



# Education (Scotland) Act 1996

## 1996 CHAPTER 43

An Act to provide for the establishment of a body corporate to be known as the Scottish Qualifications Authority; to provide for the transfer of functions, property, rights, liabilities, obligations and staff to that body and for the conferring of other functions on it; to make provision enabling payment of grant to providers of education for children under school age; to amend certain legislation relating to school education in Scotland; and for connected purposes. [18th July 1996]

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:—

### Extent Information

**E1** This Act extends to Scotland only but for exceptions see [s.37\(5\)\(6\)](#)

## PART I

### THE SCOTTISH QUALIFICATIONS AUTHORITY

#### *Establishment*

#### **1 The Scottish Qualifications Authority.**

- (1) The Secretary of State may by order establish a body corporate to be known as the Scottish Qualifications Authority (in this Act referred to as “SQA”).
- (2) SQA shall consist of the following members—
  - (a) not less than fifteen nor more than twenty four individuals (including a chairman) appointed in accordance with subsections (3) and (4) below;

*Status: Point in time view as at 01/04/2002.*

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- (b) a chief executive appointed in accordance with paragraph 15 of Schedule 1 to this Act.
- (3) The Secretary of State shall appoint not less than twelve nor more than nineteen of the members mentioned in subsection (2)(a) above including the chairman.
- (4) The number of members mentioned in subsection (2)(a) above to be appointed by SQA shall be determined in accordance with the following table where column 1 is the number of members appointed by the Secretary of State and, in relation to that number, column 2 is the minimum number of members required to be appointed by SQA and column 3 is the additional number of members SQA may appoint:—

Column 1	Column 2	Column 3
19	0	5
18	0	5
17	0	5
16	0	4
15	0	4
14	1	3
13	2	2
12	3	0

- (5) Schedule 1 to this Act shall have effect with respect to SQA.

### *Functions*

## **2 General functions of SQA.**

- (1) SQA shall have the following general functions—
- (a) to devise qualifications;
  - (b) to determine the entitlement of individuals to SQA qualifications and, where a person is so entitled, to award and record such a qualification;
  - (c) to keep under review and develop SQA qualifications;
  - (d) to approve education and training establishments as being suitable for presenting persons for SQA qualifications; and
  - (e) to make arrangements for, assist in or carry out the assessment of persons undertaking education and training.
- (2) The functions mentioned in paragraphs (a) and (c) of subsection (1) above include a power for SQA, in relation to a SQA qualification, to—
- (a) determine what it is that a person is required to do and the level of competence he is required to demonstrate in order to attain the qualification;
  - (b) determine the means of assessing whether he has done what is required or demonstrated the level of competence required.
- (3) Paragraph (a) of subsection (2) above includes a power to devise a programme of learning.

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- (4) SQA shall not exercise any of its functions under this section or section 3 of this Act in relation to a degree.

### **3 Accreditation function.**

- (1) SQA shall have the function of accrediting qualifications as meeting such requirements as are specified by SQA.
- (2) SQA shall publish the requirements specified by it in pursuance of subsection (1) above.
- (3) The function of accrediting qualifications conferred on SQA under subsection (1) above shall be carried out by a committee, to be known as the “Accreditation Committee”, established for that purpose by SQA.
- (4) The majority of members of the Accreditation Committee shall be individuals who are neither members nor employees of SQA.
- (5) At any meeting of the Accreditation Committee, a quorum shall be established only if the majority of members present at the meeting are neither members nor employees of SQA.

### **4 Quality assurance.**

SQA may, in respect of education and training establishments which offer persons the opportunity to obtain SQA qualifications, make such arrangements as it considers appropriate to satisfy itself as to—

- (a) the quality of the procedures used by such establishments for assessing the standards of attainment of such persons (and, in particular, such persons with special educational needs) in relation to SQA qualifications;
- (b) the quality of the internal arrangements adopted by such establishments for monitoring and controlling the effectiveness of such procedures; and
- (c) the suitability of such establishments for presenting persons for SQA qualifications.

### **5 Advisory function.**

- (1) SQA shall provide the Secretary of State with such advice in respect of any matter to which its functions relate as he may, from time to time, require.
- (2) SQA may provide the Secretary of State with such advice in respect of any matter to which its functions relate as it thinks fit.

### **6 Incidental functions.**

- (1) SQA shall have power to do anything whether in Scotland or elsewhere which, in its opinion, is calculated to facilitate or is conducive or incidental to the carrying out of its functions.
- (2) The powers of SQA shall include power, for the purposes of or in connection with the carrying out of its functions—
- (a) to fix and recover charges for services provided by it in accordance with criteria determined from time to time by the Secretary of State;

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- (b) subject to subsections (3) and (4) below, to enter into contracts including contracts for the employment of staff;
  - (c) to acquire, hold and, subject to paragraph 18 of Schedule 1 to this Act, to dispose of land and other property;
  - (d) subject to subsections (5) and (6) below, to borrow such sums as it thinks fit including such sums for the purpose of meeting any liability or obligation transferred to it under or in pursuance of any provision of this Part of this Act and in connection with such borrowing to grant such security or give such guarantee or indemnity as it thinks fit;
  - (e) subject to subsection (8) below, to raise funds, accept gifts of money, land or other property and apply them or administer them in trust;
  - (f) subject to subsection (8) below, to invest any sums not immediately required by it for the purpose of carrying out its functions or for the purpose of meeting any liability or obligation transferred to it in pursuance of this Part of this Act;
  - (g) to carry out, commission or assist in the carrying out of research;
  - (h) to promote or assist in the promotion of publicity;
  - (j) to publish or assist in the publication of material;
  - (k) to confer fellowships and other awards on persons whom it considers to have made an outstanding contribution to the advancement of education or training;
  - (l) subject to subsection (7) below, to form or promote, or to join with any other person in forming or promoting, companies (within the meaning of the <sup>M1</sup>Companies Act 1985).
- (3) The consent of the Secretary of State is required before SQA enters into any contract under paragraph (b) of subsection (2) above which is of such a value, or commits it to expenditure of such amount, as the Secretary of State may from time to time determine.
- (4) Consent under subsection (3) above may be given in respect of a particular contract or in respect of a class or description of contracts and may be given subject to such conditions as the Secretary of State may determine.
- (5) The consent of the Secretary of State and the Treasury is required in respect of any borrowing made and any related security, guarantee or indemnity granted or given under paragraph (d) of subsection (2) above.
- (6) Consent under subsection (5) above may be given in respect of a particular transaction or in respect of a class or description of transactions and may be given subject to such conditions as the Secretary of State may, with the consent of Treasury, determine.
- (7) The consent of the Secretary of State is required before SQA forms a company under paragraph (l) of subsection (2) above.
- (8) SQA shall use its funds, land or other property only in connection with the exercise of its functions and shall not distribute any of its funds, land or other property to its members.

**Marginal Citations**

**M1** 1985 c. 6.

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## **7 Regard to certain considerations.**

In the exercise of its functions in pursuance of this or any other enactment SQA shall—

- (a) endeavour to promote and advance education and training; and
- (b) have regard to the interests of persons using its services.

## **8 Services to others, collaboration, agency etc.**

- (1) SQA may provide services (including advice or assistance), whether in or outwith Scotland, for any person in respect of any matter to which its functions relate.
- (2) SQA may collaborate with other persons, whether in or outwith Scotland, in respect of any matter to which its functions relate.
- (3) SQA may, whether in or outwith Scotland, carry out any of its functions or do anything incidental or related to the carrying out of its functions as agent for another person.
- (4) SQA may with the consent of the Secretary of State arrange for the discharge of any of its functions by another person on such terms as may be agreed between SQA and that person.
- (5) Any arrangement made under subsection (4) above shall not prevent SQA from exercising the delegated function.

