



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

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
 - (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

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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.
- (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

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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.
- (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)—

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- (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”;
 - (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.

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- (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 ".
- (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

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- (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.”.

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 ^{M1}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,

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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

M1 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,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.

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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 ^{M2}Local Government (Scotland) Act 1973;
 - “the 1980 Act” means the ^{M3}Education (Scotland) Act 1980;
 - “the 1988 Act” means the ^{M4}School Boards (Scotland) Act 1988;
 - “appointed member” shall be construed in accordance with section 3(1)(c) of this Act;
 - “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)

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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 ^{M5}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 ^{M6}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;

“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

M2 1973 c. 65.

M3 1980 c. 44.

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M4 1988 c. 47.
M5 1979 c. 33.
M6 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)

- C1** 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.
- (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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