virtue of this Part of this Act upon 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;

(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, any 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—
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

(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.

(2) If it is alleged by any notice of complaint served under this section that any [...]teacher in the school is—

(a) disqualified as mentioned in sub-paragraph (i) or (ii) of subsection (1A)(h) above;

(b) a prescribed person; or

(c) otherwise not a proper person to be a teacher in any school,

that [...]teacher shall be named in the notice and the particulars contained in the notice shall specify the grounds of the allegation, and a copy of the notice shall be served upon him at the same time as the notice is served.

(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.

100 Determination of complaints

(1) This section applies—

(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 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 any pupil attending the school; or

8 Text amended by section 5(3) and schedule 1 of the Bill.
(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 or any part of them are 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;

(b) where, under paragraph (e) of that subsection, an order is made disqualifying a teacher, that teacher; and

(c) the Registrar,

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.
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(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) Where by virtue of an order made [...] under this Part of this Act any person is disqualified either from being the proprietor of an independent school or from being a teacher in any school, then, unless the order otherwise directs, that person shall, by virtue of the order, be disqualified both from being the proprietor of an independent school and from being a teacher in any school.

101 Enforcement of orders

(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.

(2) If any person uses [...]—

(a) school premises which are or any part of such premises which is; or

(b) any accommodation provided at such premises which is,

disqualified by virtue of any order made under this Part of this Act, 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.

(3) If any person acts as the proprietor of an independent school, [...] while he is disqualified from so acting [...] by any such order as aforesaid, he 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.

(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.

(4) For the purposes of the foregoing provisions of this Part of this Act, a person who is subject to or deemed to be subject to a direction given under section 142 of the Education Act 2002 (c.32) shall be deemed to be disqualified from being the proprietor

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9 Text amended by section 5(4) and schedule 1 of the Bill.
of an independent school or from being a teacher in any school [...] by an order made under this Part of this Act.

102 Removal of disqualifications

(1) If on the application of any person the Secretary of State is satisfied that any disqualification imposed by an order made under [...] this Part of this Act is, by reason of any change of circumstances, no longer necessary, the Secretary of State shall by order remove the disqualification.

(1A) The Scottish Ministers shall, as soon as reasonably practicable after making a decision under subsection (1) above, give notice to—

(a) the applicant; and

(b) the Registrar,

of that decision.

(2) Any person who is aggrieved by the refusal of the Secretary of State to remove a disqualification so imposed may, before the expiry of the period of 28 days beginning with the day on which the applicant is given notice under subsection (1A)(a) above, appeal to the sheriff principal against that refusal.

103 Appeals under this Part

(1) An appeal—

(a) made under—

(i) section 98C(6) of this Act;

(ii) section 97C(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); or

(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(6) of this Act;

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10 Text amended by section 6(1) and schedule 1 of the Bill.

11 Text amended by section 6(2) of the Bill.
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

(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) Where, on an appeal under section 99(3) of this Act—

(a) 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—

(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
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(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) Any 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.

103A Proprietor which is body corporate etc.\(^{12}\)

(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.

(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

\(^{12}\) Text inserted by section 7 of the Bill.
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

(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.

FINANCIAL MEMORANDUM

INTRODUCTION

69. The School Education (Ministerial Powers and Independent Schools) (Scotland) Bill provides the Scottish Ministers with new powers to direct education authorities and the managers of grant-aided schools to take specific actions to secure improvements following inspections by HMIE. These are contained in Part 1 of the Bill, which also places new duties on HMIE, managers of grant-aided schools and education authorities.

70. Part 2 of the Bill amends the existing legislative provisions covering the registration and regulation of independent schools contained in the 1980 Act. Amendments are also made to the appeal system, in particular abolishing the Independent Schools Tribunal and providing that appeals will go before the sheriff principal.

