

SCHEDULES

SCHEDULE 6

Section 15.

EDUCATIONAL ENDOWMENTS

Modifications etc. (not altering text)

C1 The text of ss. 1–7, 8(1)(2), 9–17, 18(2), 21(1)(3), Schs. 1–7, 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 1 The principal Act shall be amended in accordance with the following provisions of this Schedule.
- 2 In section 77 (regulations with respect to certain institutions providing further education)—
 - (a) in subsection (1)—
 - (i) after paragraph (b) there shall be inserted the following paragraph—

“(c) without prejudice to any power contained in Part VI of this Act, revoke, amend or re-enact any provision of any endowment relating to any grant-aided college;”;
 - (ii) after sub-paragraph (vi) there shall be inserted the following sub-paragraph—

“(vii) provide for any of the purposes specified in paragraphs (a) to (e) of section 105(1) of this Act.”.
- 3 In section 104 (register of educational endowments)—
 - (a) in subsection (1), for the words from the beginning to “Registrar”, where secondly occurring, there shall be substituted the words “It shall be the duty of the Secretary of State”; and
 - (b) in subsection (2)—
 - (i) the words from “within” to “operation,” shall be omitted;
 - (ii) for the word “Registrar” there shall be substituted the words “Secretary of State”; and
 - (iii) at the end there shall be inserted the words “in such manner as may be so prescribed”.
- 4 In section 105 (schemes for reorganisation of educational endowments)—
 - (a) in subsection (1) for the words “the Secretary of State shall have power to” there shall be substituted the words “an education authority, whether upon an application made to them or not, may, if they think fit.”;
 - (b) in subsection (1)(b) for the words “Secretary of State thinks” there shall be substituted the words “education authority think ”;

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- (c) for the words “Secretary of State”, where subsequently occurring, there shall be substituted the words “education authority”;
- (d) at the end of subsection (1) there shall be inserted the following—

“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.”;

- (e) in subsection (4), after paragraph (d) there shall be inserted the following—

“, 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.”;
- (f) for the proviso to subsection (4) there shall be substituted the following—

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

- (g) after subsection (4) there shall be inserted the following subsections—

“(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

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special regard to the matters specified in paragraphs (a) to (d) of subsection (2) above.

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

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

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

(4D) Nothing in the Trustee Investments Act 1961 shall affect the power of the Court under subsection (4A) above to confer wider powers of investment than those conferred by that Act or affect the extent to which the power of the Court under that subsection is to be exercised.”;

(h) subsection (5) shall be omitted; and

(i) after subsection (6) there shall be inserted the following subsection—

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

5 In section 106 (sale of land belonging to educational endowments)—

(a) in subsection (1)—

- (i) for the words “Secretary of State”, where first occurring, there shall be substituted the words “Court of Session”; and
- (ii) for the words “he may by order direct” there shall be substituted the words “the Court may order ”; and

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- (b) in the proviso to subsection (1)—
 - (i) for the words “direction shall be given” there shall be substituted the words “order shall be made”; and
 - (ii) for the words “Secretary of State” there shall be substituted the word “Court”.
- 6 In section 107 (educational endowments applicable in part to non-educational purposes)—
- (a) in subsection (1), for the words “within the meaning of this Part of this Act” there shall be substituted the words “to which the powers conferred by section 105 of this Act extend”;
 - (b) in subsection (2)—
 - (i) for the words “Secretary of State” there shall be substituted the words “education authority having power to exercise, in relation to that endowment, the functions conferred by section 105 of this Act”; and
 - (ii) for paragraphs (ii) to (iv) there shall be substituted the following paragraph—
 - “(ii) the purposes of such part of the endowment have become obsolete or useless.”;
 - (c) in subsection (3)—
 - (i) for the words “Secretary of State”, where first occurring, there shall be substituted the words “education authority ”; and
 - (ii) for the words “such number of years as the Secretary of State shall determine” there shall be substituted the words “the five most recent years for which accounts are available”; and
 - (d) in subsections (5), (6) and (7), for the words “Secretary of State”, wherever occurring, there shall be substituted the words “education authority”.
- 7 In section 108 (reorganisation of non-educational endowments)—
- (a) in subsection (1)—
 - (i) for the words “dealt with by the Secretary of State” there shall be substituted the word “reorganised”; and
 - (ii) for the words from “intimate” to the end there shall be substituted the words “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.”; and
 - (b) subsection (2) shall be renumbered section 108A (Court’s power to give effect to reorganisation scheme on petition of Lord Advocate) and in that section—
 - (i) for the words “subsection (1) above” there shall be substituted the words “section 108 of this Act ”;
 - (ii) for the words “framed” and “frame” there shall be substituted respectively the words “made” and “make”; and
 - (iii) the words from “which is not ” to “Act ” shall be omitted.

