



# School Boards (Scotland) Act 1988

## 1988 CHAPTER 47

An Act to make new provision for the government of public schools in Scotland; and for connected purposes. [15th November 1988]

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:—

### *School Boards*

#### **1 Constitution of School Boards**

- (1) Every education authority shall (subject to section 20 of this Act) establish, in accordance with this Act, a board, to be known as a "School Board", for each school in their area.
- (2) A School Board shall, in respect of the school for which they are established, exercise—
  - (a) the functions assigned to them by this Act; and
  - (b) any functions delegated to them under section 15 of this Act.
- (3) Where, before the commencement of Schedule 4 to this Act, a School Board are established for a school, any school council appointed under section 125(1) of the 1973 Act to discharge functions under that section in relation to that school shall cease to discharge them in respect of that school.
- (4) A School Board are established on the first occasion following the commencement of this section (or following a period of disestablishment under section 20 of this Act) when elections for members of the Board have taken place and the number of parent members prescribed under section 2 of this Act is duly elected.
- (5) A School Board shall cease to exist when the school for which they are established is discontinued.

## 2 Composition of Boards

- (1) A School Board shall consist of—
- (a) persons (to be known as “parent members”) who are, and who shall be elected by, parents of pupils in attendance at the school;
  - (b) (except in the case of a school which has no staff, as defined in subsection (13) below) persons (to be known as “staff members”) who are, and who shall be elected by, members of the staff of the school; and
  - (c) persons (to be known as “co-opted members”), who shall be co-opted by the Board,
- in such numbers as shall be prescribed.
- (2) Parent members shall form a majority of every School Board.
- (3) Regulations—
- (a) shall specify the numbers of parent, staff and co-opted members, and different provision may be made for different schools and for different classes of schools;
  - (b) may specify the dates at which the number of pupils in attendance at a school is to be determined for the purposes of any regulations made under paragraph (a) above;
  - (c) shall specify, in relation to schools in existence at the commencement of section 1 of this Act (except where a decision has been taken, in accordance with section 20(1) of this Act, not to have a School Board), the date by which an education authority shall hold the first elections of parent and staff members to School Boards under this section;
  - (d) may provide for the making by education authorities, within such time as may be prescribed, of arrangements to adjust the composition of School Boards in consequence of variation of regulations made under this section or changes in the circumstances of a school, including—
    - (i) provision enabling authorities to hold elections or to direct co-options;
    - (ii) provision enabling authorities to direct the early termination of office of any member;
    - (iii) provision enabling authorities to determine the term of office of any person elected or co-opted under such arrangements.
- (4) A person who is eligible for election to a School Board as a staff member shall not be eligible for election to that Board as a parent member.
- (5) A person who is eligible for election to a School Board shall not be eligible for co-option to that Board.
- (6) A person may not be a member of a School Board in more than one capacity (as parent, staff or co-opted member) at any one time.
- (7) Where a school is a denominational school—
- (a) transferred to the education authority under section 16(1) of the 1980 Act (transference of denominational schools to education authorities); or
  - (b) provided by the authority under section 17(2) of the 1980 Act (which relates, among other things, to the provision by the education authority of denominational schools),

one of the co-opted members shall be a person nominated by the church or denominational body in whose interest the school is conducted.

- (8) Elections under this Act shall be held in accordance with Schedule 1 to this Act.
- (9) In relation to schools (including combined schools) which come into existence after the commencement of section 1 of this Act, the first elections under this Act shall (subject to section 20) be held as soon as is practicable after pupils first attend the school.
- (10) A Board shall, as soon as is practicable after their establishment, co-opt members in accordance with subsection (1) above.
- (11) In the event of a lesser number of parent members being elected on any occasion than is necessary to make up the numbers for the time being prescribed under this section, section 20(5) to (7) of this Act shall apply.
- (12) In the event of a lesser number of staff members than is for the time being prescribed being elected on any occasion section 3(6) of this Act shall apply.
- (13) In subsection (1)(b) above, “staff” (in relation to a school) means teachers, and instructors, whether full-time or part-time, employed by the authority for the purpose of providing education at that school, whether or not they are also so employed at other schools, but does not include the headteacher.

### **3 Terms of office etc**

- (1) Subject to subsection (2) below, every member of a School Board shall hold office for 4 years.
- (2) The term of office of half (or, where there is an odd number of parent members, of the largest number less than half) of the parent members elected when a School Board are established shall be 2 years.
- (3) The parent members whose term of office is to be restricted to 2 years under subsection (2) above, failing agreement between all the parent members elected to the Board, shall be selected by drawing lots.
- (4) A member of a School Board may resign office at any time by giving notice in writing to the Clerk of the Board or to the education authority for the area.
- (5) A School Board may remove any member of the Board who they are satisfied—
  - (a) is unable to carry out his duties by reason of physical or mental illness or incapacity; or
  - (b) has failed without good cause to attend meetings for a continuous period of at least 6 months and to attend 3 consecutive meetings.
- (6) In the event of a vacancy for a parent member or a staff member of a School Board arising a by-election shall be held, subject to subsection (7) below, as soon as possible, and in any event within a period of 3 months.
- (7) Where a person ceases, for whatever reason, to be a parent member or staff member within 6 months before the expiry of his term of office, no by-election need be held under subsection (6) above.