## **9 Secretary of State's directions to SQA.**

- (1) The Secretary of State may, after consultation with SQA, give SQA directions of a general or specific character with regard to the discharge of its functions and it shall be the duty of SQA to comply with such directions.
- (2) The Secretary of State may give to the Accreditation Committee directions of a general or specific nature and it shall be the duty of the Accreditation Committee to comply with such directions.
- (3) A direction given under subsection (1) or (2) above may be varied or revoked by a subsequent direction so given.

### *Information*

## **10 Provision of information by SQA.**

- (1) SQA shall provide the Secretary of State with all such information as he may reasonably require relating to the carrying out or proposed carrying out of its functions.
- (2) For the purposes of subsection (1) above, SQA shall—
  - (a) permit any person authorised for the purpose by the Secretary of State or the Comptroller and Auditor General to inspect and make copies of the contents of any accounts or other records of SQA; and
  - (b) give such explanation of them as that authorised person may reasonably require.

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## **11 Annual report.**

- (1) By such date as the Secretary of State shall determine in each financial year, SQA shall prepare a report on its activities during the preceding financial year and shall send a copy of that report to the Secretary of State.
- (2) Every such report shall set out any directions issued by the Secretary of State under section 9 above during the preceding financial year.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament.

### *Financial provisions*

## **12 Financial duties of SQA.**

- (1) After consultation with SQA, the Secretary of State may determine the financial duties of SQA; and different determinations may be made in relation to different functions.
- (2) The Secretary of State shall give SQA notice of every determination under subsection (1) above; and such a determination may—
  - (a) relate to a period beginning before the date on which it is made;
  - (b) contain incidental or supplemental provisions; and
  - (c) be varied by a subsequent determination under that subsection.

## **13 Payment of grants etc. to SQA.**

- (1) The Secretary of State may pay to SQA in respect of any expenditure incurred or to be incurred by it in connection with its functions, grants or other payments of such amounts as he may determine.
- (2) A grant or other payment paid under this section may be made subject to such conditions as, with the consent of Treasury, the Secretary of State thinks appropriate and such conditions—
  - (a) may be imposed before, after or at the time such grant or other payment is made; and
  - (b) may relate to any time, whether before or after such time.
- (3) The terms and conditions on which the Secretary of State may make any grants or other payments under this section may include in particular conditions—
  - (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid.
- (4) A condition imposed in pursuance of subsection (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

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#### **14 Secretary of State's power to make loans.**

- (1) For the purposes of the exercise of any of its functions SQA may, subject to such conditions as, with the consent of the Treasury, the Secretary of State thinks fit to impose, borrow from him, and he may lend to it out of money provided by Parliament, sums of such amounts as he may with such consent determine.
- (2) Any loan made in pursuance of subsection (1) above shall be repaid to the Secretary of State at such times and by such method, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time, with the consent of Treasury, direct; and all sums received by the Secretary of State in pursuance of this section shall be paid into the Consolidated Fund.

#### **15 Secretary of State's guarantees of SQA's borrowing.**

- (1) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which SQA borrows from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this section, the Secretary of State shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, he shall lay before each House of Parliament a statement relating to that sum, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (3) Any sums required by the Secretary of State for fulfilling a guarantee under this section shall be paid out of money provided by Parliament.
- (4) If any sums are issued by the Secretary of State in fulfilment of a guarantee given by him under this section, SQA shall make to him at such time and in such manner as, with the consent of the Treasury, he from time to time directs, payments of such amounts as, with such consent, he so directs in or towards repayment of the sums so issued and payments of interest, at such rate as, with such consent, he so directs, on what is outstanding for the time being in respect of sums so issued.
- (5) Any sums received by the Secretary of State in pursuance of subsection (4) above shall be paid into the Consolidated Fund.

#### **16 Accounts, records and audit.**

- (1) It shall be the duty of SQA to—
  - (a) keep proper accounts and proper accounting records; and
  - (b) prepare in respect of each financial year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of SQA.
- (2) Every statement of accounts prepared by SQA in accordance with this section shall comply with any requirement which the Secretary of State has, with the consent of the Treasury, notified in writing to SQA and which relates to any of the following matters, namely—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented; and

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- (c) the methods and principles according to which the statement is to be prepared.
- (3) SQA shall send <sup>F1</sup> . . . the statement of account to the Secretary of State <sup>F2</sup> . . . by such date following the end of the financial year as the Secretary of State so directs.
- [<sup>F3</sup>(3A) The Scottish Ministers shall send the statement of accounts to the Auditor General for Scotland for auditing.]
- <sup>F4</sup>(4) . . . . .

**Textual Amendments**

- F1** Words in s. 16(3) repealed (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 15(a)**; S.S.I. 2000/10, **art. 2(3)**
- F2** Words in s. 16(3) repealed (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 15(a)**; S.S.I. 2000/10, **art. 2(3)**
- F3** S. 16(3A) inserted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 15(b)**; S.S.I. 2000/10, **art. 2(3)**
- F4** S. 16(4) repealed (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 15(c)**; S.S.I. 2000/10, **art. 2(3)**

*Property*

**17 Transfer of property etc. to SQA.**

- (1) On such date as the Secretary of State may, by order, prescribe (in this Part of this Act referred to as the “transfer date”) there shall be transferred to and vest in SQA all property, rights, liabilities and obligations mentioned in subsection (2) below.
- (2) The property, rights, liabilities and obligations referred to in subsection (1) above are—
- (a) all land or other property (including corporeal and incorporeal moveable property) which immediately before the transfer date was owned by either the Scottish Examination Board or the Scottish Vocational Education Council (in this Part of this Act referred to as the “existing bodies”); and
  - (b) all rights, liabilities and obligations which, immediately before the transfer date, subsisted in respect of either of the existing bodies.
- (3) Any reference in this Part of this Act—
- (a) to property of either of the existing bodies is a reference to such property whether situated in the United Kingdom or elsewhere;
  - (b) to rights, liabilities and obligations of either of the existing bodies is a reference to rights to which the body in question is entitled or as the case may be to liabilities or obligations to which the body is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outwith the United Kingdom.
- (4) The vesting of property, rights, liabilities and obligations under this section shall have effect notwithstanding—
- (a) anything to the contrary in; or
  - (b) any condition relating to the transfer of such property, rights, liabilities and obligations contained in,
- any enactment, rule of law or obligation.



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## *Staff*

### **18 Transfer of staff to SQA.**

- (1) This section applies to any person (in this section referred to as a “qualifying person”) who, immediately before the transfer date, is employed by an existing body.
- (2) The contract of employment between a qualifying person and the existing body shall have effect from the transfer date as if originally made between him and SQA.
- (3) Without prejudice to subsection (2) above—
  - (a) all the existing body’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this paragraph be transferred to SQA on the transfer date; and
  - (b) anything done before that date by or in relation to the existing body in respect of that contract or the qualifying person shall be deemed from that date to have been done by or in relation to SQA.
- (4) Subsections (2) and (3) above are without prejudice to any right of a qualifying person to terminate his contract of employment if the terms and conditions of his employment are changed substantially to his detriment; but such change shall not be taken to have occurred by reason only of the fact that his employer is changed by virtue of this section.
- (5) Where a person—
  - (a) has, prior to the transfer date, entered into a contract of employment with an existing body which is to come into effect on or after that date; and
  - (b) would, if the contract had come into effect before that date, have been a qualifying person,he shall be treated for the purposes of this section as if he were a qualifying person.
- (6) In this section references to the terms and conditions of a person’s contract of employment with an existing body shall be construed as including references to any rights (whether accrued or contingent) under any pension or superannuation scheme of which he was a member by virtue of his employment with the body.

