



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

PART I

SELF-GOVERNING SCHOOLS

Duty to maintain self-governing schools

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

- (1) Subject to the provisions of this Part, it shall be the duty of the Secretary of State to maintain any school governed by a board of management incorporated under section 19(2) of this Act.
- (2) For the purposes of subsection (1) above, the duty of the Secretary of State is a duty to make such payments in respect of the expenses of maintaining the school as are required by the following provisions of this Part.
- (3) A school to which the Secretary of State's duty under this section for the time being applies shall be known as a self-governing school.
- (4) On the incorporation date any duty of the education authority to maintain or manage the school, or to provide school education in the school, or to keep it efficient, shall cease.

Government

2 Scheme of government.

- (1) For every self-governing school there shall be an instrument (to be known as the scheme of government), one part of which (to be known as the articles of constitution) shall make provision for the constitution of the board of management of the school

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and the other part of which (to be known as the articles of management) shall make provision as regards the exercise of the board's functions in respect of the school.

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

3 The board of management and the articles of constitution.

- (1) Without prejudice to section 19(3) of, and Schedule 4 to, this Act and subject to paragraphs 1 to 5 of Part I of Schedule 1 to this Act, the board of management of a self-governing school shall comprise—
- (a) parent members (being persons elected to the board of management under this paragraph by parents of pupils in attendance at the school from such parents);
 - (b) staff members (being persons elected to the board of management under this paragraph by members of staff of the school from such staff);
 - (c) appointed members (being persons appointed under this paragraph to and by the board of management); and
 - (d) the person who is for the time being the head teacher of the school.
- (2) Part I of Schedule 1 to this Act, which makes further provision as regards the articles of constitution, shall have effect.
- (3) Subject to subsections (4) and (5) below it shall be the duty of the board of management to ensure that any vacancy in the membership of the board is duly filled as soon as is reasonably practicable and in any event within three months of the vacancy's arising.
- (4) Where a person ceases, for whatever reason, to be a parent member or staff member within six months before the date of expiry of his term of office, the duty under subsection (3) above does not require the vacancy to be filled before that date.
- (5) The duty, under subsection (3) above, of an interim board of management shall be construed as a duty to ensure that the election of the parent and staff members who are to succeed them on the board of management takes place as soon as is reasonably practicable and in any event within three months after the incorporation date.

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4 Members' tenure of office.

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

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

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

Marginal Citations

M1 1973 c. 65.

6 Proceedings of board of management.

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

7 Powers and duties of board of management.

- (1) The board of management of a self-governing school shall manage the school, shall provide suitable and efficient school education at the school and shall, subject to subsection (2) below, to any regulations under subsection (7) below, to sections 11(1) and 12 of this Act and to any provision made by the articles of management of the school, have power to do anything which appears to them to be necessary or expedient

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for their exercise of those functions in respect of the school, including in particular power—

- (a) to assume the management as from the incorporation date of the school, and for that purpose to receive any land, moveable property, liabilities and obligations transferred to them under section 36 or 49 of this Act;
 - (b) subject to subsection (2) below and to section 37 of this Act, to acquire and dispose of land and other property;
 - (c) to enter into contracts, including in particular contracts for the employment of teachers and other staff;
 - (d) to invest any sums not immediately required for the purposes of meeting the expenses of managing the school or any liability or obligation transferred to the board of management under section 36 or 49 of this Act; and
 - (e) to raise funds by any means other than borrowing, to accept gifts of money, land or other property and to apply, or hold and administer on trust, such funds and gifts for any purpose connected with such exercise by them.
- (2) Subsection (1) above does not confer power to borrow money; and the power under paragraph (b) of that subsection to dispose of land—
- (a) does not include any power to grant any security in respect of land; and
 - (b) may only be exercised with the written consent of the Secretary of State, the consent not being given without his having consulted the education authority as regards the proposed disposal.
- (3) Without prejudice to subsection (1) above, but subject to any provision made by the scheme of government of the school, the board of management of a self-governing school shall also have power to provide education other than school education at the school.
- (4) The board of management of a self-governing school shall promote contact between the school, parents of pupils at the school and the community and shall in particular—
- (a) encourage the formation of a parent-teacher association or parents' association at the school; and
 - (b) subject to their duty under subsection (1) above to provide suitable and efficient school education, promote the use of the school premises and facilities by the community.
- (5) The board of management of a self-governing school shall, as part of the provision by them of school education, provide adequate facilities for pupils in attendance at the school for social, cultural and recreative activities and for physical education and training; and they may additionally provide such facilities (whether or not for those pupils) other than as part of the provision of school education.
- (6) The board of management of a self-governing school shall, in the exercise of their functions, have regard to a need to make improvements in the provision which the school makes for pupils with special educational needs.
- (7) Standards and general requirements may be prescribed to which every board of management shall conform in discharging their functions under this Act.
- (8) Section 70 of the 1980 Act (enforcement of duties) applies as regards a board of management in respect of any duty imposed on them for the purposes of this Act (or of any other enactment relating to education).

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- (9) Part II of Schedule 1 to this Act, which makes provision as regards articles of management, shall have effect.

8 Execution of documents.

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

9 Reports and parents' meetings.

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

Parental rights etc.

10 Rights of parents in relation to individual pupils.

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

Fees, charges, books, etc.

11 Fees, charges, books etc.

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

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- (b) may provide, whether free of charge or otherwise, to pupils in attendance at the school articles of clothing suitable for physical exercise or for other activities of the school for which special clothing is desirable.

Management of denominational schools

12 Management of denominational schools.

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

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

Procedure for acquisition of self-governing status etc.

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

- (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 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—

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- (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

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“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.

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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
 - (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 ^{M2}Sex Discrimination Act 1975; and
 - (e) stating whether or not it is a denominational school.