- (8) Members of a School Board who cease to be eligible to serve in the capacity in which they have been elected or co-opted may complete their term of office, provided that their remaining term of office is less than two years.
- (9) Where a vacancy for a co-opted member of a Board occurs the Board shall (in accordance with this Act) co-opt another person in his place.
- (10) Persons elected or co-opted under this section to fill a casual vacancy shall serve for the remainder of the term of office of the person whose place they have filled.

#### **4 Qualification and disqualification of members**

- (1) Persons who would be disqualified for seeking election as, or for being—
  - (a) members of a local authority by virtue of section 31(1)(b) or (c), (2) or (3) of the 1973 Act; or
  - (b) members of the education authority for the area within which the school is situated by virtue of section 31(1)(d) of that Act,
 shall be disqualified for seeking election as, or for being a member of a School Board.
- (2) A young person may be a co-opted member of a School Board.
- (3) Subject to subsection (2) above, persons subject to legal incapacity may not be nominated for election to or be members of School Boards.
- (4) A retiring member of a School Board shall not be disqualified (by reason of such retirement) from further election or co-option.

#### **5 Advice to Boards**

- (1) The Director of Education or an officer of his education authority nominated by him for the purpose shall be entitled to attend and to speak at any meeting of a School Board in the authority's area, but shall not be a member of the Board.
- (2) The regional or islands councillor for the electoral division in which a school is situated shall be entitled to attend and to speak at any meeting of any School Board for the time being established for that school, but he shall not be a member of the Board.
- (3) The headteacher of a school shall—
  - (a) have the right and, if requested by the School Board, the duty to give advice to the Board on any matter within the Board's competence;
  - (b) have the right to be present and to speak at meetings of the School Board, but shall not be a member of the Board.
- (4) An education authority shall give advice to a School Board in their area when requested on any matter within the Board's competence.
- (5) A School Board shall consider any advice given to them under subsection (3)(a) or (4) above.
- (6) Every education authority shall take such steps as are appropriate to ensure that the headteacher and staff of each school in their area are available when necessary for the purposes of—
  - (a) fulfilling the headteacher's duties by or under this Act in respect of the School Board; and

- (b) giving effect to any competent decisions of the Board.

## **6 Proceedings**

- (1) Every School Board shall elect a chairman and vice-chairman from among the members (other than the staff members) of the Board.
- (2) In the case of an equality of votes at any meeting of the Board the chairman or in his absence the vice-chairman shall have a second or casting vote, except where the matter which is the subject of the vote relates to the appointment—
  - (a) of a co-opted member, or
  - (b) to any particular office or committee,in which case the decision shall be by lot.
- (3) A School Board may establish committees of the Board, which may include as up to one half of their membership persons who are not members of the Board, whose function shall be to consider and report on matters referred to them by the Board, and the Board may regulate the meetings and proceedings (including the quorum) of such committees.
- (4) A School Board may empower any of their members or the Clerk to execute documents on their behalf and any legal proceedings or other document to be served on a Board shall be deemed to have been duly served if served at the school on the Clerk or, if no Clerk has been appointed, on the chairman or vice-chairman.
- (5) A School Board shall have power to regulate their proceedings, so far as is consistent with this Act.
- (6) The quorum of a School Board shall be not less than one third of their members and proceedings of the Board shall not be invalidated by any vacancy in the membership or by any defect in the qualifications, election or co-option of any member.
- (7) Minutes of the proceedings of a meeting of a School Board, or of any committee of a Board, shall be drawn up and shall be signed at the same or next following meeting by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.
- (8) Where their education authority so require, a School Board shall send to the authority a copy of the minutes signed under subsection (7) above in relation to any meeting.
- (9) The Secretary of State may by regulations—
  - (a) require School Boards and any committee established by them to make available to such persons or classes of person as may be prescribed such documents and information relating to their meetings and proceedings as may be prescribed; and
  - (b) prescribe the extent to which meetings of the Board and of any such committee are to be open to the public.
- (10) A School Board shall appoint a person to be Clerk to the Board who may, unless he is a member of the Board, be paid for his services.
- (11) A School Board may invite to attend any of their meetings and to speak any person whose presence they consider to be desirable for the purpose of giving advice to the Board regarding, or representing persons interested in, the matters under discussion.

