



THE REGISTRATION OF  
INDEPENDENT SCHOOLS  
IN SCOTLAND

GUIDANCE NOTES

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## INTRODUCTION

1. All independent schools in Scotland are required, in accordance with the Education (Scotland) Act 1980, as amended, to be registered with the Registrar of Independent Schools. The Registrar is an official of the Scottish Government appointed by the Scottish Ministers.

2. This guidance has a number of purposes. Firstly it sets out the procedures prospective proprietors should follow to register their school with the Registrar. Secondly it informs existing proprietors about the arrangements that were introduced following legislation which commenced on 31 December 2005.<sup>1</sup> It also highlights some of the issues prospective proprietors will need to consider, and directs proprietors to sources of useful advice and information.

3. This version was produced in July 2006 and is regularly updated. **However we strongly recommend that proprietors contact the relevant organisations to ensure that they have the most up to date information when deciding on their policies (e.g. on child protection) and making decisions about their schools.** It has been prepared by the Scottish Government Learning Directorate, Education Scotland HM Inspectors, the Care Inspectorate and the Scottish Council of Independent Schools (SCIS) have contributed to the development of this guidance.

4. **The information in this document is for guidance only. You should not regard it as an authoritative or definitive interpretation of the law, which can only be provided by the Courts. You should therefore consult your own legal advisers as appropriate.**

5. **This guidance does not provide an exhaustive list of issues and legislation that prospective or existing proprietors should consider when establishing, or continuing, an independent school. It is the responsibility of prospective and existing proprietors to be aware of, and comply with, any legislation relevant to the running of an independent school. Proprietors may therefore wish to contact the organisations listed at [Annex A](#) (and any other relevant organisations) for advice and guidance.**

### Definition of an independent school

6. An independent school is defined in the Education (Scotland) Act 1980 (referred to as "the 1980 Act" in this guidance), as amended, as "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 or a grant-aided school".<sup>2</sup> The 1980 Act does not prescribe a minimum number of pupils needed in order to constitute a school, and it defines school age as a person of school age if that person has reached the age of 5 and not attained the age of 16.<sup>3</sup>

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<sup>1</sup> Part 2 of the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004

<sup>2</sup> Section 135 of the Education (Scotland) Act 1980, as amended

<sup>3</sup> See Section 31 of the Education (Scotland) Act, as amended

7. The responsibility for obtaining and maintaining registration of an independent school rests with the "proprietor". That term is used in the provisions relating to the registration of independent schools contained within Section 98 of the 1980 Act, which defines proprietor in relation to an independent school as meaning "the managers of such school", and in relation to an application to register an independent school "includes any person or body of persons proposing to be the managers".<sup>4</sup> For consistency this guidance uses the term 'proprietor' throughout.

8. The term "manager" may also be relevant to proprietors of independent schools, and is defined in the 1980 Act as meaning, in relation to an educational establishment, "the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority".<sup>5</sup>

9. A nursery school which caters exclusively for children who have not reached compulsory school age does not fall to be registered as an independent school. It will, however, require to be registered with the Care Inspectorate.

## REGISTRATION

### New Schools

#### Application

10. If a proprietor considers that a proposed school falls within the definition of an independent school set out in the Education (Scotland) Act 1980 (see paragraph 6), they should complete and submit an application to the Scottish Ministers. Application forms must be submitted electronically and you can access the link here: [http://www.businesslink.gov.uk/bdotg/action/piplink?agency\\_id=132107&service\\_id=7700030001](http://www.businesslink.gov.uk/bdotg/action/piplink?agency_id=132107&service_id=7700030001) If you have any queries or problems accessing the link then please contact Mrs Shirley Anderson on 0131 244 4502 or e-mail [Shirley.Anderson@scotland.gsi.gov.uk](mailto:Shirley.Anderson@scotland.gsi.gov.uk)

11. If any person carries on an independent school which is not registered with the Registrar of Independent Schools then they may be committing an offence, and on summary conviction may be liable to be fined and/or imprisoned for a maximum of three months.<sup>6</sup> Proprietors should therefore not admit any pupils to an independent school until it is registered.

12. Independent schools with boarding facilities must also register their boarding provision with the Care Inspectorate as a school care accommodation service. Operation of a school care accommodation service in advance of such registration is

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<sup>4</sup> The full definition of the term "proprietor" as used in this document and in the Education (Scotland) Act 1980 as in Section 135(1) of the 1980 Act, as amended

<sup>5</sup> This definition is in Section 135(10) of the Education (Scotland) Act 1980, as amended

<sup>6</sup> See Section 10(1) of the Education (Scotland) Act 1980, as amended

also an offence.<sup>7</sup> Prospective proprietors who want to offer boarding accommodation at their school should therefore contact the Care Inspectorate. This is currently a separate process from that of registering a school with the Scottish Ministers. The Care Inspectorate and the Office of the Registrar of Independent Schools work together to streamline the process and will share and exchange information to keep the duplication of requests for information to the minimum. The Care Inspectorate's contact details are at [Annex A](#).

### **Registering an Independent School with the Scottish Ministers**

13. Any application to register an independent school must include the information required by Ministers as set out in the Schedule to the Registration of Independent Schools (Scotland) Regulations 2006, attached at [Annex F](#). The regulations require the following information to be provided by a proprietor when submitting an application:-

- a) the name of the school;
- b) the postal address, electronic address, telephone number, facsimile number of the school; a description of the heritable property occupied for the purposes of the school; and plans of each building forming part of the school, indicating sanitary facilities and the dimensions of each room;
- c) the type of school, detailing which combination of the following describe the school, and the education or other provision made within it e.g. primary, secondary, additional support for learning, church or other denominational, and whether day or boarding facilities are offered;
- d) the maximum intended number of pupils in the school, including an indication of whether the provision is to be mixed gender or single sex and whether boarding is to be available.
- e) the proposed date from which the school wishes to be operational;
- f) for an individual proprietor that person's full name, contact details and residential address;
- g) Proprietors communication details if different from f) above;
- h) for a proprietor who is not an individual (e.g. a corporate body), the name of the proprietor, address, telephone number and if it has one the proprietor's registered office. The name, address, telephone number of the person who the proprietor wishes communications about the school to be sent to;
- i) in the case of a body corporate, Scottish partnership, or unincorporated association (other than a Scottish partnership), the title

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<sup>7</sup> Under the Regulation of Care (Scotland) Act 2001

of the body, partnership or association, a description of its nature and the full name and usual residential address of any relevant person and the capacity in which such person acts;

- j) in the case when the school is, or is conducted by, a charity, the name of that charity and details as to its registration as a charity;
- k) a copy of the school's
  - curriculum,
  - statement of aims,
  - prospectus,
  - admission policy,
  - fire risk assessment policy and procedures,
  - health and safety risk assessment policy and procedures,
  - child protection/safeguarding policy and procedures;
  - proposed leadership and governance/arrangements; and
- l) a statement confirming that criminal records certificate (also known as a disclosure) appropriate to the position have been obtained and are in accordance with the school's Child Protection Policy and Procedures in respect of the proprietor of the school, all proposed teachers and all other persons in or to be in a child care position relative to the school.

14. It is considered that the above information should provide Ministers with a clear picture of the type of school a proprietor would like to operate, the client group and the type of education which the users can expect to receive.

15. If a school's prospective proprietor is a corporate proprietor (e.g. an unincorporated association) then the application should be signed by the chair of the body, or of the committee of the body, directly responsible for the management of the school.

16. All schools have a maximum roll (previously known as optimum roll), which is the maximum number of pupils a school can enrol, including the maximum number of boarders which can attend a school. The Registrar sets each school's maximum roll based on information supplied by the proprietor and in consultation with HM Inspectors. See paragraph 50 on Maximum Roll for details of how to revise a roll after registration.

17. The Registrar will work with the Care Inspectorate when determining the maximum numbers of boarders which a school will be permitted to accommodate.

18. Once the Registrar is satisfied that the application, including the information required to set the maximum roll, and supporting material received are complete, he will forward a copy to Her Majesty's Inspectors in Education Scotland for advice and consideration in advance of the pre-registration inspection. If boarding is to be provided the application will be considered in conjunction with the application submitted to the Care Inspectorate. It is the intention that information received by the

Registrar would be shared with HM Inspectors and the Care Inspectorate to reduce the submission of duplicate information.

### **Pre Registration Inspection**

19. Once the Registrar is satisfied that the documentation provided is complete, HM Inspectors will carry out a pre-registration visit to the school, normally within 6 working weeks, although this may not always be possible.

20. The school cannot be operating with any pupils at this stage of the registration process. The aim of the visit is to check that the proposed school accommodation is fit for purpose; agree the maximum roll; and ensure that appropriate consideration has been given to the care and welfare of future pupils, before the school is registered (i.e. before the school can operate).