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- 8 In section 109 (provisions regarding interests of individuals), in subsection (1) for the words “the Secretary of State” there shall be substituted the words “made under this Part of this Act, the education authority or, as the case may be, the Court”.
- 9 In section 110 (provisions as to beneficiaries of endowments and teachers)—
- (a) for the words “Secretary of State”, wherever occurring, there shall be substituted the words “education authority”;
 - (b) in subsection (1)—
 - (i) for the words “framing a” there shall be substituted the words “preparing a draft”;
 - (ii) in paragraph (a) after the word “to” there shall be inserted the words “educational need”; and
 - (iii) in paragraph (b), for the words “where he considers it expedient to do so” there shall be substituted the words “unless in any particular case they consider it inexpedient to do so,”;
 - (c) for the words from the beginning of subsection (2) to “the scheme” where occurring in the proviso to that subsection there shall be substituted the words “Every scheme for an educational endowment”;
 - (d) subsection (3) shall be omitted; and
 - (e) in subsection (4), after the word “scheme” there shall be inserted the words—
 - “(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,”.
- 10 In section 111 (accounts and audit of educational endowments)—
- (a) in subsection (1), the words “in such manner as the Secretary of State may prescribe”, in subsection (2), the words from “in such form” to the end, in subsection (3), the words from “with the approval” to “Privy Council” and subsections (4) and (5) shall be omitted; and
 - (b) in subsection (6), for the words from the beginning to “applies” there shall be substituted the words “The governing body of each endowment to which this section applies shall make the audited accounts of that endowment”.
- 11 In section 112 (procedure in preparation of reorganisation schemes)—
- (a) in subsection (1)—
 - (i) for the words “the Secretary of State”, where first occurring, there shall be substituted the words “an education authority”;
 - (ii) for paragraph (b) and the word “and” immediately preceding it there shall be substituted the following paragraphs—
 - “(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;”;
 - (iii) for the words from “from” to “scheme” there shall be substituted the words “the first notice of the draft scheme given by the authority under paragraph (b) above”; and

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- (iv) for the words “Secretary of State”, where secondly occurring, there shall be substituted the words “education authority”;
- (b) after subsection (1) there shall be inserted the following subsections—
 - “(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.”;
- (c) in subsection (2)—
 - (i) for the words from “him” to “statutory instrument” there shall be substituted the words “them, the education authority may, by resolution of the authority authorising their proper officer to sign the scheme on their behalf.”;
 - (ii) for the word “published” there shall be substituted the words “of which notice has been given”; and
 - (iii) at the end there shall be inserted the words “and on doing so shall notify the date of commencement of the scheme to the governing body of the endowment.”;
- (d) in subsection (3)—
 - (i) for the words “him, the Secretary of State” there shall be substituted the words “them, the education authority”;
 - (ii) after the word “amendments” there shall be inserted the words “, 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”;
 - (iii) for the words “he thinks”, where twice occurring, there shall be substituted the words “they think ”; and
 - (iv) for the words “frame a” there shall be substituted the words “, by resolution of the authority authorising their proper officer to sign the scheme on their behalf, make the”;
- (e) after subsection (3) there shall be inserted the following subsections—
 - “(3A) Schedule 10 to the Local Government (Scotland) Act 1973 shall not apply to the making of a scheme by an education authority under subsection (2) or (3) above.

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- (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.”;
- (f) in subsection (4)—
- (i) for the words “the Secretary of State frames” there shall be substituted the words “an education authority make”.
 - (ii) for the word “he”, where first occurring, there shall be substituted the word “they”;
 - (iii) for the word “his”, where twice occurring, there shall be substituted the word “their”;
 - (iv) for paragraphs (c) and (d) there shall be substituted the following paragraph—
 - “(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.”;
- (g) for subsection (5) there shall be substituted the following subsections—
- “(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.”;
- (h) subsection (6) shall be omitted;
- (i) for subsection (7), there shall be substituted the following subsection—
- “(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

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for the future government and management of educational endowments, and

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

The persons referred to above are—

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

- (j) in subsection (8)—

- (i) for the words from “Secretary of State” to “he thinks”, where secondly occurring, there shall be substituted the words “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 ”; and
- (ii) for the word “framed”, where twice occurring, there shall be substituted the word “made”; and

- (k) in subsection (9)—

- (i) for the words “the Secretary of State causes” there shall be substituted the words “an education authority cause”;
- (ii) for the word “published” there shall be substituted the word “publicised”; and
- (iii) for the words “he” and “his” there shall be substituted respectively the words “they ” and “their ”.

12 Section 113 (procedure in preparation of certain re-organisation schemes) shall be omitted.

13 In section 114 (effect of schemes)—

- (a) in subsection (1)—

- (i) for the word “approved” there shall be substituted the words “given effect to”;
- (ii) the words from “come” to “shall”, where secondly occurring, shall be omitted; and
- (iii) for the words “said date” there shall be substituted the words “date of commencement of the scheme”:

- (b) in subsection (2)—

- (i) for the words from the beginning to “approving” there shall be substituted the words “An instrument containing or giving effect to”;
- (ii) after the word “shall”, where first occurring, there shall be inserted the words “, from the date of commencement of the scheme,”; and

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- (iii) after the word “not” there shall be inserted the words “, from the said date.”; and
- (c) after subsection (2) there shall be inserted the following subsection—
- “(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.”.
- 14 Sections 115 (schemes for small endowments) and 116 (amending schemes) shall be omitted.
- 15 In section 117 (costs of publishing scheme etc.)—
- (a) for the word “publishing” there shall be substituted the word “publicising”;
- and
- (b) the proviso shall be omitted.
- 16 For section 118 (reports by governing bodies) there shall be substituted the following section—

“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.”.

- 17 After section 118 there shall be inserted the following section—

“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.”.
- 18 In section 120 (default by governing body)—
- (a) at the beginning there shall be inserted “(1)”;
- (b) after the word “endowment” there shall be inserted the words “to which section 105 of this Act does not extend”;
- (c) after the words “Part of this Act” there shall be inserted the words “prior to the commencement of section 15 of the Education (Scotland) Act 1981”;
- and

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(d) at the end there shall be inserted the following subsection—

“(2) In relation to any educational endowment to which section 105 of this Act extends, subsection (1) above shall apply—

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

19 In section 121 (judgment of Court of Session final)—

- (a) in paragraph (a), after the word “Court” there shall be inserted “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”; and
- (b) the words “(including the expenses of the Secretary of State)” in paragraph (b) and the proviso to that paragraph shall be omitted.

20 In section 122 (interpretation) for the words “Secretary of State” in subsection (2) there shall be substituted the words “Court of Session”.

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