

Improving
our
Schools

Consultation on the
Schools Scotland Code



SCOTTISH EXECUTIVE

Making it work together

Consultation on the
Schools Scotland Code

A Consultation Paper by the
Scottish Executive Education Department

This discussion paper invites views on the Schools Scotland Code 1956. Views should be submitted by 30 June 2000 to

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FOREWORD TO SCHOOLS (SCOTLAND) CODE CONSULTATION

The Schools (Scotland) Code was introduced in 1956 to set what were then seen to be the regulatory standards required in our schools. There have been many changes in education since then. These changes are not only in the subjects taught in school but also in the environment in which our children learn and our understanding of how they learn and the skills they need to acquire. Methods of communication, organisational arrangements and management structures have also changed and are continuing to change as we enter the 21st Century.

The Code reflects the attitudes and structures of its day rather than our current approaches to school education. It is therefore time the Code was reviewed in the best interests of children's education. The consultation paper which follows examines the provisions of the Code as it stands and seeks your comments.

The document raises some important issues about how we manage education in Scotland. There is an obligation on all of us concerned with school education to be forward looking. We need to be sure that our schools are ready to meet the needs of the 21st century. I would encourage all of you with an interest to consider the issues raised in this document carefully and to let us have your views. Your responses can help ensure that the regulatory framework for schools does not act as a straightjacket, stifling discussion and innovation, but serves rather as an enabler, facilitating development and improvement, and helping us face the challenges that lie ahead.

A handwritten signature in black ink, appearing to read 'Sam Galbraith', written over a horizontal dashed line.

Sam Galbraith MSP
Minister for Children and Education

SUMMARY

The Schools (Scotland) Code 1956 was established to regulate the administration of state schools at a time when the system was much smaller and more centralised than at present.

The Code's design and approach is dated and amendments over the years have reduced its cohesion significantly. It is time to examine the continuing relevance of the Code to the challenges facing modern schools, and to ensure consistency with developments in the management and organisation of schools. Such an examination should ensure that regulations properly support the role of schools in raising standards.

In addition the Committee of Inquiry into professional conditions of service for teachers chaired by Professor McCrone may raise issues of relevance to the Code.

The Executive has prepared the following discussion paper on the regulations in the Code so that all the relevant issues can be considered together.

Key issues and questions are listed in this summary - more detailed questions and discussion of the relevant issues are presented in the remainder of the paper.

Key questions

- **People**

The Code requires authorities to employ adequate teaching and clerical staff in their schools and sets out a formula for the number of teachers to be employed in primary schools.

Is such detailed regulation still necessary?

- **Class Sizes**

The Code prescribes maximum class sizes for nursery, secondary (including practical) and special needs classes. The lists of practical classes and special needs terminology used in the Code are out of date. Class size limits are also set out in Scottish Joint Negotiating Committee agreements (as part of teachers' conditions of service). These also cover primary schools and composite classes. More recently, the Government has introduced new regulations as part of its Manifesto commitment to reduce class sizes in the early years of schooling. These set a maximum for the first three years of primary school.

The Code, notwithstanding its statutory basis, now has only limited impact on class sizes. Should the pre-eminence of the statutory framework and of Parliamentary scrutiny be re-asserted in relation to class sizes?

- **Management Structures**

The Code prescribes the range of promoted posts in schools. This limits authorities' ability to design posts and structures appropriate to local circumstances. The Scottish Executive wishes to ensure that there is sufficient flexibility to allow authorities to put in place management structures relevant to the challenges and circumstances of each school.

Is detailed prescription of management posts still appropriate?

- **Teacher Registration**

The Code requires teachers to be registered with the General Teaching Council for Scotland (GTC). The Scottish Executive is not considering any change to this. However there may be circumstances where schools wish further education lecturers to help deliver certain New Higher Still courses.

Given Higher Still developments what arrangements would provide flexibility while maintaining standards?

- **Teacher Qualifications**

The Code stipulates the qualifications required to teach in primary and secondary schools. This generally prohibits teachers with primary qualifications from working in secondary schools.

Given the concerns about the transition between primary and secondary, should schools and authorities be free to decide on the most appropriate qualifications?

- **Special Educational Needs Qualifications**

The Code sets out the qualifications required for teachers in special schools or classes. At the very least, this part of the Code requires considerable modernisation in its terminology and view of special needs.

Are regulations in their present form the best way of ensuring that the interests of children with special needs are served and protected?

- **Pre-school Education**

The Code lays down the qualifications teachers require, the maximum size of classes and the employment of auxiliaries in nursery schools. The Code takes no account of the growth of the private/voluntary childcare sector or of related legislation.

Views on these issues have already been sought in the consultation paper “The Regulation of Early Education and Childcare”. Ministers are currently considering responses and will bring forward proposals in due course.

- **Reports on unsatisfactory teachers**

The Code requires authorities to make reports to the Secretary of State (now Scottish Ministers). The reporting arrangements introduced with the GTC render this regulation redundant.

- **Designation of Stages and Classes**

The Code describes the terminology for yearly courses and classes in schools. The continuing need for these is in doubt and the relaxation of age/stage restrictions in secondary school may make the designation inappropriate.

- **General**

If continued regulation is required should it be by a single code or by separate regulations in each area?