21. A pre-registration visit will usually be carried out by one HM Inspector in one day, depending on the size and nature of the proposed school. The HMI will tour the accommodation, interview the headteacher, speak informally to any other staff who may already be in post, and scrutinise any additional relevant documentation. HM Inspectors may ask, as appropriate for copies of documents, including those which are viewed in inspection. The HMI will gather evidence under the quality indicators from the publication *How Good is Our School?* covering accommodation and pastoral care and any other evidence relevant to the care and welfare of pupils. At the end of the visit, the HMI will provide oral feedback to the headteacher. The HMI will make clear at feedback any concerns and inform the headteacher that the Registrar will be advised accordingly, providing advice as to whether Ministers should register the school at this stage.

### **Notification**

22. Each application will be considered taking account of advice from HM Inspectors, following the pre-registration inspection, and the papers submitted by the prospective proprietor. The Registrar will inform the prospective proprietor as soon as possible of Ministers' decision to:-

- a) grant registration (see paragraphs 23 -24);
- b) in relation to the granting of an application for registration, whether conditions are to be imposed (see paragraph 25);
- c) refuse registration (see paragraphs 26 and 27);
- d) in relation to the refusal of an application for registration whether disqualifications are to be ordered (see paragraphs 28 and 29).

23. If Ministers grant the school registration,<sup>8</sup> it may then begin to operate subject to any conditions ordered by Ministers. Unless the letter specifies otherwise, the date of registration will be the date of the letter notifying the proprietor of the Ministers'

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<sup>8</sup> Section 98A(4) of the Education (Scotland) Act 1980, as amended, sets out these provisions

decision. The letter will also confirm the school's maximum roll. However, it should be noted that proprietors who will also be providing boarding should ensure that registration has been granted by the Care Inspectorate prior to accepting boarding pupils. The Registrar and the Care Inspectorate will work together with the intention of registration with both regulators being granted at the same time.

24. After registration is confirmed, the school details will be added to the Register of Independent Schools, which can be viewed at:-

[www.scotland.gov.uk/topics/education/schools/parents/independentsearch](http://www.scotland.gov.uk/topics/education/schools/parents/independentsearch).

## **Conditions**

25. Ministers may impose conditions when granting an application for the registration of a new school. They may also impose conditions on the carrying on of an already registered school (see paragraph 52). Once conditions have been imposed, they may be varied or revoked by Ministers.<sup>9</sup> The Registrar will notify the proprietor in writing when conditions have been imposed, revoked or varied. Proprietors may apply in writing to the Registrar asking Ministers to vary or revoke conditions. Proprietors can appeal a decision relating to the imposition, variation or revoking of a condition to the Sheriff Principal (see paragraph 58).

## **Refusal of Registration**

26. Ministers can refuse applications for registration of an independent school if they are not satisfied that:<sup>10</sup>

- 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) the proprietor of the school is a proper person to be the proprietor of an independent school;
- d) every proposed teacher in the school is a proper person to be a teacher in any school;
- e) the proposed school premises are suitable for use as a school;
- f) 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;

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<sup>9</sup> Section 98E of the Education (Scotland) Act 1980, as amended, sets out these provisions

<sup>10</sup> Section 98A(3) of the Education (Scotland) Act 1980, as amended, sets out these provisions

27. Proprietors can appeal refusal of registration to the Sheriff Principal. (see paragraph 59)

### **Disqualifications**

28. On refusing an application for registration Ministers can also make a disqualification order <sup>11</sup> if they are not satisfied that:

- a) the proposed school premises are suitable for use as a school;
- b) the 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 at the school is a proper person to be a teacher in any school.

29. Proprietors can appeal against a disqualification to the Sheriff Principal (see para 58).

### **Post-Registration Inspection**

30. HM Inspectors will carry out a post-registration inspection within nine months of registration of the school to allow the inspectors to see learning and teaching in the school and to evaluate the quality of education and care provision.

31. The inspection will normally be completed in two and a half days with a report being published within 12 weeks of the notification of the inspection.

32. In the post-registration inspection, HM Inspectors will focus on evaluating the school's provision in respect of the following:

- a) How well do children and young people learn and achieve?
- b) How well does the school support children and young people to develop and learn?
- c) How well do the accommodation and resources support learning?
- d) How well does the school improve the quality of its work?

33. HM Inspectors have designed inspection procedures to ensure that inspections are independent, responsive, fair and open. Each inspection will be responsive to the school's individual circumstances. Account will be taken of

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<sup>11</sup> Section 98B of the Education (Scotland) Act 1980, as amended, sets out these provisions

information provided by the school and the Board of Governors. HM Inspectors operate within the Charter and the Code of Practice for Child Protection.

34. HM Inspectors will make every attempt to minimise disruption to the school being inspected and will ensure that each inspection activity is necessary to forming relevant, well-founded judgements. Schools will be asked to provide the minimum necessary level of documentation in advance of the inspection and additional documentation as required during the inspection. All inspection activities will focus clearly on the evidence and evaluation required for the published report. In gathering evidence and making evaluations, HM Inspectors will refer to the quality indicators (QIs) contained in 'How Good is Our School?' which can be viewed [here](#).

35. Clear oral feedback will be given on the inspection outcomes to the school's management, and a representative from the Board of Governors, where appropriate. After the inspection, a report containing the considered views of the inspection team will be written. A confidential copy of the draft report will be sent to the headteacher and also the chairperson of the Board of Governors. The managing inspector will discuss the report with the headteacher and, if necessary, with the chairperson of the Board of Governors, before it is finalised for publication.

36. The purpose of the discussion of the draft report is to ensure its factual accuracy and to deal with any issues not already covered during the inspection or at the feedback to teachers and senior managers. Additional evidence may be presented at this time and it will be considered in arriving at the final version of the report for publication. The published report will be written in plain English and will make clear evaluative statements about the school's provision and include the main points for action arising from the inspection.

37. Under normal circumstances the report will be published on Education Scotland's website for parents and carers to access and copies will be sent by e-mail to the school and the chairperson of the Board of Governors within 12 working weeks of the notification of the inspection. **The reports must remain strictly confidential until the publication date.**

38. A copy of the final report will be sent to the Registrar for consideration by Scottish Ministers as to whether specific conditions should be attached to the continued registration of the school, any conditions set will require to be met within a certain timescale. The Registrar will request an action plan from the school outlining the steps which will be taken to address any improvements recommended in the HM Inspectors report.

39. Following the post-registration inspection, the school will enter the normal cycle of inspections. The extent and nature of further inspection activities will depend on the findings of the post-registration inspection. If conditions are attached to the registration, HM Inspectors will continue to engage with the school to ensure the school has effectively met these. Inspectors will provide this additional evidence to the Registrar.

40. HM Inspectors and Care Inspectorate will co-operate on inspections in respect of any school with boarding provision and the subsequent report will be available to the public.

### **Existing Registered Schools**

41. Once a school has been registered, its details are added to the Register of Independent Schools which contains information relating to all existing registered schools. The Register is available to the public and can be viewed on the Scottish Government web site. The information is obtained from, and is kept up-to-date through the annual school census. The Register also includes the maximum number of pupils which a school is registered to enrol.

42. To ensure that the quality of education, accommodation and the care and welfare of pupils is being appropriately addressed within independent schools, they like all other schools in Scotland are subject to regular inspection by HM Inspectors. New arrangements for inspecting schools in Scotland were introduced in August 2011 and the details can be viewed [here](#).

43. Inspections provide the opportunity for schools to show that they know themselves inside out and that they are using self-evaluation to focus on improving all the achievements of young people in line with the aims of the school's curriculum. It can also help identify good practice and innovation that HM Inspectors may wish to look at in more detail as part of their continuing engagement after the inspection has been completed. HM Inspectors will refer to the framework of the seven key areas and associated quality indicators ( QIs) contained in How Good is Our School? which can be viewed [here](#).

44. In schools with boarding provision integrated HM Inspectors and the Care Inspectorate inspections will work closely to ensure the inspections are proportionate and in line with the Public Services Reform Act duty of co-operation.

### **Provision of information**

45. In accordance with regulation 4(1) of the Registration of Independent Schools (Scotland) Regulations 2006 ('the 2006 Regulations') proprietors are required, annually, to supply the information listed in schedule 1 and 2. However, in accordance with regulation 4(2) the Registrar will ensure that any of the information in schedule 1 which is already held is not requested. To reduce the burden on independent schools the collection of this information has now been incorporated into the school census form along with the information required under schedule 2.

46. You should also note that in accordance with regulation 5 of the 2006 Regulations, proprietors are required to inform the Registrar in writing, within one month, if any of the information supplied under paragraphs 1 to 4 and 6 to 8 of Schedule 1 to the 2006 Regulations has changed. (see copy of Regulations at [Annex F](#))

47. The information required at Schedule 2 must be submitted in writing, to the Registrar, in September each year. This relates to the pupil and teacher statistics

along with confirmation that any new teachers or any other person in a child care position employed by the school for the first time or re-employed in the previous 12 months have had a satisfactory criminal records certificate issued. The school will also have to confirm that it has undertaken assessments in terms of its Fire and Health and Safety Risk Assessment Procedures. Forms requesting this information are issued to schools as part of the Annual School Census undertaken by the Scottish Government. The Annual School Census also collects information provided by independent schools on a voluntary basis, such as the destination of school leavers, and the number of pupils with additional support needs. To reduce the burden placed on schools, the confirmation information referred to above will be included in the Census return.

