

Education (Scotland) Act 1980

1980 CHAPTER 44

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An Act to consolidate certain enactments relating to education in Scotland with amendments to give effect to recommendations of the Scottish Law Commission.

[1st August 1980]

PART I

PROVISION OF EDUCATION BY EDUCATION AUTHORITIES

School education and further education

1.— Duty of education authorities to secure provision of education.

(1) Subject to subsections (1A) and (2A) below, it shall be the duty of every education authority to secure that there is made for their area adequate and efficient provision of school education and further education.

(1A) The duty imposed on education authorities by subsection (1) above shall, in relation to children who are under school age, be exercisable only as respects children of such description or descriptions as may be prescribed by order.

(1B) Where an order is made under subsection (1A) above, the amount of school education with which children of a description prescribed in that order are to be provided shall also be prescribed in the order.

(1C) An education authority shall have power in relation to pre-school children to secure for their area the provision of such school education, other than that which they are required by subsection (1) above to secure, as they think fit.

(2A) The duty imposed on an education authority by subsection (1) above shall not include the provision of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, but an education authority shall have power to provide such further education for their area.

(3) Every education authority

(a) Shall have power to secure for their area, and

(b) be under a duty to secure for pupils in attendance at schools in their area,

the provision of adequate facilities for social, cultural and recreative activities and for physical education and training.

(4) The facilities for further education that may be provided by an education authority shall include facilities for vocational and industrial training.

[(4A) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4B) In this section “pre-school children” means—

- (a) children who are under school age and have not commenced attendance at a primary school (other than a nursery class in such a school); and
- (b) children who have attained school age but have not commenced attendance at such a school.

]¹

(5) In this Act—

- (a) “school education” means progressive education appropriate to the requirements of pupils, regard being had to the age, ability and aptitude of such pupils, and includes—
 - (i) activities in schools and classes (such schools and classes being in this Act called “nursery schools” and “nursery classes”), being activities of a kind suitable in the ordinary case for pupils who are under school age;
 - (ii) provision for special educational needs;
 - (iii) the teaching of Gaelic in Gaelic-speaking areas;
- (b) further education includes—
 - (i) voluntary part-time and full-time courses of instruction for persons over school age;
 - (ii) social, cultural and recreative activities and physical education and training, either as voluntary organised activities designed to promote the educational development of persons taking part therein or as part of a course of instruction;
 - (iii) the teaching of Gaelic in Gaelic-speaking areas;
- (c) “provision for special educational needs”, in relation to a child who has attained school age or to a young person receiving school education, means educational provision which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of his age in schools under the management of the education authority for the area to which he belongs in accordance with section 23(3) of this Act; and in relation to any other child means such educational provision as is appropriate to those needs
- (d) “special educational needs”, in relation to a child or young person, are needs caused by a learning difficulty which he has which calls for provision for special educational needs to be made for him, and a child or young person has a learning difficulty for the purposes of this paragraph if—
 - (i) he has significantly greater difficulty in learning than the majority of children or, as the case may be, young persons of his age; or
 - (ii) he suffers from a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children or, as the case may be, young persons of his age in schools under the management of the education authority for the area to which he belongs in accordance with section 23(3) of this Act; or
 - (iii) he is under the age of five years and is, or would be if provision for special educational needs were not made for him, likely to fall within sub-paragraph (i) or (ii) above when over that age,

¹ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 32(5)

but a child or young person is not to be taken as having a learning difficulty solely because the language in which he is or will be taught (the “teaching language”) is different from a language, or from a form of the teaching language, which has at any time been spoken in his home.

2. Secretary of State may prescribe standards, etc., for education authorities.

The Secretary of State may make regulations prescribing the standards and [...] ² requirements to which every education authority shall conform in discharging their functions under section 1 of this Act and without prejudice to the generality of the foregoing, such regulations may include provision as to the testing of pupils in primary schools.

2A.— Assessment of secondary school pupils.

(1) The Secretary of State may by regulations make provision for the testing and assessment of pupils undertaking the first or second year of secondary education in public schools.

(2) It shall be the duty of an education authority [...] ³ to comply with the provisions of regulations made in pursuance of subsection (1) above.

(3) Regulations made in pursuance of subsection (1) above may make different provision as to different cases or circumstances.

3.— Fees not to be charged in public schools, etc: exceptions.

(1) Subject to the provisions of subsections (2) to (5) below, school education provided by an education authority shall be provided without payment of fees.

(2) An education authority shall have power to charge fees for school education in some or all of the classes in a limited number of schools under their management.

(3) An education authority may award to any pupil in a class in which fees are charged by virtue of subsection (2) above a scholarship, by way of remission in whole or in part of the fee, in any case where, having regard to the pupil's ability and aptitude, it appears to the authority proper to do so; but such a pupil shall not be regarded for the purposes of section 11(1)(a) of this Act (provision of free books, etc.) as receiving free education.

(4) An education authority shall not exercise the power conferred by subsection (2) above except where it may be exercised without prejudice to the adequate provision of free school education for their area whether—

(a) at schools under their management, or

(b) at other schools by virtue of arrangements made by them with the managers of those schools or, in the case of schools under the management of another education authority, with that authority.

(5) Where an education authority are providing school education for an outwith-area pupil in a school under their management—

² Word repealed by Education (Scotland) Act 1996 c. 43 Sch. 6 para. 1

³ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

- (a) in classes in which fees are charged under the provisions of subsection (2) above, the education authority may charge in respect of that pupil, in addition to the fee charged by virtue of that subsection, such extra fee as they think proper,
- (b) in classes in which no fees are charged, the education authority may charge in respect of that pupil such fee as they think proper.

In this subsection “outwith-area pupil” means, in relation to any education authority, a pupil who is not deemed to belong for the purposes of section 23 of this Act to the area of that authority.

(6) An education authority shall have power to make charges in respect of the use of some or all of—

- (a) any facilities for further education provided by them,
- (b) any facilities provided by them under section 1(3) of this Act.

[(7) This section does not apply as respects the provision of school education by virtue of subsections (1) and (1A), or as the case may be subsection (1C), of section 1 of this Act.]⁴

4. Duty of education authorities to provide child guidance service.

It shall be the duty of every education authority to provide for their area a [...] ⁵ psychological service in clinics or elsewhere, and the functions of that service shall include—

- (a) the study of children with special educational needs;
- (b) the giving of advice to parents and teachers as to appropriate methods of education for such children;
- (c) in suitable cases, provision for the special educational needs of such children in clinics;
- (d) the giving of advice to a local authority within the meaning of the Social Work (Scotland) Act 1968 regarding the assessment of the needs of any child for the purposes of any of the provisions of that or any other enactment.

5. [...]⁶

6.— Social activities, physical education, etc.

(1) For the purpose of securing , under section 1(3) of this Act, the provision of facilities for social, cultural and recreative activities and physical education and training, and education authority may—

- (a) establish, maintain and manage—
 - (i) camps, outdoor centres, playing fields and swimming pools;
 - (ii) play areas and centres;
 - (iii) sports halls, centres and clubs;
 - (iv) youth, community and cultural centres and clubs,
 and other places at which any such facilities as aforesaid are available;
- (b) organise holiday classes, games, expeditions and other activities.

(2) In the exercise of their powers under subsection (1) above an education authority may assist any body whose objects include

⁴ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 33(4)

⁵ words repealed by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 14 para. 1

⁶ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

the provision or promotion of social, cultural and recreative activities and physical education and training or the facilities for such activities, education and training.

(3) [...] ⁷

7.— Provision of educational facilities to be in accordance with schemes.

(4) In considering and determining for the purposes of their functions under the foregoing provisions of this Act in relation to the provision of school education what amount of public school accommodation or additional public school accommodation is required for their area, an education authority shall have regard to and take into account every school, whether public or not, and whether situated in the area or not, which, in their opinion, gives, or will when completed give, efficient school education, and is, or will when completed be, suitable and available for the education of the pupils in their area.

(5) An education authority shall for the purposes of subsection (4) above have power to call upon all head teachers and managers of schools other than public schools for such information and for access to and delivery of all such documents as shall to the education authority appear to be necessary to enable them to discharge their duties under this Act, and an education authority may from time to time appoint fit and proper persons to procure such information and to inspect such documents.

(6) In the performance of their functions under the foregoing provisions of this Act in relation to the provision of school education, an education authority shall, in particular, have regard to the expediency of securing the provision of boarding accommodation, either in boarding schools or in hostels, for pupils for whom education as boarders is considered by their parents and by the authority to be desirable.

(7) [...] ⁸

(8) [...] ⁹

8.— Religious instruction.

(1) Whereas it has been the custom in the public schools of Scotland for religious observance to be practised and for instruction in religion to be given to pupils whose parents did not object to such observance or instruction, but with liberty to parents, without forfeiting any of the other advantages of the schools, to elect that their children should not take part in such observance or receive such instruction, be it enacted that education authorities shall be at liberty to continue the said custom, subject to the provisions of section 9 of this Act.

(2) It shall not be lawful for an education authority [...] ¹⁰ to discontinue religious observance or the provision of instruction in religion in terms of subsection (1) above, unless and until a resolution in favour of such discontinuance duly passed by the authority has been submitted to a poll of the local government electors for the education area taken for the purpose, and has been approved by a majority of electors voting thereat.

⁷ repealed by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 14 para. 1

⁸ repealed by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 10 para. 1

⁹ repealed by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 10 para. 1

¹⁰ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

(3) A poll under subsection (2) above shall be by ballot and shall be taken in accordance with rules to be made by the Secretary of State, which rules may apply with any necessary modifications any enactments relating to parliamentary or local government elections.

9. Conscience clause.

Every public school[and every grant-aided school]¹¹ shall be open to pupils of all denominations, and any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school; and no pupil shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such pupil or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects.

10. Safeguards for religious beliefs.

Where the parent of any pupil who is a boarder at any public school or other educational establishment under the management of an education authority requests that the pupil be permitted to attend worship in accordance with the tenets of a particular religious denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs, or to receive religious instruction or to practise religious observance in accordance with such tenets outside the working hours of the school or other educational establishment, the education authority shall make arrangements for affording to the pupil reasonable opportunities for so doing, and such arrangements may provide for affording facilities for such worship, instruction or observance on the premises of the school or other educational establishment, so however that such arrangements shall not entail expenditure by the education authority [...] ¹² .

11.— Provision of books, materials and special clothing free of charge.

(1) An education authority shall provide free of charge for all pupils belonging to their area who are given free education—

- (a) at schools [...] ¹³ under their management, or
- (b) at other schools by virtue of arrangements made by them with the managers of those schools or, in the case of schools under the management of another education authority, with that authority,

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; and the authority may make similar provision, with or without charge, for other pupils resident in their area and attending any school or other educational establishment.

(2) An education authority may provide—

¹¹ words substituted by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 2 para. 3(3)

¹² words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 2 para. 3(4)(d)

¹³ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

- (a) for pupils in attendance at any school, [...] ¹⁴ or other educational establishment under their management, articles of clothing suitable for physical exercise or for other activities of the school, [...] ¹⁵ or establishment for which special clothing is desirable, and
- (b) for persons who make use of facilities for physical education or training provided by the authority under section 1(3) of this Act, articles of clothing suitable for such physical education or training.

12.— Library service.

(1) An education authority may, as an ancillary means of promoting education, provide, by purchase or otherwise, such books and other printed matter, pictures, gramophone records, tape recordings, films and other materials as they may think desirable, for pupils attending schools, [...] ¹⁶ or other educational establishments in their area.

(2) For the purposes of this section, an education authority may—

- (a) make such arrangements as they consider necessary for the management of a library service provided by them including the accommodation and distribution of books and other materials, and
- (b) enter into arrangements with the managers of public libraries.

13. Provision of hotels.

An education authority may provide and maintain hostels for pupils attending educational establishments in their area.

[14 Education for children unable to attend school etc.

(1) If an education authority are satisfied that, by reason of—

(a) any extraordinary circumstances (not being circumstances mentioned in paragraph (b), or subsection (2) or (3), below)—

- (i) a pupil is unable; or
- (ii) it would be unreasonable to expect a pupil,

to attend a suitable educational establishment for the purpose of receiving education, they may;

(b) a pupil's prolonged ill-health—

- (i) the pupil is unable; or
- (ii) it would be unreasonable to expect the pupil,

to attend such an establishment for that purpose, they shall, without undue delay after those circumstances become apparent to them,

make special arrangements for the pupil to receive education elsewhere than at an educational establishment.

(2) If an education authority have, under section 34(1) of this Act, granted a pupil exemption from the obligation to attend school, the exemption being to enable the pupil to give assistance at home

¹⁴ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

¹⁵ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

¹⁶ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

in circumstances arising out of the illness or infirmity of a member of the pupil's family, they shall in so far as is practicable and without undue delay make such special arrangements as are mentioned in subsection (1) above.

(3) If a pupil withdraws, excluded by the education authority (or with the consent of the authority in circumstances where he would have been so excluded but for his withdrawal), from a public school in their area they shall, without undue delay—

- (a) provide school education for him in a school managed by them;
- (b) make arrangements for him to receive such education in any other school the managers of which are willing to receive him; or
- (c) make such special arrangements as are mentioned in subsection (1) above.

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[14ZA. Meaning of pupil in sections 12 to 14.

In sections 12 to 14 of this Act and in section 52 of this Act as it relates to the said section 13, any reference to a pupil shall include a reference to a student attending a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992.] ¹⁸

[14A.— Education in social work establishments.

(1) An education authority may, in accordance with this section, provide for their area school education in any establishment provided by a local authority under section 59(1) or (2) of the Social Work (Scotland) Act 1968 which is provided wholly or mainly for children under school age (other than any establishment whose provision is secured by them under paragraph (c) of the said section 59(2)).

(2) The provision of school education referred to in subsection (1) above shall consist of the making available by the education authority, in accordance with arrangements made by them in that behalf with the local authority providing the establishment, of the services of any teacher who is employed by them.

(3) Arrangements under subsection (2) above may make provision for—

- (a) the supply of equipment for use in connection with the provision of school education made available under the arrangements;
- (b) any supplementary or incidental matters connected with the arrangements.

(4) A teacher whose services are made available by an education authority in pursuance of arrangements under subsection (2) above shall, during the period in which his services are made available, be deemed to be in a post in a primary department of a school under the management of the education authority.

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¹⁷ substituted by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 40

¹⁸ added by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 9 para. 7(2)

¹⁹ S. 14A inserted by Education (Scotland) Act 1981 (c. 58), s. 12

*Transference of schools to education authorities***15.— Transference of endowed schools to education authorities.**

(1) The governing body of any school providing a course of secondary education administered under a scheme approved in terms of the Act of 1882, or under any Act or any provisional order confirmed by Act of Parliament, may, with a view to the maintenance of such school as a school providing a course of secondary education resolve to transfer the management thereof, together with the school buildings, and the revenue of the school from endowments in whole or in part, or, where the endowments are held solely for the purpose of such school, together with the endowments, to the education authority of the education area in which the school is situated. The education authority shall have power to receive the same, to manage the school as a school providing a course of secondary education and to make good any deficiency in the income of the school as managed by them.

(2) The Secretary of State may by order make provision for all matters which appear to him necessary or proper for giving full effect to any transfer under this section, including provision for the determination of any existing trust whose whole endowments are so transferred.

(3) A resolution by a governing body under this section shall not take effect unless it is confirmed by a subsequent meeting called for that special purpose with not less than three weeks notice by circular sent to each member of the governing body and held not sooner than one month nor later than two months after the date of the first meeting, and at such second meeting the requisite majority to secure confirmation shall be not less than the absolute majority of the governing body.

16.— Transference of denominational schools to education authorities.

(1) It shall be lawful for the person or persons vested with the title of any school established after 21st November 1918, to which section 18 of the Act of 1918 would have applied had the school been in existence at that date, with the consent of the trustees of any trust upon which the school is held and of the Secretary of State, to transfer the school together with the site thereof and any land or buildings and furniture held and used in connection therewith, by sale, lease or otherwise, to the education authority, who shall be bound to accept such transfer, upon such terms as to price, rent, or other consideration as may be agreed, or as may be determined, failing agreement, by an arbiter appointed by the Secretary of State upon the application of either party.

(2) The consent of trustees to the transference of a school to an education authority under this section may be given by a majority of not less than two thirds of the trustees present at a meeting duly summoned for that purpose. The transference may be effected

(a) by an ordinary disposition or other deed of conveyance by the persons vested with the title, recorded in the register of sasines ; or

(b) where—

(i) the [transferee's right in the land]²⁰ is registrable under the Land Registration (Scotland) Act 1979; or

(ii) the transference itself is so registrable,

by registration under that Act

²⁰ words substituted by Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5 (Scottish Act) Sch. 12(1) para. 41(2)

and no stamp or other duty shall be exigible on such disposition or other deed; and the persons whose consent is hereby required need not be parties to the conveyance, and the validity of the transference and the title of the education authority shall not be subject to challenge on the ground that the requisite consents were not duly given, unless such challenge shall be judicially made within six months after the recording of the deed of conveyance or, as the case may be, registration .

(3) The existing staff of teachers in a school transferred under this section shall be taken over by the education authority and shall as from the date of transfer be placed upon the same scale of salaries as teachers of corresponding qualifications appointed to corresponding positions in other schools of the same authority; and any question which may arise as to the due fulfilment or observance of any provision or requirement of this subsection shall be determined by the Secretary of State.

Provision, maintenance and equipment of schools and other buildings

17.— Provision, maintenance and equipment of schools and other buildings.

(1) Subject to subsection (6) below, It shall be the duty of an education authority , in the performance of their functions under sections 1 to 6 of this Act, to provide for their area, sufficient accommodation in public schools (whether day schools or boarding schools), and other educational establishments under their management to enable them to perform their said functions .

(2) In any case where an education authority are satisfied, whether upon representations made to them by any church or denominational body acting on behalf of the parents of children belonging to such church or body or otherwise, that a new school is required for the accommodation of children whose parents are resident within the area of the authority, regard being had to the religious belief of such parents, it shall be lawful for the education authority to provide a new school.

(3) Subject to subsection (6) below, An education authority shall maintain and keep efficient every public school, and other educational establishment under their management, and shall from time to time provide such additional accommodation as may be necessary to enable them to perform their functions under sections 1 to 6 of this Act. .

(4) An education authority may, for the purposes of their duty under this section, provide, alter, improve, enlarge, equip and maintain schools, and other educational establishments outwith as well as within their area.

(5) An education authority may provide, alter, improve, enlarge, equip, maintain and furnish houses and hostels, with such outbuildings and gardens as they think expedient, for teachers and other officers employed by them (whether or not employed in or about an educational establishment).

[(6) Subsections (1) and (3) above shall have effect as regards further education only to the extent that the education authority is under a duty to do anything under the said sections 1 to 6.]²¹

²¹ added by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 9 para. 7(3)(b)

18.— Improvements as to premises of educational establishments for the safety of pupils.

(1) Subject to the provisions of this section, an education authority may for the purpose of reducing the risk of accident to pupils going to or returning from schools or other educational establishments in their area and under their management, or while actually present at such schools or establishments, do work to improve the safety of any private road which is used by these pupils or which is in the vicinity of such a school or establishment, and provide or arrange for the provision of safety barriers at or near the entrances to such schools and establishments.

(2) Any work for the purpose of subsection (1) above may be undertaken by the education authority in co-operation with any other person.

(3) For the purpose of subsection (1) above an education authority may enter on and carry out work on any land:

Provided that where an education authority propose to carry out any such work on land which is in possession of another person, the authority shall obtain the consent of the owner and of the occupier of such land, unless the owner or the occupier cannot be found.

(4) Where an education authority propose to provide or arrange for the provision of safety barriers for the purpose of subsection (1) above on any road, the authority shall—

(a) if it is a public road, obtain the consent of the authority responsible for the maintenance of such road;

(b) if it is a private road, consult the authority responsible for the maintenance of public roads in the area in which that private road is situated.

[(5) In this section “road”, “public road” and “private road” have the meanings ascribed to them by section 151(1) of the Roads (Scotland) Act 1984.]²²

19.— Power of Secretary of State to prescribe standards for premises, etc., of educational establishments.

(1) The Secretary of State may make regulations prescribing standards and requirements which are to apply to the premises and equipment of educational establishments under the management of education authorities and regulations under this subsection may prescribe different standards or requirements in respect of such different classes (however defined) of educational establishment as may be specified in the regulations.

(2) It shall be the duty

(a) of an education authority to secure that the premises and equipment of any educational establishment under their management conform to the standards and requirements applicable to that establishment;

and, in particular, that the premises and equipment of all educational establishments under their management are maintained in such a condition as to conduce to the good health and safety of all persons occupying or frequenting the premises or using the equipment.

(3) Where the premises or equipment of any educational establishment under the management of an education authority [...] ²³ do not conform to the standards or requirements applicable to that

²² S. 18(5) substituted by Roads (Scotland) Act 1984 (c.54), s. 156(1), Sch. 9 para. 80

²³ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

establishment [...] ²⁴ or are not maintained as mentioned in subsection (2) above, the Secretary of State may, after consultation with the authority [...] ²⁵ direct that the premises or equipment be brought into conformity with the said standards or requirements or into the state of maintenance mentioned in that subsection (as the case may be) within a period to be specified in the direction; and it shall thereupon be the duty of that authority [...] ²⁶ to comply with the direction.

[19A.— Secretary of State's power to control use of dangerous materials or apparatus in educational establishments.

(1) The Secretary of State may by regulations make provision for requiring his approval to be obtained for the use in such educational establishments as may be specified in the regulations of such materials or apparatus as may be so specified, being materials or apparatus which could or might involve a serious risk to health.

(2) The power referred to in subsection (1) above includes power to make different provision in respect of different educational establishment.

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20.— Acquisition of land and execution of works.

(1) In order to enable them to execute any of their functions, an education authority may, from time to time—

- (a) acquire, whether by way of purchase, [...] ²⁸ lease, excambion or donation, any land whether situated within or outwith the area of the authority;
- (b) erect and furnish buildings or execute any other works on any land belonging to them, or on land leased by them;
- (c) convert, alter, enlarge or improve any existing building or other works belonging to the authority or leased by them;

Provided always that paragraphs (b) and (c) above shall not of themselves authorise the authority to do anything contrary to the conditions contained in the title to or lease of any such land, buildings or other works.

(4) For the purpose of the acquisition of land by an education authority under this Act, the Land Clauses Acts, except in so far as they relate to the purchase and taking of land otherwise than by agreement, shall be incorporated with this Act.

(5) An education authority may be authorised by the Secretary of State to purchase land compulsorily for the purposes of this Act, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. shall apply in relation to any such compulsory purchase as if this Act had been in force immediately before the commencement of that Act.

(6) In this section, and in the Lands Clauses Acts as hereby incorporated, “land” includes water and any right or servitude in or over land or water.

²⁴ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

²⁵ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

²⁶ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

²⁷ S. 19A inserted by Education (Amendment) (Scotland) Act 1984 (c.6), s. 1

²⁸ word repealed by Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5 (Scottish Act) Sch. 13(1) para. 1

*Management of denominational schools***21.— Management of denominational schools.**

(1) Any school transferred to an education authority under section 16(1) of this Act shall be held, maintained and managed by the education authority as a public school.

(2) [Subject to subsections (2A) and (2C) below,]²⁹ in any such school the education authority shall have the sole power of regulating the curriculum and of appointing teachers:

[(2A) A teacher appointed to any post on the staff of any such school by the education authority shall [...] ³⁰ satisfy the Secretary of State as to qualification, and [shall be required to be] ³¹ approved as regards [his] ³² religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted;]³³

[(2B) Where the said representatives of a church or denominational body refuse to give the approval mentioned in subsection (2A) above they shall state their reasons for such refusal in writing.]³⁴

(2C) subject to the provisions of section 9 of this Act, the time set apart for religious instruction or observance in any such school shall not be less than that so set apart according to the use and wont of the former management of the school.

(3) For each such school the education authority shall appoint as supervisor of religious instruction, without remuneration, a person approved as regards religious belief and character as aforesaid, and the supervisor so appointed shall report to the education authority as to the efficiency of the religious instruction given in such school, and shall be entitled to enter the school at all times set apart for religious instruction or observance.

(4) In every such school the education authority shall give facilities for the holding of religious examinations.

(5) Subsections (1) to (4) above, so far as applicable, shall have effect in relation to any school provided by an education authority under section 17(2) of this Act as they have effect in relation to schools transferred to an education authority as mentioned in subsection (1) above, subject to the modification that the time set apart for religious instruction in any school so provided shall be not less than that so set apart in schools in the same education area which have been transferred as mentioned in subsection (1) above.

(6) Any question which may arise as to the due fulfilment or observance of any provision or requirement of the foregoing provisions of this section shall be determined by the Secretary of State.

²⁹ Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(7)(a)

³⁰ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1)(2), Sch. 10 para. 8(7)(c), Sch. 11

³¹ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(7)(d)

³² Word substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(7)(e)

³³ S. 21(2A) substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1)(2), Sch. 10 para. 8(7)(c), Sch. 11

³⁴ S. 21(2B) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(7)(f)

(7) In this section, the reference to section 16(1) or 17(2) of this Act shall include a reference to the corresponding provision of the Act of 1918, the Act of 1946 and the Act of 1962.

Discontinuance and moves of educational establishments

22.— Discontinuance and moves of educational establishments.

(1) Subject to any special conditions attaching thereto, an education authority may—

- (a) sell, [...] ³⁵ exchang or let any land vested in them; and
- (b) discontinue or change the site of, any educational establishment under their management, or part thereof.

(2) Where an education authority propose to discontinue any educational establishment under their management, or to discontinue the use, in connection with such an educational establishment, of any part of that establishment, or of any building or part of a building ancillary to the establishment, and land forming the site, or part of the site, of that establishment or of that part of the establishment or of that building or part of a building, as the case may be, is subject to—

- (a) the third proviso to section 2 of the School Sites Act 1841 (which provides that, if any land granted in accordance with the provisions of that section ceases to be used for the purposes mentioned in that Act, that land shall revert to the grantor), or
- (b) any condition of a similar nature in any Act, deed or other instrument,

the Secretary of State, on the application in that behalf of the education authority, may by order direct that the said proviso or condition shall not have effect in relation to that land:

Provided that such a direction shall not be given in relation to any land unless the Secretary of State is satisfied either—

- (i) *that the person to whom the land would revert in accordance with the said proviso or condition cannot after due inquiry be found, or*
- (ii) *that, if that person can be found, he has consented to relinquish his rights in relation to the land under the said proviso or condition, and that, if he has consented to do so in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum.*

(3) A direction given by the Secretary of State under subsection (2) above in relation to any land may make provision for the payment out of the proceeds of any sale of that land of any sum which is payable to any person in consideration of the relinquishment of his rights in relation to the land under the said proviso or condition.

(4) If at any time after the expiry of ten years from the transfer of a school under section 16 of this Act, or from the provision of a new school under section 17(2) of this Act, the education authority by whom the school is maintained are of opinion that the school is no longer required, or that, having regard to the religious belief of the parents of the children attending the school, the conditions prescribed in subsections (1) to (4) of section 21 of this Act or in the said subsections so far as applicable and having effect by virtue of subsection (5) of that section, as the case may be, ought no longer to apply thereto, it shall subject to sections 22A, 22B, 22C and 22D of this Act be lawful for the education authority thereafter to discontinue the school, or, as the case may be, to hold, maintain and manage the same in all respects as a public school not subject to those conditions:

³⁵ word repealed by Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5 (Scottish Act) Sch. 13(1) para. 1

Provided that—

- (i) in the case of any school which has been transferred as aforesaid to an education authority, that authority shall in either of those events make to the trustees by whom the school was transferred, or to their successors in office or representatives, such compensation (if any) in respect of the school or other property so transferred as may be agreed, or as may be determined, failing agreement, by an arbiter appointed by the Secretary of State upon the application of either party; and*
- (ii) if before the expiry of ten years from the transfer of any such school, the education authority are of opinion as aforesaid and so represent, and the trustees by whom the school was transferred, or their successors in office or representatives, formally intimate to the authority that they concur with the authority in their opinion as represented, then in such case, , it shall subject to sections 22A, 22B, 22C and 22D of this Act be lawful for the education authority forthwith to discontinue or to hold, maintain or manage the school as aforesaid, subject to the like provision with respect to compensation.*

(5) In subsection (4) above, the reference to section 16 or 17(2) of this Act shall include a reference to the corresponding provision of the Act of 1918, the Act of 1946 and the Act of 1962.

Consultation on, and consent for, changes in certain educational matters

[22A.— Consultation on certain changes in educational matters.

(1) Where an education authority make a proposal of a prescribed kind, they shall, in such manner as may be prescribed, publish it or otherwise make it available and consult such persons as may be prescribed and shall not reach a decision on it without having regard to any representations made to them on it by those persons.

