



# Self-Governing Schools etc. (Scotland) Act 1989

## 1989 CHAPTER 39

### S

An Act to make provision as regards the acquisition of self-governing status by certain public schools in Scotland; to make further provision as regards education in Scotland; and for connected purposes. [16th November 1989]

Be 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:—

#### Modifications etc. (not altering text)

- C1 Act applied (16. 5. 1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\), s. 36\(3\)](#) (with [s. 30\(2\)](#)); S.I. 1992/817, art. 3(2), [Sch.1](#).

## PART I S

### SELF-GOVERNING SCHOOLS

#### *Duty to maintain self-governing schools*

#### 1 Duty of Secretary of State to maintain self-governing schools. S

- (1) Subject to the provisions of this Part, it shall be the duty of the Secretary of State to maintain any school governed by a board of management incorporated under section 19(2) of this Act.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

- (2) For the purposes of subsection (1) above, the duty of the Secretary of State is a duty to make such payments in respect of the expenses of maintaining the school as are required by the following provisions of this Part.
- (3) A school to which the Secretary of State's duty under this section for the time being applies shall be known as a self-governing school.
- (4) On the incorporation date any duty of the education authority to maintain or manage the school, or to provide school education in the school, or to keep it efficient, shall cease.

### *Government*

## 2 **Scheme of government.** S

- (1) For every self-governing school there shall be an instrument (to be known as the scheme of government), one part of which (to be known as the articles of constitution) shall make provision for the constitution of the board of management of the school and the other part of which (to be known as the articles of management) shall make provision as regards the exercise of the board's functions in respect of the school.
- (2) A scheme of government—
  - (a) shall be made; and
  - (b) may be varied,
 by order of the Secretary of State; but any variation involving a change in the characteristics of the school shall only be made by virtue of subsection (10) of section 30 of this Act ("change in characteristics" being construed in accordance with subsection (13) of that section).
- (3) Before making any order under subsection (2) above, other than by virtue of section 30(10) of this Act, the Secretary of State shall consult—
  - (a) the board of management or, before the incorporation date, the school board of the school in question; and
  - (b) where the school is a denominational school, the church or other denominational body in whose interest the school is managed.
- (4) The first scheme of government required by subsection (1) above for a school—
  - (a) shall be made before the incorporation date to come into force on that date; and
  - (b) shall accord, in so far as is practicable, with the proposals, as approved under section 19(1)(b) of this Act, for acquisition of self-governing status for the school.

## 3 **The board of management and the articles of constitution.** S

- (1) Without prejudice to section 19(3) of, and Schedule 4 to, this Act and subject to paragraphs 1 to 5 of Part I of Schedule 1 to this Act, the board of management of a self-governing school shall comprise—
  - (a) parent members (being persons elected to the board of management under this paragraph by parents of pupils in attendance at the school from such parents);
  - (b) staff members (being persons elected to the board of management under this paragraph by members of staff of the school from such staff);

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- (c) appointed members (being persons appointed under this paragraph to and by the board of management); and
  - (d) the person who is for the time being the head teacher of the school.
- (2) Part I of Schedule 1 to this Act, which makes further provision as regards the articles of constitution, shall have effect.
- (3) Subject to subsections (4) and (5) below it shall be the duty of the board of management to ensure that any vacancy in the membership of the board is duly filled as soon as is reasonably practicable and in any event within three months of the vacancy's arising.
- (4) Where a person ceases, for whatever reason, to be a parent member or staff member within six months before the date of expiry of his term of office, the duty under subsection (3) above does not require the vacancy to be filled before that date.
- (5) The duty, under subsection (3) above, of an interim board of management shall be construed as a duty to ensure that the election of the parent and staff members who are to succeed them on the board of management takes place as soon as is reasonably practicable and in any event within three months after the incorporation date.

#### **4 Members' tenure of office. S**

- (1) Subject to subsections (2) and (3) below, a member of a board of management shall hold office for a term of four years.
- (2) Where the parent members first elected to a board of management constitute—
- (a) an even number, half;
  - (b) an odd number, the next whole number less than half;
- shall hold office for a term of two years only, the individuals whose term of office is affected by this subsection being determined (in the absence of the agreement of all such members as to who those individuals shall be) by the drawing of lots.
- (3) A person elected under section 3(1) of this Act to fill a vacancy which has occurred on the death, resignation or removal of a member shall serve only for the remainder of the term of office of the person whose place is filled.

#### **5 Qualification for and disqualification from membership of a board of management. S**

- (1) A person subject to legal incapacity shall be disqualified from election to, or membership of, a board of management.
- (2) A person disqualified—
- (a) under paragraph (b) or (c) of section 31(1) of the <sup>M1</sup>1973 Act for being elected, or for being, a member of a local authority shall be disqualified from election to, or membership of, a board of management;
  - (b) under paragraph (d) of that section for holding the office of councillor of a local authority shall be disqualified from election to, or membership of, a board of management of any school situated within the area of that authority.

#### **Marginal Citations**

M1 1973 c. 65.

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## 6 Proceedings of board of management. **S**

- (1) The proceedings of the board of management of a self-governing school shall not be invalidated by—
  - (a) any vacancy among their number; or
  - (b) any defect in the election or appointment of any member.
- (2) Subject to the provisions of this Part and any instrument made under this Part, boards of management may regulate their own procedure.

## 7 Powers and duties of board of management. **S**

- (1) The board of management of a self-governing school shall manage the school, shall provide suitable and efficient school education at the school and shall, subject to subsection (2) below, to any regulations under subsection (7) below, to sections 11(1) and 12 of this Act and to any provision made by the articles of management of the school, have power to do anything which appears to them to be necessary or expedient for their exercise of those functions in respect of the school, including in particular power—
  - (a) to assume the management as from the incorporation date of the school, and for that purpose to receive any land, moveable property, liabilities and obligations transferred to them under section 36 or 49 of this Act;
  - (b) subject to subsection (2) below and to section 37 of this Act, to acquire and dispose of land and other property;
  - (c) to enter into contracts, including in particular contracts for the employment of teachers and other staff;
  - (d) to invest any sums not immediately required for the purposes of meeting the expenses of managing the school or any liability or obligation transferred to the board of management under section 36 or 49 of this Act; and
  - (e) to raise funds by any means other than borrowing, to accept gifts of money, land or other property and to apply, or hold and administer on trust, such funds and gifts for any purpose connected with such exercise by them.
- (2) Subsection (1) above does not confer power to borrow money; and the power under paragraph (b) of that subsection to dispose of land—
  - (a) does not include any power to grant any security in respect of land; and
  - (b) may only be exercised with the written consent of the Secretary of State, the consent not being given without his having consulted the education authority as regards the proposed disposal.
- (3) Without prejudice to subsection (1) above, but subject to any provision made by the scheme of government of the school, the board of management of a self-governing school shall also have power to provide education other than school education at the school.
- (4) The board of management of a self-governing school shall promote contact between the school, parents of pupils at the school and the community and shall in particular—
  - (a) encourage the formation of a parent-teacher association or parents' association at the school; and
  - (b) subject to their duty under subsection (1) above to provide suitable and efficient school education, promote the use of the school premises and facilities by the community.

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- (5) The board of management of a self-governing school shall, as part of the provision by them of school education, provide adequate facilities for pupils in attendance at the school for social, cultural and recreative activities and for physical education and training; and they may additionally provide such facilities (whether or not for those pupils) other than as part of the provision of school education.
- (6) The board of management of a self-governing school shall, in the exercise of their functions, have regard to a need to make improvements in the provision which the school makes for pupils with special educational needs.
- (7) Standards and general requirements may be prescribed to which every board of management shall conform in discharging their functions under this Act.
- (8) Section 70 of the 1980 Act (enforcement of duties) applies as regards a board of management in respect of any duty imposed on them for the purposes of this Act (or of any other enactment relating to education).
- (9) Part II of Schedule 1 to this Act, which makes provision as regards articles of management, shall have effect.

## **8 Execution of documents. S**

- (1) A document is validly executed by a board of management if it is subscribed on their behalf by one of their members or by any other person duly authorised to do so.
- (2) A document is to be presumed, unless the contrary is shown, to have been so executed if it bears to be so subscribed and to have been sealed with the board's common seal (whether attested by witnesses or not).

## **9 Reports and parents' meetings. S**

- (1) The board of management of a self-governing school shall make such reports and returns and give such information to the Secretary of State as he may from time to time require as respects the school.
- (2) Subsection (2) of section 12 of the 1988 Act (reports to parents) and section 13 of that Act (parents' meetings) shall apply in relation to the board of management of a self-governing school as they apply in relation to the school board of a public school; but for the purposes of this subsection the reference in paragraph (a)(i) of the said subsection (2) to the establishment of the school board shall be construed as a reference to the incorporation date in relation to the self-governing school.

*Parental rights etc.*

## **10 Rights of parents in relation to individual pupils. S**

Schedule 2 to this Act, which as regards self-governing schools makes provision analogous to that made by sections 28 to 28H of the 1980 Act as regards public schools, shall have effect.

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*Fees, charges, books, etc.*

**11 Fees, charges, books etc. S**

- (1) No fees shall be payable in respect of school education provided at a self-governing school.
- (2) The board of management of a self-governing school may make charges in respect of some or all of—
  - (a) such education and facilities as are provided by them other than as part of; and
  - (b) the use of school premises or equipment other than in the course of, the provision of school education.
- (3) The board of management of a self-governing school—
  - (a) shall provide free of charge, to all pupils in attendance at the school, books, writing materials, stationery, mathematical instruments, practice material and other articles which are necessary to enable the pupils to take full advantage of the education provided at the school; and
  - (b) may provide, whether free of charge or otherwise, to pupils in attendance at the school articles of clothing suitable for physical exercise or for other activities of the school for which special clothing is desirable.

*Management of denominational schools*

**12 Management of denominational schools. S**

Subsections (2A) to (4) and (6) of section 21 of the 1980 Act (management of and regulation of curriculum and appointment of teachers in denominational schools) shall have effect in relation to a self-governing school which is a denominational school as those provisions apply to any school transferred to an education authority under section 16(1) of that Act but with the following modifications—

- (a) references to the education authority shall be construed as references to the board of management; and
- (b) references to “any such school”, “each such school”, “every such school” and “such school” shall be construed as references to “the school”.

*Procedure for acquisition of self-governing status etc.*

**13 Initiation of procedure for acquisition of self-governing status. S**

- (1) Subject to subsection (2) of section 14 of this Act, in the case of a school which is eligible for self-governing status (in this Act referred to as an “eligible school”), being a school for which a school board is for the time being established, a ballot of parents on the question of whether that status should be sought for the school shall be held in accordance with that section if the school board—
  - (a) decide, by a resolution passed at a meeting of the board (a “first resolution”) to hold such a ballot and confirm that decision by a resolution (a “second resolution”) passed at a meeting of the board held not less than twenty-eight days, nor more than forty-two days, after that at which the first resolution was passed; or

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- (b) receive a written request, which meets the requirements of subsection (4) below,  
to hold such a ballot.
- (2) Subject to subsection (3) below, a school is eligible for self-governing status if it is a public school other than a nursery school.
- (3) Notwithstanding subsection (2) above, a school is not eligible for self-governing status if (and shall cease to be so eligible when)—
  - (a) the education authority have, in accordance with section 22A of the 1980 Act, reached (or as the case may be so reach) a decision to discontinue or amalgamate the school, no consent being required under section 22B, 22C or 22D of that Act as regards the decision; or
  - (b) the Secretary of State has duly consented (or as the case may be duly consents) under the said section 22B, 22C or 22D of the 1980 Act to a proposal to discontinue or amalgamate the school.
- (4) The requirements mentioned in subsection (1)(b) above are—
  - (a) in a case other than that provided for in paragraph (b) below, that the request must be signed by at least thirty parents of pupils in attendance at the school and that the number of such parents so signing must be equal to at least ten per cent. of the number of persons whose names, at the date of election of parent members of the school board last preceding the receipt of the request, appeared on the list established and maintained, in respect of the school, by the education authority under paragraph 6 of Schedule 1 to the 1988 Act; and
  - (b) in a case where the names of fewer than sixty persons so appeared, that the request must be signed by such number of parents of pupils in attendance at the school as would constitute a majority of those parents were their total number equal to the number of persons whose names so appeared.
- (5) Any question as to whether, at the date of signing the request, a person is the parent of a pupil in attendance at the school shall be determined by the school board.
- (6) On a first resolution, and again on a second resolution, being passed by the school board or on a request such as is mentioned in subsection (1)(b) above being received by them, they shall forthwith by written notice inform the Secretary of State and the education authority accordingly; and any such notice shall specify the date of the resolution or, as the case may be, the date of receipt of the request and, except where the notice is of a first resolution, whether the case is one such as is mentioned in section 14(2) of this Act.
- (7) Where the school in respect of which notice is given under subsection (6) above is a denominational school, the notice provided for shall be given also to the church or other denominational body in whose interest the school is managed.

#### **14 Ballot of parents on question of acquisition of self-governing status. S**

- (1) Subject to subsection (2) below, any ballot—
  - (a) provided for by subsection (1) of section 13 of this Act shall be held within the period of three months immediately following, as the case may be—
    - (i) the date of the relevant resolution; or
    - (ii) the date of receipt of the relevant request;

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- (b) required by a notice under section 15(1) of this Act shall be held before such date as may be specified in the notice.
- (2) In a case where, as regards the school in question, a ballot has been held in accordance with this section within the period of two years ending with the date immediately preceding the date of the relevant resolution, or as the case may be the date of receipt of the relevant request—
- (a) subsection (1)(a) above and subsection (1) of the said section 13 shall not require a ballot to be held; and
- (b) any notice under subsection (6) of that section shall, for the purposes of any provision of this Act other than this section or that section, be disregarded, unless the Secretary of State gives consent in writing for a new ballot to be held (receipt and the date of receipt by the education authority of intimation of such consent being taken for the said purposes as and in place of receipt and the date of receipt of notice under the said subsection (6) either of a first resolution or of a request).
- (3) In subsections (1)(a) and (2) above—
- “the relevant resolution” means the second resolution mentioned in subsection (1)(a) of section 13 of this Act; and
- “the relevant request” means the request mentioned in subsection (1)(b) of that section.
- (4) Schedule 3 to this Act shall have effect as regards the arrangements to be made for holding the ballot.
- (5) The result of the ballot shall forthwith be intimated to the Secretary of State, to the education authority, and where the school is a denominational school to the church or other denominational body in whose interest the school is managed, by the school board.
- (6) Where a ballot is held in respect of a school in accordance with this section—
- (a) the Secretary of State shall pay, or reimburse the school board in respect of, such expenses in respect of the ballot as appear to him to have been reasonably incurred by that board (not being expenses mentioned in paragraph (b) below); and
- (b) the education authority shall pay, or reimburse the school board in respect of, such expenses incurred in connection with, or in contemplation of, legal proceedings (whether or not instituted) arising out of—
- (i) the holding of the ballot; or
- (ii) the publication under section 16(2) of this Act, following the determination of the result of the ballot, of proposals for acquisition of self-governing status for the school,
- as appear to the Secretary of State to have been reasonably incurred by that board.
- (7) The making of any payments under subsection (6) above shall be subject to such conditions as the Secretary of State thinks fit.

## 15 **Fresh ballot.** S

- (1) If it appears to the Secretary of State—



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- (a) that any requirements of Schedule 3 or 7 to this Act have been contravened in the case of any ballot purportedly held in accordance with section 14, or as the case may be 30, of this Act;
- (b) that the arrangements for any ballot so held did not accord with any guidance published by him for the purposes of the Schedule in question; or
- (c) that the school board, or as the case may be the board of management, of any school have acted unreasonably in the discharge of their duties under the Schedule in question,

he may, by notice in writing to the board, to the education authority and, where the school is a denominational school, to the church or other denominational body in whose interest the school is managed, declare the ballot void and require that a fresh ballot be held by the board, in accordance with the said section 14, or as the case may be 30.

- (2) Where in a ballot held in accordance with section 14 or 30 of this Act (other than a ballot held by virtue of this subsection) the total number of votes cast by persons eligible to vote in the ballot is less than fifty per cent. of the persons so eligible, the board shall, in accordance with the said section 14 or as the case may be 30, and before the end of the period of fourteen days beginning with the day immediately following that on which the result is determined, hold a fresh ballot.

## 16 Proposals for acquisition of self-governing status. **S**

- (1) This section applies where, in the case of any eligible school, the result of a ballot held in accordance with section 14 of this Act shows a majority of votes cast in the ballot in favour of seeking such status (no declaration having been made under subsection (1) of section 15 of this Act as regards the ballot and no fresh ballot being required by virtue of subsection (2) of that section).
- (2) It shall be the duty of the school board, before the end of the period of one month beginning with the date on which the result of the ballot is determined or of such longer period as the Secretary of State may permit—
  - (a) to publish, in such manner as may be prescribed, proposals for acquisition of self-governing status for the school; and
  - (b) to submit to the Secretary of State, to the education authority and, where the school is a denominational school, to the church or other denominational body in whose interest the school is managed a copy of the published proposals.
- (3) The proposals shall—
  - (a) give the name under which it is proposed that the board of management should be incorporated under section 19(2) of this Act;
  - (b) having regard to paragraphs 2 to 4 of Part I of Schedule 1 to this Act, specify the respective numbers of parent members, staff members and appointed members who it is proposed should (with the person for the time being head teacher) constitute the board of management which succeeds the interim board of management;
  - (c) describe the arrangements which, subject to the declaration under subsection (6)(a) below, it is proposed to adopt, if the school becomes self-governing, with respect to—
    - (i) the admission of pupils to the school;
    - (ii) any special emphasis which will characterise the provision of education at the school; and

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- (iii) such other aspects of the management of the school as the school board think fit;
  - (d) specify the proposed date of their implementation; and
  - (e) give such other information as may be prescribed.
- (4) Subject to subsection (5) below, the published proposals shall be accompanied by a description of the school as at the date of publication—
- (a) stating—
    - (i) whether the school is an institution for the provision of primary or secondary education or both;
    - (ii) whether it provides a nursery class; and
    - (iii) the number of yearly stages of school education it provides;
  - (b) stating what range of provisions the school has for pupils with special educational needs;
  - (c) specifying any arrangements whereby pupils are admitted to the school by reference to ability and aptitude;
  - (d) stating whether or not it is a single sex school within the meaning of section 26 of the <sup>M2</sup>Sex Discrimination Act 1975; and
  - (e) stating whether or not it is a denominational school.
- (5) Without prejudice to section 13(3) of this Act, where—
- (a) a decision has been duly reached by an education authority on a proposal published under section 22A of the 1980 Act, no consent being required under section 22B, 22C or 22D of that Act as regards the proposal; or
  - (b) a proposal submitted under the said section 22B, 22C or 22D has been duly consented to by the Secretary of State,
- but, as at the date of publication under subsection (2)(a) above of proposals in relation to a school, that proposal has not been implemented, it shall nonetheless, in so far as it affects a matter to be stated or specified in respect of the school under any of paragraphs (a) to (e) of subsection (4) above, be taken to have been implemented before that date.
- (6) The description required by subsection (4) above shall also declare—
- (a) that the matters stated and specified under paragraphs (a) to (e) of that subsection shall, subject to any change made in accordance with section 30 of this Act, continue to be characteristics of the school if it becomes self-governing;
  - (b) that subject to the provisions of this Act the persons who are members of the school board shall be constituted as an interim board of management on the school's becoming self-governing but that the interim board shall be succeeded, within three months after the incorporation date, by a board of management the parent members and staff members of which will be elected and on which the parent members will constitute an overall majority.
- (7) Where by virtue of subsection (5) above any matter stated or specified under the said paragraphs (a) to (e) has been stated or specified differently than it otherwise would have been, the description required by subsection (4) above shall include an explanation that a proposal has been taken to have been implemented, and a summary of that proposal and of its effect on the description.

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#### Marginal Citations

M2 1975 c. 65.