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- (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.

Marginal Citations

M2 1975 c. 65.

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

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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.

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

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

- (1) Subject to section 14(2) of this Act, where a proposal—
- (a) is published under section 22A of the 1980 Act as regards a school (consultation on certain changes in educational matters), but before a decision is reached on the proposal the education authority receive written notice under subsection (6) of section 13 of this Act, either of a first resolution or of a request, as regards the school, they shall not decide on the proposal;
 - (b) is submitted under section 22B, 22C or 22D of the 1980 Act (consent for certain changes in educational matters or affecting denominational schools) as regards a school but before the Secretary of State consents to the proposal the education authority receive such notice as is mentioned in paragraph (a) above as regards the school, the consent cannot validly be given,
- unless and until one of the conditions specified in section 24(2) of this Act is satisfied as regards the school.
- (2) Without prejudice to paragraph (a) of subsection (1) above, the receipt of such notice as is mentioned in that paragraph shall not prevent publication under the said section 22A.
- (3) No proposal shall be—
- (a) published, made available or decided on under the said section 22A; or
 - (b) submitted or consented to under the said section 22B, 22C or 22D,
- in respect of a school as regards which proposals published under section 16 of this Act have been approved by the Secretary of State.

Staff

22 Transfer of staff to self-governing schools.

- (1) Subject to subsection (2) below, this section applies to any person who immediately before the incorporation date in relation to a school—
- (a) is employed by the education authority by whom the school is maintained in a post (whether teaching or non-teaching and whether or not at the school) which involves his working solely at the school or has been assigned to work solely at the school; or
 - (b) is employed by that authority to work at the school and is designated for the purposes of this section, either individually or as a member of a class or description of employees, by a direction given by the Secretary of State.

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

- (2) This section does not apply to any person employed as mentioned in subsection (1) above—
- (a) whose contract of employment terminates on the day immediately preceding the incorporation date or who before that date has been—
 - (i) appointed or assigned by the education authority concerned to work solely at another school as from that date; or
 - (ii) withdrawn from work at the school with effect as from that date; or
 - (b) who is employed in connection with the provision of meals, unless the meals are provided for consumption only at the school.
- (3) The contract of employment between a person to whom this section applies and the education authority by whom he is employed shall have effect from the incorporation date as if originally made between him and the board of management of the school.
- (4) A person who before the incorporation date has been appointed or assigned by the education authority by whom the school is maintained to work at the school as from that date (or some later date) shall be treated for the purposes of this section as if he had been employed by that authority immediately before that date to do such work at the school as he would have been required to do on or after that date under his contract of employment with that authority.
- (5) Without prejudice to subsection (3) above—
- (a) all the education authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the board of management on the incorporation date; and
 - (b) anything done before that date by or in relation to the education authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the board of management.
- (6) Where—
- (a) the contract of employment of a person employed by an education authority includes a term (however expressed) to the effect that the person may be assigned to work at more than one of the schools managed by them; and
 - (b) by virtue of a direction given under subsection (1)(b) above that contract is to have effect as if made between him and a board of management,
- the term shall, in accordance with subsections (3) and (5) above, give the right of assignation to the board, so however that the schools (other than the self-governing school) to which the person may be assigned if the authority agree shall be those to which he might have been assigned had no direction been given.
- (7) Subsections (3) and (5) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.

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

- (1) It may be prescribed that only registered teachers shall be employed, or continue to be employed, as teachers in self-governing schools, subject to such exceptions as may from time to time be prescribed.

Status: Point in time view as at 01/02/1991.

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

- (2) Section 89 of the 1980 Act (age of retirement of teachers) shall apply to teachers employed by the board of management of a self-governing school as it applies to those employed by an education authority or by the managers of a grant-aided school.

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

- (1) Subject to section 14(2) of this Act, an education authority who have received from a school board written notice under subsection (6) of section 13 of this Act, either of a first resolution or of a request, shall not, until one of the conditions specified in subsection (2) below is satisfied as regards the school—

- (a) appoint any person to fill a vacancy in a post (whether teaching or non-teaching) at, or which involves his working solely at, the school;
- (b) dismiss any person who is employed in such a post;
- (c) alter, or agree to alter, the terms and conditions of employment of any person who is employed in such a post where the like alteration is not made or agreed as respects all other persons employed by them (whether or not at the school) in the same category of post; or
- (d) withdraw any person from work at the school (otherwise than by dismissing him),

without the board's consent; and the obtaining of such consent shall be in addition to any requirement imposed by section 11 of and Schedule 2 to the 1988 Act.

- (2) The conditions mentioned in subsection (1) above are that—
- (a) in a case where the notice received was of a first resolution, forty-six days have passed since the date of that resolution without the education authority having received written notice, under subsection (6) of section 13 of this Act, of a second resolution;
 - (b) the result of a ballot held in accordance with section 14 of this Act is not as is mentioned in subsection (1) of section 16 of this Act and two weeks have thereafter passed without the Secretary of State having declared the ballot void under section 15 of this Act; or
 - (c) proposals published in accordance with subsection (2) of the said section 16 are either rejected by the Secretary of State or are withdrawn without a requirement being imposed under section 18(2) of this Act.

Benefits and services for pupils

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

- (1) Subject to the provisions of this Act and of the 1980 Act, where—
- (a) an education authority are under a duty, or have power (whether by virtue of this section or otherwise), to provide any benefits or services for pupils; and
 - (b) the duty is to be performed, or the power may be exercised, both in relation to pupils at schools under the management of the authority and in relation to pupils at self-governing schools,

the authority shall not, in performing the duty, or exercising the power, distinguish, as regards the benefits or services provided or as regards the terms on which they are provided, between those two categories of pupil.

Status: Point in time view as at 01/02/1991.