INTRODUCTION

1. The Scottish Executive has recently introduced the Standards in Scotland's Schools etc. Bill which establishes a framework for planning for continuous improvement in Scottish schools. Fundamental to that framework is the principle that each school, supported by its local authority, has the central responsibility for its own improvement and for raising standards.
2. The role of education authorities, the Scottish Executive, HM Inspectorate and other bodies is to challenge and support schools in the process of continuous improvement. Properly empowered schools should be able to plan and make provision relevant to their circumstances and to seek improvement in standards. Schools should not be unduly constrained by regulations that either frustrate innovation or impose needless uniformity.
3. The regulations contained in the Schools (Scotland) Code 1956 must be examined carefully in that light. The Scottish Executive's particular concern is to ensure that regulations assist schools in the priority objective of raising standards and do not stand in the way of improved educational practices. The Executive is also concerned to ensure that the outmoded detailed prescription of inputs does not stand in the way of changes designed to promote improved educational outcomes. **It is the outcome of education for every child and young person that should be the primary concern.**
4. Most of the provisions of the Code have been in place for more than 40 years, and during that time there have been many changes in education, in local government and in the nature and purpose of regulation. More discretion is given to schools and education authorities as to how they achieve their objectives and discharge their duties. It remains important to ensure that appropriate safeguards are in place to maintain standards. But increasingly this is achieved by establishing an effective planning framework and by quality assurance of the outcomes rather than by regulating the detail of inputs and processes.

5. In recent years, agreements by the Scottish Joint Negotiating Committee (SJNC) have overlapped with some of the provisions in the Code. (The overlap between Scottish Joint Negotiating Committee agreements and certain provisions of the Code is set out in Annex D). The Code has not been updated to take account of these changes and there has been confusion over what may or may not be a statutory requirement and the extent to which Code regulations preclude agreement by the SJNC. There needs to be clarity in these areas. The Executive has announced its intention to remove the statutory basis of the SJNC whilst leaving existing agreements in place.

6. The Executive firmly believes that if regulation has a role to play in bringing about improvement in education it must be regulation where the benefits clearly outweigh the costs and it does not impose unreasonable burdens. Regulations should also be examined to ensure that they do not have a distorting impact on the choices to be made by parents or students. It is therefore time to review whether the Code continues to be relevant, and whether such detailed regulation is appropriate.

The Schools (Scotland) Code

7. The following paragraphs are arranged thematically and draw together related regulations from different parts of the Code. The annexes will assist you in considering the issues. They are:

- A. A summary of the main provisions of the Code.
- B. The Code - the text of the existing regulations.
- C. Illustrations of the number of teachers to be employed in primary departments issued in 1972. This relates to regulation 5(5).
- D. The areas of overlap between the agreements reached by the Scottish Joint Negotiating Committee and provisions of the Code.

REGULATIONS CONTAINED WITHIN THE SCHOOLS (SCOTLAND) CODE

People

8. Regulation 4(1) requires local authorities to employ adequate staff in the schools under their management and empowers the Secretary of State (now Scottish Ministers) to take action if they fail to do so. Regulation 5(5) specifies how many teachers should be employed in primary schools depending upon the size of the school roll. The Code does not determine class sizes. Since class sizes are a major determinant of teacher numbers, it is not clear that the provisions of the Code continue to have much relevance.

9. They have been overtaken by subsequent guidance on staffing standards which itself is now somewhat dated. In addition, there are separate restrictions on class size maxima partly in the Code but also the subject of SJNC agreements - see further in paragraphs 12-18 below and limitations on class contact time for teachers in SJNC agreements.

10. Under section 1 of the Education (Scotland) Act 1980, all Scottish local authorities have a duty to ensure that they provide an adequate and efficient level of school education. This includes an implied obligation to ensure that there is sufficient teaching and non-teaching staff available to deliver effective education. Where local authorities are not providing an adequate and efficient education system, Scottish Ministers have the power under section 70 of the 1980 Act to make an order declaring an authority to be in default in respect of that duty and to require them to discharge their legal obligations.

Q1. What role, if any, should there be for detailed central regulation or guidance in determining staffing standards in schools?

Q2. Do the regulations in the Code unduly hamper the ability of local authorities to provide adequate and efficient education or to make innovative and flexible arrangements to suit local needs and circumstances?

Headteacher Support

11. Regulation 9 places a requirement on local authorities to provide adequate clerical assistance for the headteacher of each school to ensure that she/he does not have to undertake such work at the expense of her/his professional duties. Although this objective is of major significance it is not clear what this regulation adds to the general obligation on education authorities to secure adequate and efficient provision of school education under section 1 of the 1980 Act. The introduction of Devolved School Management (DSM) has given headteachers greater scope to manage support arrangements and the degree and nature of support required will vary from school to school. The provision may be limiting in its reference to clerical assistance - other support staff may be similarly important.

Q3. Is it appropriate or necessary for regulations to lay down requirements regarding clerical or other support staff for headteachers?

Class sizes

12. Regulations 15(1)-15(4) set maxima for class sizes at different stages and also for pupils with special needs.

13. The Code does not regulate the size of all classes. No class size maxima are set for primary schools although staffing standards are. The provisions relating to these classes were removed in 1972. Similarly, the maxima in the Code for special schools have fallen out of use although the provisions of the Code have not been removed.

14. There is no reason to suppose that class size maxima for other ages and stages covered by the Code would rise if the Code were abolished. If it were necessary, however, the Scottish Parliament could introduce new regulations dealing specifically with class size.

Primary Education

15. The Scottish Executive has set a target that by August 2001 no P1, P2 or P3 class will have more than 30 pupils. Regulations have been made to set this limit. Funding is being provided to local authorities through the Excellence Fund to implement this policy. There is no plan to make regulations for the other primary stages.