### 17 **Ballot expenses.** **S**

Subject to subsection (2) of section 14 of this Act, an education authority who have received from a school board written notice under subsection (6) of section 13 of this Act, either of a first resolution or of a request, shall neither pay any sum nor incur any expense, for the purpose of influencing the outcome of the ballot provided for by subsection (1) of the said section 13 (or the outcome of any fresh ballot held, in accordance with the said section 14, by virtue of section 15 of this Act), in excess of such maximum amount as may be prescribed; and the school board may, for the purposes of the ballot, require the Secretary of State to make payment to them under this section of sums whose total does not exceed that amount in respect of such expenses as they may incur in promoting the acquisition of self-governing status by the school.

### 18 **Further provision as regards proposals under section 16.** **S**

- (1) Proposals published under section 16 of this Act may only be withdrawn if the Secretary of State consents; and such withdrawal shall be subject to such conditions as he may impose.
- (2) Conditions imposed under subsection (1) above may in particular require further proposals to be published under the said section 16 within such period as the Secretary of State may specify in the conditions.
- (3) Before the end of the period of two months beginning with the date of publication of the proposals (or as the case may be further proposals) under the said section 16 any person may submit representations to the Secretary of State as regards the proposals.
- (4) The Secretary of State shall pay, or reimburse the school board in respect of, such expenses in respect of publication under the said section 16 as appear to him to have been reasonably incurred by that board.

### 19 **Rejection or approval of proposals.** **S**

- (1) As regards any proposals published under section 16 of this Act, the Secretary of State may, after the expiry of the period mentioned in section 18(3) of this Act, after considering any relevant representations made under that subsection and after taking into account such other matters as he considers appropriate including, without prejudice to the generality of the foregoing, the percentage that the total votes cast in the ballot which occasioned publication of the proposals constituted of the total number of persons eligible to vote in the ballot and the percentage that the votes so cast which were in favour of seeking self-governing status for the school constituted of those total votes—
  - (a) reject the proposals, having first consulted the school board as regards the possible such rejection; or
  - (b) approve them without modification or, after consultation with the school board and the education authority, with such modifications as he thinks desirable;

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but he shall in any event reject the proposals if by the time of expiry of the said period the school board have become disestablished.

- (2) If proposals published in respect of any school under section 16 of this Act are approved by the Secretary of State, a board of management (initially an interim board of management) shall, on the proposed date of implementation of the proposals, or on such later date as the Secretary of State may, by notice in writing to the school board and to the education authority at any time before the proposed date, substitute for that date as the date of implementation (the date of implementation as proposed, or as the case may be as substituted, being in this Act referred to as the “incorporation date”)—
  - (a) be constituted; and
  - (b) become a body corporate under the proposed corporate name.
- (3) Schedule 4 to this Act shall have effect as regards the constitution of interim boards of management and related matters.
- (4) On the incorporation date the school board shall cease to exist.
- (5) A school board shall provide the Secretary of State with such information and documents as he may require from them for the purposes of his determining under subsection (1) above whether to approve, approve with modifications, or reject any proposals published by them under section 16(2)(a) of this Act.

## **20 Transition to self-governing status. S**

Schedule 5 to this Act, which makes provision as regards the transition to self-governing status of eligible schools, shall have effect.

*Proposals under sections 22A to 22D of 1980 Act where procedure for acquisition of self-governing status initiated*

## **21 Effect of pending procedure for acquisition of self-governing status on proposals for alteration etc. of schools. S**

- (1) Subject to section 14(2) of this Act, where a proposal—
  - (a) is published under section 22A of the 1980 Act as regards a school (consultation on certain changes in educational matters), but before a decision is reached on the proposal the education authority receive written notice under subsection (6) of section 13 of this Act, either of a first resolution or of a request, as regards the school, they shall not decide on the proposal;
  - (b) is submitted under section 22B, 22C or 22D of the 1980 Act (consent for certain changes in educational matters or affecting denominational schools) as regards a school but before the Secretary of State consents to the proposal the education authority receive such notice as is mentioned in paragraph (a) above as regards the school, the consent cannot validly be given,
 unless and until one of the conditions specified in section 24(2) of this Act is satisfied as regards the school.
- (2) Without prejudice to paragraph (a) of subsection (1) above, the receipt of such notice as is mentioned in that paragraph shall not prevent publication under the said section 22A.
- (3) No proposal shall be—
  - (a) published, made available or decided on under the said section 22A; or

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(b) submitted or consented to under the said section 22B, 22C or 22D, in respect of a school as regards which proposals published under section 16 of this Act have been approved by the Secretary of State.

### *Staff*

## **22 Transfer of staff to self-governing schools. S**

- (1) Subject to subsection (2) below, this section applies to any person who immediately before the incorporation date in relation to a school—
  - (a) is employed by the education authority by whom the school is maintained in a post (whether teaching or non-teaching and whether or not at the school) which involves his working solely at the school or has been assigned to work solely at the school; or
  - (b) is employed by that authority to work at the school and is designated for the purposes of this section, either individually or as a member of a class or description of employees, by a direction given by the Secretary of State.
- (2) This section does not apply to any person employed as mentioned in subsection (1) above—
  - (a) whose contract of employment terminates on the day immediately preceding the incorporation date or who before that date has been—
    - (i) appointed or assigned by the education authority concerned to work solely at another school as from that date; or
    - (ii) withdrawn from work at the school with effect as from that date; or
  - (b) who is employed in connection with the provision of meals, unless the meals are provided for consumption only at the school.
- (3) The contract of employment between a person to whom this section applies and the education authority by whom he is employed shall have effect from the incorporation date as if originally made between him and the board of management of the school.
- (4) A person who before the incorporation date has been appointed or assigned by the education authority by whom the school is maintained to work at the school as from that date (or some later date) shall be treated for the purposes of this section as if he had been employed by that authority immediately before that date to do such work at the school as he would have been required to do on or after that date under his contract of employment with that authority.
- (5) Without prejudice to subsection (3) above—
  - (a) all the education authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the board of management on the incorporation date; and
  - (b) anything done before that date by or in relation to the education authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the board of management.
- (6) Where—
  - (a) the contract of employment of a person employed by an education authority includes a term (however expressed) to the effect that the person may be assigned to work at more than one of the schools managed by them; and

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(b) by virtue of a direction given under subsection (1)(b) above that contract is to have effect as if made between him and a board of management, the term shall, in accordance with subsections (3) and (5) above, give the right of assignation to the board, so however that the schools (other than the self-governing school) to which the person may be assigned if the authority agree shall be those to which he might have been assigned had no direction been given.

(7) Subsections (3) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

### 23 Further provision as regards teachers in self-governing schools. **S**

- (1) It may be prescribed that only registered teachers shall be employed, or continue to be employed, as teachers in self-governing schools, subject to such exceptions as may from time to time be prescribed.
- (2) Section 89 of the 1980 Act (age of retirement of teachers) shall apply to teachers employed by the board of management of a self-governing school as it applies to those employed by an education authority or by the managers of a grant-aided school.

### 24 Effect of pending procedure for acquisition of self-governing status on appointment etc. of staff. **S**

- (1) Subject to section 14(2) of this Act, an education authority who have received from a school board written notice under subsection (6) of section 13 of this Act, either of a first resolution or of a request, shall not, until one of the conditions specified in subsection (2) below is satisfied as regards the school—
  - (a) appoint any person to fill a vacancy in a post (whether teaching or non-teaching) at, or which involves his working solely at, the school;
  - (b) dismiss any person who is employed in such a post;
  - (c) alter, or agree to alter, the terms and conditions of employment of any person who is employed in such a post where the like alteration is not made or agreed as respects all other persons employed by them (whether or not at the school) in the same category of post; or
  - (d) withdraw any person from work at the school (otherwise than by dismissing him),
 without the board's consent; and the obtaining of such consent shall be in addition to any requirement imposed by section 11 of and Schedule 2 to the 1988 Act.
- (2) The conditions mentioned in subsection (1) above are that—
  - (a) in a case where the notice received was of a first resolution, forty-six days have passed since the date of that resolution without the education authority having received written notice, under subsection (6) of section 13 of this Act, of a second resolution;
  - (b) the result of a ballot held in accordance with section 14 of this Act is not as is mentioned in subsection (1) of section 16 of this Act and two weeks have thereafter passed without the Secretary of State having declared the ballot void under section 15 of this Act; or

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- (c) proposals published in accordance with subsection (2) of the said section 16 are either rejected by the Secretary of State or are withdrawn without a requirement being imposed under section 18(2) of this Act.

### *Benefits and services for pupils*

## **25 Provision of benefits and services for pupils by education authorities. S**

- (1) Subject to the provisions of this Act and of the 1980 Act, where—
  - (a) an education authority are under a duty, or have power (whether by virtue of this section or otherwise), to provide any benefits or services for pupils; and
  - (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools under the management of the authority and in relation to pupils at self-governing schools,the authority shall not, in performing the duty, or exercising the power, distinguish, as regards the benefits or services provided or as regards the terms on which they are provided, between those two categories of pupil.
- (2) The board of management of each self-governing school shall make such reports and returns, and give such information, to any education authority by whom functions in relation to such provision as is mentioned in subsection (1)(a) above are exercisable—
  - (a) in relation to; or
  - (b) in relation to pupils in attendance at,the school as the authority may require for the purpose of the exercise of those functions.
- (3) Schedule 6 to this Act, which relates to the provision of benefits and services by education authorities for pupils at self-governing schools etc., shall have effect.

### *Finance*

## **26 Recurrent grant, capital grants and special purpose grants. S**

- (1) The payments the Secretary of State is required to make in pursuance of his duty to maintain a self-governing school are annual grants to the board of management of the school in respect of expenditure, for the purposes of the board's functions under section 7(1) of this Act, incurred or to be incurred by the board in the financial year to which any such grant (to be known as "recurrent grant") relates.
- (2) The amount of the recurrent grant payable in respect of any such school for any financial year shall, subject to section 27 of this Act, be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to in this Part of this Act as "grant regulations"); and the education authority which maintained the school before the incorporation date shall provide the Secretary of State with such information as he may require of them, for the purposes of his making or applying those regulations, concerning their financial management of the school and of other schools maintained by them and any decisions taken by them regarding the present or prospective such management of those other schools.
- (3) Grant regulations may also provide for the payment to a board of management—

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- (a) of grants (to be known as “capital grants”) in respect of expenditure of a capital nature;
  - (b) of grants (to be known as “special purpose grants”) in respect of expenditure not of a capital nature, being expenditure which the Secretary of State considers should not be met from recurrent grant,
- incurred or to be incurred by them of any class or description specified in the regulations.
- (4) The descriptions of expenditure which are to be regarded for the purposes of subsection (3)(a) above as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (5) The times at which, and the manner in which, payments are made in respect of recurrent grant, capital grants and special purpose grants shall be such as may be determined in accordance with the regulations.
- (6) For the purposes of subsection (5) above, the regulations—
- (a) may provide that payments in respect of recurrent grant for any school in respect of any financial year may be made, before any amount has been determined in accordance with the regulations as the amount of such grant payable for that year in respect of that school, by reference to an estimate of the amount which will be so payable made by the Secretary of State;
  - (b) may make provision as regards recovery from boards of management of recurrent grant, capital grants and special purpose grants overpaid.
- (7) A board of management to whom any payments in respect of recurrent grant or capital or special purpose grants are made shall comply with such requirements as the Secretary of State may from time to time impose, being requirements—
- (a) specified in grant regulations as requirements which may be imposed by the Secretary of State on boards to whom such payments are made; or
  - (b) determined in accordance with such regulations by the Secretary of State.
- (8) Requirements imposed under subsection (7) above—
- (a) may be imposed on, or at any time after, the making of any payment by reference to which they are imposed; and
  - (b) may at any time be waived or, subject to subsection (9) below, varied by the Secretary of State.
- (9) The power of the Secretary of State to vary such a requirement—
- (a) does not apply to a requirement imposed under subsection (7)(a) above; and
  - (b) is subject, in the case of a requirement imposed under subsection (7)(b) above, to the provisions of the regulations with respect to the determination of the requirements that may be so imposed in the case of payments in respect of the grants in question.
- (10) The requirements which may be specified in or authorised by grant regulations as requirements which may be imposed on boards to whom payments are made, include in particular requirements with respect to the repayment, in whole or in part, of payments made if any other requirement imposed under subsection (7) above by reference to payments (whether imposed before, at or after the time when the payments subject to the repayment are made) is not complied with.
- (11) Subject to—



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- (a) any requirements imposed by the Secretary of State under subsection (7) above; and
- (b) any requirements with respect to the application of grant contained in the articles of management of the school,

it shall be the duty of a board of management to apply any payments made to them in respect of recurrent grant solely for the purposes mentioned in subsection (1) above.

## 27 Recurrent grant in respect of provision for special educational needs. **S**

(1) For each financial year, recurrent grant payable in respect of any self-governing school—

- (a) which is a special school; or
- (b) (in the case of a school which is not a special school) in so far as is attributable to expenditure for the purpose of making provision for pupils in attendance at the school who are persons whose needs are recorded by the education authority under section 60(2) of the 1980 Act (record of needs),

shall be determined having regard to the following provisions of this section.

(2) The education authority and the board of management shall attempt to reach agreement as to—

- (a) in the case of a special school, what educational and other provision is to be made in the financial year for the pupils in attendance at the school, the estimated cost of that provision and the estimated expenditure incurred or to be incurred for the purposes of the board's other functions under section 7(1) of this Act in that year;
- (b) in any other case, what provision is to be made in that year for such pupils as are mentioned in paragraph (b) of subsection (1) above and the estimated cost of that provision;

and any such agreement, or a failure to reach such agreement, shall be timeously intimated by the board of management to the Secretary of State.

(3) If intimation under subsection (2) above is of a failure to reach agreement or if the Secretary of State does not accept any aspect of an intimated agreement, he shall himself determine the matters mentioned in paragraph (a), or as the case may be (b), of subsection (2) above in determining under section 26(2) of this Act the amount of recurrent grant payable in respect of the school; and his determination as to the said matters shall (without prejudice to the provision made by the said section 26(2) as to revision) be final.

(4) In determining under section 26(2) of this Act the amount of recurrent grant payable in respect of a school, the Secretary of State shall, where he does not make a determination under subsection (3) above, regard an agreement intimated under subsection (2) above as determining the matters to which it relates.

(5) Grant regulations may prescribe—

- (a) what information is to be—
  - (i) exchanged between an education authority and a board of management for the purposes of their duty under subsection (2) above or for the purposes of subsection (6) below;
  - (ii) provided to the Secretary of State by the authority and the board for the purposes of his considering any agreement intimated to him under that subsection or subsection (7) below or himself making

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- a determination under subsection (3) above or a variation under subsection (9) below;
- (b) the dates by which, in respect of any financial year, such information as is mentioned in paragraph (a) above is to be provided;
  - (c) the latest date by which, in respect of any financial year, any agreement, or failure to reach agreement, is to be intimated to the Secretary of State under subsection (2) above.
- (6) In a case where an amount of recurrent grant payable has been determined in accordance with subsection (4) above, the education authority and the board of management during the course of the financial year—
- (a) may agree; and
  - (b) if the Secretary of State so requires, shall attempt to reach agreement as to, a variation of their agreement under subsection (2) above.
- (7) The board of management shall intimate to the Secretary of State any variation agreed under subsection (6) above or (in the case of a requirement imposed under paragraph (b) of that subsection) any failure to reach agreement as to such variation.
- (8) The Secretary of State shall, where he accepts an agreed variation intimated under subsection (7) above, vary the amount of recurrent grant payable accordingly.
- (9) Where the Secretary of State does not accept an agreed variation so intimated, or where he has imposed a requirement under subsection (6) above but the education authority and the board of management are unable to agree on a variation of their agreement under subsection (2) above, he may himself vary the amount of recurrent grant payable but he shall not otherwise vary that amount in a case such as is mentioned in subsection (6) above.

## **28 Recovery of sums in respect of recurrent grant. S**

- (1) The Secretary of State may in respect of any financial year recover from the education authority sums in respect of the recurrent grant payable for that year to the board of management of the school.
- (2) Subject to subsection (5) below, sums recoverable by virtue of subsection (1) above in respect of any school for any financial year—
- (a) shall be of such amounts; and
  - (b) shall fall due on such date or dates;
- as may be determined by the Secretary of State.
- (3) The total amount so recoverable shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to in this section as “recovery regulations”).
- (4) Subject to any provision made by such regulations by virtue of subsection (6) below, recovery regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the recurrent grant (as from time to time revised) payable in respect of the school for the financial year in question.
- (5) The amount of any sum so recoverable shall be determined—
- (a) where before the determination of the amount of that sum any amount has been determined under recovery regulations as the total amount recoverable

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by virtue of subsection (1) above in respect of the school and financial year in question, by reference to any amount so determined as the total amount so recoverable; and

- (b) in any other case, by reference to any amount estimated by the Secretary of State as the amount which will initially be so determined as the total amount so recoverable;

which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.

- (6) Recovery regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from an education authority by virtue of subsection (1) above in respect of any school for any financial year by reference to any excess amounts recovered under this section in respect of any previous financial year.
- (7) For the purposes of subsection (6) above an excess amount is recovered under this section in respect of any financial year if the aggregate amount of the sums recovered under this section for that year from the authority—
- (a) in respect of any school in respect of which sums are recoverable from the authority under this section; or
- (b) where there is more than one such school, in respect of both or all of those schools;
- exceeds the total amount recoverable under this section in accordance with recovery regulations in respect of that school or, as the case may be, in respect of both or all of those schools for that year.
- (8) The Secretary of State may recover sums due to him under this section from the authority in either or both of the following ways—
- (a) by requiring the authority to pay the whole or any part of any such sum at such time or times as he thinks fit;
- (b) by deducting, at such time or times as he thinks fit, the whole or any part of any such sum from any grant payable by him to the authority under any enactment (whether passed before or after this Act and whether or not to the authority as education authority).
- (9) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

## **29 Extension of, and recovery for education etc. provided under, section 23 of 1980 Act. S**

- (1) For the purposes of section 23 of the 1980 Act (recovery for provision for education of pupils belonging to, or having connection with, the area of another authority) the provision for education made in any financial year in respect of a pupil in attendance at a self-governing school shall be taken to have been made by the education authority.
- (2) The reference in subsection (1) above to provision for education includes a reference to provision of any benefits or services for which provision is made by or under any enactment relating to education.
- (3) The board of management of a self-governing school shall provide the education authority with such information relating to the pupils in attendance at the school as

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the authority may require for the purposes of claiming any amount in respect of any such pupil from another authority under, or by virtue of, the said section 23.

*Change in characteristics, discontinuance etc.*

### 30 **Change in characteristics of self-governing school. S**

- (1) Where the board of management of a self-governing school after the appropriate consultation decide, by a resolution passed at a meeting of the board held, subject to subsection (2) below, not less than five years after the incorporation date, to seek a change in the characteristics of the school, other than an increase in the range of provisions which the school has for pupils with special educational needs, the board shall secure that a ballot of parents on the question of whether the change should be made is held in accordance with this section.
- (2) With the prior written consent of the Secretary of State a motion for such a resolution as is mentioned in subsection (1) above may be determined at a meeting of the board of management held at a date earlier than subsection (1) above would require.
- (3) For the purposes of subsection (1) above, the appropriate consultation is consultation with the education authority and, where the school is, or the change sought would result in its becoming, a denominational school, with the church or denominational body in whose interest the school is, or as the case may be would be, managed.
- (4) Schedule 7 to this Act, which makes provision as regards the arrangements to be made for holding the ballot, shall have effect.
- (5) The result of the ballot shall forthwith be intimated to the Secretary of State by the board of management.
- (6) A fresh ballot required by a notice under section 15(1) of this Act shall be held in accordance with such conditions, and before such date, as may be specified in the notice.
- (7) Where the result of the ballot shows a majority of votes cast in the ballot in favour of the change sought, the board shall, before the end of the period of one month beginning with the date on which the result of the ballot is determined or of such longer period as the Secretary of State may permit—
  - (a) publish proposals for the change in such manner as may be prescribed by regulations;
  - (b) submit to the Secretary of State and to the education authority a copy of the published proposals; and
  - (c) where the school is, or the change sought would result in its becoming, a denominational school, submit such a copy to the church or denominational body in whose interest the school is, or as the case may be would be, managed.
- (8) Before the expiry of the period of three months beginning with the date of publication of the proposals any person may submit representations to the Secretary of State as regards the proposals.
- (9) The proposals shall require the approval of the Secretary of State; and he may, after the expiry of the period mentioned in subsection (8) above, after considering any relevant representations made under that subsection, after having regard to any representations from the education authority as to the probable effect of the proposed change on the

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fulfilment by them of their duty under section 1 of the 1980 Act (duty to secure that there be made for their area adequate and efficient provision of school education) and after taking into account such other matters as he considers appropriate including, without prejudice to the generality of the foregoing, the percentage that the total votes cast in the ballot which occasioned publication of the proposals constituted of the total number of persons eligible to vote in the ballot and the percentage that the votes so cast which were in favour of the change sought constituted of those total votes—

- (a) reject the proposals, having first consulted the board as regards the possible such rejection; or
  - (b) approve them without modification or, after consultation with the board and the education authority, with such modifications as he thinks desirable.
- (10) Where the Secretary of State approves the proposals (whether or not with modifications) he shall, under section 2(2) of this Act, vary the scheme of government of the school to give effect to the change.
- (11) Subject to subsection (12) below, neither the board nor any other person shall do or undertake anything for which proposals are required to be published and submitted in accordance with this section until such proposals have been duly approved by the Secretary of State.
- (12) The Secretary of State may, pending compliance with any of the requirements of subsections (1) to (10) above, allow such steps to be taken by the board as he considers reasonable in the circumstances of any case.
- (13) In subsection (1) above, the reference to characteristics of the school is to the matters stated and specified in the description of the school required by section 16(4) of this Act or, where there has been a change in accordance with this section as regards the school, those matters as so changed.

