



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

PART I

SELF-GOVERNING SCHOOLS

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;

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- (d) confer powers or impose duties on the board of management in relation to the winding up of the school;
 - (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—
- (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 expediting 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—

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- (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;
 - (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 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 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.
- (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.