## 7 Combined schools

- (1) Where a school is constituted by the amalgamation of 2 or more existing schools, it shall be known as a “combined school” for the purposes of this Act, whether or not it—
  - (a) occupies the buildings previously used by; or
  - (b) is called by the same name as,one of the schools it replaces.
- (2) Where a decision has been taken by an education authority to constitute a combined school, the members of the School Boards of the existing schools shall, meeting together, constitute an *Interim* School Board which shall have the functions given to a School Board by the provisions of this Act mentioned in subsection (5) below in relation to the combined school.
- (3) In the event of any of the School Boards for the schools constituting the combined school ceasing to exist (before a School Board are established for the combined school), the members of that School Board shall remain members of the *Interim* Board, but no vacancy arising in their membership shall be filled.
- (4) An *Interim* Board shall cease to exist when a School Board have been established for the combined school.
- (5) Sections 3(4) and (5), 4 to 6, 8 to 14 and 17 to 19 of this Act shall (with the necessary modifications) apply to an *Interim* Board as they apply to a School Board.

## 8 Exercise of functions of Boards

- (1) Subject to this Act, a School Board may do anything which is calculated to facilitate the exercise of their functions including, without prejudice to the foregoing generality, power to enter into contracts and agreements (other than contracts or agreements relating to land) and to invest money.
- (2) A School Board exercising any function given to them by or under 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 imposed under this Act.
- (3) The members of a School Board shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of any functions given to them by or under this Act.
- (4) In the exercise of any functions given to them by or under this Act, a School Board shall have regard, where any of the land or equipment of a school is used for the purposes of further education, to the requirements of that use and shall, in any case where the exercise of any such function is liable to affect such use, hold consultations with such of the following persons as they consider appropriate in the circumstances, namely—
  - (a) their education authority;
  - (b) any college council concerned; and
  - (c) the person in charge of the institution providing the further education.
- (5) In the exercise of any functions given to them by or under this Act, a School Board shall ensure that any duty of their education authority under statute or any rule of law is duly complied with.

- (6) A School Board shall comply with any reasonable requests made to them from time to time by their education authority for information relating to the exercise of any function given to the Board by or under this Act.

## **9 Books, materials, etc**

- (1) Every education authority shall, in every financial year, make available to the headteacher of every school in their area such funds as they think necessary for the purchase of books and other teaching materials for the school, and for such other purposes as they think fit.
- (2) The headteacher—
- (a) shall from time to time make proposals to the School Board as to how the funds provided under this section should be spent; and
  - (b) shall not spend funds on any proposal unless it is approved by the Board.
- (3) Where for any reason no School Board are for the time being established for a school, the headteacher shall spend the funds provided under this section in such manner as he thinks appropriate.
- (4) The headteacher and the Board shall have regard, in exercising their respective functions under this section, to—
- (a) any guidance issued in relation to those functions by the education authority; and
  - (b) any policy of the education authority in relation to the curriculum of schools, and shall ensure that any relevant duty of the authority under statute or any rule of law is duly complied with.

## **10 Information and reports**

- (1) Every education authority shall provide to every School Board in their area such information as the Board may from time to time reasonably request relating—
- (a) to the school for which the Board are established; or
  - (b) to the provision of education in the authority's area.
- (2) Every headteacher shall provide to the School Board, at the time when the Board are established, a statement of the policies as regards—
- (a) curriculum;
  - (b) assessment of pupils; and
  - (c) discipline, rules and uniform,
- which are being applied in the school, and thereafter shall advise the Board of any changes in those policies.
- (3) Every headteacher shall provide to the School Board—
- (a) an annual report, including in particular a report on the level of attainment of the pupils in the school;
  - (b) such other reports and information concerning the school as the Board may from time to time reasonably require.

- (4) The School Board may make representations with regard to information, statements and reports provided under this section to the education authority and to the headteacher who shall take account of those representations and shall reply to them.

## 11 Appointments

Schedule 2 to this Act shall have effect in relation to the appointment of headteachers and deputy and assistant headteachers.

## 12 Relations between Boards and parents

- (1) Every School Board shall promote contact between the school, parents of pupils in attendance at the school and the community and, in particular, shall encourage the formation of parent-teacher or parents' associations.
- (2) Every School Board shall—
- (a) as often as appears to them to be necessary but, in any event—
    - (i) not more than 12 months after their establishment; and
    - (ii) at intervals of not more than 12 months after the first such report, make a report to parents of pupils in attendance at the school in order to inform parents of the Board's activities; and
  - (b) as often as appears to them to be necessary, ascertain the views of parents on matters which are the responsibility of the Board.
- (3) The headteacher of the school shall provide the Board with information as to the arrangements applied in the school for consultation between parents and teachers, and the Board may make representations concerning these arrangements to the headteacher, who shall take account of those representations and shall reply to them.