### **31 Discontinuance by board of management. S**

- (1) The board of management of a self-governing school shall not discontinue the school except in pursuance of proposals published and approved under this section.
- (2) Where the board of management—
  - (a) decide by a resolution passed at a meeting of the board (“the first resolution”) to publish proposals under this section for the discontinuance of the school and confirm that decision by a resolution (“the second resolution”) passed at a subsequent meeting of the board held not less than twenty-eight days, nor more than forty-two days, after that at which the first resolution was passed; and
  - (b) give notice in writing of the second resolution to the Secretary of State and to the education authority,they may within the period of six months beginning with the date of the second resolution publish proposals for that purpose in such manner as may be prescribed and shall submit to the Secretary of State, to the education authority and, where the school is a denominational school, to the church or other denominational body in whose interest the school is managed, a copy of the published proposals.
- (3) The notice required by subsection (2)(b) above shall be given as soon as practicable after the passing of the resolution to which it refers.
- (4) The published proposals—

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- (a) shall specify the proposed date of discontinuance of the school; and
- (b) shall be accompanied by a statement—
  - (i) indicating whether or not any proposals with respect to the establishment of a new school on the premises of the school have been published under section 22A of the 1980 Act (provision for consultation on certain changes); and
  - (ii) explaining the effect of subsection (5) below.
- (5) Before the end of the period of two months beginning with the date of publication of the proposals, any person may submit representations to the Secretary of State in respect of the proposed discontinuance.
- (6) The Secretary of State may, after considering any representations submitted under subsection (5) above, reject any proposals under this section, approve them without modification or, after consultation with the board of management and the education authority, approve them with modifications which, without prejudice to the generality of this subsection, may include the substitution of a different date for the date of discontinuance proposed.
- (7) If the Secretary of State approves proposals under this section with respect to a school—
  - (a) the board of management shall cease to manage the school; and
  - (b) the Secretary of State’s duty to maintain the school shall cease,
 on the date of discontinuance specified in the proposals as approved or on any other date subsequently specified by the Secretary of State at the request of the board (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously specified under this subsection).

### 32 **Compensation in respect of denominational schools.** S

In the event of a self-governing school which, immediately before the incorporation date, was maintained and managed under section 21(1) of the 1980 Act (management of denominational schools)—

- (a) by virtue of a change in characteristics under section 30 of this Act (“change in characteristics” being construed in accordance with subsection (13) of that section) ceasing to be a denominational school; or
- (b) being discontinued under section 31 of this Act (at a time when still a denominational school),

such compensation as would have been payable by an education authority under the first proviso to subsection (4) of section 22 of that Act, in either of the events mentioned in that subsection, had the school continued to be maintained by that authority shall be payable by the board of management.

#### *Withdrawal of grant*

### 33 **Withdrawal of grant by Secretary of State.** S

- (1) The Secretary of State may cease to maintain a self-governing school by giving notice in writing under this subsection of his intention to do so to the board of management; and on the date specified in that notice as the date on which the Secretary of State intends to cease to maintain the school his duty to do so shall cease.

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- (2) Subject to the following provisions of this section—
  - (a) the date mentioned in subsection (1) above shall be at least seven years after the date on which the relevant notice under that subsection is given; and
  - (b) before giving such notice the Secretary of State shall consult—
    - (i) the board of management;
    - (ii) the education authority;
    - (iii) the parents of the pupils in attendance at the school; and
    - (iv) where the school is a denominational school, the church or other denominational body in whose interest the school is managed.
- (3) Subsection (2) above shall not apply where the Secretary of State is satisfied that as currently constituted or managed the school is unsuitable to continue as a self-governing school on either or both of the following grounds—
  - (a) that the number of pupils in attendance is too small for efficient and suitable instruction to be provided for them at reasonable cost;
  - (b) that the board of management have been guilty of substantial or persistent failure to comply, or secure compliance, with any duty imposed on them by or under this Act or any other enactment.
- (4) Where the Secretary of State is satisfied as is mentioned in subsection (3) above, he may give the board of management notice in writing under this subsection stating the grounds on which he considers that the school as currently constituted or managed is unsuitable to continue as a self-governing school together with full particulars of the matters relevant to each such ground.
- (5) Where any of the matters of which particulars are given in a notice under subsection (4) above is stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall be accompanied by a notice under subsection (1) above in respect of the school.
- (6) Where subsection (5) above does not apply in the case of any notice under subsection (4) above, the notice shall—
  - (a) state that the Secretary of State intends to cease to maintain the school unless the matters of which particulars are given in the notice are remedied;
  - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters; and
  - (c) specify the time, not being less than six months after the date on which the notice is given, within which the board of management are required to take those measures.
- (7) Where the board of management fail to take the measures required by a notice under subsection (4) above within the time specified in the notice or allowed by any previous notice under this subsection, the Secretary of State shall within the period of two months beginning with the day next following the end of that time either—
  - (a) give notice in writing under this subsection to the board extending the time within which those measures are required to be taken; or
  - (b) after consulting the education authority, give notice under subsection (1) above in respect of the school.
- (8) The Secretary of State may by notice in writing under this subsection to the board—
  - (a) withdraw any notice under subsection (1) or (4) above;

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- (b) vary any notice under subsection (1) above by substituting a later date for the date for the time being specified in the notice as the date on which he intends to cease to maintain the school; or
  - (c) vary any notice under subsection (4) above to which subsection (6) above applies, so far as relates to the measures required by the notice to remedy the matters of which particulars are given in the notice.
- (9) If by virtue of subsection (8)(c) above the Secretary of State varies any notice under subsection (4) above so as to require different measures to be taken he shall substitute for the time specified in that notice as the time within which the board are required to take the measures specified in the notice as varied a time ending—
- (a) not less than six months after the date on which the notice of variation is given; and
  - (b) where the time so specified has been extended under subsection (7) above, not earlier than that time as so extended.
- (10) Any variation under subsection (9) above of the time specified in a notice under subsection (4) above is without prejudice to any further extension of that time by notice under subsection (7)(a) above.

#### *Miscellaneous*

### **34 Administrative, professional, technical or other services. S**

- (1) Without prejudice to section 1 of the Local Authorities (Goods and Services) Act 1970 (power of local authority and public body to enter into agreement for certain purposes) the board of management of a self-governing school may require the education authority to provide them with any administrative, professional, technical or other services which the authority provide to or in respect of schools under the authority's management.
- (2) An education authority may make such charge as is reasonable for any services which they are required under subsection (1) above to provide; and they shall in determining what charge to make have regard both to the cost of providing the services and to any guidance issued by the Secretary of State in respect of any such charge.
- (3) In the event of any dispute arising between the education authority and the board of management as regards the reasonableness of any such charge, the matter may be referred by either party to the Secretary of State, whose decision in that regard shall be final.

### **35 Functions of school board: application of certain provisions of 1988 Act. S**

- (1) In so far as the context admits, functions under this Act of a school board are, for the purposes of—
  - (a) section 5 of the 1988 Act (advice to boards) matters within the competence of the board;
  - (b) sections 8(1) (exercise of functions of boards) and 19 (allowances for members) of that Act functions of the board;
  - (c) section 12(2)(a) (reports to parents) of that Act activities of the board;
  - (d) section 12(2)(b) (ascertaining views of parents) of that Act matters which are the responsibility of the board;



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- (e) section 13 (parents' meetings) of that Act activities of the board.
- (2) Subsection (1) of section 17 of the 1988 Act (financing of boards) shall apply in relation to functions of a school board under this Act as it applies to such functions under that Act; and subsection (3) of that section shall be construed accordingly.

### *Property*

## **36 Transfer of land, moveable property and obligations to board of management. S**

- (1) Subject to subsections (4) and (5) below and to the provisions of sections 38 and 39 of, and Schedule 8 to, this Act, on the incorporation date there shall be transferred to and vest in the board of management of a self-governing school—
  - (a) all land or moveable property (whether corporeal or incorporeal) which, immediately before that date, is—
    - (i) owned by an education authority; and
    - (ii) used or held by that authority for the purposes of that school;
  - (b) subject to subsection (5) below, all liabilities and obligations of the authority in respect of that school, or in respect of property used or held for the purposes of that school; and
  - (c) all moveable property (whether corporeal or incorporeal) acquired, and liabilities and obligations incurred, by the school board in relation to that school.
- (2) The land and moveable property mentioned in subsection (1)(a) above includes any land or moveable property which, immediately before the incorporation date, is used or held by the education authority—
  - (a) for the purposes of more than one of the schools in their area; or
  - (b) partly for the purposes of one or more of such schools and partly for other purposes,to the extent that it is so used or held for the purposes of the school in question.
- (3) The liabilities and obligations mentioned in subsection (1)(b) above include any liabilities or obligations subsisting—
  - (a) for the purposes of more than one of the schools in the education authority's area; or
  - (b) partly for the purposes of one or more of such schools and partly for other purposes,in so far as those liabilities or obligations subsist for the purposes of the school in question.
- (4) The land or moveable property mentioned in subsection (1)(a) above does not include any hostels provided and maintained by the education authority under section 13 (provision of hostels) of the 1980 Act.
- (5) The liabilities and obligations to be transferred to a board of management under subsection (1)(b) above do not include—
  - (a) any obligation to repay the principal or interest of any loan incurred by the authority for the purposes of that school;

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- (b) any obligation of the authority in respect of compensation for premature retirement of any person formerly employed by them;
  - (c) any obligation or liability under a contract of employment relating to a person previously employed by the education authority to whom section 22 of this Act does not apply; or
  - (d) any delictual, strict or statutory liability of the authority arising out of any act or omission where a cause of action accrued before the incorporation date.
- (6) Subject to section 14(2) of this Act, any land owned by an education authority which is, as at the date when the authority receive a notice under section 13(6) of this Act, either of a first resolution or of a request, to any extent used or held for the purposes of the school to which the notice relates shall be deemed still to be so used or held at the incorporation date unless the authority have obtained the consent of the school board to any change in the purposes for which it is used or held.
- (7) An education authority shall not, with the object of—
- (a) preventing or restricting the operation of this section in relation to; or
  - (b) retaining, whether directly or indirectly, some control over,
- any land or moveable property which would, in the event of a school's becoming a self-governing school, fall to be transferred to the board of management of that school under this section, transfer, or enter into any transaction involving, any such land or moveable property.
- (8) Schedule 8 to this Act, which makes provision in relation to the transfer and apportionment of assets, shall have effect.

### **37 Disposal of land by board of management. S**

- (1) This section applies where a board of management seek the consent of the Secretary of State to the disposal of land which was—
- (a) transferred to the board under section 36 of this Act; or
  - (b) acquired by the board, wholly or partly, with the proceeds of the sale of land which was transferred as mentioned in paragraph (a) above; or
  - (c) acquired by the board, wholly or partly, with the proceeds of the sale of land which was acquired, wholly or partly—
    - (i) as mentioned in paragraph (b) above; or
    - (ii) with the proceeds of any subsequent sale of any such land.
- (2) Where the consent of the Secretary of State is sought as mentioned in subsection (1) above, he may—
- (a) require the board of management to transfer the land, or any part of it, to the education authority upon payment by the authority to the board of such consideration, if any, as he considers appropriate; or
  - (b) except in a case where the land is being transferred to the education authority, require the board of management to pay to the authority all, or any part of, the consideration which they receive in respect of the disposal of the land.
- (3) Where any land such as is mentioned in subsection (1) above is compulsorily acquired from a board of management, they shall—
- (a) not require to seek the consent of the Secretary of State to such disposal; but
  - (b) inform him that the land is being compulsorily acquired from them; and

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- (c) pay to the education authority the whole or such part of the compensation which they receive in respect of the compulsory acquisition as the Secretary of State may direct.

### **38 Commissioners for school assets. S**

Schedule 9 to this Act shall have effect as regards the appointment etc. of commissioners for school assets.

### **39 Certificates in respect of land, moveable property etc. S**

- (1) A commissioner for school assets appointed in respect of a school shall, in accordance with this section, from time to time issue certificates specifying land, moveable property, liabilities and obligations which are to transfer or have transferred to the board of management from the education authority under section 36 of this Act, and which have been identified in—
  - (a) any agreement reached in that regard between a commissioner and the authority under paragraph 1 of Schedule 8 to this Act;
  - (b) any determination made by the Secretary of State under paragraph 5(2) of the said Schedule 8; or
  - (c) any order made by the court under section 42 or 45 of this Act.
- (2) The commissioner shall issue separate certificates in respect of—
  - (a) land; and
  - (b) all moveable property and any liabilities and obligations other than those relating to land.
- (3) Subject to section 8 of the <sup>M3</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (which relates to the rectification of documents defectively expressed), a certificate issued under this section shall be conclusive evidence of the matters specified therein.
- (4) A certificate issued under this section in respect of land may, where appropriate, be recorded in the Register of Sasines and shall be treated, for the purposes of—
  - (a) the <sup>M4</sup>Prescription and Limitation (Scotland) Act 1973, as a deed sufficient in respect of its terms to constitute in favour of the board of management a title to an interest in land; and
  - (b) any enactment relating to the conveyance of land, as such a conveyance.
- (5) A commissioner for school assets appointed in respect of a school or, where the commissioner's appointment has been terminated, the board of management of that school shall not, without the prior consent of the Secretary of State, apply to the court under the said section 8 for the rectification of any certificate issued by the commissioner under this section.

#### **Marginal Citations**

**M3** 1985 c. 73.

**M4** 1973 c. 52.

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#### **40 Transfer of property where no certificate issued. S**

- (1) Subject to subsection (2) below, any person showing an interest may apply to the court for a declarator that land, moveable property, liabilities or obligations of an education authority have transferred to a board of management of a self-governing school, notwithstanding that no certificate has been issued under section 39 of this Act in respect thereof.
- (2) The board of management of a self-governing school shall not, without the prior consent of the Secretary of State, raise or defend any such proceedings as are mentioned in subsection (1) above.

#### **41 Disposal of land or moveable property by education authority prior to incorporation date. S**

- (1) Where it appears to the commissioner for school assets appointed in respect of any school, whether before or after the incorporation date, that the education authority have—
  - (a) removed or withdrawn from the school any moveable property; or
  - (b) transferred, or entered into a transaction involving, any land or moveable property,which in the opinion of the commissioner would transfer or, as the case may be, would have transferred to the board of management of that school on that date under section 36 of this Act, he shall refer the matter to the Secretary of State.
- (2) Where a matter is referred to the Secretary of State under subsection (1) above, he shall, after taking such advice from the commissioner as he may require, consult—
  - (a) the education authority; and
  - (b) any third party having an interest in the land or moveable property,and shall thereafter make a determination as to what, if any, of the land or moveable property mentioned in the referral should transfer or, as the case may be, should have transferred to the board of management on the incorporation date.
- (3) Where the Secretary of State has made a determination under subsection (2) above that property should or, as the case may be, should have transferred the commissioner for school assets—
  - (a) shall issue an interim certificate complying with that determination; and
  - (b) may take such action as appears to him to be appropriate against the education authority under section 42, 44, 45, 46 or 47 of this Act.
- (4) An interim certificate issued under subsection (3) above shall specify the land or moveable property which should transfer or, as the case may be, should have transferred to the board of management.

#### **42 Reduction of disposals of property by education authority. S**

- (1) Subject to the provisions of this section, a commissioner for school assets may apply to the Court of Session for—
  - (a) an order setting aside or varying any transfer of, or transaction involving, land or moveable property which has been effected by the education authority in contravention of section 36(7) of this Act; or
  - (b) damages in respect of—

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- (i) the value of any property so transferred; and
  - (ii) any loss incurred by the commissioner or the board of management as a result of the said contravention.
- (2) An application under this section shall not be made—
- (a) more than one year after the incorporation date; or
  - (b) in respect of a transfer or transaction effected—
    - (i) prior to 22nd November 1988;
    - (ii) more than five years before the date of the making of the application;or
  - (iii) subject to section 14(2) of this Act, after an education authority have received a notice under section 13(6) of this Act, either of a first resolution or of a request;
- or
- (c) other than in respect of a transfer or transaction involving land or moveable property in respect of which the commissioner for school assets has issued an interim certificate under section 41 of this Act.
- (3) Where the court is satisfied that the education authority effected the transfer or transaction in contravention of section 36(7) of this Act it may make the order applied for or such other order as it thinks fit.
- (4) Where the court makes an order under subsection (3) above, it may include in the order such terms and conditions as it thinks fit and may make any ancillary order which it considers expedient to ensure that the order is effective.
- (5) The court shall not make an order under this section which would prejudice a party who acquired the land or moveable property—
- (a) in good faith and for value; or
  - (b) from a party who had so acquired it.

#### **43 Prevention of disposals of property by education authority. S**

- (1) Subject to the provisions of this section and to section 14(2) of this Act, an education authority who have received a notice from a school board under section 13(6) of this Act, either of a first resolution or of a request, shall not, until one of the conditions specified in subsection (2) below is satisfied as regards the school—
- (a) dispose of; or
  - (b) enter into any agreement or unilateral obligation with respect to, any land or moveable property which is used or held by the authority wholly or partly for the purposes of that school.
- (2) The conditions mentioned in subsection (1) above are that—
- (a) the authority have obtained the prior consent of the school board; or
  - (b) in a case where the notice received was of a first resolution, forty-six days have passed since the date of that resolution without the education authority having received written notice, under subsection (6) of section 13 of this Act, of a second resolution; or
  - (c) the result of a ballot held in accordance with section 14 of this Act is not as is mentioned in subsection (1) of section 16 of this Act and two weeks have

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thereafter passed without the Secretary of State having declared the ballot void under section 15(1) of this Act; or

- (d) proposals published in accordance with subsection (2) of the said section 16 are either rejected by the Secretary of State or are withdrawn without a requirement being imposed under section 18(2) of this Act.
- (3) Subsection (1) above does not apply to any disposal made under—
- (a) an agreement entered into; or
  - (b) a unilateral obligation executed and intimated to the beneficiary, before the receipt by the authority of the notice mentioned in subsection (1) above.
- (4) This section has effect notwithstanding anything in section 74 of the 1973 Act (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to the consent required by subsection (2) of that section or by any other enactment.

#### **44 Repudiation of agreements made in contravention of section 43. S**

- (1) Where an education authority have entered into any agreement or unilateral obligation with respect to land or moveable property in contravention of section 43(1) of this Act the commissioner for school assets appointed in respect of the school in question may, with the prior consent of the Secretary of State but before any such agreement is implemented or any right under any such unilateral obligation is exercised, serve a notice on the parties mentioned in subsection (2) below informing them that the agreement or undertaking is at an end.
- (2) The parties referred to in subsection (1) above are, in the case of—
- (a) an agreement, the parties to that agreement and any third party who is a beneficiary thereunder; and
  - (b) a unilateral obligation, the education authority and the beneficiary.
- (3) A notice under subsection (1) above shall be treated for all purposes as a repudiation by the education authority of the agreement or obligation to which the notice relates.

