

## ELIZABETH II



# Education (Mentally Handicapped Children) (Scotland) Act 1974

## 1974 CHAPTER 27

An Act to make provision as respects Scotland for discontinuing the ascertainment of mentally handicapped children as unsuitable for education at school, to impose a duty on education authorities to provide for the education of such children whether accommodated in a hospital within the meaning of the Mental Health (Scotland) Act 1960 or otherwise, and for purposes connected therewith. [17th July 1974]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) As from such day (“the appointed day”) as the Secretary of State may appoint by order made by statutory instrument— **Mentally handicapped children.**

- (a) the functions of an education authority under section 63 of the Education (Scotland) Act 1962, as read with section 10 of the Education (Scotland) Act 1969, shall cease to exist for the purpose of ascertaining children suffering from a disability of such a nature or to such an extent as to make them unsuitable for education or training, either by ordinary methods or by special education; and
- (b) a local authority shall not, under section 12 of the Mental Health (Scotland) Act 1960, be subject to 1960 c. 61.

1962 c. 47.

a duty to make arrangements for securing the provision of suitable training and occupation for children who suffer from a disability and who are for purposes of the Education (Scotland) Act 1962 of school age ;

and, where immediately before the appointed day a decision under section 63(1)(ii) of the said Act of 1962 was in force, section 65 of that Act, both those sections being read with section 10 of the said Act of 1969, shall apply as if the decision had been made, and the examination in consequence of which it was made had been carried out, under sections 63(1)(i), 64 and 65 of the said Act of 1962.

(2) The Secretary of State shall by order make such provision as appears to him to be necessary or expedient in consequence of this Act—

- (a) for the protection of the interests of persons who before the appointed day have been employed for the purpose of functions of health boards or local authorities ; and
- (b) for the transfer to education authorities of rights and liabilities in, or on, moveable property of health boards.

(3) The provision to be made under subsection (2)(a) above shall include provision—

- (a) for the payment by the Secretary of State or by any education authority, subject to such exceptions or conditions as may be prescribed by the order, of compensation to or in respect of any such persons as are referred to in subsection (2)(a) who suffer loss of employment or loss or diminution of emoluments which is attributable to the provisions of this section ; and

- (b) as respects any person so referred to who on the appointed day is in consequence of this section employed for the purpose of functions of an education authority, for securing that, so long as he continues in that authority's employment for the purpose of those functions—

- (i) he shall enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before that date, except as regards the scale of his salary or remuneration if on that date or afterwards he ceases to be engaged in duties reasonably comparable to those in which he was engaged immediately before that date ; and

- (ii) in the event of his ceasing to be so engaged, the scale of his salary or remuneration shall also be not less favourable so long as he has not been

served with a statement in writing of new terms and conditions of employment.

A written statement given in accordance with section 4 of the Contracts of Employment Act 1963 shall not be regarded as a statement of new terms and conditions of employment for the purposes of paragraph (b) above unless the statement indicates that it is to be. 1963 c. 49.

(4) An order under subsection (2) above may include provision—

- (a) for the determination of questions arising under any such order and as to the manner in which and persons to whom claims for compensation are to be made;
- (b) for applying, with or without modifications, any provision made by or under any enactment and relating to the transfer of staff between authorities;

and the provision made under subsection (2)(a) shall have effect notwithstanding, and may amend or repeal, any provision made by or under any enactment and relating to the remuneration of teachers or to superannuation.

(5) Any order under subsection (2) above may be varied or revoked by a subsequent order of the Secretary of State, and the power of the Secretary of State to make orders under that subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by the Secretary of State in the payment of compensation under any provision made in accordance with subsection (3)(a) above; and
- (b) any increase attributable to this section in the sums payable out of moneys so provided by way of rate support grant.

2.—(1) This Act may be cited as the Education (Mentally Handicapped Children) (Scotland) Act 1974, and this Act and the Education (Scotland) Acts 1939 to 1973 (1973 cc. 23 and 59) may be cited as the Education (Scotland) Acts 1939 to 1974. Citation, repeal and extent.

(2) As from the appointed day, the enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) This Act shall extend to Scotland only.

## Section 2.

**SCHEDULE**  
**ENACTMENTS REPEALED**

Chapter	Short Title	Extent of Repeal
1960 c. 61.	The Mental Health (Scotland) Act 1960.	In section 12, in subsection (1), paragraph (a) and proviso (i). Sections 13 and 14.
1962 c. 47.	The Education (Scotland) Act 1962.	In section 63, in subsection (1), paragraph (ii). In section 64, in subsection (1), the words from "or that" to "this Act" and, in subsections (4) and (5), the words from "or is suffering" to "of this Act". In section 66, in subsection (4), paragraph (iii), and subsections (6) and (7). Sections 66B, 66C and 66D. In section 141, in subsection (2), paragraphs (a) and (b).
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, in Part I, the entry for the Mental Health (Scotland) Act 1960, section 13(3), except as respects offences committed before the appointed day.
1969 c. 49.	The Education (Scotland) Act 1969.	In section 10, in the sections substituted for sections 63 to 66 of the Education (Scotland) Act 1962, the like repeals shall be made as are made above in the said sections. In Schedule 2, paragraph 40. In Schedule 4, in paragraph 6, the words from "and any reference" to the end, and, in paragraph 7, in sub-paragraph (1), the words from "or" at the end of head (a) to "such commencement", and the words "or a report issued", and heads (ii) and (iii) and sub-paragraph (2).

PRINTED IN ENGLAND BY HAROLD GLOVER  
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

8p net

ISBN 0 10 542774 8

(384356)