(2) In this section “prescribed” means prescribed for the purposes of this section by the Secretary of State by regulations and in so prescribing kinds of proposals the Secretary of State shall include proposals to discontinue or change the site of any school under the management of an education authority.

]³⁶

[22B.— Consent for certain changes in educational matters.

(1) An education authority shall submit to the Secretary of State for his consent any proposal of theirs of a prescribed kind and shall not implement such a proposal without his consent.

(2) In this section “prescribed” means prescribed for the purposes of this section by the Secretary of State by regulations and the Secretary of State may prescribe different kinds of proposals in relation to different education authorities.

]³⁷

³⁶ Ss. 22A–22D inserted by Education (Scotland) Act 1981 (c. 58), s. 6

³⁷ Ss. 22A–22D inserted by Education (Scotland) Act 1981 (c. 58), s. 6

[22C.— Consent for certain changes affecting denominational schools.

- (1) An education authority shall submit to the Secretary of State for his consent any proposal of theirs to which this section applies and shall not implement such a proposal without his consent.
- (2) A proposal to which this section applies is one which—
- (a) relates to a school transferred to an education authority under section 16(1) or provided by them under section 17(2) of this Act; and
 - (b) will, if implemented, have the effect that all or some of the pupils who attend the school will no longer receive school education in a school of the kind referred to in paragraph (a) above or that all or some of the children who would, but for the implementation of the proposal, have been likely to attend it will not be likely to receive such education in a school of that kind.
- (3) The Secretary of State shall not grant consent under this section unless he is satisfied that adequate arrangements have been made for the religious instruction of pupils and children who would, as a result of implementation of the proposal, no longer receive or be likely to receive school education in a school of the kind referred to in paragraph (a) of subsection (2) above.
- (4) In granting consent under this section the Secretary of State may impose such conditions as he thinks fit with regard to the religious instruction of the pupils and children referred to in paragraph (b) of subsection (2) above and to related matters and conditions imposed by the Secretary of State under this section may be revoked or amended by him at any time.
- (5) Any question which may arise—
- (a) whether a proposal is one to which this section applies;
 - (b) as to the implementation of a proposal to which the Secretary of State has consented under this section;
 - (c) as to the fulfilment or observation of any conditions upon his consent imposed under subsection (4) above shall be determined by the Secretary of State and the education authority shall perform their duties under this Act in accordance with any such determination.
- (6) In this section, the reference to section 16(1) or 17(2) of this Act shall include a reference to the corresponding provision of the Act of 1918, the Act of 1946 and the Act of 1962.

]

22D.— Further provisions relating to denominational schools.

- (1) An education authority shall submit to the Secretary of State for his consent any proposal of theirs to which this section applies and shall not implement such a proposal without his consent.
- (2) A proposal to which this section applies is one—
- (a) which relates to a school transferred to an education authority under section 16(1) or provided by them under section 17(2) of this Act;
 - (b) to—
 - (i) discontinue the school or a part of it;
 - (ii) amalgamate the school or a part of it with another school;
 - (iii) change the site of the school;
 - (iv) change the arrangements for admission to the school; or

³⁸ Ss. 22A–22D inserted by Education (Scotland) Act 1981 (c. 58), s. 6

- (v) disapply to the school the conditions prescribed in subsections (1) to (4) of section 21 of this Act or in the said subsections so far as applicable and having effect by virtue of subsection (5) of that section; and
- (c) in relation to which the Secretary of State, having consulted any education authority affected by it, is satisfied, upon written representations made, in the case of any church or denominational body in whose interest the school is conducted other than the Roman Catholic Church, by a person authorised for that purpose by that church or denominational body and, in the case of the Roman Catholic Church, by the Scottish Hierarchy of that Church, that—
- (i) if implemented, it will have any of the results specified in subsection (3) below; and
 - (ii) the education authority submitting the proposal under subsection (1) above and the church, denominational body or Hierarchy, as the case may be, have, after discussion, failed to reach agreement that it should be implemented.
- [(3) The results referred to in subsection (2)(c)(i) above are—
- (a) a significant deterioration for pupils belonging to the area of the education authority submitting the proposal under subsection (1) above; or
 - (b) a significant deterioration for pupils belonging to the area of any other education authority; or
 - (c) where neither paragraph (a) nor paragraph (b) above applies, such a deterioration for pupils as mentioned in the said paragraph (a) and pupils belonging to the area of another education authority as, taken together, amounts to a significant deterioration,
- in the provision, distribution or availability of school education in schools of the kind referred to in subsection (2)(a) above compared with such provision, distribution or availability in other public schools.
-] ³⁹
- (5) The Secretary of State shall not grant consent under this section in relation to a school unless he is satisfied that adequate arrangements have been made for the religious instruction of the children who will no longer receive or be likely to receive school education in a school of the kind referred to in subsection (2)(a) above.
- (6) In granting consent under this section in relation to a school the Secretary of State may impose such conditions as he thinks fit with regard to the religious instruction of the children who will no longer receive or be likely to receive school education in a school of the kind referred to in subsection (2)(a) above and to related matters and, in doing so, he shall have regard to the duties imposed by section 21 of this Act on education authorities in relation to schools of that kind, and conditions imposed by the Secretary of State under this section may be revoked or amended by him at any time.
- (7) Any question which may arise—
- (a) whether a proposal is one to which this section applies;
 - (b) as to the implementation of a proposal to which the Secretary of State has consented under this section;
 - (c) as to the fulfilment or observation of any conditions upon his consent imposed under subsection (6) above

³⁹ subsection (3) substitutes subsections (3) and (4) by Local Government etc. (Scotland) Act 1994 c. 39 Pt IV s. 144(c)

shall be determined by the Secretary of State and the education authority shall perform their duties under this Act in accordance with any such determination.

(8) In this section the reference to section 16(1) or 17(2) of this Act shall include a reference to the corresponding provision of the Act of 1918, the Act of 1946 and the Act of 1962.

Co-operation between education authorities and others

23.— Provision by education authority for education of pupils belonging to areas of other authorities.

(1) An education authority shall have power to provide in or in connection with any public school, or other educational establishment under their management, school education or further education and other services under this Act for any pupil belonging to the area of some other education authority or of a local education authority in England and Wales

(1A) Without prejudice to any other provision of this Act, for the purposes of their duty under section 1 of this Act an education authority shall have power to make arrangements with another education authority (in this subsection referred to as a “provider authority”) for the provision of school education or further education for any pupils belonging to the area of the authority in a school or educational establishment under the management of the provider authority.

(1B) Arrangements made under this Act by an education authority for the placing of children in schools may include provision to give effect to any arrangements made under subsection (1A) above.

(1C) Where the arrangements for the placing of children in schools subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 lead, as a consequence of such establishment, to school education for pupils belonging to the area of one education authority being provided at schools or educational establishments under the management of another education authority, nothing in this Act shall prevent such arrangements from continuing until they are changed by an education authority in accordance with this Act.

(2) Where an education authority have provided school education with or without other services for any pupil belonging to the area of some other authority, the education authority, may, if a claim therefor is made within the prescribed period, recover from that other authority such contributions in respect of such provision as may be agreed by the authorities concerned, or, in default of such agreement, as may be determined by the Secretary of State, who shall have regard to the estimated cost of such provision:

(3) The Secretary of State may make regulations prescribing the areas to which particular classes of pupils receiving school education are to be deemed to belong for the purposes of this section and sections 1(5)(c) and (d), 28A(1) (as it has effect under Schedule A2 to this Act), 50, 51 and 60 to 65F of this Act and any such pupil to whom the regulations apply shall be deemed to belong to the area determined in accordance with the regulations. Any other pupil receiving school education shall, for the aforesaid purposes, be deemed to belong to the area in which his parent is ordinarily resident, and any pupil receiving further education shall be deemed to belong to the area in which he himself is ordinarily resident:

Provided that any pupil who becomes ordinarily resident in any area wholly or mainly for the purposes of attending an educational establishment providing further education shall be deemed to belong not to that area but to any area to which he was deemed to belong immediately before he became so resident.

[(3A) Where an education authority's arrangements for the placing of children in schools under their management give any priority to siblings of pupils attending such schools, those arrangements shall not discriminate between siblings belonging to the area of that education authority and siblings belonging to the area of another education authority.]⁴⁰

(4) Where on 1st January 1947 or at any subsequent date it was or is the practice of an education authority or of the managers of a school situated in the area of that authority to provide school education for pupils belonging to the area of another education authority, then whether contributions have been recovered under section 24(2) of the Act of 1946, section 24(2) of the Act of 1962 or this section or not, they shall not be entitled to discontinue such practice except after giving such notice as the Secretary of State may, in the event of a dispute, consider reasonable.

24.— Power of education authorities to make payments to persons providing education, etc.

(1) An education authority may, for the purpose of promoting education generally, or of improving the facilities for education available, or the education provided, for their area in particular, make payments—

- (a) to another education authority,
- (b) to a university, or to the managers of a hostel or other residence used by students attending a university,
- (c) to the managers of any school (other than a public school),
- (d) to the managers of any educational establishment (other than a school),
- (e) to any other person providing education or educational services,
- (f) to any person to assist the carrying out of educational research,

and any such payment may be made either unconditionally or subject to such conditions as may be agreed between the parties.

(2) Where—

- (a) it is agreed between an education authority and the managers of any educational establishment, as a condition of the making of payments under subsection (1) above, that the authority shall have representation or additional representation on the governing body of that establishment, but
- (b) the provisions of any trust deed or other instrument relating to the establishment will not, unless they are modified, permit provision to be made for such representation or additional representation as aforesaid,

the Secretary of State may, on being requested to do so by the managers of the establishment, by order make such modifications in the provisions of that trust deed or other instrument as may be necessary to enable provision to be made for such representation or additional representation, as the case may be, as aforesaid, and any such trust deed or other instrument shall, so long as the said payments continue to be made, have effect subject to any modifications so made.

⁴⁰ added by Local Government etc. (Scotland) Act 1994 c. 39 Pt I c. 6 s. 32(3)

*Promotion of educational developments***25. Educational research.**

An education authority may make such provision for conducting or assisting the conduct of research as appears to the authority to be desirable for the purpose of improving the education provided for their area.

26. Educational conferences.

An education authority may arrange or organise, or participate in the arrangement or organisation of, conferences or meetings for the discussion of questions relating to education, and may expend such sums as may be reasonable in paying or contributing towards any expenditure incurred in connection with conferences or meetings for the discussion of such questions, including the expenses of any person authorised by them to attend any such conference or meeting.

27.— Provision of museums by education authorities.

(1) An education authority may provide and maintain museums within their area, and shall have power—

- (a) to acquire any objects which, in their opinion, it is desirable to include in a collection contained in a museum maintained by them under this section;
- (b) to lend any object vested in them and comprised in any such collection, on such terms and conditions as they think fit, to any person for any purpose;
- (c) subject to subsection (3) below, to transfer any object vested in them and comprised in any such collection to the governing body of a museum maintained by a person other than the education authority, for the purpose of being included in a collection contained in that museum;
- (d) subject to subsection (3) below, to sell, exchange, give away or otherwise dispose of any object vested in them and comprised in a collection contained in a museum maintained by them under this section, if for any reason that object is not, in their opinion, required for retention in any such collection;
- (e) to co-operate with any other education authority or any other body;
- (f) generally to do all such things as they may consider necessary or expedient for or in connection with the provision and maintenance of museums under this section.

(2) An education authority may, if they think fit, make such charge as they consider reasonable for admission to a museum maintained by them under this section, and in determining whether, and in what manner, to exercise their powers under this subsection in relation to any museum, an authority shall take into account the need to secure that the museum plays its full part in the promotion of education in their area, and shall have particular regard to the interests of children and students.

(3) Where an object has become vested in an education authority subject to any trust or condition—

- (a) that object shall, on being transferred under subsection (1)(c) above, be subject to the like trust or condition in the hands of the transferee;
- (b) the powers conferred by subsection (1)(d) above shall not be exercisable in relation to that object in a manner inconsistent with that trust or condition.

PART II

RIGHTS AND DUTIES OF PARENTS AND FUNCTIONS OF EDUCATION AUTHORITIES IN RELATION TO INDIVIDUAL PUPILS

General principle

28.— Pupils to be educated in accordance with the wishes of their parents.

(1) In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

(2) [...] ⁴¹

28A.— Duty to comply with parents requests as to schools.

(1) Where the parent of a qualifying child makes a written request to an education authority to place his child in the school (other than a nursery school or a nursery class in a school) specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2), (3), (3A) and (3F) below, to place the child accordingly. Such a request so made is referred to in this Act as a “placing request” and the school specified in it is referred to in this Act as the “specified school”.

(1A) The education authorities shall—

- (a) in carrying out the duty imposed on them by subsection (1) above; and
- (b) in deciding when that duty does not apply,

have regard to such guidance as the Scottish Ministers may give in that respect.

(2) Where a placing request relates to two or more schools under the management of the education authority to whom it was made, the duty imposed by subsection (1) above shall apply in relation to the first mentioned such school, which shall be treated for the purposes of this Act as the specified school.

(3) The duty imposed by subsection (1) above does not apply—

- (a) if placing the child in the specified school would—
 - (i) make it necessary for the authority to take an additional teacher into employment;
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
 - (iii) be seriously detrimental to the continuity of the child's education;
 - (iv) be likely to be seriously detrimental to order and discipline in the school;
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;
 - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the

⁴¹ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

specified school or to take an additional teacher into employment at that school; [or]⁴²

[(vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;]⁴³

- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
- (c) if the education authority have already required the child to discontinue his attendance at the specified school;
- (d) if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school; or
- (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,

but an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above.

(3A) the duty imposed by subsection (1) above does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school; but nothing in this subsection shall prevent an education authority from placing a child in the specified school.

(3C) In subsection (3A) above, “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as may be prescribed by regulations) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1 August to which the placing request relates; and different numbers or, as the case may be, percentages may be prescribed under this subsection for the purpose of different cases or circumstances.

(3D) In subsections (3A) and (3C) above, “catchment area” means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of this Act.

(3F) Where an education authority are carrying out the duty imposed on them by subsection (1) above in respect of a child such as is mentioned in subsection (6)(c) below, they shall place the child in the specified school—

- (a) on the date (being the date fixed for that school under section 32(1) and (2) of this Act) next following the making of the placing request; or
- (b) where that date has passed, as soon after that date as is reasonably practicable.

(4) An education authority shall inform a parent in writing of their decision on his placing request and, where they decide to refuse it, shall give him written reasons for their decision and inform him of his right to refer it under section 28C of this Act to an appeal committee.

⁴² added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 44(4)

⁴³ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 44(4)

(5) The Secretary of State may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with subsection (4) above within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes.

(6) In this section—

“primary school” does not include a nursery school or a nursery class; and

“qualifying child” means—

(a) a child of school age;

(b) a child who has commenced attendance at a primary school but is not of school age; or

(c) a child who is not of school age and who, on the date (being the date fixed under subsections (1) and (2) of section 32 of this Act for the purposes of subsection (6) of that section) next following the making of the request under subsection (1) above, will be eligible under this Act to commence attendance at a primary school.

[44]

[28B.— Information as to placing in schools and other matters.

(1) Every education authority shall—

(a) publish or otherwise make available information as to—

(i) their arrangements for the placing of children in schools under their management;

(ii) such matters as may be prescribed by regulations;

(iii) such other matters as the authority consider necessary or expedient for the purposes of their functions under this Act;

(b) where a child falls, in accordance with those arrangements, to be placed in a school under their management—

(i) in a case where the authority propose to place the child in a particular school, inform his parent of the school; and

(ii) in every case, subject to subsection (4) below, inform the parent of the general effect of section 28A(1) and (2) of this Act and of his right to make a placing request;

(c) in making arrangements for the performance of their functions under this Act, formulate guidelines to be followed by them as respects placing in schools generally or, if they think it necessary, in any particular school in the event of there being more placing requests made in respect of certain schools or, as the case may be, that school or in respect of any stage or stages of school education provided there than there are places available;

(d) on a request to that effect made to them at any time by a parent of a child, supply the parent with any prescribed or determined information about any school under their management.

In paragraph (d) above, “prescribed or determined information” means information prescribed or determined under subsection (3)(c) below.

(2) An education authority shall, in performing the duties imposed on them by subsection (1) above, comply with any regulations made under subsection (3) below.

⁴⁴ In relation to a recorded child under 1980 c.44, s.60: [See Westlaw UK].

(3) The Secretary of State may by regulations prescribe or make provision for the determining of—

- (a) the procedure in accordance with which education authorities are to perform the duties imposed on them by subsection (1) above and when they are to do so;
- (b) how education authorities are to go about publishing or otherwise making available information under subsection (1) above or informing parents under that subsection;
- (c) the kind of information which is to be so published or which is to comprise the information so made available or supplied to parents.

(4) The duty imposed by subsection (1)(b)(ii) above arises only when the existence of the child and the fact that he falls to be placed in a school under their management are known to the education authority.

] ⁴⁵

28C.— Reference to appeal committee of refusal of placing request.

(1) Subject to subsections (2) and (3) below, a parent who has made a placing request may refer a decision of the education authority refusing his request to an appeal committee set up under section 28D of this Act.

(2) [...] ⁴⁶

(3) Where a reference under this section has been made in respect of a child, no further such reference in respect of the child shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.

(4) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following), but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.

[28D.— Appeal committees.

(1) Every education authority shall—

- (a) set up and maintain such number of appeal committees; and
- (b) make such other arrangements

as are necessary to enable references to be made under sections 28C, 28E(6), 28F(7), 28H and 63 of this Act and heard by the committees.

(2) An appeal committee set up under subsection (1) above shall be constituted in accordance with Schedule A1 to this Act.

(3) The Secretary of State may by regulations make provision for procedure in relation to references under section 28C of this Act and regulations made under this subsection may include provision—

⁴⁵ Ss. 28A-28G inserted by Education (Scotland) Act 1981 (c. 58), s. 1(1)

⁴⁶ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 43(3)

- (a) requiring the education authority to make information relevant to their decision available to the committee and to the parent referring that decision to the committee;
- (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority on a placing request in the event of the committee's not having complied with section 28E(3) of this Act within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes;
- (c) ancillary to or consequential upon provision made under paragraphs (a) and (b) above.

]⁴⁷

[28E.— Appeal committees: supplementary provisions.

(1) An appeal committee may, on a reference under section 28C of this Act, confirm the education authority's decision if they are satisfied—

- (a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and
- (b) that, in all the circumstances, it is appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where they so refuse, require the education authority to place the child to whom the reference relates in the specified school.

(2) Where, in considering a reference under section 28C of this Act of a decision to refuse a placing request where the specified school is a special school, an appeal committee refuse to confirm the decision, they shall have power, if the education authority have decided not to record the child to whom the reference relates, to require the education authority to reconsider their decision not to record him.

(3) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they shall inform the parent of his right of appeal to the sheriff under section 28F of this Act.

(4) Where, on a reference under section 28C of this Act, an appeal committee refuse to confirm an education authority's decision, the authority shall give effect to the placing request to which the reference relates.

(5) Where a decision of an appeal committee under this section is inconsistent with any decision of the education authority refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the appeal committee's decision relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child in writing of their decision upon that review and the reasons for it.

(6) The decision of an education authority upon a review under subsection (5) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.

⁴⁷ Ss. 28A-28G inserted by Education (Scotland) Act 1981 (c. 58), s. 1(1)

(7) [...] ⁴⁸

(8) [...] ⁴⁹

]⁵⁰

[28F.— Appeal to sheriff from appeal committee.

(1) A parent who has made a reference under section 28C of this Act may appeal to the sheriff having jurisdiction where the specified school is situated against the decision of an appeal committee on that reference.

(2) The education authority may, but the appeal committee shall not, be a party to an appeal under this section.

(3) An appeal under this section—

- (a) shall be made by way of summary application;
- (b) shall be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted, except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following); and
- (c) shall be heard in chambers.

(4) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (3) above.

(5) The sheriff may on an appeal under this section confirm the education authority's decision if he is satisfied—

- (a) that one or more of the grounds of refusal specified in section 28A(3) of this Act exists or exist; and
- (b) that, in all the circumstances, it is appropriate to do so

but shall otherwise refuse to confirm their decision and shall, where he so refuses, require the authority to give effect to the placing request to which the appeal relates.

(6) Where the judgment of the sheriff on an appeal under this section is inconsistent with any decision of the education authority (whether confirmed by the appeal committee or not) refusing a placing request to place another child at the same time and at the same stage of education and in the same school as that at and in which the child to whom the judgment relates is to be placed, the education authority shall review their decision so to refuse and shall inform the parent of the other child of their decision upon that review and the reasons for it.

(7) The decision of an education authority upon a review under subsection (6) above not to reverse their decision to refuse the placing request in respect of the other child may be referred to an appeal committee by the parent of the other child as if the decision upon the review were a decision refusing his placing request and the provisions of this Act relating to references of decisions upon placing requests and appeals therefrom (including those relating to appeal committees) shall apply accordingly.

⁴⁸ Amends Tribunals and Inquiries Act 1971 (c. 62), Sch. 1 para. 36

⁴⁹ Inserts s. 23(2)(f) in Local Government (Scotland) Act 1975 (c. 30)

⁵⁰ Ss. 28A-28G inserted by Education (Scotland) Act 1981 (c. 58), s. 1(1)

(8) The sheriff may make such order as to the expenses of an appeal under this section as he thinks proper.

(9) The judgment of the sheriff on an appeal under this section shall be final.
] ⁵¹

28G.— Application of sections 28A to 28F and Schedule A1 to young persons.

Sections 28A to 28F of this Act and Schedule A1 to this Act shall apply in relation to a young person who is a pupil and in that application references in those sections to the parent of a qualifying child as well as references to the [qualifying] ⁵² child himself shall be construed as references to the young person.

[28H.— Reference to appeal committee, and appeal therefrom of decision to exclude pupil.

(1) Where an education authority decide to exclude a pupil from a school under their management which he attends, the parent of the pupil or, where the pupil is a young person, the pupil may refer the decision to an appeal committee set up under section 28D of this Act.

(2) An appeal committee may, on a reference under this section, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision of the authority to exclude a pupil until certain conditions stipulated by them are complied with, the committee may modify the conditions.

(3) The decision of an appeal committee on a reference under this section and the reasons for it shall be notified by the committee in writing to the parent or, as the case may be, the pupil making the reference and to the education authority.

(4) A decision of an appeal committee on a reference under this section annulling a decision of an education authority or modifying the conditions subject to which an education authority have excluded a pupil from a school shall be complied with by the authority.

(5) The Secretary of State may by regulations make provision for procedure in relation to references under this section and regulations made under this subsection may include provision—

(a) requiring the education authority to make information relevant to their decision available to the appeal committee and to the parent or, as the case may be, pupil referring that decision to the committee;

(b) deeming, for the purposes of this Act, an appeal committee to have confirmed the education authority's decision to exclude a pupil from a school under their management which he attends in the event of the appeal committee's not having complied with subsection (3) above within such period as may be prescribed in the regulations and different periods may be so prescribed for different purposes.

(6) The decision of an appeal committee confirming an education authority's decision to exclude a pupil or modifying conditions under subsection (2) above may be appealed against by the parent of the pupil or, where the pupil is a young person, the pupil to the sheriff having jurisdiction where the school from which the pupil has been excluded is situated, and subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this subsection.

⁵¹ Ss. 28A-28G inserted by Education (Scotland) Act 1981 (c. 58), s. 1(1)

⁵² word inserted by School Education (Amendment) (Scotland) Act 2002 asp 2 (Scottish Act) s. 1(3)(b)

(7) The sheriff may, on an appeal under subsection (6) above, confirm or annul the decision of the education authority excluding the pupil and, in confirming a decision excluding the pupil until certain conditions stipulated by them are complied with, he may modify the conditions.

] ⁵³

29. [...] ⁵⁴

Information as to schools and pupils

[28I.— Information as to schools.

- (1) The Secretary of State may by regulations make provision requiring—
- (a) in respect of every school for the management of which an education authority is responsible, the education authority; and
 - (b) in respect of every other school—
 - (i) where the school has a board of management, the board of management;
 - (ii) in any other case, the managers,
- to provide to him and to such persons (including education authorities) as may be prescribed such information as regards the school and pupils attending the school as may be prescribed.
- (2) For the purposes of this section information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (3) Where the Secretary of State exercises his power to make regulations under this section he shall do so with a view to making available information which is likely to—
- (a) assist parents in choosing schools for their children;
 - (b) increase public awareness of the quality of the education provided by the schools concerned and the educational standards achieved in those schools; or
 - (c) assist in assessing the degree of efficiency with which the financial resources of those schools are managed.
- (4) Information which is required by virtue of regulations made under this section shall be provided—
- (a) in such form and manner; and
 - (b) on such occasions,
- as may be prescribed.
- (5) No information provided in accordance with regulations made under this section shall name any pupil to whom it relates.
- (6) The Secretary of State may—
- (a) publish information provided in accordance with regulations made under this section in such form and manner as he considers appropriate;
 - (b) require an education authority to publish such information at such times and in such form and manner as he may specify for the purposes of this section; or

⁵³ S. 28H inserted by Education (Scotland) Act 1981 (c. 58), s. 1(1)

⁵⁴ Repealed with saving by Education (Scotland) Act 1981 (c.58), s. 8(2)(3), Sch. 9

(c) make arrangements for such information to be published in such form and manner, and by such persons, as he may specify for the purposes of this section.

(7) The powers given to the Secretary of State by this section and section 28J of this Act may be exercised so as to make different provision in relation to different areas.

(8) This section and sections 28J and 28K of this Act are not to be taken as restricting, or otherwise affecting, any other powers that the Secretary of State may have to make regulations with respect to, or otherwise require, the provision of information by any person.

(9) Regulations made under this section and sections 28J and 28K of this Act may make different provision for different cases or classes of case.

(10) This section does not apply to nursery schools.

] ⁵⁵

[28J.— Requirement to provide information as to school education.

(1) The Secretary of State may make regulations requiring education authorities, boards of management and managers of grant-aided schools to provide to prescribed persons such information or documents or categories of information or documents relating to school education as may be prescribed.

(2) Information or documents provided in pursuance of regulations made under subsection (1) above shall be provided—

(a) in such form and manner; and

(b) on such occasions,

as may be prescribed.

] ⁵⁶

[28K.— Information as to pupils.

(1) The Secretary of State may by regulations make provision requiring that such information and reports as may be prescribed as regards pupils attending schools to which this section applies shall be supplied to the parents of such pupils at such times and in such form and manner as may be determined by or in accordance with the regulations.

(2) This section applies to any school which is not a grant-aided school, an independent school or a nursery school.

(3) Regulations made under this section may contain provision as to—

(a) the means of involvement of parents in consideration of such reports; and

(b) the extent to which any information relating to general standards of performance in examinations or other forms of assessment of any group of pupils shall be supplied to parents of other pupils.

⁵⁵ s.29 is moved into a new Section Group as part of the amendment inserting ss.28I-28K by Education (Schools) Act 1992 c. 38 s. 17

⁵⁶ s.29 is moved into a new Section Group as part of the amendment inserting ss.28I-28K by Education (Schools) Act 1992 c. 38 s. 17

] ⁵⁷*Duty of parents to provide education for their children***[30. Duty of parents to provide education for their children.**

(1) It shall be the duty of the parent of every child of school age to provide efficient education for him suitable to his age, ability and aptitude either by causing him to attend a public school regularly or by other means.

(2) Section 1 of the Standards in Scotland's Schools etc. Act 2000 (asp 6) (right of child to be provided with school education by, or by virtue of arrangements made by, an education authority) is without prejudice to the choice afforded a parent by subsection (1) above.

] ⁵⁸**31. School age.**

Subject to sections 32(3) and 33(2) and (4) of this Act, a person is of school age if he has attained the age of five years and has not attained the age of sixteen years.

32.— Dates for commencement of school attendance.

(1) Subject to subsection (7) below, an education authority shall fix a date or dates (any such fixed date being hereinafter referred to as a “school commencement date”) for the commencement of attendance at primary schools in their area; and any such date may be either a calendar date or fixed by reference to the occurrence of a particular annual event.

(2) Subject to subsection (7) below, an education authority may, under subsection (1) above—

- (a) fix different school commencement dates for different primary schools in their area;
- (b) at any time fix a different school commencement date in substitution for any date previously fixed by them under the said subsection (1).

(3) A child who does not attain the age of five years on a school commencement date shall, for the purposes of section 31 of this Act, be deemed not to have attained that age until the school commencement date next following the fifth anniversary of his birth.

(4) Subject to subsection (7) below, an education authority shall, in respect of each school commencement date fixed by them under subsection (1) above and applicable to a public primary school, fix the latest following date (any such fixed date being hereinafter referred to as an “appropriate latest date”) on or before which a child must attain the age of five years in order to come within the category of children whom the authority consider of sufficient age to commence attendance at a public primary school at that school commencement date.