#### **45 Reduction or setting aside of disposals made in contravention of section 43. S**

- (1) Where any land or moveable property has been disposed of by an education authority in contravention of section 43(1) of this Act, the commissioner for school assets appointed in respect of the school concerned may apply to the Court of Session for an order—
- (a) reducing any document by which the disposal was effected; or
  - (b) where the disposal was effected by an oral agreement, setting aside the disposal.
- (2) In an application made under this section the court may, if it is satisfied that—
- (a) the education authority had received a notice under section 13(6) of this Act, either of a first resolution or of a request, or in a case such as is mentioned in subsection (2) of section 14 of this Act intimation of consent under that subsection, before the disposal was made;
  - (b) the school board had not consented to the disposal; and
  - (c) the commissioner for school assets has issued an interim certificate under section 41 of this Act in respect of the land or moveable property disposed of,

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make the order applied for or such other order as it thinks fit.

- (3) The court shall not make an order under this section which would prejudice a party who acquired the land or moveable property—
  - (a) in good faith and for value; or
  - (b) from a party who had so acquired it.
- (4) Where the court makes an order under this section, it may include in the order such terms and conditions as it thinks fit and may make any ancillary order which it considers expedient to ensure that the order is effective.

**46 Commissioner for school assets' right of action for contravention of section 43. S**

- (1) Where a commissioner for school assets cannot (as, for example, by reason of the operation of subsection (3) of section 45 of this Act), or decides not to, exercise the remedy provided by that section in relation to a contravention by the education authority of section 43(1) of this Act he may raise an action against that authority under this section.
- (2) In an action under this section a commissioner for school assets may seek to recover from the authority—
  - (a) the value of the land or moveable property which was disposed of by the authority in contravention of the said section 43(1); and
  - (b) any additional expenditure reasonably incurred by him or by the board of management as a result of that disposal.
- (3) The court shall not grant decree in an action under this section unless satisfied as to the matters mentioned in paragraphs (a), (b) and (c) of section 45(2) of this Act.

**47 Removal of property from school by education authority. S**

- (1) Subject to section 14(2) of this Act, an education authority who have received a notice under section 13(6) of this Act, either of a first resolution or of a request, shall not, until one of the conditions specified in subsection (2) of section 43 of this Act is satisfied as regards a school, remove or withdraw from the premises of that school any moveable property which is owned or held by that authority wholly or partly for the purposes of that school.
- (2) Where an education authority have removed or withdrawn any property in contravention of subsection (1) above, the commissioner for school assets appointed in respect of that school may raise against the authority an action—
  - (a) for payment in respect of the value of the property concerned; and
  - (b) of damages in respect of any additional expenditure reasonably incurred by him or by the board of management as a result of the said removal or withdrawal.
- (3) The court shall not grant decree in an action raised under this section unless satisfied as to the matters mentioned in paragraphs (a), (b) and (c) of section 45(2) of this Act.

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### *Provision of information*

#### **48 Duty of education authority to provide information. S**

The education authority shall, on the incorporation date or as soon as practicable thereafter, provide the board of management of a self-governing school with all the information held by that authority in respect of that school including, without prejudice to the generality of the foregoing, information in respect of—

- (a) the administration of the school;
- (b) the fabric of the school;
- (c) staff transferred from the employment of the authority to the employment of the board of management by virtue of section 22 of this Act; and
- (d) the pupils in attendance at the school.

### *Educational endowments*

#### **49 Educational endowments. S**

- (1) Where, immediately before the incorporation date in relation to any school, an educational endowment is to any extent vested in an education authority solely for the purposes of the school, the endowment shall, on that date and to that extent, be transferred to and vest for the same purposes in the board of management of the school.
- (2) Where—
  - (a) an educational endowment is to any extent vested in an officer of an education authority (whether by virtue of his office or otherwise) solely for the purposes of any school; and
  - (b) that school becomes a self-governing school,
 the endowment shall to that extent be transferred to and vest in such person as may be nominated for the purpose by the board of management of the school with effect from the date when the board make the nomination.
- (3) Where an educational endowment is vested in an education authority generally for the benefit of the schools or of any group of the schools in their area or for the benefit of the pupils attending those schools, the authority shall apply that endowment for the benefit of any of those schools which has become a self-governing school or, as the case may be, of the pupils attending any such school as if that school were still maintained by that authority.

### *Winding up*

#### **50 Winding up orders. S**

- (1) Where the Secretary of State has—
  - (a) approved proposals made under section 31 of this Act for the discontinuance of a school; or
  - (b) given notice under section 33 of this Act that he intends to cease to maintain a school with effect from a particular date,
 he may, after consultation with the education authority and subject to subsection (2) below, by order under this section make provision for the winding up of the school.



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- (2) Where subsection (2)(a) of the said section 33 applies to a notice given under that section the Secretary of State shall not make an order under this section within 5 years of the date on which he gives the said notice.
- (3) Without prejudice to the generality of subsection (1) above, an order under this section may—
- (a) stipulate a time-table for the winding up of the school;
  - (b) provide for the payment of the expenses of the winding up;
  - (c) appoint a date (the “dissolution date”) on which—
    - (i) the board of management is to be dissolved; and
    - (ii) the property mentioned in section 51 of this Act is to be transferred to other persons in accordance with the provisions of that section;
  - (d) confer powers or impose duties on the board of management in relation to the winding up of the school;
  - (e) provide for the ingathering of any land or moveable property owned by—
    - (i) the board; or
    - (ii) trustees for the purposes of the school;
  - (f) provide for the discharging by the board of any of their liabilities;
  - (g) provide for the repayment by the board to the Secretary of State of the unexpended portion of any capital grant made by him to the board;
  - (h) require the board to comply with any directions made by the Secretary of State;
  - (j) provide for—
    - (i) the exercise of any of the board’s functions; and
    - (ii) the execution of documents on behalf of the board,by any member of the board named in the order; and
  - (k) require the board to give notice of dismissal to persons employed by them with effect from such date as may be specified in the order.
- (4) The Secretary of State shall not in an order under this section appoint a dissolution date unless he is satisfied that—
- (a) all liabilities of the board of management have been discharged;
  - (b) all the expenses of the winding up have been met; and
  - (c) the board of management have complied with all the obligations imposed on them in respect of the winding up.
- (5) The Secretary of State may make grants to a board of management for the purpose of—
- (a) discharging any liabilities of the board; and
  - (b) enabling the board to defray the expenses of the winding up,
- and in relation to any such grant he may impose requirements on the board before, at or after the time at which the payment of the grant is made.

## **51 Disposal of property on winding up. S**

- (1) An order made under section 50 of this Act may provide for the disposal of all land and moveable property owned by the board of management—
- (a) absolutely; or
  - (b) as trustees for the purposes of the school,

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in accordance with the provisions of this section.

- (2) Subject to subsection (4) below, an order under the said section 50 may provide that all land and moveable property owned by a board of management immediately before the dissolution date shall, on that date, transfer to and vest in the education authority.
- (3) An order under the said section 50 may provide that all land and moveable property owned by the board of management as trustees for the purposes of the school shall on the dissolution date transfer to and vest in the said education authority—
  - (a) on trust for such purposes as may be specified in the order; or
  - (b) where it appears to the Secretary of State that the land or moveable property concerned was purchased or otherwise provided wholly or mainly by or at the expense of the education authority, absolutely.
- (4) Where it appears to the Secretary of State that—
  - (a) any land or moveable property, or any class or description of land or moveable property, in the ownership or under the control of the board of management has been procured, whether before or after the incorporation date, otherwise than at the expense of the education authority; and
  - (b) it is appropriate, on that account, to exclude that land or moveable property, or land or moveable property of that class or description, from transfer to the authority,

he may in an order under the said section 50 transfer any such land or moveable property to such persons as may be designated in the order on such terms as may be so designated.
- (5) Any land or moveable property transferred to any person by an order under the said section 50 shall vest in that person on the dissolution date specified in the order.
- (6) If a person to whom any land is transferred by an order under the said section 50 wishes to complete a title to the land so transferred by expediting a notarial instrument or notice of title or otherwise, the said order shall be deemed to be and may be used as a general disposition or assignation of the said land in favour of that person.
- (7) Where any land or moveable property which has been purchased for a school out of funds provided by way of a capital grant by the Secretary of State has been—
  - (a) transferred to an education authority under subsection (2) above; and
  - (b) thereafter sold by that education authority to a third party,

the Secretary of State may require the education authority to pay him the whole or part of the money spent by him in—

  - (i) making the said capital grant; and
  - (ii) making grants to the board of management under section 50(5) of this Act:

Provided that the sums required from the education authority by the Secretary of State under sub-paragraphs (i) and (ii) above shall not amount to more than the total amount received by the authority in respect of the sale of the land or moveable property.

## 52 **Transfer of school for establishment of new school.** **S**

- (1) Subject to the provisions of this section, where, for the purpose of establishing a new independent school, any person (“the proposer”) proposes to occupy the premises of a school which is being wound up, the Secretary of State may, in an order under

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*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

section 50 of this Act, transfer any of the land and moveable property mentioned in section 51(1) of this Act to that person; and the provisions of the said section 51 shall apply in relation to land or moveable property transferred to a proposer by virtue of this section as they apply to land or moveable property transferred to an education authority by virtue of that section.

- (2) Where land or moveable property is transferred as described in subsection (1) above, the proposer shall pay the appropriate consideration to the education authority.
- (3) An order made by virtue of subsection (1) above may provide for—
  - (a) the payment by the proposer to the Secretary of State of any sums expended by the latter by way of—
    - (i) capital grants to the board of management of the discontinued school prior to the making of a winding up order in respect of the school; and
    - (ii) grants made by him under subsection (5) of the said section 50;
  - (b) the payment by the proposer of any sums for which the board of management are liable in respect of—
    - (i) any outstanding debts or monetary obligations, including redundancy payments to former staff of the school; or
    - (ii) the expenses of the winding up,in so far as any such payments have not been met out of grants made by the Secretary of State; and
  - (c) for any sums paid by the proposer under paragraph (a) or (b) above to be deducted from the money payable by the proposer to the education authority under subsection (2) above.
- (4) In this section “the appropriate consideration” means, in relation to—
  - (a) land, such an amount as the Secretary of State determines to be the market value of the land as at the dissolution date or as at a date no earlier than six months before that date; and
  - (b) moveable property, such an amount as the Secretary of State determines to be a fair consideration for the transfer of that property.

### **53 Disposal of surplus money on winding up. S**

- (1) Subject to subsection (2) below—
  - (a) any money held by a board of management (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the <sup>M5</sup>Banking Act 1987); and
  - (b) any investments to which this section applies held by such a board,shall be paid or, as the case may be, transferred to the Secretary of State, after—
  - (i) discharge of their liabilities (other than any not required to be discharged before the dissolution date is appointed); and
  - (ii) payment of all expenses of the winding up.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
  - (a) that the money or that part of it was derived or, as the case may be, those investments were acquired otherwise than from grants paid by him; and
  - (b) that it ought to be paid, or the investments ought to be transferred, to an education authority or to some other person,

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

he may require the board of management to pay that money, or an amount equal to the part in question, or to transfer those investments, to such education authority or other person as he may specify, either absolutely or in trust for such purposes as he may specify.

- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the board of management before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the <sup>M6</sup>Financial Services Act 1986 which falls within—
  - (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
  - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.
- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of the said Act of 1986 (power of Secretary of State to extend or restrict scope of Act) which amends those paragraphs for the purposes of all the provisions of that Act.

#### Marginal Citations

**M5** 1987 c. 22.

**M6** 1986 c. 60.

## PART II **S**

### FURTHER EDUCATION

#### *College Councils*

#### **54 Establishment of college councils. **S****

- (1) Every education authority shall, by 1st April 1990 or such later date as the Secretary of State may in relation to any education authority or college of further education direct, establish a body, to be known as a “college council”, for each such college in their area for the purpose of exercising such functions as may be delegated to it by that authority by a delegation scheme made under section 56 of this Act.
- (2) Where an education authority propose—
  - (a) to establish a new college of further education; or
  - (b) to amalgamate into one college a number of existing such colleges,
 they shall, as soon as they consider appropriate but in any event before students are first enrolled in the new or, as the case may be, amalgamated college, establish a college council for that college.
- (3) Subsections (1) and (2) above shall not apply in relation to such classes of college of further education as may be prescribed.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

- (4) The members of a college council shall, subject to subsection (5) below and, in relation to casual vacancies, section 55(2)(b) of this Act, be appointed by the education authority after consultation with such organisations, including employer and trade union or other organisations—
- (a) as appear to them to be representative of interests relevant to the work of the college; or
  - (b) as may be prescribed.
- (5) The principal of a college of further education shall be a member of the college council *ex officio* and, in appointing the remaining members of a college council, the education authority shall—
- (a) secure that—
    - (i) the total number of members does not exceed 20;
    - (ii) not less than half the members are selected from persons nominated by employers, or by employer organisations consulted by the authority under subsection (4) above; and
    - (iii) not more than one fifth of the members appointed by the authority are members or employees (other than persons employed at any educational establishment) of either that authority or of any other local authority;
  - and
  - (b) comply with such further conditions as to the composition of the council as may be prescribed.
- (6) As from—
- (a) the first occasion on which a college council established under this section discharge functions delegated to them by virtue of section 56 of this Act; or
  - (b) 1st October 1990 (in relation to colleges to which subsections (1) and (2) above do not apply);
- any college council appointed under section 125 of the 1973 Act (schools and college councils) for the college in question shall cease to exist.
- (7) Notwithstanding the repeal by this Act of—
- (a) section 125 of the 1973 Act; and
  - (b) references to college councils in section 126 of and Schedule 10 to that Act, those provisions shall remain in force in relation to any college council appointed under the said section 125 for so long as that council remains in existence.

**Modifications etc. (not altering text)**

- C2** S. 54(1) restricted by S.I. 1990/183, art. 3(1)
- C3** S. 54(1) excluded by S.I. 1990/1637, art. 4(1)
- C4** S. 54(2) restricted by S.I. 1990/183, art. 3(3)
- C5** S. 54(2) excluded by S.I. 1990/1637, art. 4(3)
- C6** S. 54(4)(5) restricted (16. 5. 1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 34(1)(8)(a) (with s. 30(2)); S.I. 1992/817, art. 3(2), Sch.1.

**55 Proceedings of college councils. S**

- (1) Every college council shall elect one of their number, who shall not be—

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

- (a) an employee of an education authority; or
  - (b) a student or a representative of students at the college,
- to be the council chairman.
- (2) The Secretary of State may by regulations make provision as to—
- (a) the duration of appointments to college councils;
  - (b) the procedure for filling casual vacancies on councils;
  - (c) the grounds on which a person may be disqualified from being a member of a council; and
  - (d) the meetings and proceedings of councils.
- (3) Subject to any regulations made by the Secretary of State under subsection (2) above, a college council may determine their own procedure and, without prejudice to the generality of the foregoing, they may—
- (a) arrange for the discharge of any of their functions by—
    - (i) a committee appointed by them;
    - (ii) the chairman of the council; or
    - (iii) a member of the staff of the college; and
  - (b) delegate to any member of the council or any member of the staff of the college power to execute documents on behalf of the council.
- (4) The proceedings of a college council or of any committee appointed by them under subsection (3)(a) above shall not be invalidated by reason of—
- (a) any vacancy among the members; or
  - (b) any defect in the appointment of any member.

**Modifications etc. (not altering text)**

**C7** S. 55(2)(a)-(c) restricted (16. 5. 1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 34(1)(8)(a) (with s. 30(2)); S.I. 1992/817, art. 3(2), Sch.1.

**56 Functions of college councils. S**

- (1) Subject to the provisions of this section, every education authority shall, by 1st October 1990 or such later date as the Secretary of State may in relation to any education authority or college council direct, make an instrument, to be known as a “delegation scheme”, in respect of each college council in their area, delegating, subject to such conditions as the authority think appropriate, such of the authority’s functions—
- (a) in relation to the management, supervision and financial control of the college; and
  - (b) under sections 61 to 63 of this Act,
- as they consider to be appropriate.
- (2) The functions which may be delegated by a scheme under subsection (1) above do not include any power—
- (a) to enter into contracts of employment with, or to dismiss, staff of the college; or
  - (b) to make loans to any companies formed by the authority by virtue of section 61(1)(a) of this Act.

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*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

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- (3) Paragraph (a) of subsection (2) above is without prejudice to an authority's power under this section to delegate matters relating to—
  - (a) the selection of persons suitable to be employed at the college; and
  - (b) the career development, including redeployment, of members of the staff of the college;
- (4) Subject to subsection (2) above, the Secretary of State may make regulations—
  - (a) as to the functions which are to be included in or excluded from a scheme made under subsection (1) above; and
  - (b) as to the conditions subject to which functions are to be delegated.
- (5) Where a scheme made under subsection (1) above becomes inconsistent with regulations made by the Secretary of State under subsection (4) above the authority concerned shall, so soon as is practicable, make the amendments necessary to make the scheme consistent with any such regulations.
- (6) The education authority may at any time amend a scheme made under subsection (1) above in so far as it relates to functions or conditions other than those mentioned in any regulations made under subsection (4) above, but the authority shall give the college council concerned—
  - (a) not less than 3 months' notice of any such amendment; and
  - (b) an opportunity to make representations to, and to be heard by, the authority concerning the proposed amendment.
- (7) Subject to subsections (1) to (6) above, a college council may do anything which is calculated to facilitate the exercise of the functions delegated to them by their education authority and, without prejudice to the foregoing generality, may—
  - (a) enter into contracts and agreements;
  - (b) raise funds by any means (other than borrowing);
  - (c) receive gifts; and
  - (d) invest money.

## 57 **Financing of college councils and financial information.** **S**

- (1) Every education authority shall, in respect of each financial year, before the beginning of that financial year, and in accordance with regulations made under subsection (2) below, determine for each college council in their area, after consultation with the council, what sum of money within the authority's budget is required by the council for—
  - (a) carrying out any functions delegated to the council by a delegation scheme made under section 56 of this Act; and
  - (b) meeting the administrative expenses and other outgoings of the council.
- (2) Regulations made by the Secretary of State under this subsection may include provision—
  - (a) as to the rules in accordance with which the determination mentioned in subsection (1) above is to be carried out;
  - (b) as to the extent to which a college council may retain any income or gift received by them;

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*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

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- (c) as to the extent to which any income of the college council may be taken into account by the education authority in making the determination described in subsection (1) above; and
- (d) in respect of—
  - (i) the manner in which any surplus or deficit in the income and expenditure of a college council in any financial year is to be calculated; and
  - (ii) whether and, if so, to what extent the education authority are to take any such surplus or deficit into account in the determination made by them under subsection (1) above.
- (3) An education authority shall make available to each college council in their area the money determined under this section for that council at such times as that money is required.
- (4) Subject to any regulations made under subsection (2) above, if, during any financial year, it appears to an education authority appropriate to do so, they may—
  - (a) increase; or
  - (b) reduce,
 the sum determined under this section for any college council.
- (5) An education authority shall in each financial year, by such date and in such form as may be prescribed, provide to every college council in their area a statement of—
  - (a) money paid out by the authority in the previous financial year in respect of—
    - (i) the running costs of the college; and
    - (ii) capital expenditure related to that college; and
  - (b) money proposed to be paid out for those purposes by the authority in the financial year in which the statement is made.
- (6) Without prejudice to section 58(5) of this Act, an education authority shall comply with any reasonable request from a college council for information relating to past, or proposed future, expenditure in respect of that college, whether or not the information sought relates to functions which have been delegated to that council.

## **58 College council to be agent of education authority. S**

- (1) A college council exercising any function delegated to them by virtue of section 56 of this Act shall be treated, as regards relations with third parties, as the agent of their education authority, whether or not the exercise complies with this Act or with any conditions or restrictions imposed by virtue of this Act.
- (2) The members of a college council shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of any of the council's functions.
- (3) In the exercise of any of their functions, a college council shall ensure that any duty of their education authority under statute or any rule of law is duly complied with.
- (4) A college council shall comply with any reasonable request from their education authority for information relating to the exercise of any of the council's functions.
- (5) An education authority shall comply with any reasonable request from a college council for information relating to the exercise of any of the council's functions.