Q4. *Should the maximum for all primary stages be set in regulations?*

Secondary Education

16. The Code sets a maximum class size of 40 for the first 3 years of secondary education. A maximum of 30 is set for S4, S5 and S6 and a maximum of 20 for classes involving practical instruction.

17. The list of subjects defined as practical is out-dated and bears little relation to the curriculum. Subjects such as art and science remain relevant, but the days of housewifery and dairying as school subjects have passed. In practice, authorities take a pragmatic approach and treat new subjects as practical if it is appropriate to do so.

18. The widespread use of modern technology may increasingly make the distinction between practical and other subjects less clear-cut. There are three options:

- Remove the formal distinction between practical and other subjects and allow local decisions on appropriate class management arrangements;

- Although distinctions may be difficult, prepare an up-dated list of practical subjects to be included in regulations;
- Set a limit in regulations for practical subjects and then issue guidance on which subjects should be treated as included by the term.

Q5. What regulations, if any, should govern class sizes in secondary schools?

Q6. Is there any advantage in retaining the distinction between “practical” and other subjects?

Pupils with Special Educational Needs

19. The Code sets out a series of maximum class sizes for pupils in special schools or in special classes. These were intended to relate to particular needs of pupils but they are no longer in line with more recent approaches to special needs education or with the thrust to integration in mainstream classes. For instance, a maximum of 15 is set for a class consisting wholly of blind pupils but no separate limits are set for mainstream classes which contain one or more blind pupils. Similarly no limits are set for classes containing pupils with a mix of special needs. The SJNC agreements also cover this area.

20. It would be possible to adopt a different approach to regulation through the use of broader categories and focusing on the implications for teaching and learning rather than the particular disorder. It would also be possible to give a greater degree of discretion to schools, perhaps by setting an overall maximum together with factors to be taken into account in deciding the maximum for particular classes. There are also interactions with the issue of specialist qualifications discussed further at paragraphs 32-35 below.

Q7. Should class sizes for pupils with Special Educational Needs continue to be set in regulations?

Q8. *Should regulations differentiate between different types and degrees of need - if so how?*

Q9. *How should the issue of integration in mainstream classes be approached?*

Composite Classes

21. Composite classes are introduced when schools cannot accommodate classes by yearly stage alone. A maximum of 25 for composite primary classes (i.e. classes containing pupils from more than one yearly stage) is set by SJNC agreement. The maximum for secondary composite classes is set at 30 by the Code. The number of stages that a composite class may include is not stipulated in either approach. (Any regulation on this aspect would have to take account of very small rural schools with only one or two teachers and multi-stage classes). Moreover, organisation by year stage is a matter of practicality rather than educational wisdom. There is no evidence that the education of children in composite classes suffers compared with those in single stage classes and no clear reason why a lower class size is required as a matter of course. It is therefore appropriate to consider the extent to which this issue should be determined by schools rather than set out in regulation.

Q10. *Should the maxima for composite classes be set in regulations?*

Q11. *Should regulations limit the number of stages that may be included in a particular composite class?*

Management Structures

22. Regulations 5(3), 5(4), 6(2) and 6(3) of the 1956 Code prescribe the range of promoted posts in primary and secondary schools and require every school to have a head teacher. The Code does not define job descriptions or salary levels which are determined by the SJNC. The combination of regulations and

SJNC agreements means that, although schools do not have to recruit teachers to a particular number or mixture of promoted posts, their freedom to design management structures appropriate to their individual needs and circumstances can be significantly constrained. Removal of the regulations would give schools and authorities discretion to create posts according to their perception of educational/management requirements.

23. The question of the structure of grades within the profession and the balance between teaching and management responsibilities will be considered by the McCrone Committee. The current regulations may well require amendment or abolition in the light of the Committee's recommendations. Meantime, the question of local discretion to determine management structures also arises.

Q12. Should the type and level of promoted posts in schools continue to be the subject to regulation, or should local authorities and schools themselves be able to determine appropriate structures for their circumstances?

Headteachers

24. Regulations 5(3) and 6(2) require every school to have a headteacher. This is irrespective of the pupil roll and other factors. In some cases, however, local circumstances might make it sensible for a small group of schools to be under the professional leadership of one person without diminishing the headteacher's leadership role or jeopardising his or her accountability. The question arises of whether this needs to be the subject of national regulation rather than local discretion, and if the former whether there should be any exceptions.

25. A number of schools have both a primary and a secondary department. Under the terms of the Code, regulations 5(3) and 6(2), these schools can only have one headteacher. There may be circumstances in which such a school would benefit from having separate headteachers overseeing the primary and secondary

departments. There is no obvious reason why local authorities should not be free to pursue that possibility if they wish to do so. Nor is it readily apparent why this should be the subject of central regulation.

Q13. What regulation governing the requirement for head teachers is necessary, if any?

Teacher registration

26. The Teaching Council (Scotland) Act 1965 established the General Teaching Council for Scotland (GTC). Regulation 4(2) of the Code states that every teacher in a local authority school in Scotland must be registered with the Council. In maintaining the register and controlling entry to the profession, the Council ensures that pupils in Scotland are taught by appropriately qualified teachers. The Executive considers that compulsory registration remains an important safeguard for the quality of school education and it is not considering any change to that fundamental position.

27. Regulation 4(3) provides that, where an authority cannot fill a post with an appropriately qualified and experienced teacher, it can appoint a registered teacher without the appropriate qualifications on a temporary basis, or on a permanent basis with the approval of the Secretary of State (now Scottish Ministers). These provisions were intended to be used only on a limited basis. However, schools may wish to enhance their existing range of courses by drawing on the opportunities offered by new National Courses and Units under Higher Still. In these circumstances, it may be appropriate for schools to enter into arrangements which involve Further Education lecturers delivering elements of courses which are new to the school setting.