48. Failure to inform the Registrar of any changes or to submit the annual return under Schedule 4<sup>12</sup> could result in the Scottish Ministers serving a notice of complaint on the school<sup>13</sup> requiring the information to be submitted. If the information is not supplied then this could lead to the school being removed from the Register of Independent Schools, meaning it could no longer operate.

49. Proprietors can appeal to the Sheriff Principal against a notice of complaint<sup>14</sup> (see paragraph 58)

### **Maximum Roll (previously known as optimum roll)**

50. Setting the initial maximum roll (previously known as optimum roll) for new schools is set as part of the Registration process. (see paragraph 16 to 18). **Proprietors should not exceed the approved maximum roll.**

51. In accordance with established practice and procedures, if at any time proprietors wish to increase the maximum roll, they must write to the Registrar to seek approval, enclosing supporting information with their request to help the Registrar in reaching a decision. If the information provided is sufficient for the Registrar to come to a decision, the school will be informed in writing. If a visit is required by either the Registrar or HM Inspectors, it will be arranged as soon as practicable and a decision reached as soon as possible after such a visit. **Proprietors should not accept additional pupils before written approval has been given to an increase in the maximum roll.**

52. If the request is to increase the number of boarders, the request should be made both to the Registrar and the Care Inspectorate who will work together in sharing the information supplied and agree an adjustment to the number of boarders.

### **Conditions**

53. Ministers can impose conditions on a school at Registration (see paragraph 25). Ministers can also set conditions on existing schools under specified

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<sup>12</sup> Regulation 4(1) of The Registration of Independent Schools (Scotland) Regulations 2006

<sup>13</sup> Section 99(1)(j) of the Education (Scotland) Act 1980, as amended

<sup>14</sup> Section 99(3) of the Education (Scotland) Act 1980, as amended

circumstances <sup>15</sup> to prevent a school from becoming objectionable upon any of the grounds by which a notice of complaint could be served on a school (see paragraph 54). Once conditions have been imposed, they may be varied or revoked by Ministers. The Registrar will notify the proprietor in writing when conditions have been imposed, revoked or varied. Proprietors may apply in writing to the Registrar asking Ministers to vary or revoke conditions.

54. Proprietors can appeal to the Sheriff Principal against the imposition of conditions, variation or a refusal to vary or revoke a condition (see paragraph 58 ).

### **Notices of Complaint**

55. Ministers have powers to serve upon the proprietor of an independent school a notice of complaint <sup>16</sup> stating that the school is objectionable upon all or any of the following grounds:-

- a) that efficient and suitable instruction is not being provided at the school, having regard to the ages and sex of pupils attending thereat;
- b) that the welfare of a pupil attending the school is not adequately safeguarded and promoted there;
- c) that the school premises or any part thereof are unsuitable for a school;
- d) 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;
- e) that a condition imposed by Ministers on the school is not being or has not been complied with;
- f) that the proprietor is not a proper person to be the proprietor of an independent school or that any teacher in the school is not a proper person to be a teacher in any school;
- g) that any part of the school premises is disqualified from being used as a school;
- h) that any accommodation provided at the school premises is disqualified from being used as such or is being used as such for pupils of such number or such age or sex from which use it is so disqualified;
- i) that the proprietor of the school is disqualified from being the proprietor of an independent school, disqualified from working with children, a prescribed person or otherwise not a proper person to be the proprietor of an independent school;

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<sup>15</sup> Section 98E(1) of the Education (Scotland) Act 1980

<sup>16</sup> Section 99 of the Education (Scotland) Act 1980 sets out these provisions

- j) that a teacher in the school is disqualified from being a teacher in any school, disqualified from working with children, a prescribed person or otherwise not a proper person to be a teacher in any school;
- k) that the proprietor has not provided the Registrar with the information required by the Scottish Ministers annually, or has failed to inform the Registrar of a change in the school's particulars.<sup>17</sup>

56. The notice of complaint will state the ground of the complaint and specify the measures which Ministers consider are necessary to remedy the subject of the complaint. The notice will also specify a period within which such measures should be taken.<sup>18</sup> Where Ministers are not satisfied that appropriate action has been taken in the time specified, they may<sup>19</sup>:-

- a) order the school to be removed from the Register (see paragraphs 57 to 58)
- b) impose or vary conditions (see paragraphs 53 to 54)
- c) 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.
- d) 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 being used as such or from being used as such for pupils exceeding such numbers or of such age or sex.
- d) If satisfied that the proprietor is not a proper person to be the proprietor of an independent school or 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 any independent school or, as the case may be, that teacher from being a teacher in any school.

### Removal from Register of Independent Schools

57. Where a school is no longer operating, or has failed to satisfy Ministers that remedial action taken after a notice of complaint has been served, Ministers may make an order directing the Registrar to remove the school from the Register of Independent Schools.<sup>20</sup> **A school can no longer operate if it is removed from the Register.**

58. Ministers can also act without serving a notice of complaint if they are satisfied that the circumstances require urgent action,<sup>21</sup> e.g. where the welfare of

<sup>17</sup> The Registration of Independent Schools (Scotland) Act 1980

<sup>18</sup> Section 99(1C) of the Education (Scotland) Act 1980

<sup>19</sup> Section 100(2) of the Education (Scotland) Act 1980

<sup>20</sup> Sections 98D and Section 100 of the Education (Scotland) Act 1980, set out these provisions

<sup>21</sup> Section 99(1B) of the Education (Scotland) Act 1980

pupils is at risk. The actions Ministers can take in this situation include making an order directing the Registrar to remove a school from the Register.

### **Appeals to the Sheriff Principal**

59. Proprietors may appeal to the Sheriff Principal<sup>22</sup> against decisions taken by Ministers to:-

- a) refuse registration;
- b) impose, vary or refuse to revoke conditions;
- c) disqualify a proprietor, teacher, accommodation or premises (whole or part);
- d) serve a notice of complaint;
- e) order the school to be removed from the Register of Independent Schools;
- f) refuse to remove a disqualification relating to school premises or accommodation.

60. Except where the appeal is against disqualification of a person as either proprietor or teacher, appeals should be made to the Sheriff Principal of the local sheriffdom for the school within 28 days of the proprietor being notified.<sup>23</sup>

61. Where the appeal relates to the disqualification of a person as either a proprietor or a teacher, the appeal should be made to the appellant's local Sheriff Principal unless the appellant lives outwith Scotland, in which case it should be made to the Sheriff Principal of Lothian and Borders at Edinburgh.<sup>24</sup>

## **PREMISES**

62. When considering registration and the continued registration in respect of existing schools, Ministers require to be satisfied that the school's premises, including teaching areas, social spaces, and boarding accommodation is suitable, safe and fit for purpose.

### **Premises**

63. The accommodation standards expected in an independent school are not set down in legislation but are based on established practices and procedures gained over many years by HM Inspectors when carrying out inspections.

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<sup>22</sup> Section 103 of the Education (Scotland) Act 1980

<sup>23</sup> Section 103(1)(a) of the Education (Scotland) Act 1980

<sup>24</sup> Section 103(1)(b) of the Education (Scotland) Act 1980

Proprietors may find it helpful to look at the quality indicators contained in *How Good is Our School?* and published HM Inspectors reports. Especially for proprietors providing boarding schools they should become familiar with the National Care Standards appropriate to school care accommodation services and quality assessment indicators used by the Care Inspectorate inspectors.

64. The educational accommodation in an independent school should be suitable and adequate for the purpose for which it is to be used, having regard to the size of the area and the number of pupils. Schools should provide adequate facilities for social activities and should ensure that adequate and suitable space is available for play and recreation.

65. Proprietors will wish to be aware that in accordance with established practices and procedures HM Inspectors use the standards set out below as the basis for evaluating the sanitary facilities provided by an independent school.

|                         |   |
|-------------------------|---|
|                         | <b>Day pupils</b>   |
| <b>Lavatories</b>       | 2 for every 15 up to 60;<br><br>then 2 for every additional 30 to 300;<br><br>then 2 for every additional 60 beyond 300 |
| <b>Wash hand basins</b> | One for each lavatory appliance required, as above.   |

66. The Regulation of Care (Scotland) Act 2001, requires proprietors and managers of independent schools to promote and safeguard the welfare of pupils in residential accommodation provided by a school.

67. Where a school provides boarding or living accommodation, the main aim should be to ensure that each pupil enjoys the amenities of a good home. Facilities are required for recreation and social life as well as for study, sleeping and eating. Outdoor areas are very important to pupils' health and wellbeing, and give opportunities for sport and outdoor activities. Study areas may be provided in various ways, integrally and separately. Sanitary facilities, sleeping areas and day rooms should be suitable for the number and sex of the pupils, and conveniently located. Safe and adequate means of escape must be in place in case of fire or other emergencies. Good heating, lighting, ventilation and adequate security, are essential in all living areas.

68. For sleeping accommodation, bedrooms shared by smaller groups of pupils have the advantage of helping to create more of a family atmosphere and giving greater privacy than open dormitories. For older pupils, study bedrooms may be preferred. Each pupil should be provided with "a place of his/her own", with ample space for a bed and for storage of clothes and belongings, and for expressions of personal taste. There should be sufficient circulation space, and safe and convenient access to lavatories and showers/bathrooms. A resident member of staff should be close to hand.

