



Education (Scotland) Act 1980

1980 CHAPTER 44

PART VI

REORGANISATION OF ENDOWMENTS

104 Register of educational endowments.

- (1) [^{F1}It shall be the duty of the Secretary of State] 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 ^{F2}, to furnish the [^{F3}Secretary of State] with such information about the endowment as may be prescribed by regulations made by the Secretary of State [^{F4}in such manner as may be so prescribed].
- (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.

Textual Amendments

- F1** Words substituted by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 3\(a\), Sch. 8](#)
- F2** Words repealed by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 9](#)
- F3** Words substituted by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 3\(b\)\(ii\), Sch. 8](#)
- F4** Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 3\(b\)\(iii\)](#)

105 Schemes for reorganisation of educational endowments.

- (1) Subject to the provisions of this section, [^{F5}an education authority, whether upon an application made to them or not, may, if they think fit,] prepare draft schemes for the future government and management of educational endowments, which schemes may provide—

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- (a) for altering the purposes to which such endowments are applied or applicable and the conditions and provisions regarding such application;
- (b) for the application of the capital or income of such endowments to such educational purposes, mental or physical, moral or social, as the [^{F6}education authority think] 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.

[^{F7}Provided that in considering whether to exercise, in relation to any endowment, the power conferred upon them by this subsection an education authority may have regard to whether the exercise of the power would prejudice the proper discharge by them of their functions under this Act apart from this section or their functions as local authority under any enactment.]

- (2) It shall be the duty of the [^{F8}education authority] 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 [^{F8}education authority] 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 [^{F8}education authority] under this section shall not extend—
 - (a) to a university endowment, or
 - (b) to the Carnegie Trust, or
 - (c) to a theological endowment, or

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- (d) to a new endowment; ^{F9}, or
- (e) to an endowment which relates in whole or in part to an educational establishment not managed by the education authority who would, but for this paragraph, be empowered under this section to exercise in relation to that endowment the functions conferred by this section, or
- (f) to an educational endowment having no limitation either as to the area in which any educational establishment to which it relates is situated or as to the area in which any of its beneficiaries are required under its governing instrument to reside or with which they are so required to have some other connection.]

^{F10}Provided that tis subsection shall not apply to an endowment which falls within paragraph (e) above solely by reason of the inclusion among its purposes of the award of prizes, bursaries or similar benefits to persons who attend or have attended educational establishments or other institutions not managed by an education authority.]

^{F11}(4A) The Court of Session shall have power, on the petition of—

- (a) the governing body of any endowment to which subsection (4) above applies or, in the case of the Carnegie Trust, the Trustees;
- (b) in relation to an endowment to which paragraph (e) of that subsection applies and which relates only in part to an educational establishment not managed by the education authority referred to in that paragraph, the education authority, in respect of the part of the endowment in relation to which they would, but for the said paragraph (e), be empowered under this section to exercise the functions conferred by this section,

to give effect to draft schemes for the future government and management of the endowment or, as the case may be, the Trust, which schemes may provide for any of the purposes set out in paragraphs (a) to (e) of subsection (1) above and, in exercising the power conferred on it under this subsection, the Court shall have special regard to the matters specified in paragraphs (a) to (d) of subsection (2) above.

(4B) Where a petition under subsection (4A) above relates to an endowment to which paragraph (e) of subsection (4) above applies and which relates only in part to an educational establishment not managed by the education authority referred to in that paragraph the Court of Session shall, before making an order under the said subsection (4A)—

- (a) where the petition was presented by any body referred to in paragraph (a) of the said subsection (4A), cause the petition to be served on the education authority;
- (b) where the petition was presented by an education authority under paragraph (b) of the said subsection (4A), cause the petition to be served on the governing body of the endowment to which the petition relates.