### *Dissolution of the Scottish Examination Board and of the Scottish Vocational Education Council: the Winding Down Period*

### **19 Dissolution of the Scottish Examination Board and of the Scottish Vocational Education Council.**

- (1) The Scottish Examination Board and the Scottish Vocational Education Council shall continue in existence after the transfer date until the body in question is dissolved under subsection (3) below.
- (2) The period of each of the existing body’s continued existence is, in relation to that body, referred to in this Part of this Act as its “winding down period”.
- (3) The Secretary of State may by order, on a date so specified in the order—
  - (a) after consulting the Scottish Examination Board and SQA, dissolve the Scottish Examination Board (such date being referred to in this Part of this Act as the “SEB dissolution date”);

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- (b) after consulting the Scottish Vocational Education Council and SQA, dissolve the Scottish Vocational Education Council (such date being referred to in this Part of this Act as the “SCOTVEC dissolution date”),
- as soon as he is satisfied that nothing further remains to be done by the Scottish Examination Board or, as the case may be, the Scottish Vocational Education Council (whether under this section or Schedule 2 to this Act or otherwise).
- (4) The same date may be appointed as the SEB dissolution date and the SCOTVEC dissolution date.
- (5) The Secretary of State may by order vary—
- (a) the SEB dissolution date; and
  - (b) the SCOTVEC dissolution date;
- at any time prior to the date in question.
- (6) During the winding down period an existing body shall, subject to Schedule 2 to this Act, have such functions as are necessary or expedient—
- (a) to facilitate the transfer of its property, rights, liabilities, obligations and staff to SQA in pursuance of sections 17 and 18 of this Act; and
  - (b) to facilitate or enable the effective carrying on by SQA of its functions after the transfer date.
- (7) Subject to paragraph 1 of Schedule 2 to this Act, nothing in this section shall authorise an existing body to enter into a contract of employment with any person.
- (8) Schedule 2 to this Act shall have effect in relation to the existing bodies and SQA during the winding down period.
- (9) Any expenses incurred by an existing body in pursuance of this section or Schedule 2 to this Act shall be met by SQA.

*Transitional*

**20 Transitional provisions as regards SQA.**

- (1) During the transitional period SQA shall have such of the functions to be conferred on it by this Part of this Act as are necessary or expedient—
- (a) to facilitate the transfer of property, rights, liabilities, obligations and staff to it under sections 17 and 18 of this Act; and
  - (b) to facilitate or enable the effective carrying on by it of its functions after the transfer date.
- (2) In this section and in Schedule 3 to this Act, the “transitional period” in relation to SQA is the period beginning with such date as the Secretary of State may by order prescribe for SQA and ending on the transfer date.
- (3) Schedule 3 to this Act, which makes provision for the transitional period as regards SQA, shall have effect.

**Subordinate Legislation Made**

**P1** S. 20(2) power fully exercised (22.8.1996): 18.9.1996 appointed day by S.I. 1996/365.

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## *Interpretation of Part I*

### **21 Interpretation of Part I.**

In this Part of this Act, unless the context otherwise requires—

“degree” means a degree which is awarded by any university or institution specified as competent to grant such a degree by virtue of section 48 of the <sup>M2</sup>Further and Higher Education (Scotland) Act 1992;

“enactment” includes an enactment contained in a subordinate instrument whether passed or made before or after the coming into force of this Act;

“existing bodies” has the meaning given by section 17(2) of this Act;

“financial year” means such period as the Secretary of State may from time to time determine;

“SCOTVEC dissolution date” has the meaning given by section 19(3)(b) of this Act;

“SEB dissolution date” has the meaning given by section 19(3)(a) of this Act;

“special educational needs” has the meaning given by section 1(5)(d) of the <sup>M3</sup>Education (Scotland) Act 1980;

“SQA” means the Scottish Qualifications Authority;

“SQA qualification” means any qualification devised or awarded by SQA;

“transfer date” has the meaning given by section 17(1) of this Act;

“transitional period” has the meaning given by section 20(2) of this Act;

“winding down period” has the meaning given by section 19(2) of this Act.

#### **Marginal Citations**

**M2** 1992 c. 37.

**M3** 1980 c. 44.

## *Service of documents*

### **22 Service of documents.**

(1) Any notice required or authorised by virtue of this Part of this Act to be served (whether the expression “serve” or the expression “give” or “send” or any other expression is used) on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or

(b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body.

(2) For the purposes of this section and of section 7 of the <sup>M4</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that in a case to which paragraph (b) of subsection (1) above applies, it shall be the address of the registered or principal office of the body; and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a firm carrying on business outside the United Kingdom is its principal office within the United Kingdom.

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- (3) If a person to be served by virtue of this Part of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) This section shall not apply to any document in relation to the service of which provision is made by rules of court.
- (5) In this section “serve” shall be construed in accordance with subsection (1) above.

**Marginal Citations**

**M4** 1978 c. 30.

**[<sup>F5</sup>PART II**

EDUCATION FOR CHILDREN UNDER SCHOOL AGE]

**Textual Amendments**

**F5** Pt. II (ss. 23-27) repealed (S.) (1.4.2002) by 2000 asp 6, s. 39; S.S.I. 2002/72, art. 2(2)

**[<sup>F6</sup>26 Disclosure of information.**

- (1) This section applies to—
  - (a) civil servants in the Scottish Office and any other persons who carry out the administrative work of that Office, and
  - (b) any person exercising any function by virtue of section 25 of this Act and any persons who are employed by (or are directors or other officers of) any such person or who carry out the administrative work of any such person.
- (2) The Secretary of State may supply to any person to whom this section applies any such social security information as the person may require for or in connection with the exercise of any function in pursuance of section 23 of this Act.
- (3) Any person who is or has been a person to whom this section applies is guilty of an offence if, without lawful authority, he discloses any social security information relating to a particular person which he acquired while acting as a person to whom this section applies.
- (4) It is not an offence under subsection (3) above—
  - (a) to disclose social security information in the form of a summary or collection of information so framed as not to enable social security information relating to any particular person to be ascertained from it; or

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- (b) to disclose any social security information which has previously been disclosed to the public with lawful authority.
- (5) It is a defence for a person charged with an offence under subsection (3) above to prove that at the time of the alleged offence—
- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
  - (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (6) For the purposes of this section, a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) by a person in accordance with his official duty as a civil servant;
  - (b) by any other person either—
    - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the person responsible; or
    - (ii) to, or in accordance with an authorisation duly given by, the person responsible;
  - (c) in accordance with any enactment or order of a court;
  - (d) for the purposes of instituting, or otherwise for the purposes of, any proceedings before a court; or
  - (e) with the consent of the person to whom the information relates or of any person authorised to act on his behalf.
- (7) A person guilty of an offence under subsection (3) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (8) In this section—
- “person responsible” means the [<sup>F7</sup>Scottish Ministers] or any person authorised by the [<sup>F7</sup>Scottish Ministers]; and
  - “social security information” means information which—
    - (a) is of a description prescribed by regulations made by the Secretary of State, and
    - (b) was obtained by reason of the exercise by the Secretary of State of any of his functions under the <sup>M5</sup>Social Security Contributions and Benefits Act 1992 or the <sup>M6</sup>Social Security Administration Act 1992.]