(5) Subject to subsection (7) below, an education authority may, under subsection (4) above—

⁵⁷ s.29 is moved into a new Section Group as part of the amendment inserting ss.28I-28K by Education (Schools) Act 1992 c. 38 s. 17

⁵⁸ renumbering existing s30 as s30(1) and subsection (2) added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 2 para. 3(5)

- (a) where a school commencement date is applicable to more than one public primary school in their area, fix in respect of that school commencement date different appropriate latest dates for those different schools;
 - (b) at any time fix a different appropriate latest date in substitution for any date previously fixed by them under the said subsection (4).
- (6) The education authority shall carry out their duty under section 1 of this Act as if a child who is under school age on a school commencement date, but who will attain the age of five years on or before the next following appropriate latest date fixed in respect of the school commencement date, has attained the age of five years on the school commencement date; but nothing in this subsection or in subsection (4) above shall, in respect of a child under school age,—
- (a) impose any duty on his parent; or
 - (b) require an education authority to take any action under section 36 or 37 of this Act.
- (7) The period between an appropriate latest date applicable to a school and the next following school commencement date applicable to that school (whether or not the school commencement date is that in respect of which the appropriate latest date is fixed) shall not, except with the approval of the Secretary of State on an application to him by the education authority, exceed six months by more than seven days:
- Provided that no such application shall be made, nor approval given, in respect of any such period which commences after 31st December 1979.*
- (8) In relation to any child, “school commencement date”—
- (a) in subsection (3) above—
 - (i) means, where the child is a pupil in attendance at a primary school, a school commencement date of that school;
 - (ii) in any other case has the same meaning as in subsection (6) above;
 - (b) in subsection (6) above means a school commencement date of the public primary school to which a child of his religious denomination and from his place of residence would normally be admitted.
- (9) In this section, “primary school” does not include a nursery school or a nursery class.

33.— School leaving dates.

- (1) The last day of May (hereinafter referred to as the “summer leaving date”) and the appropriate day in December (hereinafter referred to as the “winter leaving date”) shall be the school leaving dates in each year.
- (2) Subject to subsection (4) below, for the purposes of section 31 of this Act a person shall, if the date of his attaining the age of sixteen years is—
- (a) on or after 1st March but before the next summer leaving date, be deemed not to have attained that age until the summer leaving date;
 - (b) after the summer leaving date but before 1st October next following that date, be deemed to have attained that age on the summer leaving date;
 - (c) on or after 1st October but before the next winter leaving date, be deemed not to have attained that age until the winter leaving date;
 - (d) after the winter leaving date but before 1st March next following that date, be deemed to have attained that age on the winter leaving date.

- (3) In subsection (1) above, “the appropriate day in December” means —
- (a) in the case of a person who is a pupil in attendance at a school, the first day of the Christmas holiday period;
 - (b) in any other case, 21st December,
- and in paragraph (a) of this subsection, “Christmas holiday period” means a period of consecutive days which includes 25th December and in which the school does not meet for the purpose of providing school education.
- (4) [...] ⁵⁹

34.— Exemption from school attendance.

(1) Where after due inquiry an education authority are satisfied that by reason of any circumstances existing at his home it would cause exceptional hardship to require a child over fourteen years of age to attend school, they may grant exemption from the obligation to attend school to enable the said child to give assistance at home upon such conditions, if any, as to the amount and manner of further attendance at school until the child reaches the upper limit of the school age as the authority think fit.

(2) No exemption granted under subsection (1) above shall extend beyond the date for commencing school attendance next following the date upon which the exemption was granted:

Provided that the authority may if they think fit renew an exemption, so however that the provisions of this section shall apply to such renewal in like manner as they apply to the original grant.

(3) An exemption granted under this section shall exempt the parent of the child concerned from any prosecution or other proceeding under this Act for neglecting to provide for the education of the said child.

(4) The education authority shall keep a register of exemptions granted under this section wherein shall be entered the name of each child so exempted and a statement of the circumstances in which and the conditions upon which such exemption was granted.

Failure of parents to provide education for their children

35.— Failure by parent to secure regular attendance by his child at a public school.

(1) Where a child of school age who has attended a public school on one or more occasions fails without reasonable excuse to attend regularly at the said school, then, unless the education authority have consented to the withdrawal of the child from the school (which consent shall not be unreasonably withheld), his parent shall be guilty of an offence against this section.

(2) For the purposes of this section, a child who has been required to discontinue for any period his attendance at a school on account of his parent's refusal or failure to comply with the rules, regulations or disciplinary requirements of the school, shall, unless the court otherwise determines, be deemed to have failed without reasonable excuse to attend regularly at the school.

⁵⁹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

36.— Power of education authority in relation to irregular attendance of child at a public school.

[(1) It shall be the duty of the education authority if they consider that a parent has committed an offence against section 35 of this Act in respect of a child resident in their area, to serve a notice on the parent requiring him, within such time as may be specified in the notice (not being less than forty-eight hours or more than seven days from the service thereof) to appear (with or without the child) before the authority and explain the reason for the absence of the child from school. If the parent fails to satisfy the authority that he had a reasonable excuse, the authority may

(a) instruct that he be prosecuted forthwith under section 43 of this Act, in the court of summary jurisdiction in which proceedings may be taken for the offence, not being the district court; or

(b) report the circumstances to the procurator fiscal or;

warn the parent and postpone for a period not exceeding six weeks a decision as to whether so to report.

]⁶⁰

(2) Where an education authority in the exercise of the powers conferred upon them by subsection (1) above postpone a decision as to whether to prosecute a parent, they may, if the child is still of school age, make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act requiring the parent to cause the child to attend the public school which he has been attending, or, if the child has changed his residence, a school attended by children residing in the same neighbourhood as the child.

(3) Without prejudice to the institution of proceedings for an offence against section 35 of this Act or the exercise of the power conferred by section 44(1) of this Act, where a child of school age has failed to attend a public school regularly, the education authority, where no requirement arises under section 53(1) of the Children (Scotland) Act 1995 to give information about the child to the Principal Reporter, may under this subsection provide the Principal Reporter with such information.

37.— Power of education authority where not satisfied that parent is providing efficient education for his child.

(1) Where a child of school age has not attended a public school in the area in which his parent is residing, or has attended such a school and has been withdrawn therefrom with the consent of, or excluded by, the education authority, then, if the authority are not satisfied that the parent is providing efficient education for him suitable to his age, ability and aptitude, it shall be the duty of the authority to serve a notice on the parent requiring him within such time as may be specified in the notice (not being less than seven or more than fourteen days from the service thereof) either—

(a) to appear (with or without the child) before the authority and give such information as the authority may require regarding the means, if any, he has adopted for providing education, or

(b) in the option of the parent, to give such information to the authority in writing.

(2) If a parent on whom a notice has been served in pursuance of subsection (1) above fails to satisfy the authority that he is providing efficient education for the child suitable to his age, ability

⁶⁰ renumbering effect, existing text renumbered as (a) and (b) inserted by Bail, Judicial Appointments etc. (Scotland) Act 2000 asp 9 (Scottish Act) Sch. 1 para. 3(1)(a)

and aptitude or that there is reasonable excuse for his failure to do so, the authority shall make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act.

Attendance orders

38.— Making of attendance orders.

(1) References in sections 36 and 37 of this Act, and in the following provisions of this Act, to an attendance order in respect of a child are references to an order in writing requiring the parent of the child to cause the child to attend a school named in the order, being either a public school, or a school (other than a public school) the managers of which are willing to receive the child.

(2) In an attendance order in respect of a child—

(a) a school at which the parent will be required to pay fees shall not be named except at the request of the parent; and

[(b) a special school shall not be named unless the child is a recorded child.]⁶¹

(3) Before making an attendance order under section 36 or 37 of this Act, the education authority shall consider any views expressed by the parent as to the school which he desires his child to attend.

(4) The authority shall cause a copy of any attendance order made by them under section 36 or 37 of this Act to be served upon the parent, and it shall thereupon be the duty of the parent, subject to an appeal to the sheriff under subsection (5) below, to cause the child to attend regularly at the school named in the order.

(5) A parent aggrieved by the making of an attendance order by an education authority may within fourteen days after the date upon which a copy of the order was served upon him under subsection (4) above appeal against it to the sheriff, who may confirm, vary or annul the order and whose decision shall be final.

39.— Amendment and revocation of attendance orders.

(1) An education authority who have made an attendance order in respect of any child may at any time while the order is in force serve upon the parent of the said child a notice of their intention to amend the order by substituting the name of another school for that named in the order.

(2) Where a child in respect of whom an attendance order is in force moves his residence, the education authority of the area to which the child has moved may serve upon the parent of the said child a notice of their intention to amend that order by substituting for the name of the school appearing in the order the name of a school attended by children residing in the same neighbourhood as the child.

(3) The parent may within fourteen days of the service of a notice under subsection (1) or (2) above intimate in writing to the authority any objections he may have to the proposed amendment. After the expiry of the said period of fourteen days and after considering any objections made by the parent, the authority may amend the attendance order, and subsections (2), (4) and (5) of section

⁶¹ S. 38(2)(b) substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. II para. 5, Sch. 8

38 of this Act shall apply in the case of the amended attendance order as they apply in the case of an attendance order.

(4) If at any time while an attendance order is in force with respect to any child the parent of the child makes application to the authority by whom the order was made or amended requesting—

(a) that another school be substituted for that named in the order, or

(b) that the order be revoked on the ground that arrangements have been made for the child to receive efficient education suitable to his age, ability and aptitude at a school other than that named in the order or elsewhere than at school,

the authority shall amend or revoke the order in compliance with the request unless they are of opinion that the proposed change of school is unreasonable or inexpedient in the interests of the child, or that the arrangements made for the education of the child at a school other than that named in the order or elsewhere than at school are not satisfactory, as the case may be; and, if a parent is aggrieved by a failure of the authority to reach a decision upon his application within one month after the date thereof or by refusal of the authority to comply with any such request, he may appeal to the sheriff, who shall give such direction as he thinks fit.

40. Period of operation of attendance orders.

An attendance order made in respect of any child shall, subject to any amendment thereof made by an education authority or variation made by the sheriff, and unless revoked by an authority or annulled by the sheriff, continue in force so long as the child is of school age:

*[Provided that if the Record in relation to a recorded child is or falls to be discontinued by virtue of any enactment any attendance order requiring the attendance of that child at a special school shall be deemed to be annulled.]*⁶²

41. Failure to comply with attendance order.

Where an attendance order has been made and is in force in respect of any child, and a copy of such order has been served on the parent of the child, the parent shall, if the order is not complied with, be guilty of an offence against this section unless he satisfies the court that he has a reasonable excuse.

Reasonable Excuses

42.— Reasonable excuses.

(1) For the purposes of sections 35, 36, 37, 41 and 44 of this Act, there shall [, subject to subsection (1A) below,]⁶³ be deemed to be a reasonable excuse if—

(a) there is within walking distance of the child's home measured by the nearest available route no public or other school the managers of which are willing to receive the child and to provide him with free education, and either—

(i) no arrangements have been made by the education authority under section 50 or 51 of this Act with regard to the child; or

⁶² S. 40 proviso substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. II para. 6, Sch. 8

⁶³ Words inserted by Education (Scotland) Act 1981 (c. 58), s. 2(1)(a)

- (ii) any arrangements so made are such as to require the child to walk more than walking distance in the course of any journey between his home and school; or
- (b) the child has been prevented by sickness from attending school or receiving education as the case may be; or
- (c) there are other circumstances which in the opinion of the education authority or the court afford a reasonable excuse.

[(1A) Subsection (1) above shall not apply in a case where—

(a) the education authority have, in accordance with their arrangements as published or otherwise made available under section 28B(1)(a) of this Act, proposed to place the child in a particular school or in one of a number of schools named by them and, where the particular or named school is more than walking distance from the pupil's home measured by the nearest available route, they have offered to make for him suitable arrangements of the kind referred to in section 50 or 51 of this Act under which he would not require to walk more than walking distance, so measured, in the course of any journey between his home and the school; but

(b) in consequence of a placing request, the child has been placed by them in a school other than a school referred to in paragraph (a) above,

and in such a case, for the purposes of sections 35, 36, 37, 41 and 44 of this Act, there shall be deemed to be a reasonable excuse if—

- (i) the child has been prevented by sickness from attending school or receiving education as the case may be; or
- (ii) there are other circumstances which in the opinion of the education authority or the court afford a reasonable excuse.

] ⁶⁴

(2) The fact that an application to an education authority, or an appeal to the sheriff, has been made under section 39(4) of this Act in relation to an attendance order in respect of a child shall not be deemed to be a reasonable excuse for failure to cause the child to attend regularly at the school named in the order.

(3) Where a parent alleges that his child has been prevented by sickness from attending school or receiving education as the case may be, the parent shall, if required by the education authority, permit a medical officer of the appropriate Health Board to examine the child, and any parent who fails to do so shall be guilty of an offence against this section.

(4) In this section—

“walking distance” means , in the case of a child who has not attained the age of eight years, two miles, and in the case of any other child, three miles;

“the appropriate Health Board”, in relation to any child, means —

- (a) where an attendance order is in force in respect of the child, the Health Board in whose area the school named in the order is situated;
- (b) in any other case, the Health Board in whose area the place of residence of the child is situated.

⁶⁴ S. 42(1A) inserted by Education (Scotland) Act 1981 (c. 58), s. 2(1)(b)

*Prosecutions***43.— Prosecutions and penalties.**

(1) Any person guilty of an offence against section 35, 41 or 42 of this Act shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.

(2) Proceedings under this section[, other than in the district court,]⁶⁵ may be taken at the instance either of the public prosecutor of the court of summary jurisdiction in which the proceedings are to be taken or of another person authorised by the education authority to institute proceedings on their behalf.

44.— Powers of Courts in relation to child.

(2) If the court before which a prosecution is brought for an offence against section 35 of this Act is satisfied that a child has failed without reasonable excuse to attend regularly at school, but does not, in the exercise of the powers conferred upon it by [section 54(1) of the Children (Scotland) Act 1995, refer the matter to the Principal Reporter]⁶⁶, the court may, if the child is still of school age, make an attendance order in respect of the child requiring the parent to cause the child to attend the public school which he has been attending or, if the child has changed his residence, a school attended by children residing in the same neighbourhood as the child; and subsections (2) and (3) of section 38 and sections 39 to 41 of this Act shall apply with any necessary modifications to an attendance order made by a court under this section as they apply to an attendance order made by an education authority.

Attendance at junior colleges

45.— [...] ⁶⁷

46.— [...] ⁶⁸

47.— [...] ⁶⁹

48.— [...] ⁷⁰

Corporal Punishment

48A.— [...] ⁷¹

⁶⁵ words inserted by Bail, Judicial Appointments etc. (Scotland) Act 2000 asp 9 (Scottish Act) Sch. 1 para. 3(2)

⁶⁶ words substituted by Children (Scotland) Act 1995 c. 36 Sch. 4 para. 28(3)(b)

⁶⁷ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁶⁸ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁶⁹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁷⁰ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁷¹ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 16(6)

*Provision to assist pupils to take advantage of educational facilities***49.— Power of education authorities to assist persons to take advantage of educational facilities.**

(1) Subject to the following provisions of this section, an education authority shall have power to grant, on such conditions as may be prescribed, and make payments in pursuance of, bursaries, scholarships or other allowances to persons over school age attending courses of full-time or part-time education (whether held in Scotland or elsewhere) which are not courses of school education or (in the case of courses held outside Scotland) are not courses of education comparable to school education in Scotland.

(2) Subject to the following provisions of this section, an education authority shall have power, for the purpose of enabling persons to take advantage without hardship to themselves or their parents of the facilities for school education available to them, to grant, on such conditions as may be prescribed, and make payments in pursuance of, allowances for the purpose of defraying in whole or in part—

- (a) such expenses of persons attending any school as may be expedient to enable them to take full part in the activities of the school;
- (b) the fees and expenses payable in respect of persons attending schools at which fees are payable;
- (c) the maintenance expenses of persons over school age who are attending schools.

[(2A) In subsection (2) above, references to attending school are to so attending not only where the school is in Scotland, but also where it is in England and Wales or in Northern Ireland ('school education' being construed accordingly).]⁷²

(3) The Secretary of State may make regulations providing that the powers conferred on an education authority by subsections (1) and (2) above—

- (a) shall be exercised in accordance with such provisions as may be prescribed by or under the regulations; and
- (b) shall not be exercised in relation to a person who does not fulfil such requirements as to residence in the area of the authority, or as to other matters, as may be specified in the regulations;

and regulations made under this subsection may contain provision for the determination by the Secretary of State of any question whether any such requirements are fulfilled in any particular case.

50.— Education of pupils in exceptional circumstances.

(1) Where in the opinion of an education authority—

- (a) any pupil is, owing to the remoteness of his home or the conditions under which he is living or other exceptional circumstances, unable to receive the full benefit of school education unless special arrangements are made for him, or
- (b) school education suitable to the age, ability and aptitude of any pupil can best be provided for him at any particular school

⁷² S. 49(2A) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(9)

the authority, in a case where subsection (3) applies, may make such arrangements of either a temporary or a permanent character as they think best suited to the purpose of enabling that pupil to attend, in any case falling under—

- (i) paragraph (a) of this subsection, an appropriate school; and
- (ii) paragraph (b) thereof, the particular school.

(1A) In subsection (1) above, references to an appropriate school and to a particular school are references not only to schools in Scotland but also to schools in England and Wales or in Northern Ireland ('school education' being construed accordingly).

(2) The arrangements made under subsection (1) above may include—

- (a) the provision of travelling facilities or the payment of travelling expenses under subsection (1) of section 51 of this Act (for the purposes of this paragraph, any reference in that section to a school being construed as a reference not only to a school in Scotland but also to a school in England and Wales or in Northern Ireland); or
- (b) the accommodation of the pupil at a boarding school, or in a hostel, home or other institution; or
- (c) other provision of board and lodging, provided that the education authority shall, so far as practicable, give effect to the wishes of the parent with respect to the religious denomination of the person with whom the pupil will reside; or
- (d) provision for the travelling, board and lodging of teachers.

(3) This subsection applies where—

- (a) the education authority have, in accordance with—
 - (i) their arrangements as published or otherwise made available under section 28B(1)(a) of this Act—
 - (ii) any arrangements made by them under section 23(1A) of this Act; or
 - (iii) the arrangements subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 and continuing by virtue of section 23(1C) of this Act

proposed to place the pupil in a particular school or in one of a number of schools named by them and have, in connection with that proposal, made or offered to make for the pupil suitable arrangements of the kind referred to in subsection (2) above; but

- (b) in consequence of a placing request, the pupil has been placed by them [or another education authority]⁷³ in a school other than a school referred to in paragraph (a) above.

(4) The duty imposed by subsection (1)(a) or (b) above does not apply where the pupil belongs (in accordance with section 23(3) of this Act) to the area of some other education authority or of a local education authority in England and Wales.

51.— Provision of transport and other facilities.

(1) An education authority, in a case to which subsection (2A) below applies, may and, in any other case, subject to subsection (2B) below shall make such arrangements as they consider necessary for the provision of any of the following facilities in respect of pupils attending schools or other educational establishments—

⁷³ words added by Local Government etc. (Scotland) Act 1994 c. 39 Pt IV s. 145(2)(b)

- (a) for their conveyance without charge for the whole or part of the journey between their homes and the schools or other educational establishments which they are attending;
- (b) for making bicycles or other suitable means of transport available to the pupils, or to their parents for the use of the pupils, upon such terms and conditions as may be arranged, or for paying money allowances in lieu thereof;
- (c) for paying the whole or any part, as the authority think fit, of their reasonable travelling expenses,

and any such arrangement may in respect of any pupil make provision for more than one of the facilities specified in the foregoing paragraphs of this subsection.

(2) Where the requirements of pupils, for the conveyance of whom arrangements have been made by an education authority under subsection (1)(a) above, have been met, it shall be the duty of that authority, where there are any vacant places in any vehicle used for such conveyance, to allow such vacant places to be used by other pupils to be selected by the authority.

(2AA) An education authority may—

- (a) subject to subsection (2BB) below, charge the parent of a pupil using a vacant place by virtue of subsection (2) above such sum as the authority consider appropriate; or
- (b) allow a vacant place to be so used without charge,

and the authority may make different charges for different cases or different classes of case.

(2BB) An education authority may not charge any sum under subsection (2AA)(a) above unless, having had regard to the financial circumstances of the parent to be charged, the authority consider that the charge can be paid by the parent without undue hardship.

(2A) This subsection applies where—

- (a) the education authority have, in accordance with—
 - (i) their arrangements as published or otherwise made available under section 28B(1)(a) of this Act
 - (ii) any arrangements made by them under section 23(1A) of this Act; or
 - (iii) the arrangements subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 and continuing by virtue of section 23(1C) of this Act

proposed to place the pupil in a particular school or in one of a number of schools named by them and, where the particular or named school is more than walking distance from the pupil's home measured by the nearest available route, they have offered to make for him suitable arrangements of the kind referred to in subsection (1) above under which he would not require to walk more than walking distance, so measured, in the course of any journey between his home and the school; but

- (b) in consequence of a placing request, the pupil has been placed by them or another education authority in a school other than a school referred to in paragraph (a) above.

In this subsection “walking distance” has the same meaning as in section 42 of this Act.

(2AB)-(2AC) [...] ⁷⁴

(2AD) Without prejudice to the generality of subsection (1) above, the duty imposed by that subsection applies in cases where a pupil attends a school or educational establishment under the management of another education authority—

- (a) in accordance with any arrangements made by them under section 23(1A) of this Act;

⁷⁴ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

(b) in accordance with the arrangements subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 and continuing by virtue of section 23(1C) of this Act; or

(c) if at the time when the pupil was placed in that school or educational establishment it was under the management of the education authority for the area to which the pupil belonged, and is under the management of another education authority as a consequence of the establishment of such new local government areas.

(2B) The duty imposed by subsection (1) above does not apply where the pupil belongs (in accordance with section 23(3) of this Act) to the area of some other education authority or of a local education authority in England and Wales.

(2C) In considering whether to make any arrangements under subsection (1) above in respect of pupils attending schools, an education authority shall have regard to the safety of such pupils.

(3) Where as a condition of admission to any educational institution a person is required to attend for examination or interview at a particular place, the education authority may pay the whole or part of the expenses necessarily incurred by that person in respect of such attendance.

(4) In this section “school” does not include a nursery school or a nursery class in a school.

52.— Recovery of cost of board and lodging.

Where an education authority have provided a pupil with board and lodging, whether at a school, [...] ⁷⁵ hostel or elsewhere, the authority may, in their discretion, require the parent to pay to them in respect thereof such sums if any not exceeding the cost of such board and lodging as in the opinion of the authority he is able without financial hardship to pay:

Provided that—

(i) *where the board and lodging provided for any pupil were so provided under arrangements made by the authority for any of the reasons specified in section 50(1) of this Act, no sum shall be recoverable in respect thereof under this section; and*

(ii) *where the board and lodging have been so provided for a young person [...] ⁷⁶ under section 13 of this Act, at [an] ⁷⁷ educational establishment, the authority, if satisfied that he is in a financial position to pay the whole or any part of a sum recoverable from his parent under this section, may recover that sum or that part thereof from the young person instead of from the parent.*

Provision of food and clothing

53.— Provision of school meals.

(1) An education authority—

(a) may provide milk, meals or other refreshment for pupils in attendance at public schools and other educational establishments under their management and may do so either on the

⁷⁵ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁷⁶ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

⁷⁷ Word substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(11)

premises or at any place other than the school premises where education is being provided; and

(b) shall provide such facilities as the authority consider appropriate for the consumption of any meals or other refreshment brought to the school or other educational establishment by such pupils.

(2) Subject to subsection (3) below, an authority must charge for anything provided by them under subsection (1)(a) above and must charge every pupil the same price for the same quantity of the same item.

(3) Subsection (3AA) below applies in relation to a pupil—

(a) whose parents are in receipt of—

(i) income support;

(ii) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995);

(iii) support provided under Part VI of the Immigration and Asylum Act 1999; or

(iv) any other benefit or allowance or any tax credit or element of such a tax credit (within the meaning of the Tax Credits Act 2002 (c.21)) that the Scottish Ministers may by regulations prescribe, in such circumstances as may be so prescribed;

(b) who is himself in receipt of—

(i) income support;

(ii) an income-based jobseeker's allowance; or

(iii) any other benefit or allowance or any tax credit or element of such a tax credit (within the meaning of the Tax Credits Act 2002 (c.21)) that the Scottish Ministers may by regulations prescribe, in such circumstances as may be so prescribed.

(3AA) An authority shall so exercise the power conferred by subsection (1)(a) above as to ensure that such provision is made for the pupil in the middle of the day as appears to the authority to be requisite and shall make that provision for him free of charge.

(3A) [...] ⁷⁸

(4) For the purposes of this section, a pupil for whom an education authority have made special arrangements under section 14 of this Act may, at the discretion of the authority, be deemed to be in attendance at a public school under their management.

54.— Provision of clothing for pupils at public schools.

(1) When it is brought to the notice of an education authority that a pupil attending a school under their management is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided, the education authority shall make such provision for the pupil for the purpose of ensuring that he is sufficiently and suitably clad as they may deem necessary during such period while the pupil is attending school (including days when the school does not meet) as they may determine.

(2) Where an education authority make provision for a pupil in pursuance of this section, they shall be entitled to recover from the parent of the pupil the expense thereby incurred or, if the authority are satisfied that the parent is unable without financial hardship to pay the whole of that

⁷⁸ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

expense, such part thereof, if any, as he is, in the opinion of the authority, able without financial hardship to pay.

(3) Without prejudice to any powers conferred upon them by subsections (1) and (2) above, an education authority may provide clothing free of charge—

- (i) for any pupil who is a boarder at a school, or
- (ii) for any pupil in attendance at a nursery school or a nursery class,

under the management of the authority [...] ⁷⁹ .

(4) For the purposes of this section—

- (a) a pupil on attaining the age of five years shall, pending his admission to school, be deemed to be attending a school under the management of the education authority in whose area he is ordinarily resident; and
- (b) a recorded child or recorded young person in respect of whom an education authority are, under section 62(3) of this Act, under a duty shall be deemed to be attending a school under the management of that authority.

55. Provision of food and clothing for pupils at schools other than public schools.

An education authority may, with the consent of the managers of any school in their area which is not a public school, and upon such financial and other terms, if any, as may be determined by agreement between the authority and the managers, make arrangements for securing—

- (a) the provision of milk, meals and other refreshment for pupils in attendance at the school; and
- (b) [...] ⁸⁰ the provision, for any pupil in attendance at the school who is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education (including physical exercise) provided by the school, of such clothing as is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school.

56. Condition of provision of clothing by education authorities.

Save as may be otherwise prescribed, provision of clothing by an education authority under any of the powers conferred by this Act may be made in such a way as to confer, at the option of the authority, either a right of property in the clothing or a right to use it only.

Health and cleanliness of pupils

57.— Medical and dental examination and inspection.

(1) The Secretary of State may make regulations as to the conduct of medical and dental examinations and medical and dental inspections for the purposes of the performance of his duties under section 39 of the National Health Service (Scotland) Act 1978.

(2) For the purpose of securing the proper medical or dental inspection of the pupils and young persons for whom there is a duty under the said section 39 to provide such inspection, an education

⁷⁹ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

⁸⁰ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

authority may require the parent of any pupil in attendance at any school under their management to submit the pupil for medical or dental inspection in accordance with arrangements made by the appropriate Health Board in agreement with the authority; and the authority may require any young person in attendance at any educational establishment under their management to submit for such medical or dental inspection.

(3) If any parent fails without reasonable excuse to comply with a requirement made by an education authority [...] ⁸¹ under subsection (2) above, he shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding level 1 on the standard scale.

(4) In this section “the appropriate Health Board”, in relation to any pupil or young person, means the Health Board in whose area is situated the school, or other educational establishment at which the pupil or young person is in attendance.

58.— Power to ensure cleanliness.

(1) An education authority may, by directions in writing issued with respect to all schools, and other educational establishments under their management or with respect to any of such schools, or establishments named in the directions authorise a medical officer of the appropriate Health Board to cause examinations to be made of the bodies and clothing of all or any of the pupils in attendance at such schools and young persons in attendance at such establishments whenever in his opinion such examinations are necessary in the interests of cleanliness.

(2) Any such examination as aforesaid shall be made by such medical officer or by a person authorised in writing by him to make such examinations (in this section referred to as an “authorised person”), and, if the body or clothing of any pupil or young person is found upon such an examination to be infested with vermin or in a foul condition, the authority may serve upon the parent of such pupil or upon the young person a notice requiring the parent to cause the body and clothing of the pupil to be cleansed or the young person to cause himself and his clothing to be cleansed as the case may be.