*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C8** S. 58 excluded (16. 5. 1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 34(1)(6) (with s. 30(2)); S.I. 1992/817, art. 3(2), Sch.1.

**59 Power to enforce duties of college councils. S**

- (1) An education authority shall not exercise functions which they have delegated to a college council by a delegation scheme made under section 56 of this Act except in so far as—
  - (a) conditions imposed under that section provide; or
  - (b) this section provides.
- (2) Where an education authority are satisfied that a college council in their area have seriously or persistently failed, in relation to any function delegated to them by virtue of the said section 56—
  - (a) to comply with any condition imposed under that section;
  - (b) to comply with this Act or any regulations made under this Act; or
  - (c) to exercise the function so as to ensure that any duty of the authority under statute or any rule of law is complied with,the authority may to the extent that it appears to them necessary to do so suspend the delegation of the function and themselves exercise the function.
- (3) An education authority who intend to suspend the delegation of any function under subsection (2) above shall give the college council not less than four weeks' notice of that intention, unless they are satisfied that gross mismanagement has occurred or that an emergency exists, when they may by notice suspend the delegation of the function with immediate effect.
- (4) An education authority shall, in any notice given under subsection (3) above, give their reasons for the suspension in question.
- (5) A college council shall be entitled to make representations with regard to any suspension under subsection (2) or (3) above, and to be heard—
  - (a) where four weeks' notice is given, before expiry of the notice;
  - (b) otherwise within four weeks of the notice.
- (6) An education authority may at any time reverse a suspension under this section entirely or to such extent as they think appropriate.
- (7) Any suspension under this section shall be reviewed by the education authority in question, after giving the college council concerned an opportunity to be heard—
  - (a) within twelve months after the date of the suspension; and
  - (b) thereafter at intervals of not more than twelve months.
- (8) On any review under subsection (7) above the education authority shall, after considering the whole circumstances of the matter, including any representations made by the college council, determine whether the suspension continues to be justified and, in the light of that determination, may—
  - (a) continue the suspension; or
  - (b) reverse the suspension either entirely or to such extent as appears to them to be appropriate.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

- (9) An education authority who suspend a function under this section shall have power to adjust accordingly the money made available or to be made available to the college council in question under section 57 of this Act.

## 60 Allowances for council members. **S**

An education authority may pay to any member of a college council in their area—

- (a) in respect of his attendance at a meeting of the council; or
- (b) in respect of his doing anything approved by the authority, or anything of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the council,

such allowances, in the nature of those payable under section 46 of the 1973 Act (which relates to the payment of travelling and subsistence allowances to members of local authorities) as they think fit, being payments of such reasonable amounts as they may determine in any particular case or class of case and not exceeding the amounts specified under the said section 46 for the corresponding allowances under that section.

### *Supply of goods and services*

## 61 Powers of education authorities to enter agreements and to make loans. **S**

- (1) An education authority shall have power to enter into agreements for the supply of goods and services through a college of further education provided by them (such supply being construed in accordance with section 62 of this Act), and, in the exercise of that power, may—
  - (a) form companies under section 1 of the <sup>M7</sup>Companies Act 1985;
  - (b) for the purposes of such agreements, and subject to section 63 of this Act, make loans to those companies.
- (2) Subject to the following provisions of this section, an education authority shall not under an agreement made under subsection (1) above supply goods or services for less than their open market value.
- (3) For the purposes of this section the open market value of goods or services shall be taken to be the amount of the consideration in money that would be payable for the supply of those goods or services by a person standing in no such relationship with any person as would affect that consideration.
- (4) Loans may be made under this section for the purposes of an agreement either before the agreement is made or during its currency.
- (5) Nothing in this section shall be construed as—
  - (a) derogating from any powers exercisable by an education authority apart from this section; or
  - (b) authorising the carrying on through a college of further education of any commercial activities which are detrimental to the provision of further education at that college.

### Marginal Citations

M7 1985 c. 6.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

## **62 Supply of goods and services through colleges of further education. S**

- (1) For the purposes of section 61 of this Act, goods are supplied through a college of further education if they are—
  - (a) produced in the course of its educational activities;
  - (b) produced by the use of its facilities and the expertise of persons employed at it in the fields in which they are so employed; or
  - (c) derived from ideas of a person employed at it, or of one of its students, arising out of its educational activities.
- (2) For the purposes of the said section 61 services are supplied through such an establishment—
  - (a) if they are provided by making available—
    - (i) its facilities; or
    - (ii) the expertise of persons employed at it in the fields in which they are so employed; or
  - (b) if they—
    - (i) are supplied in the course of its educational activities; or
    - (ii) are derived from ideas such as are mentioned in subsection (1)(c) above.
- (3) For the purposes of this section educational activities are—
  - (a) the provision of teaching and industrial and vocational training;
  - (b) the carrying out of research; and
  - (c) any activity incidental or ancillary to any activity mentioned in paragraph (a) or (b) above.

## **63 Financial and accounting provisions. S**

- (1) Loans made under section 61 of this Act shall carry interest at a rate not less than a rate determined by the Secretary of State with the consent of the Treasury, and—
  - (a) different rates may be so determined in respect of different categories of loans;
  - (b) a rate may be determined by reference to a rate—
    - (i) specified by or under any other enactment; or
    - (ii) ascertainable by such other means as the Secretary of State may with the consent of the Treasury specify.
- (2) Before determining a rate under subsection (1) above, the Secretary of State shall consult any education authorities and bodies representing education authorities with whom consultation appears to him to be desirable.
- (3) The accounts kept by a local authority under section 96 of the 1973 Act shall include a separate account of any expenditure incurred or income received by that authority in exercising their powers under section 61 of this Act.
- (4) The accounts kept by an authority under the said section 96 shall show the full cost to the authority of goods or services which are supplied by virtue of the said section 61 and which are relevant to the account kept by virtue of subsection (3) above; and for the purposes of this section “full cost” shall be calculated in such manner as the Secretary of State may direct.

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*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

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- (5) An education authority shall use their best endeavours to secure that at the end of every financial year any account kept by them under the said section 96 in relation to the goods and services supplied by virtue of the said section 61 and relating to that year is in surplus.

*Discontinuance of college of further education*

**64 Discontinuance of college of further education. S**

- (1) A college council shall cease to exist when the college for which they are established is discontinued or is amalgamated with another college or ceases to be managed by an education authority.
- (2) All property, rights and obligations of a college council shall pass—
- (a) on discontinuance of the college, to the education authority;
  - (b) on amalgamation, to the college council of the amalgamated college; and
  - (c) where the college ceases to be managed by an education authority, to the new managers of the college.

*Formation of companies to manage colleges of further education*

**65 Power of college councils to form companies to manage colleges of further education. S**

- (1) A college council may, with the consent of—
- (a) the education authority; and
  - (b) the Secretary of State,
- form companies under section 1 of the <sup>M8</sup>Companies Act 1985, for the purpose of enabling the education authority to transfer to any such company, in accordance with subsection (2) below, responsibility for managing a college, or colleges, of further education.
- (2) Where a company has been incorporated by virtue of subsection (1) above, the education authority and the company may, with the consent of the Secretary of State, agree a scheme providing for—
- (a) the transfer from the authority to the company of responsibility for managing such of the authority's colleges of further education as may be specified therein;
  - (b) the provision by the company of further education at any such college or colleges;
  - (c) the transfer from the authority to the company of such property, rights and liabilities as may be agreed;
  - (d) subject to section 66 of this Act, the transfer to the employment of the company of such of the staff employed at the college or colleges as may be agreed;
  - (e) subject to such conditions as may be agreed, the making of payments by the authority to the company in respect of the provision by the latter of further education; and
  - (f) such other matters as may be agreed.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

- (3) Subject to subsection (4) below, the education authority and the company may at any time, with the consent of the Secretary of State, amend or revoke a scheme agreed under subsection (2) above.
- (4) Where it appears to the Secretary of State that an amendment to a scheme agreed under subsection (2) above is desirable, he may, after consulting the authority and the company, direct that the scheme be amended accordingly; and the scheme shall thereafter have effect as so amended.
- (5) Nothing in this section shall be construed as authorising the carrying on through a college of further education managed by a company formed by virtue of subsection (1) above of any commercial activities which are detrimental to the provision of further education at that college.

#### Marginal Citations

M8 1985 c. 6.

## 66 Transfer of staff to companies formed by virtue of section 65. **S**

- (1) This section applies to any person who immediately before the transfer date in relation to a college of further education is employed by the education authority responsible for managing that college, and who in terms of a scheme agreed under subsection (2) of section 65 of this Act is to be transferred to the employment of a company formed by virtue of subsection (1) of that section.
- (2) The contract of employment between a person to whom this section applies and the education authority by whom he is employed shall have effect from the transfer date as if originally made between him and the company.
- (3) Without prejudice to subsection (2) above—
  - (a) all the education authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the company on the transfer date; and
  - (b) anything done before that date by or in relation to the education authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the company.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) For the purposes of this section—

“the transfer date”, in relation to a college of further education, is the date on which, in accordance with a scheme agreed under section 65 of this Act, responsibility for the management of that college is transferred from an education authority to a company formed by virtue of that section; and

“the company” means the company to which responsibility for managing the college of further education is transferred by such a scheme.

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

*Pay and conditions of service*

**67 Abolition of committee to consider pay and conditions of teaching staff employed in providing further education. S**

(1) Subject to subsection (2) below, the committee established under section 94 of the 1980 Act (committee to consider pay and conditions of teaching staff employed in providing further education) is abolished, and accordingly sections 94 to 97 of the 1980 Act are repealed.

(2) Where—

- (a) an order made under section 92 of the 1980 Act (as originally enacted and not as substituted by the <sup>M9</sup>Education (Scotland) Act 1981) relating to the remuneration of teaching staff employed in providing further education; or
- (b) a settlement formulated under section 94(1)(b) of the 1980 Act; or
- (c) a determination or, as the case may be, an award made under section 97B of the 1980 Act,

is still in force on the date on which this enactment comes into force the order, settlement, determination or award shall, subject to subsection (3) below, remain in force after that date.

(3) Where, after this enactment comes into force—

- (a) any group of teaching staff employed in or in connection with the provision of further education in Scotland and those employing them agree, whether expressly or impliedly, to an alteration of the remuneration payable to, or the terms and conditions of employment of, that group of teaching staff; or
- (b) any such alteration as is mentioned in paragraph (a) above is arrived at in an agreed manner,

that alteration shall, to the extent that it is concerned with the same matters, supersede any such order, settlement, determination or award as is referred to in paragraph (a), (b) or (c) of subsection (2) above.

**Marginal Citations**

**M9** 1981 c. 58.

**PART III S**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

**68 Technology academies. S**

(1) The Secretary of State may enter into an agreement with any person under which—

- (a) that person undertakes to establish and maintain, and to carry on, or provide for the carrying on of, an independent school, to be known as a “technology academy”, having such characteristics as are specified in the agreement and in subsection (2) below; and

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- (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.
- (2) The characteristics mentioned above are that the school—
  - (a) provides secondary education; and
  - (b) has a broad curriculum with an emphasis on science and technology.
- (3) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—
  - (a) conditions and requirements imposed for the purpose of securing that no fees are payable in respect of school education provided at the school; and
  - (b) such other conditions and requirements with respect to the school as are specified in the agreement.
- (4) Payments under an agreement under this section may be in respect of capital or current expenditure and, in so far as they relate to the latter, the agreement shall provide for their continuance, subject to the fulfilment of the conditions and requirements mentioned in subsection (3) above, for a period of not less than seven years or for an indefinite period terminable by the Secretary of State by not less than seven years written notice.
- (5) Where such payments relate to capital expenditure, the agreement shall provide for the repayment to the Secretary of State, in the event at any time of the school being discontinued or ceasing to have the characteristics specified in the agreement and in subsection (2) above, of sums determined by reference to—
  - (a) the value at that time of the school premises and other assets held for the purposes of the school; and
  - (b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement.
- (6) Without prejudice to subsection (4) above, an agreement under this section may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure—
  - (a) incurred by that person in carrying out the undertaking mentioned in subsection (1) above; or
  - (b) incurred by that person (otherwise than by virtue of subsection (5) above) in consequence of the termination of the agreement.
- (7) Where the Secretary of State is satisfied that a person intends to enter into an agreement with him under this section as respects a technology academy he may, in advance of such agreement, and subject to such conditions and requirements as he considers appropriate, make payments to that or any other person in respect of expenditure incurred, or to be incurred, in establishing the academy.

## 69 Testing in primary schools. **S**

- (1) At the end of section 2 of the 1980 Act (power of Secretary of State to prescribe standards etc. for education authorities) there shall be added the words “and, without prejudice to the generality of the foregoing, such regulations may include provision as to the testing of pupils in primary schools.”.
- (2) The Secretary of State may by regulations provide for the testing of pupils undergoing primary education in self-governing schools.

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- (3) Section 129 of the 1980 Act (establishment of board to conduct examinations etc.) shall be amended as follows—
- (a) after paragraph (b) of subsection (1) there shall be inserted the following paragraph—
    - “(bb) subject to any regulations made by the Secretary of State under section 2 of this Act or section 69(2) of the Self-Governing Schools etc. (Scotland) Act 1989 (comparable regulations in respect of self-governing schools), preparing, distributing and monitoring tests for the assessment of pupils in primary schools;”;
  - (b) in paragraph (c) of that subsection, after the word “examinations” there shall be inserted the words “or tests”; and
  - (c) after subsection (4C) there shall be added the following subsection—
    - “(4D) The Secretary of State may, from time to time and subject to such conditions as he considers appropriate, make grants to the Board which shall be applied by them towards meeting their expenses in carrying out their duties in relation to the tests mentioned in subsection (1)(bb) and (c) above.”.

## 70 Appraisal of teachers. **S**

- (1) The Secretary of State may by regulations require—
  - (a) education authorities;
  - (b) boards of management of self-governing schools;
  - (c) managers of grant-aided schools; and
  - (d) companies formed by virtue of section 65(1) of this Act;
 (in this section referred to as the “employers”) to secure that the performance of members of their teaching staff in carrying out their duties is regularly appraised in accordance with such requirements as may be prescribed.
- (2) Regulations under this section may require the employers to make schemes for the appraisal of the performance of such members of their teaching staff as may be prescribed; and different schemes may be required to be made in respect of different classes of teachers or of teachers in different establishments.
- (3) Subject to regulations made under this section, an employer may at any time vary or replace a scheme made in accordance with those regulations and, if such regulations so require, he shall—
  - (a) before making, varying or replacing any such scheme, consult any body representing teaching staff who are to be affected by the scheme as proposed to be made, varied or replaced;
  - (b) before proceeding with appraisal under any such scheme as so made, varied or replaced, submit it to the Secretary of State.
- (4) When a scheme is submitted to him under subsection (3) above, the Secretary of State may—
  - (a) approve it; or
  - (b) after consulting the employer concerned, amend it; or
  - (c) reject it, and require the employer to prepare and submit a fresh scheme.



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- (5) Before making regulations under this section the Secretary of State shall consult—
  - (a) such bodies representing education authorities or teaching staff as appear to him to be concerned; and
  - (b) any other persons with whom consultation appears to him to be desirable.
- (6) With effect from such date as may be prescribed—
  - (a) there shall be deemed to be incorporated into the contract of employment of each member of the employers' teaching staff a provision requiring such a member to participate in any arrangements for the appraisal of staff made in accordance with regulations made under this section; and
  - (b) that contract shall have effect only in so far as consistent with that provision.

## 71 **Placing of recorded and other children and young persons in schools outwith Scotland etc.** **S**

- (1) In section 28A of the 1980 Act, as substituted by Schedule A2 to that Act (placing requests in respect of recorded children and young persons)—
  - (a) in subsection (1)—
    - (i) the words “a special school the managers of which are willing to admit the child” shall be paragraph (a) of the subsection; and
    - (ii) after that paragraph there shall be inserted the following paragraph—
      - “(b) a school in England and Wales or in Northern Ireland, the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) with pronounced, specific or complex special educational needs;”;
  - (b) in subsection (2)—
    - (i) for the words “special schools (other than public schools)” there shall be substituted the words “ schools mentioned in paragraph (a) or (b) of subsection (1) above ”; and
    - (ii) for the words “subsection (1) above” there shall be substituted the words “ that subsection ”; and
  - (c) in subsection (3)—
    - (i) in paragraph (d), for the words “special school” there shall be substituted the words “ school mentioned in paragraph (a) or (b) of subsection (1) above ”; and
    - (ii) in paragraph (f), for sub-paragraph (ii) there shall be substituted the following sub-paragraphs—
      - “(ii) the authority are able to make provision for the special educational needs of the child in a school under their management;
      - (iia) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the special educational needs of the child in the specified school and in the school under the authority's management, to place the child in the specified school; and”;

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(iii) for the words “to (f)” there shall be substituted the words “to (e)”.

(2) In Part II of the 1980 Act, the following section shall be inserted after section 65F—

**“65G Attendance of certain children and young persons with special educational needs at establishments outwith United Kingdom.**

- (1) Without prejudice to sections 49 (power of educational authorities to assist persons to take advantage of educational facilities) and 50 (education of pupils in exceptional circumstances) of this Act, an education authority shall have power to make such arrangements as they think fit to enable a child or young person to whom subsection (2) below applies to attend an establishment (whether or not a school) outwith the United Kingdom if that establishment makes provision wholly or mainly for persons with pronounced, specific or complex special educational needs.
- (2) This subsection applies to a child or young person if he has such needs as are mentioned in subsection (1) above whether or not a record of those needs is kept in respect of him under section 60 of this Act.
- (3) Without prejudice to the generality of subsection (1) above, the arrangements mentioned in that subsection may include defraying, whether wholly or partly—
  - (a) the fees payable for the child’s or young person’s attendance and his travelling, maintenance and other expenses in respect of that attendance; and
  - (b) where in the opinion of the authority it would be to the advantage of the child or young person were one (or both) of his parents, or some other person, to be present with him at the establishment during the period of the attendance, such expenses of, as the case may be, the parent, parents or other person.”.

**72 Further amendment of 1980 Act in respect of recorded children. S**

- (1) In section 60(2) of the 1980 Act (powers and duties of education authority as regards children and young persons with special educational needs)—
  - (a) in paragraph (a)(i), after the word “age” there shall be added the words “and are not children in respect of whom the authority is under a duty by virtue of sub-paragraph (ii) of paragraph (b) below”;
  - (b) in paragraph (b), the words “are of school age” shall be sub-paragraph (i) and after that sub-paragraph there shall be added the word “; or” and the following sub-paragraph—
    - “(ii) have not attained school age but, being at least two years of age, have come to the attention of the authority as having, or appearing to have, special educational needs.”.
- (2) In section 61(1) of that Act (examination and assessment of children and young persons), in paragraph (b), for the words “who is of school age” there shall be substituted the words “in respect of whom the authority is under a duty under section 60(2) of this Act”.

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- (3) In section 62(3) of that Act (duty to ensure provision made for recorded special educational needs), at the end there shall be added the words “ ; and they shall in any event, as regards each such child belonging to their area as is mentioned in section 60(2)(b)(ii) of this Act, make provision for any special educational needs recorded in respect of the child which are not being met by other suitable arrangements ”.

### 73 **Educational services: extension of power of Secretary of State to make grants.** **S**

In section 73(d) of the 1980 Act (power of Secretary of State to make grants to persons providing education or educational services other than education authorities, universities and managers of educational establishments)—

- (a) the word “for” shall be inserted before the words “ providing education or educational services ” and shall with those words constitute sub-paragraph (i); and
- (b) after that sub-paragraph there shall be inserted the word “ or ” and the following sub-paragraph—
- “(ii) in respect of expenditure incurred or to be incurred by them for the purposes of, or in connection with the provision (or proposed provision) of, education or educational services.”.

### 74 **Appointment of teachers.** **S**

After section 87 of the 1980 Act there shall be inserted the following sections—

#### **“87A Appointment of principal teachers.**

Where an education authority intend to fill a post, other than on an acting basis, of a principal teacher in a school, they shall advertise the post in such publications circulating throughout Scotland as they consider appropriate.