69. A sick room with adjacent access to lavatories and bathroom facilities is essential. The school doctor will be able to advise on the best means of safeguarding pupils in sleeping areas from the risk of cross-infection and isolating pupils with infectious diseases.

70. The standards set out below are the minimum standards which HM Inspectors use as guidance when inspecting boarding accommodation. These originated from 1959 regulations pertaining to local authority schools which have since been repealed. However they are still considered as a good starting point when inspections of boarding accommodation is undertaken.

| <b>Boarding Accommodation</b> | <b>Approx. Floor Area per Pupil</b> |
|-------------------------------|-------------------------------------|
| Bedrooms (3 Bed)              | 6 square metres                     |
| Study Bedrooms (1 bed)        | 9 square metres                     |
| Study Space                   | 1 square metre                      |
| Showers                       | 2 for every 10 pupils               |
| Baths                         | 1 for every 10 pupils               |
| Lavatories                    | 2 for every 10 pupils               |
| Wash-hand Basins              | 4 for every 10 pupils               |

## **Fire Safety**

71. The importance of adequate precautions against risk of fire, especially in residential accommodation, cannot be over-emphasised. For the purposes of being registered and continuing to be registered proprietors should ensure that they have in place a robust fire safety policy.

72. Proprietors should therefore make themselves aware of the requirements of Part 3 of the Fire (Scotland) Act 2005 (as amended), and the Fire Safety (Scotland) Regulations 2006. Information about the legislation including rights and responsibilities is available on the Scottish Government's firelaw website at <http://www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw> . In summary, a fire safety risk assessment of the school and any boarding accommodation must be undertaken and appropriate fire safety measures put in place.

73. Premises may be subject to inspection by the local Fire and Rescue Authority from time to time. When such an inspection has been made, a copy of any report(s) from the Fire and Rescue Authority should be sent to the Registrar of Independent Schools. Where recommendations have been made by the Fire and Rescue Authority, confirmation that these recommendations have been implemented or an action plan detailing when they will be implemented should be sent to the Registrar.

74. When structural changes are made to the school or boarding areas, the school should review the fire risk assessment in light of the changes and arrange for the Fire and Rescue Authority to carry out an inspection if this is deemed necessary. Again a copy of the inspection report should be sent to the Registrar, along with

confirmation that any recommendations by the Fire and Rescue Authority have been implemented, or a timetable for implementation.

75. Proprietors may find the guide “Practical Fire Safety Guidance for Educational and Day Care for Children Premises” helpful. It is available at <http://www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw/SectorSpecificGuidance/Daycare>

It is also available via the public library network (ISBN 987-0-7559-7025-4)

## **Health and Safety**

76. Proprietors will need to be aware of their responsibility for, and the importance of, health and safety issues. The Health and Safety at Work Act 1974, as amended, covers every aspect of health and safety in schools and associated school activities, whether or not they occur on school premises, including school trips.

77. The responsibility for health, safety and welfare of employees rests with proprietor, who must:

- a) ensure the health, safety and welfare of their employees at work by ensuring safe plant, safe systems at work, safe premises and safe working environments;
- b) ensure adequate information, instruction, training and supervision;
- c) prepare written safety policies and make them known; and
- d) in prescribed circumstances, establish a committee.

78. Proprietors should ensure a suitably trained member of staff has responsibility for complying with health and safety issues, including the drawing up and managing of the health and safety risk assessment.

79. The enforcing authority for health and safety in schools is the Health and Safety Executive (HSE) who have local offices in Edinburgh, Glasgow, Aberdeen and Inverness. Proprietors may find it helpful to refer to the HSE publication "Health and Safety Guidance for School Governors and Members of School Boards". This gives guidance on health and safety law and how it relates to education authority schools. It should be read in conjunction with the latest health and safety legislation (such as the Management of Health and Safety at Work Regulations 1999). Further guidance and publications on health & safety matters are available at [www.hse.gov.uk](http://www.hse.gov.uk)

## **CURRICULUM**

80. Ministers expect children in Scotland to receive the breadth and the depth of education they need, which increases pupils' skills and knowledge. Normally the curriculum should comprise the following curriculum areas:

- a) Languages and literacy, including the opportunity to study a foreign language
- b) Mathematics and numeracy
- c) Science
- d) Technologies
- e) Social studies
- f) Health and wellbeing, including mental, emotional, social and physical wellbeing
- g) Expressive arts
- h) Religious and moral education

81. The areas of literacy, numeracy and health and wellbeing are the responsibility of all teachers. Schools have flexibility on how they structure learning to meet this breadth required.

82. The curriculum should be in line with pupils' needs, and appropriate to their age, stage of development and experience. It should take account the range of ways in which pupils learn and should include opportunities to interact with other pupils and with the teacher, and to take part in practical activities.

83. Principles of curriculum design are challenge and enjoyment, breadth, progression, depth, personalisation and choice, coherence and relevance and must be taken into account for all children and young people. The curriculum is designed to enable learners to develop as successful learners, confident individuals, responsible citizens and effective contributors. It is of particular importance that the curriculum prepares all learners for the challenges they face, by equipping them with the skills for learning, life and work.

84. It is the responsibility of the proprietor to ensure that parents, including prospective parents, are aware of how the curriculum offered by the school meets these criteria. When a school wishes to offer a curriculum which does not reflect the ethos set out in paragraphs 80-83 it should ensure that parents understand why, and the impact this could have on the pupils' experience and options for post school education and work is considered. Lack of facilities in itself should not preclude the offering of any aspect of the curriculum.

85. Independent schools may wish to use sources of curricular advice. Guidance on Scotland's 3-18 curriculum, Curriculum for Excellence, is available on the Education Scotland website at <http://www.educationscotland.gov.uk/thecurriculum/>. The website provides guidance on curriculum design and planning, and on the experiences and outcomes for each curriculum area. This is further supported by a growing range of good practice examples for each curriculum area also available online.

## **PUPILS**

### **Getting It Right For Every Child (GIRFEC)**

86. Getting it right for every child is the national approach to improving wellbeing of children and young people and has early intervention and prevention at its heart. The Children and Young People (Scotland) Act 2014, which received Royal Assent earlier this year, is rooted in children's rights and the GIRFEC approach, and puts children and young people at the very heart of planning and delivery of services.

87. The Act includes statutory duties for proprietors to make arrangements for the provision of a named person service in relation to all pupils in their school. The Named Person is a key element of the GIRFEC approach, and will have a duty to promote, support, and safeguard a child's wellbeing. This duty is due to commence in August 2016. Statutory guidance is currently being developed to help inform the operation of the service, and will be consulted on with stakeholders, including the Scottish Council of Independent Schools. The guidance is scheduled for publication in summer 2015, a year ahead of commencement.

### **Child Protection**

88. Everyone working with children has a fundamental duty of care towards them and must recognise and manage the risks children face. Independent school prospective proprietors will need to determine their individual responsibilities, and should do this taking account of the requirements of "Protecting Children and Young People: Framework for Standards" and as part of this proprietors should have a written child protection policy and procedures.

89. Prospective proprietors are required to submit a copy of their child protection policy and procedures when they apply to register their school.

90. All managers and staff should be familiar with the requirements of "Protecting Children and Young People: Framework for Standards" as well as the "Protecting Children and Young People: The Charter". These documents are on the Scottish Government's child protection website at [www.childprotectionscotland.org](http://www.childprotectionscotland.org)

91. Paragraphs 109 to 112 set out where proprietors can obtain guidance on the Protecting Vulnerable Groups Scheme ("the PVG Scheme") which was established in Scotland on 28 February 2011 when the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") was brought into force. The PVG Scheme ended the use of enhanced disclosures under the Police Act 1997 ("the 1997 Act") for most work with children. Proprietors should ensure PVG Scheme disclosure records are obtained for the relevant staff. If a PVG Scheme disclosure record is not available due to the person's work not being regulated work under the 2007 Act then a basic disclosure under the Police Act 1997 should be obtained.

92. The Scottish Council of Independent Schools (see paragraph 116) has a model of a child protection procedure, and proprietors may find this helpful in drafting their own procedure. It is important that a school's policy and procedures are written in the context of the school's own circumstances and meets the needs of the young

people concerned, taking into account the requirements of "Protecting Children and Young People: Framework for Standards".

### **Pupils with Disabilities**

93. The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 requires proprietors of independent schools to prepare, and implement, accessibility strategies which cover:

- a) increasing the extent to which pupils with a disability can participate in the curriculum;
- b) improving the physical environment of the school or schools to make the education and associated services offered by the school or schools more accessible to pupils with a disability;
- c) improving communication of school information to pupils with a disability and, in particular, providing school information to those pupils with disabilities in appropriate alternative forms within a reasonable time and taking into account the pupils' needs and any preferences that they or their parents express.

94. The Scottish Government undertook a consultation in late 2013 to review their guidance for responsible bodies on their obligations under the 2002 Act. The revised guidance "Planning Improvements for Disabled Pupils' Access to Education", was published in November 2014 and Proprietors can obtain an electronic copy at <http://www.scotland.gov.uk/Publications/2014/10/8011/downloads> A full copy of the relevant Act <sup>25</sup> can be found at [www.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm](http://www.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm).