(4C) The governing body of an endowment in relation to which an education authority are empowered under this section to exercise the functions conferred by this section may, if the authority refuse to exercise their power under subsection (1) above in relation to the endowment on the ground that such exercise would prejudice the proper discharge by them of their functions under this Act apart from this section or their functions as local authority under any enactment, present a petition to the Court of Session, and subsections (4A), (4B) and (4D) of this section shall apply to such a petition.

^{F12}(4D)

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- (5) ^{F13}
- (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 [^{F14}Public Services Reform (General Teaching Council for Scotland) Order 2011];
 - (b) to a children’s committee shall be construed as a reference to a social work committee established under section 2(1) of the ^{M1} 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.

[In this section, “education authority” means, in relation to an educational endowment, ^{F15}(7) the education authority for the area in which any educational establishment to which the endowment relates is situated or, where the endowment relates to no particular such establishment, the education authority for the area in which the beneficiaries of the endowment are required under its governing instrument to reside or with which they are so required to have some other connection.]]

Textual Amendments

- F5** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(a), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F6** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(b), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F7** S. 105(1) proviso inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 4(d)**
- F8** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(c), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F9** S. 105(4)(e)(f) inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 4(e)**
- F10** S. 105(4) proviso substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 4(f), **Sch. 8**
- F11** S. 105(4A)–(4D) inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 4(g)**
- F12** S. 105(4D) repealed (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **sch. 3 para. 6**; S.S.I. 2005/644, art. 2(1), sch. 1
- F13** Ss. 105(5), 110(3), 112(6), 113, 115, 116, repealed with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 9** and S.I. 1981/1557, **art. 4**
- F14** Words in s. 105(6)(a) substituted (2.4.2012) by The Public Services Reform (General Teaching Council for Scotland) Order 2011 (S.S.I. 2011/215), art. 2, **sch. 6 para. 1(2)**
- F15** S. 105(7) inserted by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 4(i)**

Marginal Citations

- M1** 1968 c. 49.

106 Sale of land belonging to educational endowments.

- (1) Where it appears to the [^{F16}Court of Session] 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

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third proviso to section 2 of the ^{M2}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, [^{F16}the Court may order] that the said proviso or condition shall not have effect in relation to the land:

Provided that no such [^{F17}order shall be made] in relation to any land unless the [^{F18}Court] 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 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 ^{M3}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.

Textual Amendments

- F16** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(a), Sch. 8 and S.I. 1981/1557, art. 4
- F17** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(b)(i), Sch. 8 and S.I. 1981/1557, art. 4
- F18** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 5(b)(ii), Sch. 8 and S.I. 1981/1557, art. 4

Marginal Citations

- M2** 1841 c. 38.
M3 1841 c. 38.

107 Educational endowments applicable in part to non-educational purposes.

- (1) Where an endowment is an educational endowment [^{F19}to which the powers conferred by section 105 of this Act extend], 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).

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- (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 ^{F20}education authority having power to exercise, in relation to that endowment, the functions conferred by section 105 of this Act]—
- (i) there are no persons who are entitled to benefit out of such part of the endowment; or
- ^{F21}(ii) the purposes of such part of the endowment have become obsolete or useless.]
- (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 ^{F22}education authority], is the proportion which has according to the average of ^{F23}the five most recent years for which accounts are available] 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 ^{F24}education authority].
- (6) When any portion of the endowment or the annual income of such portion has been accumulated and not applied to any purpose, the ^{F24}education authority] 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 ^{F24}education authority] 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.

Textual Amendments

- F19** Words substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 6\(a\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F20** Words substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 6\(b\)\(i\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F21** [S. 107\(2\)\(ii\)](#) substituted for [s. 107\(2\)\(ii\)–\(iv\)](#) with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 6\(b\)\(ii\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F22** Words substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 6\(c\)\(i\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)

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- F23** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(c)(ii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F24** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 6(d), **Sch. 8** and S.I. 1981/1557, **art. 4**

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 [^{F25}reorganised] 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 [^{F26}present a petition to the Court of Session to give effect to a draft scheme for the future government and management of the endowment and thereafter such endowment may be dealt with in all respects as if it were included amongst those specified in section 105(4) of this Act.]