\footnotesize{\textsuperscript{13}}Text inserted by section 7 of the Bill.
71. *Ensuring Improvement in our Schools: A consultation paper and draft Bill* was published in November 2003. Over 3400 copies were distributed. One was sent to every school and authority in Scotland. Respondents were asked to highlight any costs they envisaged as a result of the new provisions. Further consultation has taken place with HMIE, the Scottish Court Service, CoSLA and independent schools.

**PART 1 – POWER OF SCOTTISH MINISTERS TO REQUIRE ACTION BY SCHOOLS AND EDUCATION AUTHORITIES**

72. Part 1 introduces new powers for the Scottish Ministers and imposes new duties on HMIE, education authorities and managers of grant-aided schools. The powers are intended to be “last resort” powers, and as such, it is thought they will be used infrequently. Costs will only arise from this part of the Bill if the powers are invoked.

73. For the purposes of this memorandum, costs have been calculated on the basis of the administrative cost per reference leading to an enforcement direction. Separate costs are given for administering the powers in relation to improvements required in a school and for administering the powers in relation to improvements required in an education authority.

74. We do not associate any costs involved in implementing any action specified in a direction. Several authorities, in their responses to the consultation, identified potential implementation costs or costs associated with redistributing resources. We have examined this issue again and concluded that such costs would not be attributable to the Bill. The provisions do not impose any new standards on education authorities or grant-aided schools, but seek to ensure that the existing standards are met. To reach these standards, we consider that adequate funding is already available. In relation to the possibility of resources requiring to be redistributed, the timescales that would be involved in invoking the powers mean that an authority would be able to plan for any redistribution in its normal budget process.

75. CoSLA have indicated that they do not think the powers proposed are necessary and will not need to be used. They therefore associate no new costs with the proposals. As stated above, we consider that the use of the powers will be rare, but that there will be minimal administrative costs for the authority in the instances where they are used.

**Costs on the Scottish Administration**

*Scottish Executive Education Department*

76. The costs for the Scottish Executive relate to the administration of the new system as and when it is required. Officials will be required to liaise with the Scottish Ministers, HMIE and the education authority or grant-aided school throughout the process. The cost to the Scottish Executive of administering one reference about a school from HMIE through to enforcement direction is considered to be £1600. This is based on an assumption that 6 days of senior officials’ time would be involved. The cost to the Scottish Executive of administering one reference about an education authority from HMIE through to enforcement direction is considered to be £2600. This is based on the assumption that 10 days of senior officials’ time would be involved. It is assumed that each power would be used very rarely and therefore less than once a year. In order to reach an estimated cost, an assumption has been made of one use
per year in relation to an education authority and one in relation to a school. These costs can therefore be met from within existing budgets.

Her Majesty’s Inspectorate of Education (HMIE)

77. HMIE have a new duty under these provisions to make a written reference to the Scottish Ministers if they are satisfied that an education authority or the managers of a grant-aided school have not taken sufficient action to secure improvement. They will also be consulted by the Scottish Ministers on any response received following a preliminary notice; before giving, varying or revoking an enforcement direction; and their advice may be sought by Ministers on progress made following an enforcement direction.

78. The cost for HMIE of carrying out this new duty and providing additional advice to the Scottish Ministers and SE officials is estimated to be £2250 in relation to a reference about a school. This is based on the time associated with the professional involvement of inspectors administering the system. On the same basis, the cost involved in a reference in relation to an education authority is estimated to be £4500. This is again based on the assumption that each power would be used once a year. The costs can therefore be met from within existing budgets.

Costs on local authorities

79. Education authorities that receive a reference from the Scottish Ministers will have to identify staff to respond at the preliminary notice stage and after the enforcement direction stage (if relevant). As CoSLA do not anticipate their use, and we consider their likely use to be rare, the costs are estimated to be minimal.

Costs on other bodies, individuals and businesses

Grant-aided schools

80. Managers of grant-aided schools that receive a preliminary notice from the Scottish Ministers will need to respond and continue to liaise and provide information to the Scottish Executive if an enforcement direction is made. The cost of administering this system from reference to enforcement direction in the case of a school is estimated to be £1200. This is based on the assumption that the process would be managed by the headteacher in consultation with the management board and that this would involve an average of 4 days. There are only eight grant-aided schools and so it is very unlikely that there would be even one reference in any given year. These costs could be met from within existing budgets.