#### **87B Selection of teachers.**

Without prejudice to section 7 of the Local Government and Housing Act 1989 (which provides for the appointment of staff of local authorities to be made on merit) and to any requirement in any other enactment as to the considerations to which they may or may not have regard in making appointments, an education authority who are considering an appointment of a teacher shall not exclude any person from consideration for such an appointment on the ground that—

- (a) he is not employed by that education authority; or
- (b) he is or is not employed by a particular employer or class of employer; or
- (c) he is not currently employed as a teacher.”.

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## 75 Dismissal of teachers. **S**

Section 88 of the 1980 Act (which makes provision as to the procedure to be carried out by an education authority in dismissing certain registered teachers) shall cease to have effect.

## 76 Remuneration of certain persons employed in providing school education. **S**

(1) This section applies to persons employed by education authorities in Scotland in, or in connection with, the provision of school education in relation to whose remuneration and terms and conditions of employment sections 91 to 97B of the 1980 Act have ceased, by virtue of an order made under section 97C(a) of that Act, to apply.

(2) Where, in relation to the remuneration or terms and conditions of employment of any persons to whom this section applies—

- (a) an order made under section 92 of the 1980 Act (as originally enacted and not as substituted by the <sup>M10</sup>Education (Scotland) Act 1981); or
- (b) a settlement formulated under section 91(1) of the 1980 Act; or
- (c) a determination or, as the case may be, an award made under section 97B of the 1980 Act,

is still in force on the date on which such an order as is mentioned in subsection (1) above comes into force, the order, settlement, determination or award shall, subject to subsection (3) below, remain in force after that date.

(3) Where, after this enactment comes into force—

- (a) any group of persons to whom this section applies and those employing them agree, whether expressly or impliedly, to an alteration of the remuneration payable to, or the terms and conditions of employment of, that group of persons; or
- (b) any such alteration as is mentioned in paragraph (a) above is arrived at in an agreed manner,

that alteration shall, to the extent that it is concerned with the same matters, supersede any such order, settlement, determination or award as is referred to in paragraph (a), (b) or (c) of subsection (2) above.

### Marginal Citations

M10 1981 c. 58.

## 77 Extensions of functions of Commission for Local Authority Accounts in Scotland. **S**

(1) If a governing body so requests, the Commission for Local Authority Accounts in Scotland (“the Commission”) may—

- (a) promote or undertake studies designed to improve the economy, the efficiency, or the effectiveness, of the management or operations of that body;
- (b) in relation to that body’s accounts in respect of any financial year—
  - (i) give advice as to the appointment of suitable persons; or
  - (ii) arrange for members of the Commission’s staff acceptable to that body,

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to audit those accounts.

- (2) For the purposes of this section “governing body” means—
  - (a) the board of management of a self-governing school; or
  - (b) a college council established under section 54 of this Act; or
  - (c) the board of directors of a company formed by an education authority by virtue of section 65 of this Act.
- (3) Where the Commission provide services to a governing body under subsection (1) above they shall charge that governing body such fees as will enable the Commission to recover the whole cost of providing those services.
- (4) The provisions of section 97(3) of the 1973 Act (power of the Secretary of State to give directions to the Commission in relation to the discharge of their functions) shall apply in relation to the functions conferred on the Commission by subsection (1) of this section as they apply in relation to the functions conferred on the Commission by subsection (2) of that section.

### *General*

#### **78 Orders and regulations. S**

- (1) Any power of the Secretary of State to make orders or regulations under this Act (other than under any of the excepted provisions) shall be made by statutory instrument.
- (2) For the purposes of subsection (1) above, the excepted provisions are sections 2(2) and 50(1) and paragraph 1 of Schedule 5.
- (3) A statutory instrument containing any order or regulations made by the Secretary of State under this Act, other than an order under section 81, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Orders or regulations under this Act may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provision as the Secretary of State thinks fit.

#### **79 Expenses. S**

There shall be defrayed out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### **80 Interpretation. S**

- (1) In this Act, unless the context otherwise requires—
  - “the 1973 Act” means the <sup>M11</sup>Local Government (Scotland) Act 1973;
  - “the 1980 Act” means the <sup>M12</sup>Education (Scotland) Act 1980;
  - “the 1988 Act” means the <sup>M13</sup>School Boards (Scotland) Act 1988;
  - “appointed member” shall be construed in accordance with section 3(1)(c) of this Act;

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“articles of constitution” and “articles of management” have the meanings given by section 2(1) of this Act;

“board of management” means a board incorporated under section 19(2) of this Act (any such board constituted in accordance with Schedule 4 to this Act being referred to as an “interim board of management”);

“capital grants” has the meaning given by section 26(3)(a) of this Act;

“college of further education” means an educational establishment, under the management of an education authority, for the provision of any form of further education;

“denominational school” means—

- (a) in relation to a public school, a school provided under section 17(2), or maintained and managed under section 21(1), of the 1980 Act; and
- (b) in relation to a self-governing school—
  - (i) a school which immediately before the incorporation date was so provided, maintained or managed and which has not, by virtue of a change in characteristics under section 30 of this Act ( “change in characteristics” being construed in accordance with subsection (13) of that section), ceased to be a school managed in the interest of a church or other denominational body; or
  - (ii) a school which, by virtue of such a change, is managed in such interest;

“education authority”, in relation to a school or college of further education, means the education authority within whose area the school or, as the case may be, the college is situated;

“eligible school” has the meaning given by section 13(1) of this Act;

“grant regulations” has the meaning given by section 26(2) of this Act;

“the incorporation date”, in relation to a school, shall be construed in accordance with section 19(2) of this Act;

“interest in land” has the meaning given by section 28(1) (interpretation) of the <sup>M14</sup>Land Registration (Scotland) Act 1979;

“land” includes interests in land, land obligations and any other liabilities and rights over land;

“land obligations” has the meaning given by section 2(6) of the <sup>M15</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

“parent”, in relation to a child or young person, includes his guardian and any person who is liable to maintain, or has the actual custody of, the child or young person except that in sections 3, 13 and 30 and Schedules 3 and 7 (and in the expression “parent member”, which is defined by subsection (1)(a) of the said section 3 but which also includes persons becoming such members by virtue of section 19(2) of this Act) it does not include any person other than a natural person;

“premises” in relation to any school includes the site of the school, any building in which pupils attending the school are boarded and any playing fields used in connection with the school whether contiguous to the school or detached therefrom;

“prescribed” means prescribed by regulations made by the Secretary of State;

“pupil” has the same meaning as in the 1988 Act;

“recovery regulations” has the meaning given by section 28(3) of this Act;

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“recurrent grant” has the meaning given by section 26(1) of this Act;  
“scheme of government” has the meaning given by section 2(1) of this Act;  
“self-governing school” has the meaning given by section 1(3) of this Act;  
“special purpose grants” has the meaning given by section 26(3)(b) of this Act;  
“staff member” shall be construed in accordance with section 3(1)(b) of this Act but shall include persons becoming such members by virtue of section 19(2) of this Act; and  
“technology academy” has the meaning given by section 68(1) of this Act.

- (2) Subject to subsection (1) above, expressions used in this Act and in either the 1980 Act or the 1988 Act (or in both) shall, unless the context otherwise requires, have the same meaning in this Act as in that Act (or those Acts).

#### Marginal Citations

**M11** 1973 c. 65.

**M12** 1980 c. 44.

**M13** 1988 c. 47.

**M14** 1979 c. 33.

**M15** 1970 c. 35.

## 81 Commencement. **S**

- (1) The following provisions of this Act shall come into force on the passing of this Act—  
Part I;  
Part II except section 67;  
Part III except sections 69(1) and (2), 70, 72 to 76, and 82(2);  
Schedules 1 to 9; and  
Schedule 10 except paragraphs 1, 2, 8(7), (9) to (11) and (13) to (21) and 10.
- (2) Schedule 11 and the provisions of Parts II and III and Schedule 10 which are excepted by subsection (1) above shall come into force on such date as the Secretary of State may by order appoint.
- (3) Under subsection (2) above different dates may be appointed in relation to different provisions and for different purposes of the same provision.

#### Modifications etc. (not altering text)

**C9** Power of appointment conferred by s. 81(2) partly exercised: [S.I. 1990/86, art. 2](#), [1990/1108, art. 2](#); [S.I. 1997/391, art.2](#)

## 82 Minor and consequential amendments and repeals. **S**

- (1) The enactments mentioned in Schedule 10 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential upon the provisions of this Act.

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- (2) The enactments mentioned in Schedule 11 to this Act are repealed to the extent specified in the third column of that Schedule.

**83 Citation and extent. S**

This Act—

- (a) may be cited as the Self-Governing Schools etc. (Scotland) Act 1989; and
- (b) extends to Scotland only.



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## SCHEDULES

### SCHEDULE 1 **S**

Sections 3(2) and 7(9).

#### THE SCHEME OF GOVERNMENT

### PART I **S**

#### ARTICLES OF CONSTITUTION

##### *Denominational schools*

- 1 The articles of constitution shall, in the case of a denominational school, provide for one of the appointed members to be nominated by the church or denominational body in whose interest the school is managed.

##### *Initial provision as regards membership*

- 2 The articles of constitution shall specify the membership of the board; so however that the first such specification in respect of the board shall require that—
- (a) the parent members first elected shall be of greater number than had the school board on the relevant date;
  - (b) the staff members first elected shall be of the same number as had the school board on that date; and
  - (c) the appointed members ( “appointed” not including persons deemed appointed by virtue of paragraph 1(2) of Schedule 4 to this Act) shall be of greater number than had the school board of co-opted members on that date.
- 3 In paragraph 2 above the reference to the relevant date is to the date immediately preceding the incorporation date; and for the purposes of that paragraph numbers shall be determined as if any vacancy in the membership of the school board were filled.

##### *Parental majority*

- 4 The articles of constitution shall, without prejudice to paragraph 1(2) of Schedule 4 to this Act, provide that the number of parent members shall constitute an overall majority of the total number of members of the board of management.

##### *Eligibility*

- 5 The articles of constitution for a school shall provide that—
- (a) a person who is eligible for election to a board of management as a staff member shall not be eligible for election as a parent member of that board;
  - (b) a person who is eligible for election to the board of management shall not be eligible for appointment to the board; and

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- (c) a retiring member of a board of management shall not be disqualified, by reason only of such retirement, from further election, or appointment, to the board.

#### *Resignation and removal*

6 Subject to paragraph 7 below, the articles of constitution for a school shall provide that—

- (a) a member of a board of management may resign office at any time by giving written notice to the board if after the resignation there will remain in office not less than three members of the board;
- (b) a board of management —
- (i) may terminate the membership of any member who they are satisfied is unable to carry out his duties because of his physical or mental illness or incapacity;
  - (ii) may terminate the membership of any member who they are satisfied has failed, without good cause, to attend meetings held by the board during a continuous period of at least six months if within the period there were three consecutive meetings which he did not attend; and
  - (iii) subject to paragraph 7 below, shall terminate the membership of any member who they are satisfied is either a parent member who has ceased to have a child (whether or not over school age) in attendance at the school or a staff member who has ceased to be a member of staff of the school.

7 No provision shall be made under paragraph 6(b)(iii) above in relation to any person the unexpired period of whose term of office is less than two years.

#### *Proceedings*

8 The articles of constitution for a school may make provision as to the meetings and proceedings of the board of management.

9 The provision that may be made by virtue of paragraph 8 above includes in particular provision—

- (a) as to the election of a chairman and vice-chairman;
- (b) as to the establishment, constitution, meetings and proceedings of committees;
- (c) for the delegation of functions of the board of management in such circumstances as may be specified in the articles of constitution to committees established by the board or to any member of the board;
- (d) as to the procedure (including any quorum) when business is transacted by members of a particular category; and
- (e) as to the procedure for the election of members of the board of management and for the determination of any question arising in connection with, or matters relating to, any such elections;

and the provision mentioned in sub-paragraph (b) above may provide for a committee to include persons who are not members of the board of management.

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### *Allowances to members*

- 10 The board of management of a school may be empowered by the articles of constitution to pay to their members and to such other persons as are, by virtue of paragraph 9 above, members of a committee established by virtue of subparagraph (b) of that paragraph, such travelling, subsistence or other allowances as may be determined in accordance with a scheme made by the board and approved by the Secretary of State.
- 11 Any scheme made under paragraph 10 above may be varied or revoked by a subsequent scheme so made.

### *Saving*

- 12 Nothing in the foregoing provisions of this Schedule prejudices the generality of section 2 of this Act.

## **PART II S**

### ARTICLES OF MANAGEMENT

- 1 The articles of management for a school may include provision as to the establishment, by the board of management, of committees or other bodies of persons for the purpose of, or in connection with the performance in relation to the school of, such functions as may be determined by or under those articles.
- 2 Without prejudice to the generality of section 2 of this Act, the articles of management shall contain a description such as is required by section 16(4) of this Act (but shall, on any change being made in accordance with section 30 of this Act as respects the school, be amended accordingly) and shall include provision—
- (a) that the board of management shall so exercise their functions as to ensure that the school continues to conform to the description for the time being so contained;
  - (b) subject to paragraphs 2 to 8 of Schedule 2 to this Act, with respect to arrangements for appeals, in such circumstances as may be provided by the articles of management, to an appeal committee constituted in accordance with those articles against any decision or action taken by the board of management, or by any persons authorised under those articles to take any decision or action of the kind in question, in relation to—
    - (i) the admission of pupils to the school; or
    - (ii) the exclusion of any pupil from the school.
  - (c) subject to the said paragraphs 2 to 8, requiring the board of management to publish, for each school year, particulars of—
    - (i) the arrangements for the admission of pupils to the school; and
    - (ii) the procedures applicable under the articles of management and any further arrangements made by them in respect of appeals by parents against any such decision or action as is mentioned in subparagraph (b) above in relation to the admission of pupils to the school;
  - (d) with respect to disciplinary rules and procedures applicable to members of the staff of the school and procedures for affording to them opportunities for seeking redress of any grievances relating to their employment; and

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- (e) with respect to arrangements—
  - (i) for affording to any member of the staff an opportunity of making representations with respect to any proposal to dismiss him by the board of management or any persons authorised under the articles of management to dismiss him, including (if he so wishes) oral representations to such person or persons as may be appointed for the purpose;
  - (ii) for requiring the board of management or any such persons to have regard to any representations made by him before taking any decision to dismiss him; and
  - (iii) for affording to any member of staff whom it has been decided to dismiss an opportunity of appealing against that decision before any action is taken to implement it.

## SCHEDULE 2 S

Section 10.

### RIGHTS OF PARENTS IN RELATION TO INDIVIDUAL PUPILS

#### *General principle*

- 1 The board of management of a self-governing school shall, in the exercise of their powers and duties under this Act, have regard to the general principle that, so far as is compatible with—
- (a) the scheme of government of the school;
  - (b) the provision of suitable instruction and training; and
  - (c) the avoidance of unreasonable public expenditure,
- pupils at the school are to be educated in accordance with the wishes of their parents.

#### *Specific Duties*

- 2 (1) Where the parent of a child makes a written application to the board of management of a self-governing school for the child's admission to that school, the board shall, subject to sub-paragraph (2) below, admit the child accordingly.
- (2) The duty imposed by sub-paragraph (1) above does not apply—
- (a) if admitting the child to the school would—
    - (i) make it necessary for the board 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; or
    - (iv) be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there;
  - (b) if the education normally provided at the school is not suited to the age, ability or aptitude of the child;
  - (c) if the board have already required the child to discontinue his attendance at the school;

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- (d) if, where the 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 school is a single sex school (within the meaning given to that expression by section 26 of the <sup>M16</sup>Sex Discrimination Act 1975) and the child is not of the sex admitted, or taken to be admitted, to the school;
- but the board may admit a child to the school notwithstanding heads (a) to (e) above.
- (3) The board shall inform the parent in writing of their decision on his application and, where they decide to refuse admission, shall give him written reasons for their decision and inform him of his right to refer it, under paragraph 3 of this Schedule, to an appeal committee.

#### Marginal Citations

M16 1975 c. 65.

#### *Appeals*

- 3 (1) Subject to sub-paragraph (2) below, a parent who has made an application under paragraph 2(1) above may refer a decision of a board refusing the application to the appeal committee constituted for the school under the articles of management.
- (2) Where a reference under this paragraph has been made in respect of a child, no further such reference in respect of the child shall be competent during the period of twelve months beginning with the day on which the immediately preceding such reference was lodged.
- (3) A reference under this paragraph shall be lodged with the appeal committee within 28 days after the receipt by the parent of the decision of the board (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following); but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.
- 4 An appeal committee shall be constituted, in accordance with the articles of management, for each self-governing school and shall consist both of persons who are, and of persons who are not, members of the board of management.
- 5 (1) An appeal committee may, on a reference under paragraph 3 of this Schedule, confirm the decision of a board of management if satisfied—
- (a) that one or more of the grounds of refusal specified in paragraph 2(2) of this Schedule exists or exist; and
  - (b) that, in all the circumstances, it is appropriate to do so,
- but otherwise shall refuse to confirm the board's decision and shall, where they so refuse, require the board to admit the child.
- (2) An appeal committee shall notify their decision under this paragraph, and the reasons for the decision, in writing to the parent who made the reference and to the board; and, where they confirm the board's decision, they shall inform the parent of his right of appeal to the sheriff under paragraph 6 of this Schedule.

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- (3) Where a decision of an appeal committee under this paragraph is inconsistent with any decision of the board refusing an application for admission in respect of another child at the same time, the other child being at the same yearly stage of school education, the board shall review their decision as regards the other child and shall inform the parent of that child, in writing, of their decision upon that review and the reasons for such decision.
- (4) The decision of a board upon a review under sub-paragraph (3) above not to reverse their decision to refuse the application in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision to refuse the application; and the provisions of this Schedule relating to references of decisions upon such applications, and appeals from such decisions, shall apply accordingly.
- 6 (1) A parent who has made a reference under paragraph 3 of this Schedule may appeal to the sheriff having jurisdiction where the school is situated against the decision of an appeal committee on that reference.
- (2) The board of management may, but the appeal committee shall not, be a party to an appeal under this paragraph.
- (3) An appeal under this paragraph—
- (a) shall be made by way of summary application;
  - (b) shall be lodged with the sheriff clerk within 28 days after the date of receipt of the decision of the appeal committee (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted, except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following); and
  - (c) shall be heard in chambers.
- (4) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (3) above.
- (5) The sheriff may on an appeal under this paragraph confirm the board's decision if he is satisfied—
- (a) that one or more of the grounds of refusal specified in paragraph 2(2) of this Schedule exists or exist; and
  - (b) that, in all the circumstances, it is appropriate to do so,
- but shall otherwise refuse to confirm their decision and shall, where he so refuses, require the board to admit the child.
- (6) Sub-paragraphs (3) and (4) of paragraph 5 of this Schedule shall apply in relation to a judgment on an appeal under this paragraph as they apply in relation to a decision under that paragraph.
- (7) The sheriff may make such order as to the expenses of an appeal under this paragraph as he thinks proper.
- (8) The judgment of the sheriff on an appeal under this paragraph shall be final.
- 7 (1) Where the board of management of a self-governing school decide to exclude a pupil from the school (whether or not until stipulated conditions are complied with), the

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parent of the pupil may refer the decision to the appeal committee constituted by virtue of paragraph 4 of this Schedule.

- (2) An appeal committee may, on a reference under this paragraph, confirm or annul the decision of the board and, in confirming a decision to exclude a pupil until conditions are complied with, the committee may modify the conditions.
- (3) The decision of an appeal committee on a reference under this paragraph, and the reasons for that decision, shall be notified by the committee in writing to the parent and to the board.
- (4) A decision of an appeal committee, on a reference under this paragraph, annulling a decision of a board or modifying the conditions subject to which the board have excluded a pupil from a school shall be complied with by the board.
- (5) The decision of an appeal committee confirming a board's decision to exclude a pupil or modifying conditions under sub-paragraph (2) above may be appealed against by the parent of the pupil to the sheriff having jurisdiction where the school from which the pupil has been excluded is situated; and sub-paragraphs (2), (3), (4), (7) and (8) of paragraph 6 of this Schedule shall apply to an appeal under this sub-paragraph as they apply to an appeal under that paragraph.
- (6) The sheriff may, on an appeal under sub-paragraph (5) above, confirm or annul the decision of the board excluding the pupil and, in confirming a decision excluding the pupil until certain stipulated conditions are complied with, he may modify the conditions.