Q14. What arrangements would allow for flexibility in delivery of courses and staff deployment, while ensuring that standards are maintained?

Teacher qualifications

28. Regulations 1(n), 5(1) and 6(1) stipulate the qualifications required to teach in primary and secondary schools. Under the Teachers (Education, Training and Recommendation for Registration) (Scotland) Regulations 1993, teaching qualifications (TQs) awarded following a course of initial teacher education are:

TQ (primary education) - to teach in primary school;

TQ (secondary education) - to teach a subject or subjects in secondary schools;

TQ (FE) - to teach a subject or subjects in an FE college.

29. Teachers with a TQ (secondary) can teach in primary schools or departments but teachers with the primary TQ are not generally permitted to teach in a secondary school. (There is an exception for teachers if the majority of their work is with children with special educational needs). Regulation 5(2) contains similar stipulations for pre-school education. Regulation 1(n) allows the use of secondary teachers in subjects in which they are not qualified provided they also teach a subject in which they are qualified.

30. One question is whether, as at present, regulations need to specify the qualifications needed for employment in the different sectors. Another question, for the secondary sector, is whether regulations should determine the subject(s) which a teacher is permitted to teach. The Executive supports the principle that teachers need professional skills and an appropriate level of subject knowledge. However, it is not clear that a strict demarcation between teaching in primary and secondary sectors is wholly relevant to modern curricular developments and to innovations such as new community schools or to the continuing concern over issues relating to the transition from primary to secondary.

31. It could be argued that the considered application of the principle of suitable professional skills and appropriate subject knowledge is a more significant safeguard of educational quality

than a strict separation of deployment of teachers with primary and secondary qualifications. There is a case for suggesting that schools and education authorities should have the discretion to appoint teachers whom they consider have the appropriate professional skills and subject knowledge without the restriction of these regulations. Similarly, it could be argued that teachers should remain free to teach outside the subject(s) in which they are formally qualified where authorities and schools are satisfied that they fully meet the needs of the particular classes and elements of the curriculum involved.

Q15. *Should regulations, as well as requiring teachers to be registered with the GTC, specify which teaching qualifications are required for working in different sectors?*

Q16. *Should the definition of “appropriate teaching qualification (secondary education)” be relaxed to make it easier for teachers to teach outside the subjects in which they are formally qualified?*

Specialist SEN Qualifications

32. Regulations 7(1)-7(5) set out requirements for qualifications of teachers employed mainly in special schools or special classes for pupils with a range of needs. The terminology used in the Code to describe the range of needs for which specialist teaching qualifications are required is outdated. It is not consistent with the Education (Scotland) Act 1980 or the Children (Scotland) Act 1995 or with developments in practice such as the employment of SEN auxiliaries.

33. Specialist qualification was an issue on which the Government's discussion paper *Special Educational Needs in Scotland* (May 1998) invited comment. In particular, the discussion paper asked if the requirement for mandatory qualifications for teachers in special schools or classes should be extended to teachers working with pupils with special educational needs in mainstream education. Responses revealed sharply varying opinions.

34. All respondents highlighted the importance of staff being trained and qualified in the field in which they were working. This was important for special schools and special classes as well as for the increasing level of provision integrated within a mainstream setting. Many respondents suggested that with the implementation of inclusive policies there was a need to move away from the concept of a few highly qualified specialists towards developing specialist expertise amongst all staff working with SEN pupils. It was suggested that greater emphasis was required in both initial teacher education and in in-service training to develop the generic skills of all staff. At the same time, it was suggested that there was continuing need for specially qualified teachers in a wide variety of disciplines. Education authorities in particular stressed the need for a flexible well trained workforce without the need for mandatory pre-qualification.

35. In contrast, representations were received from a number of organisations, in particular representing deaf and hearing impaired children. They proposed that the terms of the Code should be extended to teachers working with children and young persons with special educational needs in the mainstream setting. They stressed the importance of professional qualifications to ensure knowledge of subject matter; effectiveness in identification, assessment and intervention; and professional credibility with parents.

Q17. *Would the interests of children with special needs be best served by:*

- *Removing the detailed regulations which now apply,*
- *Maintaining and modernising the existing regulations,*
- *Extending the scope of the modernised regulations to all staff working with children with special needs whether in special or mainstream settings?*

Q18. *If the regulations are relaxed, is there a class (or classes) of special needs for which specialist qualifications are of such importance that they should be the subject of specific regulation?*

Pre-School Education

36. Regulations 5(2), 15(1) and 23(2) and (3) of the Code lay down the qualifications required of head teachers and teachers, the maximum size of classes and the employment of auxiliaries in local authority nursery schools and classes.

37. The Code was drafted when nursery provision was mainly to be found in the public sector and funded by local authorities with a tradition of supporting children's early education and of enabling mothers to work outwith the home. Since then, provision for pre-school children has changed dramatically. Now, virtually all children in the pre-school year attend part-time pre-school education; and the Executive is committed to expanding services to all children after their third birthday.

38. Whilst the majority of children attend local authority nursery schools or nursery classes attached to primary schools, a significant minority use private day nurseries and voluntary playgroups. Pre-school education is regulated in these settings by guidance issued under the Children (Scotland) Act 1989. This suggests different adult:child ratios and levels of qualification from those stipulated by the Schools Code. Ministers believe that provision of similar type should be subject to the same standards, whether it is in the public, private or voluntary sector.

