



Appendix 1

Rights and duties of parents and functions of education authorities in relation to individual pupils

28A - Duty to comply with parents requests as to schools.

(1) Where the parent of a qualifying child makes a written request to an education authority to place his child in the school (other than a nursery school or a nursery class in a school) specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2), (3), (3A) and (3F) below, to place the child accordingly. Such a request so made is referred to in this Act as a "placing request" and the school specified in it is referred to in this Act as the "specified school".

(1A) The education authorities shall –
(a) in carrying out the duty imposed on them by subsection (1) above; and
(b) in deciding when that duty does not apply,
have regard to such guidance as the Scottish Ministers may give in that respect.

(2) Where a placing request relates to two or more schools under the management of the education authority to whom it was made, the duty imposed by subsection (1) above shall apply in relation to the first mentioned such school, which shall be treated for the purposes of this Act as the specified school.

(3) The duty imposed by subsection (1) above does not apply –

(a) if placing the child in the specified school would –

- (i) make it necessary for the authority to take an additional teacher into employment;
- (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
- (iii) be seriously detrimental to the continuity of the child's education;
- (iv) be likely to be seriously detrimental to order and discipline in the school;
- (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;
- (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school; [or] 42
- [(vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;]43

(b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;

(c) if the education authority have already required the child to discontinue his attendance at the specified school;

(d) if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school; or

(e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,

but an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above.

- (3A) the duty imposed by subsection (1) above does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school; but nothing in this subsection shall prevent an education authority from placing a child in the specified school.
- (3C) In subsection (3A) above, “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as may be prescribed by regulations) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1 August to which the placing request relates; and different numbers or, as the case may be, percentages may be prescribed under this subsection for the purpose of different cases or circumstances.

42 added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s.44(4)

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