



# Education (Scotland) Act 1980

## 1980 CHAPTER 44

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]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 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 subsection (2) 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.
- (2) The duty imposed on an education authority by subsection (1) above shall not include the provision of school education in nursery schools and nursery classes, but an education authority shall have power to provide for their area school education in nursery schools and nursery classes.
- (3) Every education authority—
  - (a) shall have power to secure for their area, and
  - (b) without prejudice to the duty imposed on them by subsection (1) above, shall 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.

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- (4) The facilities for further education that may be provided by an education authority shall include facilities for vocational and industrial training.
- (5) In this Act—
- (a) " school education" means progressive education appropriate to the requirements of pupils in attendance at schools, regard being had to the age, ability and aptitude of such pupils, and includes—
    - (i) activities in schools and classes (hereinafter 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) special education;
    - (iii) the teaching of Gaelic in Gaelic-speaking areas;
  - (b) further education includes—
    - (i) compulsory part-time and in exceptional cases full-time courses of instruction approved in terms of the regulations made under section 2 of this Act given in colleges (hereinafter in this Act referred to as " junior colleges ") to young persons not exempt from attendance under section 45(8) of this Act and designed to enable them to develop their various aptitudes and capacities and to prepare them for the responsibilities of citizenship;
    - (ii) voluntary part-time and full-time courses of instruction for persons over school age ;
    - (iii) social, cultural and recreative activities and physical education and training, either as part of a course of instruction or as organised voluntary leisure-time occupation;
    - (iv) the teaching of Gaelic in Gaelic-speaking areas;
  - (c) "special education" means education by special methods appropriate to the requirements of pupils whose physical, intellectual, emotional or social development cannot, in the opinion of the education authority, be adequately promoted by ordinary methods of education, and shall be given in special schools or by other appropriate means.

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

The Secretary of State may make regulations prescribing the standards and general requirements to which every education authority shall conform in discharging their functions under section 1 of this Act

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

- (1) Subject to the provisions of subsections (2) to (5) below, school education and compulsory further 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—
- (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 voluntary further education provided by them,
  - (b) any facilities provided by them under section 1(3) of this Act.

#### **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 child guidance service in child guidance clinics or elsewhere, and the functions of that service shall include—

- (a) the study of handicapped, backward and difficult children;
- (b) the giving of advice to parents and teachers as to appropriate methods of education and training for such children;
- (c) in suitable cases, the provision of special education for such children in child guidance 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 Special education for children with certain disabilities**

- (1) It shall be the duty of every education authority to provide the Secretary of State at such times as he may direct with information on the provision made by that education authority of special educational facilities for children who suffer from—
- (a) the dual handicap of blindness and deafness; or
  - (b) autism or other forms of early childhood psychosis; or
  - (c) acute dyslexia.

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- (2) The arrangements made by an education authority for the special education of children who suffer as mentioned in subsection (1) above shall, so far as is practicable, provide for the giving of such education in any school under the management of the education authority.

## **6 Social activities, physical education, etc.**

- (1) For the purpose of securing the provision of facilities for social, cultural and recreative activities and physical education and training, an 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—
- (a) may assist any body whose objects include;
  - (b) shall, so far as practicable, co-operate with local authorities and with voluntary societies or bodies whose objects include,
- 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) In this section " local authority " means a regional, islands or district council.

## **7 Provision of educational facilities to be in accordance with schemes**

- (1) The functions of an education authority under the foregoing provisions of this Act shall be exercised in accordance with schemes prepared as hereinafter provided and approved by the Secretary of State under section 69 of this Act, except where such functions relate to—
- (a) further education as described in sub-paragraphs (ii) and (iii) of section 1(5)
  - (b) of this Act other than such voluntary part-time or full-time courses of instruction for persons over school age as the Secretary of State may direct; or
  - (b) such facilities as are mentioned in section 6(1) of this Act; or
  - (c) special education other than in special schools.
- (2) It shall be the duty of an education authority within such time as may be prescribed to prepare and submit for the approval of the Secretary of State a scheme or schemes for the exercise of their powers and duties under the foregoing provisions of this Act.
- (3) An education authority may at any time, and shall if and when so required by the Secretary of State, prepare and submit for his approval a revised scheme or modification of an existing scheme under this section.
- (4) In considering and determining for the purposes of any scheme for 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,

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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 preparation of any scheme for 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 then-parents and by the authority to be desirable.
- (7) In the preparation of any scheme for further education, an education authority shall have regard to such of the following considerations as may be relevant—
  - (a) to any facilities for such education provided for their area by universities, central institutions, colleges of education, educational associations, and other bodies and to the need for consultation with any such organisations as aforesaid and with the education authorities for adjacent areas; and the scheme may include such provisions as to the co-operation of any such bodies or authorities as may have been agreed between them and the authority preparing the scheme ;
  - (b) to the need for consultation with persons concerned or engaged in crafts, industries, commerce or other employments in their area ;
  - (c) to the need for securing the adequate provision of technical education and, keeping in view the requirements of the crafts, industries, commerce and other employments in the area and the provision therefor made elsewhere, to the need for the establishment of local technical colleges offering courses of suitable standard;
  - (d) to the expediency of securing the provision of boarding accommodation, either as part of a junior college or in hostels, for pupils for whom residence at a distance from their homes is necessary in order that the greatest advantage may be derived from compulsory further education; and
  - (e) to the desirability of securing the provision of residential colleges for other forms of further education.
- (8) Where general arrangements under section 50 of this Act are part of the measures to be taken by the authority to secure the adequate provision of school or compulsory further education for persons resident in any part of their area, information regarding the said arrangements shall be included in the appropriate scheme prepared under this section.

## **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.

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- (2) It shall not be lawful for an education authority 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.
- (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 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, junior college 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, junior college 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, junior college or other educational establishment, so however that such arrangements shall not entail expenditure by the education authority.

## **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 or junior colleges 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—

- (a) for pupils in attendance at any school, junior college or other educational establishment under their management, articles of clothing suitable for physical exercise or for other activities of the school, college 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, junior colleges 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 hostels**

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

## **14 Power to provide education elsewhere than at an educational establishment**

If an education authority are satisfied that by reason of any extraordinary circumstances a pupil is unable to attend a suitable educational establishment for the purpose of receiving education, they may make special arrangements for him to receive education elsewhere than at an educational establishment.

### *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

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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 by an ordinary disposition or other deed of conveyance by the persons vested with the title, recorded in the register of sasines, 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.
- (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) It shall be the duty of an education authority to provide for their area, in accordance with any scheme under section 7 of this Act for the time being in force in the area, sufficient accommodation in public schools (whether day schools or boarding schools), junior colleges and other educational establishments under their management to enable them to carry the said scheme into effect.
- (2) In any case where the Secretary of State is satisfied, upon representations made to him by the education authority of any education area, or by any church or denominational body acting on behalf of the parents of children belonging to such church or body,

and after such inquiry as the Secretary of State deems necessary, that a new school is required for the accommodation of children whose parents are resident within that education area, regard being had to the religious belief of such parents, it shall be lawful for the education authority of that area to provide a new school.

- (3) An education authority shall maintain and keep efficient every public school, junior college and other educational establishment under their management, and shall from time to time provide such additional accommodation as may be necessary to carry out the provisions of any such scheme as aforesaid.
- (4) An education authority may, for the purposes of their duty under this section, provide, alter, improve, enlarge, equip and maintain schools, junior colleges 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).

## **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) For the purposes of this section " public road " means a road or street managed and maintained by the Secretary of State or by a regional or islands council, and " private road " means any road, street or path other than a public road, and includes any ford or bridge over which a private road passes.

## **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 general 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 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 do not conform to the standards or requirements applicable to that establishment or are not maintained as mentioned in subsection (2) above, the Secretary of State may, after consultation with the authority, 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 the authority to comply with the direction.

## **20 Acquisition of land and execution of works**

- (1) In order to enable them to execute any of their functions, an education authority may, subject to subsection (2) below, from time to time—
  - (a) acquire whether by way of purchase, feu, 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.

- (2) An education authority shall not, except in such cases as may be prescribed by regulations made by the Secretary of State, cause or permit works to be commenced for the erection, extension or alteration of any building on land acquired by them for use as the site—
  - (a) of an educational establishment or of playing fields to be used in connection with such an establishment, or
  - (b) of an extension to any such establishment or playing fields (whether contiguous to the establishment or playing fields or detached therefrom),
 without the approval of the Secretary of State given in writing before such commencement.
- (3) An application by an education authority to the Secretary of State for an approval under subsection (2) above shall be in such form, and shall contain such particulars, as

may be prescribed; and the Secretary of State may give his approval unconditionally, or subject to such conditions as he may think fit.

- (4) For the purpose of the acquisition of land by an education authority under this Act, the Lands 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.

### *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) In any such school the education authority shall have the sole power of regulating the curriculum and of appointing teachers:  
Provided that—
  - (i) all teachers appointed to the staff of any such school by the education authority shall in every case be teachers who satisfy the Secretary of State as to qualification, and are approved as regards their religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted;
  - (ii) 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.

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- (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.
- (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 and to any scheme under section 7 of this Act relating thereto, an education authority may—
  - (a) sell, feu, excamb or let any land vested in them ; and
  - (b) with the sanction of the Secretary of State 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

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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, the authority may so represent to the Secretary of State, and if the Secretary of State, after such inquiry as he deems necessary, is of the same opinion and so signifies, it shall 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:

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 Secretary of State that they concur with the authority in their opinion as represented, then in such case, if the Secretary of State is of the same opinion and so signifies, it shall 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.

#### *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, junior college 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.
- (2) Where an education authority or the managers of any school not conducted for private profit situated in the area of that authority have provided school education with or without other services for any pupil belonging to the area of some other authority, the education authority or the managers, as the case may be, 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 by the authority and the managers concerned, as the case may be, 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:

Provided that, if in the case of any pupil the Secretary of State is satisfied, having regard to all the circumstances including the religious belief of the parents, that there was no sufficient reason why he should not have attended a school provided by the

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*Status: This is the original version (as it was originally enacted).*

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authority of the area to which he belongs, the Secretary of State may, on the application of that authority, direct that no contribution shall be recoverable in respect thereof under this subsection.

- (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 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.

- (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.
- (5) The Secretary of State may make regulations requiring or authorising payments of amounts determined by or under the regulations to be made by one authority to another where—
- (a) the authority receiving the payment makes, in such cases or circumstances as may be specified in the regulations, provision for education in respect of a pupil having such connection with the area of the paying authority as may be so specified ; and
  - (b) one of the authorities is an education authority and the other authority is a local education authority in England or Wales.
- (6) In subsection (5)(a) above, the reference to provision for education includes a reference to provision of any benefits or services for which provision is made by or under the enactments relating to education.
- (7) Regulations under subsection (5) above may make different provision for different cases or different circumstances and may contain such incidental, supplementary or transitional provisions as the Secretary of State thinks fit.