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

- (2) The board of management of each self-governing school shall make such reports and returns, and give such information, to any education authority by whom functions in relation to such provision as is mentioned in subsection (1)(a) above are exercisable—
 - (a) in relation to; or
 - (b) in relation to pupils in attendance at,the school as the authority may require for the purpose of the exercise of those functions.
- (3) Schedule 6 to this Act, which relates to the provision of benefits and services by education authorities for pupils at self-governing schools etc., shall have effect.

Finance

26 Recurrent grant, capital grants and special purpose grants.

- (1) The payments the Secretary of State is required to make in pursuance of his duty to maintain a self-governing school are annual grants to the board of management of the school in respect of expenditure, for the purposes of the board's functions under section 7(1) of this Act, incurred or to be incurred by the board in the financial year to which any such grant (to be known as "recurrent grant") relates.
- (2) The amount of the recurrent grant payable in respect of any such school for any financial year shall, subject to section 27 of this Act, be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to in this Part of this Act as "grant regulations"); and the education authority which maintained the school before the incorporation date shall provide the Secretary of State with such information as he may require of them, for the purposes of his making or applying those regulations, concerning their financial management of the school and of other schools maintained by them and any decisions taken by them regarding the present or prospective such management of those other schools.
- (3) Grant regulations may also provide for the payment to a board of management—
 - (a) of grants (to be known as "capital grants") in respect of expenditure of a capital nature;
 - (b) of grants (to be known as "special purpose grants") in respect of expenditure not of a capital nature, being expenditure which the Secretary of State considers should not be met from recurrent grant,incurred or to be incurred by them of any class or description specified in the regulations.
- (4) The descriptions of expenditure which are to be regarded for the purposes of subsection (3)(a) above as expenditure of a capital nature shall be such as may be determined by or in accordance with the regulations.
- (5) The times at which, and the manner in which, payments are made in respect of recurrent grant, capital grants and special purpose grants shall be such as may be determined in accordance with the regulations.
- (6) For the purposes of subsection (5) above, the regulations—
 - (a) may provide that payments in respect of recurrent grant for any school in respect of any financial year may be made, before any amount has been

Status: Point in time view as at 01/02/1991.

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

- determined in accordance with the regulations as the amount of such grant payable for that year in respect of that school, by reference to an estimate of the amount which will be so payable made by the Secretary of State;
- (b) may make provision as regards recovery from boards of management of recurrent grant, capital grants and special purpose grants overpaid.
- (7) A board of management to whom any payments in respect of recurrent grant or capital or special purpose grants are made shall comply with such requirements as the Secretary of State may from time to time impose, being requirements—
- (a) specified in grant regulations as requirements which may be imposed by the Secretary of State on boards to whom such payments are made; or
- (b) determined in accordance with such regulations by the Secretary of State.
- (8) Requirements imposed under subsection (7) above—
- (a) may be imposed on, or at any time after, the making of any payment by reference to which they are imposed; and
- (b) may at any time be waived or, subject to subsection (9) below, varied by the Secretary of State.
- (9) The power of the Secretary of State to vary such a requirement—
- (a) does not apply to a requirement imposed under subsection (7)(a) above; and
- (b) is subject, in the case of a requirement imposed under subsection (7)(b) above, to the provisions of the regulations with respect to the determination of the requirements that may be so imposed in the case of payments in respect of the grants in question.
- (10) The requirements which may be specified in or authorised by grant regulations as requirements which may be imposed on boards to whom payments are made, include in particular requirements with respect to the repayment, in whole or in part, of payments made if any other requirement imposed under subsection (7) above by reference to payments (whether imposed before, at or after the time when the payments subject to the repayment are made) is not complied with.
- (11) Subject to—
- (a) any requirements imposed by the Secretary of State under subsection (7) above; and
- (b) any requirements with respect to the application of grant contained in the articles of management of the school,
- it shall be the duty of a board of management to apply any payments made to them in respect of recurrent grant solely for the purposes mentioned in subsection (1) above.

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

- (1) For each financial year, recurrent grant payable in respect of any self-governing school—
- (a) which is a special school; or
- (b) (in the case of a school which is not a special school) in so far as is attributable to expenditure for the purpose of making provision for pupils in attendance at the school who are persons whose needs are recorded by the education authority under section 60(2) of the 1980 Act (record of needs),
- shall be determined having regard to the following provisions of this section.

Status: Point in time view as at 01/02/1991.

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

- (2) The education authority and the board of management shall attempt to reach agreement as to—
- (a) in the case of a special school, what educational and other provision is to be made in the financial year for the pupils in attendance at the school, the estimated cost of that provision and the estimated expenditure incurred or to be incurred for the purposes of the board's other functions under section 7(1) of this Act in that year;
 - (b) in any other case, what provision is to be made in that year for such pupils as are mentioned in paragraph (b) of subsection (1) above and the estimated cost of that provision;
- and any such agreement, or a failure to reach such agreement, shall be timeously intimated by the board of management to the Secretary of State.
- (3) If intimation under subsection (2) above is of a failure to reach agreement or if the Secretary of State does not accept any aspect of an intimated agreement, he shall himself determine the matters mentioned in paragraph (a), or as the case may be (b), of subsection (2) above in determining under section 26(2) of this Act the amount of recurrent grant payable in respect of the school; and his determination as to the said matters shall (without prejudice to the provision made by the said section 26(2) as to revision) be final.
- (4) In determining under section 26(2) of this Act the amount of recurrent grant payable in respect of a school, the Secretary of State shall, where he does not make a determination under subsection (3) above, regard an agreement intimated under subsection (2) above as determining the matters to which it relates.
- (5) Grant regulations may prescribe—
- (a) what information is to be—
 - (i) exchanged between an education authority and a board of management for the purposes of their duty under subsection (2) above or for the purposes of subsection (6) below;
 - (ii) provided to the Secretary of State by the authority and the board for the purposes of his considering any agreement intimated to him under that subsection or subsection (7) below or himself making a determination under subsection (3) above or a variation under subsection (9) below;
 - (b) the dates by which, in respect of any financial year, such information as is mentioned in paragraph (a) above is to be provided;
 - (c) the latest date by which, in respect of any financial year, any agreement, or failure to reach agreement, is to be intimated to the Secretary of State under subsection (2) above.
- (6) In a case where an amount of recurrent grant payable has been determined in accordance with subsection (4) above, the education authority and the board of management during the course of the financial year—
- (a) may agree; and
 - (b) if the Secretary of State so requires, shall attempt to reach agreement as to, a variation of their agreement under subsection (2) above.
- (7) The board of management shall intimate to the Secretary of State any variation agreed under subsection (6) above or (in the case of a requirement imposed under paragraph (b) of that subsection) any failure to reach agreement as to such variation.