Textual Amendments

- F25** Word substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(a)(i), **Sch. 8**
- F26** Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(a)(ii), **Sch. 8**

[^{F27}108A] Courts' power to give effect to reorganisation scheme on petition of Lord Advocate.

Where the Lord Advocate is of opinion on any such ground as is specified in [^{F28}section 108 of this Act] that a scheme should be [^{F29}made] for the future government and management of any endowment ^{F30}, 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 [^{F29}make] 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.

Textual Amendments

- F27** S. 108(2) renumbered s. 108A by Education (Scotland) Act 1981 (c. 58), **Sch. 6**
- F28** Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 7(b)(i), **Sch. 8**
- F29** Word substituted by Education Act 1981 (c. 58), Sch. 6 para. 7(b)(ii), **Sch. 8**
- F30** Words repealed by Education (Scotland) Act 1981 (c. 58), **Sch. 9**

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Modifications etc. (not altering text)

- C1 S. 108A: functions transferred (temp. 20.5.1999 to 1.7.1999) by S.I. 1999/901, arts. 1, 5, Sch.; S.I. 1998/3178, art. 3

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, [^{F31}made under this Part of this Act, the education authority or, as the case may be, the Court] 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.

Textual Amendments

- F31 Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 8, Sch. 8 and S.I. 1981/1557, art. 4

110 Provisions as to beneficiaries and teachers.

- (1) In [^{F32}preparing a draft] scheme for any endowment, the [^{F33}education authority] shall—
 - (a) provide that in making a selection from amongst those eligible for the benefits of the endowment, due regard shall be paid to [^{F34}educational need], diligence, attainment and promise as ascertained in such manner as the [^{F33}education authority] shall determine, and
 - (b) [^{F35}unless in any particular case they consider it inexpedient to do so,] provide for extending to both sexes the benefit of the endowment.
- (2) [^{F36}Every scheme for an educational endowment] 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)^{F37}
- (4) Any such scheme—
 - [^{F38}(a) given effect to by the Court of Session; or
 - (b) prepared by an education authority with respect to a school other than one which has been transferred to them under section 16 or provided under section 17(2) of this Act,] may contain provision for the removal of any religious test or qualification applicable to teachers.

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Textual Amendments

- F32** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(b)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F33** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(a), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F34** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 9(b)(ii)** and S.I. 1981/1557, **art. 4**
- F35** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(b)(iii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F36** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 9(c), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F37** Ss. 105(5), 110(3), 112(6), 113, 115, 116, repealed with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 9** and S.I. 1981/1557, **art. 4**
- F38** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 9(e)** and S.I. 1981/1557, **art. 4**

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 ^{F39}, 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 ^{M4}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 ^{F39}
- (3) The accounts of every endowment to which this section applies shall be audited each year by an auditor appointed by the governing body ^{F39}; [^{F40}and no person shall be appointed auditor as aforesaid unless he is eligible for appointment as a [^{F41}statutory auditor under Part 42 of the Companies Act 2006].]
- (4) ^{F42}
- (6) [^{F43}The governing body of each endowment to which this section applies shall make the audited accounts of that endowment] available for public inspection at all reasonable times.
- (7) Any provision in a governing instrument referred to in subsection (1) above prescribing the financial year of an endowment shall remain in operation notwithstanding the repeal by the Act of 1962 of section 11(2) of the ^{M5}Education (Scotland) Act 1956.

Textual Amendments

- F39** Words repealed by Education (Scotland) Act 1981 (c. 58), **Sch. 9**
- F40** S. 111(3): by S.I. 1991/1997, reg. 2, **Sch. para.36** (with reg. 4) it is provided that words shall be substituted (01.10.1991) for the words from 'and no person shall be eligible' to the end

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- F41** Words in s. 111(3) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(u)** (with arts. 6, 11, 12)
- F42** S. 111(4)(5) repealed by Education (Scotland) Act 1981 (c. 58), **Sch. 9**
- F43** Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 10(b), **Sch. 8**

Marginal Citations

- M4** 1973 c. 65.
M5 1956 c. 75.