#### Textual Amendments

**F6** Pt. II (ss. 23-27) repealed (S.) (1.4.2002) by 2000 asp 6, s. 39; S.S.I. 2002/72, art. 2(2)

**F7** Words in the definition of "person responsible" in s. 26(8) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 125

#### Marginal Citations

**M5** 1992 c. 4.

**M6** 1992 c. 5.

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## PART III

### SCHOOL BOARDS

#### 28 School Boards: elections.

- (1) In section 2 of the <sup>M8</sup>School Boards (Scotland) Act 1988 (in this Part of this Act referred to as “the 1988 Act”) (composition of Boards) subsections (8) to (12) shall cease to have effect.
- (2) After the said section 2 there shall be inserted the following sections—

#### “2A Elections.

- (1) Subject to subsections (2) and (3) below, elections for members of School Boards shall be held during the regular election period in every relevant year; and in this Act, an election held under this subsection shall be referred to as a “regular election”.
- (2) In the case of a school (including a combined school) which comes into existence after the commencement of section 28 of the Education (Scotland) Act 1996, the first election for members of the School Board shall be held as soon as practicable after pupils first attend the school.
- (3) In the case of a school for which no School Board is established at the commencement of the said section 28—
  - (a) where a School Board has been disestablished or a first election has been held and no School Board has been established, further elections for members of the School Board shall be held in accordance with section 20(7) of this Act; and
  - (b) in any other case, the first election for members of the School Board shall be held as soon as practicable after pupils first attend the school.
- (4) In the event of a lesser number of parent members being elected at an election held in pursuance of subsection (2) or (3) above than is necessary to make up the number for the time being prescribed under section 2 of this Act as the number of parent members for the Board, subsections (5), (6) and (7) of section 20 of this Act shall apply.
- (5) In the event of a vacancy for a parent member of a Board arising a by-election shall be held—
  - (a) where an authority is so requested by the Board, not more than 3 months after the vacancy occurs; or
  - (b) in any other case, during the next regular election period whether or not that period falls in a relevant year.
- (6) In the event of—
  - (a) a lesser number of staff members being elected on any occasion than is necessary to make up the number for the time being prescribed under the said section 2 as the number of staff members for the Board; or

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- (b) a vacancy for a staff member of a board arising,  
a by-election shall be held as soon as possible and, in any event, not more than 3 months after the occasion or, as the case may be, vacancy arising.
- (7) Where no person is elected by virtue of subsection (6) above, the education authority—
  - (a) may at any time; and
  - (b) if requested in writing by a person entitled to stand and vote in an election for a staff member, shall within three months of such request, hold a by-election to fill the vacancy.
- (8) Where a person ceases, for whatever reason, to be a parent member or a staff member not more than 6 months before the expiry of his term of office, it shall not be necessary to hold a by-election under subsection (5) or, as the case may be, (6) above.
- (9) Schedule 1 to this Act shall have effect for the purpose of the holding of elections.
- (10) In this section—
  - “regular election period” means not earlier than 1 September in any year and not later than 30 November in that year, or such other period as may be prescribed; and
  - “relevant year” means 1997 and every second year thereafter.

## **2B Co-option.**

- (1) A Board shall, as soon as is practicable after their establishment, co-opt members in accordance with section 2(1) of this Act.
- (2) Where a vacancy for a co-opted member of a Board occurs, the Board shall, in accordance with this Act, co-opt another person in his place.
- (3) Subject to subsection (4) below, where, following the holding of a by-election for the election of a parent member of a Board no person is elected, the Board may, not later than three months after the holding of such by-election, invite a person from among the parents of pupils attending the school to be co-opted as a member of the Board; but no more than two persons co-opted under this subsection shall be members of the Board at any time, and a person so co-opted shall be known as a co-opted parent member of the Board.
- (4) Subsection (3) above shall not apply in the case of a by-election held for the purpose of enabling a School Board to be established.”
- (3) Where, before the commencement of this section—
  - (a) a vacancy occurs among the parent members of a Board; and
  - (b) no by-election has been held,section 2A of the 1988 Act shall apply in relation to the holding of such a by-election.

### **Marginal Citations**

**M8** 1988 c. 47.

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## 29 School Boards: terms of office.

(1) For section 3 of the 1988 Act there shall be substituted the following section—

### “3 Terms of office.

- (1) The terms of office of members of School Boards shall be determined in accordance with this section.
- (2) The term of office of every member elected at a regular election shall begin on the day following the end of the regular election period in the year of his election and, subject to subsection (3) below, expire at the end of the regular election period in the second relevant year thereafter.
- (3) Where a School Board are first established, the term of office of one half of the parent members (or, where an odd number of parent members is elected, the largest number less than half) selected by agreement amongst them or, failing agreement, by the drawing of lots, shall expire—
  - (a) in the case of a Board established during or not more than 12 months after the end of a regular election period in a relevant year, at the end of the next such regular election period; and
  - (b) in the case of a Board established not more than 9 months before a regular election period in a relevant year, at the end of the second such regular election period after their establishment,
 and the term of office of the remaining members shall expire at the end of, respectively, the second and third regular election periods in relevant years after the Board’s establishment.
- (4) The term of office of a co-opted member shall expire four years after the date of his co-option.
- (5) The term of office of a member elected at a by-election or co-opted under section 2B(3) of this Act to fill a vacancy in the membership of the Board shall expire when the term of office of the member he is elected or, as the case may be, co-opted to replace would have expired under this section.
- (6) A parent member of a Board who ceases to be eligible to serve in the capacity in which he was elected or, as the case may be, co-opted may continue to be a member of the Board until the next regular election unless the remaining part of his term of office is for a period of more than two years.
- (7) A member of a Board may resign office at any time by giving notice in writing to the Clerk to the Board or to the education authority for the area.
- (8) A School Board may remove any member of the Board who they are satisfied—
  - (a) is unable or unfit to carry out his duties; or
  - (b) has failed, without good cause, to attend—
    - (i) any meeting of the Board for a continuous period of not less than 6 months; and
    - (ii) 3 consecutive meetings of the Board.”



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- (2) The term of office of any person who has been elected to a School Board established before the commencement of this section shall be determined in accordance with the following provisions of this section.
- (3) Subject to subsection (4) below, where the term of office of any member of a Board would, by virtue of section 3 of the 1988 Act as originally enacted, have expired—
  - (a) at any time in the period of two years following the commencement of this section, his term of office shall expire on 30 November 1997;
  - (b) at other time, his term of office shall expire on 30 November 1999.
- (4) Where, in relation to any Board, the application of subsection (3) above would not result in the term of office of an equal number of parent members of the Board (or, where there is an odd number of parent members, an equal number plus or minus one) expiring on 30 November in each of 1997 and 1999, the education authority shall, after consultation with the Board, direct which members shall retire on 30 November 1997 and 1999 respectively.
- (5) Notwithstanding subsection (4) above, where any question arises as to the expiry of the term of office of an elected member of a Board, the education authority shall, after such consultation as is mentioned in subsection (4) above, direct whether the term of office of the member shall expire on 30 November 1997 or 1999.
- (6) A direction given by an education authority under subsection (4) or (5) above shall be binding.
- (7) In this section, “School Board” and “parent members” have the same meanings as in the 1988 Act and “parent member” shall be construed accordingly.

### **30 School Boards: conflict of interest.**

After section 5 of the 1988 Act there shall be inserted the following new section—

#### **“5A Conflict of interest.**

- (1) Subject to subsection (2) below, where, whether before or during any meeting of a Board or any committee of theirs, any member of the Board or of such committee becomes aware that he or any person connected with him has (whether directly or indirectly) a material interest in or relating to any matter to be or being considered by the Board or, as the case may be, the committee, he shall declare such interest and withdraw from the meeting during such consideration and shall not vote on any question relating to the matter.
- (2) Nothing in subsection (1) above shall—
  - (a) require a parent member or staff member of a Board or committee to declare an interest or withdraw; or
  - (b) prohibit him from voting,in relation to any matter where his interest exists only by reason of his being such a member.
- (3) Any person who is, by virtue of section 5 of this Act, entitled to attend and speak at any meeting of a Board, who becomes aware that he or any person connected with him has (whether directly or indirectly) a material interest in

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any matter being considered by the Board shall declare such interest and his declaration shall be recorded in the minutes of the meeting.