Status: Point in time view as at 01/02/1991.

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

- (8) The Secretary of State shall, where he accepts an agreed variation intimated under subsection (7) above, vary the amount of recurrent grant payable accordingly.
- (9) Where the Secretary of State does not accept an agreed variation so intimated, or where he has imposed a requirement under subsection (6) above but the education authority and the board of management are unable to agree on a variation of their agreement under subsection (2) above, he may himself vary the amount of recurrent grant payable but he shall not otherwise vary that amount in a case such as is mentioned in subsection (6) above.

28 Recovery of sums in respect of recurrent grant.

- (1) The Secretary of State may in respect of any financial year recover from the education authority sums in respect of the recurrent grant payable for that year to the board of management of the school.
- (2) Subject to subsection (5) below, sums recoverable by virtue of subsection (1) above in respect of any school for any financial year—
 - (a) shall be of such amounts; and
 - (b) shall fall due on such date or dates;
 as may be determined by the Secretary of State.
- (3) The total amount so recoverable shall be such as may be determined (and from time to time revised) in accordance with regulations made by the Secretary of State under this section (referred to in this section as “recovery regulations”).
- (4) Subject to any provision made by such regulations by virtue of subsection (6) below, recovery regulations shall provide for the total amount so recoverable to be determined by reference to any amount determined under grant regulations as the amount of the recurrent grant (as from time to time revised) payable in respect of the school for the financial year in question.
- (5) The amount of any sum so recoverable shall be determined—
 - (a) where before the determination of the amount of that sum any amount has been determined under recovery regulations as the total amount recoverable by virtue of subsection (1) above in respect of the school and financial year in question, by reference to any amount so determined as the total amount so recoverable; and
 - (b) in any other case, by reference to any amount estimated by the Secretary of State as the amount which will initially be so determined as the total amount so recoverable;
 which the Secretary of State considers it appropriate to adopt for the time being as a basis for determining the amounts of sums so recoverable.
- (6) Recovery regulations may provide for reducing any amount which would otherwise fall to be determined under the regulations as the total amount recoverable from an education authority by virtue of subsection (1) above in respect of any school for any financial year by reference to any excess amounts recovered under this section in respect of any previous financial year.
- (7) For the purposes of subsection (6) above an excess amount is recovered under this section in respect of any financial year if the aggregate amount of the sums recovered under this section for that year from the authority—

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

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

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

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

Change in characteristics, discontinuance etc.

30 Change in characteristics of self-governing school.

- (1) Where the board of management of a self-governing school after the appropriate consultation decide, by a resolution passed at a meeting of the board held, subject to subsection (2) below, not less than five years after the incorporation date, to seek a change in the characteristics of the school, other than an increase in the range of provisions which the school has for pupils with special educational needs, the board shall secure that a ballot of parents on the question of whether the change should be made is held in accordance with this section.
- (2) With the prior written consent of the Secretary of State a motion for such a resolution as is mentioned in subsection (1) above may be determined at a meeting of the board of management held at a date earlier than subsection (1) above would require.

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- (3) For the purposes of subsection (1) above, the appropriate consultation is consultation with the education authority and, where the school is, or the change sought would result in its becoming, a denominational school, with the church or denominational body in whose interest the school is, or as the case may be would be, managed.
- (4) Schedule 7 to this Act, which makes provision as regards the arrangements to be made for holding the ballot, shall have effect.
- (5) The result of the ballot shall forthwith be intimated to the Secretary of State by the board of management.
- (6) A fresh ballot required by a notice under section 15(1) of this Act shall be held in accordance with such conditions, and before such date, as may be specified in the notice.
- (7) Where the result of the ballot shows a majority of votes cast in the ballot in favour of the change sought, the board shall, before the end of the period of one month beginning with the date on which the result of the ballot is determined or of such longer period as the Secretary of State may permit—
 - (a) publish proposals for the change in such manner as may be prescribed by regulations;
 - (b) submit to the Secretary of State and to the education authority a copy of the published proposals; and
 - (c) where the school is, or the change sought would result in its becoming, a denominational school, submit such a copy to the church or denominational body in whose interest the school is, or as the case may be would be, managed.
- (8) Before the expiry of the period of three months beginning with the date of publication of the proposals any person may submit representations to the Secretary of State as regards the proposals.
- (9) The proposals shall require the approval of the Secretary of State; and he may, after the expiry of the period mentioned in subsection (8) above, after considering any relevant representations made under that subsection, after having regard to any representations from the education authority as to the probable effect of the proposed change on the fulfilment by them of their duty under section 1 of the 1980 Act (duty to secure that there be made for their area adequate and efficient provision of school education) and after taking into account such other matters as he considers appropriate including, without prejudice to the generality of the foregoing, the percentage that the total votes cast in the ballot which occasioned publication of the proposals constituted of the total number of persons eligible to vote in the ballot and the percentage that the votes so cast which were in favour of the change sought constituted of those total votes—
 - (a) reject the proposals, having first consulted the board as regards the possible such rejection; or
 - (b) approve them without modification or, after consultation with the board and the education authority, with such modifications as he thinks desirable.
- (10) Where the Secretary of State approves the proposals (whether or not with modifications) he shall, under section 2(2) of this Act, vary the scheme of government of the school to give effect to the change.
- (11) Subject to subsection (12) below, neither the board nor any other person shall do or undertake anything for which proposals are required to be published and submitted

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in accordance with this section until such proposals have been duly approved by the Secretary of State.