PART 2 – INDEPENDENT SCHOOLS

81. Part 2 of the Bill amends and revises the existing legislative provisions for independent schools contained in Part V of the 1980 Act. Costs are estimated for the provisions, but as the provisions modify existing processes, additional costs are minimal.
Costs on the Scottish Administration

Scottish Executive Education Department

82. The Scottish Executive will continue to run the office of the Registrar of Independent Schools administering the registration and regulation of this sector. The registration procedure currently involves 5 days of officials’ time, costing on average £700 per school. This cost does not change as a result of the Bill.

83. An average of 3 schools has registered each year over the last ten years. There is a low risk of an initial influx of new schools seeking registration as a result of the extension of the definition of an independent school. Any establishment that currently provides full-time education to fewer than 5 pupils of school age would at present fall under the definition of a “day care of children” service in the Regulation of Care (Scotland) Act 2001. None are currently registered. We estimate that the number of establishments that would have to be brought under regulation as a result of the change in definition in the first year of implementation would be between 4 and 6. To account for this, an additional cost to the Scottish Executive is estimated at between £2800 and £4200 for the first year after implementation. Ongoing costs assume the possibility of 1 additional school being registered per year from year two onwards.

84. We consider that the cost of setting conditions will be offset by their use. The use of conditions means that a school can be registered with a condition, if appropriate, rather than having its registration refused and having to apply again. Costs involved in this double-administration will be saved. Similarly, the introduction of conditions will give an alternative to notices of complaint in less serious cases.

85. The implementation of a notice of complaint procedure is on average £2100 per notice. This is based on the assumption that it will involve between 5 and 10 days of senior officials’ time. Two notices of complaint have been served in the last 10 years. The changes in the procedure make it quicker rather than more likely to be used and, therefore, any increase in cost is considered likely to be minimal, and would be offset by the use of conditions as an alternative.

86. The cost to the Scottish Executive of any appeals is £800 on the assumption that it will involve 3 days of senior officials’ time. Despite the new rights of appeal being introduced by the Bill, we do not anticipate any increase in appeals. Rights of appeal are currently heard by the Independent Schools Tribunal. It has been required to meet very rarely; the last appeal was heard in 1977. While it is possible that the number of appeals may increase as a result of the changes to the appeal procedures, there is no evidence to suggest this will happen.

Her Majesty’s Inspectorate of Education (HMIE)

87. The system of registration has been changed by the provisions in the Bill. HMIE previously were involved in first stage inspections following provisional registration and carried out a final inspection at least one year after provisional registration. The revised system is not considered to place any additional cost on HMIE per school. The cost of registering a school to HMIE is estimated to be £5500 based on a school of up to 30 pupils. This is based on the assumption that the process will involve up to 11 days of inspectors’ time to assess paperwork, carry out a full inspection in the first six months and carry out follow up visits in the next year.
88. As stated above, an average three new independent schools are registered per year. Extending the definition of an independent school may result in an initial increase in the schools requiring registration in the first year. As such an additional cost for HMIE in the first year of implementation is estimated to be between £18,000 and £27,000 based on the assumption that the number of additional establishments that would have to be brought under regulation with implementation would be between 4 and 6. The additional costs for follow-up inspections in the second year on the same basis would be between £4000 and £6000. Total additional costs for year two, therefore, are estimated to be in the range £8500 to £10,500 including the assumption of 1 additional school being registered per year as a result from year two onwards.

89. From year three of implementation HMIE will have an annual additional cost of £5500 based on 1 additional school being registered each year as a result of the extension in definition.

90. The costs for HMIE for appeals and regulation do not change as a result of the amended provisions. The time involved in a notice of complaint is estimated to be an average of 5 days; however this can rise to 8-10 days in more complex cases. The range, therefore, is between £2500 and £5000. The cost of an appeal is estimated to be £1000 based on the involvement of an inspector for two days.