## 13 Parents' meetings

- (1) Where School Boards receive a request in writing from—
- (a) 30 parents of pupils in attendance at the school; or
  - (b) a number of such parents equal to at least one quarter of those who were entitled to vote at the most recently-held election of parent members,
- whichever is less, they shall hold a meeting under this section.
- (2) A meeting under this section may be requested in order to enable parents—
- (a) to make inquiries and to discuss matters relating to the activities of the Board;
  - (b) to make resolutions relating to the activities of the Board,
- and the request shall specify the purposes of the meeting and the matters to be raised or the resolutions which are to be proposed.
- (3) On receiving a request for a meeting under this section a Board shall—
- (a) fix the earliest practicable date for the meeting, having regard to the desirability of giving all parents of pupils in attendance at the school notice thereof; and
  - (b) send to every such parent, by post, a notice specifying—
    - (i) the date, time and place of the meeting;
    - (ii) the purposes for which the meeting has been requested; and



- (iii) the matters which are to be raised and any resolution which is to be proposed.
- (4) The Board shall arrange for such of their members as they think appropriate to attend a meeting under this section, and for one of their members to chair the meeting.
- (5) Members of the Board, the headteacher, parents of pupils in attendance at the school and any other person invited by the Board may attend and speak at a meeting held under this section.
- (6) The procedure at a meeting under this section shall be determined by the chairman, who may refuse to permit discussion of any matter or resolution not specified in the request under subsection (2) above.
- (7) Only parents of pupils in attendance at the school may vote on any resolution put to a meeting under this section.
- (8) The Board shall consider any resolution passed at a meeting under this section.

#### **14 Use of premises and occasional holidays**

- (1) Every School Board shall, subject to any direction by their education authority (and to the authority's powers to fix charges, so far as not delegated under section 15 of this Act), control the use of the premises of the school outside school hours, and shall encourage the use of those premises by members of the community in which the school is situated.
- (2) Every School Board shall have power, after consulting their education authority, to fix occasional holidays during school terms.

#### **15 Delegation of functions to Boards**

- (1) Every education authority shall have power, by making an instrument to be known as a "delegation order", to delegate, subject to subsections (2) and (3) below, any of the authority's functions in relation to a school to the School Board.
- (2) There shall not be delegated under this section—
  - (a) the function of giving employment to, or of dismissing or of removing from a school, any of the staff of the school;
  - (b) the function of selecting a person to be appointed as headteacher, or as a deputy or assistant headteacher;
  - (c) the regulation of the curriculum;
  - (d) the assessment of pupils (without prejudice to the competency of delegating decisions as to the manner in which results of assessment are reported);
  - (e) the function of discontinuing, changing the site of, or amalgamating with another school a school (or part of a school); or
  - (f) the function of setting up or discontinuing any stage of education in a school, or special classes in a school;
  - (g) the function of determining admissions policy for a school.
- (3) A delegation order may be made for a specified period or without limit of time, and may include such conditions attached to the delegation of functions as (subject to Schedule 3 to this Act) the authority consider appropriate.

- (4) Schedule 3 to this Act shall have effect in relation to the making and amendment of delegation orders.
- (5) An education authority which revokes or amends an order under this section shall have power to adjust accordingly the monies made available to the School Board under section 17 of this Act.

## **16 Powers of education authority to ensure due exercise of delegated functions**

- (1) An education authority shall not exercise functions which they have delegated to a School Board under section 15 of this Act except insofar as—
  - (a) conditions imposed under that section of this Act provide; or
  - (b) section 20(8) of this Act or this section provides.
- (2) Where an education authority are satisfied that a School Board in their area have, in relation to any function delegated to them under section 15 of this Act, seriously or persistently failed—
  - (a) to comply with any condition imposed under that section;
  - (b) to comply with 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 suspend the delegation of the function and may exercise the function themselves.
- (3) Where an education authority have suspended the delegation of a function under this section they shall have power to adjust accordingly the monies made available to the School Board under section 17 of this Act.
- (4) Where an education authority intend to suspend the delegation of any function of a School Board under subsection (2) above they shall give the Board not less than one month's notice of that intention, unless they are satisfied that gross mismanagement has occurred or that an emergency exists, when they may suspend the delegation of the function on immediate notice.
- (5) An education authority shall give their reasons for suspending delegation of functions along with notice under subsection (4) above.
- (6) A School Board shall be entitled to make representations with regard to any suspension under subsection (2) above, and to be heard—
  - (a) where a month's notice is given, before expiry of the notice;
  - (b) otherwise within 4 weeks of the notice.
- (7) An education authority may at any time revoke a suspension under this section entirely or to such extent as they think appropriate.
- (8) Once the procedures described in subsections (4), (5) and (6) above have been exhausted, a School Board may appeal against a suspension under this section to the Secretary of State who may revoke the suspension entirely or to such extent as he thinks appropriate.
- (9) A suspension under this section shall be reviewed by the education authority not less than 12 and not more than 14 months after the date of the suspension, and on such a review the education authority shall give the School Board an opportunity to make representations.

- (10) An education authority, on a review under subsection (9) above, shall—
- (a) revoke the suspension; or
  - (b) as soon as is practicable, proceed under Schedule 3 to this Act to seek revocation of the delegation of the function, and shall give the Board notice of their decision.
- (11) In the event of the authority proceeding under subsection (10)(b) above and the Secretary of State refusing to consent to revocation, the suspension shall cease to have effect.