- (12) The Secretary of State may, pending compliance with any of the requirements of subsections (1) to (10) above, allow such steps to be taken by the board as he considers reasonable in the circumstances of any case.
- (13) In subsection (1) above, the reference to characteristics of the school is to the matters stated and specified in the description of the school required by section 16(4) of this Act or, where there has been a change in accordance with this section as regards the school, those matters as so changed.

31 Discontinuance by board of management.

- (1) The board of management of a self-governing school shall not discontinue the school except in pursuance of proposals published and approved under this section.
- (2) Where the board of management—
- (a) decide by a resolution passed at a meeting of the board (“the first resolution”) to publish proposals under this section for the discontinuance of the school and confirm that decision by a resolution (“the second resolution”) passed at a subsequent meeting of the board held not less than twenty-eight days, nor more than forty-two days, after that at which the first resolution was passed; and
 - (b) give notice in writing of the second resolution to the Secretary of State and to the education authority,
- they may within the period of six months beginning with the date of the second resolution publish proposals for that purpose in such manner as may be prescribed and shall submit to the Secretary of State, to the education authority and, where the school is a denominational school, to the church or other denominational body in whose interest the school is managed, a copy of the published proposals.
- (3) The notice required by subsection (2)(b) above shall be given as soon as practicable after the passing of the resolution to which it refers.
- (4) The published proposals—
- (a) shall specify the proposed date of discontinuance of the school; and
 - (b) shall be accompanied by a statement—
 - (i) indicating whether or not any proposals with respect to the establishment of a new school on the premises of the school have been published under section 22A of the 1980 Act (provision for consultation on certain changes); and
 - (ii) explaining the effect of subsection (5) below.
- (5) Before the end of the period of two months beginning with the date of publication of the proposals, any person may submit representations to the Secretary of State in respect of the proposed discontinuance.
- (6) The Secretary of State may, after considering any representations submitted under subsection (5) above, reject any proposals under this section, approve them without modification or, after consultation with the board of management and the education authority, approve them with modifications which, without prejudice to the generality of this subsection, may include the substitution of a different date for the date of discontinuance proposed.

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- (7) If the Secretary of State approves proposals under this section with respect to a school—
- (a) the board of management shall cease to manage the school; and
 - (b) the Secretary of State’s duty to maintain the school shall cease,
- on the date of discontinuance specified in the proposals as approved or on any other date subsequently specified by the Secretary of State at the request of the board (whether in substitution for the date specified in the proposals as approved or in substitution for a date previously specified under this subsection).

32 Compensation in respect of denominational schools.

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

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

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

Withdrawal of grant

33 Withdrawal of grant by Secretary of State.

- (1) The Secretary of State may cease to maintain a self-governing school by giving notice in writing under this subsection of his intention to do so to the board of management; and on the date specified in that notice as the date on which the Secretary of State intends to cease to maintain the school his duty to do so shall cease.
- (2) Subject to the following provisions of this section—
 - (a) the date mentioned in subsection (1) above shall be at least seven years after the date on which the relevant notice under that subsection is given; and
 - (b) before giving such notice the Secretary of State shall consult—
 - (i) the board of management;
 - (ii) the education authority;
 - (iii) the parents of the pupils in attendance at the school; and
 - (iv) where the school is a denominational school, the church or other denominational body in whose interest the school is managed.
- (3) Subsection (2) above shall not apply where the Secretary of State is satisfied that as currently constituted or managed the school is unsuitable to continue as a self-governing school on either or both of the following grounds—
 - (a) that the number of pupils in attendance is too small for efficient and suitable instruction to be provided for them at reasonable cost;

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- (b) that the board of management have been guilty of substantial or persistent failure to comply, or secure compliance, with any duty imposed on them by or under this Act or any other enactment.
- (4) Where the Secretary of State is satisfied as is mentioned in subsection (3) above, he may give the board of management notice in writing under this subsection stating the grounds on which he considers that the school as currently constituted or managed is unsuitable to continue as a self-governing school together with full particulars of the matters relevant to each such ground.
 - (5) Where any of the matters of which particulars are given in a notice under subsection (4) above is stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall be accompanied by a notice under subsection (1) above in respect of the school.
 - (6) Where subsection (5) above does not apply in the case of any notice under subsection (4) above, the notice shall—
 - (a) state that the Secretary of State intends to cease to maintain the school unless the matters of which particulars are given in the notice are remedied;
 - (b) specify the measures necessary in the opinion of the Secretary of State to remedy those matters; and
 - (c) specify the time, not being less than six months after the date on which the notice is given, within which the board of management are required to take those measures.
 - (7) Where the board of management fail to take the measures required by a notice under subsection (4) above within the time specified in the notice or allowed by any previous notice under this subsection, the Secretary of State shall within the period of two months beginning with the day next following the end of that time either—
 - (a) give notice in writing under this subsection to the board extending the time within which those measures are required to be taken; or
 - (b) after consulting the education authority, give notice under subsection (1) above in respect of the school.
 - (8) The Secretary of State may by notice in writing under this subsection to the board—
 - (a) withdraw any notice under subsection (1) or (4) above;
 - (b) vary any notice under subsection (1) above by substituting a later date for the date for the time being specified in the notice as the date on which he intends to cease to maintain the school; or
 - (c) vary any notice under subsection (4) above to which subsection (6) above applies, so far as relates to the measures required by the notice to remedy the matters of which particulars are given in the notice.
 - (9) If by virtue of subsection (8)(c) above the Secretary of State varies any notice under subsection (4) above so as to require different measures to be taken he shall substitute for the time specified in that notice as the time within which the board are required to take the measures specified in the notice as varied a time ending—
 - (a) not less than six months after the date on which the notice of variation is given; and
 - (b) where the time so specified has been extended under subsection (7) above, not earlier than that time as so extended.