## **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.

*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) A parent shall not be entitled to select a course of secondary education for his child from which in the opinion of the education authority (confirmed by the Secretary of State in the event of a dispute between the parent and the authority) the pupil shows no reasonable promise of profiting.

#### *Transfer from primary to secondary education*

#### **29 Transfer schemes**

An education authority may at any time, and shall if and when so required by the Secretary of State, prepare and submit for his approval under section 69 of this Act a scheme or a revised scheme (hereafter in this Act called a "transfer scheme ") relating to the schools under their management, and a transfer scheme shall—

- (a) set out the arrangements which the education authority propose to adopt in relation to the transfer of pupils from one stage of school education and their admission to a subsequent stage of school education, and
- (b) fix a single date (to be known as a "transfer date") on which such transfer shall take place in every year:

Provided that the Secretary of State may, if in the circumstances of any particular case he thinks it expedient to do so, approve a scheme which fixes more than one transfer date.

### *Duty of parents to provide education for their children*

## **30 Duty of parents to provide education for their children**

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.

## **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—

- (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) A person who attains the age of sixteen years—
- (a) before 30th June 1976 and who has not ceased to be of school age before that date; or
  - (b) on or after 30th June 1976 but before 1st October 1976,
- shall be deemed not to be over school age until such date (being 30th June 1976 or a date thereafter) as the Secretary of State may by order made by statutory instrument prescribe; and different dates may be prescribed for different categories of such persons.

### **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.

**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 instruct that he be prosecuted forthwith under section 43 of this Act, or may warn the parent and postpone for a period not exceeding six weeks a decision as to whether to prosecute.
- (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 may refer the child to the reporter of the appropriate local authority; and in this subsection "local authority" has the same meaning as in the Social Work (Scotland) Act 1968.

**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 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 education authority have decided under the Act of 1946, the Act of 1962 or this Act that the child requires special education.
- (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 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 a decision of an education authority under the Act of 1946, the Act of 1962 or this Act that a child requires special education is revoked any attendance order requiring the attendance of that child at a special school shall be deemed to be annulled.

#### **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 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
    - (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.
- (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.

### *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, in the case of a first conviction to a fine not exceeding £50, in the case of a second conviction, whether in respect of the same or of another child, to a fine not exceeding £50, and in the case of a third or subsequent conviction, whether in respect of the same or of another child, to a fine not exceeding £50 or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.
- (2) Proceedings under this section 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**

- (1) If the court before which a prosecution is brought for an offence against section 35, 41 or 42 of this Act is satisfied that the child has failed without reasonable excuse to attend regularly at school, then, whether or not the parent is convicted, the court may direct that the case be referred to the reporter of the appropriate local authority and if so referred shall certify the said failure as a ground established for the purposes of Part III of the Social Work (Scotland) Act 1968; and in this subsection " local authority " has the same meaning as in the said Act of 1968.
- (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 subsection (1) above, make a direction, 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 Attendance at junior colleges**

- (1) It shall be the duty of every education authority to serve on every young person ordinarily resident in their area who is not exempt from compulsory further education a notice (hereinafter referred to as an "attendance notice") directing him to attend a junior college named in the notice, and it shall be the duty of every young person upon whom such a notice is served to attend at the junior college in accordance with the requirements specified in the notice. The authority shall serve a copy of the notice and of any amendment thereof upon the parent of the young person.
- (2) Subject to subsection (3) below the requirements specified in an attendance notice shall be such as to secure the attendance at a junior college of the young person upon whom the notice is served—
  - (a) for one whole day, or two half-days, in each of forty-four weeks in every year while he remains a young person; or
  - (b) for one continuous period of eight weeks, or for two continuous periods of four weeks each in every such year, if the authority are satisfied that continuous attendance would be more suitable for the said young person;

and in this section the expression "year" means, in relation to any young person, in the case of the first year, the period of twelve months beginning with the first day on which he is required by an attendance notice served on him to attend a junior college, and in the case of every subsequent year the period of twelve months beginning immediately after the expiration of the last preceding year:

Provided that—

- (i) in respect of the year in which the young person attains the age of eighteen the requirements specified in the notice shall be reduced to such extent as the education authority think expedient for securing that the attendances required of him until he attains that age shall be as nearly as may be proportionate to those which would have been required of him during a full period of twelve months; and
- (ii) the Secretary of State may from time to time require an education authority to fix for their area two or more dates for terminating attendance at junior colleges. The education authority shall intimate to the Secretary of State the dates which they propose to fix, and the Secretary of State may approve the said dates or may, after consultation with the authority and with such other persons as he thinks fit, require the authority to fix other dates. The authority shall fix dates in accordance with the approval or requirement of the Secretary of State, and thereupon a young person resident in the area shall for the purpose of attendance at a junior college be deemed to attain the age

of eighteen on the fixed date next following the day when he actually attains that age.

- (3) If by reason of the nature of the employment of any young person or of other circumstances affecting him the education authority are satisfied that attendance in accordance with subsection (2) above would not be suitable in his case, an attendance notice may, with the consent of the young person, require his attendance in accordance with such other arrangements as may be specified in the notice, so, however, that the requirements specified in the notice in accordance with such arrangements as aforesaid shall be such as to secure the attendance of the young person for periods amounting in the aggregate to three hundred and thirty hours in each year, or, in the case of the year in which he attains the age of eighteen, to the proportionately reduced number of hours.
- (4) Except where continuous attendance at a junior college involves residence at the college or at a hostel, no attendance notice shall require a young person to attend a junior college on a Sunday or during any holiday or half-holiday to which by any enactment regulating his employment or by agreement he is entitled, or, so far as practicable, during any holiday or half-holiday which is allowed in accordance with any custom of his employment, or between the hours of six in the evening and half past eight in the morning:

Provided that the Secretary of State may, on the application of an education authority, direct that in relation to young persons in their area or in any part thereof employed at night or otherwise employed at abnormal times this subsection shall have effect as if for the reference to the hours of six in the evening and half past eight in the morning there were substituted a reference to such other times as may be specified in the direction.

- (5) The place, days, times and periods of attendance required of a young person and the period for which the notice is to be in force shall be specified in any attendance notice served on him; and the requirements of any such notice may be amended as occasion may require either by the authority by whom it was served or by any other education authority in whose area he may for the time being reside, so, however, that the provisions of every such notice shall be such as to secure that the requirements imposed on the young person during each year while he remains a young person shall comply with subsections (2), (3) and (4) above.
- (6) In determining what requirements shall be imposed upon a young person by an attendance notice or by any amendments to such a notice, the education authority shall have regard, so far as practicable, to any preference which he and, in the case of a young person under the age of sixteen years, his parent may express, to the circumstances of his employment or prospective employment, and to any representations that may be made to the authority by his employer or any person proposing to employ him.
- (7) If a pupil satisfies the education authority that any religious observance or any part of the instruction at a junior college which the pupil is required to attend is contrary to his religious belief or likely to give offence to his religious feelings, the education authority shall permit the pupil to withdraw from such observance or instruction and shall, so far as practicable, arrange for him to be suitably occupied while such observance or instruction is in progress.
- (8) The following persons shall be exempt from compulsory attendance at a junior college, that is to say:—

- (a) any person who is in full-time attendance at any school or other educational establishment (not being a junior college) approved by the Secretary of State for the purpose;
  - (b) any person who is shown to the satisfaction of the education authority to be receiving suitable and efficient instruction in some other manner either full-time or for such times as in the opinion of the authority are equivalent to not less than three hundred and thirty hours instruction in a period of twelve months;
  - (c) any person who having been exempt under either paragraph (a) or (b) above did not cease to be so exempt until after he had attained the age of seventeen years and eight months;
  - (d) any person who is undergoing a course of training approved by the Secretary of State for the mercantile marine or the sea fishing industry or who, having satisfactorily completed such a course, is engaged in the mercantile marine or in the sea fishing industry;
  - (e) any person to whom, by reason of section 130 or 131 of this Act, the duties of education authorities do not relate;
  - (f) any person who attained the age of sixteen years before the date when the scheme for the provision of junior colleges came into force.
- (9) If any person is aggrieved by a decision of an education authority given under subsection (8)(b) above, he may refer the question to the Secretary of State, who shall give such direction thereon as he thinks fit.
- (10) If any young person upon whom an attendance notice has been served fails to comply with any requirement of the notice, he shall be guilty of an offence against this section unless he proves either—
- (a) that he was exempt from compulsory attendance for further education, or
  - (b) that he was prevented from complying with the requirement by reason of sickness or any other unavoidable cause,
- or unless the court is satisfied that there was some other reasonable cause for such failure.

#### **46 Provisions for securing attendance at junior colleges**

- (1) For the purpose of facilitating the execution by education authorities of their functions under section 45 of this Act, the following provisions shall have effect, that is to say—
- (a) every young person who is not exempt from compulsory attendance at a junior college shall at all times keep the education authority concerned informed of his proper address;
  - (b) every person whose employment such a young person as aforesaid enters shall, not later than four days thereafter, if the young person has not then left his employment, notify the education authority concerned that the young person has entered his employment;
  - (c) where a young person whose entry into employment has been notified in pursuance of paragraph (b) above leaves that employment, the employer shall within four days thereafter notify the education authority concerned that the young person has ceased to be employed by him;
  - (d) where such a young person as aforesaid enters the employment of an employer by whom he had previously been employed, the employer shall immediately

notify such entry to the education authority concerned unless the previous entry was so notified in pursuance of paragraph (b) above ;

- (e) every person by whom such a young person as aforesaid is employed shall notify the education authority concerned of any change of his address, and, if known to him, of any change of the young person's address.

In this subsection the expression " the education authority concerned" means the education authority in whose area the young person is ordinarily resident.

- (2) Any person who fails to comply with any requirement imposed on him by subsection (1) above shall be guilty of an offence against this section.
- (3) The education authority by whom an attendance notice is served upon any young person shall serve a copy thereof upon any person who notifies the authority that the young person is employed by him.
- (4) The Secretary of State may by regulations make provision as to the form of attendance notices, as to consultation and the exchange of information between education authorities, as to the issue of certificates of exemption in respect of young persons who are exempt from compulsory attendance at a junior college, and generally for the purpose of facilitating the administration by education authorities of the provisions of this Act as to attendance at junior colleges.
- (5) The Secretary of State shall give directions to education authorities and to the Manpower Services Commission for ensuring due consultation and exchange of information between education authorities and the Commission.

#### **47 Enforcement of attendance at junior colleges**

- (1) Any person guilty of an offence against either section 45 or 46 of this Act shall be liable on conviction by a court of summary jurisdiction in the case of a first offence against that section to a fine not exceeding £1, in the case of a second offence against that section to a fine not exceeding £5, and in the case of a third or subsequent offence against that section to a fine not exceeding £10 or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.
- (2) If, in furnishing any information for the purposes of either section 45 or 46 of this Act, any person makes any statement which he knows to be false in any material particular, or recklessly makes any statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding £20 or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.
- (3) If the parent of a young person or any person by whom a young person is employed or the servant or agent of any such person has connived at any offence committed by the young person against either section 45 or 46 of this Act, the person who has connived at the offence shall, whether or not any person is proceeded against or convicted in respect of the offence connived at, be guilty of the like offence and punishable accordingly.