95. The Equality Act 2010 replaced previous anti-discrimination legislation, including the Disability Discrimination Act 1995. It simplified and strengthened the law and removed some of the inconsistencies. The Equality Act 2010 protects people from discrimination because of a range of 'protected characteristics' including disability, and includes a duty to make 'reasonable adjustments' for disabled people. The legislation applies to school education.

96. The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ("the Act") provides the framework for providing for children and young people who require some additional help with their learning. The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people. The code of practice explains the duties on education authorities and other agencies to support children's and young people's learning, this can be found at <http://www.scotland.gov.uk/Publications/2011/04/04090720/0>

97. Particular points to note with regard to independent schools are the following:

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<sup>25</sup> The Education (Disability Strategies and Pupil's Educational Records) (Scotland) Act 2002

- a) Where an education authority has placed a child in an independent school then the **full provisions of the Act apply**. This applies also to prescribed<sup>26</sup> pre-school children in independent partnership nurseries.
- b) A Co-ordinated support plan (CSP) is available only where the education authority is responsible for the child's education.
- c) Education authorities have discretionary power to make provision for pupils with additional support needs in independent schools, for whose education they are not responsible.
- d) The education authority may comply with a request from a parent to establish whether a child in an independent school, for whose education they are not responsible, has additional support needs or would, if the education authority were responsible for the child's education, require a co-ordinated support plan. Such a request can also be made by a manager of an independent or grant-aided school.
- e) If the education authority do establish that the child has additional support needs or would, if the authority were responsible for the child's education, require a co-ordinated support plan then they must provide parents, young person or managers, as appropriate (i.e. whomsoever has made the request), with information and advice about the additional support required by the child or young person.
- f) Mediation services - parents of children placed by education authorities in independent schools can access the mediation service of their home education authority if they have disagreements about their education authority's functions under the Act, with regard to their child. Likewise they can access dispute resolution arrangements.

### **Pupils' Educational Records**

98. The Pupils' Educational Records (Scotland) Regulations 2003 give parents a specific right of access to their child's educational records. They apply wherever such records are held by a body responsible for the provision of school education, including an independent school. The Regulations also set out requirements for keeping and transferring pupils' educational records. The Regulations are available on-line at [www.opsi.gov.uk/legislation/scotland/ssi2003/20030581.htm](http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030581.htm).

### **Administration of Medicine in Schools**

99. When considering their own arrangements for administration and storage of medication proprietors may find the Scottish Government guidance "The Administration of Medicine in Schools" helpful. Copies can be accessed on-line at: [www.scotland.gov.uk/news/releases/2001/09/134](http://www.scotland.gov.uk/news/releases/2001/09/134).

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<sup>26</sup> Prescribed pre-school children are children being educated through the arrangements made by education authorities to provide free nursery places for 3 and 4 year olds, one of the Government's commitments

## **Children Missing Education**

100. Pupils may leave an independent school for many reasons, such as withdrawal by a parent, exclusion from the school or family relocation. However, it is important that, for all children of school age, schools forward details of pupils leaving their school to the education authority in which the family is known to live (or where there are known family connections). In particular, where there are any concerns for the wellbeing or safety of the pupils, this information must be transferred to the education authority as soon as possible.

101. Independent schools should also take action if a child who they expect to join the school fails to arrive, by taking steps to confirm the whereabouts of the child and alerting the relevant education authority if necessary. If a child over five arrives in school with incomplete or inaccurate information about their previous schools or addresses, this may also be cause for concern. Efforts should be made to gather further information through education authority contacts where possible and by encouraging staff to listen carefully when building a relationship with the child over time (this should not be an investigation or interrogation) in case information is revealed that indicates where the child has previously lived or gone to school.

102. There is a Children Missing from Education (Scotland) Service within the Scottish Government which gives advice to education authorities who disappear from view of the school system. Movement between the state and independent sectors is one factor in situations where children may become 'lost' from view of services which help keep them safe and well. Co-operation between the sectors is therefore essential. Further information on Children Missing From Education (Scotland) Service is available via their website [www.cmescotland.net](http://www.cmescotland.net)

## **TEACHING AND NON-TEACHING STAFF**

### **Teachers' Conditions of Service**

103. When proprietors employ teaching staff, they should satisfy themselves that such staff are competent to teach the areas of the curriculum they are employed to teach, at a level appropriate to the age and need of the pupils. There is no statutory requirement that independent schools employ registered teachers (i.e. teachers who are registered with the General Teaching Council for Scotland). However, many schools do operate a policy of employing only registered teachers.

104. The salaries and related conditions of service are matters for agreement between school proprietors and members of staff. However proprietors may find it helpful to look at the salaries and terms and conditions of service agreed for teachers in education authority schools through the Scottish Negotiating Committee for Teachers (SNCT). The SNCT Handbook of Conditions of Service is available at <http://www.snct.org.uk/index.php>

105. Proprietors may also want to be aware of new circulars issued by the SNCT, copies of which can also be found within the Handbook.

106. Part IV of the Education (Scotland) Act 1980 also deals with other matters relating to the employment of teachers in the education authority sector and may be of interest to proprietors of independent schools.

107. If proprietors wish to find out about the Scottish Teachers Superannuation Scheme they may be interested in the booklet "The Teachers Superannuation Scheme Employers Guide and Instructions" which deals with the responsibilities of employers. It is available from the Scottish Public Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE, telephone 01896 893 000 or at <http://www.sppa.gov.uk/>

### **Non teaching Staff**

108. The employment of non-teaching staff should be approached with the same care as for teachers. It is extremely important that suitability of non-teaching staff, particularly where those staff have substantial access to pupils, should be investigated before they are appointed.

### **Disclosure Scotland Checks on staff**

109. Proprietors should confirm that all prospective teachers and all other persons doing regulated work as defined in the 2007 Act have been successful in their application to join the PVG Scheme, both when a proprietor first applies to register a school, and for any teachers and others who subsequently join the staff of the school. There are also other duties and requirements, under the 2007 Act that apply to proprietors.

110. Proprietors should make themselves aware of the 2007 Act and the Scottish Statutory Instruments made under that Act. We strongly recommend that they obtain a copy of the Scottish Government's publication: "Protecting Vulnerable Groups Scheme: Guidance for individuals, organisations and personal employers" published in June 2010 that is available on Disclosure Scotland's website at: <http://www.disclosurescotland.co.uk/disclosureinformation/guidance.htm>.

111. PVG Scheme disclosure records and basic, standard and enhanced disclosures under the 1997 Act are issued by Disclosure Scotland, and information on the procedures for obtaining disclosures can be obtained from Disclosure Scotland, at P.O. Box 250, Glasgow, G51 1YU. Disclosure Scotland can also be contacted at [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk) , and on 0870 609 6006.

112. Under section 3 of the 2007 Act Independent Schools are required to refer to Ministers individuals who on the basis of a referral ground being met have been dismissed from regulated work; transferred to work that is not regulated work of the type to which the referral ground relates; or would or might have dismissed or so transferred the individual on the referral ground if the individual had not stopped doing the regulated work. The PVG Guidance at Chapter 6, referred to in paragraph 108 above, explains how referrals are made. A referral form can be obtained from Disclosure Scotland or electronically from the Disclosure Scotland [website](http://www.disclosurescotland.co.uk/protectionservices/referralprocess.htm) at: <http://www.disclosurescotland.co.uk/protectionservices/referralprocess.htm> by following the link 'Employer Referral Form'. Proprietors are also asked to inform the

Registrar of Independent Schools if they refer an individual to Ministers for this reason.

113. The obtaining of disclosures is only part of the process and schools should ensure that they have in place robust recruitment procedures which include the obtaining of references and if necessary medical reports in respect of potential employees.

114. Application forms for teaching posts should make it clear to those who apply that a disclosure will be required. Where a school does not use application forms for teaching posts, it is recommended that it is made clear at interview that a disclosure will be carried out on the successful candidate. Proprietors may also wish to contact the General Teaching Council for Scotland (GTCS) if it is the intention to employ a registered teacher as the GTCS have the power to de-register staff on various grounds.

## **CARE INSPECTORATE**

115. The Care Inspectorate is responsible for regulating a wide range of care services including early learning and child care provision and school care accommodation services. School care accommodation services include boarding facilities in independent schools and residential special schools. If an independent school offers boarding facilities it must be registered with the Care Inspectorate as a school care accommodation service. The Care Inspectorate can be contacted by telephone on 0845 600 9527 or 01382 207100, or by post at Compass House, 11 Riverside Drive, Dundee. DD1 4NY. The website is at <http://www.CareInspectorate.com/>

## **THE SCOTTISH COUNCIL OF INDEPENDENT SCHOOLS**

116. The Scottish Council of Independent Schools (SCIS) represents, and supports independent schools SCIS provides schools with guidance and professional advice on a wide range of issues. It runs an extensive training programme for academic and other staff and works closely with the Scottish Government, HM Inspectors, the SQA, the GTCS and other national bodies. The SCIS offices are in Edinburgh - for sector information visit the SCIS website at [www.scis.org.uk](http://www.scis.org.uk), or telephone 0131 556 2316.