#### *Application to young persons*

- 8 Paragraphs 2 to 7 of this Schedule shall apply in relation to a young person as if references in those paragraphs to the parent of a child were references to the young person.

### SCHEDULE 3 **S**

Section 14(4).

#### ARRANGEMENTS IN RESPECT OF BALLOT OF PARENTS REGARDING ACQUISITION OF SELF-GOVERNING STATUS

- 1 The school board shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed (in this Schedule referred to as “the prescribed body”).
- 2 The arrangements, and the exercise by the school board of any functions in relation to the ballot, shall accord with such guidance as the Secretary of State may from time to time publish for the purposes of this Schedule.
- 3 The ballot shall be a secret postal ballot of all parents of pupils for the time being in attendance at the school and any question as to whether a person is such a parent shall be determined by the school board; but on being requested to do so by the school

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board the education authority shall, for the purposes of the ballot, provide the board with a copy of the current list maintained by the authority, in respect of the school, under paragraph 6 of Schedule 1 to the 1988 Act (list of names of parents of pupils in attendance).

- 4 It shall be the duty of the school board to secure that the prescribed body take such steps as are reasonably practicable to ensure that each person who is eligible to vote in the ballot is—
- (a) without prejudice to sub-paragraph (b) below, given such information about the consequence for the school of acquisition of self-governing status as may reasonably be expected to enable him to form a proper judgment as to whether such status should be sought for the school;
  - (b) given such information, including (without prejudice to the generality of this sub-paragraph) information—
    - (i) about the ballot and about the procedure for the acquisition of self-governing status; and
    - (ii) in the case of a ballot held by virtue of section 15 of this Act, an explanation (which in the case of a ballot required by a notice under subsection (1) of that section shall repeat the reasons given in the notice by the Secretary of State for declaring the earlier ballot void) as to why a fresh ballot is to be held,
 as may be prescribed;
  - (c) informed that he is entitled to vote in the ballot; and
  - (d) given an opportunity to do so by being provided timeously with a ballot paper which sets out the question as to whether such status should be sought for the school and invites him to vote “yes” or “no” to that question.
- 5 Before the ballot the school board shall make available, for inspection (at all reasonable times and free of charge), to every person employed to work at the school a document containing the information given under paragraph 4(a) and (b) above.
- 6 Subject to section 14 of this Act, and to the foregoing provisions of this Schedule, the arrangements shall be such as the school board think fit.

## SCHEDULE 4 **S**

Section 19(3).

### INTERIM BOARD OF MANAGEMENT

- 1 (1) An interim board of management of a self-governing school shall be constituted, under section 19(2) of this Act, in accordance with the following provisions of this paragraph.
- (2) The members of the school board who are—
- (a) parent members shall become parent members of the interim board of management;



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- (b) staff members shall become staff members of the interim board of management;
  - (c) co-opted members shall become members of the interim board of management, being deemed appointed members thereof.
- 2 A person who is a member of a board of management by virtue of paragraph 1 above shall hold office until the interim board of management is succeeded by the first board of management to which members are elected, regardless of whether any period which, but for the operation of section 19(4) of this Act, would have remained of his term of office as a member of the school board, expires before the date of the relevant election.
- 3 An interim board of management shall cease to exist on the fulfilment of their duty under section 3(3) of this Act and shall thereupon be succeeded as board of management by the parent members and staff members to whose election that duty related, together with the person who is for the time being the head teacher of the school.

## SCHEDULE 5 **S**

Section 20.

### TRANSITION OF ELIGIBLE SCHOOLS TO SELF-GOVERNING STATUS

- 1 Where under section 19(1)(b) of this Act the Secretary of State approves proposals for acquisition of self-governing status in respect of any school he may, by an order or orders made at any time on or after such approval and before the incorporation date in relation to the school, make such provision as he considers appropriate in connection with the school's transition to self-governing status and the impending transfer of responsibility for the conduct of the school to the board of management.
- 2 The provision that may be made by an order under paragraph 1 above includes in particular provision—
- (a) for the exercise by the school board in relation to the school, in such circumstances and in such manner and subject to such conditions as may be specified in the order, of any power so specified corresponding to any of the powers that would by virtue of section 7 of this Act be exercisable by the board of management of the school on that board's incorporation, including in particular power—
    - (i) to appoint members of staff to take up employment on or after the incorporation date;
    - (ii) to enter into contracts for the purpose of, or in connection with, the conduct of the school on or after that date; and
    - (iii) to determine the arrangements for admission of pupils to the school that are to apply in the first school year beginning on or after that date;
  - (b) excluding or modifying any powers of the education authority in relation to any matter to which any power exercisable by the school board in

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- accordance with any provision made by virtue of sub-paragraph (a) above applies;
- (c) for—
- (i) requiring the school board to be consulted before the education authority exercise in relation to the school any function of a description specified in the order or take in relation to the school any action of a description so specified; or
  - (ii) requiring or enabling the school board to participate in the exercise in relation to the school of any such function or in the taking in relation to the school of any such action,
- in such circumstances and in such manner as may be so specified;
- (d) with respect to the proceedings of the school board and the authentication of their actions (including the making or issue of any instrument by them or on their behalf); and
- (e) that without prejudice to the generality of section 10(1)(a) of the 1988 Act (information and reports) and even in so far as that section might not otherwise compel compliance, the education authority shall provide the school board with such information as the board may reasonably request under that section in respect of—
- (i) the administration of the school;
  - (ii) the fabric of the school;
  - (iii) the staff employed at the school;
  - (iv) the pupils in attendance at the school; and
  - (v) other children and young persons who would be expected to be pupils in attendance at the school within two years after the incorporation date and of whose existence the authority are aware.
- 3 (1) The Secretary of State may make grants to the school board in respect of expenditure incurred or to be incurred by them in pursuance of any provision made by an order under paragraph 1 above.
- (2) The Secretary of State may impose on a school board to whom any such payment is made such requirements as he may from time to time determine (whether before, at or after the time when the payment in question is made).
- 4 The duty of an education authority to maintain a school in respect of which proposals for acquisition of self-governing status have been approved shall not apply in relation to any expenses incurred by the school board by virtue of this Schedule.
- 5 At any time on or after the date on which he approves any such proposals the Secretary of State may consult the school board with respect to the provisions he proposes to include in the scheme of government for the school.
- 6 On and after the incorporation date in relation to a school any appointment made, contract entered into or other thing done by the school board in pursuance of any provision made by an order under paragraph 1 above, so far as subsisting or in force

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immediately before that date, shall be treated as having been made, entered into or done by the board of management.

## SCHEDULE 6 **S**

Section 25(3).

### PROVISION OF BENEFITS AND SERVICES FOR PUPILS AT SELF-GOVERNING SCHOOLS ETC.

- 1 (1) The 1980 Act shall be amended as follows.
  - (2) In section 51 (provision of transport etc.)—
    - (a) in subsection (1), after the words “(2A)” there shall be inserted the words “ or (2AB) ”;
    - (b) after subsection (2A) there shall be inserted the following subsections—

“(2AB) This subsection applies—

      - (a) where the pupil is in attendance at a self-governing school but lives outwith an area for the time being specified in relation to that school by the Secretary of State by order under this subsection; or
      - (b) where the pupil lives within that area and either—
        - (i) his parent has not applied to the board of management, under paragraph 2(1) of Schedule 2 to the Self-Governing Schools etc. (Scotland) Act 1989, for the pupil’s admission to the school; or
        - (ii) his parent has so applied and they are prepared to admit the pupil, but the pupil is not in such attendance;

and paragraph 8 of the said Schedule 2 shall apply in relation to references in this subsection as that paragraph applies to references in paragraphs 2 to 7 of that Schedule.
  - (2AC) An order under subsection (2AB) above may be revoked, and a new area specified in relation to the school, by a further order under that subsection; but before making any such order, or further order, the Secretary of State shall consult the board of management of the school and the education authority within whose area the school is situated.”.
- (3) In section 54 (education authority’s duty to ensure clothing of pupils at public schools is sufficient etc.)—
  - (a) in subsection (1), after the word “management” there shall be inserted the words “ , or a self-governing school, ”; and
  - (b) in subsection (3), at the end there shall be added the words “ ; or for any pupil who is a boarder at a self-governing school ”.
- (4) In section 55(b) (arrangements for provision of sufficient clothing by education authority for pupils in attendance at schools other than public schools), at the beginning there shall be inserted the words “ except in relation to a school which is a self-governing school, ”.
- (5) In section 57 (health of pupils)—

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- (a) in subsection (2), for the words from “inspection”, where it occurs for the second time, to the end there shall be substituted the words—
- “(a) an education authority may require the parent of any pupil in attendance at any school under their management; and
- (b) a board of management of a self-governing school may require the parent of any pupil in attendance at that school,
- to submit the pupil for medical or dental inspection in accordance with arrangements made by the appropriate Health Board in agreement with the authority, or as the case may be board of management; and—
- (i) an education authority may require any young person in attendance at any educational establishment under their management;
- (ii) a board of management of a self-governing school may require any young person in attendance at that school,
- to submit himself for such medical or dental inspection.”;
- and
- (b) in subsection (3), after the word “authority” there shall be inserted the words “ or board of management ”.
- (6) In section 58 (power to ensure cleanliness)—
- (a) in subsection (1)—
- (i) after the word “directions”, where it occurs for the second time, there shall be inserted the words “ , and the board of management of any self-governing school may by notice in writing issued with respect to that school, ”; and
- (ii) after the words “such schools”, where they occur for the second time, there shall be inserted the words “ (or as the case may be at that school) ”;
- (b) in subsection (2), after the word “authority” there shall be inserted the words “ , or in the case of a self-governing school, the board of management, ”;
- (c) in subsection (3), after the word “authority”—
- (i) where it first occurs, there shall be inserted the words—
- “ , or in the case of a self-governing school the board of management ”;
- (ii) where it occurs for the second time, there shall be inserted the words—
- “ , or in the case of a self-governing school any officer appointed by the board of management, ”; and
- (d) in each of subsections (4) and (6), after the word “authority” there shall be inserted the words “ , or as the case may be the board of management ”.
- 2 In section 39 of the <sup>M17</sup>National Health Service (Scotland) Act 1978 (medical and dental inspection of pupils etc.)—
- (a) in subsection (1), after the word “authority” there shall be inserted the words “ or at any self-governing school ”;
- (b) in subsection (3), after the word “authority”, where it first occurs, there shall be inserted the words “ and of every board of management ”; and

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- (c) in subsection (4), after the word “authority” there shall be inserted the words “and of every board of management”.

#### Marginal Citations

M17 1978 c. 29.

## SCHEDULE 7 **S**

Section 30(4).

### ARRANGEMENTS IN RESPECT OF BALLOT OF PARENTS REGARDING CHANGE IN CHARACTERISTICS OF SELF-GOVERNING SCHOOL

- [<sup>F1</sup>1] The board of management of the school shall secure that all necessary arrangements for the ballot are made by such body as may be prescribed (in this Schedule referred to as “the prescribed body”).

#### Textual Amendments

F1 Sch. 7 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 2 The arrangements, and the exercise by the board of management of any functions in relation to the ballot, shall accord with such guidance as the Secretary of State may from time to time publish for the purposes of this Schedule.

#### Textual Amendments

F1 Sch. 7 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 3 The ballot shall be a secret postal ballot of, and only of, all parents of pupils for the time being in attendance at the school; and any question of whether a person is such a parent shall be determined by the board.

#### Textual Amendments

F1 Sch. 7 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 4 It shall be the duty of the board to secure that the prescribed body take such steps as are reasonably practicable to ensure that each person who is eligible to vote in the ballot is—
- (a) without prejudice to sub-paragraph (b) below, given such information about the consequences for the school of the proposed change in characteristics as may reasonably be expected to enable him to form a proper judgment as to whether the change should be sought for the school;
  - (b) given such information, including (without prejudice to the generality of this sub-paragraph) information—
    - (i) about the ballot and about the procedure for changing the characteristics of a self-governing school; and
    - (ii) in the case of a ballot held by virtue of section 15 of this Act, an explanation (which in the case of a ballot required by a notice under

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subsection (1) of that section shall repeat the reasons given in the notice by the Secretary of State for declaring the earlier ballot void) as to why a fresh ballot is to be held;

as may be prescribed;

- (c) informed that he is entitled to vote in the ballot; and
- (d) given an opportunity to do so by being provided timeously with a ballot paper which sets out the question as to whether the change sought should be made and invites him to vote “yes” or “no” to that question.

#### Textual Amendments

**F1** Sch. 7 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 5 Subject to the foregoing provisions of this Schedule, the arrangements shall be such as the board think fit.]

#### Textual Amendments

**F1** Sch. 7 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

## SCHEDULE 8 S

Section 36(8).

### TRANSFER AND APPORTIONMENT OF ASSETS

#### *<sup>F2</sup> Identification of land, moveable property, liabilities and obligations*

#### Textual Amendments

**F2** Sch. 8 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 1 (1) The education authority and the commissioner for school assets appointed in respect of a school shall, whether before or after the incorporation date, so far as practicable arrive at such written agreements, and execute such other instruments, as are necessary or expedient—
- (a) to identify or define the land, moveable property, liabilities and obligations transferred to and vested in the board of management under section 36 of this Act; or
  - (b) for making any arrangements such as are mentioned in paragraph 2(2) below as will afford to the authority and the board as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.
- (2) Any such agreement shall provide so far as is expedient—
- (a) for the creation of interests in land or land obligations, whether involving the surrender of any existing interest or obligation or the creation of a new interest or obligation, and whether in favour of or incumbent on the education authority or the board of management; and
  - (b) for the granting of indemnities.

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- (3) An education authority shall supply a commissioner for school assets with such information, including all deeds relating to interests in land and land obligations, as he may require in the exercise of his functions.
- 2 (1) The land, moveable property, liabilities and obligations mentioned in section 36(2) or (3) of this Act shall, where their nature permits, be divided or apportioned between the education authority and the board of management in such proportions as may be appropriate.
- (2) Any land, moveable property, liability or obligation the nature of which does not permit its division or apportionment shall be transferred to the board of management or retained by the education authority according to—
- (a) in the case of land, which of the education authority or the board of management appear, as at the incorporation date, to be likely to experience the greater practical difficulty through not having possession of that land or, where neither of them appear likely to experience such difficulty to a greater extent than the other, which of them appear on that date to be likely to make use of the land to the greater extent; or
  - (b) in the case of any moveable property or of any liability or obligation, which of them appear on the incorporation date to be likely to make use of the property or, as the case may be, to be affected by the liability or obligation to the greater extent,
- subject (in either case) to such arrangements for the protection of the other party as may be agreed between the education authority and the commissioner for school assets or determined by the Secretary of State under paragraph 5 below.
- (3) Where any land falls to be divided under sub-paragraph (1) above—
- (a) any rent payable under a lease in respect of that land, and
  - (b) any rent charged on that land;
- shall be correspondingly divided or apportioned so that one part of any such rent is payable in respect of, or charged on, only one part of the land and the other part is payable in respect of, or charged on, only the other part of the land.

#### *Transfer certificates*

- 3 A certificate issued under section 39(1) of this Act in relation to land shall—
- (a) specify all interests in land and land obligations which are transferred; and
  - (b) state from whom and to whom the interests in land and land obligations are transferred;
- and shall where necessary be accompanied by a map or plan identifying the land which is being transferred.
- 4 No stamp duty shall be chargeable in respect of any transfer made under section 36, 51 or 53(2) of this Act or in accordance with this Schedule.

#### *Reference of disputes to Secretary of State*

- 5 (1) Where it appears to a commissioner for school assets unlikely that agreement will be reached in respect of any matter on which agreement is required to be reached under paragraph 1 above, he shall refer the matter to the Secretary of State.

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- (2) Where a reference has been made under sub-paragraph (1) above, the Secretary of State may, whether before or after the incorporation date, determine that matter, and may include in the determination any provision which might have been included in an agreement under the said paragraph 1.
- (3) The Secretary of State shall seek such assistance and advice as he may require from the commissioner for school assets, and shall consult the education authority, before making a determination under this paragraph.
- (4) Where the Secretary of State has made a determination under sub-paragraph (2) above that any land, moveable property, liability or obligation is to be transferred from the education authority to the board of management the commissioner for school assets shall conform with that determination in issuing a certificate under section 39(1) of this Act.

*Right to production of documents of title*

- 6 Without prejudice to paragraph 1(3) above, where on any transfer of land or moveable property to a board of management under section 36 of this Act the education authority is entitled to retain possession of a document relating in part to the title to any such land or moveable property, the authority shall be treated as having given to the board an acknowledgment in writing of the right of the board to production of that document and to delivery of copies of it.

*Construction of agreements*

- 7 (1) Where any rights, liabilities or obligations transferred under section 36 of this Act are rights, liabilities or obligations under an agreement to which the education authority were a party immediately before the incorporation date, the agreement shall, unless the context otherwise requires, have effect on and after the incorporation date as if—
- (a) the board of management had been a party to the agreement;
  - (b) for any reference (whether express or implied and, if express, however worded) to the education authority there were substituted, as respects anything falling to be done on or after the incorporation date, a reference to the board of management;
  - (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the education authority or a person employed by the authority in a specified capacity were, as respects anything falling to be done on or after the incorporation date, a reference to such person as the board of management may appoint or, in default of appointment, to an officer or employee of the board of management who corresponds as closely as possible to the person referred to in the agreement; and
  - (d) where the agreement refers to land, moveable property, liabilities or obligations which fall to be apportioned or divided between the education authority and the board of management, the agreement constituted two separate agreements separately enforceable by and against the authority and the board as regards the part of the land, moveable property, liabilities or obligations retained by the authority or, as the case may be, the part thereof vesting in the board and not as regards the other part.
- (2) Head (d) of sub-paragraph (1) above shall apply in particular to the stipulations and conditions of any lease by or to the education authority.



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*Status: Point in time view as at 01/10/1992.*

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- (3) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the education authority.
- 8 Save as otherwise provided by any provision of this Act (whether expressly or by necessary implication) paragraph 7 above, except head (a) of sub-paragraph (1), shall apply in relation to any statutory provision, any provision of any agreement to which the education authority was not a party, and any provision of any document other than an agreement, if and in so far as the provision in question relates to any of the transferred rights and liabilities, as it applies in relation to an agreement to which the authority was a party; and, in relation to any such statutory or other provision as aforesaid, references in heads (b) and (c) of that sub-paragraph to the authority and to any officers or servants of the authority include references made by means of a general reference to a class of persons of which the authority is one, without the authority themselves being specifically referred to.
- 9 (1) Without prejudice to the generality of paragraphs 7 and 8 above, any person shall, as from the incorporation date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the board of management under section 36 of this Act as he would have had if that right or liability had at all times been a right or liability of the board.
- (2) Without prejudice to section 36(5)(d) of this Act, any legal proceedings commenced before the incorporation date by or against the education authority, in so far as they relate to any land, moveable property, liability or obligation transferred to the board of management under this Act, or to any agreement relating to any such land, moveable property, liability or obligation, shall be continued by or against the board of management to the exclusion of the education authority.
- 10 The provisions of paragraphs 7 to 9 above shall have effect for the interpretation of agreements, statutory provisions and other documents subject to the context, and shall not apply where the context otherwise requires.

*Third parties affected by vesting provisions*

- 11 (1) Without prejudice to the generality of paragraphs 7 to 10 above—
- (a) any transfer of land or moveable property from an education authority to a board of management under section 36 of this Act; and
- (b) any subsequent transfer of that land or moveable property from a board of management,
- shall be binding on all other persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of, or the waiver of any right by, any person other than the authority and the board.
- (2) If as a result of any such transfer any person's rights or liabilities—
- (a) cease to be enforceable by or against the education authority and instead become enforceable by or against the board of management; or
- (b) become enforceable as to part by or against the education authority and as to part by or against the board of management,
- the commissioner for school assets shall give that person written notification of that fact.