(3) A notice served under subsection (2) above shall inform the person upon whom it is served that, unless within the period limited by the notice, not being more than twenty-four hours after the service thereof, the body and clothing of the pupil or young person to whom the notice relates are cleansed to the satisfaction of the medical officer or an authorised person as may be specified in the notice, the cleansing thereof will be carried out under arrangements made by the education authority; and, if at the expiration of that period the medical officer or an authorised person is not satisfied that the body and clothing of the pupil or young person have been properly cleansed, the medical officer or an authorised person may issue an order directing that the body and clothing of the pupil or young person be cleansed under such arrangements. The order shall be sufficient to authorise any officer of the authority to cause the body and clothing of the pupil or young person named in the order to be cleansed in accordance with such arrangements, and for that purpose to convey him to the premises where the cleansing is to be carried out and to detain him there until such time as the cleansing has been completed.

(4) It shall be the duty of the education authority to make arrangements for securing that any cleansing under this section, whether at the request of a parent or young person or in pursuance of

⁸¹ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

an order issued under this section, may be carried out in suitable premises by suitable persons and with suitable appliances.

(5) If after the cleansing of the body or clothing of any pupil or young person has been carried out under this section his body or clothing is again found to be infested with vermin or in a foul condition at any time while he is in attendance at such school, or other educational establishment, and it is proved that the condition of his body or clothing is due to neglect on the part of his parent, or, in the case of a young person in attendance at our educational establishment, to his own neglect, the parent or the young person, as the case may be, shall be liable on conviction by a court of summary jurisdiction in the case of a first conviction to a fine not exceeding £1, in the case of a second conviction to a fine not exceeding £5, and in the case of a third or subsequent conviction to a fine not exceeding £10 or to a term of imprisonment not exceeding one month or to both such fine and such imprisonment.

(6) Where such a medical officer or authorised person has reason to believe that the body or clothing of any pupil or young person in attendance at such school, or other educational establishment is infested with vermin or in a foul condition, but action for the examination or cleansing thereof cannot immediately be taken, he shall so advise the authority [...] ⁸², who may, if they consider it necessary so to do in the interests either of the pupil or young person or of other children or young persons in attendance at the school, or other educational establishment, direct that the pupil or young person be excluded from the school, or other educational establishment until such action has been taken; and such a direction shall be a defence to any proceedings under this Act in respect of the failure of the pupil or young person to attend school or to comply with the requirements of an attendance notice, as the case may be, on any day on which he is excluded in pursuance of the direction, unless it is proved that the issue of the direction was necessitated by the wilful default of the parent or of the young person.

(7) No female shall be examined or cleansed under the powers conferred by this section except by a registered medical practitioner or by a woman authorised for that purpose by a medical officer of a Health Board.

(8) In this section “the appropriate Health Board” has the same meaning as in section 57 of this Act.

Children requiring special education

59. [...] ⁸³

[60.— Functions of education authority in relation to children and young persons with certain special educational needs.

(1) It shall be the duty of an education authority to disseminate in their area information as to the importance of the early discovery of special educational needs and as to the opportunity for assessment available under the following provisions of this Act.

(2) An education authority—

⁸² words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

⁸³ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

- (a) shall have power, as regards—
- (i) children in their area who have not attained school age [and are not children in respect of whom the authority is under a duty by virtue of subparagraph (ii) of paragraph (b) below]⁸⁴ ; and
 - (ii) young persons belonging to their area (in accordance with section 23(3) of this Act) who are receiving school education; and
- (b) shall be under a duty, as regards children belonging to their area (in accordance with section 23(3) of this Act) who,
- (i) are of school age[; or]⁸⁵
 - [(ii) have not attained school age but, being at least two years of age, have come to the attention of the authority as having, or appearing to have, special educational needs,]⁸⁶

in accordance with the provisions of section 61 of this Act, to establish which of those children or, as the case may be, young persons have pronounced, specific or complex special educational needs which are such as require continuing review and to open and keep a Record of Needs of each such child or young person.

(3) In this Act, unless the context otherwise requires, “Record”, when used as a noun, means a Record of Needs opened and kept under subsection (2) above and “recorded” and other cognate expressions shall be construed accordingly.

(4) A Record shall not be disclosed by an education authority otherwise than in accordance with regulations made under section 65D(1)(e) of this Act.

(5) The power of an education authority under subsection (2)(a)(ii) above shall be exercisable in relation to a young person only on a request to that effect being made to the authority by the young person or his parent.

]⁸⁷

[61.— Examination and assessment of children and young persons.

(1) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a child has pronounced, specific or complex special educational needs such as require continuing review and to record him unless he has undergone a [process of observation and assessment (including educational, psychological and medical assessments)]⁸⁸ , for the purpose of affording to the authority advice as to his special educational needs and whether or not they ought to record him; and before doing so, an authority shall—

- (a) invite the parent of that child by notice in writing to submit the child for [assessment]⁸⁹ for the said purpose, and
- (b) (in the case of a child [in respect of whom the authority is under a duty under section 60(2) of this Act]⁹⁰) if the parent fails without reasonable excuse to submit the child as

⁸⁴ Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 72(1)(a)

⁸⁵ Words inserted by subparagraph (i)

⁸⁶ Ss. 60(2)(b)(i) and (ii) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 72(1)(b)

⁸⁷ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

⁸⁸ Words substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(a)(i)

⁸⁹ Word substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(a)(ii)

⁹⁰ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 72(2)

aforsaid, by notice in writing served upon the parent require him to submit the child for [assessment]⁹¹ for the said purpose.

(2) A parent who submits his child for [assessment]⁹² in pursuance of subsection (1) above or subsection (6) below shall be entitled to be present at [any medical examination held in connection with the assessment]⁹³ .

(3) A notice under paragraph (a) or (b) of subsection (1) above in respect of any child shall—

- (a) state that the purpose of the [assessment]⁹⁴ is to afford to the education authority advice as to his special educational needs and whether or not they ought to record the child;
- (b) specify the times and places at which [any examinations held in connection with the assessment]⁹⁵ will be held;
- (c) inform the parent of his right to be present at [any medical examination held in connection with the assessment]⁹⁶ ;
- (d) inform the parent of the name of the officer of the authority from whom advice and further information may be obtained;
- (e) invite the parent to express in writing to the authority, within 21 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the child and the measures required to meet those needs;

and a notice under the said paragraph (b) shall in addition inform the parent of the effect of subsection (4) below.

(4) If any parent on whom a notice has been served under paragraph (b) of subsection (1) above fails without reasonable excuse to comply with the requirements of the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [level 2 on the standard scale]⁹⁷ .

(5) The duty imposed by section 60(2) of this Act shall not apply if the parent of the child has had notice served upon him under subsection (1)(b) above and has failed to comply with that notice.

(6) If the parent of any child requests the education authority for the area to which the child belongs (in accordance with section 23(3) of this Act) to make arrangements for the child to undergo such process of [observation and]⁹⁸ assessment as is mentioned in subsection (1) above for the purpose mentioned there, the authority shall comply with the request unless in their opinion the request is unreasonable.

(7) It shall not be lawful for an education authority to establish, under section 60 of this Act, that a young person has pronounced, specific or complex special educational needs such as require continuing review and to record him unless—

⁹¹ Word substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(a)(ii)

⁹² Word substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(b)(i)

⁹³ Words substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(b)(ii)

⁹⁴ Word substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(c)(i)

⁹⁵ Words substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(c)(ii)

⁹⁶ Words substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(c)(iii)

⁹⁷ Words from “level” to “scale” substituted for word “£50” by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289G (as inserted by Criminal Justice Act 1982 (c. 48), s. 54)

⁹⁸ Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(d)

- (a) that young person has undergone such process of [observation and]⁹⁹ assessment as the authority consider necessary for the purpose of affording to them advice as to his special educational needs and whether or not they ought to record him; and
- (b) that young person or, where the education authority are satisfied that a young person is not capable of expressing his views for the purposes of this section, his parent has been invited by the authority, by notice in writing, to express to the authority, within 14 days from the date of the notice or such longer period as the notice may specify, his views as regards the special educational needs of the young person and the measures required to meet those needs.

]¹⁰⁰

[62.— Recording of children and young persons.

(1) In deciding whether or not to record a child or young person an education authority shall take into consideration—

- (a) in the case of a child, the advice given to them with respect to the child in consequence of the process of [observation and]¹⁰¹ assessment undergone by him in pursuance of section 61(1) or (6) of this Act;
- (b) in the case of a young person, the advice given to them with respect to the young person in consequence of the process of [observation and]¹⁰² assessment undergone by him in pursuance of section 61(7) of this Act;
- (c) any views expressed by the parent of the child, or by the young person or, where the education authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent;
- (d) if he has been at any time in attendance at any school other than one under their management, any reports or other information with respect to him obtained by them from the managers of the school or from teachers at the school;
- (e) any other reports or information relevant to his educational needs which they are able to obtain.

(2) The decision of an education authority whether or not to record a child or young person, the reasons for that decision and the terms in which the education authority propose to record the child or young person shall be intimated forthwith by notice in writing to the parent of the child or, in a case where the authority were satisfied that the young person was not capable of expressing his views for the purposes of section 61(7) of this Act, to his parent or, in any other case, to the young person, and the education authority shall, in recording the child or young person, have regard to any views expressed upon these terms by the parent of the child or of the young person or, as the case may be, the young person, within 14 days of the date of the notice, and thereafter notify him of—

- (a) their decision as to those terms;
- (b) the right of appeal under section 63 of this Act; and

⁹⁹ Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(3)(e)

¹⁰⁰ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

¹⁰¹ Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(4)(a)

¹⁰² Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(4)(a)

(c) the name and address of the person to whom application may be made for advice and information about the child's or young person's special educational needs [unless the parent of the child or of the young person or, as the case may be, the young person has requested the education authority not to appoint such a person]¹⁰³ .

(3) An education authority shall ensure that the provision made by them under this Act for a recorded child or a recorded young person includes provision for his special educational needs [; and they shall in any event, as regards each such child belonging to their area as is mentioned in section 60(2)(b)(ii) of this Act, make provision for any special educational needs recorded in respect of the child which are not being met by other suitable arrangements]¹⁰⁴ .
] ¹⁰⁵

[63.— Appeals against decisions about recorded children or young persons.

(1) The parent of a recorded child may refer to an appeal committee set up under section 28D of this Act—

(a) a decision of an education authority to record the child or, following a review under section 65A of this Act, to continue to record him;

[(aa) a decision of an education authority not to record the child or, following a review under section 65A of this Act, not to continue to record him;]¹⁰⁶

(b) their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in his Record or any such decision following a review under section 65A of this Act;

(c) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by him or any such decision following a review under section 65A of this Act;

(d) subject to subsection (4) below, their decision refusing his placing request in respect of the child.

(2) Where the education authority were satisfied that a young person was not capable of expressing his views for the purposes of section 61(7) of this Act, his parent and, in any other case, the young person himself may refer to an appeal committee set up under section 28D of this Act—

(a) a decision of the education authority, in accordance with section 62 of this Act or following a review under section 65A of this Act, as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the young person's Record; [(aa) a decision of an education authority not to record the young person, or, following a review under section 65A of this Act, not to continue to record him;]¹⁰⁷

(b) subject to subsections (3) and (4) below, their decision as to the nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the young person or any such decision following a review under section 65A of this Act;

(c) subject to subsection (4) below, their decision refusing a placing request in respect of the young person.

¹⁰³ Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(4)(b)

¹⁰⁴ Words inserted by section 60(2)(b)(ii)

¹⁰⁵ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

¹⁰⁶ S. 63(1)(aa) inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(5)(a)

¹⁰⁷ S. 63(2)(aa) inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(5)(b)

(3) A decision of an education authority as to nomination of a school to be attended by a recorded child or recorded young person may be referred under subsection (1)(c) or (2)(b) above only if the parent or, as the case may be, the young person has made a placing request.

(4) Where a reference under subsection (1)(c) or (d) or (2)(b) or (c) above has been made in respect of a recorded child or recorded young person, no further such reference in respect of him shall be competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.

(5) A reference under this section shall be lodged with the appeal committee within 28 days of the receipt by the parent or, as the case may be, the young person of the notification of the decision of the education authority as to the terms in which they have recorded the child or young person (which, if posted, shall, unless the contrary is proved, be presumed to have been received on the day after the date on which it was posted except that a decision posted on a Friday or Saturday shall, unless the contrary is proved, be presumed to have been received on the Monday next following), but the committee shall, on good cause being shown, have power to hear such a reference notwithstanding that it was not lodged within that time.

(6) The Secretary of State may by regulations make provision for procedure in relation to references made under this section and regulations made under this section may include provision—

(a) requiring the education authority to make information relevant to their decision available to the committee and to the parent or, as the case may be, young person referring that decision to the committee;

(b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority in relation to which a reference to the committee was made in the event of the committee's not having complied with section 64(10) of this Act within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes.

]¹⁰⁸

[64.— Provisions supplementary to section 63.

(1) Where—

(a) an appeal committee are satisfied that a reference to them under section 63 of this Act is made under subsection (1)(a)[, (aa)]¹⁰⁹ or (b) or [(2)(aa) or (a)]¹¹⁰ of that section; or

(b) an appeal committee consider that, without having the decision of the Secretary of State on the question whether or not a child should be recorded or on the matters specified in section 65D(2)(a) or (b) of this Act in relation to a child or young person, they cannot deal with a reference made under section 63(1)(c) or (2)(b) of this Act which relates to the education authority's decision as to the nomination for the purposes of section 65D(2)(d) of this Act of a school to be attended by the child or young person,

they shall in turn refer the reference or, as the case may be, that question or so much of the reference as relates to matters specified in section 65D(2)(a) or (b) of this Act to the Secretary of State.

¹⁰⁸ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

¹⁰⁹ Words inserted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(6)(a)

¹¹⁰ Words substituted by Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), s. 14(6)(b)

(2) Subject to subsection (1) above, an appeal committee may, on a reference made to them under section 63(1) or (2) of this Act, confirm the education authority's decision as to nomination, for the purposes of section 65D(2)(d) of this Act, of a school to be attended by the child or young person to whom the reference relates or refusing a placing request in respect of him if they are satisfied that—

- (a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act as it applies to recorded children or, as the case may be, recorded young persons exists or exist; and
- (b) it is, in all the circumstances, appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where they so refuse, require the education authority to place the child or young person in the specified school.

In this subsection, the reference to a placing request includes a reference to a placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made; and the reference to the specified school includes a reference to the school specified in such a placing request.

(3) Where, in the case of a recorded child or recorded young person—

- (a) an appeal committee refuse to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing a placing request in respect of him; and
- (b) the specified school is an independent or grant-aided special school,

the committee shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school, and the authority shall comply with that requirement.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

(4) On a reference to him under subsection (1) above the Secretary of State shall, subject to subsection (7) below—

- (a) confirm or refuse to confirm the education authority's decision to record or to continue to record the child;
- (b) confirm, with or without modification, the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of the child or young person.

(5) Where the Secretary of State refuses, under paragraph (a) of subsection (4) above, to confirm an education authority's decision to record a child or to continue to record a child, he shall direct the authority to discontinue the Record of the child and the authority shall comply with such a direction.

(6) Where the Secretary of State, under subsection (4)(b) above, confirms with modifications an education authority's decision as to the terms in which the matters specified in section 65D(2)(a) or (b) of this Act are recorded in the Record of a child or young person, he shall direct the authority to modify the Record accordingly and the authority shall comply with such a direction.

(7) Where a reference has in turn been made to the Secretary of State under paragraph (b) of subsection (1) above, the Secretary of State shall not—

- (a) refuse to confirm the decision of the education authority to record or to continue to record the child; or

(b) confirm, with modifications, their decision as to the terms in which the matters specified in section 65D(2)(a) or (b) are recorded in the Record of the child or young person unless he has first obtained and taken into consideration the views of the parent or young person who made the reference to the appeal committee.

(8) The Secretary of State shall notify his decision under this section to the appeal committee, the person who made the reference to the appeal committee and the education authority.

(9) Where, on a reference to an appeal committee under section 63 of this Act, the committee have in turn referred the reference or any part thereof to the Secretary of State under subsection (1)(a) or (b) above, they shall not dispose of so much of the reference as relates to the school to be attended by the child or young person until the Secretary of State's decision upon the matter referred in turn to him is notified to the appeal committee and they shall reach their decision as respects the school to be attended by the child or young person in the light of the Secretary of State's decision.

(10) An appeal committee shall notify their decision under this section and the reasons for it in writing to the parent or, as the case may be, young person who made the reference to them and to the education authority and, where they confirm the education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, they shall inform the parent or, as the case may be, the young person who made the reference to them of his right of appeal to the sheriff under section 65 of this Act.

(11) Where, on a reference under section 63(1) or (2) of this Act, an appeal committee refuse to confirm an education authority's decision as to the nomination of a school to be attended by the child or young person or refusing the placing request to which the reference relates, the authority shall place him in the specified school and shall amend accordingly any nomination in his Record of a school to be attended by him.

In this subsection, the reference to the specified school includes a reference to the school specified in the placing request the making of which has, by virtue of section 63(3) of this Act, enabled the reference to the appeal committee to be made.

]¹¹¹

[65.— Appeal to sheriff on the placing in a school of a recorded child or young person.

(1) A parent or young person who has made a reference to an appeal committee under section 63(1)(c) or (d) or 2(b) or (c) of this Act may appeal to the sheriff against the decision of the appeal committee on that reference.

(2) Subsections (2), (3), (4), (8) and (9) of section 28F of this Act shall apply to an appeal under this section.

(3) Where the sheriff considers that, without having the decision of the Secretary of State on the question whether or not the child should be recorded or on the matters specified in section 65D(2)(a) or (b) of this Act in relation to the child or young person, he cannot deal with an appeal under this section against the decision of an appeal committee confirming the decision of an education authority as to the nomination of a school to be attended by the child or young person, he may, subject to subsection (5) below, on the motion of a party to the appeal, refer that question or those matters to the Secretary of State.

¹¹¹ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

(4) The Secretary of State shall deal with a reference made to him under subsection (3) above as if it were a reference made to him under section 64(1) of this Act.

(5) The sheriff shall not make a reference to the Secretary of State under subsection (3) above if the appeal committee, in reaching the decision appealed against, have already referred the reference to them to the Secretary of State under section 64(1) of this Act.

(6) Subject to subsection (3) above, the sheriff may, on an appeal made to him under this section, confirm the education authority's decision if he is satisfied that—

(a) in relation to the placing request, one or more of the grounds of refusal specified in section 28A(3) of this Act, as it applies to recorded children, or as the case may be, recorded young persons, exists or exist; and

(b) it is, in all the circumstances, appropriate to do so

but otherwise shall refuse to confirm the authority's decision and shall, where he so refuses, require the education authority to place the child or young person in the specified school and to amend accordingly any nomination in the Record of the child or young person of a school to be attended by him.

In this subsection, the reference to the placing request includes a reference to the placing request the making of which enabled, by virtue of section 63(3) of this Act, the reference to the appeal committee whose decision thereon has been appealed to the sheriff, to be made; and the reference to the specified school includes a reference to the school specified in such a placing request.

(7) Where, in the case of a recorded child or recorded young person—

(a) the sheriff refuses to confirm the education authority's decision as to the nomination of a school to be attended by him or refusing the placing request made in respect of him; and

(b) the specified school is an independent or grant-aided school,

the sheriff shall require the authority to meet the fees and other necessary costs of the child's or young person's attendance at the specified school.

In this subsection the references to the placing request and the specified school shall be construed in the same way as in subsection (6) above.

(8) The sheriff shall dispose of—

(a) any appeal against the decision of an appeal committee on a reference which was, in turn, referred to the Secretary of State under section 64(1) of this Act;

(b) any appeal in relation to which he has referred any matter or question to the Secretary of State under subsection (3) above

in the light of the Secretary of State's decision on the reference to him.

]¹¹²

[65A.— Review by education authority of decision to record and information in Record.

(1) Subject to subsection (2) below, it shall be the duty of an education authority to keep under consideration the cases of all recorded children and recorded young persons belonging to their area (in accordance with section 23(3) of this Act), and—

(a) when in the discharge of their duty in relation to such a child or young person the authority think it expedient; or

¹¹² Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

(b) if the authority are at any time requested to do so by notice in writing given to them by the parent of such a child or by such a young person or, where the authority are of the opinion that such a young person is not capable of expressing his views, by his parent, the authority shall review their decision to record the said child or young person and the information entered in the Record of that child or young person.

(2) The parent of a recorded child, a recorded young person or, as the case may be, the parent of a recorded young person shall not, by virtue of subsection (1)(b) above, be entitled to request the authority to review—

(a) their decision to record the child or young person earlier than the expiry of the period of 12 months from the date of that decision or the most recent review of that decision, whichever is the later;

(b) the information entered in the Record for the purposes of section 65D(2)(a), (b) or (c) of this Act earlier than the expiry of the period of 12 months from the date of commencement of the Record or the most recent review of the information entered therein, whichever is the later.

(3) Sections 61 and 62 of this Act shall apply to a review by an education authority of their decision to record a child or young person and of the information contained in the Record of a child or young person with such modifications as the Secretary of State may by regulations prescribe.

]¹¹³

65B.— Future provision for recorded children.

(1) It shall be the duty of an education authority in accordance with this section to consider in relation to each recorded child belonging to their area (in accordance with section 23(3) of this Act) what provision would benefit him after he ceases to be of school age and to make a report thereon.

(2) The education authority shall perform the duty imposed on them under subsection (1) above during the period beginning 2 years before the child ceases to be of school age and ending 9 months before then.

(3) Sections 61 and 62 of this Act shall apply to the process of consideration under this section with such modification as the Secretary of State may by regulations prescribe.

(4) The duty of consideration imposed by subsection (1) above may be performed in conjunction with a review in relation to the child under section 65A of this Act.

(5) The education authority's report under subsection (1) above shall include their recommendation as to—

(a) whether the child would benefit from school education after he ceases to be of school age; and

(b) if the recommendation under paragraph (a) above is that he would benefit therefrom, whether or not his Record should be discontinued in accordance with section 65C(3) of this Act after he ceases to be of school age,

and they shall send a copy of the report to the child's parent and inform him of the right to have the Record discontinued under section 65C(3) of this Act.

¹¹³ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

(6) In any case where they consider it appropriate to do so, the education authority shall, in accordance with subsection (7) below, send a copy of their report to—

(a) [...] ¹¹⁴

(b) the health board for the area in which the child resides; and

(c) with the consent of the child's parent, any other body being a body making provision from which, in their opinion, he might benefit.

and the local authority as education authority shall also ensure that the local authority for the purposes of Part II of the Children (Scotland) Act 1995 receive such a copy.

(6A) Without prejudice to the generality of paragraph (c) of subsection (6) above, the reference in that paragraph to any other body shall include a reference to the board of management of a college of further education (within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992) making provision from which, in the opinion of the authority, the child might benefit.

(7) The education authority shall, where possible, perform their duty under subsection (6) above not later than 6 months before the child or young person to whom the report referred to in that subsection relates is expected to cease receiving school education.

[65C.— Continuance of Record of young persons.

(1) Where a recorded child ceases to be of school age but, as a young person, receives school education, the education authority shall, subject to subsection (3) below, continue his Record for so long as he receives such education.

(2) If and for so long as a Record is continued under subsection (1) above, the provisions of this Act relating to the opening and keeping of Records of recorded young persons (other than section 60(5) of this Act) shall apply in relation to it, and the child whose Record is so continued shall be deemed to be a recorded young person.

(3) An education authority shall discontinue the Record of a young person if he requests them to do so or, where the authority are of the opinion that he is not capable of expressing a request for the purposes of this section, his parent so requests.

]¹¹⁵

[65D.— Regulations regarding Records.

(1) The Secretary of State shall by regulations prescribe—

(a) the form of a Record;

(b) the nature of the information to be entered therein;

(c) the procedure to be followed in relation to the keeping, discontinuance and destruction of a Record and its transfer on the recorded child or recorded young person moving from the area of one education authority to that of another;

(d) the period for which a Record must be preserved after its discontinuance;

(e) the persons to whom an education authority—

(i) shall, at the request of such a person, disclose a Record; and

¹¹⁴ repealed by Children (Scotland) Act 1995 c. 36 Sch. 5 para. 1

¹¹⁵ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

- (ii) may disclose a Record, and the manner of such disclosure;
 - (f) such other matters relating to Records as are in his opinion necessary or expedient, and the Secretary of State may—
 - (i) under paragraph (c) of this subsection, prescribe different procedures in different circumstances;
 - (ii) under paragraph (d) of this subsection, prescribe different periods in different circumstances; and
 - (iii) under paragraph (e) of this subsection, prescribe different persons and different manners of disclosure for different purposes.
- (2) Regulations under subsection (1) above shall provide that a Record shall include four parts containing respectively—
- (a) a summary of the child's or young person's impairments;
 - (b) a statement of the special educational needs arising from those impairments;
 - (c) a statement of the measures proposed by the education authority to be taken to meet those needs; and
 - (d) where appropriate, the nomination of a school to be attended by him.

] ¹¹⁶

[65E. Application of certain provisions of this Act to recorded children and young persons. Schedule A2 to this Act (which modifies certain provisions of this Act in their application to recorded children and young persons) shall have effect.] ¹¹⁷

65F. Secretary of State may prescribe standards etc. for special schools.

Without prejudice to section 2 of this Act, the Secretary of State may make regulations prescribing standards and [...] ¹¹⁸ requirements relating to the conduct of schools making provision for recorded children or recorded young persons.

[65G.— Attendance of certain children and young persons with special educational needs at establishments outwith United Kingdom.

(1) Without prejudice to sections 49 (power of educational authorities to assist persons to take advantage of educational facilities) and 50 (education of pupils in exceptional circumstances) of this Act, an education authority shall have power to make such arrangements as they think fit to enable a child or young person to whom subsection (2) below applies to attend an establishment (whether or not a school) outwith the United Kingdom if that establishment makes provision wholly or mainly for persons with pronounced, specific or complex special educational needs.

(2) This subsection applies to a child or young person if he has such needs as are mentioned in subsection (1) above whether or not a record of those needs is kept in respect of him under section 60 of this Act.

¹¹⁶ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

¹¹⁷ Ss. 60–65F substituted for ss. 60–65 by Education (Scotland) Act 1981 (c.58), s. 4(1), Sch.8

¹¹⁸ Word repealed by Education (Scotland) Act 1996 c. 43 Sch. 6 para. 1

(3) Without prejudice to the generality of subsection (1) above, the arrangements mentioned in that subsection may include defraying, whether or wholly or partly—

- (a) the fees payable for the child's or young person's attendance and his travelling, maintenance and other expenses in respect of that attendance; and
- (b) where in the opinion of the authority it would be to the advantage of the child or young person were one (or both) of his parents, or some other person, to be present with him at the establishment during the period of the attendance, such expenses of, as the case may be, the parent, parents or other person.

] ¹¹⁹

PART III

ADMINISTRATION AND FINANCE

Central administration

66.— Inspection of educational establishments.

(1) The Secretary of State shall have power to cause inspection to be made of every school at such intervals as appear to him to be appropriate, and to cause a special inspection of any school to be made whenever he considers such an inspection to be desirable, and he may from time to time cause inspection to be made of any other educational establishment (other than a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992), and such inspections shall be made by Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section (or Her Majesty's Inspectors and any such person).

(1AA) If requested to do so by the Scottish Ministers—

- (a) Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section shall give advice to the Scottish Ministers on such matter as may be specified in the request;
- (b) Her Majesty's Inspectors or any such person (or Her Majesty's Inspectors and any such person) may, as respect a matter so specified, inspect and report on a school (including any establishment in which school education is provided in pursuance of arrangements entered into under section 35 of this Act), or class of schools, so specified.

[(1A) Without prejudice to subsection (1) above, the Scottish Ministers shall have power to cause inspection to be made at any establishment in which school education is provided in pursuance of arrangements entered into under section 35 of the Standards in Scotland's Schools etc. Act 2000 (asp 6); and such inspections shall be made by Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section (or Her Majesty's Inspectors and any such person).] ¹²⁰

(1B) Notwithstanding subsection (1) above, the Secretary of State shall have power to cause inspection to be made of the education and training, wherever it is carried out, provided by institutions within the higher education sector (within the meaning of the Further and Higher

¹¹⁹ S. 65G inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 71(2)

¹²⁰ substituted by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 36

Education (Scotland) Act 1992) wholly or mainly for persons preparing to be, or persons who are, teachers in schools, and such inspections shall be made by Her Majesty's Inspectors or other persons appointed by the Secretary of State for the purpose.

(3) If any person wilfully obstructs any person authorised to make an inspection in pursuance of this section in the execution of his duty, he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

[66A Code of practice as regards inspections under section 66

- (1) Subject to subsection (2) below, the Scottish Ministers may, for the purposes of—
- (a) giving practical guidance on matters relating to inspections under section 66 of this Act (including, without prejudice to that generality, such matters as the making and publishing of reports on those inspections); and
 - (b) promoting what appear to them to be desirable practices with respect to these matters, from time to time prepare, approve and issue such codes of practice as in their opinion are suitable for those purposes.
- (2) Subsection (1) above does not apply in relation to inspections of educational establishments which are institutions for the provision of any form of further education.