Scottish Court Service

91. The Bill abolishes the Independent Schools Tribunal, and gives rights of appeal to the sheriff principal. The sheriff principal had previously been the chair of the Tribunal, alongside two lay members.

92. As outlined above, the Independent Schools Tribunal was required to meet very rarely; it last met in 1977. While, it is possible that the number of appeals may increase as a result of the changes to the appeal procedures, there is no evidence to suggest this will happen. The costs per case to the Scottish Court Service are estimated to be £3,700 for judicial salaries and £800 for running costs for the court service.

Costs on local authorities

93. Part 2 of the Bill has no cost implications for local authorities.

Costs on other bodies, individuals and businesses

Independent schools

94. A regulatory impact assessment has been completed on the impact on independent schools as a result of the extension of the definition of these schools. It is only a very small number of schools that are likely to require to be registered as a result. Any non-residential establishment that currently provides full-time education to fewer than 5 pupils of school age would at present fall under the definition of a “day care of children” service in the Regulation of Care (Scotland) Act 2001. The requirement to be registered with the Care Commission would cease when they become defined as independent schools. A small number of residential establishments that provide full-time education are currently registered as “care home” services.
For these establishments, the Care Commission costs would continue but their registration would be under “school care accommodation” services.

95. There is no registration fee associated with registering an independent school with the Registrar of Independent Schools. The existing administrative costs for these schools is estimated to be on average £1500 per school taking into account the time involved for the headteacher to produce and submit the evidence required. Ongoing administrative costs on the same basis are estimated to be on average £180 per year. Any increase in these administrative costs as a result of the new provisions is considered to be minimal. A school providing an efficient education and safeguarding the welfare of the pupils will not be subject to any costs associated with regulation or appeals.
These documents relate to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 29 March 2004

TABLE 1: SUMMARY OF COSTS PER USE FOR PART 1 OF THE BILL

Note: all costs in the table below represent new additional burdens on each body.

<table>
<thead>
<tr>
<th>Part of Bill and Cost per measure</th>
<th>Scottish Administration</th>
<th>Grant-Aided Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scottish Executive Education Department</td>
<td>HMIE</td>
</tr>
<tr>
<td>1a. Power to require action by managers of a grant aided school</td>
<td>£1,600</td>
<td>£2,250</td>
</tr>
<tr>
<td>1b. Power to require action by education authorities in relation to a school</td>
<td>£1,600</td>
<td>£2,250</td>
</tr>
<tr>
<td>2. Power to require action by education authorities</td>
<td>£2,600</td>
<td>£4,500</td>
</tr>
</tbody>
</table>

TABLE 2: SUMMARY OF COSTS FOR THE DEFINITION OF AN INDEPENDENT SCHOOLS UNDER PART 2 SECTION 3

Note: The summary table below shows the cost to the Scottish Executive Education Department HMIE and Newly defined independent schools during the first three years of implementation. All costs are additional to those currently incurred. Additional annual costs to the Scottish Executive and newly defined independent schools reach a new steady-state level in year 2. Additional annual costs to HMIE reach a new steady-state level in year 3.

<table>
<thead>
<tr>
<th>Year of implementation</th>
<th>Scottish Administration</th>
<th>Newly defined Independent School (cost per school)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scottish Executive Education Department</td>
<td>HMIE</td>
</tr>
<tr>
<td>Year 1</td>
<td>£2,800 - £4,200</td>
<td>£18,000-£27,000</td>
</tr>
<tr>
<td>Year 2</td>
<td>£700</td>
<td>£8,500-£10,500</td>
</tr>
<tr>
<td>Year 3 onwards</td>
<td>£700</td>
<td>£5,500</td>
</tr>
</tbody>
</table>
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

96. On 29 March 2004, the Minister for Education and Young People (Peter Peacock) made the following statement:

“In my view, the provisions of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

97. On 25 March 2004, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”