## **OTHER ISSUES OF INTEREST TO PROPRIETORS**

117. The following paragraphs draw to proprietors attention some legislation which they may wish to consider in the operation of an independent school although this list is not exhaustive. Proprietors have a responsibility to ensure that they are aware of and adhere to all relevant legislative and regulatory requirements.

## **Financial Viability**

118. Financial viability is not a criterion for registration of an independent school. However, most independent schools are registered as charities or companies and it is the responsibility of proprietors to ensure that they meet the statutory requirements regarding the keeping of and making available financial accounts.

## **Equality Act 2010**

119. The Equality Act 2010 replaced previous anti-discrimination legislation with a single Act. It simplified and strengthened the law and removed some inconsistencies. It protects people from discrimination because of the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

120. The Act covers direct discrimination, indirect discrimination, harassment and victimisation. In relation to disability, there is also a duty to make 'reasonable adjustments'. The legislation applies across areas such as employment, the provision of goods and services, the exercise of public functions, education and membership of associations. Individuals have rights under the Act, and there is provision for legal remedies through the courts or employment tribunals in order to enforce those rights.

121. There is also a public sector equality duty which requires public authorities to have due regard to the need to eliminate discrimination which is unlawful under the Act, advance equality of opportunity for people who share relevant protected characteristics and foster good relations between people who share relevant protected characteristics. The duty applies to public authorities and to any organisation exercising public functions in relation to those functions. Scottish Ministers have also made 'specific duties' designed to enable the better performance of the public sector equality duty by Scottish public authorities.

122. Most of the Act came into force on 1 October 2010. The public sector equality duty came into force on 5 April 2011 and the Scottish 'specific duties' came into force on 27 May 2012.

123. There are some differences in the way the Act covers different characteristics. For example, in relation to school education, age and marriage and civil partnership are not protected characteristics.

124. Further information about the Equality Act 2010, including guidance and Codes of Practice, is available from the Equality and Human Rights Commission at: <http://www.equalityhumanrights.com/scotland/>. The UK Government has also published a suite of guidance on the Act which is available at: <http://homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/>

## **Charitable Status**

125. The Office of the Scottish Charity Regulator (OSCR) is responsible for determining charitable status in Scotland in accordance with the Charities and Trustee Investment (Scotland) Act 2005. As part of its role, OSCR has a duty to ensure that charities entered in the Scottish Charity Register continue to meet the charity test. It does this by conducting individual reviews of charities, focussing primarily on types of charities it believes are most at risk of not meeting the charity test.

126. OSCR applies the same test to all bodies seeking charitable status in accordance with the requirements of the 2005 Act and the detailed guidance it is under a duty to produce and consult on. To meet the charity test, a body must have wholly charitable purposes and be able to demonstrate that it will provide public benefit in furtherance of those purposes.

127. Further details relating to OSCR and the requirements of the 2005 Act can be obtained from [www.oscr.org.uk](http://www.oscr.org.uk)

## **Educational Endowments**

128. Educational endowments are registered in terms of section 104(1) of the Education (Scotland) Act 1980. Governing bodies must, in this connection, provide information to Ministers about any new endowments received by them, or any reorganisation of the purposes of any existing endowments managed by them. The required information is as follows:

- a) the name of the endowment;
- b) the locality to which the endowment belongs;
- c) a summary of the purpose to which the endowment is applicable and the conditions pertaining to the beneficiaries; and
- d) the name and address of the official correspondent of the governing body of the endowment.

129. The Charities and Trustee Investment (Scotland) Act 2005 introduced new requirements for charities which wish to make changes to their constitution. Some educational endowments may also be charities, and will therefore be affected by these requirements. A charity which has powers to make changes to its own constitution must seek OSCR's consent before making certain changes, for example, before amending its purposes. Charities are also required to inform OSCR of certain other changes which are made. A charity which does not have powers to amend its own constitution will be able to apply for consent to amend their constitution following the reorganisation process set out in chapter 5 of the 2005 Act, seeking the approval of OSCR.

130. These changes mean that an educational endowment which is also a charity is not permitted to follow the reorganisation procedures set out in Part VI of the

Education (Scotland) Act 1980. Further information is available from OSCR, who can be contacted on 01382 220 446. Please see [Annex A](#)

## **Freedom of Information**

131. The Freedom of Information (Scotland) Act 2002 (FOISA) provides individuals with a right of access to all recorded information held by Scotland's public authorities. Anyone can use this right, and information can only be withheld where FOISA expressly permits it.

132. In Accordance with Section 23 of FOISA the Registrar is required to maintain a publication scheme. A publication scheme sets out the types of information that the Registrar routinely makes available. This scheme has been approved by the Scottish Information Commissioner, who is responsible for enforcing FOISA. The Registrar is also obliged to review the scheme from time to time.

133. Listed below are the classes of information which the Registrar intends to publish. All information listed under these classes is available on requested

**Register of Independent Schools:-** The Register contains information about all independent schools in Scotland, including details of their proprietors, premises type of education they provide and maximum number of pupils the school is registered to educate. It can be accessed at [www.scotland.gov.uk/Topics/Education/Schools/Parents/IndependentSearch](http://www.scotland.gov.uk/Topics/Education/Schools/Parents/IndependentSearch)

**Guidance:-** This Guidance document to proprietors and prospective proprietors advising them on the requirements to be registered as an independent school.

The Registrar's publication scheme is part of the Scottish Government's Publication Scheme which is available at:- <http://www.scotland.gov.uk/About/FOI/19260>

## **Health Promotion and Nutrition**

134. Proprietors should make themselves aware of the requirements of The Schools (Health Promotion and Nutrition) (Scotland) Act 2007. Under Section 5 of the 2007 Act, when placing a pupil at an independent school, education authorities have to have regard to the extent to which any food and drink which is provided to pupils at the independent school in question would comply with the nutritional regulations, if the regulations applied to independent schools. This section of the 2007 Act commenced for primary school age children in August 2008 and commenced for secondary school age children on 1st August 2009. Further information can be obtained from: [The Nutritional Requirements for Food and Drink in Schools \(Scotland\) Regulations 2008](#)

## Annex A

### ANNEXES

#### Useful Addresses and Contact details

|   |   |
|---|---|
| <p><i>The Registrar of Independent Schools<br/>The Scottish Government Schools Directorate<br/>Area 2C (South)<br/>Victoria Quay<br/>Edinburgh<br/>EH6 6QQ</i></p> <p>Tel: 0131 244 0955<br/>E-mail: <a href="mailto:tracey.mcrae@scotland.gsi.gov.uk">tracey.mcrae@scotland.gsi.gov.uk</a><br/>Web: <a href="http://www.scotland.gov.uk/topics/education/schools/parents/independentsearch">www.scotland.gov.uk/topics/education/schools/parents/independentsearch</a></p> | <p><i>Education Scotland<br/>Denholm House<br/>Almondvale Business Park<br/>Livingston<br/>EH54 6GA</i></p> <p>Tel: 0141 282 5000<br/>Fax: 01506 600 337<br/>E-mail: <a href="mailto:enquiries@educationscotland.gov.uk">enquiries@educationscotland.gov.uk</a><br/>Web: <a href="http://www.scotland.gov.uk/hmie">www.scotland.gov.uk/hmie</a></p> |
| <p><i>Scottish Council of Independent Schools<br/>61 Dublin Street<br/>Edinburgh<br/>EH3 6NL</i></p> <p>Tel: 0131 556 2316<br/>E-mail: <a href="mailto:information@scis.org.uk">information@scis.org.uk</a><br/>Web: <a href="http://www.scis.org.uk">www.scis.org.uk</a></p>   | <p><i>Disclosure Scotland<br/>PO Box 250<br/>Glasgow<br/>G51 1YU</i></p> <p>Tel: 0870 609 6006<br/>Fax: 0870 609 6996<br/>Email: <a href="mailto:info@disclosurescotland.co.uk">info@disclosurescotland.co.uk</a><br/>Web: <a href="http://www.disclosurescotland.co.uk">www.disclosurescotland.co.uk</a></p>                                       |
| <p><i>Health and Safety Executive<br/>Belford House<br/>Belford Road<br/>Edinburgh<br/>EH4 3HE</i></p> <p>Tel: 0131 247 2000<br/>Fax: 0131 247 2121<br/>E-mail: <a href="mailto:hse.infoline@natbrit.com">hse.infoline@natbrit.com</a><br/>Web: <a href="http://www.hse.gov.uk">www.hse.gov.uk</a></p>  | <p><i>The Office of the Scottish Charity Regulator<br/>(OSCR)<br/>2nd Floor<br/>Quadrant House<br/>9 Riverside Drive<br/>Dundee, DD1 4NY</i></p> <p>Tel: 01382 220446<br/>Fax: 01382 220314<br/>E-mail: <a href="mailto:info@oscr.org.uk">info@oscr.org.uk</a><br/>Web: <a href="http://www.oscr.org.uk">www.oscr.org.uk</a></p>                    |

