



# Self-Governing Schools etc. (Scotland) Act 1989

## 1989 CHAPTER 39

### <sup>F1</sup>PART I

#### SELF-GOVERNING SCHOOLS

##### Annotations:

##### Amendments (Textual)

- F1** Pt I (ss. 1-53) repealed (in force 14.7.2000 for ss. 13-22, 24 and otherwise *prosp.*) by [2000 asp 6](#), ss. 60(3), 61(2)(c), [Sch. 3](#)

#### *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.

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## *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 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.

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- (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.

#### **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 <sup>M1</sup>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.

#### **Annotations:**

#### **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.

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- (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 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.

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- (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 <sup>F2</sup> . . . 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).
- (9) Part II of Schedule 1 to this Act, which makes provision as regards articles of management, shall have effect.

**Annotations:**

**Amendments (Textual)**

**F2** Word in s. 7(7) repealed (18.9.1996) by 1996 c. 43, s. 36, **Sch.6**; S.I. 1996/2250, **art.2**

**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.

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*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
  - (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.*

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

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*Staff*

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## *Benefits and services for pupils*

### *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 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—

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- (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.
- (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;



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- (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.
- (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

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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—
  - (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.

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- (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
- [<sup>F5</sup>(a)] an increase in the range of provisions which the school has for pupils with special educational needs [<sup>F6</sup>; or
  - (b) provision of a nursery class,]
- 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.
- (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.

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- (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 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.

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- (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.

**Annotations:**

**Amendments (Textual)**

- F5** Word in s. 30(1) inserted (18.9.1996) by 1996 c. 43, s. 36, **Sch. 5 para. 5(a)**; S.I. 1996/2250, **art.2**  
**F6** S. 30(1)(b) and the word “or” preceding it inserted (18.9.1996) by 1996 c. 43, s. 36, **Sch. 5 para. 5(b)**; S.I. 1996/2250, **art.2**

**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

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of this subsection, may include the substitution of a different date for the date of discontinuance proposed.

(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 <sup>M3</sup>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 <sup>M4</sup>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 [<sup>F7</sup>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.

**Annotations:**

**Amendments (Textual)**

**F7** Words in s. 39(4)(a) repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(b), **Sch. 13 Pt. I** (with ss. 58, 62, 75)

**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.

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#### **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

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- (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,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.

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- (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.

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#### **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
  - (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 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—
    - (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 [<sup>F8</sup>any person who has permission under the Financial Services and Markets Act 2000 to accept deposits]; 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.

[<sup>F9</sup>(4) This section applies to any investment which is a security.]

[<sup>F10</sup>(5) The references to accepting deposits in subsection (1)(a) and to an investment being a security in subsection (4) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;

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- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

**Annotations:**

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**Amendments (Textual)**

**F8** Words in s. 53(1)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 229(2)

**F9** S. 53(4) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 229(3)

**F10** S. 53(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 229(4)

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**Changes and effects yet to be applied to :**

- Pt. 1 repealed by [2000 asp 6 Sch. 3](#)

**Commencement Orders yet to be applied to the Self-Governing Schools etc. (Scotland) Act 1989**

Commencement Orders bringing legislation that affects this Act into force:

- [S.S.I. 2003/456 art. 2 commences \(2000 asp 5\)](#)
- [S.S.I. 2004/528 art. 2 commences \(2000 asp 6\)](#)
- [S.S.I. 2005/564 art. 2 commences \(2004 asp 4\)](#)
- [S.S.I. 2007/31 art. 2 commences \(2006 asp 8\)](#)