(4) Section 346(2) of the <sup>M9</sup>Companies Act 1985 (meaning of “connected person”) shall apply for the purpose of determining whether a person is connected with—

- (a) a member of a Board or, as the case may be, a member of any committee of theirs; and
- (b) any person mentioned in subsection (3) above as being entitled to attend and speak at a meeting,

as it applies for the purpose of determining whether a person is connected with a director of a company; and for such purpose, references in that section to a director of a company shall be construed as if they were references to, as the case may be, a member of the Board or of such committee, or a person mentioned in paragraph (b) above.

(5) The validity of any proceedings of a Board or committee shall not be affected by any failure to comply with this section.”

#### Marginal Citations

M9 1985 c. 6.

### 31 School Boards: miscellaneous.

The 1988 Act shall be amended in accordance with Schedule 4 to this Act.

## PART IV

### MISCELLANEOUS

### 32 Assessment of secondary school pupils.

After section 2 of the <sup>M10</sup>Education (Scotland) Act 1980 (Secretary of State may prescribe standards etc. for education authorities) there shall be inserted the following section—

#### “2A Assessment of secondary school pupils.

- (1) The Secretary of State may by regulations make provision for the testing and assessment of pupils undertaking the first or second year of secondary education in public or self-governing schools.
- (2) It shall be the duty of an education authority or a board of management to comply with the provisions of regulations made in pursuance of subsection (1) above.
- (3) Regulations made in pursuance of subsection (1) above may make different provision as to different cases or circumstances.”

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#### Marginal Citations

M10 1980 c. 44.

### 33 Placing requests.

- (1) Section 28A of the <sup>M10</sup>Education (Scotland) Act 1980 (which sets out the duties of education authorities in relation to placing requests), and that section as substituted for certain purposes by Schedule A2 to that Act, shall be amended in accordance with this section.
- (2) In subsection (1) for the words “and (3)” there shall be substituted the words “, (3) and (3A)”.
- (3) In subsection (3) for sub-paragraph (iv) of paragraph (a) and the word “or” immediately preceding it there shall be substituted the following sub-paragraphs—
  - “(iv) be likely to be seriously detrimental to order and discipline in the school; or
  - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;”.
- (4) After subsection (3) there shall be inserted the following subsections—
  - “(3A) Subject to subsection (3B) below, the duty imposed by subsection (1) above does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school; but nothing in this subsection shall prevent an education authority from placing a child in the specified school.
  - (3B) An education authority shall not be entitled to refuse a placing request on the ground mentioned in subsection (3A) above where there is another equivalent school managed by the authority within—
    - (a) in the case of a request relating to any stage of primary education, 3.2 kilometres (2 miles); and
    - (b) in any other case, 4.8 kilometres (3 miles),walking distance by the nearest available route of the specified school; and in paragraphs (a) and (b) the references to imperial measurements are supplementary indications of distance.
  - (3C) In subsection (3A) above, “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as may be prescribed by regulations) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1 August to which the placing request relates; and different numbers or, as the case may be, percentages may be prescribed under this subsection for the purpose of different cases or circumstances.

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

(3E) In subsection (3B) above, “equivalent school” means—

- (a) where the specified school is a denominational school, a school of the same denomination;
- (b) where the specified school is a special school, another special school; and
- (c) where the specified school is neither a denominational school nor a special school, another such school,

being a school which provides school education at the stage sought in the placing request.”

#### Marginal Citations

M11 1980 c. 44.

### 34 Stamp duty.

Stamp duty shall not be chargeable in respect of any agreement made or any transfer effected in pursuance of any of the provisions of this Act.

### 35 Regulations and orders.

- (1) Any power under this Act of the Secretary of State to make regulations or orders shall, subject to subsection (2) below, be exercisable by statutory instrument subject, except in the case of an order made under section 37(2) of this Act, to annulment in pursuance of a resolution of either House of Parliament.
- (2) Regulations and orders made under this Act may make different provisions as to different cases or circumstances; and such regulations or orders may contain such incidental, supplementary or transitional provision as the Secretary of State thinks fit.

### 36 Transitional provisions, miscellaneous amendments and repeals.

- (1) The enactments specified in Schedule 5 to this Act shall have effect subject to the amendments specified in that Schedule.
- (2) The enactments specified in Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The Secretary of State may in relation to any particular functions of the Scottish Examination Board, the Scottish Vocational Education Council or SQA under sections 19 and 20 of and Schedules 2 or 3 to this Act by order—
  - (a) exclude, modify or supplement any of those provisions; and
  - (b) make such other transitional provision as he considers necessary or expedient.

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**37 Short title, commencement and extent.**

- (1) This Act may be cited as the Education (Scotland) Act 1996.
- (2) This Act shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint; and different dates may be so appointed for different provisions or for different purposes.
- (3) An order under subsection (2) above may make such transitional and saving provisions as appear to the Secretary of State necessary or expedient in connection with the provision brought into force by the order.
- (4) Subject to subsections (5) and (6) below, this Act extends to Scotland only.
- (5) Section 26 of this Act extends to England, Wales and Northern Ireland as well as Scotland.
- (6) The amendment by this Act of an enactment which extends to England and Wales or Northern Ireland extends also to England and Wales or, as the case may be, Northern Ireland.

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**Subordinate Legislation Made**

- P2** [S. 37\(2\)](#) power partly exercised (22.8.1996): 18.9.1996 appointed for specified provisions by [S.I. 1996/2250, art. 2.](#)

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE SCOTTISH QUALIFICATIONS AUTHORITY

##### *Status*

- 1 SQA shall not—
- (a) be regarded as a servant or agent of the Crown;
  - (b) have any status, immunity or privilege of the Crown;
- and its property shall not be regarded as property of, or held on behalf of, the Crown.

##### *Qualifications and tenure of office*

- 2 Subject to the provisions of this Schedule each member of SQA—
- (a) shall hold and vacate office in accordance with the terms of his appointment for a maximum period of four years;
  - (b) may, by giving notice in writing to the appointing authority, resign his office; and
  - (c) after ceasing to hold office shall be eligible for reappointment as a member.
- 3 The appointing authority shall satisfy itself—
- (a) before it appoints a person as a member of SQA, that the person has no financial or other interest likely to affect prejudicially his performance as a member;
  - (b) from time to time, that each person so appointed continues, and has continued, to have no such interest.
- 4 (1) A person is not eligible for appointment as a member of SQA if—
- (a) he has, within five years of the date his appointment would take effect, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
  - (b) his estate has been sequestrated, he has made an arrangement with his creditors, he has been adjudged bankrupt, he has granted a trust deed for his creditors or made a composition with his creditors; or
  - (c) he has been removed from office by the appointing authority under paragraph 6(c) below.
- (2) Where a person is disqualified under sub-paragraph (1)(b) above by reason of having had his estate sequestrated, the disqualification shall cease if and when—
- (a) the sequestration of his estate is recalled or reduced; or

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- (b) he is discharged under or by virtue of the <sup>M12</sup>Bankruptcy (Scotland) Act 1985.
- (3) Where a person is disqualified under that sub-paragraph by reason of having been adjudged bankrupt, the disqualification shall cease—
  - (a) unless the bankruptcy order made against him is previously annulled, on his discharge from bankruptcy; and
  - (b) if the bankruptcy order is so annulled, on the date of the annulment.
- (4) Where a person is disqualified under that sub-paragraph by reason of his having made an arrangement with his creditors, granted a trust deed for his creditors or made a composition with his creditors, the disqualification shall cease when the arrangement or, as the case may be, trust deed or composition is no longer in force.