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- (10) Any variation under subsection (9) above of the time specified in a notice under subsection (4) above is without prejudice to any further extension of that time by notice under subsection (7)(a) above.

Miscellaneous

34 Administrative, professional, technical or other services.

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

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

- (1) In so far as the context admits, functions under this Act of a school board are, for the purposes of—
- (a) section 5 of the 1988 Act (advice to boards) matters within the competence of the board;
 - (b) sections 8(1) (exercise of functions of boards) and 19 (allowances for members) of that Act functions of the board;
 - (c) section 12(2)(a) (reports to parents) of that Act activities of the board;
 - (d) section 12(2)(b) (ascertaining views of parents) of that Act matters which are the responsibility of the board;
 - (e) section 13 (parents' meetings) of that Act activities of the board.
- (2) Subsection (1) of section 17 of the 1988 Act (financing of boards) shall apply in relation to functions of a school board under this Act as it applies to such functions under that Act; and subsection (3) of that section shall be construed accordingly.

Property

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

- (1) Subject to subsections (4) and (5) below and to the provisions of sections 38 and 39 of, and Schedule 8 to, this Act, on the incorporation date there shall be transferred to and vest in the board of management of a self-governing school—
- (a) all land or moveable property (whether corporeal or incorporeal) which, immediately before that date, is—

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- (i) owned by an education authority; and
 - (ii) used or held by that authority for the purposes of that school;
 - (b) subject to subsection (5) below, all liabilities and obligations of the authority in respect of that school, or in respect of property used or held for the purposes of that school; and
 - (c) all moveable property (whether corporeal or incorporeal) acquired, and liabilities and obligations incurred, by the school board in relation to that school.
- (2) The land and moveable property mentioned in subsection (1)(a) above includes any land or moveable property which, immediately before the incorporation date, is used or held by the education authority—
- (a) for the purposes of more than one of the schools in their area; or
 - (b) partly for the purposes of one or more of such schools and partly for other purposes,
- to the extent that it is so used or held for the purposes of the school in question.
- (3) The liabilities and obligations mentioned in subsection (1)(b) above include any liabilities or obligations subsisting—
- (a) for the purposes of more than one of the schools in the education authority's area; or
 - (b) partly for the purposes of one or more of such schools and partly for other purposes,
- in so far as those liabilities or obligations subsist for the purposes of the school in question.
- (4) The land or moveable property mentioned in subsection (1)(a) above does not include any hostels provided and maintained by the education authority under section 13 (provision of hostels) of the 1980 Act.
- (5) The liabilities and obligations to be transferred to a board of management under subsection (1)(b) above do not include—
- (a) any obligation to repay the principal or interest of any loan incurred by the authority for the purposes of that school;
 - (b) any obligation of the authority in respect of compensation for premature retirement of any person formerly employed by them;
 - (c) any obligation or liability under a contract of employment relating to a person previously employed by the education authority to whom section 22 of this Act does not apply; or
 - (d) any delictual, strict or statutory liability of the authority arising out of any act or omission where a cause of action accrued before the incorporation date.
- (6) Subject to section 14(2) of this Act, any land owned by an education authority which is, as at the date when the authority receive a notice under section 13(6) of this Act, either of a first resolution or of a request, to any extent used or held for the purposes of the school to which the notice relates shall be deemed still to be so used or held at the incorporation date unless the authority have obtained the consent of the school board to any change in the purposes for which it is used or held.
- (7) An education authority shall not, with the object of—
- (a) preventing or restricting the operation of this section in relation to; or
 - (b) retaining, whether directly or indirectly, some control over,

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any land or moveable property which would, in the event of a school's becoming a self-governing school, fall to be transferred to the board of management of that school under this section, transfer, or enter into any transaction involving, any such land or moveable property.

- (8) Schedule 8 to this Act, which makes provision in relation to the transfer and apportionment of assets, shall have effect.

37 Disposal of land by board of management.

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

38 Commissioners for school assets.

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

39 Certificates in respect of land, moveable property etc.

- (1) A commissioner for school assets appointed in respect of a school shall, in accordance with this section, from time to time issue certificates specifying land, moveable property, liabilities and obligations which are to transfer or have transferred to the board of management from the education authority under section 36 of this Act, and which have been identified in—
- (a) any agreement reached in that regard between a commissioner and the authority under paragraph 1 of Schedule 8 to this Act;

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

Marginal Citations

M3 1985 c. 73.

M4 1973 c. 52.

40 Transfer of property where no certificate issued.

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

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

- (1) Where it appears to the commissioner for school assets appointed in respect of any school, whether before or after the incorporation date, that the education authority have—
- (a) removed or withdrawn from the school any moveable property; or

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

42 Reduction of disposals of property by education authority.

- (1) Subject to the provisions of this section, a commissioner for school assets may apply to the Court of Session for—
- (a) an order setting aside or varying any transfer of, or transaction involving, land or moveable property which has been effected by the education authority in contravention of section 36(7) of this Act; or
 - (b) damages in respect of—
 - (i) the value of any property so transferred; and
 - (ii) any loss incurred by the commissioner or the board of management as a result of the said contravention.
- (2) An application under this section shall not be made—
- (a) more than one year after the incorporation date; or
 - (b) in respect of a transfer or transaction effected—
 - (i) prior to 22nd November 1988;
 - (ii) more than five years before the date of the making of the application; or
 - (iii) subject to section 14(2) of this Act, after an education authority have received a notice under section 13(6) of this Act, either of a first resolution or of a request;
- or
- (c) other than in respect of a transfer or transaction involving land or moveable property in respect of which the commissioner for school assets has issued an interim certificate under section 41 of this Act.

