



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

PART I

SELF-GOVERNING SCHOOLS

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—
 - (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.

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- (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,
- 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;
 - (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 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—

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- (a) the 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.

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
 - (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.
- (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,

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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.

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 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

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- (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.