]¹²¹

[66B Duty of Her Majesty's Inspectors to make reference to Scottish Ministers

- (1) This section applies where, after an inspection under subsection (1) or (1AA) of section 66 of this Act of—
- (a) a public school; or
 - (b) a grant-aided school,
- Her Majesty's Inspectors identify that a relevant person requires to take action to secure improvement in a matter relating to the school or the school education provided in it.
- (2) If it appears to Her Majesty's Inspectors that—
- (a) having been given sufficient opportunity to secure improvement in a matter identified under subsection (1) above, the relevant person is failing or has failed to take satisfactory action to do so; and
 - (b) having regard to the seriousness of that failure, an enforcement direction is justified,
- they shall make a reference to the Scottish Ministers.
- (3) A reference under subsection (2) above shall—
- (a) be in writing;
 - (b) specify the failure mentioned in subsection (2)(a) above; and
 - (c) include recommendations as to the action which, in the opinion of Her Majesty's Inspectors, the relevant person requires to take to remedy or prevent the recurrence of that failure.
- (4) Where Her Majesty's Inspectors make a reference under subsection (2) above, they shall inform the relevant person of the making of that reference.

¹²¹ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 12

- (5) In this section and in sections 66C and 66D of this Act, “relevant person” means—
- (a) in relation to a public school, the education authority; and
 - (b) in relation to a grant-aided school, the managers of the school.

]¹²²

[66C Preliminary notice

(1) Where, on a reference under section 66B(2) of this Act, it appears to the Scottish Ministers that—

- (a) the relevant person is failing or has failed to take satisfactory action to secure improvement in the matter mentioned in section 66B(2)(a) of this Act; and
- (b) an enforcement direction is justified,

they may serve a preliminary notice on the relevant person.

(2) A preliminary notice is a notice which—

- (a) informs the relevant person of the apparent failure mentioned in subsection (1)(a) above; and
- (b) requires the relevant person to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
 - (i) states that the person has not so failed and gives reasons supporting that statement; or
 - (ii) states that the person has so failed but gives reasons why an enforcement direction should not be given to that person.

]¹²³

[66D Enforcement direction

(1) Where, following service under section 66C(1) of this Act of a preliminary notice and the expiry of the time specified in it, it still appears to the Scottish Ministers that—

- (a) the relevant person is failing or has failed to take satisfactory action to secure improvement in the matter mentioned in section 66B(2)(a) of this Act; and
- (b) having regard to the seriousness of that failure, action under this section is justified,

they may give the relevant person an enforcement direction.

(2) An enforcement direction is a direction in writing by the Scottish Ministers requiring the relevant person to whom it is given to take, within such time as is specified in the direction, such action as is so specified, being action calculated to remedy or prevent the recurrence of the failure mentioned in subsection (1)(a) above.

(3) Where two or more courses of action are specified in an enforcement direction, the Scottish Ministers may specify for each a different time within which it is to be taken.

(4) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the relevant person in relation to the school and the school education provided in it as are so specified.

¹²² added by School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 asp 12 (Scottish Act) Pt 1 s. 1

¹²³ added by School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 asp 12 (Scottish Act) Pt 1 s. 1

- (5) The Scottish Ministers may vary an enforcement direction by giving a further such direction.
- (6) A further such direction need not proceed upon a further preliminary notice under section 66C(1) of this Act.
- (7) An enforcement direction may be revoked by the Scottish Ministers.
- (8) Before giving, varying or revoking an enforcement direction, the Scottish Ministers shall consult Her Majesty's Inspectors.
- (9) A relevant person to whom an enforcement direction is given shall comply with it.
- (10) The Scottish Ministers may, instead of or as well as giving an enforcement direction, make such recommendations to the relevant person as they think appropriate.
- (11) If the Scottish Ministers exercise their power to give, vary or revoke an enforcement direction they shall—
- (a) prepare a report on their exercise of that power; and
 - (b) lay that report before the Scottish Parliament.

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67. Local inquiries.

The Secretary of State may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this [or any other enactment relating to education]¹²⁵ Act, and the provisions of Schedule 1 to this Act shall have effect with regard to any such inquiry.

68. Power to require submission to medical examination.

Where any question is to be decided by the Secretary of State under this Act or under any rule, regulation or order made thereunder, then, if in the opinion of the Secretary of State the medical examination of any pupil or other person enrolled at an educational establishment would assist the determination of the question, the Secretary of State may by notice in writing served on the parent of that pupil, if the pupil is enrolled at a school, or on the pupil [or other person]¹²⁶ himself if he is enrolled at another educational establishment, require the parent to submit him, or require the pupil [or other person]¹²⁷ to submit himself, as the case may be, for such examination; and if any person on whom such a notice is served fails without reasonable excuse to comply with the requirements thereof, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

69.— Approval and carrying out of schemes.

- (1) The Secretary of State may, after considering any representations made to him on the subject and the report of any local inquiry which may have been held under section 67 of this Act, approve, either as submitted or with such modifications and amendments as he thinks proper, any scheme

¹²⁴ added by School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 asp 12 (Scottish Act) Pt 1 s. 1

¹²⁵ Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 10 para. 8(15)

¹²⁶ words inserted by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 9 para. 7(6)(a)

¹²⁷ words inserted by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 9 para. 7(6)(a)

or revised scheme or modification of an existing scheme (in this section referred to as “the scheme”) submitted to him under this Act by an education authority; and thereupon it shall be the duty of the education authority to carry the scheme into effect as so approved.

(2) If an education authority inform the Secretary of State that they are aggrieved by his approval with modifications or amendments of the scheme, the Secretary of State shall cause the scheme as so approved to be laid before Parliament as soon as may be thereafter together with the report of any local inquiry which may have been held under section 67 of this Act. If either House of Parliament within the period of forty days beginning with the day on which the scheme is laid before it resolves that the approval of the scheme be annulled, the scheme as so approved shall cease to have effect, but without prejudice to anything previously done thereunder or to the submission and approval with or without modifications and amendments of any new scheme, revised scheme or modification of an existing scheme.

(3) In reckoning any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

[70. Powers to enforce duty of education authorities and other persons.

(1) If the Secretary of State is satisfied, either on complaint by any person interested or otherwise, that an education authority, a School Board, the managers of a school or educational establishment, or other persons have failed to discharge any duty imposed on them by or for the purposes of this Act or of any other enactment relating to education, the Secretary of State may make an order declaring them to be in default in respect of that duty and requiring them before a date stated in the order to discharge that duty. If by the said date the education authority, a School Board, managers or other persons have not discharged the duty, one or other of the following steps may be taken to secure the discharge thereof—

- (a) the Secretary of State may make such arrangements as he thinks fit for the discharge of the duty, and all expenses incurred by the Secretary of State in so doing shall be recoverable as a debt due by the authority, managers or other persons to the Secretary of State; or
- (b) the Court of Session may, on the application of the Lord Advocate, order specific performance of the duty.

(2) Without prejudice to the generality of subsection (1) above, in that subsection the expression “enactment” includes—

- (a) an Act of the Scottish Parliament but only in so far as it is an Act which relates to school education; and
- (b) an order, regulation, rule or other instrument which has effect by virtue of an Act of the Scottish Parliament but only in so far as it is an instrument which so relates.

]¹²⁸

¹²⁸ existing s70 renumbered s70(1) and subsection (2) added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 2 para. 3(8)

*Advisory councils***71.— Advisory councils.**

(1) It shall be lawful for Her Majesty by Order in Council to establish an advisory council consisting, as to not less than two-thirds of the members, of persons qualified to represent the views of various bodies interested in education, for the purpose of advising the Secretary of State on educational matters, and the Secretary of State shall take into consideration any advice or representation submitted to him by the advisory council.

(2) Provisions may be made in the said order for the appointment by the advisory council of special committees to deal with remits on particular subjects made to the council by the Secretary of State, for such special committees to be composed of persons nominated by the Secretary of State of whom some shall be members of the council and the remainder shall be persons having special knowledge or experience of the subjects of the respective remits, and for the reports of special committees to be submitted to the Secretary of State by the advisory council, who shall be entitled in submitting the reports to make such comments thereon as they think fit.

(3) The Secretary of State may, after consultation with education authorities and other persons interested, by order establish a regional advisory council for any branch of education, to advise the education authorities and other managers of schools, [...] ¹²⁹ and other educational establishments in the region as to the development of the branch of education for which the council is appointed.

*Finance***72.— Expenses of Secretary of State.**

(1) The expenses incurred by the Secretary of State in the exercise of his functions under this Act shall, in so far as they are not met under section 1(2) of the Reorganisation of Offices (Scotland) Act 1939, be defrayed out of money provided by Parliament.

(2) Any sum by which any grants under this Act are increased by reason of the powers and duties conferred and imposed by the provisions of section 48 of this Act on education authorities shall be defrayed out of money provided by Parliament.

73. Power of Secretary of State to make grants to education authorities and others.

The Secretary of State may out of money provided by Parliament apply, in accordance with regulations made by him, such sums as he thinks necessary or expedient for any or all of the following purposes:—

- (a) the payment of grants to education authorities;
- (b) the payment of grants to universities;
- (c) the payment of grants to the managers of educational establishments;
- (d) the payment of grants to any other persons
 - (i) for providing education or educational services; or

¹²⁹ Words repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(2), Sch. 11

- (ii) in respect of expenditure incurred or to be incurred by them for the purposes of, or in connection with the provision (or proposed provision) of, education or educational services.
- (e) the payment of grants to persons to assist the carrying out of educational research;
- (f) [the payment of allowances or loans to or in respect of persons
 - (i) undertaking; or
 - (ii) who have undertaken;
 courses of education;]¹³⁰
- (g) providing for any other educational expenditure approved by him.

[73A.— Transfer or delegation of functions relating to student support.

- (1) If the Secretary of State so determines, any function exercisable by him by virtue of regulations made under section 73(f) of this Act shall, to such extent as is specified in his determination, be exercisable instead by such body or person as is so specified.
- (2) A person or body by whom any function is for the time being exercisable by virtue of subsection (1) above shall comply with any direction given by the Secretary of State as to the exercise of that function.
- (3) The Secretary of State may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function exercisable by him by virtue of regulations under section 73(f) of this Act (including any such functions as to appeals).
- (4) Any arrangements made under subsection (3) above shall not prevent the Secretary of State from exercising the function in question himself.
- (5) The Secretary of State may make provision for enabling appeals—
- (a) to be made with respect to such matters arising out of the exercise by any person or body of any function by virtue of subsection (1) or (3) above as he may determine; and
 - (b) to be so made to a person or body appointed by him for that purpose.
- (6) The Secretary of State may pay to any person or body by whom any function is exercisable by virtue of subsection (1) or (3) above—
- (a) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person or body—
 - (i) in making grants or loans by virtue of regulations under section 73(f) of this Act, or
 - (ii) by way of administrative expenses,
 in, or in connection with, the exercise of that function;
 - (b) in the case of any such person, or of any body with which the Secretary of State has made arrangements under subsection (3) above, such remuneration as he may determine.
- (7) Any payment under subsection (6)(a) above may be made subject to such terms and conditions (including conditions as to repayment) as the Secretary of State may determine.

¹³⁰ word substituted by Education (Graduate Endowment and Student Support) (Scotland) Act 2001 asp 6 (Scottish Act) s. 3(2)

(8) The Secretary of State may pay to any person or body appointed by him under subsection (5) such remuneration or administrative expenses (or both) as he may determine.

(9) In relation to any function which, by virtue of subsection (1) or (3) above is exercisable to a specified extent, references in any other provision of this section to the exercise of that function are accordingly to its exercise to that extent.

]¹³¹

73B.— Regulations relating to student loans.

(1) This section applies in relation to regulations under paragraph (f) of section 73 of this Act made with respect to loans.

(2) Regulations to which this section applies may make provision requiring such amounts as may be prescribed, payable under loans granted by virtue of such regulations, to be paid directly to institutions providing courses of education who have previously made payments of any prescribed description to persons undertaking such courses to whom such loans may be granted.

(3) Regulations to which this section applies may make such provision as the Secretary of State considers necessary or expedient in connection with the recovery of amounts due from borrowers under loans granted by virtue of such regulations, including provision for—

(a) imposing on employers, or (as the case may be) such other persons or bodies as may be prescribed, requirements with respect to—

- (i) the making of deductions in respect of amounts so due (or, in any prescribed circumstances, amounts assessed in accordance with the regulations to be so due) from emoluments payable to borrowers,
- (ii) the collection by other means of such amounts,
- (iii) the transmission of amounts so deducted or collected to the Secretary of State in accordance with directions given by him;

(b) imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to the keeping and production of records for such purposes as may be prescribed;

(c) imposing on borrowers requirements with respect to—

- (i) the provision of such information, and
- (ii) the keeping and production of such documents and records,

relating to their income as may be prescribed;

(d) requiring the payment, by persons or bodies to whom the requirements imposed in pursuance of paragraphs (a) to (c) above apply, of—

- (i) penalties in cases of non-compliance with, or otherwise framed by reference to, such requirements, and
- (ii) interest in respect of periods when such penalties are due but unpaid;

(e) requiring the payment by borrowers, in respect of periods when amounts due under their loans are unpaid, of—

- (i) interest (applied to such amounts at a rate calculated otherwise than in accordance with subsections (6) and (7) below), or
- (ii) both such interest and one or more surcharges (together with further interest in respect of periods when such surcharges are due but unpaid);

¹³¹ added by Teaching and Higher Education Act 1998 c. 30 Pt II c. II s. 29(2)

- (f) enabling the Secretary of State to require the reimbursement by borrowers of costs or expenses of any prescribed description incurred by him in connection with the recovery of unpaid amounts;
 - (g) applying or extending with or without modification, for purposes connected with the recovery of amounts under regulations to which this section applies, any of the provisions of the Taxes Acts or of PAYE regulations;
 - (h) determining the priority as between deductions falling to be made by virtue of paragraph (a)(i) above and deductions falling to be made from emoluments payable to borrowers by virtue of other enactments (whenever passed);
 - (i) modifying any enactment or instrument (whenever passed or made) so as to provide for the treatment, in connection with any calculation with respect to income (however defined), of amounts due from or payable to such persons under loans granted by virtue of regulations to which this section applies.
- (4) In subsection (3) above—
- (a) “employers” means persons who make payments of, or on account of, [PAYE income]¹³², and
 - (b) “the Taxes Acts” has the same meaning as in the Taxes Management Act 1970.
- (5) Regulations to which this section applies may make provision for the payment, in respect of amounts overpaid by borrowers, of interest at such rate, and calculated in such manner, as may be determined by the Secretary of State from time to time.
- (6) A rate of interest, prescribed by regulations to which this section applies, to be borne by loans shall at no time exceed the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974 (exemption of certain consumer credit agreements by reference to the rate of the total charge for credit).
- (7) Subject to subsection (6) above, regulations to which this section applies shall not prescribe a rate of interest to be borne by loans higher than that which the Secretary of State, having regard to such retail prices index as appears to him to be appropriate, is satisfied is required to maintain the value in real terms of the outstanding amounts of such loans.
- (8) Regulations to which this section applies may make provision, for the purpose of calculating the interest to be borne by loans, for repayments by borrowers to be treated as having been made or received on such date or dates as may be prescribed.
- (9) Regulations to which this section applies may prescribe requirements or other provisions which add to or otherwise modify, during the currency of a loan, requirements or other provisions (whether as to repayment or otherwise) which apply in relation to loans granted by virtue of such regulations.
- (10) Regulations to which this section applies may make provision for a borrower not to be liable to make any repayment in respect of a loan—
- (a) during such periods as may be prescribed from time to time, or
 - (b) in such circumstances as may be prescribed,
- including provision for the cancellation of any further such liability of the borrower in any such circumstances.

¹³² words substituted by Income Tax (Earnings and Pensions) Act 2003 c. 1 Sch. 6(2) para. 149(b)

(11) Regulations to which this section applies may make provision for appeals with respect to matters arising under such regulations (including provision for determining, or enabling the determination of, the procedure to be followed in connection with such appeals).

(12) Regulations to which this section applies may, in relation to a borrower's discharge under or by virtue of section 54 of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4 to that Act, make provision for the treatment of any debt or liability to which a borrower is, or may become, subject in respect of sums received, or which he is entitled to received, after the date of his sequestration.

(13) Nothing in this section prejudices the generality of section 73(f) of this Act.

[73C.— Transitional provisions and savings on repeal of Education (Student Loans) Act 1990.

(1) The Secretary of State may by regulations make such transitional provision and savings in connection with the repeal by the Teaching and Higher Education Act 1998 of the Education (Student Loans) Act 1990 (“the 1990 Act”) as he considers necessary or expedient including—

(a) provision for any function which has been conferred under or by virtue of the 1990 Act to transfer to, or otherwise become exercisable by—

(i) the Secretary of State, or

(ii) such other person or body as may be prescribed,

to such extent as may be prescribed; and

(b) provision for the transfer to the Secretary of State or any such other person or body of rights or liabilities arising under or by virtue of the 1990 Act.

(2) Regulations made by virtue of paragraphs (a) and (b) of subsection (1) above may, in particular, provide for—

(a) any such function to be exercisable in pursuance of such regulations in such modified form as may be prescribed;

(b) the 1990 Act to have effect with such modifications as may be prescribed.

]¹³³

73D.— Provision as to maximum amounts of certain allowances.

(1) This section applies to allowances payable by virtue of section 73(f) of this Act in respect of the fees charged in connection with [...] ¹³⁴ a course of higher education.

(2) The Secretary of State may by order made by statutory instrument determine the maximum amount payable in any academic year of allowances to which this section applies in respect of such courses or classes of courses of higher education as may be so determined and, subject to subsection (3) below, a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

¹³³ added by Teaching and Higher Education Act 1998 c. 30 Pt II c. II s. 29(2)

¹³⁴ words repealed by Education (Graduate Endowment and Student Support) (Scotland) Act 2001 asp 6 (Scottish Act) s. 3(4)

(3) Where the Secretary of State has determined a maximum amount under subsection (2) above, he shall not make a further determination increasing that maximum amount under that subsection unless—

- (a) he is satisfied that the increase is no greater than is required to maintain the allowance's value in real terms; or
- (b) a draft of the order containing the further determination has been laid before, and approved by a resolution of, each House of Parliament.

(4) For the purposes of subsection (3)(a) above the Secretary of State shall have regard to such retail prices index as appears to him to be appropriate.

(5) In subsection (2) above, “courses of higher education” means courses of higher education falling within section 38 of the Further and Higher Education (Scotland) Act 1992.

[73E.— Supply of information in connection with student loans.

(1) This section applies to any information which is held—

- (a) by the Commissioners of Inland Revenue, or
- (b) by a person providing services to those Commissioners and in connection with the provision of those services.

(2) Information to which this section applies may be supplied to—

- (a) the Secretary of State or the Department of Education for Northern Ireland,
- (b) any person or body acting on behalf of the Secretary of State or that Department under the delegation of functions provisions, or
- (c) any person or body by whom any function of the Secretary of State or that Department is for the time being exercisable to any extent by virtue of the transfer of functions provisions, for the purpose of enabling or assisting the recipient to exercise any function in connection with the operation of the student loans scheme.

(3) Information supplied under subsection (2) above shall not be supplied by the recipient to any other person or body unless it is supplied—

- (a) to a person or body to whom it could have been supplied under that subsection, or
- (b) for the purposes of any civil or criminal proceedings arising out of the student loans scheme.

(4) Subsections (2) and (3) above extend only to the supply of information by or under the authority of the Commissioners of Inland Revenue.

(5) This section does not limit the circumstances in which information may be supplied apart from this section.

(6) In this section—

- (a) “the delegation of functions provisions” means section 73A(3) of this Act or section 23(4) of the Teaching and Higher Education Act 1998;
- (b) “the transfer of functions provisions” means section 73A(1) of this Act or section 23(1) of the Teaching and Higher Education Act 1998; and
- (c) “the student loans scheme” means the provisions of—
 - (i) regulations under section 73(f) of this Act with respect to loans; or
 - (ii) regulations under section 22 of the Teaching and Higher Education Act 1998 so far as having effect in relation to loans under that section;

and in this subsection any reference to a provision of this Act includes a reference to any corresponding Northern Ireland legislation.

]¹³⁵

74.— Payment of grants to be subject to conditions.

(1) The Secretary of State may by regulations make provision that any payment which he is required or authorised to make by or under this Act, except section 76 of this Act, shall be subject to such conditions as may be prescribed in [or determined by him under]¹³⁶ the regulations, and that education authorities and other persons to whom such payments have been made shall comply with such requirements as may be specified in [or determined by him under]¹³⁷ the regulations.

(2) Where the Secretary of State is satisfied that the persons to whom any grant is payable under this Act are, by reason of the provisions of any trust deed or other instrument, unable to fulfil any condition or comply with any requirement imposed under this section, he may, after consultation with them, by order make such modifications of the said provisions as may be necessary for the purpose of enabling the said persons to fulfil that condition or comply with that requirement; and any such trust deed or other instrument shall, during such period as may be specified in the order, have effect subject to any modifications so made.

75. Examination of accounts.

Save as may be otherwise prescribed, it shall be a condition of the payment by the Secretary of State of a grant to the managers of a school or other educational establishment not under the management of an education authority or to other persons providing educational services approved by the Secretary of State that the accounts of the income and expenditure of such managers or persons in respect of such school, educational establishment or service shall be set out according to a form prescribed by the Secretary of State and shall together with the relative vouchers and other documents be submitted for examination to the Secretary of State.

75A.— Assisted places at grant-aided and independent schools.

(1) The Secretary of State shall, subject to subsections (1A) and (1B) below, operate a scheme whereby—

- (a) participating schools remit fees that would otherwise be chargeable in respect of pupils admitted to assisted places under the scheme; and
- (b) the Secretary of State reimburses the schools for the fees that are remitted.

(1A) The Secretary of State shall operate a scheme such as is described in subsection (1) above only in relation to any pupil admitted to an assisted place under such a scheme prior to the beginning of the first term of the 1997-98 school year where the pupil will be in attendance at the school concerned—

- (a) at the beginning of that term; or

¹³⁵ added by Teaching and Higher Education Act 1998 c. 30 Pt II c. II s. 30

¹³⁶ Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(17)(a)

¹³⁷ Words inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 82(1), Sch. 10 para. 8(17)(b)

(b) after the beginning of that term but before the end of that school year, and where it appears to the Secretary of State that it is reasonable, in view of any particular circumstances relating to that pupil, that he should be permitted to take advantage of that place after the beginning of that term,

and, for the purposes of this section, “1997-98 school year” means the period of twelve months beginning on 1st August 1997.

(1B) A pupil holding an assisted place who is receiving primary education during the 1997-98 school year shall cease to hold that place—

- (a) at the end of the school year in which he completes his primary education; or
- (b) if the Secretary of State, where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to that pupil, decides that he should continue to hold that place for a further period during which he receives secondary education, at the end of that period.

(2) In this section references to a participating school are references to any grant-aided or independent school providing secondary education which the Secretary of State has determined, prior to the coming into force of this subsection, to be a participating school for the purposes of the scheme.

(3) A determination under subsection (2) above—

- (a) shall state the maximum annual amount allocated by the Secretary of State to the school under the scheme including the maximum annual amount so allocated for the purposes of section 75B of this Act; and
- (b) may contain such conditions as the Secretary of State thinks fit in addition to those prescribed under subsection (9) below.

(4) The Secretary of State may alter—

- (a) the maximum annual amount referred to in subsection (3)(a) above; or
- (b) the conditions referred to in subsection (3)(b) above,

by written notification to the school concerned.

(5) A participating school shall comply with any conditions contained in a determination under subsection (2) above and with any condition or obligation prescribed under subsection (9) below.

(7) The fees in relation to which the scheme is to have effect shall be—

- (a) tuition and other fees the payment of which is a condition of attendance at a participating school but excluding—
 - (i) boarding fees; and
 - (ii) such other charges, if any, as may be prescribed by regulations; and
- (b) entrance fees for public examinations paid by a participating school in respect of candidates from the school.

(8) If the Secretary of State is of the opinion that any fee which falls to be remitted in whole or in part under a scheme established and operated under this section is excessive, he may substitute for such fee such other amount as he considers appropriate.

(9) The Secretary of State shall by regulations prescribe—

- (c) the conditions subject to which, the extent to which, and the arrangements in accordance with which, fees are to be remitted by participating schools;
- (d) the time and manner in which participating schools are to claim and receive reimbursements from the Secretary of State;

- (e) conditions to be complied with by participating schools with respect to the fees to be charged, the keeping and auditing of accounts and the furnishing of information to the Secretary of State; and
- (f) such other matters as appear to him to be requisite for the purposes of the scheme.

(9A) Regulations under this section may—

- (a) provide for the discharge of any future liabilities of the Secretary of State to make reimbursements of fees by way of lump sum payments;
- (b) provide for the Secretary of State, in a case where a participating school—
 - (i) merges with another school;
 - (ii) closes (whether wholly or in part); or
 - (iii) notifies the Secretary of State that it no longer wishes to provide assisted places,

to authorise the new school or, as the case may be, any other participating school to provide any assisted places which the participating school first mentioned was authorised to provide; and a new school authorised to provide assisted places under regulations made under this section shall be treated for the purposes of this section and section 75B of this Act as if a determination had been made in respect of it under subsection (2) above [; and]¹³⁸

[(c) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has, at any time since the beginning of the first term of the 1997-98 school year, held) an assisted place at a school under a scheme operated by virtue of subsection (1) above, to authorise another school which is, or is treated as, a participating school to provide for the pupil under such a scheme the assisted place which the first-mentioned school was authorised to provide.]¹³⁹

(9B) Without prejudice to his duty to operate a scheme under subsection (1) above in respect of pupils such as are mentioned in subsection (1A) above, the Secretary of State may by regulations make such provision as he considers necessary for or in relation to the ending of the scheme.

(9C) Regulations made under this section or section 75B of this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

(10) Regulations under subsection (9) above may authorise the Secretary of State to make provision for any purpose specified in the regulations.

(11) Before making regulations under subsection (9) above the Secretary of State shall consult such bodies as appear to him to be appropriate and to be representative of participating schools.

(12) Regulations made under subsection (9)(c) above shall be reviewed by the Secretary of State in consultation with such bodies as appear to him to be appropriate and to be representative of participating schools—

- (a) not later than two years after the date on which the first such regulations are made; and
- (b) thereafter at intervals not exceeding two years.

¹³⁸ and the word "and" immediately preceding it by School Standards and Framework Act 1998 c. 31 Pt VII s. 130(2)(b)

¹³⁹ and the word "and" immediately preceding it by School Standards and Framework Act 1998 c. 31 Pt VII s. 130(2)(b)

(13) Except where the context otherwise requires, references in this section and section 75B of this Act to a school include references to the proprietors and managers of the school; and references in this section to an independent school are references to an independent school which is—

- (a) a registered school; and
- (b) conducted only for charitable purposes within the meaning of section 122(1) of this Act.

[75B.— Incidental expenses of and provision for pupils holding assisted places.

(1) The Secretary of State may by regulations require or enable or make provision for requiring or enabling any school participating in the scheme referred to in section 75A of this Act to make grants in respect of such expenses, including such travelling expenses, and to remit such charges, as may be specified in the regulations and to make such provision of meals or other refreshment or of facilities for the consumption of meals or other refreshment and such provision of clothing as the school making the provision considers appropriate, being expenses, charges or provision in respect of matters incidental to or arising out of the attendance at the school of pupils holding assisted places under the scheme.

(2) Regulations made under this section may require or enable or make provision for requiring or enabling any school providing meals or other refreshment under subsection (1) above to make such charges as it thinks fit for any such meal or other refreshment except where it is provided by virtue of subsection (4) below.

(3) Regulations under this section shall provide that, within the maximum amount stated under section 75A(3) of this Act, any amounts granted or remitted by a school and expenditure incurred by them by or under the regulations shall be reimbursed to the school by the Secretary of State.

(4) The Secretary of State shall exercise his power to make regulations under this section so as to ensure that, in relation to any pupil whose parents are in receipt of supplementary benefit or family income supplement, such provision is made for that pupil in the middle of the day as appears to the school to be requisite.

(5) Regulations under this section may in particular prescribe—

- (a) the conditions subject to which, the extent to which, and the arrangements in accordance with which, grants and remissions are to be made and meals, other refreshment, facilities for the consumption thereof and clothing are to be provided;
- (b) whether a charge is to be remitted in whole or in such part as may be prescribed in the regulations;
- (c) the time and manner in which schools are to claim and receive reimbursement from the Secretary of State.

(6) Regulations under this section may authorise the Secretary of State to make provision for any purpose specified in the regulations.