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- (3) Where the court is satisfied that the education authority effected the transfer or transaction in contravention of section 36(7) of this Act it may make the order applied for or such other order as it thinks fit.
- (4) Where the court makes an order under subsection (3) above, it may include in the order such terms and conditions as it thinks fit and may make any ancillary order which it considers expedient to ensure that the order is effective.
- (5) The court shall not make an order under this section which would prejudice a party who acquired the land or moveable property—
 - (a) in good faith and for value; or
 - (b) from a party who had so acquired it.

43 Prevention of disposals of property by education authority.

- (1) Subject to the provisions of this section and to section 14(2) of this Act, an education authority who have received a notice from a school board under section 13(6) of this Act, either of a first resolution or of a request, shall not, until one of the conditions specified in subsection (2) below is satisfied as regards the school—
 - (a) dispose of; or
 - (b) enter into any agreement or unilateral obligation with respect to, any land or moveable property which is used or held by the authority wholly or partly for the purposes of that school.
- (2) The conditions mentioned in subsection (1) above are that—
 - (a) the authority have obtained the prior consent of the school board; or
 - (b) in a case where the notice received was of a first resolution, forty-six days have passed since the date of that resolution without the education authority having received written notice, under subsection (6) of section 13 of this Act, of a second resolution; or
 - (c) the result of a ballot held in accordance with section 14 of this Act is not as is mentioned in subsection (1) of section 16 of this Act and two weeks have thereafter passed without the Secretary of State having declared the ballot void under section 15(1) of this Act; or
 - (d) proposals published in accordance with subsection (2) of the said section 16 are either rejected by the Secretary of State or are withdrawn without a requirement being imposed under section 18(2) of this Act.
- (3) Subsection (1) above does not apply to any disposal made under—
 - (a) an agreement entered into; or
 - (b) a unilateral obligation executed and intimated to the beneficiary, before the receipt by the authority of the notice mentioned in subsection (1) above.
- (4) This section has effect notwithstanding anything in section 74 of the 1973 Act (general power to dispose of land) or in any other enactment; and the consent required by this section shall be in addition to the consent required by subsection (2) of that section or by any other enactment.

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44 Repudiation of agreements made in contravention of section 43.

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

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

- (1) Where any land or moveable property has been disposed of by an education authority in contravention of section 43(1) of this Act, the commissioner for school assets appointed in respect of the school concerned may apply to the Court of Session for an order—
 - (a) reducing any document by which the disposal was effected; or
 - (b) where the disposal was effected by an oral agreement, setting aside the disposal.
- (2) In an application made under this section the court may, if it is satisfied that—
 - (a) the education authority had received a notice under section 13(6) of this Act, either of a first resolution or of a request, or in a case such as is mentioned in subsection (2) of section 14 of this Act intimation of consent under that subsection, before the disposal was made;
 - (b) the school board had not consented to the disposal; and
 - (c) the commissioner for school assets has issued an interim certificate under section 41 of this Act in respect of the land or moveable property disposed of,
 make the order applied for or such other order as it thinks fit.
- (3) The court shall not make an order under this section which would prejudice a party who acquired the land or moveable property—
 - (a) in good faith and for value; or
 - (b) from a party who had so acquired it.
- (4) Where the court makes an order under this section, it may include in the order such terms and conditions as it thinks fit and may make any ancillary order which it considers expedient to ensure that the order is effective.

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

- (1) Where a commissioner for school assets cannot (as, for example, by reason of the operation of subsection (3) of section 45 of this Act), or decides not to, exercise the remedy provided by that section in relation to a contravention by the education

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authority of section 43(1) of this Act he may raise an action against that authority under this section.

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

47 Removal of property from school by education authority.

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

Provision of information

48 Duty of education authority to provide information.

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

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

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Educational endowments

49 Educational endowments.

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

Winding up

50 Winding up orders.

- (1) Where the Secretary of State has—
 - (a) approved proposals made under section 31 of this Act for the discontinuance of a school; or
 - (b) given notice under section 33 of this Act that he intends to cease to maintain a school with effect from a particular date,
 he may, after consultation with the education authority and subject to subsection (2) below, by order under this section make provision for the winding up of the school.
- (2) Where subsection (2)(a) of the said section 33 applies to a notice given under that section the Secretary of State shall not make an order under this section within 5 years of the date on which he gives the said notice.
- (3) Without prejudice to the generality of subsection (1) above, an order under this section may—
 - (a) stipulate a time-table for the winding up of the school;
 - (b) provide for the payment of the expenses of the winding up;
 - (c) appoint a date (the “dissolution date”) on which—
 - (i) the board of management is to be dissolved; and
 - (ii) the property mentioned in section 51 of this Act is to be transferred to other persons in accordance with the provisions of that section;
 - (d) confer powers or impose duties on the board of management in relation to the winding up of the school;

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- (e) provide for the ingathering of any land or moveable property owned by—
 - (i) the board; or
 - (ii) trustees for the purposes of the school;
 - (f) provide for the discharging by the board of any of their liabilities;
 - (g) provide for the repayment by the board to the Secretary of State of the unexpended portion of any capital grant made by him to the board;
 - (h) require the board to comply with any directions made by the Secretary of State;
 - (j) provide for—
 - (i) the exercise of any of the board's functions; and
 - (ii) the execution of documents on behalf of the board,by any member of the board named in the order; and
 - (k) require the board to give notice of dismissal to persons employed by them with effect from such date as may be specified in the order.
- (4) The Secretary of State shall not in an order under this section appoint a dissolution date unless he is satisfied that—
- (a) all liabilities of the board of management have been discharged;
 - (b) all the expenses of the winding up have been met; and
 - (c) the board of management have complied with all the obligations imposed on them in respect of the winding up.
- (5) The Secretary of State may make grants to a board of management for the purpose of—
- (a) discharging any liabilities of the board; and
 - (b) enabling the board to defray the expenses of the winding up,
- and in relation to any such grant he may impose requirements on the board before, at or after the time at which the payment of the grant is made.