112 Procedure in preparation of reorganisation schemes.

- (1) Before making a scheme for the reorganisation of any educational endowment [^{F44}an education authority] shall prepare a draft scheme and shall—
- (a) send copies of the draft scheme to the governing body of the endowment to which it relates;
 - [^{F45}(b) give notice of the draft scheme in accordance with subsection (1A) below and cause it to be published in such other manner, if any, as they think fit; and
 - (c) permit public inspection of the draft scheme at such places and during such times as may be specified in the notice given by them under paragraph (b) above;]

and the governing body of that endowment or any other person interested in the scheme may, not later than the expiry of the period of one month from [^{F46}the first notice of the draft scheme given by the authority under paragraph (b) above], send in writing to the [^{F47}education authority] objections to the draft scheme, or proposed amendments thereto, or both.

[^{F48}(1A) The notice to be given under subsection (1)(b) above—

- (a) shall be by way of advertisement in a newspaper circulating in the area in which each educational establishment to which the endowment relates is situated or, where the endowment relates to no particular educational establishment, the area in which the beneficiaries of the endowment are required under its governing instrument to reside or with which they are so required to have some other connection;
- (b) shall state that written objections to and proposed amendments of the scheme may be made in the manner specified in subsection (1) above; and
- (c) shall state the places and times at which the draft scheme may be examined under subsection (1)(c) above.

(1B) The requirement under subsection (1A) above to give notice of the draft scheme by way of newspaper advertisement shall not apply in relation to an educational endowment of less annual value than £500 if, by giving notice in another manner, the education authority incur less expense.]

- (2) If within the period referred to in subsection (1) above no objection and no proposed amendment to the draft scheme is received by [^{F49}them, the education authority may, by resolution of the authority authorising their proper officer to sign the scheme on their behalf,] make the scheme in the terms of the draft scheme [^{F50}of which notice has been given] under subsection (1) above [^{F51}and on doing so shall notify the date of commencement of the scheme to the governing body of the endowment.]
- (3) If within the said period objections or proposed amendments to the draft scheme are received by [^{F52}them, the education authority] shall consider those objections and

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proposed amendments [F53], shall, if any of them were sent by any of the persons mentioned in subsection (7) below, hold a public local inquiry into such of them as are not withdrawn] and may thereafter, if [F54]they think] fit, [F55]by resolution of the authority authorising their proper officer to sign the scheme on their behalf, make the] scheme in such form as [F54]they think] expedient.

[F56](3A) [F57]Section 56 of] the M6Local Government (Scotland) Act 1973 shall not apply to the making of a scheme by an education authority under subsection (2) or (3) above.

(3B) The person appointed by the education authority to hold a public local inquiry under subsection (3) above shall not be a member or officer of the authority or a member or employee of the governing body of the endowment to which the scheme relates.

(3C) Without prejudice to their duty to hold a public local inquiry in the circumstances mentioned in subsection (3) above, an education authority may, if they consider it appropriate, hold a public local inquiry into any matter to which they may properly address themselves in the exercise of their functions under this Part of this Act.]

(4) If [F58]an education authority make] a scheme under subsection (3) above, [F59]they] shall as soon as practicable thereafter—

(a) give to the persons who made the objections or, as the case may be, proposed the amendments to the draft scheme notice in writing of [F60]their] decision with respect to those objections or amendments, together with a statement in writing of the reasons for [F60]their] decision;

(b) send copies of the scheme to the governing body of the endowment to which it relates;

[F61](c) cause notice of the scheme to be given in accordance with subsection (1A) (a) and (c) above, containing a statement that, unless not later than the expiry of the period of one month from the first such notice a petition or appeal is presented to the Court of Session in accordance with the following provisions of this section, the scheme will come into operation on such date as the notice may specify, being not less than one month after the date of the first such notice.]