#### **48 Power to require attendance of unemployed young persons at junior colleges**

- (1) If any young person is capable of and available for work but has no work or only part-time or intermittent work, the Secretary of State may require his attendance in accordance with regulations at any junior college at which he can reasonably be expected to attend.

- (2) If any young person whose attendance at a junior college has been required by the Secretary of State under this section fails, except by reason of sickness or other unavoidable cause, to attend at that college, he shall be liable on conviction by a court of summary jurisdiction in the case of a first offence to a fine not exceeding £1, in the case of a second offence to a fine not exceeding £5, and in the case of a third or subsequent offence to a fine not exceeding £10 or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.
- (3) For the purposes of subsection (2) above and of any such proceedings as are therein mentioned, a young person who, by reason of his misbehaviour while attending at a junior college, has been required to discontinue his attendance thereat for any period shall be deemed to have failed without unavoidable cause to attend at that college.
- (4) An education authority shall have power to assist the Secretary of State with respect to the attendance at junior colleges of young persons who may be, or have been, required by the Secretary of State under this section to attend thereat.
- (5) Regulations made by the Secretary of State under this section shall make provision as to the functions to be performed by education authorities with respect to young persons required under this section to attend at junior colleges, and, in particular, shall direct such authorities to make in any attendance notice served on any such young person such modifications as may be provided by the regulations, and shall make provision as to the circumstances in which and the extent to which attendances in pursuance of requirements under this section may be reckoned as attendances in pursuance of the requirements of attendance notices.
- (6) The aforesaid regulations may make provision for the establishment of boards of assessors for the purpose of reporting to the Secretary of State as to the advisability of requiring young persons to attend at a junior college.

*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.
- (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, or
  - (c) compulsory further education should in the case of any pupil be provided by requiring his continuous attendance at a junior college under section 45 of this Act,

the authority shall, after consultation with the parent and, in any case falling under paragraph (c) of this subsection, with the pupil, 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 an appropriate school or college.

- (2) The arrangements made under subsection (1) above may include—
- (a) the provision of travelling facilities or the payment of travelling expenses under section 51 of this Act; or
  - (b) the accommodation of the pupil at a boarding school or at a junior college where boarding is provided, 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.

## **51 Provision of transport and other facilities**

- (1) An education authority 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—
- (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 without charge by other pupils to be selected by the authority.
- (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.

## **52 Recovery of cost of board and lodging**

—Where an education authority have provided a pupil with board and lodging, whether at a school, junior college or 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 in voluntary attendance at a junior college or, under section 13 of this Act, at another 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
  - (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) An education authority shall exercise their power under subsection (1)(a) above in relation to any pupil whose parents are in receipt of supplementary benefit or family income supplement so as to ensure that such provision is made for him in the middle of the day as appears to the authority to be requisite.
- (3) An education authority—
  - (a) may make such charges as they think fit for anything provided by them under subsection (1)(a) above, except where it is provided by virtue of subsection (2) above ; but
  - (b) shall remit the whole or any part of any charge that would otherwise be made if, having regard to the particular circumstances of any pupil or class or description of pupils, they consider it appropriate to do so.
- (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 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.
- (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 pupil for whose education it is the duty of an education authority to provide special education 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) 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 it is the duty of the Secretary of State under the said section 39 to provide such inspection, an education 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 may require any young person in attendance at any junior college or other educational establishment under their management to submit himself for such medical or dental inspection.
- (3) If any person fails without reasonable excuse to comply with a requirement made by an education authority 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 £10.
- (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, junior college 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, junior colleges and other educational establishments under their management or with respect to any of such schools, colleges 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 colleges or 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 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, junior college 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 a junior college or other 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, junior college 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 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, college or other educational establishment, direct that the pupil or young person be excluded from the school, college 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 Classification and educational arrangements**

The Secretary of State may make regulations defining the several categories of pupils requiring special education and making provision as to the special educational arrangements appropriate for pupils of each category.

#### **60 Functions of education authority in relation to ascertainment of handicapped children**

- (1) An education authority—
  - (a) shall have power, as regards children in their area who have not attained the age of five years, and
  - (b) shall be under a duty, as regards children in their area who have attained that age,
 to ascertain which of those children require special education.
- (2) It shall be the duty of an education authority to disseminate in their area information as to the importance to any child who requires special education of the early ascertainment of his need, and of the opportunity for medical examination and psychological examination available under the following provisions of this Act

#### **61 Examination of children**

- (1) It shall not be lawful for an education authority to decide that a child requires special education, unless that child has undergone a medical examination and a psychological examination for the purpose of affording to the authority advice as to whether or not they ought so to decide ; and accordingly, before so deciding in the case of any child, an education authority shall—
  - (a) invite the parent of that child to submit the child for a medical examination and a psychological examination for the said purpose, and
  - (b) (in the case of a child who has attained the age of five years) if the parent fails to submit the child as aforesaid, by notice in writing served upon the parent require him to submit the child for a medical examination and a psychological examination for the said purpose.
- (2) A parent who submits his child for a medical examination under subsection (1) above shall be entitled to be present at that examination if he so desires.
- (3) 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 conviction by a court of summary jurisdiction to a fine not exceeding £10.

- (4) A notice served under paragraph (b) of subsection (1) above in respect of any child shall—
- (a) state that the purpose of the examinations is to afford to the education authority advice as to whether or not they ought to decide that that child requires special education;
  - (b) specify the times and places at which the examinations will be held;
  - (c) inform the parent of his right to be present at the medical examination if he so desires ;
  - (d) inform the parent of the penalty to which he will be liable if he fails without reasonable excuse to comply with the requirements of the notice.
- (5) If the parent of any child requests the education authority for the area to cause that child to be medically and psychologically examined for the purpose of affording to the authority advice as to whether or not they ought to decide that the child requires special education, the authority shall comply with the request unless in their opinion the request is unreasonable.

## **62 Ascertainment by education authority of children requiring special education**

- (1) An education authority shall take into consideration—
- (a) the advice given to them with respect to any child in consequence of the medical and psychological examinations undergone by that child under section 61 of this Act;
  - (b) the views of the parent of the child, so far as these can be obtained;
  - (c) if the child has been at any time in attendance at any school, any reports or other information with respect to the child which they are able to obtain from the records of the school or from teachers at the school;
  - (d) any other reports or information which they are able to obtain with respect to the ability or aptitude of the child;

and the education authority may thereafter decide that the child requires special education, and if they so decide shall—

- (i) forthwith give to the parent of the child notice in writing of their decision, and
- (ii) thereafter ensure that any education provided by them for the child is special education.

- (2) A notice given by an education authority to a parent in pursuance of paragraph (i) of subsection (1) above shall inform the parent of his right under subsection (1) of section 64 of this Act to require the authority to issue to him a statement of the reasons for their decision, and of his right under that subsection to refer the case to the Secretary of State.

## **63 Review by education authority of cases of children requiring special education**

- (1) It shall be the duty of an education authority to keep generally under consideration the cases of all children in their area who the authority have decided require special education, and—
- (a) when in the discharge of that duty in relation to such a child the education authority think it expedient, or

- (b) if the education authority are at any time requested to do so by notice in writing given to them by the parent of such a child,

the education authority shall review their decision that the said child requires special education:

Provided that the parent of a child who the education authority have decided requires special education shall not, by virtue of paragraph (b) above, be entitled to request the authority to review their decision earlier than the expiry of the period of 12 months from the date of that decision or more often than once in any period of 12 months subsequent to the expiry of the first-mentioned period.

- (2) For the purpose of obtaining advice in connection with a review, under subsection (1) above, of their decision that a child requires special education, an education authority may—
- (a) invite the parent of that child to submit the child for a medical examination and a psychological examination, and
  - (b) (in the case of a child who has attained the age of five years) if the parent fails to submit the child as aforesaid, by notice in writing served upon the parent require him to submit the child for a medical examination and a psychological examination.
- (3) Subsections (2) to (4) of section 61 of this Act (examination of children) shall apply for the purposes of this section as they apply for the purposes of that section, with the substitution, for the references to subsection (1) of that section, of references to subsection (2) of this section, and subject to any other necessary modifications.
- (4) In reviewing, under subsection (1) above, their decision that a child requires special education an education authority shall take into consideration—
- (a) the advice given to them with respect to that child in consequence of medical and psychological examinations undergone by the child ;
  - (b) if either the review is being carried out in pursuance of a request made to them by the parent of the child by virtue of paragraph (b) of subsection (1) above or the parent was invited, under paragraph (a) of subsection (2) above, to submit the child for medical and psychological examination in connection with the review, the views of the parent of the child, so far as these can be obtained;
  - (c) if the child has been at any time in attendance at any school, any reports or other information with respect to the child which they are able to obtain from the records of the school or from teachers at the school;
  - (d) any other reports or information which they are able to obtain with respect to the ability or aptitude of the child;

and the education authority shall thereafter either—

- (i) revoke the said decision, in which case they shall forthwith give to the parent of the child notice in writing of its revocation, and their duty to ensure that any education provided by them for the child is special education shall thereupon cease; or
- (ii) determine not to revoke the decision, in which case, if either the review was carried out in pursuance of a request made to them by the parent of the child by virtue of paragraph (b) of subsection (1) above or the parent was invited, under paragraph (a) of subsection (2) above, to submit the child for medical and psychological examination in connection with the review, they shall forthwith give to the parent such notice of their determination as is mentioned in subsection (5) below.

- (5) A notice given by an education authority to a parent in pursuance of paragraph (ii) of subsection (4) above shall be in writing and shall inform the parent of his right under subsection (1) of section 64 of this Act to require the authority to issue to him a statement of the reasons for their determination, and of his right under that subsection to refer the case to the Secretary of State.

#### **64 Reference to Secretary of State of cases under ss. 62 and 63**

- (1) Where an education authority—
- (a) decide under section 62 of this Act that a child requires special education, or
  - (b) determine under section 63 of this Act not to revoke a decision made by them that a child requires special education and give to the parent of that child, in pursuance of paragraph (ii) of section 63(4) of this Act notice in writing of their determination,
- the education authority shall, if so required by the parent of the child, issue to the parent a statement of the reasons for their decision or determination, as the case may be, and where such a statement is so issued the parent may, if he is aggrieved by the decision or determination—
- (i) in the case of a decision, within the period of twenty-eight days from the date on which the statement was issued or such longer period therefrom as the Secretary of State may, either during or after the expiry of the twenty-eight days, allow,
  - (ii) in the case of a determination, within the said period of twenty-eight days, refer the case to the Secretary of State.
- (2) On any reference under subsection (1) above the Secretary of State shall either confirm or refuse to confirm the decision or determination of the education authority.
- (3) Where under subsection (2) above the Secretary of State refuses to confirm the decision or determination of an education authority with respect to any child, the authority shall be deemed to have revoked their decision that that child requires special education, and—
- (a) they shall forthwith give to the parent of the child notice in writing of the revocation of the decision, and
  - (b) their duty to ensure that any education provided by them for the child is special education shall thereupon cease.

