



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

PART I

SELF-GOVERNING SCHOOLS

Procedure for acquisition of self-governing status etc.

13 Initiation of procedure for acquisition of self-governing status

- (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
 - (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

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- 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

- (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;
- (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

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

- (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
 - (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

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- (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 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.

17 Ballot expenses

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.

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18 Further provision as regards proposals under section 16

- (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

- (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;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

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