[F62](5) If no petition or appeal is presented to the Court of Session in accordance with the following provisions of this section, the scheme shall come into operation on the date specified in the notice under subsection (4)(c) above.

(5A) If a petition or appeal is presented to the Court of Session in accordance with the following provisions of this section and is refused by the Court, the Court shall make such order as it thinks fit as respects the commencement of the scheme.]

(6) F63

[F64](7) If within the period of one month from the date of the notice given under subsection (4) above a petition or appeal is presented to the Court of Session by any of the persons mentioned below, the scheme referred to in that notice shall thereby be suspended and the Court may amend the scheme and make it as so amended or may make a new scheme and for those purposes the Court—

(a) shall have the like powers as are conferred by this Part of this Act on an education authority regarding schemes for the future government and management of educational endowments, and

(b) may make such orders as it thinks fit as respects notification and commencement of the amended or new scheme.

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The persons referred to above are—

- (i) the governing body of the endowment to which the scheme relates,
- (ii) the council of any district directly affected by the scheme,
- (iii) any education authority directly affected by the scheme,
- (iv) any ratepayers (not being less than twenty) of any district or place directly affected by the scheme,
- (v) any person having a vested interest in the said endowment or any part of it.]

(8) If within the said period an appeal is presented to the Court of Session by—

- (a) the governing body of the endowment to which the scheme refers, or any other person directly affected by the scheme, on the ground that the scheme is not within the scope of, or is not made in conformity with, this Part of this Act, or
- (b) any person holding any office, place or employment, or receiving any pension, compensation, allowance, bursary or emolument, under or arising out of the endowment to which the scheme relates, on the ground that the scheme does not comply with the provisions of this Part of this Act as to saving or making due compensation for his vested interests,

and the Court of Session decides that the scheme is contrary to law on any of the grounds mentioned in paragraphs (a) and (b) above, the [^{F65}education authority shall rescind their decision to make the scheme but may, if they think fit, make an amended scheme in such form as they think] expedient, and the provisions of subsections (4) to (7) above, and of this subsection, shall apply in relation to an amended scheme [^{F66}made] under this subsection as they apply to a scheme [^{F66}made] under subsection (3) above.

(9) Where [^{F67}an education authority cause] a draft scheme or a scheme to be [^{F68}publicised] under this section, [^{F69}they] shall cause to be prefixed to that draft scheme or scheme a memorandum setting out—

- (a) the reasons why, in [^{F69}their] view, the reorganisation of the endowment to which the draft scheme or scheme relates is necessary;
- (b) the respects in which the draft scheme or scheme involves any substantial alteration of the purposes to which the said endowment is applied or applicable; and
- (c) the reasons for any such alteration;

and for the purposes of the provisions of this section relating to publication, that memorandum shall be deemed to be part of the draft scheme or scheme, as the case may be.

Textual Amendments

- F44** Words substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 11\(a\)\(i\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F45** [S. 112\(1\)\(b\)\(c\)](#) substituted with savings for [s. 112\(1\)\(b\)](#) by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 11\(a\)\(ii\)](#), [Sch. 8](#) and [S.I. 1981/1557](#) [art. 4](#)
- F46** Words substituted (for the words from “from” to “scheme”) with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 11\(a\)\(iii\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F47** Words substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 11\(a\)\(iv\)](#), [Sch. 8](#) and [S.I. 1981/1557](#), [art. 4](#)
- F48** [S. 112\(1A\)\(1B\)](#) inserted with savings by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 11\(b\)](#) and [S.I. 1981/1557](#), [art. 4](#)