## **17 Financing of Boards and financial information**

- (1) Every education authority shall, in respect of each financial year, and before the beginning of that financial year, determine for each School Board in the authority's area allocations of such monies within the authority's budget as appear to the education authority, after consultation with the Board, to be reasonably required by the Board for—
- (a) meeting administrative expenses, the expenses of training of members of the Board, and other outgoings; and
  - (b) carrying out any functions delegated to the Board under this Act.
- (2) Every education authority shall, in each financial year, make available to each School Board in their area the monies allocated under this section for them in respect of that year at such times as those monies are required.
- (3) If, during any financial year, it appears to an education authority appropriate to do so, they may make monies in addition to those allocated under this section available to a School Board for the purposes described in subsection (1) above.
- (4) Every education authority shall in each financial year, by such date and in such form as may be prescribed, provide to every School Board in their area a statement of—
- (a) monies paid out by the authority in the previous financial year in respect of—
    - (i) the running costs of the school; and
    - (ii) capital expenditure related to that school; and
  - (b) monies proposed to be paid out by the authority in the financial year in which the statement is made for those purposes.
- (5) A School Board shall be entitled to make representations to the education authority concerning the statements required for the purposes of subsection (4) above, and the education authority shall take account of such representations and shall reply to them.
- (6) An education authority shall comply with any reasonable request made by a School Board for financial information relating to the school, or relating to schools in the education authority's area generally.

## **18 Financial powers of Boards**

- (1) A School Board may—
- (a) raise funds by any means (other than borrowing); and
  - (b) receive gifts,
- and may expend any sums so received at their discretion, taking account of the views of the headteacher, for the benefit of the school.

- (2) A School Board shall keep proper accounts in relation to any sums received by them under subsection (1) above.
- (3) Nothing in subsection (1) above shall entitle a School Board to make any charges or demand any fees in respect of the school education provided by their education authority.
- (4) A School Board shall not acquire any interest in heritable property, whether by inheritance, gift or otherwise, and any provision in any instrument which contravenes this subsection shall be void.
- (5) Where a School Board cease to exist by operation of section 1(5) of this Act (discontinuance of school), any property belonging to the Board shall pass to the education authority.
- (6) Where a School Board are disestablished by operation of section 20(6) of this Act (insufficient parent members elected), any property belonging to the Board shall pass to the education authority, but—
  - (a) the authority shall use any such property for the benefit of the school in question; and
  - (b) in the event of a School Board being re-established for that school, any such property remaining in the hands of the education authority shall pass to the new School Board.
- (7) Any property belonging to an *Interim* School Board at the time when a School Board are established for the school in question shall pass to the School Board.
- (8) All rights and obligations in relation to and arising in respect of property which passes under any of subsections (5) to (7) above shall pass with the property to the recipient.

## **19 Allowances for members of Boards**

An education authority may pay to any member of a School Board in their area—

- (a) in respect of his attendance at a meeting of the Board; 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 Board,

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.

## **20 Schools without a Board and disestablishment of Boards**

- (1) An education authority may decide not to establish a School Board for a school for which no School Board have been established or whose School Board are for the time being disestablished if—
  - (a) they are satisfied that by reason of the small number of pupils in attendance at the school there are insufficient parents of such pupils who are qualified to serve as parent members to satisfy the requirements of this Act; and
  - (b) the Secretary of State consents to the decision.

- (2) A decision under subsection (1) above shall be rescinded if a number of parents equal to the number of parent members prescribed for the Board for that school request it in writing, and a School Board shall be established for that school as soon as is practicable.
- (3) The authority may review a decision under subsection (1) above at any time, and shall do so if there is in their view a significant increase in the number of pupils in attendance at the school: and shall, if they consider that there are sufficient parents qualified to serve as parent members, establish a School Board for that school as soon as is practicable.
- (4) Sections 10, 12(3) and 17(4) to (6) of this Act shall apply in relation to each parent of pupils in attendance at a school which does not have a School Board by reason of subsection (1) above as those provisions would apply to a School Board established for that school.
- (5) In the event of a lesser number of parent members being elected at any election under section 2 of this Act than is necessary to make up the numbers for the time being prescribed under that section, a by-election to fill the places of parent members shall be held as soon as is practicable.
- (6) Where insufficient parent members are elected at a by-election under subsection (5) above, the School Board shall not be established or, in the case of an existing Board, shall be disestablished.
- (7) Where by reason of subsection (6) above a Board are not established or are disestablished, unless it is decided in accordance with subsection (1) above not to establish a Board for the school, further elections for members of the Board shall be held—
  - (a) at any time when a number of parents equal to the number of parent members prescribed for the Board request it in writing;
  - (b) in any event, not less than 22 and not more than 24 months after the last such elections.
- (8) Where no School Board or *Interim* School Board are for the time being established for a school—
  - (a) any functions delegated to a Board for such a school which has become disestablished; and
  - (b) the functions conferred on School Boards by section 14 of this Act, shall be exercised by the education authority for the area in which the school is situated.
- (9) A School Board re-established as a result of elections under subsection (7) above shall have all the delegated functions which they had before they became disestablished.