51 Disposal of property on winding up.

- (1) An order made under section 50 of this Act may provide for the disposal of all land and moveable property owned by the board of management—
- (a) absolutely; or
 - (b) as trustees for the purposes of the school,
- in accordance with the provisions of this section.
- (2) Subject to subsection (4) below, an order under the said section 50 may provide that all land and moveable property owned by a board of management immediately before the dissolution date shall, on that date, transfer to and vest in the education authority.
- (3) An order under the said section 50 may provide that all land and moveable property owned by the board of management as trustees for the purposes of the school shall on the dissolution date transfer to and vest in the said education authority—
- (a) on trust for such purposes as may be specified in the order; or
 - (b) where it appears to the Secretary of State that the land or moveable property concerned was purchased or otherwise provided wholly or mainly by or at the expense of the education authority, absolutely.
- (4) Where it appears to the Secretary of State that—

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- (a) any land or moveable property, or any class or description of land or moveable property, in the ownership or under the control of the board of management has been procured, whether before or after the incorporation date, otherwise than at the expense of the education authority; and
- (b) it is appropriate, on that account, to exclude that land or moveable property, or land or moveable property of that class or description, from transfer to the authority,

he may in an order under the said section 50 transfer any such land or moveable property to such persons as may be designated in the order on such terms as may be so designated.

- (5) Any land or moveable property transferred to any person by an order under the said section 50 shall vest in that person on the dissolution date specified in the order.
- (6) If a person to whom any land is transferred by an order under the said section 50 wishes to complete a title to the land so transferred by expeding a notarial instrument or notice of title or otherwise, the said order shall be deemed to be and may be used as a general disposition or assignation of the said land in favour of that person.
- (7) Where any land or moveable property which has been purchased for a school out of funds provided by way of a capital grant by the Secretary of State has been—
 - (a) transferred to an education authority under subsection (2) above; and
 - (b) thereafter sold by that education authority to a third party,
 the Secretary of State may require the education authority to pay him the whole or part of the money spent by him in—
 - (i) making the said capital grant; and
 - (ii) making grants to the board of management under section 50(5) of this Act:

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

52 Transfer of school for establishment of new school.

- (1) Subject to the provisions of this section, where, for the purpose of establishing a new independent school, any person (“the proposer”) proposes to occupy the premises of a school which is being wound up, the Secretary of State may, in an order under section 50 of this Act, transfer any of the land and moveable property mentioned in section 51(1) of this Act to that person; and the provisions of the said section 51 shall apply in relation to land or moveable property transferred to a proposer by virtue of this section as they apply to land or moveable property transferred to an education authority by virtue of that section.
- (2) Where land or moveable property is transferred as described in subsection (1) above, the proposer shall pay the appropriate consideration to the education authority.
- (3) An order made by virtue of subsection (1) above may provide for—
 - (a) the payment by the proposer to the Secretary of State of any sums expended by the latter by way of—
 - (i) capital grants to the board of management of the discontinued school prior to the making of a winding up order in respect of the school; and
 - (ii) grants made by him under subsection (5) of the said section 50;

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

53 Disposal of surplus money on winding up.

- (1) Subject to subsection (2) below—
- (a) any money held by a board of management (whether in cash or to their account at or on deposit with any bank or other institution which may lawfully take deposits within the meaning of the ^{M5}Banking Act 1987); and
 - (b) any investments to which this section applies held by such a board,
- shall be paid or, as the case may be, transferred to the Secretary of State, after—
- (i) discharge of their liabilities (other than any not required to be discharged before the dissolution date is appointed); and
 - (ii) payment of all expenses of the winding up.
- (2) Where the Secretary of State is satisfied as to the whole or any part of any such money or as to any such investments—
- (a) that the money or that part of it was derived or, as the case may be, those investments were acquired otherwise than from grants paid by him; and
 - (b) that it ought to be paid, or the investments ought to be transferred, to an education authority or to some other person,
- he may require the board of management to pay that money, or an amount equal to the part in question, or to transfer those investments, to such education authority or other person as he may specify, either absolutely or in trust for such purposes as he may specify.
- (3) Without prejudice to the power of the Secretary of State under subsection (2) above, any payment of money or transfer of investments under this section shall be free of any trusts on which the money or investments are held by the board of management before the payment or transfer is made.
- (4) This section applies to any investment within the meaning of the ^{M6}Financial Services Act 1986 which falls within—
- (a) any of paragraphs 1 to 6 of Schedule 1 to that Act; or
 - (b) paragraph 11 of that Schedule, so far as referring to investments falling within any paragraph of that Schedule mentioned in paragraph (a) above.

Status: Point in time view as at 01/02/1991.

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

- (5) References in subsection (4) above to any paragraphs of Schedule 1 to that Act include references to those paragraphs as amended by any order under section 2 of the said Act of 1986 (power of Secretary of State to extend or restrict scope of Act) which amends those paragraphs for the purposes of all the provisions of that Act.

Marginal Citations

M5 1987 c. 22.

M6 1986 c. 60.

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

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