#### Marginal Citations

M12 1985 c. 66.

- 5 If at any time the appointing authority is satisfied that any member has been convicted as mentioned in sub-sub-paragraph (a) of paragraph 4(1) above or has become a person to whom sub-sub-paragraph (b) of that paragraph applies, it shall remove him from office; and thereupon the office shall become vacant.
- 6 If at any time the appointing authority is satisfied that any member—
  - (a) has failed to comply with any requirement of paragraph 11 or 12 below; or
  - (b) has been absent, without the permission of SQA, from all meetings of SQA and any of its committees to which he has been appointed, for a period longer than six consecutive months; or
  - (c) without prejudice to paragraph 5 above, has become otherwise unable or unfit to discharge his functions as a member of SQA,the appointing authority may remove him from office; and thereupon the office shall become vacant.
- 7 The appointing authority shall give notice in writing to any member who is to be removed from office under paragraphs 5 or 6 above.

#### Chairman

- 8 (1) The chairman shall hold and vacate office in terms of his appointment.
- (2) The chairman may resign his office by notice given in writing to the Secretary of State.
- (3) Where the chairman—
  - (a) ceases to be a member of SQA, he shall cease to be chairman;
  - (b) ceases to be chairman he shall not thereby cease to be a member of SQA but where he ceases to be chairman otherwise than on the expiry of his term of office, the Secretary of State may (without prejudice to his powers of removal under paragraphs 5 and 6 above) remove him from office as a member by notice in writing.

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*Remuneration, pensions, etc.*

- 9 (1) SQA shall—
- (a) pay to its members such travelling and other allowances; and
  - (b) as regards the chairman, pay such remuneration;
- as the Secretary of State may determine.
- (2) The Secretary of State may determine that SQA shall, as regards the chairman—
- (a) pay such pension, allowance or gratuity to or in respect of him; or
  - (b) make such payments toward the provision of such pension, allowance or gratuity,
- as may be so determined.
- (3) If the chairman ceases to be a member of SQA otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which might make it right for that person to receive compensation, the Secretary of State may require SQA to pay to that person a sum of such amount as the Secretary of State may determine.

*Proceedings*

- 10 (1) The quorum for a meeting of SQA shall be nine.
- (2) Subject to this paragraph, paragraphs 11 and 12 below and section 3(5) of this Act, SQA may regulate its own procedure and that of any committee established by it.
- (3) The proceedings of SQA and of any committee established by it shall not be invalidated by any vacancy amongst its members or the members of such committee or by any defect in the appointment of such member or failure to comply with any requirement of paragraph 11 or 12 below.

*Conflict of interest*

- 11 (1) Subject to sub-paragraph (5) below, where, whether before or during any meeting of SQA or any of its committees, any member becomes aware that he or any person connected with him has (whether directly or indirectly) a material interest in or relating to any matter to be or being considered by SQA or, as the case may be, the committee, he shall declare such interest and SQA or, as the case may be, the committee, shall record such declaration in the minutes of the meeting.
- (2) Where a member makes a declaration under sub-paragraph (1) above and the other members present at the meeting in question decide by resolution that such interest might prejudicially affect that person's consideration of the matter in question, that person shall withdraw from the meeting during consideration of that matter and shall not vote on any question relating to it.
- (3) Notwithstanding sub-paragraphs (1) and (2) above, where in relation to any member mentioned in sub-paragraph (4) below, any matter referred to in that sub-paragraph is to be considered by any meeting of SQA or any of its committees, that member



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shall withdraw from the meeting during such consideration and shall not vote on any question relating to the matter.

- (4) The members mentioned in sub-paragraph (3) above in relation to particular matters are—
- (a) the chief executive in relation to his terms and conditions of employment, his suspension, dismissal or any other disciplinary measure relating to him, his re-appointment or the appointment of his successor;
  - (b) the chairman in relation to his remuneration, allowances, re-appointment or the appointment of his successor; and
  - (c) each other member in relation to his allowances, re-appointment or the appointment of his successor.
- (5) Subject to sub-paragraph (4) above, nothing in this paragraph shall require a member to declare an interest or withdraw from consideration of any matter where his interest exists only by reason of his being a member.
- (6) Section 346(2) of the <sup>M13</sup>Companies Act 1985 (meaning of “connected person”) shall apply for the purpose of determining whether a person is connected with a member as it applies for the purpose of determining whether a person is connected with a director of a company; and for such purpose references in that section to a director of a company shall be construed as if they were references to a member.
- (7) In this paragraph “member” includes any person appointed to a committee by virtue of paragraph 13 below and any person appointed to the Accreditation Committee by virtue of section 3(3) of this Act .

#### Marginal Citations

M13 1985 c. 6.

#### *Confidentiality of information*

- 12 Any information which is received or obtained by any person in connection with his functions as a member of SQA or a member of any committee established by it, on the basis that such information shall be treated as confidential, shall be treated by him as confidential to SQA or, as the case may be, the committee.

#### *Committees*

- 13 (1) Subject to section 3(3) of this Act, SQA may establish committees for or in connection with the discharge of such of its functions as it may determine and any such committee may, with the consent of SQA, appoint sub-committees.
- (2) Such committees may include persons who are not members of SQA.
- (3) SQA may pay to the members of any committee established by it (whether or not they are also members of SQA) such allowances and expenses as it may determine; and any allowances and expenses to be paid by virtue of this sub-paragraph shall be calculated by reference to such criteria as the Secretary of State may determine.

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*Status: Point in time view as at 01/04/2002.*

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### *Delegation of powers*

- 14 (1) Anything authorised or required by or under any enactment to be done by SQA may be done by any of its committees which, or by any of its members or employees who, is authorised (generally or specifically) for the purpose by SQA.
- (2) Nothing in sub-paragraph (1) above shall prevent SQA from doing anything that a committee, member or employee has been authorised or required to do.
- (3) Nothing in this paragraph shall apply to anything which is to be done by the Accreditation Committee in pursuance of section 3(3) of this Act.

### *Staff*

- 15 The Secretary of State shall, after consultation with the chairman or person designated to be chairman (if there is a person holding or designated to hold that office), make the first appointment of chief executive on such terms and conditions as he may determine; and thereafter SQA may, with the approval of the Secretary of State, make subsequent appointments to that office on such terms and conditions as it may with such approval determine.
- 16 SQA may appoint such other employees as it thinks fit on such terms and conditions as it may, with the approval of the Secretary of State determine.
- 17 SQA shall, in the case of such of its employees or former employees as it may, with the approval of the Secretary of State, determine—
- (a) pay or make arrangements for the payment of such pensions, allowances or gratuities to or in respect of those employees;
  - (b) make such payments towards provision of such pensions, allowances or gratuities; or
  - (c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,
- as it may, with the approval of the Secretary of State, determine.