### *Supplementary*

## **21 Public money**

There shall be paid out of money provided by Parliament—

- (a) any expenses of the Secretary of State under this Act; and
- (b) any increase in the sums so payable under any other enactment.

## 22 Interpretation

(1) Except where express provision is made to the contrary, expressions used in this Act and in the 1980 Act shall have the same meaning in this Act as is given to them by section 135(1) of that Act.

(2) In this Act—

“appointment committee” has the meaning given in Schedule 2 to this Act;  
 “college council” means a college council appointed under section 125 of the 1973 Act;

“combined school” has the meaning given in section 7 of this Act;

“co-opted members” has the meaning given in section 2(1)(c) of this Act;

“denominational school” has the meaning given in section 2(7) of this Act;

“electoral division” means an electoral division of a region or of an islands area, in terms of section 5(1) (a) of the 1973 Act;

“financial year” means the financial year of a local authority in terms of the 1973 Act;

“islands councillor” means a councillor elected for an electoral division of an islands area, in terms of section 5(1) of the 1973 Act;

“parent” in relation to a pupil means his natural parent or any other natural person who is his guardian, who has custody of him or who is liable to maintain him;

“parent members” has the meaning given in section 2(1)(a) of this Act;

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

“pupil” does not include any person over the age of 18 years;

“regional councillor” means a councillor elected for an electoral division of a region, in terms of section 5(1) of the 1973 Act;

“school” means a public school other than a nursery school;

“School Board” has the meaning given in section 1 of this Act;

“staff members” has the meaning given in section 2(1)(b) of this Act;

“the 1973 Act” means the Local Government (Scotland) Act 1973; and

“the 1980 Act” means the Education (Scotland) Act 1980.

## 23 Regulations and minor and consequential amendments

(1) Any power of the Secretary of State to make regulations under this Act shall be exercised by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Regulations under this Act may make different provision for different cases or different circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.

(3) The enactments specified in Schedule 4 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.

## 24 Short title, commencement and extent

(1) This Act may be cited as the School Boards (Scotland) Act 1988.

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- (2) This Act, except this section, shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint, and different dates may be so appointed for different purposes.
- (3) This Act extends to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 2.

#### ELECTORAL PROCEDURE

- 1 Every education authority shall make arrangements for the holding of elections under this Act for School Boards in their area, and for that purpose shall draw up a scheme of arrangements for such elections in accordance with—
- (a) this Schedule; and
  - (b) such guidance as to the form and content of such schemes as the Secretary of State may from time to time issue.
- 2 A scheme may make different provision for different schools or classes of school.
- 3 Every scheme shall include provision for the appointment by the education authority of a returning officer to ensure the proper conduct of the elections.
- 4 In the case of an election of a parent member, the arrangements under paragraph 1 above shall provide for every parent of a pupil in attendance at the school to have an opportunity to vote by post.
- 5 Subject to this Schedule and to any scheme made under paragraph 1 above, the education authority for the area in which a school is situated shall determine all matters relating to any election of members of the School Board for that school, and in particular all matters relating to eligibility to be a candidate or to vote including the date at which such eligibility is to be determined in respect of any particular election.
- 6 For the purposes of paragraph 5 above, the education authority shall, in respect of each school in their area, establish and maintain a list of the names of the parents of pupils in attendance at that school, and unless a parent's name appears on the list on the date determined by an authority under paragraph 5 above for the purposes of any election he shall not be eligible to be a candidate or to vote in that election.
- 7 Elections under this Act shall be held by secret ballot.
- 8 All practicable steps shall be taken to ensure that every person known to be a parent of a pupil in attendance at a school in their area—
- (a) is informed of any forthcoming election under this Act of a parent member of the School Board for that school, and of his right to be a candidate and to vote; and
  - (b) has an opportunity to be a candidate and to vote at any such election.
- 9 Every education authority shall, for the purposes of any election of parent members of a School Board for a school in their area, send to every parent eligible to vote in that election—
- (a) a ballot paper;
  - (b) a copy of a statement not exceeding 250 words by any candidate who has provided the authority with such a statement by such date as the authority shall have specified,



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and the authority shall not issue any statements or material designed to influence the election other than the statement referred to in (b) above.

- 10 An education authority may arrange for any of their functions under this Schedule in relation to elections, apart from the making or variation of schemes, to be carried out in accordance with their directions by the School Board for the school.
- 11 For the purposes of this Schedule “election” includes a by-election.

## SCHEDULE 2

Section 11.