#### **65 Children who may benefit by local authority services after leaving school**

- (1) Where an education authority decide that a child to whom this section applies is suffering from mental deficiency to such an extent that he may, on leaving school, benefit from services which it is the function of a local authority to provide or secure the provision of, it shall be the duty of the education authority to issue, not earlier than six months, or later than one month, before the child ceases to be of school age—
- (a) to the parent of the child, a report of their decision, and
  - (b) to the local authority, a report of their decision together with a copy of any document which was taken into account in making the decision.
- (2) For the purpose of obtaining advice as to the carrying out of the duty imposed on them by subsection (1) above in relation to any child, an education authority may—

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- (a) invite the parent of the child to submit the child for a medical examination and (if the education authority think it expedient) a psychological examination, and
  - (b) if the parent fails to submit the child for any examination on being invited to do so under paragraph (a) above, by notice in writing served upon the parent require him to submit the child for such an examination.
- (3) Subsections (2) to (4) of section 61 of this Act (examination of children) shall apply for the purposes of this section as they apply for the purposes of that section, with the substitution, for the references to subsection (1) of that section, of references to subsection (2) of this section, and subject to any other necessary modifications.
- (4) This section applies to—
- (a) any child in attendance at a school under the management of the education authority concerned;
  - (b) any child in attendance at a school (other than such a school as is mentioned in paragraph (a) above) in the area of the education authority concerned;
  - (c) any child who is receiving education at a school by virtue of arrangements made by the education authority concerned with the managers of that school.
- (5) In this section " local authority " has the same meaning as in the Social Work (Scotland) Act 1968.

### **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 educational establishment being a school or junior college at such intervals as appear to him to be appropriate, and to cause a special inspection of any such school or junior college 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, and such inspections shall be made by Her Majesty's Inspectors or other persons appointed by the Secretary of State for the purpose.
- (2) It shall be no part of the duty of a person authorised under this section to make an inspection of any educational establishment, to inquire into instruction in religious subjects given therein or to examine any pupil in religious knowledge or in any religious subject or book.
- (3) If any person 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 £20 or in the case of a second or subsequent conviction to a fine not exceeding £50 or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

## **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 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 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 himself if he is enrolled at a junior college or other educational establishment, require the parent to submit him, or require the pupil 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 £10.

## **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 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**

If the Secretary of State is satisfied, either on complaint by any person interested or otherwise, that an education authority, 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

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said date the education authority, 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.

### *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) Provision 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, junior colleges 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 providing education or educational services ;
- (e) the payment of grants to persons to assist the carrying out of educational research ;
- (f) the payment of allowances to or in respect of persons attending courses of education ;
- (g) providing for any other educational expenditure approved by him.

#### **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 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 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.

#### **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—

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- (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 Power of Secretary of State to make regulations with respect to certain institutions providing further education**

- (1) The Secretary of State may make regulations with respect to grant-aided colleges, and such regulations may—
- (a) make provision with regard to the constitution of the governing bodies of such colleges, and in particular provide that the governing bodies shall be bodies corporate having a common seal;
  - (b) prescribe the general functions to be discharged by the governing bodies, and confer on the governing bodies such powers as the Secretary of State may consider necessary or expedient for the efficient discharge of those functions;
- and without prejudice to the generality of the foregoing provisions of this subsection, such regulations may—
- (i) prescribe the administrative and other arrangements to be adopted by the governing bodies for the purpose of discharging their functions and, in particular, provide for the delegation by the governing bodies of such of their functions as may be prescribed in the regulations to persons or bodies of persons to be appointed in such manner as may be so prescribed;
  - (ii) provide for the appointment, remuneration, discipline and dismissal by the governing bodies of administrative, teaching and other staff, and for the payment by the governing bodies of pensions, allowances or gratuities to or in respect of members of such staff on their death or retirement;
  - (iii) make provision with regard to fees and other payments to be made by students in attendance at such colleges ;
  - (iv) provide for the constitution of bodies representative of students in attendance at such colleges and confer on any such bodies such functions as may be prescribed in the regulations;
  - (v) prescribe the procedure to be followed in cases of alleged breaches of discipline by students in attendance at such colleges;
  - (vi) provide that the governing body of such a college shall comply with any direction given by the Secretary of State, after consultation with them, as to the discontinuance of any course of instruction provided in the college or the number of students of different categories to be admitted to the college in any period.
- (2) The Secretary of State may by regulations establish institutions for the provision of any form of further education, and such regulations may make such provision and prescribe such matters with respect to such institutions as may be provided or prescribed with respect to grant-aided colleges in regulations made under subsection (1) above; and where any institution established by regulations under this subsection becomes a grant-aided college, those regulations shall continue to apply to

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that institution until varied or revoked by regulations made under subsection (1) above or subsection (3) below; and regulations under this subsection may make different provision in relation to different classes of institution or different institutions.

(3) The Secretary of State may by regulations dissolve any grant-aided college and such regulations may provide—

- (a) for the transfer of the staff of such a college to, and
- (b) that the property, rights, liabilities and obligations of the college shall be transferred to and vest in,

such institution established by regulations under subsection (2) above or grant-aided college as may be specified in the regulations on such conditions as to the use and disposal of the property so transferred as may be so specified:

Provided that any property transferred by virtue of such regulations shall remain subject to any trust or condition (whether contained in a scheme made or approved under Part VI of this Act or otherwise) to which it was subject immediately before such transfer.

(4) Regulations made under subsection (1) or (3) above may—

- (a) apply to all grant-aided colleges, or to certain grant-aided colleges only, or to a single grant-aided college only;
- (b) make different provision in respect of different classes of grant-aided college or in respect of different grant-aided colleges;
- (c) vary or revoke the provisions of any enactment (including any regulations made under subsection (2) above), scheme, articles of association, trust deed or other instrument relating to any grant-aided college to which the regulations apply, in so far as those provisions are, in the opinion of the Secretary of State, inconsistent with the regulations;

and regulations under any of the foregoing provisions of this section may contain such incidental, supplementary and consequential provisions as appear to the Secretary of State to be necessary or expedient.

(5) In this section 'grant-aided college' means a central institution, a college of education or an institution established under subsection (2) above, the managers of which are for the time being receiving grant in respect of that institution or college under section 73(c) of this Act.

#### *Appointment of director of education*

### **78 Appointment of director of education**

The education authority shall employ a director of education, who shall be the chief education officer of the authority and shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit.

*Local administration***79 Education authorities may receive and administer bequests 80. Funds for behoof of public schools etc., to be transferred to education authorities**

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 benefitted.

**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 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 £1.25, 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 or by the director of education of that authority ;
- (b) an extract from the minutes of the proceedings of an education authority or of any committee or subcommittee 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 or junior college, and to be signed by the head teacher of the school or college ;
- (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 or by the director of education; or
- (f) a certificate, in the prescribed form, of exemption from attendance at junior college, and to be authenticated in the prescribed manner ;

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) (e) or (f) 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.

#### **88 Dismissal of teachers**

- (1) No resolution of an education authority for the dismissal from their service of a registered teacher other than a teacher who has completed forty-five years of reckonable service or of reckonable service and comparable British service within the meaning of the teachers' superannuation regulations shall be valid unless—
  - (a) written notice of the motion for his dismissal shall, not less than three weeks before the meeting at which the resolution is adopted, have been sent to the teacher and to each member of the education authority; and
  - (b) not less than one half of the members of the education authority are present at the meeting; and
  - (c) the resolution is agreed to by two-thirds of the members so present.
- (2) Where an education authority arrange for the exercise by their education committee of the power of dismissing a registered teacher from their service, the provisions of subsection (1) above shall apply with the substitution of the education committee for the education authority.
- (3) Notwithstanding anything in this Act, an education authority may summarily suspend any teacher from the exercise of his duties in any educational establishment under their management; but such suspension shall not affect the teacher's rights to the salary or other emoluments attached to his office.
- (4) Subsections (1) and (3) above shall apply in like manner as they apply to an education authority and registered teachers in their service to—
  - (a) the governing body of any school other than an independent school and the registered teachers employed therein; and
  - (b) the persons responsible for the management of an establishment or residential establishment within the meaning of the Social Work (Scotland) Act 1968 and the registered teachers employed therein in the provision of school education.
- (5) Subsections (1) and (2) above shall apply to a certificated teacher employed in an institution providing any form of further education as they apply to a registered teacher, but this subsection shall cease to have effect on such date as the Secretary of State may appoint by an order made by statutory instrument.
- (6) In subsection (5) above "certificated teacher" means a teacher holding or who is deemed to hold a certificate of competency issued in accordance with regulations made under the Education (Scotland) Acts 1872 to 1945 or under the Act of 1946 or the Act of 1962.

## **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 reemployment 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, 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.

*Remuneration of teachers***91 Committees to consider remuneration of teachers**

- (1) The Secretary of State shall secure that, for the purpose of considering the remuneration payable to teachers by education authorities, there shall be one or more committees consisting of—
  - (a) a chairman appointed by the Secretary of State as being an independent person ;
  - (b) persons nominated from time to time by such bodies as may be determined by the Secretary of State, being bodies appearing to him to represent education authorities;
  - (c) persons nominated from time to time by such bodies as may be determined by the Secretary of State, being bodies appearing to him to represent teachers;
  - (d) one or more persons nominated from time to time by the Secretary of State to represent him.
- (2) The Secretary of State shall determine the number of persons to be nominated by the bodies mentioned in paragraphs (b) and (c) of subsection (1) above.
- (3) Subject to the following provisions of this section, the Secretary of State may from time to time vary or revoke any determination made by him under this section.
- (4) A determination of the Secretary of State whereby a body which is for the time being represented on a committee constituted under this section will cease to be so represented (except in a case where that body will have ceased to exist before the time when the determination is to take effect) shall not have effect unless it is embodied in an order made by the Secretary of State.
- (5) The power to make orders under this section shall be exercisable by statutory instrument; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The Secretary of State, either at the time when a committee is constituted under this section or at any subsequent time, may give directions specifying the descriptions of teachers whose remuneration any such committee are to consider and the descriptions of such remuneration.

**92 Review of remuneration by committees**

- (1) It shall be the duty of each committee, whenever they think fit or are required by the Secretary of State to do so, to consider the relevant remuneration of teachers.
- (2) Where, in consequence of such consideration a committee agree on any recommendations with respect to the relevant remuneration of teachers, they shall transmit those recommendations to the Secretary of State.
- (3) Subject to the following provisions of this section, on the receipt of any recommendations of a committee under subsection (2) above the Secretary of State shall prepare a draft memorandum setting out the scales and other provisions required for determining the relevant remuneration of teachers, in the form in which, in his opinion, those scales and provisions should be so as to give effect to the recommendations of the committee.