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- F49** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(c)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F50** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(c)(ii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F51** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 11(c)(iii)** and S.I. 1981/1557, **art. 4**
- F52** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(d)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F53** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 11(d)(ii)** and S.I. 1981/1557, **art. 4**
- F54** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(d)(iii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F55** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(d)(iv), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F56** S. 112(3A)–(3C) inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 11(e)** and S.I. 1981/1557, **art. 4**
- F57** Words in s. 112(3A) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 118(6)**; S.I. 1996/323, **art. 4(1)(c)**.
- F58** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(f)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F59** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(f)(ii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F60** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(f)(iii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F61** S. 112(4)(c) substituted with savings for s. 112(4)(c)(d) by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(f)(iv), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F62** S. 112(5)(5A) substituted for s. 112(5) with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(g), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F63** Ss. 105(5), 110(3), 112(6), 113, 115, 116, repealed with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 9** and S.I. 1981/1557, **art. 4**
- F64** S. 112(7) substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F65** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(j)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F66** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(j)(ii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F67** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(k)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F68** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(k)(ii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F69** Word substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 11(k)(iii), **Sch. 8** and S.I. 1981/1557, **art. 4**

Marginal Citations

M6 1973 c. 65.

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Textual Amendments

F70 Ss. 105(5), 110(3), 112(6), 113, 115, 116, repealed with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 9** and S.I. 1981/1557, **art. 4**

114 Effect of schemes.

- (1) Any scheme made or [^{F71}given effect to] under the foregoing provisions of this Part of this Act shall ^{F72} have effect in the same manner as if it had been enacted in this Act, and accordingly, from the [^{F73}date of commencement of the scheme], 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) [^{F74}An instrument containing or giving effect to] a scheme, under this Part of this Act shall [^{F75}, from the date of commencement of the scheme,] 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 [^{F76}, from the said date,] be questioned in any legal proceedings whatever.
- [^{F77}(3) Each of the powers to make schemes conferred by this Part of this Act implies power exercisable in the same manner and subject to the same conditions or limitations to revoke, amend or re-enact any scheme made under that power.]

Textual Amendments

- F71** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F72** Words repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(ii), **Sch. 9** and S.I. 1981/1557, **art. 4**
- F73** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(a)(iii), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F74** Words substituted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 13(b)(i), **Sch. 8** and S.I. 1981/1557, **art. 4**
- F75** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 13(b)(ii)** and S.I. 1981/1557, **art. 4**
- F76** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 13(b)(iii)** and S.I. 1981/1557, **art. 4**
- F77** S. 114(3) inserted with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 6 para. 13(c)** and S.I. 1981/1557, **art. 4**

115, ^{F78}
116.

Textual Amendments

F78 Ss. 105(5), 110(3), 112(6), 113, 115, 116, repealed with savings by Education (Scotland) Act 1981 (c. 58), **Sch. 9** and S.I. 1981/1557, **art. 4**

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117 Cost of publishing scheme, etc.

The cost of [^{F79}publicising] 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:^{F80}

Textual Amendments

F79 Word substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 15\(a\), Sch. 8](#) and [S.I. 1981/1557, art. 4](#)

F80 S. 117 proviso repealed with savings by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 15\(b\)](#) and [S.I. 1981/1557, art. 4](#)

[^{F81}118 Information by governing bodies.

Every governing body of an endowment to which section 105 of this Act extends shall give such information to the education authority having power under that section to prepare a scheme for the future government and management of the endowment as the authority may from time to time require.]

Textual Amendments

F81 S. 118 substituted with savings by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 16, Sch. 8](#) and [S.I. 1981/1557, art. 4](#)

[^{F82}118A Income plans under schemes.

- (1) Any provision of a scheme referred to in subsection (2) below which (however expressed) empowers or requires the governing body of the endowment to which the scheme relates—
 - (a) to prepare and submit for the approval of the Secretary of State a plan, a revised plan or an amendment of a plan for the exercise by the governing body of their functions in relation to the application of the income of the endowment; or
 - (b) to give effect to such a plan or amendment as approved by the Secretary of State,shall be of no effect.
- (2) This section applies to any scheme made or approved under the Acts of 1928 to 1935, Part VI of the Act of 1946, Part VI of the Act of 1962, or this Part of this Act.]