39. These issues were discussed fully in a separate SEED consultation document entitled "Regulation of Early Years Education and Childcare", which was issued in March 1999. Ministers are currently considering responses and will bring forward proposals in due course.

Reports on unsatisfactory teachers

40. Regulation 8 stipulates that where the character or conduct of a teacher leads directly or indirectly to resignation or termination of a teacher's employment or contract of employment not being renewed on expiry, the local authority must inform the Secretary of

State of the circumstances. This regulation predates the establishment of the General Teaching Council for Scotland in 1965. Authorities now report the circumstances of any cases involving alleged misconduct directly to the GTC, which then consider whether to remove a teacher's name from the register. These reporting arrangements are put on a statutory footing in the Standards in Scotland's Schools etc. Bill. Regulation 8 is therefore unnecessary.

Designation of stages and classes

41. Regulations 14(1) and 14(2) set out the terminology used to describe yearly stages of primary and secondary courses and classes, for example P1, S2 etc. The regulations seem to be based on the previous arrangements of 2 entry dates to school. This terminology is arguably sufficiently well known to negate the need for incorporation in regulations. In secondary schools, the relaxation of Age and Stage restrictions governing the presentation of pupils for SQA certificated courses has introduced the opportunity for schools to consider more flexible student groupings. In these circumstances, the designation of classes may be seen as inappropriate.

Q19. Is there a continuing need for these regulations?

Conclusion

42. Many of the standards laid down in the Code reflect the circumstances of the 1950s and are now irrelevant. The existing text of the Code is now too heavily amended to be readily understood and refers to legislation and concepts which no longer exist. The growth of the pre-school sector and further education give rise to other issues.

Q20. If new regulations are required, should they be embodied in a new single Code or as a series of separate, unrelated regulations?

Q21. Are there any areas of school/pre-school education not touched on in this paper where new regulation is required?

Annex A

Schools (Scotland) Code 1956 (as Amended)

SUMMARY OF MAIN PROVISIONS

General

The Code relates to the conduct of education authority, grant-aided and self-governing schools and to the education, which they provide.

Staff

Authorities are required to employ adequate teaching and clerical staff in their schools. Teachers are required to be registered and to hold qualifications appropriate to the posts in which they are employed.

Guidance is given on promoted post structures and, for primary, the number of teachers to be employed in relation to the size of the school roll.

Reports on unsatisfactory teachers are required to be made to the Secretary of State.

Designation of Stages and Classes

Yearly stages of primary and secondary courses are required to be designed eg P1, S4; similarly, classes are required to be designated.

Size of Classes

Maximum class sizes are prescribed for nursery, secondary and special.

Nursery Schools and Classes

At least one nursery nurse or helper for each 20 pupils should be employed in nursery schools and classes.

Special Schools and Classes

An educational psychologist and a psychiatrist must be employed in child guidance clinics. Maximum class sizes are prescribed for occupational centres.

Annex B

Schools (Scotland) Code 1956

EXISTING REGULATIONS INTERPRETATION

Regulation 1

(1) In this Code unless the context otherwise requires the following expressions have the meanings respectively assigned to them:-

(a) "Act of 1946" means the Education (Scotland) Act 1946;

(b) "Backward pupil" means a pupil who is backward because he is lacking in ability and aptitude; "retarded pupil" means a pupil whose education is retarded because of absence from school or other interruption or interference; and "deaf pupil", "partially deaf pupil", "blind pupil", "partially sighted pupil", "mentally handicapped pupil", "epileptic pupil", "pupil suffering from speech defect", "maladjusted pupil" and "physically handicapped pupil" have the meanings respectively assigned to them by Regulation 2 of the Special Educational Treatment (Scotland) Regulations 1954;

(e) "Class" means a group of pupils for the time being under the immediate charge of a teacher;

(ee) "Conditionally registered teacher" means a teacher conditionally registered under the Teaching Council (Scotland) Act 1965;

(f) "District", in relation to inspection, means one of the districts each comprising one or more education areas, into which Scotland is divided for the purpose of the inspection of educational establishments, and "District Inspector" in relation to a school means the Inspector in charge of the district in which the school is situated;

- (g)** “Infant class” means a class at stage P I or P II, as defined in Regulation 14 of these Regulations;
- (h)** “Inspector” means one of Her Majesty’s Inspector of Schools and any other person appointed by the Secretary of State under section 61 of the Act of 1946 to inspect educational establishments;
- (j)** “Primary department” includes a primary school with no secondary department;
- (jj)** “Registered teacher” means a teacher registered under the Teaching Council (Scotland) Act 1965;
- (jjj)** “Reference panel” means a panel constituted by the Secretary of State after consultation with the General Teaching Council for Scotland and with associations representing the interests of education authorities and of teachers;
- (k)** “School” means a public school or a grant-aided school, but does not include an independent school or an approved school within the meaning of the Children and Young Persons (Scotland) Act 1937;
- (m)** “Secondary department” includes a secondary school with no primary department;
- (mm)** “Special qualification” means a special qualification awarded or deemed to have been awarded under regulation 5 of the Teachers (Education, Training and Certification)(Scotland) Regulations 1965 or awarded by the governing body of a college of education under regulation 13(1)(b) of the Teachers (Colleges of Education)(Scotland) Regulations 1967;
- (n)** “Teaching Qualification (Primary Education)” and “Teaching Qualification (Secondary Education)” have the same meaning as in regulation 4 of the Training Regulations and shall be deemed to include a qualification or a combination of qualifications accepted as equivalent to one or the other by the General Teaching Council

for Scotland for purposes of exceptional admission to the register of teachers; and “appropriate Teaching Qualification (Secondary Education)” means a Teaching Qualification (Secondary Education) in the subject or one of the subjects which the teacher is required to teach in the post in which he is or is to be employed;

(o) “Training Regulations” means the Teachers (Education, Training and Registration)(Scotland) Regulations 1967.