- (4) Where the Secretary of State has prepared a draft memorandum under subsection (3) above, he shall consult the committee in question with respect to the draft and shall make such modifications of the draft as are requisite for giving effect to any representations made by the committee with respect thereto; and he shall then—
  - (a) arrange for a memorandum setting out the requisite scales and other provisions in the form of the draft, or in that form as modified under this subsection, as the case may be, to be published by Her Majesty's Stationery Office, and
  - (b) make an order referring to that memorandum and directing that the relevant remuneration of teachers shall be determined in accordance with the scales and other provisions set out in the memorandum.
- (5) If at the time when any recommendations of a committee are transmitted to the Secretary of State under subsection (2) above—
  - (a) an order made under subsection (4) above is in force with respect to the relevant remuneration of teachers, and
  - (b) it appears to the Secretary of State that effect could more conveniently be given to those recommendations by amending the scales and other provisions set out in the memorandum referred to in that order,the Secretary of State, instead of preparing a new draft memorandum under subsection (3) above, may prepare a draft order setting out the amendments of those scales and other provisions which, in his opinion, are requisite for giving effect to the recommendations.
- (6) Where the Secretary of State has prepared a draft order under subsection (5) above, he shall consult the committee in question with respect to the draft and shall make such modifications of the draft as are requisite for giving effect to any representations made by the committee with respect thereto; and the Secretary of State shall then make the order in the form of the draft, or in that form as modified under this subsection, as the case may be.
- (7) In this section and in sections 93 and 94 of this Act " committee " means a committee constituted under section 91 of this Act, and " the relevant remuneration of teachers ", in relation to such a committee, means the remuneration which, in accordance with any directions under section 91(6) of this Act, which are for the time being in force, that committee are required to consider.

### **93 Provision for arbitration**

- (1) The Secretary of State shall make arrangements whereby, in such circumstances and subject to such exceptions as may be provided by the arrangements, matters in respect of which agreement has not been reached in a committee after they have been considered by the committee in accordance with sections 91 and 92 of this Act may be referred to arbitration in such manner as may be so provided.
- (2) Before making any arrangements under the foregoing subsection in relation to a committee, the Secretary of State shall consult the bodies which are to be, or are, represented on the committee in accordance with any determination made by him in pursuance of subsection (1)(b) or (c) of section 91 of this Act which is for the time being in force.
- (3) Any such arrangements may include provision for the appointment of arbiters by the Advisory, Conciliation and Arbitration Service for the purposes of any reference under

this section; and references in any such arrangements to the Minister of Labour shall be construed as references to the Service.

- (4) The Secretary of State may vary or revoke any arrangements made by him under subsection (1) above by new arrangements which shall be subject to subsection (2) above.

#### **94 Action on recommendations of arbiters**

- (1) Any recommendations of the arbiters, on a reference under section 93 of this Act with respect to any matters considered by a committee, shall be transmitted to the Secretary of State ; and, except where those recommendations do not propose any change in the relevant remuneration of teachers as it then exists and subject to subsection (2) below, subsections (3) to (6) of section 92 of this Act shall have effect in relation to the recommendations of the arbiters as if they were recommendations of that committee.
- (2) If, in any case where any recommendations of arbiters have been transmitted to the Secretary of State under subsection (1) above, each House of Parliament resolves that national economic circumstances require that effect should not be given to the recommendations, the provisions of section 92 of this Act referred to in subsection (1) above shall not have effect as mentioned in that subsection.
- (3) Where such a resolution has been passed by each House of Parliament, the Secretary of State, after consultation with the committee in question, shall determine what changes (if any) in the relevant remuneration of teachers as it then exists are appropriate in the circumstances, and, unless he determines that no such changes are appropriate, shall (subject to subsection (4) below) proceed in accordance with subsections (3) and (4) of section 92 of this Act, or (where applicable) in accordance with subsections (5) and (6) of that section, as if the changes determined by him had been recommended by that committee under subsection (2) of that section.
- (4) Subsections (4) and (6) of section 92 of this Act, as applied by subsection (3) above, shall each have effect with the substitution, for the words from " shall make " to " giving effect to ", of the words "may, if he thinks fit, modify the draft in consequence of".

#### **95 Effect of orders as to remuneration**

- (1) Where any order made under section 92(4) of this Act is for the time being in force, then, subject to subsection (2) below, remuneration to which the order applies shall be determined, and shall be paid to teachers by education authorities, in accordance with the scales and other provisions set out in the memorandum referred to in that order.
- (2) Where at any time while an order under section 92(4) of this Act (in this subsection referred to as " the principal order ") is in force, an order under subsection (6) of that section relating to remuneration to which the principal order applies (in this subsection referred to as " the amending order ") comes into force, then, at any time while the amending order is in force, remuneration to which the principal order applies shall be determined, and shall be paid to teachers by education authorities, in accordance with the scales and other provisions set out in the memorandum referred to in the principal order as amended by the amending order.
- (3) In this section any reference to subsection (4) or subsection (6) of section 92 of this Act includes a reference to that subsection as applied by section 94 of this Act.

**96 Remuneration of teachers where scales do not apply**

Where the scales and other provisions set out in a memorandum to which an order made under section 92, or that section as applied by section 94, of this Act refers do not apply to a teacher appointed by an education authority, the education authority may pay to that teacher such remuneration as they think fit.

**97 Supplementary provisions as to orders relating to remuneration**

- (1) Any power to make an order under section 92 of this Act shall be exercisable by statutory instrument.
- (2) Any order under that section may be made with retrospective effect to any date specified in the order, and the remuneration of teachers to whom the order applies shall be deemed to have been payable accordingly:

Provided that nothing in this subsection shall be construed authorising the remuneration of any teacher to be reduced retrospectively.

- (3) In this section any reference to an order made under section 92 of this Act includes a reference to an order made under that section as applied by section 94 of this Act.

**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, and
  - (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:

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 ; and
  - (ii) 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.
- (2) If any person—

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- (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 £20 or in the case of a second or subsequent conviction to a fine not exceeding £50 or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

- (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.

## 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;
  - (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;
  - (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

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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 £20 or in the case of a second or subsequent conviction, whether in respect of the same or other premises, to a fine not exceeding £50, 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 £20, or in the case of a second or subsequent conviction to a fine not exceeding £50, or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.
- (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, with the consent of the Minister for the Civil Service, determine.

## PART VI

### REORGANISATION OF ENDOWMENTS

#### **104 Register of educational endowments**

- (1) The Secretary of State shall appoint one of his officers to be Registrar of Educational Endowments, and it shall be the duty of the Registrar 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 within twelve months after the date upon which the deed creating the endowment came into operation, to furnish the Registrar with such information about the endowment as may be prescribed by regulations made by the Secretary of State.
- (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, the Secretary of State shall have power to 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;

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- (b) for the application of the capital or income of such endowments to such educational purposes, mental or physical, moral or social, as the Secretary of State thinks 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.
- (2) It shall be the duty of the Secretary of State 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 Secretary of State 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 Secretary of State 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:

Provided that if the founder or the governing body of a theological endowment or of a new endowment shall intimate in writing to the Secretary of State his or their consent to the endowment being dealt with under this section, the said powers shall extend to the endowment.

- (5) If the founder or the governing body or the university court of any university, with respect to a university endowment, or the Carnegie Trustees with respect to the Carnegie Trust, shall intimate in writing to the Scottish Universities Committee of the Privy Council their consent to the endowment or the Trust being dealt with under this section, the Scottish Universities Committee shall have the like powers and duties with regard to the endowment or the Trust as are conferred by this Part of this Act upon the Secretary of State with regard to an educational endowment; and—
- (a) except as mentioned in paragraph (b) below, the provisions of this Part of this Act shall, with any necessary modifications, apply for that purpose ;
  - (b) section 113 of this Act shall apply in place of section 112 thereof in relation to the procedure to be followed by the Scottish Universities Committee in preparing a scheme under this Part of this Act.
- (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.

## **106 Sale of land belonging to educational endowments**

- (1) Where it appears to the Secretary of State 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, he may by order direct that the said proviso or condition shall not have effect in relation to the land:

Provided that no such direction shall be given in relation to any land unless the Secretary of State 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 out of the proceeds of the sale of the land of any sum which

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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 within the meaning of this Part of this Act, 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 Secretary of State—
- (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 failed altogether or have become obsolete or useless or are otherwise sufficiently provided for; or
  - (iii) such purposes have become insignificant in comparison with the magnitude of such part of the endowment; or
  - (iv) such purposes have become prejudicial to the public welfare.
- (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 Secretary of State, is the proportion which has according to the average of such number of years as the Secretary of State shall determine 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.
- (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 Secretary of State.
- (6) When any portion of the endowment or the annual income of such portion has been accumulated and not applied to any purpose, the Secretary of State 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 Secretary of State 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 dealt with by the Secretary of State 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 intimate in writing to the Secretary of State their consent to the endowment being dealt with under this Part of this Act and thereafter such endowment may be dealt with in all respects as if it were an educational endowment.

- (2) Where the Lord Advocate is of opinion on any such ground as is specified in subsection (1) above that a scheme should be framed for the future government and management of any endowment which is not an educational endowment or of any new endowment the governing body of which have not intimated their consent to its being dealt with under this Act, 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 frame a scheme for the future government 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, the Secretary of State 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.

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## **110 Provisions as to beneficiaries and teachers**

- (1) In framing a scheme for any endowment, the Secretary of State shall—
  - (a) provide that in making a selection from amongst those eligible for the benefits of the endowment, due regard shall be paid to diligence, attainment and promise as ascertained in such manner as the Secretary of State shall determine, and
  - (b) where he considers it expedient to do so, provide for extending to both sexes the benefit of the endowment.
- (2) In every scheme the Secretary of State shall provide for the dismissal at pleasure of every officer in the employment of the governing body and of every teacher and officer in any endowed school to which the scheme relates:
 

Provided that the scheme 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) In any scheme for any endowment, any provision which applies section 85(3) of the Act of 1962 to any certificated or registered teacher in the employment of the governing body of that endowment, or which has, in relation to such a teacher, the like effect as such a provision, shall cease to have effect.
- (4) Any such scheme 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 in such manner as the Secretary of State may prescribe, 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 in such form as the Secretary of State, or, in the case of a university endowment or the Carnegie Trust, the Scottish Universities Committee of the Privy Council, may by order direct.
- (3) The accounts of every endowment to which this section applies shall be audited each year by an auditor appointed by the governing body with the approval in the case of a university endowment or the Carnegie Trust, of the Scottish Universities Committee of the Privy Council; and no person shall be qualified to be appointed auditor as aforesaid unless he is a member of one or more of the following bodies:—
  - (a) the Institute of Chartered Accountants of Scotland ;
  - (b) the Institute of Chartered Accountants in England and Wales;
  - (c) the Association of Certified Accountants;
  - (d) the Institute of Chartered Accountants in Ireland ;