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¹⁴⁰ Ss. 75A, 75B inserted by Education (Scotland) Act 1981 (c. 58), s. 5(1)

76.— Industrial scholarships.

(1) The Secretary of State may award industrial scholarships or make payments to any other person in respect of the award of such scholarships by that person.

(2) In this section “industrial scholarships” means scholarships (however described) tenable by persons undertaking full-time courses of higher education provided by a university, college or other institution in the United Kingdom, being courses which appears to the Secretary of State or, as the case may be, the person awarding the scholarships to be relevant to a career in industry.

(3) In subsection (2) above the reference to a full-time course includes a reference to a course consisting of alternate periods of—

(a) full-time study in the university, college or institution in question; and

(b) associated industrial, professional or commercial experience;

and the reference in that subsection to a course provided by a university, college or institution in the United Kingdom includes a reference to a course provided by such a university, college or institution in conjunction with a university, college or other institution in another country.

Grant-aided colleges

77.— [...] ¹⁴¹

Appointment of director of education

78. [...] ¹⁴²

*Local administration***79. Education authorities may receive and administer bequests.**

Every education authority shall be at liberty to accept any bequest or gift of property or funds for behoof of any school or other educational establishment under their management, whether generally or for the promotion of any particular branch or branches of education or instruction, or for increasing the income of any teacher, and it shall be the duty of the authority to administer such property, funds or money according to the wishes and intentions of the donors, and in such manner as to raise the standard of education and otherwise increase the educational efficiency of the school or other educational establishment intended to be benefited.

80.— Funds for behoof of public schools etc., to be transferred to education authorities.

(1) Where property or money has been or shall be vested in any persons as trustees for behoof of a public school or other educational establishment under the management of an education authority, or for the promotion of any branch of education in such school or educational establishment, or to increase the income of any teacher therein, the free income of such property or money shall be

¹⁴¹ repealed by Further and Higher Education (Scotland) Act 1992 c. 37 Sch. 10 para. 1

¹⁴² repealed by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 14 para. 1

accounted for and paid to the education authority, and shall be applied and administered by the education authority according to the trusts attaching thereto.

(2) It shall be lawful for the education authority, with the approval of the Secretary of State, to vary or depart from the said trusts, with a view to increasing the efficiency of the school or educational establishment by raising the standard of education therein or by other means.

81. Trust funds to be kept separate.

The amount of every property or fund held by an education authority on a separate trust shall be kept separate.

82. Reports by education authorities.

Every education authority shall make such reports and returns and give such information to the Secretary of State as he may from time to time require.

83. Returns by registrars of births, deaths, and marriages to education authorities.

Every registrar of births, deaths, and marriages shall make to an education authority on a form to be provided by the authority such returns of particulars with regard to the births and deaths of children registered by him as may be required by the authority with the approval of the Registrar-General of Births, Deaths and Marriages in Scotland.

84.— Certificates of birth.

(1) Where the age of any person is required to be ascertained or proved for the purposes of this Act or of any enactment relating to the employment of children or young persons, the registrar of births, deaths and marriages having the custody of the register of births containing the entry relating to the birth of that person shall, upon being presented by any person with a written requisition in such form and containing such particulars as may be prescribed and upon payment of a fee of [£8.50]¹⁴³, supply that person with a copy of the entry certified under his hand.

(2) Every registrar shall, upon being requested so to do, supply free of charge a form of requisition for the purposes of this section.

85. Presumption of age.

Where in any proceedings under this Act the prosecutor alleges that any person whose age is material to the proceedings is under, of, or over, any age, then, unless the contrary is proved, the court may presume that person to be under, of, or over, the age alleged.

86. Admissibility of documents.

In any legal proceedings any document purporting to be—

- (a) a document issued by an education authority, and to be signed by the proper officer of that authority;

¹⁴³ sum substituted by Registration of Births, Deaths and Marriages (Fees) (Scotland) Order 2002/389 (Scottish SI) Sch. 1 para. 1

- (b) an extract from the minutes of the proceedings of an education authority or of any committee or sub-committee thereof, and to be signed by the chairman of the authority or of the committee or sub-committee or by the officer having the custody of the minutes;
- (c) a certificate giving particulars of the attendance of a pupil at a school, and to be signed by the head teacher of the school;
- (d) a certificate issued by a medical officer of a Health Board, and to be signed by such officer;
- (e) a certificate issued by an education authority that an attendance order has been made by the authority and a copy thereof served upon the parent of the child to whom the order relates, and to be signed by the proper officer of the authority [...] ¹⁴⁴ ; or

shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be, and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and any such extract or certificate as is mentioned in paragraph (b) (c) (d) or (e) above shall, in the absence of evidence to the contrary, be sufficient evidence of the matters therein stated.

PART IV

TEACHERS

Appointment, dismissal, retirement and employment of teachers

87. Appointment of teachers.

The function of appointing teachers for service in public schools and other educational establishments under the management of an education authority shall be in the education authority, and every appointment shall be during the pleasure of the authority.

[87A. Appointment of principal teachers.

Where an education authority intend to fill a post, other than on an acting basis, of a principal teacher in a school, they shall advertise the post in such publications circulating throughout Scotland as they consider appropriate.]¹⁴⁵

[87B. Selection of teachers.

Without prejudice to section 7 of the Local Government and Housing Act 1989 (which provides for the appointment of staff of local authorities to be made on merit) and to any requirement in any other enactment as to the considerations to which they may or may not have regard in making appointments, an education authority who are considering an appointment of a teacher shall not exclude any person from consideration for such an appointment on the ground that—

- (a) he is not employed by that education authority; or
- (b) he is or is not employed by a particular employer or class of employer; or
- (c) he is not currently employed as a teacher.

¹⁴⁴ words repealed by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 14 para. 1

¹⁴⁵ Ss. 87A and 87B inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 74

] ¹⁴⁶

88.— [...] ¹⁴⁷

89.— Age of retirement of teachers.

(1) Subject to subsection (2) below, a teacher employed by an education authority or by the managers of a grant-aided school shall retire from the post in which he is employed no later than the date of his attaining the age of 65.

(2) Nothing in subsection (1) above shall preclude the re-employment by the education authority or, as the case may be, the managers of the grant-aided school, if and in so far as they consider it appropriate, of—

(a) a retired teacher in a post other than a post of special responsibility, either full-time or part-time and for a period not exceeding one year in respect of any one re-employment;

(b) (without prejudice to paragraph (a) above), a retired teacher who immediately before his retirement held a post of special responsibility, in that post for a period not exceeding three months from the date of his retirement.

(3) In subsection (2) above, “post of special responsibility” shall be construed in accordance with the memorandum referred to in an order made by the Secretary of State under section 92(4) of this Act and for the time being in force.

90.— Employment of teachers.

(1) The Secretary of State may in regulations under section 2 or 74(1) of this Act prescribe that only registered teachers shall be employed or continue to be employed as teachers by education authorities in the educational establishments to which the regulations apply, subject to such exceptions as may from time to time be so prescribed.

(2) It is hereby declared that the power of the Secretary of State to make regulations under section 1(2) of the Education (Scotland) Act 1962, as originally enacted, and as re-enacted as section 2 by the Education (Scotland) Act 1969 shall be deemed always to have included power on and after 1st November 1965 to prescribe in such regulations that only registered teachers shall be employed or continue to be employed as teachers by education authorities in the educational establishments to which the regulations apply, subject to such exceptions as may from time to time be so prescribed.

(3) For the avoidance of doubt, it is hereby declared that the power of the Secretary of State to make regulations under section 76(1) of the said Act of 1962 shall be deemed always to have included power on and after 1st November 1965 to prescribe in such regulations that only registered teachers shall be employed or continue to be employed as teachers by managers of educational establishments in the educational establishments to which the regulations apply, subject to such exceptions as may from time to time be so prescribed.

(4) For the avoidance of doubt, it is hereby declared that in the Schools (Scotland) Code 1956, as amended by the Teachers (Education, Training and Registration) (Scotland) Regulations 1967,

¹⁴⁶ Ss. 87A and 87B inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), s. 74

¹⁴⁷ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), ss. 75, 82(2), Sch. 11

regulation 4(2) shall be construed as having always applied to teachers in employment on 1st April 1968, as well as to teachers taken into employment after that date.

Pay and conditions of teaching staff employed in providing school education

91.— [...] ¹⁴⁸

92.— [...] ¹⁴⁹

93.— [...] ¹⁵⁰

Pay and conditions of teaching staff employed in providing further education

94.— [...] ¹⁵¹

95.— [...] ¹⁵²

96.— [...] ¹⁵³

Provisions common to the two committees

97. [...] ¹⁵⁴

97A.— [...] ¹⁵⁵

97B.— [...] ¹⁵⁶

97C. [...] ¹⁵⁷

97D. [...] ¹⁵⁸

¹⁴⁸ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁴⁹ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁵⁰ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁵¹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), ss. 67(1), 82(2), Sch. 11

¹⁵² Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), ss. 67(1), 82(2), Sch. 11

¹⁵³ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), ss. 67(1), 82(2), Sch. 11

¹⁵⁴ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), ss. 67(1), 82(2), Sch. 11

¹⁵⁵ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁵⁶ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁵⁷ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

¹⁵⁸ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

PART V

INDEPENDENT SCHOOLS

98.— Registration of independent schools.

(1) The Secretary of State shall appoint one of his officers to be the Registrar of Independent Schools in Scotland (hereinafter in this Part of this Act referred to as “the Registrar”), and it shall be the duty of the Registrar to keep a register of independent schools, which shall be open to public inspection at all reasonable times, and the Registrar shall register therein—

- (a) where the proprietor of an independent school makes application for the purpose and furnishes the information required by regulations made under this section, such of the particulars prescribed by regulations so made as the Secretary of State may direct,
- (b) every order of an Independent Schools Tribunal or of the Secretary of State imposing or removing any disqualification under Part V of the Act of 1946, Part V of the Act of 1962 or this Part of this Act:and
- (c) where a school has ceased to be a grant-aided school, such of the particulars prescribed by regulations made under this section as the Secretary of State may direct:

Provided that—

- (i) no independent school shall be registered if, by virtue of an order made under the provisions hereinafter contained, the proprietor is disqualified from being the proprietor of an independent school, or if the school premises are disqualified from being used as a school, or if the school premises are used or proposed to be used for any purpose for which they are disqualified by virtue of any such order;*
- (ia) no independent school shall be registered if the Registrar has been given notice by the Scottish Ministers that they are satisfied, on such grounds as they shall specify in the notice, that the proprietor is not a proper person to be the proprietor of any school, that a teacher to be employed in the school is not a proper person to be a teacher in any school or that the school premises, or any parts of those premises, are unsuitable for a school;*
- (ii) Subject to subsection (1A) below, the registration of any school shall be provisional only until the Secretary of State, after the school has been inspected on his behalf under section 66 of this Act, gives notice to the proprietor that the registration is final.*

(1A) Proviso (ii) to subsection (1) above shall not apply to the registration of any school referred to in paragraph (c) of that subsection unless the Registrar gives notice in writing to the proprietor of the school that the said proviso applies to that registration.

(2) If any person—

- (a) conducts an independent school which is not a registered school or a provisionally registered school, or
 - (b) being the proprietor of an independent school does any act calculated to lead to the belief that the school is a registered school while it is a provisionally registered school,
- he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(2A) [...] ¹⁵⁹

- (3) The Secretary of State shall make regulations—
- (a) prescribing the particulars information as to which is to be furnished to the Registrar by the proprietors of independent schools and the manner in which it shall be so furnished;
 - (b) requiring the notification to the Registrar of any changes in such particulars;
 - (c) prescribing the circumstances in which the name of a school may be deleted from the register if the Registrar is unable to obtain sufficient information of such changes; and
 - (d) dealing with such incidental matters as the Secretary of State may deem expedient.

[98A Refusal of registration: referral to Independent Schools Tribunal

(1) When, such notice as is mentioned in paragraph (ia) of the proviso to section 98(1) of this Act having been given, registration of school is refused, the Registrar shall so notify the proprietor (and, if the notice related to a teacher, the teacher also) setting out the grounds which were specified by the Scottish Ministers.

(2) Every notification given under subsection (1) above shall limit the time, not being less than one month after it is so given, within which the refusal of registration may be referred to an Independent Schools Tribunal constituted as is mentioned in section 100 of this Act; and the proprietor or teacher in question may within that time, in such manner as is mentioned in that section, so refer the refusal.

(3) Upon a refusal being so referred the tribunal shall, after affording to all parties concerned an opportunity of being heard, and after considering such evidence as may be tendered by those parties or on their behalf, have power—

- (a) to uphold the refusal; or
- (b) without prejudice to paragraph (ii) of the proviso mentioned in subsection (1) above, to order the Registrar to register the school.

(4) If the tribunal uphold the refusal then (according to what the grounds were which were specified by the Scottish Ministers) the tribunal may disqualify the proprietor from being the proprietor of any independent school, disqualify the teacher from being a teacher in any school or disqualify the premises, or parts of premises, from being used as a school or as part of a school.

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99.— Complaints.

(1) If at any time the Secretary of State is satisfied that any registered or provisionally registered school is objectionable upon all or any of the following grounds—

- (a) that efficient and suitable instruction is not being provided at the school, having regard to the ages and sex of the pupils attending thereat;
 - [(aa) that the welfare of a pupil attending the school is not adequately safeguarded and promoted there;]¹⁶¹
- (b) that the school premises or any parts thereof are unsuitable for a school;
- (c) that the accommodation provided at the school premises is inadequate or unsuitable, having regard to the number, ages and sex of the pupils attending the school;

¹⁵⁹ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 24(1)(b)

¹⁶⁰ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 24(2)

¹⁶¹ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 25

(d) that the proprietor of the school or any teacher employed therein is not a proper person to be the proprietor of an independent school or to be a teacher in any school, as the case may be,

the Secretary of State shall serve upon the proprietor of the school a notice of complaint stating the grounds of complaint together with full particulars of the matters complained of, and, except in so far as any of such matters are stated in the notice to be in the opinion of the Secretary of State irremediable, the notice shall specify the measures necessary in the opinion of the Secretary of State to remedy the matters complained of, and shall specify the time, not being less than six months after the service of the notice, within which such measures are thereby required to be taken.

(2) If it is alleged by any notice of complaint served under this section that any person employed as a teacher at the school is not a proper person to be a teacher in any school, that person shall be named in the notice and the particulars contained in the notice shall specify the grounds of the allegation, and a copy of the notice shall be served upon him at the same time as the notice is served.

(3) Every notice of complaint served under this section shall limit the time, not being less than one month after the service of the notice, within which the complaint may be referred to an Independent Schools Tribunal under the provisions hereinafter contained.

100.— Determination of complaints.

(1) Any person upon whom a notice of complaint or a copy of such a notice is served under section 99 of this Act may, within the time limited by the notice, appeal therefrom by referring the complaint, in such manner as may be provided by rules made under Part V of the Act of 1946, Part V of the Act of 1962 or this Part of this Act, to an Independent Schools Tribunal constituted in accordance with Schedule 2 to this Act.

(2) Upon a complaint being referred to an Independent Schools Tribunal the tribunal shall, after affording to all parties concerned an opportunity of being heard, and after considering such evidence as may be tendered by them or on their behalf, have power—

- (a) to order that the complaint be annulled;
- (b) to order that the school in respect of which the notice of complaint was served be struck off the register;
- (c) to order that the school be so struck off unless the requirements of the notice, with such modifications, if any, as may be specified in the order, are complied with to the satisfaction of the Secretary of State before the expiration of such time as may be specified in the order:

Provided that where the Secretary of State intimates that he is not satisfied that such requirements are complied with, the person upon whom the notice of complaint or a copy thereof has been served may, within fourteen days after such intimation, refer the matter to the tribunal, who shall have power to dispose of the reference in such manner as shall appear to them to be just;

(d) if satisfied that the premises alleged by the notice of complaint to be unsuitable for use as a school or any part of such premises are in fact unsuitable for such use, by order to disqualify the premises or part from being so used, or, if satisfied that the accommodation provided at the school premises or any part thereof is inadequate or unsuitable having regard to the number, ages and sex of the pupils attending the school, by order to disqualify the premises or the said part, as the case may be, from being used as a school or part of a school for pupils exceeding such number or of such age or sex as may be specified in the order;

(e) if satisfied that any person alleged by the notice of complaint to be a person who is not proper to be the proprietor of an independent school or to be a teacher in any school is in fact such a person, by order to disqualify that person from being the proprietor of any independent school or from being a teacher in any school, as the case may be.

(3) Where a notice of complaint has been served under Part V of the Act of 1946, Part V of the Act of 1962 or this Part of this Act on the proprietor of any school and the complaint is not referred by him to an Independent Schools Tribunal within the time limited in that behalf by the notice, the Secretary of State shall have power to make any order which such a tribunal would have had power to make if the complaint had been so referred:

Provided that—

(i) if the Secretary of State makes any such order as is mentioned in paragraph (c) of subsection (2) above, the proviso to that paragraph shall apply in like manner as if the order had been made by the tribunal; and

(ii) if it was alleged by the notice of complaint that any person employed as a teacher at the school is not a proper person to be a teacher in any school and that person has, within the time limited in that behalf by the copy of the notice served upon him, referred the complaint to an Independent Schools Tribunal, the Secretary of State shall not have power to make an order requiring his dismissal or disqualifying him from being a teacher in any school.

(4) Where by virtue of an order made by an Independent Schools Tribunal or by the Secretary of State any person is disqualified either from being the proprietor of an independent school or from being a teacher in any school, then, unless the order otherwise directs, that person shall, by virtue of the order, be disqualified both from being the proprietor of an independent school and from being a teacher in any school.

101.— Enforcement of orders.

(1) Where an order is made by the Secretary of State or by an Independent Schools Tribunal, directing that any school be struck off the register, the Registrar shall as from the date on which the direction takes effect strike the school off the register.

(2) If any person uses any premises for purposes for which they are disqualified by virtue of any order made under this Part of this Act, that person shall be liable on summary conviction to a fine not exceeding [level 4 on the standard scale]¹⁶², or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(3) If any person acts as the proprietor of an independent school, or accepts or endeavours to obtain employment as a teacher in any school, while he is disqualified from so acting or from being so employed by any such order as aforesaid, he shall be liable on summary conviction to a fine not exceeding [level 4 on the standard scale]¹⁶³, or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

¹⁶² Words from “level 4” to “scale” substituted for words from “£20” to “£50” by Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289H, Sch. 7D items 56, 57 (as inserted by Criminal Justice Act 1982 (c. 48), ss. 54, 56(2), Sch. 6)

¹⁶³ Words from “level 4” to “scale” substituted for words from “£20” to “£50” by Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289H, Sch. 7D items 56, 57 (as inserted by Criminal Justice Act 1982 (c. 48)ss. 54, 56(2), Sch. 6)

(4) For the purposes of the foregoing provisions of this Part of this Act, a person who is disqualified by an order made under Part III of the Education Act 1944 from being the proprietor of an independent school or from being a teacher in any school shall be deemed to be so disqualified by an order made under this Part of this Act.

102.— Removal of disqualifications.

(1) If on the application of any person the Secretary of State is satisfied that any disqualification imposed by an order made under Part V of the Act of 1946, Part V of the Act of 1962 or this Part of this Act is, by reason of any change of circumstances, no longer necessary, the Secretary of State shall by order remove the disqualification.

(2) Any person who is aggrieved by the refusal of the Secretary of State to remove a disqualification so imposed may, within such time after the refusal has been communicated to him as may be limited by rules made under Part V of the Act of 1946, Part V of the Act of 1962 or this Part of this Act, appeal to an Independent Schools Tribunal, who may or may not order the removal of the disqualification, as they think fit.

103.— Proceedings before Independent Schools Tribunals and matters relating thereto.

(1) The Lord President of the Court of Session may, with the concurrence of the Secretary of State, make rules as to the manner of making appeals to Independent Schools Tribunals and as to proceedings before such tribunals and matters incidental to or consequential on such proceedings; and, in particular, such rules may make provision requiring any such tribunal to sit at such places as may be directed in accordance with the rules, and may make provision as to appearance before such tribunals by counsel or solicitor.

(2) Rules under subsection (1) above may make provision for reference to the Court of Session, by way of stated case, of any question of law arising in such proceedings.

(3) An Independent Schools Tribunal shall have power to make such orders as to expenses, and as to such other consequential or incidental matters as appear to the tribunal to be necessary for giving effect to any order made by the tribunal, as the tribunal considers to be just, and any such order as to expenses may be enforced as if it were a recorded decree arbitral.

(4) The power to make rules under this section shall be exercisable by statutory instrument; and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing rules made under this section in like manner as if the Lord President of the Court of Session were a Minister of the Crown.

(5) The Secretary of State may, out of money provided by Parliament, pay to the members of Independent Schools Tribunals such remuneration and allowances as he may, [...] ¹⁶⁴ determine.

¹⁶⁴ words repealed by Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999/1820 Sch. 2(IV) para. 1

PART VI

REORGANISATION OF ENDOWMENTS

104.— Register of educational endowments.

(1) [It shall be the duty of the Secretary of State]¹⁶⁵ to keep a register of all educational endowments, which shall contain such information as may be prescribed, and shall be open to public inspection at all reasonable times.

(2) Except as hereinafter provided, it shall be the duty of the governing body of every educational endowment [...] ¹⁶⁶ , to furnish the [Secretary of State]¹⁶⁷ with such information about the endowment as may be prescribed by regulations made by the Secretary of State [in such manner as may be so prescribed]¹⁶⁸ .

(3) This section shall not apply to a university endowment, to a theological endowment, or to the Carnegie Trust, and regulations made under this section may exempt any endowment or class of endowments from any of the provisions of this section.

105.— Schemes for reorganisation of educational endowments.

(1) Subject to the provisions of this section, [an education authority, whether upon an application made to them or not, may, if they think fit,]¹⁶⁹ prepare draft schemes for the future government and management of educational endowments, which schemes may provide—

(a) for altering the purposes to which such endowments are applied or applicable and the conditions and provisions regarding such application;

(b) for the application of the capital or income of such endowments to such educational purposes, mental or physical, moral or social, as the [education authority think]¹⁷⁰ fit having regard to the public interest and to existing conditions, social and educational:

Provided always that the capital of any such endowment shall not be expended except on a purpose to which capital may properly be devoted;

(c) for grouping, amalgamating, combining or dividing any such endowments;

(d) for altering the constitution of the governing body of any such endowment, or uniting two or more existing governing bodies or establishing new governing bodies with such powers as shall seem necessary, and for incorporating any governing body, whether old or new, and for dissolving any governing body whose endowment is transferred to another governing body; and

(e) for altering the powers as to the investment of the funds of any such endowment.

¹⁶⁵ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 3(a), Sch. 8

¹⁶⁶ Words repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

¹⁶⁷ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 3(b)(ii), Sch. 8

¹⁶⁸ Words inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 3(b)(iii)

¹⁶⁹ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(a), Sch. 8 and S.I. 1981/1557, art. 4

¹⁷⁰ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(b), Sch. 8 and S.I. 1981/1557, art. 4

*[Provided that in considering whether to exercise, in relation to any endowment, the power conferred upon them by this subsection an education authority may have regard to whether the exercise of the power would prejudice the proper discharge by them of their functions under this Act apart from this section or their functions as local authority under any enactment.]*¹⁷¹

(2) It shall be the duty of the [education authority]¹⁷² in reorganising any endowment in pursuance of the powers conferred by this Part of this Act to have special regard—

- (a) to the spirit of the intention of the founders as embodied either—
 - (i) in the original deed constituting the endowment where it is still the governing instrument, or
 - (ii) in the scheme approved under any Act, or in any provisional order affecting the endowment;
- (b) to the interest of the locality to which the endowment belongs;
- (c) to the possibility of effecting economy in administration by the grouping, amalgamation or combination of any two or more endowments; and
- (d) to the need for continuing the provision from endowments of competitive bursaries at universities, central institutions, colleges of education or other educational institutions of a similar character.

(3) In every scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons is entitled, whether as inhabitants of a particular area or as belonging to a particular class in life or otherwise, the [education authority]¹⁷³ shall have regard to the educational interests of such class of persons:

Provided always that, where the governing instrument of any educational endowment has expressly provided for the education of children belonging to the poorer classes, either generally or within a particular area, or otherwise for their benefit, such endowment for such education or otherwise for their benefit shall continue, so far as requisite, to be applied for the benefit of such children.

(4) The powers of the [education authority]¹⁷⁴ under this section shall not extend—

- (a) to a university endowment, or
- (b) to the Carnegie Trust, or
- (c) to a theological endowment, or
- (d) to a new endowment;

[, or

- (e) to an endowment which relates in whole or in part to an educational establishment not managed by the education authority who would, but for this paragraph, be empowered under this section to exercise in relation to that endowment the functions conferred by this section,
- or

¹⁷¹ S. 105(1) proviso inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(d)

¹⁷² Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(c), Sch. 8 and S.I. 1981/1557, art. 4

¹⁷³ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(c), Sch. 8 and S.I. 1981/1557, art. 4

¹⁷⁴ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(c), Sch. 8 and S.I. 1981/1557, art. 4

(f) to an educational endowment having no limitation either as to the area in which any educational establishment to which it relates is situated or as to the area in which any of its beneficiaries are required under its governing instrument to reside or with which they are so required to have some other connection.]¹⁷⁵

*[Provided that this subsection shall not apply to an endowment which falls within paragraph (e) above solely by reason of the inclusion among its purposes of the award of prizes, bursaries or similar benefits to persons who attend or have attended educational establishments or other institutions not managed by an education authority.]*¹⁷⁶

[(4A) The Court of Session shall have power, on the petition of—

(a) the governing body of any endowment to which subsection (4) above applies or, in the case of the Carnegie Trust, the Trustees;

(b) in relation to an endowment to which paragraph (e) of that subsection applies and which relates only in part to an educational establishment not managed by the education authority referred to in that paragraph, the education authority, in respect of the part of the endowment in relation to which they would, but for the said h (e), be empowered under this section to exercise the functions conferred by this section,

to give effect to draft schemes for the future government and management of the endowment or, as the case may be, the Trust, which schemes may provide for any of the purposes set out in paragraphs (a) to (e) of subsection (1) above and, in exercising the power conferred on it under this subsection, the Court shall have special regard to the matters specified in paragraphs (a) to (d) of subsection (2) above.

(4B) Where a petition under subsection (4A) above relates to an endowment to which paragraph (e) of subsection (4) above applies and which relates only in part to an educational establishment not managed by the education authority referred to in that paragraph the Court of Session shall, before making an order under the said subsection (4A)—

(a) where the petition was presented by any body referred to in paragraph (a) of the said subsection (4A), cause the petition to be served on the education authority;

(b) where the petition was presented by an education authority under paragraph (b) of the said subsection (4A), cause the petition to be served on the governing body of the endowment to which the petition relates.

(4C) The governing body of an endowment in relation to which an education authority are empowered under this section to exercise the functions conferred by this section may, if the authority refuse to exercise their power under subsection (1) above in relation to the endowment on the ground that such exercise would prejudice the proper discharge by them of their functions under this Act apart from this section or their functions as local authority under any enactment, present a petition to the Court of Session, and subsections (4A), (4B) and (4D) of this section shall apply to such a petition.

(4D) Nothing in the Trustee Investments Act 1961 shall affect the power of the Court under subsection (4A) above to confer wider powers of investment than those conferred by that Act or affect the extent to which the power of the Court under that subsection is to be exercised.]¹⁷⁷

(5) [...] ¹⁷⁸

¹⁷⁵ S. 105(4)(e)(f) inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(e)

¹⁷⁶ S. 105(4) proviso substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(f), Sch. 8

¹⁷⁷ S. 105(4A)–(4D) inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(g)

(6) After 30th June 1976 any reference in a scheme made or approved under Part VI of the Act of 1946 or under Part VI of the Act of 1962 (reorganisation of educational endowments)—

- (a) to a certificated teacher shall be construed as a reference to a teacher registered under the Teaching Council (Scotland) Act 1965;
- (b) to a children's committee shall be construed as a reference to a social work committee established under section 2(1) of the Social Work (Scotland) Act 1968;
- (c) to the Scottish Counties of Cities Association or to the Association of County Councils in Scotland shall be construed as a reference to the Convention of Scottish Local Authorities.

[(7) In this section, “education authority” means, in relation to an educational endowment, the education authority for the area in which any educational establishment to which the endowment relates is situated or, where the endowment relates to no particular such establishment, the education authority for the area in which the beneficiaries of the endowment are required under its governing instrument to reside or with which they are so required to have some other connection.]¹⁷⁹

106.— Sale of land belonging to educational endowments.