*Care Inspectorate  
Headquarters  
Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY*  
Tel: 01382 207100  
Fax: 01382 207289  
Local: 0845 600 9527  
E-mail:  
<mailto:enquiries@careinspectorate.com>  
Web: <http://www.careinspectorate.com/>

## Annex B

### Legislation

This is a list of some legislation of which proprietors may wish to be aware. **This is not an exhaustive list of legislation that prospective or existing proprietors should consider when establishing, or continuing, an independent school. It is the responsibility of prospective and existing proprietors to be aware of, and comply with, any legislation relevant to the running of an independent school,** which may include legislation with supersedes that set out below. You should therefore consult your own legal advisers as appropriate.

| LEGISLATION  | WEBSITE ADDRESS               | ISBN   |                                   |
|--|-------------------------------|--|-----------------------------------|
| The Registration of Independent Schools (Scotland) Regulations 1957                                      | Not available on the internet | 011 051 4122   |                                   |
| Teaching Council (Scotland) Act 1965   |                               | 010 546 2926   |                                   |
| Health and Safety at Work Act 1974   |                               | 010 5437 743   |                                   |
| The Registration of Independent Schools (Scotland) Amendment Regulations 1975                            |                               | 011 051 4122   |                                   |
| Sex Discrimination Act 1975  |                               | 010 5465 755   |                                   |
| Race Relations Act 1976  |                               | 010 474 742  |                                   |
| The Independent Schools Tribunal (Scotland) Rules 1977   |                               | 011 071 2617   |                                   |
| Education (Scotland) Act 1980  |                               | 010 544 44804  |                                   |
| Education (Scotland) Act 1981  |                               | 010 545 8813   |                                   |
| Schedule to the Registrar of Educational Endowments (Prescriptions of information) (Scotland) Order 1981 |                               | 011 017 5646   |                                   |
| School Pupil Records (Scotland) Regulations 1990   |                               | <a href="http://www.opsi.gov.uk/si/si1990/Uksi_19901551_en_1.htm">www.opsi.gov.uk/si/si1990/Uksi_19901551_en_1.htm</a>           | 011 004 5513<br>(rev by SSI 2003) |
| Children's (Scotland) Act 1995   |                               | <a href="http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm">www.opsi.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm</a> | 010 543 695x                      |
| Disability Discrimination Act 1995   |                               | <a href="http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm">www.opsi.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm</a> | 010 545 0952                      |

|   |   |              |
|---|---|--------------|
| The Fire Precautions (Workplace) Regulations 1997   | <a href="http://www.opsi.gov.uk/si/si1997/19971840.htm">www.opsi.gov.uk/si/si1997/19971840.htm</a>  | 011 064 7386 |
| The Fire Precautions (Amended) (Workplace) Regulations 1999                               | <a href="http://www.opsi.gov.uk/si/si1999/19991877.htm">www.opsi.gov.uk/si/si1999/19991877.htm</a>  | 011 082 8828 |
| Data Protection Act 1998  | <a href="http://www.opsi.gov.uk/acts/acts1998/19980029.htm">www.opsi.gov.uk/acts/acts1998/19980029.htm</a>  | 010 542 9988 |
| Management of Health and Safety at Work Regulations 1999                                  | <a href="http://www.opsi.gov.uk/si/si1999/19993242.htm">www.opsi.gov.uk/si/si1999/19993242.htm</a>  | 011 085 6252 |
| Race Relations (Amendment Act) 2000   | <a href="http://www.opsi.gov.uk/acts/acts2000/20000034.htm">www.opsi.gov.uk/acts/acts2000/20000034.htm</a>  | 010 543 4000 |
| Standards in Scotland's Schools etc Act 2000  | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2000/20000006.htm">www.opsi.gov.uk/legislation/scotland/acts2000/20000006.htm</a>        | 010 591 0066 |
| Special Education Needs and Disability Act 2001   | <a href="http://www.opsi.gov.uk/acts/acts2001/20010010.htm">www.opsi.gov.uk/acts/acts2001/20010010.htm</a>  | 010 541 0012 |
| Regulation of Care Act 2001   | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2001/20010008.htm">www.opsi.gov.uk/legislation/scotland/acts2001/20010008.htm</a>        | 010 590 0184 |
| The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm">www.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm</a>        | 010 590 0370 |
| The Freedom of Information (Scotland) Act 2002  | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2002/20020013.htm">www.opsi.gov.uk/legislation/scotland/acts2002/20020013.htm</a>        | 010 590 0389 |
| Rehabilitation of Offenders Act 1974 (Exception) Order 2003                               | <a href="http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030231.htm">www.opsi.gov.uk/legislation/scotland/ssi2003/20030231.htm</a>          | 011 062 3258 |
| The Employment Equality (Sexual Orientation) Regulations 2003                             | <a href="http://www.opsi.gov.uk/si/si2003/20031661.htm">www.opsi.gov.uk/si/si2003/20031661.htm</a>  | 011 046 6772 |
| The Employment Equality (Religion or Belief) Regulations 2003                             | <a href="http://www.opsi.gov.uk/si/si2003/20031660.htm">www.opsi.gov.uk/si/si2003/20031660.htm</a>  | 011 046 6764 |
| The Employment Equality (Sexual Orientation) (Amendment) Regulations 2003                 | <a href="http://www.opsi.gov.uk/si/si2003/20032827.htm">www.opsi.gov.uk/si/si2003/20032827.htm</a>  | 011 048 133X |
| The Employment Equality (Religion or Belief) (Amendment) Regulations 2003                 | <a href="http://www.opsi.gov.uk/si/si2003/20032828.htm">www.opsi.gov.uk/si/si2003/20032828.htm</a>  | 011 048 1348 |
| The Protection of Children Act (Scotland) 2003  | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2003/20030005.htm">http://www.opsi.gov.uk/legislation/scotland/acts2003/20030005.htm</a> | 010 590047 8 |
| The Pupils' Educational   | <a href="http://www.opsi.gov.uk/legislation/scotland/s">http://www.opsi.gov.uk/legislation/scotland/s</a>   | 011 062552 8 |

|   |   |                   |
|---|---|-------------------|
| Records (Scotland) Regulations 2003   | <a href="http://www.opsi.gov.uk/si/si2003/20030581.htm">si2003/20030581.htm</a>   |                   |
| The Employment Equality (Religion or Belief) (Amendment) Regulations 2004             | <a href="http://www.opsi.gov.uk/si/si2004/20040437.htm">www.opsi.gov.uk/si/si2004/20040437.htm</a>  | 011 048 732X      |
| The School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2004/20040012.htm">http://www.opsi.gov.uk/legislation/scotland/acts2004/20040012.htm</a> | 010 590073 7      |
| Disability Discrimination Act 2005  | <a href="http://www.opsi.gov.uk/acts/acts2005/20050013.htm">www.opsi.gov.uk/acts/acts2005/20050013.htm</a>  | 010 541 1051      |
| The Fire (Scotland) Act 2005  | <a href="http://www.opsi.gov.uk/legislation/scotland/acts2005/20050005.htm">http://www.opsi.gov.uk/legislation/scotland/acts2005/20050005.htm</a> | 010 590078 8      |
| The Registration of Independent Schools (Scotland) Regulations 2006                   | <a href="http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060324.htm">www.opsi.gov.uk/legislation/scotland/ssi2006/20060324.htm</a>          | 011 0706 889      |
| The Equality Act 2006   | <a href="http://www.opsi.gov.uk/acts/acts2006/20060003.htm">www.opsi.gov.uk/acts/acts2006/20060003.htm</a>  | 010 540306 7      |
| The Schools(Health Promotion and Nutrition) (Scotland) Act 2007                       | <a href="http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070372.htm">www.opsi.gov.uk/legislation/scotland/ssi2007/20070372.htm</a>          | 978 0 11 078385 7 |
| The Employment Equality (Age) Regulations 2006  | <a href="http://www.opsi.gov.uk/si/si2006/20061031.htm#3">www.opsi.gov.uk/si/si2006/20061031.htm#3</a>  | 0 11 0744608      |

(Please note that no legislation is available on the website prior to 1988 and if required should be obtained from the TSO bookshop)

\* All of the above legislation can be obtained from:

*The Stationery Office Scotland*  
26 Rutland Square  
Edinburgh  
EH1 2BW

Tel: 0131 659 7020  
Fax: 0131 659 7040

E-mail: [enquiries@tso.cp.uk](mailto:enquiries@tso.cp.uk)  
Web: [www.tso.co.uk](http://www.tso.co.uk)

## Annex C

### Useful Publications and Weblinks

This is a list of some publications and weblinks that proprietors may find useful. It is not an exhaustive list of all documents with relevant guidance and advice, and whilst correct at the time of going to press (October 2007), **it is the responsibility of proprietors to check that they have the most up-to-date documents and guidance.**

"Planning to Improve Access to Education for Pupils with Disabilities: Guidance on Preparing Accessibility Strategies". Available from the Scottish Government web site at [www.scotland.gov.uk/library5/education/gpas-00.asp](http://www.scotland.gov.uk/library5/education/gpas-00.asp). ISBN 07759 10230