(2) In the application of this Code to a grant-aided school, references to the education authority shall be construed as references to the managers of the said school.

(3) In this Code, unless the context otherwise requires, reference to any enactment or regulation shall be construed as references to that enactment or regulation as amended by any subsequent enactment or regulation.

(4) The Interpretation Act, 1889, applies to the interpretation of this Code as it applies to the interpretation of an Act of Parliament.

STAFF

General requirements

Regulation 4(1)

The education authority shall employ, or arrange for the services, of an adequate staff in the schools under their management. If the Secretary of State is of opinion, after consultation with the authority, that the staff is inadequate in any respect and that the authority have not done all that they can reasonably be expected to do, having regard to all the circumstances, to remedy the deficiency, the Secretary of State may require them to employ, or arrange for the services of, a staff which is in his opinion, adequate in that respect, and it shall be the duty of the authority forthwith to take the necessary steps to comply with such requirement.

Regulation 4(2)

Save as hereinafter provided, every teacher employed by an education authority shall be a registered teacher holding the qualifications required by this Code for the post in which he or she is employed.

Regulation 4(3)

Where in relation to any teaching post the education authority have taken reasonable steps to make their requirement known to persons holding qualifications appropriate to the post and where no applicant for the post holds the appropriate qualifications or no applicant holding the appropriate qualification possesses, in the opinion of the education authority, the experience and competence required for the efficient discharge of the duties of the post, the authority may -

- (a)** with the approval of the Secretary of State, appoint permanently to the said post a registered teacher who does not hold the qualifications appropriate to the post but who is, in their opinion, capable of discharging efficiently the duties thereof, or
- (b)** appoint temporarily to the said post a registered teacher who does not hold the qualifications appropriate to the post or a conditionally registered teacher, provided that they shall continue to take all reasonable steps to obtain applications for appointment to the post from registered teachers holding qualifications appropriate to the post.

Regulation 4(4)

Where a registered or a conditionally registered teacher cannot be obtained to fill a teaching post in a special school, the authority may appoint some other person temporarily to fill the post for a period not exceeding 12 months, provided that -

- (a)** the authority have received the prior approval of the reference panel to the appointment; and

(b) the authority shall continue to take all practical steps to obtain a registered or a conditionally registered teacher to fill the post.

Requirements relating to primary departments

Regulation 5(1)

Every teacher employed in a primary department shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) or a Teaching Qualification (Secondary Education).

Regulation 5(2)

The head teacher of a nursery school and the teacher in charge of a nursery class not forming part of a nursery school shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) with a special qualification to act as a principal teacher of a nursery school or a teacher in a nursery school.

Regulation 5(3)

In relation to every primary department the education authority shall appoint a head teacher and may appoint such number of assistant head teachers as they think fit: provided that in a school having both a primary and a secondary department the education authority shall not appoint more than one head teacher.

Regulation 5(4)

The education authority shall not in relation to any primary department appoint a teacher to any grade of promoted post other than one of these specified in paragraph (3) of this regulation: provided that a teacher holding an appointment in relation to any primary department as deputy head teacher or infant mistress immediately before this regulation comes into operation may continue to hold the said appointment.

Regulation 5(5)

In every primary department where the numbers of pupils in attendance is a number falling within a range of numbers specified in column (1) of Schedule A annexed hereto there shall be employed at least the number of teachers specified opposite that range of numbers in column (2) of the said Schedule: provided that -

(a) in relation to any primary department where at any time the number of pupils as aforesaid increases so as to require, by virtue of this regulation, the employment of a great number of teachers, such greater number shall not require to be employed before the expiry of the period of 3 months from the time of the said increase in the number of pupils as aforesaid; and

(b) in this regulation the expression "primary department" shall not include any nursery class or nursery school.

Requirements relating to secondary departments

Regulation 6(1)

Every teacher employed in a secondary department shall hold or under the Training Regulations be deemed to hold an appropriate Teaching Qualification (Secondary Education) or, in the case of a teacher whose work in a secondary department consists wholly or mainly in the teaching of backward pupils, the said certificate or the Teaching Qualification (Primary Education).

Regulation 6(2)

In relation to every secondary department the education authority shall appoint a head teacher and may appoint such number of deputy head teachers, assistant head teachers, principal teachers and assistant principal teachers as they think fit: provided that in a school having both a primary and secondary department the education authority shall not appoint more than one head teacher.

Regulation 6(3)

The education authority shall not in relation to any secondary department appoint a teacher to any grade of promoted post other than one of those specified in paragraph (2) of this regulation: provided that -

- (a)** in any secondary department where the number of pupils in attendance does not exceed 600, they may appoint a teacher to a post combining 2 of the grades so specified; and
- (b)** a teacher holding an appointment in any secondary department to a post combining the responsibilities of 2 grades of post or as a woman adviser, principal teacher or special assistant teacher, in each case immediately before this paragraph comes into operation, may continue to hold the said appointment.

Requirements relating to special schools and classes

Regulation 7(1)

Every teacher employed wholly or mainly in special classes for deaf or partially deaf pupils shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) or a Teaching Qualification (Secondary Education) with, in either case, a special qualification to act as a teacher of deaf pupils.