(1) Where it appears to the [Court of Session]¹⁸⁰ to be desirable that a scheme under this Part of this Act should make provision for the sale of any land forming an endowment or part thereof and for the application of the proceeds of sale in accordance with the provisions of the scheme, but that such provision cannot be made by reason of the third proviso to section 2 of the School Sites Act 1841 (which provides that if any land granted in accordance with the provisions of that section ceases to be used for the purposes mentioned in that Act, the land shall revert to the grantor), or by reason of any condition of a similar nature relating to the land in any Act, deed or other instrument, [the Court may order]¹⁸¹ that the said proviso or condition shall not have effect in relation to the land:

Provided that no such [order shall be made]¹⁸² in relation to any land unless the [Court]¹⁸³ is satisfied either—

- (a) that the person to whom the land would revert in accordance with the said proviso or condition cannot after due inquiry be found; or
- (b) that, if that person can be found, he has consented to relinquish his rights in relation to the land under the said proviso or condition, and that, if he has consented so to do in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum out of the proceeds of the sale of the land.

(2) A scheme under this Part of this Act relating to any endowment which includes land in respect of which an order has been made under subsection (1) above may make provision for the payment

¹⁷⁸ Repealed with savings Education (Scotland) Act 1981 (c. 58), Sch. 9 and S.I. 1981/1557, art. 4

¹⁷⁹ S. 105(7) inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(i)

¹⁸⁰ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(a), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸¹ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(a), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸² Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(b)(i), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸³ Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(b)(ii), Sch. 8 and S.I. 1981/1557, art. 4

out of the proceeds of the sale of the land of any sum which is payable to any person in consideration of the relinquishment of his rights in relation to the land under the said proviso or condition.

(3) For the purposes of this section, any land conveyed under section 2 of the School Sites Act 1841, or held under a condition of the nature referred to in subsection (1) above, other than land forming the site or part of the site of an educational establishment under the management of an education authority or of any building ancillary to such an educational establishment, shall be deemed to be an educational endowment or part thereof notwithstanding anything in the third proviso to that section or in the said condition.

107.— Educational endowments applicable in part to non-educational purposes.

(1) Where an endowment is an educational endowment [to which the powers conferred by section 105 of this Act extend]¹⁸⁴ , and part of it is applicable or applied to other charitable purposes, the scheme shall be in conformity with the provisions of subsections (2) to (6) below (except so far as the governing body of such endowment assent to the scheme departing therefrom).

(2) The proportion of the endowment or annual income for the time being derived therefrom which is applicable to such other charitable purposes shall not be diverted by the scheme from such purposes unless in the opinion of the [education authority having power to exercise, in relation to that endowment, the functions conferred by section 105 of this Act—]¹⁸⁵

- (i) there are no persons who are entitled to benefit out of such part of the endowment; or
- [(ii) the purposes of such part of the endowment have become obsolete or useless.]¹⁸⁶

(3) The proportion of the endowment or annual income for the time being so applicable to such other charitable purposes shall be deemed to be the proportion which, in the opinion of the [education authority]¹⁸⁷ , is the proportion which has according to the average of [the five most recent years for which accounts are available]¹⁸⁸ been appropriated as regards capital or applied as regards income to such purposes, or if that proportion differs from the proportion which ought to have been so appropriated or applied according to the express directions of the instrument of foundation or the decree of any competent court or the statutes or regulations governing such endowment, the proportion applicable to such other charitable purposes shall be the proportion which ought, according to the express directions of such instrument, or such decree or such statutes or regulations, to have been appropriate or applied to such other charitable purposes.

(4) If the proportion applicable to other charitable purposes amounts to or exceeds one half of the whole of the endowment, the governing body of such endowment existing at the date of the scheme shall, so far as regards its non-educational purposes, remain unaltered by the scheme.

¹⁸⁴ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(a), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸⁵ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(b)(i), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸⁶ S. 107(2)(ii) substituted for s. 107(2)(ii)–(iv) with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(b)(ii), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸⁷ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(c)(i), Sch. 8 and S.I. 1981/1557, art. 4

¹⁸⁸ Words substituted with savings by Education (Scotland) Act 1981 (c. 58) Sch. 6 para. 6(c)(ii), Sch. 8 and S.I. 1981/1557, art. 4

(5) Where the governing body remains so unaltered, that body shall pay or apply for educational purposes such proportion as under the former provisions of this section is applicable to those purposes, or such less sum as may be fixed by the [education authority]¹⁸⁹ .

(6) When any portion of the endowment or the annual income of such portion has been accumulated and not applied to any purpose, the [education authority]¹⁹⁰ shall determine whether, and in what proportion, such portion or income is to be considered for the purposes of this section as having been appropriated or applied for educational purposes or for other charitable purposes.

(7) Subject to the foregoing provisions of this section, the [education authority]¹⁹¹ shall have power by any scheme to deal with any such endowment, and with the governing body thereof, in the same manner in all respects as if it were an endowment applied wholly to educational purposes.

108.— Non-educational endowments.

(1) Where the governing body of any endowment (not being an educational endowment) are of opinion that it is expedient that the endowment should be [reorganised]¹⁹² on any of the following grounds, that is to say:—

- (a) that there are no persons entitled to benefit out of the endowment; or
- (b) that the purposes of the endowment have failed altogether or have become obsolete or useless or prejudicial to the public welfare, or are otherwise sufficiently provided for, or are insignificant in comparison with the magnitude of the endowment, or are not substantially beneficial to the class of person for whom the endowment was originally intended; or
- (c) that it is impossible, owing to the inadequacy of the endowment or to the impracticable character of the founder's intentions, to carry these intentions into effect,

the governing body may [present a petition to the Court of Session to give effect to a draft scheme for the future government and management of the endowment and thereafter such endowment may be dealt with in all respects as if it were included amongst those specified in section 105(4) of this Act.]¹⁹³

108A. Courts' power to give effect to reorganisation scheme on petition of Lord Advocate.

Where the Lord Advocate is of opinion on any such ground as is specified in [section 108 of this Act]¹⁹⁴ that a scheme should be [made]¹⁹⁵ for the future government and management of any endowment [...] ¹⁹⁶ , he may present a petition to the Court of Session for such a scheme, and on any such petition the Court shall have power to [make]¹⁹⁷ a scheme for the future government

¹⁸⁹ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(d), Sch. 8 and S.I. 1981/1557, art. 4

¹⁹⁰ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(d), Sch. 8 and S.I. 1981/1557, art. 4

¹⁹¹ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(d), Sch. 8 and S.I. 1981/1557, art. 4

¹⁹² Word substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(a)(i), Sch. 8

¹⁹³ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(a)(ii), Sch. 8

¹⁹⁴ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(b)(i), Sch. 8

¹⁹⁵ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(b)(ii), Sch. 8

¹⁹⁶ Words repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

¹⁹⁷ Word substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(b)(ii), Sch. 8

and management of the endowment and for the application of the capital or income of the endowment to any purposes, as nearly as may be analogous to those contained in the governing instrument, as the Court shall think fit.

109.— Provisions regarding interests of individuals.

(1) Where at 3rd August 1928, any individual held a vested interest in any office, place, employment, pension, compensation allowance, bursary or emolument under or arising out of an endowment being dealt with in a scheme, [made under this Part of this Act, the education authority or, as the case may be, the Court]¹⁹⁸ shall in such scheme save or make due compensation for the said vested interest.

(2) Every interest, right, privilege or preference which any person may acquire or may have acquired since 3rd August 1928, in or relative to any endowment, or in the governing body thereof, or as member of any such governing body, or in or relative to any office, place, employment, pension, compensation allowance, bursary or emolument in the gift of any such governing body, shall be subject to the provisions of any scheme made under this Part of this Act.

110.— Provisions as to beneficiaries and teachers.

(1) In [preparing a draft]¹⁹⁹ scheme for any endowment, the [education authority]²⁰⁰ shall—
 (a) provide that in making a selection from amongst those eligible for the benefits of the endowment, due regard shall be paid to [educational need]²⁰¹, diligence, attainment and promise as ascertained in such manner as the [education authority]²⁰² shall determine, and
 (b) [unless in any particular case they consider it inexpedient to do so,]²⁰³ provide for extending to both sexes the benefit of the endowment.

(2) [Every scheme for an educational endowment]²⁰⁴ shall make provision for the application in the case of the dismissal of a registered teacher of the provisions of section 88 of this Act, with the substitution of the governing body for the education authority, and with any other necessary modifications.

(3) [...] ²⁰⁵

¹⁹⁸ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 8, Sch. 8 and S.I. 1981/1557, art. 4

¹⁹⁹ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(b)(i), Sch. 8 and S.I. 1981/1557, art. 4

²⁰⁰ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(a), Sch. 8 and S.I. 1981/1557, art. 4

²⁰¹ Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(b)(ii) and S.I. 1981/1557, art. 4

²⁰² Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(a), Sch. 8 and S.I. 1981/1557, art. 4

²⁰³ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(b)(iii), Sch. 8 and S.I. 1981/1557, art. 4

²⁰⁴ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(c), Sch. 8 and S.I. 1981/1557, art. 4

²⁰⁵ Repealed with savings Education (Scotland) Act 1981 (c. 58), Sch. 9 and S.I. 1981/1557, art. 4

(4) Any such scheme—

[(a) given effect to by the Court of Session; or

(b) prepared by an education authority with respect to a school other than one which has been transferred to them under section 16 or provided under section 17(2) of this Act,]²⁰⁶
 may contain provision for the removal of any religious test or qualification applicable to teachers.

111.— Accounts and audit of educational endowments.

(1) It shall be the duty of the governing body of every educational endowment administered under a scheme made by the Court of Session which provides for the audit of the accounts of that endowment, or administered under a provisional order made under the Act of 1878, or under a scheme made under the Act of 1882, the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962 or under this Part of this Act, other than any such endowment to which section 106(1) of the Local Government (Scotland) Act 1973, applies, to comply with the following provisions of this section.

(2) The governing body of every endowment to which this section applies shall keep proper accounts and other records in relation to the functioning of that body, and shall prepare in respect of each financial year a statement of account

[(3) The accounts of every endowment to which this section applies shall be audited each year by an auditor appointed by the governing body and no person shall be appointed auditor as aforesaid unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]²⁰⁷

(6) The governing body of each endowment to which this section applies shall make the audited accounts of that endowment available for public inspection at all reasonable times.

(7) Any provision in a governing instrument referred to in subsection (1) above prescribing the financial year of an endowment shall remain in operation notwithstanding the repeal by the Act of 1962 of section 11(2) of the Education (Scotland) Act 1956.

112.— Procedure in preparation of reorganisation schemes.

(1) Before making a scheme for the reorganisation of any educational endowment an education authority shall prepare a draft scheme and shall—

(a) send copies of the draft scheme to the governing body of the endowment to which it relates;

(b) give notice of the draft scheme in accordance with subsection (1A) below and cause it to be published in such other manner, if any, as they think fit; and

(c) permit public inspection of the draft scheme at such places and during such times as may be specified in the notice given by them under paragraph (b) above;

and the governing body of that endowment or any other person interested in the scheme may, not later than the expiry of the period of one month from the first notice of the draft scheme given by

²⁰⁶ Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(e) and S.I. 1981/1557, art. 4

²⁰⁷ words substituted by Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991/1997 Sch. 1 para. 36

the authority under paragraph (b) above, send in writing to the education authority objections to the draft scheme, or proposed amendments thereto, or both.

(1A) The notice to be given under subsection (1)(b) above—

- (a) shall be by way of advertisement in a newspaper circulating in the area in which each educational establishment to which the endowment relates is situated or, where the endowment relates to no particular educational establishment, the area in which the beneficiaries of the endowment are required under its governing instrument to reside or with which they are so required to have some other connection;
- (b) shall state that written objections to and proposed amendments of the scheme may be made in the manner specified in subsection (1) above; and
- (c) shall state the places and times at which the draft scheme may be examined under subsection (1)(c) above.

(1B) The requirement under subsection (1A) above to give notice of the draft scheme by way of newspaper advertisement shall not apply in relation to an educational endowment of less annual value than £500 if, by giving notice in another manner, the education authority incur less expense.

(2) If within the period referred to in subsection (1) above no objection and no proposed amendment to the draft scheme is received by them, the education authority may, by resolution of the authority authorising their proper officer to sign the scheme on their behalf, make the scheme in the terms of the draft scheme of which notice has been given under subsection (1) above and on doing so shall notify the date of commencement of the scheme to the governing body of the endowment.

(3) If within the said period objections or proposed amendments to the draft scheme are received by them, the education authority shall consider those objections and proposed amendments, shall, if any of them were sent by any of the persons mentioned in subsection (7) below, hold a public local inquiry into such of them as are not withdrawn and may thereafter, if they think fit, by resolution of the authority authorising their proper officer to sign the scheme on their behalf, make the scheme in such form as they think expedient.

(3A) [Section 56 of the Local Government (Scotland) Act 1973]²⁰⁸ shall not apply to the making of a scheme by an education authority under subsection (2) or (3) above.

(3B) The person appointed by the education authority to hold a public local inquiry under subsection (3) above shall not be a member or officer of the authority or a member or employee of the governing body of the endowment to which the scheme relates.

(3C) Without prejudice to their duty to hold a public local inquiry in the circumstances mentioned in subsection (3) above, an education authority may, if they consider it appropriate, hold a public local inquiry into any matter to which they may properly address themselves in the exercise of their functions under this Part of this Act.

(4) If an education authority make a scheme under subsection (3) above, they shall as soon as practicable thereafter—

- (a) give to the persons who made the objections or, as the case may be, proposed the amendments to the draft scheme notice in writing of their decision with respect to those objections or amendments, together with a statement in writing of the reasons for their decision;
- (b) send copies of the scheme to the governing body of the endowment to which it relates;

²⁰⁸ words substituted by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 13 para. 118(6)

(c) cause notice of the scheme to be given in accordance with subsection (1A)(a) and (c) above, containing a statement that, unless not later than the expiry of the period of one month from the first such notice a petition or appeal is presented to the Court of Session in accordance with the following provisions of this section, the scheme will come into operation on such date as the notice may specify, being not less than one month after the date of the first such notice.

(5) If no petition or appeal is presented to the Court of Session in accordance with the following provisions of this section, the scheme shall come into operation on the date specified in the notice under subsection (4)(c) above.

(5A) If a petition or appeal is presented to the Court of Session in accordance with the following provisions of this section and is refused by the Court, the Court shall make such order as it thinks fit as respects the commencement of the scheme.

(7) If within the period of one month from the date of the notice given under subsection (4) above a petition or appeal is presented to the Court of Session by any of the persons mentioned below, the scheme referred to in that notice shall thereby be suspended and the Court may amend the scheme and make it as so amended or may make a new scheme and for those purposes the Court—

- (a) shall have the like powers as are conferred by this Part of this Act on an education authority regarding schemes for the future government and management of educational endowments, and
- (b) may make such orders as it thinks fit as respects notification and commencement of the amended or new scheme.

The persons referred to above are—

- (i) the governing body of the endowment to which the scheme relates,
- (ii) the council of any district directly affected by the scheme,
- (iii) any education authority directly affected by the scheme,
- (iv) any ratepayers (not being less than twenty) of any district or place directly affected by the scheme,
- (v) any person having a vested interest in the said endowment or any part of it.

(8) If within the said period an appeal is presented to the Court of Session by—

- (a) the governing body of the endowment to which the scheme refers, or any other person directly affected by the scheme, on the ground that the scheme is not within the scope of, or is not made in conformity with, this Part of this Act, or
- (b) any person holding any office, place or employment, or receiving any pension, compensation, allowance, bursary or emolument, under or arising out of the endowment to which the scheme relates, on the ground that the scheme does not comply with the provisions of this Part of this Act as to saving or making due compensation for his vested interests,

and the Court of Session decides that the scheme is contrary to law on any of the grounds mentioned in paragraphs (a) and (b) above, the education authority shall rescind their decision to make the scheme but may, if they think fit, make an amended scheme in such form as they think expedient, and the provisions of subsections (4) to (7) above, and of this subsection, shall apply in relation to an amended scheme made under this subsection as they apply to a scheme made under subsection (3) above.

(9) Where an education authority cause a draft scheme or a scheme to be publicised under this section, they shall cause to be prefixed to that draft scheme or scheme a memorandum setting out—

- (a) the reasons why, in their view, the reorganisation of the endowment to which the draft scheme or scheme relates is necessary;
- (b) the respects in which the draft scheme or scheme involves any substantial alteration of the purposes to which the said endowment is applied or applicable; and
- (c) the reasons for any such alteration;

and for the purposes of the provisions of this section relating to publication, that memorandum shall be deemed to be part of the draft scheme or scheme, as the case may be.

113. [...] ²⁰⁹

114.— Effect of schemes.

(1) Any scheme made or [given effect to] ²¹⁰ under the foregoing provisions of this Part of this Act shall [...] ²¹¹ have effect in the same manner as if it had been enacted in this Act, and accordingly, from the [date of commencement of the scheme] ²¹², any enactment, letters patent, deed, instrument, trust or direction relating to the subject-matter of the scheme, so far as inconsistent with the provisions thereof, shall cease to have effect.

(2) [An instrument containing or giving effect to] ²¹³ a scheme, under this Part of this Act shall [, from the date of commencement of the scheme,] ²¹⁴ be conclusive evidence that that scheme is within the scope of, and was made in conformity with, this Act, and the validity of the scheme shall not [, from the said date,] ²¹⁵ be questioned in any legal proceedings whatever.

[(3) Each of the powers to make schemes conferred by this Part of this Act implies power exercisable in the same manner and subject to the same conditions or limitations to revoke, amend or re-enact any scheme made under that power.

115. [...] ²¹⁷

116. [...] ²¹⁸

²⁰⁹ Repealed with savings Education (Scotland) Act 1981 (c. 58), Sch. 9 and S.I. 1981/1557, art. 4

²¹⁰ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(i), Sch. 8 and S.I. 1981/1557, art. 4

²¹¹ Words repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(ii), Sch. 9 and S.I. 1981/1557, art. 4

²¹² Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(iii), Sch. 8 and S.I. 1981/1557, art. 4

²¹³ Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(b)(i), Sch. 8 and S.I. 1981/1557, art. 4

²¹⁴ Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(b)(ii) and S.I. 1981/1557, art. 4

²¹⁵ Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(b)(iii) and S.I. 1981/1557, art. 4

²¹⁶ S. 114(3) inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(c) and S.I. 1981/1557, art. 4

²¹⁷ Repealed with savings Education (Scotland) Act 1981 (c. 58), Sch. 9 and S.I. 1981/1557, art. 4

²¹⁸ Repealed with savings Education (Scotland) Act 1981 (c. 58), Sch. 9 and S.I. 1981/1557, art. 4

117. Cost of publishing scheme, etc.

The cost of [publicising]²¹⁹ and circulating any draft scheme, or scheme, or amended scheme, under this Part of this Act shall be paid out of the funds of the endowment or endowments to which the same relates: [...] ²²⁰

[118. Information by governing bodies.

Every governing body of an endowment to which section 105 of this Act extends shall give such information to the education authority having power under that section to prepare a scheme for the future government and management of the endowment as the authority may from time to time require.]²²¹

[118A.— Income plans under schemes.

(1) Any provision of a scheme referred to in subsection (2) below which (however expressed) empowers or requires the governing body of the endowment to which the scheme relates—

(a) to prepare and submit for the approval of the Secretary of State a plan, a revised plan or an amendment of a plan for the exercise by the governing body of their functions in relation to the application of the income of the endowment; or

(b) to give effect to such a plan or amendment as approved by the Secretary of State, shall be of no effect.

(2) This section applies to any scheme made or approved under the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962, or this Part of this Act.

] ²²²

119. Quorum of governing body.

The majority of members of a governing body who are present at a meeting of their body duly constituted shall have power to do anything that may be required to be done by a governing body for the purposes of this Part of this Act:

Provided that this power shall be in addition to and not in restraint of any power which any meeting of such governing body may have independently of this Part of this Act.

120. Provision for default of governing body.

(1) If the governing body of any educational endowment [to which section 105 of this Act does not extend]²²³ fail to give effect to the provisions of any provisional order or of any scheme made or approved under the Act of 1882, the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI

²¹⁹ Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 15(a), Sch. 8 and S.I. 1981/1557, art. 4

²²⁰ S. 117 proviso repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 15(b) and S.I. 1981/1557, art. 4

²²¹ S. 118 substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 16, Sch. 8 and S.I. 1981/1557, art. 4

²²² S. 118A inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 17

²²³ Words inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 18(b)

of the Act of 1962 or this Part of this Act [prior to the commencement of section 15 of the Education (Scotland) Act 1981]²²⁴, it shall be lawful for the Secretary of State, after such inquiry as he shall think proper, to send a requisition to such governing body, requiring them to give effect to the provisions of the provisional order or scheme, and the governing body shall comply with the said requisition within such time as may be specified in the requisition, and, if they fail, may be summarily compelled to do so by the Court of Session, on the application of the Lord Advocate.

[(2) In relation to any educational endowment to which section 105 of this Act extends, subsection (1) above shall apply—

(a) with the omission of the words “to which section 105 of this Act does not extend” and the words “prior to the commencement of section 15 of the Education (Scotland) Act 1981”; and

(b) with the substitution for the words “Secretary of State after such inquiry as he” of the words “education authority having power under section 105 of this Act to prepare a draft scheme for the future government and management of the endowment, after such inquiry as they”.

] ²²⁵

121. Judgment of Court of Session final.

In any proceeding before the Court of Session authorised by this Part of this Act—

(a) the judgment or deliverance of the Court [other than one giving effect under section 105(4) of this Act to a draft scheme for the future government and management of an endowment or the Carnegie Trust]²²⁶ shall be final and not subject to review; and

(b) the Court shall dispose of all questions of expenses, and may, if they think fit, direct the expenses or any part thereof [...] ²²⁷ to be paid out of the funds of the educational endowment to which the proceeding relates: [...] ²²⁸

122.— Interpretation of Part VI.

(1) In this Part of this Act, unless the context otherwise requires—

“the Act of 1878” means the Endowed Institutions (Scotland) Act 1878;

“Carnegie Trust” means the property vested in the Carnegie Trustees for the Universities of Scotland;

“charitable purposes” shall be construed in the same way as if it were contained in the Income Tax Acts;

“educational endowment” means any endowment which has been applied or is applicable in whole or in part, whether by the declared intention of the founder, or by the consent of

²²⁴ Words inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 18(c)

²²⁵ S. 120(2) inserted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 18(d)

²²⁶ Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(a) and S.I. 1981/1557, art. 4

²²⁷ Words repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(b) and S.I. 1981/1557, art. 4

²²⁸ Proviso repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(b) and S.I. 1981/1557, art. 4

the governing body, or in pursuance of any scheme approved under any Act or of any provisional order or by custom or otherwise, to educational purposes;

“educational purposes” includes—

- (i) payments towards the cost of professional training and apprenticeship fees,
- (ii) the provision of maintenance, clothing and other benefits, and
- (iii) the payment of grants for travel;

“endowment” means any property, heritable or moveable, dedicated to charitable purposes, but shall not, except with the consent of the governing body, include the funds, whether capital or revenue, of any incorporation or society contributed or paid by the members of such incorporation or society by way of entry moneys or other fixed or stated payments, nor burgess or guildry fines paid to any such incorporation or society, nor funds bequeathed or given to any such incorporation or society for the benefit solely of members or widows or families of members of such incorporation or society;

“governing body” means the managers, governors or trustees of any endowment or other person having the administration of the revenue thereof;

“governing instrument” means, with regard to any endowment, the scheme approved under any Act or any provisional order [or made under section 17 of the Local Government etc. (Scotland) Act 1994]²²⁹, in accordance with which the endowment is governed and managed or, where there is no such scheme or provisional order, the deed constituting the endowment;

“provisional order” means provisional order confirmed by Act of Parliament and provisional order made under the Act of 1878;

“theological endowment” means an endowment solely or mainly applicable or applied for the purposes of theological instruction or belonging to any theological institution;

“university endowment” means an endowment vested in, or administered by, or in the gift of any of the universities of Scotland or any of the colleges of such universities.

(2) An educational endowment shall be deemed to be a “new endowment” until the expiry of twenty years from the date when the deed creating the endowment comes into operation, so, however, that where part of an endowment has been given at one time and another part has been given at a later time and the two portions cannot in the opinion of the Court of Session be conveniently separated from each other, the date of the older part of the endowment shall be held to be the date of the endowment.

(3) Any reference in this Act to the endowment to which a scheme under this Part of this Act relates shall, in the case of a scheme relating to more than one endowment, be construed as a reference to every endowment, or (as the context may require) to any endowment, to which the scheme relates.

²²⁹ words added by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 13 para. 118(7)

PART VII
MISCELLANEOUS PROVISIONS

Employment

123.— Work experience in last year of compulsory schooling.

(1) Subject to subsection (2) below, the enactments relating to the prohibition or regulation of the employment of children shall not apply to the employment of a child to whom this subsection applies where the employment is in pursuance of arrangements made or approved by the education authority [...] ²³⁰ with a view to providing him with work experience as part of his education.

(2) Subsection (1) above shall not be taken to permit the employment of any person in any way contrary to—

- (a) an enactment which in terms applies to persons of less than, or not over, a specified age expressed as a number of years; or
- (b) section 1(2) of the Employment of Women, Young Persons and Children Act 1920 or section 55(1) of the Merchant Shipping Act 1995 (prohibition of employment of children in ships).

(3) No arrangements shall be made under subsection (1) above for a child to be employed in any way which would be contrary to an enactment prohibiting or regulating the employment of young persons if he were a young person (within the meaning of that enactment) and not a child; and where a child is employed in pursuance of arrangements so made, then so much of any enactment as regulates the employment of young persons (whether by excluding them from any description of work, or prescribing the conditions under which they may be permitted to do it, or otherwise howsoever) and would apply in relation to him if he were of an age to be treated as a young person for the purposes of that enactment shall apply in relation to him, in and in respect of the employment arranged for him, in all respects as if he were of an age to be so treated.

(4) Subsection (1) above applies to a child undergoing compulsory education during the period between 1st May in the calendar year before the calendar year in which he attains the upper limit of school age and the end of the latter year.

124.— [...] ²³¹

125. Adaptation of enactments relating to employment of children and young persons.

For the purpose of any enactment relating to the prohibition or regulation of the employment of children or young persons, any person who is not for the purposes of this Act over school age shall be deemed to be a child within the meaning of that enactment.

²³⁰ words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

²³¹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

*Children and young persons in accommodation***125A. Welfare of children and young persons in accommodation provided for purposes of school attendance.**

Where, for the purposes of his being in attendance at a school, a child or young person is provided with residential accommodation, in a place in or outwith that school, by—

- (a) an education authority or the managers of a grant-aided or independent school; or
- (b) by any other person in pursuance of arrangements made by any such authority or managers,

the authority [...] ²³² or managers in question shall have the duty to safeguard and promote the welfare of the child or young person while he is so accommodated; and the powers of inspection exercisable by virtue of section 66(1) of this Act shall include the power to inspect the place to determine whether his welfare is adequately safeguarded and promoted there.

Careers services of education authorities

126.— [...] ²³³

127.— [...] ²³⁴

128.— [...] ²³⁵

Examinations Board

129.— [...] ²³⁶

*Savings and exceptions***130. Saving as to persons in the service of the Crown.**

No power or duty conferred or imposed by this Act on the Secretary of State, on education authorities, on parents or on young persons shall be construed as relating to any child or young person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State certifies that, by reason of the arrangements made for the education of children and young persons employed therein, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary.

²³² words repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) Sch. 3 para. 1

²³³ repealed by Trade Union Reform and Employment Rights Act 1993 c. 19 Sch. 10 para. 1

²³⁴ repealed by Trade Union Reform and Employment Rights Act 1993 c. 19 Sch. 10 para. 1

²³⁵ repealed by Trade Union Reform and Employment Rights Act 1993 c. 19 Sch. 10 para. 1

²³⁶ repealed by Education (Scotland) Act 1996 c. 43 Sch. 6 para. 1

131.— Saving as to persons suffering from mental disorder and persons detained by order.

(1) Unless the context otherwise requires, no power or duty conferred or imposed by this Act on the Secretary of State, on education authorities or on parents or young persons shall be construed as relating to any person to whom this section applies:

Provided that nothing in this section shall prevent an education authority from providing or securing the provision of education for any such person if he is in their opinion capable of deriving benefit therefrom.

(2) The persons to whom this section applies are—

- (a) any person who is detained in pursuance of an order made by any court or of an order of recall made by the Secretary of State;
- (b) any child subject to a supervision requirement requiring him to reside in a residential establishment where education is provided.

[131A Consent of child to medical procedures

(1) Nothing in this Act shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (c.50) (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment); and without prejudice to that generality, where under or by virtue of this Act a child is required to submit, or to be submitted, to any medical or dental examination, inspection or treatment but the child has the capacity mentioned in the said section 2(4), the examination, inspection or treatment shall only be carried out if the child consents.

(2) In subsection (1) above, without prejudice to the generality of the expression in question, “medical examination” includes an examination under section 58 of this Act and “medical treatment” includes cleansing under that section.