### APPOINTMENT OF HEADTEACHERS, DEPUTIES AND ASSISTANTS

- 1 Where an education authority intend to fill a post, other than on an acting basis, of headteacher, deputy headteacher or assistant headteacher of a school, they shall—
- (a) advertise the post in such publications circulating throughout Scotland as they consider appropriate; and
  - (b) if they decide to proceed further with the appointment, set up a committee (to be known as an “appointment committee”) for the purpose of considering a short list of candidates provided by the education authority and making recommendations to the authority for the appointment of persons to fill posts in accordance with this Act.
- 2 Except where paragraph 4 below applies, an appointment committee shall consist—
- (a) where the appointment of a headteacher is being considered, of equal numbers of persons nominated by the education authority (one of whose nominees shall be the chairman of the committee) and by the School Board;
  - (b) in any other case, of an equal number of persons nominated by the education authority and by the School Board; and the headteacher of the school, who shall be chairman of the committee,
- but pupils of the school and members of the staff of the school other than the headteacher may not be members of an appointment committee.
- 3 Any vacancy occurring in the membership of an appointment committee (other than a vacancy resulting from lack of a headteacher, in whose absence an appointment committee to which paragraph 2(b) above applies may not be constituted or sit) shall be filled by a further nomination by the body which nominated the person whose place has become vacant.
- 4 Where for any reason no School Board are for the time being established for a school, an appointment committee shall consist of persons nominated by the education authority, together with, where paragraph (2)(b) above applies, the headteacher of the school (who shall be the chairman).

### *Application of 1973 Act to appointment committees*

- 5 The 1973 Act shall apply to appointment committees as it applies to sub-committees of an education authority appointed under Schedule 10 to that Act, but—
- (a) sections 56 and 57 of and Schedule 10 to that Act shall not apply to appointment committees;
  - (b) members of appointment committees shall not require to be members of the education authority; and

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- (c) nothing in that Act shall—
- (i) enable functions of an appointment committee to be discharged by the education authority or by any other person or body;
  - (ii) enable the education authority to control the exercise of functions by an appointment committee; or
  - (iii) prevent an employee of the education authority being a member of an appointment committee.

*Short leet*

- 6 Subject to paragraphs 7 and 8 below, a short leet shall consist of not less than 3 persons who have applied for the post and are eligible for it (in terms of any requirements by or under any enactment relating to eligibility for the post or for the class of post).
- 7 Where there are fewer than 4 applicants who are eligible for the post, the education authority may, if they think fit, re-advertise.
- 8 Where the education authority do not re-advertise the post or where, following such re-advertisement, there are fewer than 4 applicants eligible for the post, the short leet shall consist of all those who have applied.

*Appointment of headteacher, where School Board established*

- 9 In the case of the appointment of a headteacher of a school for which a School Board have been established the education authority shall submit the short leet to the School Board, and for the purposes of consideration of the short leet and of reaching any decision in accordance with paragraph 11 or 12 of this Schedule the Board shall meet without their staff or any pupil members.
- 10 For the purpose of enabling the Board to carry out their functions under paragraphs 9, 11 and 12 of this Schedule, the authority shall supply to the Board such information relating to the applicants for the post as—
- (a) the authority have in their possession or can readily obtain; and
  - (b) the Board may reasonably request.
- 11 After considering the short leet, the Board may, except where paragraph 12 below applies, make such additions to and deletions from the leet as they think fit, but—
- (a) they may not add to the leet the name of any person who has not applied or who is not eligible, in terms of paragraph 6 above, for the post; and
  - (b) they may not reduce the leet to less than 3 names,
- and they shall thereafter send the leet to the appointment committee, who shall consider the leet and make their recommendation under paragraph 16 below.
- 12 Where the short leet consists of fewer than 4 names, the Board may not make any alterations thereto, but may submit comments to the appointment committee, who shall take those comments into consideration.

*Appointments of deputy or assistant headteacher, or  
of headteacher where no School Board established*

- 13 In every other case the authority shall prepare the short leet (in the case of the appointment of a deputy or assistant headteacher, in consultation with the

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headteacher) and shall send the short list to the appointment committee, who shall consider it and make their recommendation under paragraph 16 below.

*Procedure of committee*

- 14 The appointment committee and (where appropriate) the School Board shall—
- (a) inform the Director of Education in advance of any meeting to be held by either of them in connection with appointment to any post;
  - (b) consider any advice given by him or his nominee in relation to the appointment.
- 15 The Director of Education or any officer of the education authority nominated by him for the purpose shall—
- (a) be entitled to attend any proceedings of the appointment committee or a School Board; and
  - (b) give the committee or, as the case may be, the Board such advice as he considers appropriate,
- in relation to an appointment to which this Schedule applies.
- 16 The appointment committee shall, unless they consider that no person on the short list is suitable for the post, recommend one candidate for appointment.
- 17 Where an appointment committee recommend the appointment of any person to a post to which this Schedule applies the education authority shall appoint that person accordingly, unless it appears to them that the candidate is not eligible for the post in which case they may refuse to appoint him.
- 18 Where an education authority refuse, under paragraph 17 above, to appoint the person recommended by the appointment committee, the authority shall, if they intend to fill the post, undertake fresh procedure under paragraph 1 above.
- 19 It shall not be competent for a deputy or assistant headteacher to exercise any of the functions of a headteacher under this Schedule.

SCHEDULE 3

Section 15.

DELEGATION ORDERS

*Delegation on education authority's initiative*

- 1 Where an education authority propose making a delegation order under section 15 of this Act on their own initiative, they shall provide a draft of the order to the School Board and seek the agreement of the Board to the terms of the proposed order, without which agreement the order may not be made.