*Status: Point in time view as at 01/10/1992.*

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- (3) If in consequence of a certificate issued under section 39(1) of this Act or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the education authority or the board of management which were enforceable against or by the authority become enforceable—
    - (i) against or by the board of management; or
    - (ii) as to part against or by the authority and as to part against or by the board; and
  - (b) the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the authority, the board or both.
- (4) Any dispute as to whether and if so how much compensation is payable under subparagraph (3) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.

*Delivery of documents to board of management*

- 12 The commissioner for school assets shall, as soon as is practicable after the incorporation date, deliver to the board of management—
- (a) any agreements or instruments made or, as the case may be, executed by him and the education authority under paragraph 1 above;
  - (b) copies of any determinations made by the Secretary of State under paragraph 5 above; and
  - (c) any certificates issued by him under section 39(1) of this Act.]

SCHEDULE 9 **S**

Section 38.

COMMISSIONERS FOR SCHOOL ASSETS

*<sup>F3</sup> Appointment*

**Textual Amendments**

**F3** Sch. 9 repealed (*prosp.*) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3

- 1 Where the Secretary of State has approved proposals published under section 16 of this Act, he shall appoint a commissioner for school assets (in this Schedule referred to as the “commissioner”) in respect of that school, for the purpose of carrying out the functions of a commissioner mentioned in this Act.
- 2 The appointment of a commissioner shall be in writing, and shall specify—
  - (a) the school or schools in respect of which he is appointed; and
  - (b) his remuneration.
- 3 Subject to paragraphs 5 and 6 below, a commissioner’s appointment shall come to an end when it appears to the Secretary of State that he has completed what he was employed to do.

*Status:* Point in time view as at 01/10/1992.

*Changes to legislation:* There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)

- 4 The Secretary of State shall pay the remuneration of the commissioner and any expenses incurred by him in carrying out his functions.

#### *Resignation and dismissal*

- 5 A commissioner may resign his office at any time by giving notice in writing to the Secretary of State.
- 6 The Secretary of State may, if it appears to him that a commissioner is unable or unfit to discharge his functions, terminate the commissioner's appointment by notice in writing to him.

#### *Powers*

- 7 A commissioner may with the prior consent of the Secretary of State employ persons, on such terms as he may determine, to assist him in carrying out his functions.
- 8 The commissioner shall comply with any directions given to him by the Secretary of State in carrying out his functions.
- 9 A commissioner shall not delegate any of his functions.

#### *Status*

- 10 A commissioner shall not be regarded as a servant or agent of the Crown, nor as enjoying any status, immunity or privilege of the Crown; and any property which he may hold in his capacity as a commissioner shall not be regarded as property of, or property held on behalf of, the Crown.]

## SCHEDULE 10 **S**

Section 82(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Universities (Scotland) Act 1889 (c. 55)*

- 1 In subsection (5) of section 5 of the Universities (Scotland) Act 1889 (which relates to the constitution of university courts), for the words “the principal” there shall be substituted the words “ a vice-chairman elected by the Court from among all its members, ”.

#### *The Teaching Council (Scotland) Act 1965 (c. 19)*

- 2 (1) The Teaching Council (Scotland) Act 1965 shall be amended as follows.
- (2) In subsection (2) of section 6 (which relates to the registration of teachers)—
- (a) after paragraph (b) there shall be inserted the following paragraph—
- “(ba) in the case of a person who is not entitled to be registered under either of the two foregoing paragraphs, he fulfils such requirements as the Secretary of State may by regulations made under this paragraph prescribe; or”; and

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- (b) in paragraph (c), for the words “either of the two foregoing paragraphs” there shall be substituted the words “ paragraphs (a) to (ba) above ”.
- (3) After the said subsection (2) there shall be inserted the following subsection—
- “(2A) Before making regulations under subsection (2)(ba) above the Secretary of State shall consult the Council and such organisation as appears to him to be representative of the interests of education authorities.
- (2B) Regulations made by the Secretary of State under subsection (2)(ba) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (4) In subsection (4) of the said section 6—
- (a) in paragraph (a), at the beginning there shall be inserted the words “ subject to subsection (5B) below, ”;
- (b) in paragraph (b), for the words “may be prescribed, with the approval of the Secretary of State,” there shall be substituted the words “ the Council think appropriate ”; and
- (c) for the words “subsection (2)(b)” there shall be substituted the words “ subsection (2)(b) and (ba) ”.
- (5) After subsection (5A) of the said section 6 there shall be inserted the following subsection—
- “(5B) The Council may with the consent of the Secretary of State make rules under subsection (4)(a) above in respect of persons entitled to be registered by virtue of regulations made under subsection (2)(ba) above.”.
- (6) After paragraph 4 of Schedule 1 (which relates to the constitution of the Council) there shall be inserted the following paragraph—
- “4A Where a member of the Council or of any committee of the Council has failed without good cause to attend meetings for a period of at least 6 months and to attend 3 consecutive meetings, the Council may, by a vote taken at a meeting of the Council at which the member has been given an opportunity to be heard, remove him from the Council.”.

*The Local Authorities (Goods and Services) Act 1970 (c. 39)*

- 3 (1) Subject to sub-paragraph (2) below, in the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) “public body” shall include the board of management of any self-governing school.
- (2) The provisions of sub-paragraph (1) above shall have effect as if made by an order under section 1(5) of that Act (power to provide that a person or description of persons shall be a public body for the purposes of that Act).
- (3) An order under the said section 1(5) may accordingly vary or revoke the provisions of sub-paragraph (1) above as they apply to the board of management of a self-governing school specified in the order.

*The Tribunals and Inquiries Act 1971 (c. 62)*

*Status: Point in time view as at 01/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

### Textual Amendments

- F4** Sch. 10 para. 4 repealed (1. 10. 1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(2), 19(2), [Sch. 4 Pt.I](#).

### *The Sex Discrimination Act 1975 (c. 65)*

- 5 (1) The Sex Discrimination Act 1975 shall be amended as follows.
- (2) In section 22 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 7 there shall be inserted the following paragraph—

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“7A. Self-governing school. Board of management.”.

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- (3) In section 25(6)(c)(i) (general duty in public sector of education), for the words “or 7” there shall be substituted the words “, 7 or 7A”.
- (4) In section 82(1) (interpretation)—
- (a) after the definition of “associated employer” there shall be inserted the following definition—
- ““board of management”, in relation to a self-governing school, has the same meaning as in the Education (Scotland) Act 1980;”;
- (b) after the definition of “school education” there shall be inserted the following definition—
- ““self-governing school” has the same meaning as in the Education (Scotland) Act 1980;”.
- (5) In paragraph 6 of Schedule 2 (transitional exemption orders for educational admissions) for the words “or 7” there shall be substituted the words “, 7 or 7A”.

### *The Race Relations Act 1976 (c. 74)*

- 6 (1) The Race Relations Act 1976 shall be amended as follows.
- (2) In section 17 (discrimination by bodies in charge of educational establishments), in the Table, after paragraph 7 there shall be inserted the following paragraph—

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“7A. Self-governing school. Board of management.”.

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- (3) In section 19(6)(c)(i) (general duty in public sector of education), for the words “or 7” there shall be substituted the words “, 7 or 7A”.
- (4) In section 78(1) (interpretation)—
- (a) after the definition of “advertisement” there shall be inserted the following definition—
- ““board of management”, in relation to a self-governing school, has the same meaning as in the Education (Scotland) Act 1980;”;
- (b) after the definition of “school education” there shall be inserted the following definition—

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““self-governing school” has the same meaning as in the Education (Scotland) Act 1980;”.

*The Employment Protection (Consolidation) Act 1978 (c. 44)*

- 7 In section 29 of the Employment Protection (Consolidation) Act 1978 (persons holding certain offices to be allowed time off for public duties)—
- (a) after paragraph (ee) of subsection (1) there shall be inserted the following paragraph—
- “(ef) a member of a school board or of the board of management of a self-governing school;” ; and
- (b) in subsection (2)(c)—
- (i) for the words “and “central institution” and “college of education”” there shall be substituted the words “ “board of management”, “central institution”, “college of education” and “self-governing school””; and
- (ii) at the end there shall be added the words “and “school board” has the meaning assigned by section 1(1) of the School Boards (Scotland) Act 1988”.

*The Education (Scotland) Act 1980 (c. 44)*

- 8 (1) The 1980 Act shall be amended as follows.
- (2) In section 1(5) (interpretation), in paragraph (c)—
- (a) after the word “child” there shall be inserted the words “who has attained school age”; and
- (b) at the end there shall be added the words “and in relation to any other child means such educational provision as is appropriate to those needs”.
- (3) In section 8 (religious instruction)—
- (a) in subsection (1), after the word “authorities” there shall be inserted the words “and boards of management of self-governing schools”; and
- (b) in subsection (2), after the words “education authority” there shall be inserted the words “or board of management”.
- (4) In section 9 (conscience clause), for the words “and every grant-aided school” there shall be substituted the words “, every grant-aided school and every self-governing school”.
- (5) In section 10 (safeguards for religious beliefs)—
- (a) after the words “education authority”, where they first occur, there shall be inserted the words “, or at any self-governing school”;
- (b) the words from “of the school,” where they first occur to “establishment, the education authority” shall become paragraph (a), and after that paragraph there shall be inserted the following paragraph—
- “,
- (b) of the self-governing school, the board of management;”;

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- (c) for the words “or other educational establishment”, where they occur for the third time, there shall be substituted the words “, other educational establishment or self-governing school”; and
  - (d) at the end there shall be added the words “or, as the case may be, by the board of management”.
- (6) In section 19 (power of Secretary of State to prescribe standards for premises etc.)—
- (a) in subsection (1), after the word “authorities” there shall be inserted the words “or to the premises and equipment of self-governing schools”;
  - (b) in subsection (2)—
    - (i) the words from “of an education authority” to “that establishment” shall be paragraph (a), and after that paragraph there shall be inserted the following paragraph—
      - “(b) of the board of management of a self-governing school to secure that the premises and equipment of the school conform to the standards and requirements applicable to that school”; and
    - (ii) after the words “their management” where they occur for the second time there shall be inserted the words “, or as the case may be of the self-governing school.”; and
  - (c) in subsection (3)—
    - (i) after the words “education authority” there shall be inserted the words “, or of any self-governing school.”;
    - (ii) after the word “establishment” where it occurs for the second time there shall be inserted the words “or school”;
    - (iii) after the words “the authority”, where they first occur, there shall be inserted the words “or as the case may be with the board of management”; and
    - (iv) for the words “the authority”, where they occur for the second time, there shall be substituted the words “that authority or board”.
- (7) In section 21 (management of denominational schools), in subsection (2)—
- (a) at the beginning there shall be inserted the words “Subject to subsections (2A) and (2C) below.”;
  - (b) for the words “Provided that—
    - (i) all teachers appointed to”there shall be substituted the words—
    - “(2A) A teacher appointed to any post on”;
  - (c) the words “in every case be teachers who” shall cease to have effect;
  - (d) for the word “are” there shall be substituted the words “shall require to be”;
  - (e) for the word “their” there shall be substituted the word “his”; and
  - (f) for the word “(ii)” there shall be substituted the words—
    - “(2B) Where the said representatives of a church or denominational body refuse to give the approval mentioned in subsection (2A) above they shall state their reasons for such refusal in writing.“(2C)”.

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- (8) In section 48A(5) (abolition of corporal punishment: interpretation), in paragraph (a) (i), after the word “public” there shall be inserted the words “, or self-governing.”.
- (9) In section 49 (power of education authorities to assist persons to take advantage of educational facilities), after subsection (2) there shall be inserted the following subsection—
- “(2A) In subsection (2) above, references to attending school are to so attending not only where the school is in Scotland, but also where it is in England and Wales or in Northern Ireland ( “school education” being construed accordingly).”.
- (10) In section 50 (education of pupils in exceptional circumstances)—
- (a) in subsection (1), for the words “an appropriate school or college” there shall be substituted the words—
- “, in any case falling under—
- (i) paragraph (a) of this subsection, an appropriate school; and
- (ii) paragraph (b) thereof, the particular school.”;
- (b) after subsection (1) there shall be inserted the following subsection—
- “(1A) In subsection (1) above, references to an appropriate school and to a particular school are references not only to schools in Scotland but also to schools in England and Wales or in Northern Ireland ( “school education” being construed accordingly).”; and
- (c) in subsection (2)(a), for the words “section 51 of this Act” there shall be substituted the words “subsection (1) of section 51 of this Act (for the purposes of this paragraph, any reference in that section to a school being construed as a reference not only to a school in Scotland but also to a school in England and Wales or in Northern Ireland)”.
- (11) In section 52 (recovery of the cost of board and lodging), for the word “another” there shall be substituted the word “an”.
- (12) In section 53 (provision of school meals), after subsection (3) there shall be inserted the following subsection—
- “(3A) Subsections (1) to (3) above apply in relation to pupils in attendance at a self-governing school and the board of management of that school as they apply in relation to pupils in attendance at a public school and the education authority under whose management the public school is.”.
- (13) In section 58 (power to ensure cleanliness), for the words “a junior college or other” there shall be substituted the word “an”.
- (14) In section 66(1) (inspection of educational establishments)—
- (a) for the words “educational establishment being a school or junior college” there shall be substituted the word “school”; and
- (b) for the words “such school or junior college” there shall be substituted the word “school”.
- (15) In section 67 (local inquiries), after the words “under this Act” there shall be inserted the words “or under any other enactment relating to education”.



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- (16) In section 68 (power to require submission to medical examination), for the words “a junior college or other” there shall be substituted the word “another”.
- (17) In section 74 (payment of grants to be subject to conditions), in subsection (1)—
- (a) after the words “prescribed in” there shall be inserted the words “or determined by him under”; and
  - (b) after the words “specified in” there shall be inserted the words “or determined by him under”.
- (18) In section 86 (admissibility of documents), for the words “(e) or (f)” there shall be substituted the words “or (e)”.
- (19) In subsection (2) of section 97A (effect of settlement formulated by committee established under section 91)—
- (a) for the words from the beginning to “section 91 of this Act” there shall be substituted the words “Where a settlement has been formulated by the committee”;
  - (b) for the word “(i)” there shall be substituted the word “(a)”; and
  - (c) for the word “(ii)” there shall be substituted the word “(b)”.
- (20) In paragraph (a) of section 97C (interpretation of sections 91 to 97B)—
- (a) the words “(i)” and “(or)” and sub-paragraph (ii) shall cease to have effect;
  - (b) after the word “may” there shall be inserted the words “from time to time”; and
  - (c) after the word “determine;” there shall be inserted the words “and the provisions of those sections shall accordingly not apply in relation to such teachers or other persons employed by education authorities in Scotland in, or in connection with, the provision of school education as are excluded from the definition of “teaching staff” by such an order;”.
- (21) In section 123 (work experience in last year of compulsory schooling)—
- (a) in subsection (1)—
    - (i) for the words “in his last year of compulsory schooling” there shall be substituted the words “to whom this subsection applies”; and
    - (ii) after the word “authority” there shall be inserted the words “(where the child is in attendance at a school under the management of that authority) or by the board of management of a self-governing school (where the child is in attendance at that self-governing school)”; and
  - (b) for subsection (4) there shall be substituted the following subsection—

“(4) Subsection (1) above applies to a child undergoing compulsory education during the period between 1st May in the calendar year before the calendar year in which he attains the upper limit of school age and the end of the latter year.”.
- (22) In section 135(1) of that Act (interpretation)—
- (a) after the definition of “attendance order” there shall be inserted the following definition—

“ “board of management”, in relation to a self-governing school means a board incorporated under section 19(2) of the Self-Governing Schools etc. (Scotland) Act 1989;”;

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- (b) in the definition of “grant-aided school”, at the end, there shall be added the words “, a self-governing school or a technology academy (within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989)”;
- (c) in the definition of “independent school”, for the words “or a grant-aided school” there shall be substituted the words “, a grant-aided school or a self-governing school”;
- (d) in the definition of “school”, after the words “grant-aided school” there shall be inserted the words “, a self-governing school”;
- (e) after the definition of “school age” there shall be inserted the following definition—
  - “ “school board” has the meaning assigned to it by section 1 of the School Boards (Scotland) Act 1988;”;
- (f) after the definition of “school education” there shall be inserted the following definition—
  - “ “self-governing school” has the meaning given by section 1(3) of the Self-Governing Schools etc. (Scotland) Act 1989;”.

*The Representation of the People Act 1983 (c. 2)*

- 9 In paragraph 6 of Schedule 5 to the Representation of the People Act 1983 (arrangements for use of school room for parliamentary election meetings), after sub-paragraph (a) there shall be inserted the following sub-paragraph—
- “(aa) for any reference to a grant maintained school and its governing body substitute a reference to a self-governing school and its board of management (within the meaning of the Education ((Scotland) Act 1980);”.

*The School Boards (Scotland) Act 1988 (c. 47)*

- 10 In paragraph 5 of Schedule 2 to the School Boards (Scotland) Act 1988 (appointment committees), after sub-paragraph (a) there shall be inserted the following sub-paragraph—
- “(aa) in respect of the performance of his duties as a member of an appointment committee, a person—
    - (i) shall not, under or by virtue of that Act, be entitled to receive any allowance or expenses;
    - (ii) shall be entitled to receive under this sub-paragraph from the education authority such allowances and expenses as may be determined by the Secretary of State;”.

SCHEDULE 11 **S**

Section 82(2).

REPEALS

1973 c. 65.

Local Government (Scotland) Section 125.  
Act 1973.

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*Status: Point in time view as at 01/10/1992.*

**Changes to legislation:** *There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

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		<p>In section 126, the words “(as read with section 125(4) of this Act)—(a)”; the words “or of any college council appointed by that authority”; paragraph (b); and the proviso to paragraph (b).</p> <p>In Schedule 10, in paragraphs 1 and 2 the words “a college council”; and in paragraph 4 the words “college council”.</p>
1978 c. 29.	National Health Service (Scotland) Act 1978.	<p>In section 39(1), the words “junior college or”.</p>
1980 c. 44.	Education (Scotland) Act 1980.	<p>Section 1(5)(b)(i).</p> <p>In section 7(7)(d) the words “either as part of a junior college or”.</p> <p>In section 10, the words “, junior college” in each of the three places where they occur.</p> <p>In section 11(1)(a) the words “or junior colleges”.</p> <p>In section 11(2)(a), the words “junior college” and “college”.</p> <p>In section 12(1), the words “junior colleges”.</p> <p>In section 17(1), the words “junior colleges”.</p> <p>In section 17(3), the words “junior college”.</p> <p>In section 17(4), the words “junior colleges”.</p> <p>In section 21(2), the words “in every case be teachers who”.</p> <p>In section 23(1), the words “junior college”.</p> <p>Section 33(4).</p> <p>Sections 45 to 48.</p> <p>In section 50(1), in paragraph (b), the word “or”; paragraph (c); and the words</p>

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from “and, in any case” to “the pupil”.

In section 50(2)(b), the words “or at a junior college where boarding is provided,”.

In section 52, the words “junior college or” and the words “in voluntary attendance at a junior college or,”.

In section 57(4), the words “junior college”.

In section 58(1), the words “junior colleges”, “colleges” and “colleges or”.

In section 58(5), the words “junior college” where they first appear.

In section 58(6), the words “junior college”; and the word “college” in both other places where it occurs.

In section 71(3), the words “junior colleges”.

In section 86(c), the words “or junior college” and “or college”.

Section 86(f).

Section 88.

Sections 94 to 97.

In section 97A, paragraph (b) of subsection (2).

In section 97B(2), the words “or, as the case may be, section 95(1)”.

In paragraph (a) of section 97C, the words “(i)” and “or”, and subparagraph (ii).

Section 124.

In section 135(1), in paragraph (i) of the definition of “educational establishment”, the words “, a junior college”, “other”

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*Status: Point in time view as at 01/10/1992.*

**Changes to legislation:** *There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989. (See end of Document for details)*

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and “junior college”;  
in paragraph (ii) of that  
definition the words “or  
junior colleges”; and the  
definition of “junior college”.

In Schedule 6, paragraphs 1  
to 15.

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**Status:**

Point in time view as at 01/10/1992.

**Changes to legislation:**

There are currently no known outstanding effects for the Self-Governing Schools etc. (Scotland) Act 1989.