Regulation 7(2)

Every teacher employed wholly or mainly in special classes for blind pupils shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) with a special qualification to act as a teacher of blind pupils or as a blind teacher of the blind or an appropriate Teaching Qualification (Secondary Education).

Regulation 7(3)

Every teacher employed wholly or mainly in special classes for mentally handicapped pupils shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) or a Teaching Qualification (Secondary Education) with, in either case, a special qualification to act as teacher of mentally handicapped children.

Regulation 7(4)

Every teacher employed wholly or mainly in special classes for partially sighted, epileptic, maladjusted or physically handicapped pupils or pupils suffering from speech defect shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) with a special qualification to act as a teacher of physically handicapped children or an appropriate Teaching Qualification (Secondary Education).

Regulation 7(5)

Every teacher employed in a special school or class, not being a teacher whose employment is described in the foregoing paragraphs of this Regulation shall hold or under the Training Regulations be deemed to hold a Teaching Qualification (Primary Education) or an appropriate Teaching Qualification (Secondary Education).

Reports on unsatisfactory teachers

Regulation 8

Where the character or conduct of a teacher leads directly or indirectly to his resignation or to the termination by the education authority of his employment or to his contract of employment not being renewed on its expiry, the authority shall forthwith submit a full report of the circumstances to the Secretary of State.

Clerical assistance

Regulation 9

The education authority shall provide adequate clerical assistance for the head teacher of any school in which the clerical work is such as to interfere with the performance by the head teacher of his principal duties.

ORGANISATION AND ADMINISTRATION

Designation of stages and classes

Regulation 14(1)

Yearly stages of primary courses and of secondary courses shall be designated by letters and by numbers from below upwards. The letter "P" shall be prefixed to the number of the stage in primary courses and the letter "S" in secondary courses. In primary courses the number "1" shall be allotted to the stage of the course which pupils enter when they become of school age. In secondary courses the number "1" shall be allotted to the first yearly stage of the course, and a stage of less than a year's duration which is followed by pupils after their promotion from primary courses and before their entry on Stage SI shall be known as a "transitional stage" and shall not be numbered. Where in any department provision is made only for the higher stages of primary or secondary education, the numbers allotted to the stages in that department shall be the number which would have been allotted to them had provision also been made for the lower stages of primary or secondary education.

Regulation 14(2)

In primary departments and in secondary departments every class shall be designated by the designation of the stage being followed by the pupils composing the class. Where more than one class is formed at any yearly stage, appropriate letters, numbers or words

may, in order to distinguish the several classes, be added to the said designation. Where a class is composed of pupils at more than one year stage, the designation of the class shall include the designations of all the stages being followed by the pupils composing the class.

Size of classes

Regulation 15(1)

Subject to the provisions of paragraph (4) of this Regulation in nursery schools and classes the number of pupils in any class shall not exceed 20.

Regulation 15(2)

Subject to the provisions of paragraph (4) of this Regulation, in secondary departments the number of pupils in any class shall not exceed 40, provided that the number shall be further restricted to -

- (a)** 30 in classes at stages SIV, SV and SVI;
- (b)** 30 in a class which includes pupils at more than one yearly stage;
- (c)** 20 in a class for practical instruction in science, art, art crafts, mechanics, benchwork, technical drawing, typewriting, cookery, laundry-work, dressmaking, housewifery, agriculture, gardening, dairying, navigation and seamanship; and
- (d)** 25 in a class for backward or retarded pupils.

Regulation 15(3)

Subject to the provisions of regulation (4) of this Regulation, in special schools and classes the number of pupils in any class shall not exceed -

- (a)** 10 in a class for deaf pupils;
- (b)** 10 in a class for partially deaf pupils;
- (c)** 15 in a class for blind pupils;
- (d)** 15 in a class for partially sighted pupils;
- (e)** 20 in a class for mentally handicapped pupils;
- (f)** 20 in a class for epileptic pupils;
- (g)** 20 in a class for pupils suffering from speech defect;
- (h)** 20 in a class for maladjusted pupils; and
- (i)** 25 in a class for physically handicapped pupils.

Regulation 15(4)

The District Inspector may authorise a class to be larger than is prescribed in this Regulation for so long as he considers reasonable, having regard to all the circumstances, and he may extend the period if he is satisfied that it is necessary to do so. The head teacher may, in exceptional circumstances or for the purposes of special activities, authorise a class to be larger than is prescribed in this Regulation.

SPECIAL PROVISIONS FOR CERTAIN SCHOOLS

Nursery schools and classes

Regulations 23(2) and 23(3)

Regulation 14 of this Code shall not apply, and in nursery schools and classes the education authority shall employ nursery nurses or helpers in the proportion of not less than one such person for 20 pupils.

Special schools and classes

Regulation 24(1)

In special schools and classes other than child guidance clinics and occupational centres -

(b) Regulations 5, 6 and 14 and paragraphs (1) and (2) of Regulation 15 of this Code shall not apply.

Regulations 24(2)

In child guidance clinics -

(a) Regulations 5, 6 and 14, paragraphs (1) and (2) of Regulation 15, and paragraphs (2) and (3) of Regulation 23 of this Code shall not apply;

(b) the staff who are employed or for whose services arrangements are made by the education authority shall include an educational psychologist and a psychiatrist, both or either of whom may, subject to the provisions of Regulation 4 of this Code, be employed in a whole-time or part-time capacity;

Regulation 24(3)

In occupational centres -

- (a)** paragraphs (2), (3) and (4) of Regulation 4, and Regulations 5, 6, 7, 14, 15 and 23 of this Code shall not apply; and
- (b)** the number of pupils under the immediate charge of an instructor at any one time shall not within the approval of the District Inspector exceed 15.