### *Disposal of property*

- 18 (1) SQA shall not dispose of any property acquired, improved or maintained wholly or partly, directly or indirectly out of funds provided by the Secretary of State or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained without the prior consent, given in writing, of the Secretary of State.
- (2) The consent of the Secretary of State may be given in respect of a particular disposal of property or of disposals of any class or description and may be given subject to such conditions as the Secretary of State may determine.
- (3) The consent of the Secretary of State is not required for the disposal of land which is or forms part of property mentioned in sub-paragraph (2) above where the disposal is in consequence of the compulsory acquisition of such land by any authority in pursuance of any power of compulsory acquisition under any enactment; but SQA shall inform the Secretary of State of any such compulsory acquisition.
- (4) Where any such property is disposed of, SQA shall pay to the Secretary of State such portion of the proceeds or value of the consideration for the disposal, after deduction

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of such expenses as appear to the Secretary of State to have been reasonably incurred in the disposal, as the Secretary of State may, after consultation with SQA determine.

### *Interpretation*

- 19 (1) In this Schedule—
- “the appointing authority”, in relation to any person who is or has been a member of SQA, means the Secretary of State or SQA, according to whether that person was appointed as a member by the Secretary of State or SQA;
  - “committee” shall include a reference to any sub-committee appointed by such committee; and
  - “member”, except in paragraphs 11 and 12 above, shall not include the chief executive.
- (2) Any reference in this Schedule to payment or provision of pensions, allowances or gratuities includes a reference to their payment or provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

## SCHEDULE 2

Section 19.

### FURTHER PROVISIONS AND SAVINGS RELATING TO THE WINDING DOWN PERIOD

#### *Vesting of existing bodies' foreign property in the Scottish Qualifications Authority*

- 1 (1) It shall be the duty of each existing body and SQA to take, at such time during the existing body's winding down period as SQA considers appropriate, all such steps as may be requisite to secure that the vesting in SQA, by virtue of section 17 of this Act or this paragraph, of any foreign property, right, liability or obligation is effective under the relevant foreign law.
- (2) During their winding down period, until such vesting as is mentioned in sub-paragraph (1) above in SQA is effective in foreign law, it shall be the duty of each existing body to hold the property or right in question for the benefit of, or to discharge the liability on behalf of, SQA.
- (3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of any part of the United Kingdom of such vesting as is so mentioned.
- (4) Each existing body shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—
- (a) it shall be the duty of SQA during the existing body's winding down period to act on its behalf (so far as possible) in performing the duty imposed on the existing body by this paragraph; and
  - (b) any foreign property, right, liability or obligation acquired or incurred by the existing body during that period shall immediately become the property, right, liability or obligation of SQA.
- (5) References in this paragraph to any foreign property, right, liability or obligation are references to any property, right, liability or obligation as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outwith the United Kingdom.

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*Final reports and accounts of existing bodies etc.*

- 2 (1) Notwithstanding the repeal by this Act of section 129 of the <sup>M14</sup>Education (Scotland) Act 1980, regulations 14 and 16 of the <sup>M15</sup>Scottish Examination Board Regulations 1981 (duty to keep accounts and submit annual report to Secretary of State), shall continue to apply to the Scottish Examination Board in respect of—
- (a) each financial year ending before the transfer date;
  - (b) such subsequent period ending with the SEB dissolution date (notwithstanding that period is longer than twelve months) as if the SEB dissolution date were the last day of the subsequent financial year.
- (2) The Scottish Vocational Education Council shall be under a duty to continue to keep accounting records, to submit them for auditing purposes and to make a report to the Secretary of State in accordance with Articles 42 to 49 of its Articles of Association in respect of—
- (a) each financial year ending before the transfer date;
  - (b) such subsequent period ending with the SCOTVEC dissolution date (notwithstanding that period is longer than twelve months) as if the SCOTVEC dissolution date were the last day of the subsequent financial year.
- (3) In this paragraph “financial year”—
- (a) in relation to the Scottish Examination Board, means the period of twelve months ending with 31st December;
  - (b) in relation to the Scottish Vocational Education Council, means the period of twelve months ending with 31st March.

**Marginal Citations**

**M14** 1980 c. 44.

**M15** S.I. 1981/1562.

SCHEDULE 3

Section 20.

TRANSITIONAL PROVISIONS FOR SQA

*Continuity of exercise of functions*

- 1 (1) Any relevant thing done by or in relation to the existing body before the dissolution date appointed in relation to that body by virtue of section 19(3) of this Act shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to SQA.
- (2) Any relevant thing which, immediately before that date, is in the process of being done by or in relation to the existing body may continue to be done by or in relation to SQA.
- (3) In this paragraph “relevant” in relation to anything done by or in relation to the existing body before that date means anything which, if it were to be done on or after that date, would be done by or in relation to SQA.

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### *Payment of grants by Secretary of State*

- 2 (1) The Secretary of State may make grants to SQA in respect of any expenditure incurred by it in pursuance of its functions under section 20 of this Act and this Schedule.
- (2) Grants made under this paragraph may be made subject to such conditions as, with the consent of Treasury, the Secretary of State thinks appropriate and such conditions—
- (a) may be imposed before, after or at the time the grant is made; and
  - (b) may relate to any time, whether before or after the payment of the grant.
- (3) The terms and conditions on which the Secretary of State may make any grants under this paragraph may include in particular conditions—
- (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid.
- (4) A condition imposed in pursuance of sub-paragraph (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

### *Information*

- 3 The existing bodies shall provide SQA with all information which SQA may reasonably require for the purpose of the exercise of its functions under this Schedule and section 20 of this Act.

### *Application of Part I*

- 4 Sections 9, 10 and 12 of this Act shall have effect in relation to SQA during the transitional period.

## SCHEDULE 4

Section 31.

### AMENDMENT OF THE SCHOOL BOARDS (SCOTLAND) ACT 1988

- 1 The <sup>M16</sup>School Boards (Scotland) Act 1988 shall be amended as follows.

#### **Marginal Citations**

**M16** 1988 c. 47.

- 2 In section 2 (composition of Boards)—
- (a) in subsection (1) at the end there shall be added the words “; and the number prescribed for the purposes of paragraph (a) above shall include not more than two co-opted parent members co-opted under section 2B(3) of this Act”;
  - (b) in subsection (2) after the words “members” there shall be inserted the words “(including co-opted parent members)”; and

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- (c) in subsection (13) for the words “the headteacher” there shall be substituted the words “—
- (a) the headteacher; and
  - (b) any teacher who is so employed at more than one school if he is so employed at that school for less than 40% of the normal hours of work of a full-time teacher.”
- 3 In section 5 (advice to Boards)—
- (a) in subsection (2) for the words “the electoral ward in which the school is situated” there shall be substituted the words “ any electoral ward which falls wholly or partly within the catchment area of the school ”; and
  - (b) after subsection (6) there shall be added the following subsection—
    - “(7) In subsection (2) above “catchment area” means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.”
- 4 In section 6 (proceedings)—
- (a) in subsection (3) for the words from “which” to “Board” in the third place where it occurs there shall be substituted the words “ whose membership shall include at least one member of the Board ”; and
  - (b) in subsection (6) for the words “their members” there shall be substituted the words “ the total number of members prescribed under section 2 of this Act ”.
- 5 In section 13, in subsection (1)(b) before the word “election” there shall be inserted the word “ regular ”.
- 6 After section 17 (financing of Boards) there shall be inserted the following section—

**“17A Surplus funds.**

Where, at the end of the financial year, the total amount of monies made available to a School Board under subsection (2) of section 17 of this Act is less than the amount determined under subsection (1) of that section, the education authority shall make available to the School Board the amount by which the total amount of monies so made available is less than the amount so determined to be applied by the Board at their discretion, taking account of the views of the headteacher, at such time as they think fit for the benefit of the school.”