- (e) any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 161(1)(a) of the Companies Act 1948 by the Secretary of State ;  
but a Scottish firm may be so appointed if each of the partners therein is qualified to be so appointed.
- (4) The governing body of every endowment to which this section applies, other than a theological endowment, a university endowment or the Carnegie Trust, shall, within such period after the end of the financial year of the endowment as the Secretary of State may direct, send such copies as the Secretary of State may require of the audited accounts of the endowment to the Secretary of State, who may examine these accounts and call for any other records kept in pursuance of subsection (2) above and for such additional information as he may require.
- (5) Where the Secretary of State is of the opinion that the governing body of any endowment, the accounts of which he has examined in pursuance of subsection (4) above have not complied in any respect with any enactment, deed or other instrument applying to them, he shall so report to that body and shall afford to them an opportunity of satisfying him that they are not in default.
- (6) The Registrar of Educational Endowments shall make the audited accounts of every endowment to which this section applies 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 the Secretary of State 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; and
  - (b) cause the draft scheme to be published in such manner as he thinks sufficient for giving information to all persons interested in the scheme ;
- 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 publication of the draft scheme, send in writing to the Secretary of State objections to the draft scheme, or proposed amendments thereto, or both.
- (2) If within the period referred to in subsection (1) above no objection and no proposed amendment to the draft scheme is received by him, the Secretary of State may by statutory instrument make the scheme in the terms of the draft scheme published under subsection (1) above.
- (3) If within the said period objections or proposed amendments to the draft scheme are received by him, the Secretary of State shall consider those objections and proposed amendments and may thereafter, if he thinks fit, frame a scheme in such form as he thinks expedient.
- (4) If the Secretary of State frames a scheme under subsection (3) above, he shall as soon as practicable thereafter—

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- (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 his decision with respect to those objections or amendments, together with a statement in writing of the reasons for his decision;
  - (b) send copies of the scheme to the governing body of the endowment to which it relates ;
  - (c) cause the scheme to be published in such manner as he thinks sufficient for giving information to all persons interested in the scheme;
  - (d) cause to be published, along with the scheme, a notice—
    - (i) stating that, unless not later than the expiry of the period of one month from the first publication of the scheme a petition or appeal is presented to the Court of Session in accordance with the following provisions of this section, the Secretary of State proposes by statutory instrument to make the scheme in the terms in which it has been published, and
    - (ii) drawing attention to the provisions of subsection (6) below in such a way as to inform all persons concerned of their right under that subsection to present a petition to the Secretary of State and of the effect of their so doing.
- (5) If within the period referred to in paragraph (d)(i) of subsection (4) above no petition or appeal is presented as aforesaid to the Court of Session, or if any petition or appeal so presented is refused by the Court, the Secretary of State may by statutory instrument make the scheme in the terms in which it was published under subsection (4) above.
- (6) If within the said period a petition praying that the scheme be laid before Parliament is presented to the Secretary of State by any of the persons mentioned below, the Secretary of State shall lay the statutory instrument containing the scheme before Parliament, and that statutory instrument shall be subject to annulment in pursuance of a resolution of either House thereof.

The persons referred to above are—

- (a) the governing body of the endowment to which the scheme relates,
  - (b) the council of any district directly affected by the scheme,
  - (c) any education authority directly affected by the scheme,
  - (d) any ratepayers (not being less than twenty) of any district or place directly affected by the scheme,
  - (e) any person having a vested interest in the said endowment or any part of it.
- (7) If within the said period there is presented to the Court of Session by the governing body of the endowment a petition for amendment of the scheme or for the substitution of a new scheme, the Court may amend the scheme and make it as so amended, or may make a new scheme, and for those purposes the Court of Session shall have the like powers as are conferred by this Part of this Act on the Secretary of State regarding schemes for the future government and management of educational endowments.
- (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 Secretary of State shall not make the scheme but may, if he thinks fit, frame an amended scheme in such form as he thinks expedient, and the provisions of subsections (4) to (7) above, and of this subsection, shall apply in relation to an amended scheme framed under this subsection as they apply to a scheme framed under subsection (3) above.

- (9) Where the Secretary of State causes a draft scheme or a scheme to be published under this section, he shall cause to be prefixed to that draft scheme or scheme a memorandum setting out—
- (a) the reasons why, in his 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 Procedure in preparation of reorganisation schemes by Scottish Universities Committee of Privy Council by virtue of s. 105(5)**

- (1) Before making, by virtue of section 105(5) of this Act, a scheme for the reorganisation of any endowment the Scottish Universities Committee of the Privy Council (hereafter in this section called " the Committee ") shall prepare a draft scheme and shall—
- (a) send copies of the draft scheme to the governing body of the endowment to which the draft scheme relates; and
  - (b) cause the draft scheme to be published in such manner as it thinks sufficient for giving information to all persons interested in the scheme;

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 publication of the draft scheme, send in writing to the Committee objections to the draft scheme, or proposed amendments thereto, or both.

- (2) If within the period referred to in subsection (1) above no objection and no proposed amendment to the draft scheme is received by it, the Committee may make the scheme in the terms of the draft scheme published under that subsection, and it shall be lawful for Her Majesty by Order in Council to approve the scheme so made.
- (3) If within the said period objections or proposed amendments to the draft scheme are received by it, the Committee shall consider those objections and proposed amendments and may thereafter, if it thinks fit, frame a scheme in such form as it thinks expedient.
- (4) If the Committee frames a scheme under subsection (3) above, it shall as soon as practicable thereafter—

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- (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 its decision with respect to those objections or amendments;
  - (b) send copies of the scheme to the governing body of the endowment to which the scheme relates;
  - (c) cause the scheme to be published in such manner as it thinks sufficient for giving information to all persons interested in the scheme ;
  - (d) cause to be published, along with the scheme, a notice—
    - (i) stating that, unless not later than the expiry of the period of one month from the first publication of the scheme an appeal is presented to the Court of Session in accordance with the following provisions of this section, the Committee proposes to make the scheme in the terms in which it has been published, and that the scheme when so made may be approved by Her Majesty by Order in Council; and
    - (ii) drawing attention to the provisions of subsection (6) below in such a way as to inform all persons concerned of their right under that subsection to present a petition to the Committee and of the effect of their so doing.
- (5) If within the period referred to in paragraph (d)(i) of subsection (4) above no appeal is presented as aforesaid to the Court of Session, or if any appeal so presented is refused by the Court, the Committee may make the scheme in the terms in which it was published under that subsection, and, subject to subsection (6) below, it shall be lawful for Her Majesty by Order in Council to approve the scheme so made.
- (6) If within the said period a petition praying that the scheme be laid before Parliament is presented to the Committee by any of the persons mentioned below, the Committee shall cause the scheme to be laid before both Houses of Parliament, and it shall be lawful for Her Majesty, after the scheme has so lain for forty days (in reckoning which period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), by Order in Council to approve the scheme unless within that period either House has resolved that the scheme shall not be proceeded with, in which case no further proceedings shall be taken thereon, without prejudice however, to the making of a new scheme.
- The persons referred to above in relation to a scheme under this section are those mentioned in paragraphs (a) to (e) of section 112(6) of this Act in relation to a scheme under that section.
- (7) Subsection (8) of section 112 of this Act shall apply for the purposes of this section as it applies for the purposes of that section, with the substitution, for the references to the Secretary of State and to subsections (4) to (7) and (3) of that section, of references to the Committee and to subsections (4) to (6) and (3) of this section respectively.
- (8) Subsection (9) of section 112 of this Act shall apply for the purposes of this section as it applies for the purposes of that section, with the substitution, for the references to the Secretary of State and to that section, of references to the Committee and to this section respectively.
- (9) For the purposes of this section, references to an endowment shall be construed as references to a university endowment or the Carnegie Trust and references to the governing body of an endowment shall be construed as references to the founder or the

governing body of the university court of any university, with respect to a university endowment, and to the Carnegie Trustees, with respect to the Carnegie Trust.

#### **114 Effect of schemes**

- (1) Any scheme made or approved under the foregoing provisions of this Part of this Act shall come into operation—
- (a) except as provided in paragraph (b) below, on the date of the making of the statutory or other instrument containing, or (as the case may be) the Order in Council approving, the scheme;
  - (b) in the case of a scheme contained in a statutory instrument laid before Parliament in pursuance of section 112(6) of this Act, on such date as may be specified in that statutory instrument;
- and shall have effect in the same manner as if it had been enacted in this Act, and accordingly, from the said date, 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) A statutory or other instrument containing a scheme made (otherwise than by the Scottish Universities Committee of the Privy Council), or an Order in Council or other instrument approving a scheme, under this Part of this Act shall 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 be questioned in any legal proceedings whatever.

#### **115 Schemes for small endowments**

In the case of an educational endowment of less annual value than £500, the procedure hereinbefore prescribed shall not apply, if the governing body of such endowment frame and submit to the Secretary of State a scheme respecting such endowment. The Secretary of State may approve such scheme with or without any modifications as he thinks fit. In framing and approving such scheme the same powers may be exercised, and subject to the same conditions, as nearly as may be, as in the case of any scheme under this Part of this Act; and such scheme, when approved by the Secretary of State, shall have effect as if it were a scheme made under section 112 or, as the case may be, 113 of this Act.

#### **116 Amending schemes**

Schemes may be from time to time made or approved for amending 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, and all the provisions of this Part of this Act relative to an original scheme shall, with any necessary modifications, apply also to an amending scheme.

#### **117 Cost of publishing scheme etc.**

The cost of publishing 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:

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Provided that, if the Secretary of State causes any draft scheme, or scheme, or amended scheme, to be published in the Edinburgh Gazette, no fees shall be exigible in respect of such publication.

**118 Reports by governing body**

Every governing body shall make such reports and returns and give such information to the Secretary of State as he may from time to time require.

**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**

If the governing body of any educational endowment 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 of the Act of 1962 or this Part of this Act, 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.

**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 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 (including the expenses of the Secretary of State) to be paid out of the funds of the educational endowment to which the proceeding relates: Provided always that it shall not be lawful for the Court to find the Secretary of State liable in expenses.

**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

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founder, or by the consent of 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, 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 Secretary of State 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.

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## 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 in his last year of compulsory schooling where the employment is in pursuance of arrangements made or approved by the education authority 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 (when it comes into force) section 51(1) of the Merchant Shipping Act 1970 (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) For the purposes of subsection (1) above a child is in his last year of compulsory schooling at any time during the period of twelve months before he attains the upper limit of school age.

#### **124 Effect of attendance notices on computation of working hours**

- (1) Where a young person is employed in any employment with respect to which a limitation upon the number of working hours during which he may be employed in that employment otherwise than by way of overtime in any week is imposed by or under any enactment, any period of attendance at a junior college required of him during that week by an attendance notice served on him shall, for the purposes of the limitation, be deemed to be time during which he has been so employed in that week.
- (2) Where a young person employed in any employment is entitled by or under the provisions of any enactment or of any agreement to overtime rates of pay in respect of any time during which he is employed in that employment on any day or in any week in excess of any specified number of hours or before or after any specified hour, any period of attendance at a junior college required of him on that day or during that week by an attendance notice served on him shall, for the purposes of those provisions, be

deemed to be a period during which he was employed in that employment otherwise than in excess of the specified number of hours or before or after the specified hour, as the case may be.

