



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

## 1989 CHAPTER 39

### PART I

#### SELF-GOVERNING SCHOOLS

##### *Finance*

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

- (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—
  - (a) of grants (to be known as "capital grants") in respect of expenditure of a capital nature;

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- (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—
- (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**

(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 a determination under subsection (3) above or a variation under subsection (9) below;

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- (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**

- (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 by virtue of subsection (1) above in respect of the school and financial year

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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**

- (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 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.