*Request by School Board for delegation*

- 2 Where a School Board request their education authority in writing to make a delegation order under section 15 of this Act, the authority shall consider the request and inform the Board in writing as soon as is practicable (and in any event within 6 months) in respect of each of the functions requested to be delegated whether or not they agree to make a delegation order, and of their reasons for any refusal.

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### *Refusal by authority*

- 3 In the event of a refusal under paragraph 2 above to delegate any function, the School Board may call for a ballot of all parents of pupils in attendance at the school to determine whether a majority of the parents voting in the ballot are in support of the request for delegation of that function.
- 4 Where a School Board call for a ballot under paragraph 3 above, their education authority shall carry out the ballot by providing to all parents of pupils in attendance at the school—
- (a) a ballot paper;
  - (b) a statement of the School Board’s proposals and of any reasons for them given to the authority by the Board;
  - (c) the reasons given by the authority under paragraph 2 above for refusing the request, and any reply thereto made by the Board,
- and the parents shall be invited to vote “yes” or “no” to the proposals.
- 5 Schedule 1 to this Act shall apply (with the exception of paragraph 9 and of references to candidates) to a ballot under paragraph 3 above as it applies to an election of parent members held under that Schedule.
- 6 Where, following a refusal under paragraph 2 above to delegate a function to a School Board, a majority of parents voting in a ballot under paragraph 3 above have expressed support for the delegation of a function, the education authority may agree or again refuse to delegate the function.
- 7 Where an education authority refuse to delegate a function under paragraph 6 above, the School Board may refer the matter to the Secretary of State for a decision under paragraph 8 below.
- 8 Where a request for delegation of a function is referred to the Secretary of State under paragraph 7 above he shall, after considering the views of the education authority and of the School Board, unless he is satisfied that the delegation requested would prejudice the good running of the school, direct the education authority concerned to make a delegation order in such terms and including such conditions of delegation and ancillary provisions as he considers appropriate.

### *Agreement by authority*

- 9 Where an education authority agree under paragraph 2 or 6 above to make a delegation order, they shall as soon as is practicable provide a draft of the order to the School Board, and seek to reach agreement with the Board on the terms of the order.
- 10 If agreement is reached under paragraph 9 above, the education authority shall make the delegation order forthwith.

### *Disagreement on terms of the order*

- 11 Where, after the elapse of 2 months from the date when the first draft of any proposed delegation order was provided to a School Board under paragraph 9 above, the Board and their authority have been unable to reach agreement on the terms of the proposed order, the authority shall, if so requested by the Board, send the current draft to the Secretary of State for decision under paragraph 12 below.

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- 12 Where a draft delegation order is referred to the Secretary of State under paragraph 11 above he shall, after considering the views of the education authority and of the School Board, unless he is satisfied that the delegation requested would prejudice the good running of the school, direct the education authority concerned to make forthwith a delegation order in such terms as he considers appropriate, including such conditions of delegation and ancillary provisions as he considers appropriate.

*Secretary of State's power to require information*

- 13 In connection with any reference to him under paragraph 7 or 11 above or 15 below, the Secretary of State may require the education authority and the Board to provide him with such information and documents as he requires in order to make his decision.

*Amendment*

- 14 An education authority may, with the consent of the School Board concerned, amend a delegation order by making a further order (which may include revocation of the delegation of a function, or of the whole delegation order).
- 15 Where an education authority has been unable to obtain the consent of the School Board to an order under paragraph 14 above, the authority may send a draft of the order to the Secretary of State who shall consider the views of the education authority and of the School Board, and—
- (a) may, if he is satisfied that continued delegation of any function would prejudice the good running of the school, consent to the revocation of the delegation of that function;
  - (b) may, as he thinks fit, consent to an amendment which does not in his view amount to the revocation of the delegation of a function; and
  - (c) in either case, may direct such alterations of the draft order as he thinks fit, and the authority, if they decide to proceed to make an order, shall do so in accordance with his directions.

SCHEDULE 4

Section 23.

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Local Government (Scotland) Act 1973 (c. 65)*

- 1 In section 125(1) of the 1973 Act, before “educational” in both places where it occurs, insert “further”.
- 2 In section 125(2) of the 1973 Act, omit from “(a)” to “case” where it occurs in paragraph (b) of that subsection.
- 3 In section 125(3) of the 1973 Act, omit paragraph (a) and, in paragraph (b), “(a) or”.
- 4 In section 125 and 126 of and Schedule 10 to the 1973 Act, omit “school or” wherever it occurs.
- 5 In section 125(4) of the 1973 Act, omit “school and”.

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

- 6 In section 70 of the Education (Scotland) Act 1980 (which relates to the enforcement of duties imposed under that Act and other enactments), after the words “education authority,” in both places where they occur, insert “a School Board,”.
- 7 In Schedule A1 to the Education (Scotland) Act 1980, in paragraph 7(d), omit “school council” and substitute “School Board”.