SUPPLEMENTARY PROVISIONS

Transitional Provisions

Regulation 29

Where anything done under any provision of the Code or Rules revoked by Regulation 31 of this Code might have been done under a corresponding provision of this Code if this Code had then been in operation, the said thing shall be deemed to have been done under that provision of this Code, and it shall not be necessary for that thing to be done again by reason of the inclusion of the said provision in this Code, unless the Secretary of State otherwise requires.

Vested interests of teachers

Regulation 30

Where -

- (1)** a teacher was employed immediately before this Code came into operation in a post for which a particular teaching qualification is required by this Code, and

(2) the teacher held the qualification required for the said post by any Code or Regulation in force when he was appointed thereto or where he was appointed thereto on a permanent basis with the unconditional approval of the Secretary of State or, before 4 September 1939, of the Scottish Education Department, and

(3) the teacher is employed in a post which is, in the opinion of the Secretary of State, the same post or a post involving a similar degree of responsibility -

the teacher shall, notwithstanding that he does not hold the teaching qualification required by this Code for the post held by him, be deemed for the purposes of this Code to hold the said qualification.

Citation, Commencement and Revocation

Regulation 31

(1) This Code may be cited as the Schools (Scotland) Code 1956.

(2) This Code shall come into operation on 1 August 1956.

(3) The Schools (Scotland) Code 1950, the Schools Registration (Scotland) Rules 1951, the Pupils Progress Record (Scotland) Rules 1951, the School Leaving Period (Scotland) Rules 1951 and the Schools (Scotland) Code (Amendment No 1) Regulations 1956, are hereby revoked.

Annex C

Number of Teachers to be Employed in Primary Departments

Column (1) Ranges of Number of Pupils in Attendance	Column (2) Number of Teachers
1-19	1
20-49	2
50-84	3
85-119	4
120-149	5
150-184	6
195-219	7
220-254	8
255-289	9
290-314	10
315-324	11
325-359	12
360-394	13
395-429	14
430-464	15
465-499	16
500-534	17
535-569	18
570-604	19
605-639	20
640-664	21
665-674	22
675-709	23
710-744	24
745-779	25
780-814	26
815-849	27
850-884	28
885-919	29
920-954	30
955-989	31
990-1,024	32
1,025-1,059	33

St Andrew's House
Edinburgh 1
16th May 1972

GORDON CAMPBELL
One of Her Majesty's Principal
Secretaries of State

Annex D

CROSSOVER BETWEEN THE PROVISIONS OF THE SCHOOLS (SCOTLAND) CODE 1956 AND THE SCOTTISH JOINT NEGOTIATING COMMITTEE (SJNC).

SCHOOL (SCOTLAND) CODE 1956	SCOTTISH JOINT NEGOTIATING COMMITTEE (SJNC)
Class Sizes	Class Sizes
Nursery	Nursery
Maximum of 20.	Not specified. No separate SJNC agreement has been reached.
Primary	Primary
Maximum of 45, but further restricted to :	Normal maximum of 33. Upper limit of 39.
(a) 25 in one-teacher department.	
(b) 30 in a two-teacher department.	
(c) 35 in a three or four teacher department.	
(d) 25 in a class for backward or retarded pupils. This was revoked and replaced by minimum staff complements in 1972. See Annex B of this consultation paper.	
Secondary	Secondary
Maximum of 40, but further restricted to :	
(a) 30 in classes at stages S4 to S6.	S1-S2 is 33. Upper limit is 39 S3-S4 is 30. Upper limit of 34. S5-S6 is 30.
(b) 30 in a class which includes pupils at more than one yearly stage.	
(c) 25 in a class for backward pupils.	
(d) 20 for practical instruction.	20 in practical classes
Special	Special
(a) 10 in a class for deaf and partially deaf pupils.	6 in a class with pronounced hearing loss, pronounced visual impairment, communication difficulties and social and emotional difficulties.
(b) 15 in a class for blind and partially sighted pupils.	8 in a class with severe physical impairment and severe learning difficulties.
(c) 20 in a class for mentally handicapped, epileptic, those suffering from a speech defect and for maladjusted pupils.	10 in a class with moderate and profound learning difficulties.
(d) 25 in a class for physically handicapped pupils.	

Promoted Posts	Promoted Posts
Regulations 5(3) and 5(4) specify that every primary school must : (a) not have more than one Head Teacher, but can appoint any number of Assistant Head Teachers.	In addition to existing structures, the SJNC agreed in 1987 to the introduction of Depute Head Teachers in the largest primary schools with a school roll in excess of 350 pupils.
Regulations 6(2) and 6(3) specify the inclusion of Depute Head Teachers, Principal Teachers and Assistant Principal Teachers in secondary schools.	In 1987 the SJNC agreed to the introduction of the new promoted post of Senior Teacher in all schools. The introduction of both these grades contravened the terms of the Schools (Scotland) Code 1956.

COMMENTS

The Department would welcome comments on the proposals contained within this paper. These should be sent in writing to:

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Victoria Quay
Edinburgh
EH6 6QQ

Or via the Internet to rod.minty@scotland.gov.uk

Copies of the paper are also available on the Scottish Executive website at www.scotland.gov.uk

The deadline for comments is **30 June 2000**.

In accordance with normal practice, the Department intends to make available to the public, on request, copies of the responses received. The Department will assume, therefore, that responses can be made publicly available in this way. If respondents indicate that they wish all, or part, of their reply excluded from this arrangement, its confidentiality will be strictly respected.

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