] ²³⁷

*General***132.— Amendment of enactments.**

(1) [...] ²³⁸

(2) Any reference in an enactment passed before 2nd July 1945 to a school in receipt of a parliamentary grant shall, unless the context otherwise requires, be construed as a reference to a school other than an independent school.

133.— Regulations, etc.

(1) Any power conferred by this Act on the Secretary of State to make regulations shall be exercisable by statutory instrument.

²³⁷ added by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 57

²³⁸ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

(2) Subject to subsections (2A) and (2B) below, Any statutory instrument containing regulations made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[(2A) Subsection (2) above shall not apply to the first regulations to be made under section 73(f) of this Act with respect to loans; and no such regulations shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(2B) Subsection (2) above shall not apply to any regulations under section 73(f) of this Act with respect to loans, other than the regulations mentioned in subsection (2A) above, where a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.]²³⁹

(3) Any direction given by the Secretary of State or an education authority under the provisions of this Act may be varied or revoked by a further direction given by the Secretary of State or that authority, as the case may be:

Provided that where the power to give any such direction is exercisable only upon the application or with the consent of any person, or after consultation with or intimation to any person or is otherwise subject to any conditions, no direction given under such power shall be varied or revoked except upon the like application, with the like consent, after the like consultation or intimation or subject to the like conditions, as the case may be.

(4) If it appears to the Secretary of State, on an application in that behalf made to him—
 (a) in relation to regulations made under section 2 or section 19(1) of this Act, by an education authority;
 (b) in relation to regulations made under section 74(1) of this Act, by any education authority or other person to whom any grant is payable under this Act;

that it is unreasonable that any provision of those regulations should apply in relation to that authority or person or to such educational establishment under the management of that authority or person as may be specified in the application, or should so apply without modification, he may, subject to subsection (5) below, direct that the said provision shall not apply in relation to that authority or person or that educational establishment or, as the case may be, shall so apply subject to such modification as may be specified in the direction.

(5) A direction under subsection (4) above—
 (a) may be given either unconditionally or subject to such conditions as may be specified in the direction;
 (b) shall not be given in respect of any provision of any regulations which is described in those regulations as not being subject to the giving of a direction under this section;
 (c) may be varied or revoked by a subsequent direction given by the Secretary of State either of his own accord or on the application of the education authority or other person on whose application the original direction was given.

²³⁹ added by Teaching and Higher Education Act 1998 c. 30 Sch. 3 para. 4(b)

134.— Notices.

(1) Subject to the provisions of this section, any notice required or authorised by this Act to be served or given to any person may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it to him by post.

(2) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service by post) in its application to this section, the proper address of a person on or to whom any such notice as aforesaid is to be served or given shall, in the case of an education authority, be the address of any office of that authority and, in any other case, be the last known address of the person on or to whom the notice is to be served or given.

(3) Any notice which, in accordance with the provisions of subsection (1) above, is left for a person at his proper address shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

135.— Interpretation.

(1) In this Act, unless the context otherwise requires,—

“the Act of 1882” means the Educational Endowments (Scotland) Act 1882;

“the Act of 1918” means the Education (Scotland) Act 1918;

“the Acts of 1928 to 1935” means the Educational Endowments (Scotland) Acts 1928 to 1935;

“the Act of 1937” means the Children and Young Persons (Scotland) Act 1937;

“the Act of 1946” means the Education (Scotland) Act 1946;

“the Act of 1962” means the Education (Scotland) Act 1962;

“attendance order” has the meaning assigned to it by section 38 of this Act;

“central institution” means an educational establishment for the provision of further education recognised as a central institution by regulations made by the Secretary of State;

“child” means a person who is not over school age;

“clothing” includes boots and other footwear;

“dental examination” means examination by a registered dentist, so however that in conducting an examination of any such class as may be prescribed, such dentist may be assisted by other persons having such special qualifications or experience as may be prescribed;

“dental inspection” and “dental supervision” mean, respectively, inspection and supervision by a registered dentist;

“dental treatment” includes prevention and treatment of dental diseases by or (so far as permitted by law) under the direction of any registered dentist, and the supply of appliances on the recommendation of such dentist, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at a school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil's home;

“education authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and “area” in relation to an education authority shall be construed accordingly;

“educational establishment”—

- (i) means a school and any institution for the provision of any form of further education and the premises of such school, or institution, and

(ii) without prejudice to the foregoing generality, includes a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992, a central institution, a hostel used mainly by pupils attending such schools or institutions, and a residential institution conducted under a scheme under the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962 or Part VI of this Act, but

(iii) does not include a university, a theological college, a hostel or other residence used exclusively by students attending a university or a theological college, or a club or other centre conducted by a voluntary society or body for the purpose of providing facilities for social, cultural or recreative activities or for physical education or training unless the society or body are in receipt of a grant from the Secretary of State or of a contribution from an education authority or have obtained the consent of the Secretary of State to the club or centre being treated in all respects as an educational establishment;

“employment” includes employment in any labour exercised by way of trade or for purposes of gain whether the gain be to the child or to the young person or to any other person, and a person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour; and “employ” shall be construed accordingly;

“employer” includes a parent who employs his children;

“enactment” includes an order, regulation, rule or other instrument having effect by virtue of an Act;

“enforcement direction” means a direction under section 66D(1) of this Act;

“functions” includes powers and duties;

“further education” includes the forms of instruction, occupation and teaching described in section 1(5)(b) of this Act;

“grant-aided school” means a school in respect of which grants are made by the Secretary of State to the managers of the school other than (a) grants in aid of the employers' contributions provided for in Teachers (Superannuation) Regulations, and (b) sums paid under a scheme under section 75A of this Act, or by virtue of section 75B of this Act, but does not include a public school or a technology academy (within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989);

“Health Board” means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

“independent school” means a school at which full-time education is provided for five or more pupils of school age (whether or not such education is also provided for pupils under or over that age), not being a public school or a grant-aided school;

“Her Majesty's inspectors” means the inspectors of schools appointed by Her Majesty;

“managers”, in relation to an educational establishment, means the governing body, trustees, or other person or body of persons responsible for the management of the establishment but does not include an education authority;

“medical examination” means examination by a registered medical practitioner:

Provided that in conducting an examination of any such class as may be prescribed, such practitioner may be assisted by other persons having such special qualifications or experience as may be prescribed;

“medical inspection” and “medical supervision” mean, respectively, inspection and supervision by or under the directions of a registered medical practitioner;

“medical treatment” includes prevention and treatment of diseases by any registered medical practitioner, and the supply of appliances on the recommendation of such practitioner, but does not, in relation to any pupil other than a pupil receiving school education elsewhere than at school under arrangements made by an education authority under section 14 of this Act, include treatment in that pupil's home;

“nursery school” and “nursery class” have the respective meanings assigned to them by section 1(5)(a)(i) of this Act;

“officers” includes servants;

“parent” includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of a child or young person;

“placing request” has the meaning assigned to it by section 28A(1) of this Act;

[“preliminary notice” means a notice under section 66C(1) of this Act;]²⁴⁰

“premises” in relation to any educational establishment includes the site of such establishment, any building in which pupils attending such establishments are boarded whether managed by the managers of such establishment or by any other person by arrangement with such managers, and any playing fields used in connection with such establishment whether contiguous to or detached therefrom;

“prescribed” means prescribed by the Secretary of State;

“proprietor” in relation to an independent school means the managers of such school, and for the purposes of the provisions of this Act relating to applications for the registration of independent schools includes any person or body of persons proposing to be the managers;

“provisionally registered school” means an independent school registered in the register of independent schools whereof the registration is provisional only;

“psychological examination” means an examination by an educational or clinical psychologist appointed by an education authority for the purpose;

“public school” means any school under the management of an education authority;

“pupil”, where used without qualification, means a person of any age for whom education is or is required to be provided under this Act; and a pupil shall be deemed to be attending or in attendance at a school if he is shown by the register of admission and withdrawal kept at the school in accordance with regulations made under this Act, or by any other register approved by the Secretary of State and kept for a similar purpose, to have been admitted to, but not to have been withdrawn from, or to have been readmitted to, and not thereafter to have been withdrawn from, the school; and similar expressions, whether relating to schools or to other educational establishments, shall be similarly interpreted;

“Record”, and “recorded” and other cognate expressions have the same respective meanings as in section 60 of this Act;

“registered school” means an independent school the registration of which in the register of independent schools is final;

“registered teacher” means a teacher registered under the Teaching Council (Scotland) Act 1965;

²⁴⁰ definition inserted by School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 asp 12 (Scottish Act) Sch. 1 para. 1(8)(c)

“residential establishment” has the meaning given by paragraph (a) of the definition of that expression in section 93(1) of the Children (Scotland) Act 1995;

“school” means an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school; and the expression “school” where used without qualification includes any such school or all such schools as the context may require;

“school age” shall be construed in accordance with section 31 of this Act;

“school board” has the meaning assigned to it by section 1 of the School Boards (Scotland) Act 1988

“school education” has the meaning assigned to it by section 1(5)(a) of this Act;

“special educational needs” has the meaning assigned to it by section 1(5)(d) of this Act;

“special school” means a school making provision wholly or mainly for recorded children, and includes special classes forming part of primary schools or secondary schools and child guidance clinics;

“specified school” has the meaning assigned to it by section 28A(1) and (2) of this Act;

“supervision requirement” has the meaning given by section 70(1) of the said Act of 1995;

“teachers' superannuation regulations” means regulations made under section 9 of the Superannuation Act 1972;

“young person” means a person over school age who has not attained the age of eighteen years.

(2) Any reference in any enactment or other instrument (including this Act and, unless the contrary intention appears, any enactment or other instrument passed or made after the commencement of this Act) to—

- (a) primary education shall be construed as a reference to school education of a kind
 - (i) which is appropriate in the ordinary case to the requirements of pupils who have not attained the age of twelve years; and
 - (ii) which is, in the case of a pupil with special educational needs, within the provision made for the purpose of meeting his special educational needs until he is transferred to the stage of secondary education;
- (b) secondary education shall be construed as a reference to school education of a kind
 - (i) which is appropriate in the ordinary case to the requirements of pupils who have attained that age; and
 - (ii) which is, in the case of a pupil with special educational needs, within the provision made for the purpose of meeting his special educational needs until he ceases to be of school age or to receive school education, whichever is the later.

and any reference in any such enactment or other instrument as aforesaid to primary or secondary schools or departments or classes shall be construed accordingly.

136.— Transitional and savings provisions, amendments and repeals.

(1) The transitional and savings provisions set out in Schedule 3 to this Act shall have effect.

(2) [...] ²⁴¹

(3) [...] ²⁴²

²⁴¹ Provides for amendments of enactments specified in Sch. 4

137.— Short title, commencement and extent.

- (1) This Act may be cited as the Education (Scotland) Act 1980.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on the expiry of the period of one month beginning with the date on which it is passed.
- (3) The provisions of this Act set out in Schedule 6 shall, to the extent there specified, come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (4) Subsections (5) to (7) of section 23 of this Act shall come into force on such date as the Secretary of State may by order appoint.
- (5) Any order under subsection (4) above may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or of any other provision mentioned in that subsection then in force, as appear to him to be necessary or expedient for the purpose or in consequence of the operation of any such provision before the coming into force of any other such provision.
- (6) This Act extends to Scotland only.

[SCHEDULE A1**APPEAL COMMITTEES]²⁴³****[1.**

An appeal committee set up under section 28D(1) of this Act shall be constituted in accordance with this Schedule.]²⁴⁴

[2.

An appeal committee shall consist of 3, 5 or 7 members nominated by the authority from among persons appointed by the authority under this Schedule; and sufficient persons may be appointed to enable 2 or more appeal committees to sit at the same time.]²⁴⁵

3.

The persons appointed shall comprise—

- (a) members of the authority or of any committee appointed by the authority whose purposes include advising the authority on any matter relating to the discharge of any of their functions as education authority or discharging any of those functions on behalf of such authority; and
- (b) persons who are not members of the authority or of [any such committee]²⁴⁶ but are—
 - (i) parents of children of school age;
 - (ii) persons who in the opinion of the authority have experience in education; or

²⁴² Repeals enactments specified in Sch. 5

²⁴³ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁴⁴ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁴⁵ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁴⁶ words substituted by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 13 para. 118(10)(a)(ii)

(iii) persons who in the opinion of the authority are acquainted with the educational conditions in the area of the authority;

but shall not include any person employed by the authority as director of education or in an administrative or advisory capacity as respects the discharge of their education functions..

4.

The members of an appeal committee who are members of the authority or of [any committee such as is mentioned in paragraph 3 above]²⁴⁷ shall not outnumber the other members of the appeal committee by more than one.

5.

A person who is a member of [any committee such as is mentioned in paragraph 3 above]²⁴⁸ shall not be chairman of an appeal committee.

[6.

A person shall not be a member of an appeal committee for the consideration of a reference of a decision if he was among those who made the decision or took part in or was present at discussions as to whether the decision should be made.]²⁴⁹

[7.

A person who is—

- (a) a teacher at a relevant school (within the meaning of paragraph 8 below);
- (b) a pupil at such a school;
- (c) a parent of a pupil at such a school; or
- (d) a member of a [School Board]²⁵⁰ having functions in relation to such a school

shall not be a member of an appeal committee for consideration of a reference involving a question whether a child is to be placed in the specified school or excluded from the relevant school.]²⁵¹

[8.

For the purposes of paragraph 7 above, “relevant school” means in relation to a reference to the appeal committee—

- (a) the school which the child to whom the placing request relates attends;
- (b) the specified school;
- (c) the school which the education authority propose that the child to whom the placing request relates should attend;
- (d) a school from which pupils are normally transferred to the school referred to in sub-paragraph (b) or (c) above; or
- (e) the school from which the pupil has been excluded.

] ²⁵²

²⁴⁷ words substituted by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 13 para. 118(10)(b)

²⁴⁸ words substituted by Local Government etc. (Scotland) Act 1994 c. 39 Sch. 13 para. 118(10)(c)

²⁴⁹ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁵⁰ Words substituted by School Boards (Scotland) Act 1988 (c.4), ss. 23, 24(2), Sch. 4 para. 7

²⁵¹ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁵² Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

[9.

An appeal committee constituted in accordance with this Schedule shall be included in the bodies to which sections 45(4) and 46 of the Local Government (Scotland) Act 1973 (allowances) apply.]²⁵³

[SCHEDULE A2**APPLICATION OF CERTAIN PROVISIONS OF THIS ACT TO RECORDED CHILDREN AND YOUNG PERSONS]**²⁵⁴**[1.**

Sections 28B and 28D of this Act and Schedule A1 to this Act shall apply in relation to a recorded child.]²⁵⁵

[2.

Sections 28C, 28E(1) to (6) and 28F(1) and (5) to (7) of this Act shall not apply in relation to a recorded child (corresponding provision being made in sections 63 to 65 of this Act).]²⁵⁶

[3.

In relation to a recorded child, for section 28A of this Act there shall be substituted the following section—

“28A.—

(1) Where the parent of a recorded child makes a written request to an education authority to place his child in the school specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2) and (3) below, to place the child accordingly; and where the parent of a recorded child makes a written request to the education authority for the area to which the child belongs (in accordance with section 23(3) of this Act) to place his child in the school specified in the request, not being a public school but being

[(a) a special school the managers of which are willing to admit the child,]²⁵⁷

[(b) a school in England and Wales or in Northern Ireland, the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) with pronounced, specific or complex special educational needs;;]²⁵⁸

it shall be the duty of the authority, subject to subsections (2) and (3) below, to meet the fees and other necessary costs of the child's attendance at the specified school. Such a request so made is referred to in this Act as a “placing request” and the school specified in it is referred to in this Act as the “specified school”.

²⁵³ Sch. A1 inserted by Education (Scotland) Act 1981 (c. 58), s. 1(2), Sch. 1

²⁵⁴ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁵⁵ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁵⁶ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁵⁷ Para. (a) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

²⁵⁸ Para. (b) inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

(2) Where a placing request relates to two or more schools being schools under the management of the education authority to whom it is made or [schools mentioned in paragraph (a) or (b) of subsection (1) above]²⁵⁹ the managers of which are willing to admit the child in respect of whom the request is made, the duty imposed by [that subsection]²⁶⁰ shall apply in relation to the first mentioned such school, which shall be treated for the purposes of this Act as the specified school.

(3) The duty imposed by subsection (1) above does not apply—

- (a) if placing the child in the specified school would—
 - (i) make it necessary for the authority to take an additional teacher into employment;
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
 - (iii) be seriously detrimental to the continuity of the child's education; or
 - (iv) be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there;
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
- (c) if the education authority have already required the child to discontinue his attendance at the specified school;
- (d) if, where the specified school is a [school mentioned in paragraph (a) or (b) of subsection (1) above;]²⁶¹ the child does not have special educational needs requiring the education or special facilities normally provided at that school;
- (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school; or
- (f) if—
 - (i) the specified school is not a public school;
 - [(ii) the authority are able to make provision for the special educational needs of the child in a school under their management;
 - (iia) it is not reasonable, having regard both to the respective suitability and to the respective costs (including necessary incidental expenses) of the provisions for the special educational needs of the child in the specified school and in the school under the authority's management, to place the child in the specified school; and]²⁶²
 - (iii) the authority have offered to place the child in the school referred to in sub-paragraph (ii) above,

but an education authority may place a child in the specified school notwithstanding paragraphs (a) [to (e)]²⁶³ above.

²⁵⁹ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

²⁶⁰ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

²⁶¹ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

²⁶² Paras. (ii) and (iia) substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

²⁶³ Words substituted by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 71(1)

(4) An education authority shall inform a parent in writing of their decision on his placing request and, where they decide to refuse it, shall give him written reasons for their decision and inform him of his right to refer it under section 63 of this Act to an appeal committee.

(5) On complying with a placing request an education authority shall modify accordingly the nomination in the child's Record of a school to be attended by him.

(6) The Secretary of State may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with subsection (4) above within such period or before such date as may be prescribed in the regulations and different periods or dates may be so prescribed for different purposes.”

] ²⁶⁴

[4.—

(1) Sections 28A, 28B and 28D of this Act and Schedule A1 to this Act shall, subject to the provisions of this paragraph, apply in relation to a recorded young person as they apply in relation to a recorded child.

(2) For the purposes of the application of those provisions to recorded young persons, references therein to the parent of a recorded child as well as references to the child himself shall, subject to sub-paragraph (3) below, be construed as references to the recorded young person.

(3) Sub-paragraph (2) above does not apply in a case where, for the purposes of section 61(7) of this Act, the education authority were satisfied that the young person was not capable of expressing his views for the purposes of that section.] ²⁶⁵

[5.

Sections 28C, 28E(1) to (6) and 28F(1) and (5) to (7) of this Act shall not apply in relation to a recorded young person (corresponding provision being made in sections 63 to 65 of this Act).] ²⁶⁶

[6.

Section 28G of this Act shall not apply in relation to a recorded young person (corresponding provision being made in paragraph 4 of this Schedule).] ²⁶⁷

SCHEDULE 1

LOCAL INQUIRIES

Section 67

1.

The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.

²⁶⁴ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁶⁵ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁶⁶ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

²⁶⁷ Sch. A2 inserted by Education (Scotland) Act 1981 (c. 58), s. 4(3), Sch. 3, Sch. 8

2.

The person appointed shall notify the bodies and persons appearing to him to be interested of the time when and the place where the inquiry is to be held.

3.

The person appointed may by notice in writing require any person—

- (a) to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry; or
- (b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question at the inquiry as the person appointed may think fit and as the person so required is able to furnish:

Provided that—

- (i) no person shall be required in obedience to such a notice to attend at any place which is more than ten miles from the place where he resides unless the necessary expenses are paid or tendered to him; and*
- (ii) nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.*

4.

The person appointed to hold the inquiry may administer oaths and examine witnesses on oath and may accept, in lieu of evidence on oath by any person, a statement in writing by that person supported by a declaration of the truth thereof in such form as the person appointed may require.

5.

The inquiry shall unless the Secretary of State otherwise directs be held in public.

6.

Any person who refuses or wilfully neglects to attend in obedience to a notice issued under paragraph 3 above, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required to produce by any such notice, or who refuses or wilfully neglects to comply with any requirement of the person appointed to hold the inquiry under paragraph 3 above, shall be liable on summary conviction to a fine not exceeding £20 or to imprisonment for a period not exceeding three months.

7.

The Secretary of State may make orders as to the expenses incurred by the parties appearing at the inquiry and as to the parties by whom such expenses shall be paid.

8.

Any order by the Secretary of State under paragraph 7 above requiring any party to pay expenses may be enforced in like manner as [an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]²⁶⁸

²⁶⁸ Words substituted by Debtors (Scotland) Act 1987 (c.1), s. 108(1), Sch. 6 para. 22

[SCHEDULE 1A**REVOCATION OF DETERMINATIONS FOR THE PURPOSES OF THE ASSISTED PLACES SCHEME]²⁶⁹**

1. [...] ²⁷⁰
2. [...] ²⁷¹
3. [...] ²⁷²
- 4.— [...] ²⁷³
5. [...] ²⁷⁴
6. [...] ²⁷⁵

[SCHEDULE 1B**REMUNERATION OF TEACHING STAFF: THE COMMITTEE]²⁷⁶***Procedure*

1. [...] ²⁷⁷
2. [...] ²⁷⁸

General powers

3. [...] ²⁷⁹
4. [...] ²⁸⁰

²⁶⁹ Sch. 1A inserted by Education (Scotland) Act 1981 (c. 58), s. 5(3), Sch. 4

²⁷⁰ repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷¹ repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷² repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷³ repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷⁴ repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷⁵ repealed by Education (Schools) Act 1997 c. 59 Sch. 1(II) para. 1

²⁷⁶ Sch. 1B inserted by Education (Scotland) Act 1981 (c. 58), s. 14(2), Sch. 5

²⁷⁷ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

²⁷⁸ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

²⁷⁹ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

²⁸⁰ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

*Recovery of expenditure*5. [...] ²⁸¹6. [...] ²⁸²**SCHEDULE 2****CONSTITUTION OF INDEPENDENT SCHOOLS TRIBUNALS****Section 100(1)**1. [...] ²⁸³

2.

No officer of any government department and no person employed by an education authority in any capacity other than that of a teacher shall be qualified to be appointed to [an Independent Schools Tribunal by the Secretary of State under paragraph 4 below,] ²⁸⁴ and no person shall be so qualified unless he has had such experience in teaching or in the conduct, management or administration of schools as the Secretary of State considers suitable.

3. [...] ²⁸⁵

4.

Where any complaint is required to be determined by an Independent Schools Tribunal, the tribunal shall consist of the sheriff principal (or, if he is unable to act, a person qualified for appointment as sheriff principal nominated by the Lord President of the Court of Session), who shall be chairman, and two other members appointed [...] ²⁸⁶ by the Secretary of State, [...] ²⁸⁷

5.

In this Schedule “sheriff principal” means the sheriff principal of the sheriffdom in which the school to which the complaint relates is situated or, in the case of an appeal against a refusal to remove a disqualification, the sheriff principal of the sheriffdom where the appellant resides.

²⁸¹ repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

²⁸² repealed by Standards in Scotland's Schools etc. (Scotland) Act 2000 asp 6 (Scottish Act) s. 55(1)

²⁸³ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

²⁸⁴ Words substituted by Education (Scotland) Act 1981 (c. 58), s. 11(b), Sch. 8

²⁸⁵ Repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

²⁸⁶ Words repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

²⁸⁷ Words repealed by Education (Scotland) Act 1981 (c. 58), Sch. 9

SCHEDULE 3
TRANSITIONAL AND SAVINGS PROVISIONS

Section 136(1)

General

1.

Where any document refers expressly or by implication to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.

2.

Any reference in any provision of this Act (whether expressed or implied) to a thing done or falling to be done under a provision of this Act shall, in so far as the context permits, be construed as including, in relation to times, circumstances and purposes in relation to which a corresponding provision of an enactment repealed by this Act had effect, a reference to a thing done or falling to be done under that corresponding provision.

Children Requiring Special Education

3.

Any reference in any enactment or other instrument passed or made before the commencement of the Education (Scotland) Act 1969 to special educational treatment shall be construed as a reference to [provision for recorded children]²⁸⁸ .

4.

Any decision, made under the Act of 1962 before the commencement of the said Act of 1969 by an education authority to the effect that a child requires special educational treatment, which is in force at such commencement, shall continue in force and be deemed to be a decision under section 62 of this Act (duly notified to the parents of a child under [subsection (2) of that section) to record the child.]²⁸⁹

Savings

5.

The repeal by the said Act of 1969 of sections 84 and 87 of the Act of 1962 shall not affect the payment after the commencement of this Act of any pension, gratuity or retiring allowance which was payable by virtue of paragraph 11 of Schedule 4 to the said Act of 1969 immediately before the commencement of this Act.

²⁸⁸ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. II para 9, Sch. 8

²⁸⁹ Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 2 Pt. II para. 10, Sch. 8

6.

The repeal by the said Act of 1969 of section 94 of the Act of 1962 shall not affect the application of that section to any part of the annual revenue of any scheme, being a part to which that section applied immediately before the commencement of the said Act of 1969.

SCHEDULE 41. [...] ²⁹⁰2. [...] ²⁹¹3. [...] ²⁹²4. [...] ²⁹³5. [...] ²⁹⁴6. [...] ²⁹⁵7. [...] ²⁹⁶8. [...] ²⁹⁷**9**(a) [...] ²⁹⁸(b) [...] ²⁹⁹10. [...] ³⁰⁰11. [...] ³⁰¹12. [...] ³⁰²13. [...] ³⁰³

²⁹⁰ Repealed by Foster Children (Scotland) Act 1984 (c.56), s. 22(3), Sch. 3

²⁹¹ Repealed by Mental Health (Scotland) Act 1984 (c.36), s. 127(2), Sch.5

²⁹² Amends Factories Act 1961 (c. 34), s. 176(1)

²⁹³ Amends Public Expenditure and Receipts Act 1968 (c. 14), Sch. 3 para. 1(b)

²⁹⁴ Amends Social Work (Scotland) Act 1968 (c. 49), s. 94(1)

²⁹⁵ Amends Sex Discrimination Act 1975 (c. 65), s. 22 Table para. 7

²⁹⁶ Amends Sex Discrimination Act 1975 (c. 65), s. 23(2)

²⁹⁷ Amends Sex Discrimination Act 1975 (c. 65), s. 25(3)(5)

²⁹⁸ Amends Sex Discrimination Act 1975 (c. 65), s. 79

²⁹⁹ Amends Sex Discrimination Act 1975 (c. 65), s. 79(1)(b)(4)

³⁰⁰ Amends Sex Discrimination Act 1975 (c. 65), s. 81(3)(b)

³⁰¹ Amends Sex Discrimination Act 1975 (c. 65), s. 82(1)

³⁰² Amends Race Relations Act 1976 (c. 74), s. 17 Table para. 7

14. [...] ³⁰⁴

15. [...] ³⁰⁵

16. [...] ³⁰⁶

17. [...] ³⁰⁷

18. [...] ³⁰⁸

19. [...] ³⁰⁹

SCHEDULE 5 [...] ³¹⁰

SCHEDULE 6

POSTPONEMENT OF THE COMMENCEMENT OF CERTAIN PROVISIONS

Section 137(3)

1. [...] ³¹¹

2. [...] ³¹²

3. [...] ³¹³

4. [...] ³¹⁴

5. [...] ³¹⁵

6. [...] ³¹⁶

7. [...] ³¹⁷

³⁰³ Amends Race Relations Act 1976 (c. 74), s. 18(2)

³⁰⁴ Amends Race Relations Act 1976 (c. 74), s.19(3)(5); repealed by 2000 c.34 Sch.3 on April 2, 2001

³⁰⁵ Amends Race Relations Act 1976 (c. 74), s. 78(1)

³⁰⁶ Amends National Health Service (Scotland) Act 1978 (c. 29),s. 15(1)(f)

³⁰⁷ Amends National Health Service (Scotland) Act 1978 (c. 29), s. 39(5)

³⁰⁸ Amends National Health Service (Scotland) Act 1978 (c. 29), s. 108(1)

³⁰⁹ Amends National Health Service (Scotland) Act 1978 (c. 29), Sch. 15 para. 10(b)

³¹⁰ Specifies enactments repealed by s. 136(3)

³¹¹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹² Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹³ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹⁴ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹⁵ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹⁶ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

8. [...] ³¹⁸

9. [...] ³¹⁹

10. [...] ³²⁰

11. [...] ³²¹

12. [...] ³²²

13. [...] ³²³

14. [...] ³²⁴

15. [...] ³²⁵

[16.

Section 127(3) and (4).] ³²⁶

³¹⁷ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹⁸ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³¹⁹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²⁰ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²¹ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²² Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²³ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²⁴ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²⁵ Repealed by Self-Governing Schools etc. (Scotland) Act 1989 (c.3), s. 82(2), Sch. 11

³²⁶ Para. 16 added retrospectively by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23), s. 38