Textual Amendments

F82 S. 118A inserted by [Education \(Scotland\) Act 1981 \(c. 58\), Sch. 6 para. 17](#)

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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.

[^{F83}(1)] If the governing body of any educational endowment [^{F84}to which section 105 of this Act does not extend] 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 [^{F85}prior to the commencement of section 15 of the ^{M7}Education (Scotland) Act 1981], 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.

[^{F86}(2) In relation to any educational endowment to which section 105 of this Act extends, subsection (1) above shall apply—

- (a) with the omission of the words “to which section 105 of this Act does not extend” and the words “prior to the commencement of section 15 of the ^{M8}Education (Scotland) Act 1981”; and
- (b) with the substitution for the words “Secretary of State after such inquiry as he” of the words “education authority having power under section 105 of this Act to prepare a draft scheme for the future government and management of the endowment, after such inquiry as they”.]

Textual Amendments

- F83** “(1)” inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 18\(a\)](#)
F84 Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 18\(b\)](#)
F85 Words inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 18\(c\)](#)
F86 S. 120(2) inserted by [Education \(Scotland\) Act 1981 \(c. 58\)](#), [Sch. 6 para. 18\(d\)](#)

Marginal Citations

- M7** 1981 c. 58.
M8 1981 c. 58.

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 [^{F87}other than one giving effect under section 105(4) of this Act to a draft scheme for the future government and management of an endowment or the Carnegie Trust] shall be final and not subject to review; and

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- (b) the Court shall dispose of all questions of expenses, and may, if they think fit, direct the expenses or any part thereof ^{F88} to be paid out of the funds of the educational endowment to which the proceeding relates: ^{F89}

Textual Amendments

- F87** Words inserted with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(a) and S.I. 1981/1557, art. 4
- F88** Words repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(b) and S.I. 1981/1557, art. 4
- F89** Proviso repealed with savings by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 19(b) and S.I. 1981/1557, art. 4

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;

[^{F90}“charitable purposes” has the same meaning as in the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);]

“educational endowment” means any endowment which has been applied or is applicable in whole or in part, whether by the declared intention of the founder, or by the consent of 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 [^{F91}or made under section 17 of the Local Government etc. (Scotland) Act 1994,] 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;

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“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 [^{F92}Court of Session] be conveniently separated from each other, the date of the older part of the endowment shall be held to be the date of the endowment.
- (3) Any reference in this Act to the endowment to which a scheme under this Part of this Act relates shall, in the case of a scheme relating to more than one endowment, be construed as a reference to every endowment, or (as the context may require) to any endowment, to which the scheme relates.
- [^{F93}(4) This Part, apart from section 104, does not apply in relation to any endowment the governing body of which is a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).]

Textual Amendments

- F90** Words in s. 122(1) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **sch. 4 para. 4**; S.S.I. 2006/189, art. 2(1), sch. Pt. 1
- F91** Words in s. 122 inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 118(7)**; S.I. 1996/323, **art. 4(1)(c)**.
- F92** Words substituted by Education (Scotland) Act 1981 (c. 58), Sch. 6 para. 20, **Sch. 8**
- F93** S. 122(4) inserted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), **ss. 43, 107(2)**; S.S.I. 2006/189, art. 2(1), sch. Pt. 1

Changes to legislation:

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[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 48A(5)(a)(I) words repealed by [2000 asp 6 Sch. 3](#)
- s. 53(3)(b)(i)-(iia) repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 53(3)(b)(iii) words repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 53ZA inserted by [2016 asp 8 s. 22\(3\)](#)
- s. 54A inserted by [2016 asp 8 s. 23](#)
- s. 98DA inserted by [2016 asp 8 s. 28\(2\)](#)
- s. 99(1A)(g)(ii) word substituted by [2020 asp 13 sch. 5 para. 8\(3\)](#)
- s. 99(1A)(h)(ii) word substituted by [2020 asp 13 sch. 5 para. 8\(3\)](#)