## **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.

### *Careers services of education authorities*

## **126 Provision of services by education authorities**

(1) Subject to subsections (3) to (5) below, it shall be the duty of each education authority—

- (a) to make arrangements for the purpose of assisting persons who are attending, either full-time or part-time, educational institutions in Great Britain other than universities—
  - (i) to determine what employments will, having regard to their capabilities, be suitable for them and available to them when they leave the institutions, and
  - (ii) to determine what training will then be required by them and available to them in order to fit them for those employments;
- (b) to make arrangements for the purpose of assisting persons leaving institutions mentioned in paragraph (a) above to obtain such employments and training as are so mentioned; and
- (c) to make the arrangements made in pursuance of paragraphs (a) and (b) above available to persons who seek to make use of them and are either such persons as are mentioned in those paragraphs or persons attending or leaving universities in Great Britain;

and it shall also be the duty of each education authority to arrange for officers of the authority to be appointed to administer the arrangements made by the authority in pursuance of this subsection.

(2) An education authority may, and shall so far as the Secretary of State directs it to do so, make arrangements in accordance with the following subsection—

- (a) for the purpose of assisting persons (other than those mentioned in paragraphs (a) and (b) of subsection (1) above) who are seeking employment or different employment to determine—
  - (i) what employments are suitable for persons having their capabilities, and
  - (ii) what training they require and is available to them in order to fit them for those employments; and
- (b) for the purpose of assisting those persons to obtain such employments and training as are mentioned in paragraph (a) above.

(3) The arrangements made in pursuance of subsection (1) or (2) above shall be arrangements—

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- (a) for the giving of assistance by collecting and furnishing information about persons seeking and offering employment and persons providing facilities and services for training; and
- (b) for providing advice and guidance for the purposes mentioned in that subsection,

and may include arrangements for the provision of services calculated to facilitate the carrying out of arrangements made in pursuance of paragraph (a) or (b) of this subsection.

- (4) Subject to subsection (5) below, it shall be the duty of education authorities to consult and co-operate with one another to the extent appropriate for the purpose of securing that the functions conferred on them by subsections (1) and (2) above are performed efficiently; and, without prejudice to the powers exercisable by an authority for the purpose of performing that duty, any two or more education authorities may make arrangements on such terms as they think fit (which may include terms as to the making of payments by one authority to another)—
- (a) for any of the authorities to perform any of those functions on behalf of another of the authorities as respects the whole or part of the other authority's area;
  - (b) for the authorities to act jointly in performing any of those functions as respects the whole or parts of their areas.
- (5) The Manpower Services Commission and any education authority may make arrangements for the performance by the Commission on behalf of the authority of any function conferred on the authority by virtue of subsection (1) above or subsection (4) above so far as it relates to subsection (1), and any such arrangements—
- (a) may be made in respect of the whole or part of the area of the authority ; and
  - (b) except in a case in which the Secretary of State has authorised the Commission to disregard this paragraph, must include provision for the making by the authority to the Commission of payments intended to defray the expenditure incurred by the Commission by virtue of the arrangements.
- (6) The Secretary of State may by order provide that subsection (5) above, section 127(5) of this Act, this subsection and any arrangements in force by virtue of subsection (5) above or the said section 127(5) shall cease to have effect on a day specified in the order.
- (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument, and such an order may include such supplemental and incidental provisions as the Secretary of State considers appropriate for the purposes of the order.
- (8) The reference to part-time attendance in paragraph (a) of subsection (1) above does not include—
- (a) part-time attendance where none of the relevant classes begins on any day before 5 o'clock in the evening ; and
  - (b) any other part-time attendance as to which the Secretary of State directs that it shall be disregarded for the purposes of that paragraph;

except that the said reference does include part-time attendance by persons who satisfy the education authority in question that their attendance is with a view to employment.

- (9) In this section—

" employment " means employment under a contract of service or apprenticeship or a contract for services or otherwise than under a contract; and

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" training " includes any education with a view to employment ;  
and in this section and section 127 of this Act " university " includes a central institution and a college of education.

## **127 Records of vocational advice**

- (1) It shall be the duty of each education authority to keep records of the vocational advice given on behalf of the authority to such persons as are mentioned in subsection (1)(a) of section 126 of this Act.
- (2) Where a person ceases to attend an educational institution (other than a university) in the area of an authority and begins to attend such an institution in the area of another authority it shall be the duty of the first-mentioned authority, on the request of the other authority, to furnish to the other authority any records relating to that person which have been kept by the first-mentioned authority in pursuance of subsection (1) above or transmitted to that authority in pursuance of this subsection and any records of vocational advice given to that person by the Secretary of State which have been transmitted to the first-mentioned authority by the Secretary of State.
- (3) Where to the knowledge of an authority a person ceases to attend a school in the area of the authority otherwise than with a view to attending another school in the area of that or another authority, then, subject to subsection (4) below, it shall be the duty of the authority—
  - (a) to give him a written summary of any vocational advice already given to him on behalf of the authority and of any vocational advice relating to him of which records were transmitted to the authority in pursuance of subsection (2) above or by the Secretary of State; and
  - (b) to keep a copy of the summary for two years beginning with the date on which he ceased to attend the school in question; and
  - (c) to comply with a request for a copy of the summary which during that period is made to the authority by him; and
  - (d) to comply with a request for a copy of the summary which, during that period and at a time when the person to whom it relates is under the age of eighteen, is made to the authority by his parent;but an authority shall not be required by virtue of paragraph (c) or (d) above to furnish more than one copy of the summary to the person to whom it relates or more than one copy of it to his parent.
- (4) An authority shall not be required by virtue of paragraph (a) of subsection (3) above to furnish a person with the summary mentioned in that paragraph in a case where the authority has, or the authority and other authorities and the Secretary of State between them have, already furnished him with written statements which together contain the information which apart from this subsection would fall to be included in the summary; and that subsection shall have effect in such a case as if paragraph (a) were omitted and any reference to the summary in any other provision of that subsection were a reference to the statements.
- (5) Subsection (5) of section 126 of this Act shall have effect in relation to any function conferred on an authority by virtue of the preceding provisions of this section as it has effect in relation to any function mentioned in that subsection.
- (6) In this section—

" authority " means education authority ;

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" vocational advice " means advice and guidance given in pursuance of arrangements made for the purposes of subsection (1)(a) of section 126 of this Act or in pursuance of the Employment and Training Act 1948.

## **128 Control of education authorities by Secretary of State**

- (1) It shall be the duty of each education authority—
- (a) to perform the functions conferred on the authority by sections 126 and 127 of this Act in accordance with such guidance of a general character as the Secretary of State may give to the authority; and
  - (b) to provide the Secretary of State, in such manner and at such times as he may specify, with such information and facilities and services for obtaining information as he may specify with respect to the performance by the authority of those functions.
- (2) The Secretary of State may make arrangements with one or more other Ministers of the Crown—
- (a) for constituting a body consisting of officers of his and of the other Ministers and of such other persons, if any, as may be determined in pursuance of the arrangements ; and
  - (b) for the performance by that body on behalf of the Secretary of State of functions conferred on him by subsection (1) above.

### *Examinations Board*

## **129 Establishment of board to conduct examinations, etc.**

- (1) There shall be a board (hereafter in this section referred to as " the Board ") for the following purposes, that is to say—
- (a) conducting examinations for the award of certificates relating to secondary education and awarding such certificates;
  - (b) advising the Secretary of State on matters relating to examinations for pupils receiving secondary education ;
  - (c) such other purposes relating to examinations as may be specified in regulations under this section.
- (2) Regulations shall be made under this section by the Secretary of State, and such regulations shall confer on the Board such powers, and impose on them such duties, as appear to the Secretary of State to be necessary or desirable for the purposes referred to in subsection (1) above and may empower the Secretary of State to give to the Board such directions as to the discharge by them of their functions as appear to him to be expedient.
- (3) Regulations under this section shall make provision with respect to the membership of the Board and shall ensure that not less than four-fifths of the members of the Board are appointed by the Secretary of State from amongst persons nominated by, or by bodies appearing to the Secretary of State to represent the interests of, the universities of Scotland, education authorities, governing bodies of central institutions, governing bodies of colleges of education, directors of education and teachers employed in educational establishments.
- (4) Regulations under this section may—

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- (a) provide that the Board shall be a body corporate with perpetual succession and a common seal;
  - (b) make provision with respect to the procedure of the Board and the conduct of their business;
  - (c) make provision with respect to the financial transactions of the Board, including provision for the keeping by the Board of proper accounts and for the auditing of such accounts;
  - (d) provide for the payment by the Board to the members of the Board or of any committee or sub-committee thereof of travelling, subsistence and other allowances;
  - (e) provide that the Board may appoint officers, servants and agents on such terms as to remuneration, pensions or otherwise as the Board may, with the approval of the Secretary of State, determine;
  - (f) provide that the Board shall make an annual report to the Secretary of State on the exercise by them of their functions, and that the Secretary of State shall lay a copy of the report before each House of Parliament;
  - (g) contain such consequential, ancillary and incidental provisions as appear to the Secretary of State to be necessary or desirable for the purposes of the regulations.
- (5) Every education authority shall, at such times as may be fixed by the Secretary of State, contribute to the funds of the Board such sums as may be fixed by him after consultation with such bodies representative of local authorities as appear to him to be concerned, and the said contributions shall be applied by the Board towards meeting their expenses.
- (6) The Secretary of State may from time to time make grants to the Board which shall be applied by them towards meeting their expenses.

#### *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.

### **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.

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- (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.

### *General*

## **132 Amendment of enactments**

- (1) In relation to any young person punishable under this Act, section 58 of the Act of 1937 (which relates to the substitution of other punishments for imprisonment), shall have effect as if references therein to a young person included references to any person who has not attained the age of eighteen years.
- (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.
- (2) 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.
- (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.