"Protecting Children and Young People: The Charter" (2004) sets out what children and young people feel they have a right to expect from those with responsibilities to protect them. Safer Children, Stronger Families Division, Scottish Government, Schools Directorate, Area 2B, Victoria Quay, Edinburgh, EH6 6QQ

<http://sh45inta/Publications/2004/04/19082/34411> ISBN 0-7559-4087-3

"Protecting Children and Young People: Framework for Standards" (2004) builds upon the Charter and is a framework for all agencies to progress effective measures to protect children and young people. Safer Children, Stronger Families Division, Scottish Government, Schools Directorate, Area 2B, Victoria Quay, Edinburgh, EH6

<http://www.scotland.gov.uk/Publications/2004/03/19102/34603> ISBN 0-7559-4087-3

"It's Everyone's Job To make Sure I'm Alright" (2002) is the report on the Child Protection Audit and Review. Safer Children, Stronger Families Division, Scottish Government Schools Directorate, Area 2B, Victoria Quay, Edinburgh, EH6 6QQ

<http://www.scotland.gov.uk/Publications/2002/11/15820/14009> ISBN 0-7559-0585-7

"The Administration of Medicines in Schools" issued September 2001. Copies can be obtained from Teachers Division, Scottish Government, Schools Directorate, Area 2D-South,, Victoria Quay, Edinburgh, EH6 6QQ Tel: 0131 244 4544. This is also available at: [www.scotland.gov.uk/news/releases/2001/09/134](http://www.scotland.gov.uk/news/releases/2001/09/134)

Guidance on specific aspects of education is also available from HM Inspectorate of Education website address:

<http://www.educationscotland.gov.uk/inspectionandreview/index.asp>

"Fire and Explosion - How Safe Is Your Work Place", published by the Health and Safety Executive ( HSE), ISBN 0-11-341229-0. It is available from HSE books 01787 881165 or The Stationery Office, 0870 600 5522 or online at: [www.hse.gov.uk/pubns/index.htm](http://www.hse.gov.uk/pubns/index.htm).

"Health and Safety Guidance for School Governors and Members of School Boards" is also available from HSE books 01787 881165 or The Stationery Office, 0870 600 5522 or online at: [www.hse.gov.uk/pubns/index.htm](http://www.hse.gov.uk/pubns/index.htm)

"Health and Safety at work" (available on HMSO website at [www,hmso.gov.uk](http://www.hmso.gov.uk) . Further information is available at the websites [www.hse.gov.uk](http://www.hse.gov.uk) and [www.clicktso.com](http://www.clicktso.com) .)

Proprietors may find the guide" Educational and Day Care for Children Premises Guide" helpful. It is available at <http://www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw/SectorSpecificGuidance/Daycare>

It is also available via the public library network(ISBN 978-0-7559-7025-4).

Circulars issued by the SNCT, can be found on the Teachers' Agreement Communications Team website at <http://www.snct.org.uk/>

"The Teachers Superannuation Scheme Employers Guide and Instructions" is available free from the Scottish Public Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TDI 3TE . The Agency can be telephoned on 01896 893 000.

"Fire Law - Are You Aware of Your Responsibilities" Further information is available at <http://www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw>

## Annex D

### Effect of Part 2 of the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 on Part V on the Education (Scotland) Act 1980

1. Part V of the 1980 Act as amended by the provisions in Part 2 of the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 is set out below. The attached is included in the explanatory notes to assist the reader to understand the provisions and how they integrate into the other provisions in Part V. The amendments are shown as italics and where text has been deleted this is indicated by [..].

2. The functions of the 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 a reference to the Scottish Ministers.

#### PART V

#### INDEPENDENT SCHOOLS

#### 98 Registration of independent schools<sup>1</sup>

<sup>1</sup>Text amended by section 4(1) of and schedule 1 to the Act.

(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

(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<sup>2</sup>**

<sup>2</sup>Text amended by section 4(2) of the Act.

(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;
  - (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<sup>3</sup>**

<sup>3</sup>Text inserted by section 4(2) of the Act.

- (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<sup>4</sup>**

<sup>4</sup>Text inserted by section 4(2) of the Act.

(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 notice 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
- (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<sup>5</sup>**

<sup>5</sup>Text inserted by section 4(2) of the Act.

(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.

### **98E Imposition, variation and revocation of conditions<sup>6</sup>**

<sup>6</sup>Text inserted by section 5(1) of the Act

(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.

(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.

## 99 Complaints<sup>7</sup>

<sup>7</sup>Text amended by section 5(2) of and schedule 1 to the Act

(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;

(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-
  - (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<sup>8</sup>**

<sup>8</sup>Text amended by section 5(3) of and schedule 1 to the Act.

- (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

- (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;
- (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) 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<sup>9</sup>

<sup>9</sup>Text amended by section 5(4) of and schedule 1 to the Act.

(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 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<sup>10</sup>**

<sup>10</sup>Text amended by section 6(1) of and schedule 1 to the Act.

(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;
  - (b) the Registrar; and
  - (c) any other person or body the Scottish Ministers think fit,
- 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<sup>11</sup>**

<sup>11</sup>Text amended by section 6(2) of the Act.

(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;
- (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-
  - (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.

### **103A Proprietor which is body corporate etc.**<sup>12</sup>

<sup>12</sup>Text inserted by section 7 of the Act.

(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
- (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<sup>13</sup>**

<sup>13</sup>Text inserted by section 7 of the Act.

(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.

## **Annex E**

### **SCHEDULE 1**

#### **Regulations 3, 4 and 5**

##### **Particulars Information - applications for registration and registered schools**

- 1.** The name of the school.
- 2.** The postal address, electronic address, telephone number and facsimile number of the school, including a description of the heritable property occupied for the purposes of the school and plans of each building forming part of the indicating sanitary facilities and the dimensions of each room.
- 3.** The type of school, detailing which combination of the following describe the school, and the education or other provision made within it-
  - (a) primary education;
  - (b) secondary education;
  - (c) provision for education other than referred to within paragraphs 3(a) or 3(b);
  - (d) day or boarding;
  - (e) additional support for learning;
  - (f) church or other denominational body in whose interest the school is conducted.
- 4.** The maximum intended number of pupils in the school.
- 5.** The date from which the school is to be operational.
- 6.** In the case of an individual proprietor, that person's full name, usual residential address, electronic address, telephone number and facsimile number.
- 7.** The postal address, electronic address, telephone number and facsimile number to which communications to the proprietor should be sent if different from paragraph 6.
- 8.** Where the proprietor is not an individual-
  - (a) the name of the proprietor;

- (b) the postal address, electronic address, telephone number and facsimile number of the proprietor's principal office together with such information insofar as it relates to (where it has one) the proprietor's registered office;
- (c) the full name, postal address, electronic address, telephone number and facsimile number, of any person to whom the proprietor wishes communications concerning the school to be addressed;
- (d) in the case of a body corporate, Scottish partnership, or unincorporated association (other than a Scottish partnership), the title of the body, partnership or association, a description of its nature and the full name and usual residential address of any relevant person and the capacity in which such person acts; and
- (e) in the case where the school is, or is conducted by, a charity, the name of that charity and details as to its registration as a charity.

**9.** A copy of the school's-

- (a) Curriculum;
- (b) Statement of Aims;
- (c) Prospectus;
- (d) Admissions Policy;
- (e) Fire Risk Assessment Policy and Procedure;
- (f) Health and Safety Risk Assessment Policy and Procedure; and
- (g) Child Protection Policy and Procedure, including a statement of the school's policy and practice on seeking criminal record certificates under Part V of the 1997 Act, which statement shall also include a statement detailing what checks are made, including those with reference to Part V of the 1997 Act, in respect of all persons working or to be working in a child care position, relative to the school.

**10.** A statement confirming that criminal record certificates under Part V of the 1997 Act appropriate to the position have been obtained and are in accordance with the school's Child Protection Policy and Procedure, in respect of-

- (a) the proprietor of the school;

- (b) all proposed teachers; and
- (c) all other persons in or to be in a child care position relative to the school.

## SCHEDULE 2

### Regulations 3 and 4

#### Particulars information - registered schools

1. The number of pupils in the school arranged by their year of birth, their sex and whether they are day or boarding pupils.
2. The following particulars information in relation to every teacher employed by or in the school as at the date on which such information is furnished to the Registrar under regulation 4-
  - (a) their full name;
  - (b) their date of birth and sex;
  - (c) whether they are employed on a full-time, part-time or other basis and if employed on a part-time or other basis the number of hours for which that teacher is employed per week;
  - (d) their qualifications, the subject or subjects for which they are employed to teach, and confirmation of whether or not they are registered with the Council.
3. A statement confirming that criminal record certificates under Part V of the 1997 Act, appropriate to the position, have been obtained and are in accordance with the school's Child Protection Policy and Procedure, in respect of-
  - (a) any teachers, and
  - (b) any other persons in a child care position,  
employed for the first time by or in, or re-employed by or in the school, within the previous 12 month period.
4. A statement confirming that the assessments undertaken in terms of the School's Fire Risk Assessment Policy and Procedure, and Health and Safety Risk Assessment Policy and Procedure have been reviewed within the previous 12 month period.