### **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 ;
  - " college of education " means an educational establishment in which further education is provided and the primary purpose of which is the education and training of teachers;
  - " dental examination " means examination by a registered dentist, so however that in conducting an examination of any such class as may be

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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 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 regional or islands council, and " area " in relation to an education authority shall be construed accordingly ;

" educational establishment "—

- (i) means a school, a junior college and any other institution for the provision of any form of further education and the premises of such school, junior college or institution, and
- (ii) without prejudice to the foregoing generality, includes a central institution, a college of education, a hostel used mainly by pupils attending such schools or junior colleges 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;

" 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 grants in aid of the employers' contributions provided for in Teachers (Superannuation) Regulations, but does not include a public school;

" Health Board " means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

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" 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 on the recommendation of the Secretary of State ;

" junior college " has the meaning assigned to it by section 1(5)(b)(i) of this Act;

" 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 the actual custody of a child or young person;

" premises " in relation to any educational establishment includes the site of such establishment, any building in which pupils attending such establishment 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

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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;

"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 ;

"reporter of the appropriate local authority" means the reporter of the appropriate local authority for the purposes of the Social Work (Scotland) Act 1968;

"residential establishment" has the same meaning as in the Social Work (Scotland) Act 1968 ;

"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 but does not include an establishment or residential establishment within the meaning of the Social Work (Scotland) Act 1968;

"school age" shall be construed in accordance with section 31 of this Act;

"school education" has the meaning assigned to it by section 1(5)(a) of this Act;

"special education" has the meaning assigned to it by section 1(5)(c) of this Act;

"special school" includes special classes forming part of primary schools or secondary schools, child guidance clinics and occupational centres;

"supervision requirement" has the same meaning as in the Social Work (Scotland) Act 1968 ;

"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 which is appropriate in the ordinary case to the requirements of pupils who have not attained the age of twelve years;
- (b) secondary education shall be construed as a reference to school education of a kind which is appropriate in the ordinary case to the requirements of pupils who have attained that age ;

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) The enactments specified in Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the consolidation under this Act.
- (3) The enactments set out in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

### **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.
- (5) This Act extends to Scotland only.

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## SCHEDULES

### SCHEDULE 1

Section 67.

#### LOCAL INQUIRIES

- 1 The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.
- 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 a recorded decree arbitral.

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE 2

Section 100(1).

### CONSTITUTION OF INDEPENDENT SCHOOLS TRIBUNALS

- 1 For the purpose of enabling Independent Schools Tribunals to be constituted as occasion may require, there shall be appointed by the Secretary of State a panel (hereinafter referred to as the "educational panel") of persons to act when required as members of any such tribunal.
- 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 the educational panel, 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 Any person appointed to be a member of the educational panel shall hold office for such period and subject to such conditions as may be determined by the Secretary of State.
- 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 from the educational panel by the Secretary of State, of whom at least one shall be a woman in the case of a complaint concerning a school for girls or a complaint concerning the proprietor of a school, or a teacher therein, who is a woman.
- 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.

## SCHEDULE 3

Section 136(1).

### TRANSITIONAL AND SAVINGS PROVISIONS

#### *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.

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*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 special education.

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 paragraph (i) of subsection (1) of that section) to the effect that the child requires special education:

Provided that section 64 of this Act shall not (except in so far as it relates to a determination under section 63 of this Act) apply in relation to a decision deemed by virtue of this paragraph to be a decision under section 62 of this Act.

*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.

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 4

Section 136(2).

AMENDMENT OF ENACTMENTS

*The Children Act 1958 (c. 65)*

1 In section 17 (interpretation), in the definition of "compulsory school age " for the word " 1962 " there shall be substituted the word " 1980 ".

*The Mental Health (Scotland) Act 1960 (c. 61)*

2 In section 12(1)(b) (training of mental defectives), for the word " 1962 " there shall be substituted the word " 1980 ".

*The Factories Act 1961 (c. 34)*

3 In section 176(1) (interpretation), in the definition of "child" for the word " 1962 " there shall be substituted the word " 1980 ".

*The Public Expenditure and Receipts Act 1968 (c. 14)*

4 In Schedule 3 (variation of fees), in paragraph 1(b) for the words "1962 (c. 47) section 99(1)" there shall be substituted the words " 1980 (c. 44) section 84(1) ".

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*The Social Work (Scotland) Act 1968 (c. 49)*

- 5 In section 94(1) (interpretation), in the definition of "school age" for the words "32 of the Education (Scotland) Act 1962" there shall be substituted the words " 31 of the Education (Scotland) Act 1980 ".

*The Sex Discrimination Act 1975 (c. 65)*

- 6 In section 22 (discrimination by bodies in charge of educational establishments), in paragraph 7 of the Table for the words "75(c) or (d) of the Education (Scotland) Act 1962" there shall be substituted the words " 73(c) or (d) of the Education (Scotland) Act 1980 ".
- 7 In section 23(2) (other discrimination by education authorities), for the words " Acts 1939 to 1980 " there shall be substituted the words " Act 1980 '.
- 8 In section 25 (general duty in public sector of education)—
- (a) in subsection (3) for the words " 71 of the Education (Scotland) Act 1962" and " said section 71 " there shall be substituted respectively the words " 70 of the Education (Scotland) Act 1980 " and " said section 70 " ;
  - (b) in subsection (5) for the words " 68 of the Education (Scotland) Act 1962 " there shall be substituted the words " 67 of the Education (Scotland) Act 1980. ".
- 9 In section 79 (educational endowments to which Part VI of the Education (Scotland) Act 1962 applies)—
- (a) for any reference to Part VI of the Act of 1962 there shall be substituted a reference to Part VI of this Act;
  - (b) in subsections (1)(b) and (4) for the references to sections 121(1) and 68 of the Act of 1962 there shall be substituted respectively references to sections 108(1) and 67 of this Act.
- 10 In section 81(3)(b) (orders), for the words " 128 of the Education (Scotland) Act 1962" there shall be substituted the words " 115 of the Education (Scotland) Act 1980 ".
- 11 In section 82(1) (interpretation), in the definition of "education authority", "educational establishment", "further education ", " independent school ", " managers ", " proprietor ", " school " and " school education " for the respective references to subsections (16), (17), (21), (23), (26), (37), (42) and (43A) of section 145 of the Education (Scotland) Act 1962 there shall be substituted references to section 135(1) of the Education (Scotland) Act 1980.

*The Race Relations Act 1976 (c. 74)*

- 12 In section 17 (discrimination by bodies in charge of educational establishments), in paragraph 7 of the Table for the words " 75(c) or (d) of the Education (Scotland) Act 1962 " there shall be substituted the words " 73(c) or (d) of the Education (Scotland) Act 1980. ".
- 13 In section 18(2) (discrimination by education authorities), for the words " Acts 1939 to 1980 " there shall be substituted the words " Act 1980 ".
- 14 In section 19 (general duty in public sector of education)—

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- (a) in subsection (3) for the words "71 of the Education (Scotland) Act 1962" and " said section 71 " there shall be substituted respectively the words " 70 of the Education (Scotland) Act 1980 " and " said section 70 ";
- (b) in subsection (5) for the words " 68 of the Education (Scotland) Act 1962 " there shall be substituted the words " 67 of the Education (Scotland) Act 1980 ".
- 15 In section 78(1) (interpretation), in the definitions of "education authority", "educational establishment", "further education", "independent school", "managers", "proprietor", "school" and " school education " for the respective references to subsections (16), (17), (21), (23), (26), (37), (42) and (43A) of section 145 of the Education (Scotland) Act 1962 there shall be substituted references to section 135(1) of the Education (Scotland) Act 1980.

*The National Health Service (Scotland) Act 1978 (c. 29)*

- 16 In section 15(1)(f) (supply of goods and services to local authorities etc.), for the words " 5 of the Education (Scotland) Act 1962 " there shall be substituted the words " 1(5)(c) of the Education (Scotland) Act 1980'.
- 17 In section 39(5) (medical and dental inspection, supervision and treatment of pupils and young persons), for " 1962 " there shall be substituted " 1980'.
- 18 In section 108(1) in the definitions of "education authority" and " full-time education in a school" for " 1962 " there shall be substituted 1980 ".
- 19 In paragraph 10(b) of Schedule 15 (saving of amendments), for " 154 " there shall be substituted " 155 ".

SCHEDULE 5

Section 136(3).

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
<a href="#">10 &amp; 11 Eliz. 2. c. 47.</a>	The Education (Scotland) Act 1962.	The whole Act except sections 136 and 137, subsections (7), (16), (18), (19), (33) and (42) of section 145, section 149(1) and (2) and section 148(2) and Schedule 9 so far as they relate to section 136.
<a href="#">1963 c. 21.</a>	The Education (Scotland) Act 1963.	The whole Act.
<a href="#">1964 c. 16.</a>	The Industrial Training Act 1964.	Section 16.
<a href="#">1964 c. 82.</a>	The Education Act 1964.	Section 5.

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Chapter	Short Title	Extent of Repeal
1967 c. 36.	The Remuneration of Teachers (Scotland) Act 1967.	The whole Act.
1967 c. 80.	The Criminal Justice Act 1967.	Part I of Schedule 3 so far as relating to amendments of the Education (Scotland) Act 1962.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Schedule 8 so far as relating to the Education (Scotland) Act 1962.
1969 c. 49.	The Education (Scotland) Act 1969.	The whole Act.
1970 c. 44.	The Chronically Sick and Disabled Persons Act 1970.	Sections 25 to 27.
1971 c. 42.	The Education (Scotland) 1971 Act.	The whole Act.
1972 c. 11.	The Superannuation Act 1972.	In Schedule 6, paragraph 42.
1973 c. 23.	The Education (Work Experience) Act 1973.	The whole Act.
1973 c. 50.	The Employment and Training Act 1973.	Sections 8, 9 and 10.
1973 c. 59.	The Education (Scotland) Act 1973.	The whole Act.
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 129. Schedule 11.
1975 c. 65.	The Sex Discrimination Act 1975.	Section 79(6).
1975 c. 71.	The Employment Protection Act 1975.	In Schedule 16, in Part IV, paragraphs 9 and 12.
1976 c. 20.	The Education (Scotland) Act 1976.	The whole Act.
1976 c. 65.	The Retirement of Teachers (Scotland) Act 1976.	The whole Act.
1977 c. 45.	The Criminal Law Act 1977.	Schedule 6 so far as relating to the Education (Scotland) Act 1962.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	In Schedule 15, in paragraph 10(b) the words " 126,127 ". In Schedule 16, paragraphs 15 to 18.

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Chapter	Short Title	Extent of Repeal
<a href="#">1980 c. 20.</a>	The Education Act 1980	Section 20. Section 23 Section 25. Section 31(5)-(6). Section 33(2). Sections 35, 37 and 38.

## SCHEDULE 6

Section 137(3).

### POSTPONEMENT OF THE COMMENCEMENT OF CERTAIN PROVISIONS

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| 1  | Section 1(3) so far as relating to compulsory further education and junior colleges. |
| 2  | Section 10 so far as relating to junior colleges.                                    |
| 3  | Section 11 so far as relating to junior colleges.                                    |
| 4  | Section 23 so far as relating to junior colleges.                                    |
| 5  | Sections 45 to 48.   |
| 6  | Section 50 so far as relating to junior colleges and subsection (1)(c)               |
| 7  | Section 52 so far as relating to junior colleges.                                    |
| 8  | Section 57 so far as relating to junior colleges.                                    |
| 9  | Section 58 so far as relating to junior colleges.                                    |
| 10 | Section 66 so far as relating to junior colleges.                                    |
| 11 | Section 68 so far as relating to junior colleges.                                    |
| 12 | Section 72(2) so far as relating to junior colleges.                                 |
| 13 | Section 86 so far as relating to junior colleges.                                    |
| 14 | Section 87 so far as relating to junior colleges.                                    |
| 15 | Section 124.   |