- 7 In section 20 (non-establishment and disestablishment of Boards)—
- (a) in subsection (5)—
    - (i) for the words “any election under section 2 of this Act” there shall be substituted the words “ a regular election ”;
    - (ii) for the words “that section” there shall be substituted the words “ section 2 of this Act ”; and
    - (iii) for the words “as soon as practicable” there shall be substituted the words “ not later than three months after that election ”;
  - (b) for subsection (6) there shall be substituted the following subsection—

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- “(6) Where a by-election is required to be held under subsection (5) above or subsection (5) of section 2A of this Act and—
- (a) no person is elected as a parent member; and
  - (b) no person is co-opted in pursuance of section 2B(3) of this Act,
- the School Board shall not be established or, in the case of a Board which has been established, it shall be disestablished.”
- (c) in subsection (7) for paragraph (b) there shall be substituted the following paragraph—
- “(b) in any event, at the time required by section 2A(1) of this Act.”
- 8 In section 22 (interpretation), in subsection (2) at the appropriate places there shall be inserted the following definitions—
- ““co-opted parent member” has the meaning given in section 2B(3) of this Act;”;
- ““regular election” has the meaning given in section 2A(1) of this Act;”;
- ““regular election period” has the meaning given in section 2A(10) of this Act;”;
- ““relevant year” has the meaning given in section 2A(10) of this Act;”.
- 9 In Schedule 2 (appointment of headteachers, deputies and assistants)—
- (a) in paragraph 2 after the word “staff” there shall be inserted the words “ (whether teaching or not) ”;
  - (b) in paragraph 3 the words from “(other than” to “or sit)” shall cease to have effect;
  - (c) after paragraph 4 there shall be inserted the following paragraphs—
- “4A (1) Subject to sub-paragraph (2) below, any reference in paragraphs 2 to 4 above to the headteacher of a school shall include a reference to any person appointed to act for the time being as the headteacher of that school if that person is not, himself, a candidate for the post.
- (2) Where an education authority has reasonable grounds for considering a person acting as headteacher would not be a suitable person to be a member of and chair a committee under this Schedule, the authority may exclude him from so acting.
- 4B Where it appears to an education authority that an appointment committee cannot be constituted as mentioned in paragraphs 2 to 4A above, the authority may, after consultation with the Board, constitute an appointment committee made up of equal numbers of persons nominated by the authority and the Board with such other person as appears to the authority to be suitable as chairman.”;
- (d) after paragraph 5 there shall be inserted the following paragraph—
- “ *Conflict of interest*
- 5A (1) Subject to sub-paragraph (2) below, where, whether before or during any meeting of the appointment committee, any member of the appointment committee becomes aware that he or any person

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connected with him has (whether directly or indirectly) a material interest in or relating to any matter to be or being considered by the appointment committee, he shall declare such interest and withdraw from the meeting during such consideration and shall not vote on any question relating to the matter.

(2) Nothing in sub-paragraph (1) above shall—

- (a) require a member of the appointment committee to declare an interest or withdraw; or
- (b) prohibit him from voting,

in relation to any matter where his interest exists by reason only of his being the headteacher of the school or a parent of a pupil in attendance at the school.

(3) Section 346(2) of the <sup>M17</sup>Companies Act 1985 (meaning of “connected person”) shall apply for the purpose of determining whether a person is connected with a member of the appointment committee as it applies for the purpose of determining whether a person is connected with a director of a company; and for such purpose references in that section to a director of a company shall be construed as if they were references to such a member.

(4) The validity of any proceedings of the appointment committee shall not be affected by any failure to comply with this paragraph.”;

(e) for paragraphs 7 and 8 there shall be substituted the following paragraphs—

“7 Where there are fewer than 4 applicants who are eligible for the post the education authority may—

- (a) subject to paragraph 12 below, omit the name of any candidate whom they consider to be unsuitable; or
- (b) re-advertise the post.

8 Nothing in paragraph 7 above shall authorise the education authority to reduce the leet to fewer than 2 names.”;

(f) in paragraph 10 for the words from “the applicants” to the end there shall be substituted the words “ all applicants for the post who are eligible for it (as mentioned in paragraph 6 above) as the authority have in their possession or can readily obtain ”;

(g) in paragraph 12 for the words from “make” to the end there shall be substituted the words “ delete any name from the leet but may add to it the name of any applicant who is eligible for the post as mentioned in paragraph 6 above, including any applicant whose name has been omitted from the leet by the education authority under paragraph 7 above if the Board consider him suitable for the post ”.

#### Marginal Citations

M17 1985 c. 6.



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## SCHEDULE 5

Section 36.

### MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS

#### *The House of Commons Disqualification Act 1975 (c.24)*

- 1 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place there shall be inserted the following entry—

“The Scottish Qualifications Authority.”

#### *The Education (Scotland) Act 1980 (c. 44.)*

- 2 After section 51(2B) of the Education (Scotland) Act 1980 (provision of transport and other facilities) there shall be inserted the following subsection—

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

- 3 After section 66(1) of that Act (inspection of educational establishments) there shall be inserted the following subsection—

“(1A) Without prejudice to subsection (1) above, the Secretary of State shall have power to cause inspection to be made at premises where education is provided or proposed to be provided by a person to whom the Secretary of State has power to make a grant in pursuance of section 23 of the Education (Scotland) Act 1996, and such inspections shall be made by Her Majesty’s Inspectors or other persons appointed by the Secretary of State for the purpose.”

#### *The Self-Governing Schools etc. (Scotland) Act 1989 (c.39.)*

- 4 After section 13(3) of the Self-Governing Schools etc. (Scotland) Act 1989 (eligibility for self-governing status) there shall be inserted the following subsections—

“(3A) Without prejudice to subsection (3) above, where an education authority makes a proposal to discontinue a school by virtue of section 22A of the 1980 Act, no resolution shall be passed or request made under subsection (1) above during the relevant period.

(3B) The relevant period is whichever is the shorter of the period from the date when the education authority decides to consult persons in accordance with section 22A of the 1980 Act to the date the decision to discontinue the school is reached or—

- (a) where no consent is required under section 22B, 22C or 22D of the 1980 Act as regards the decision to discontinue the school, three months later;
- (b) where consent of the Secretary of State is so required, six months later.”

- 5 In section 30(1) of that Act (change in characteristics of self-governing school)—

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- (a) after the word “than” in the second place where it occurs there shall be inserted the word “ (a) ”;
- (b) after the word “needs” there shall be inserted the words “; or  
(b) provision of a nursery class.”.

*The Education (Student Loans) Act 1990 (c.6)*

- 6 In Schedule 1 to the Education (Student Loans) Act 1990 (courses of higher education)—
- (a) in paragraph 4(b), for the words “Scottish Vocational Education Council” there shall be substituted the words “ Scottish Qualifications Authority ”; and
  - (b) in paragraph 6(b), for the words “of the Councils” there shall be substituted the words “ the Council or the Authority ”.

*The Finance Act 1991 (c.31)*

- 7 In section 32(10)(a)(ii) of the Finance Act 1991 (definition of qualifying course of vocational training) for the words “Scottish Vocational Education Council” there shall be substituted the words “ Scottish Qualifications Authority ”.

*The Further and Higher Education (Scotland) Act 1992 (c.37)*

- 8 In subsection (1)(b)(i) of section 6 of the Further and Higher Education (Scotland) Act 1992 (further education to which section 1 of that Act applies) for the words “Scottish Examination Board qualification” there shall be substituted the words “ qualification awarded by the Scottish Qualifications Authority ”.
- 9 In section 38 of that Act (meaning of higher education)—
- (a) in subsection (3)(d), for the words “Scottish Vocational Education Council” there shall be substituted the words “ Scottish Qualifications Authority ”; and
  - (b) in subsection (5)—
    - (i) after the word “amend” there shall be inserted the word “(a)”; and
    - (ii) at the end there shall be inserted the words “; and  
(b) subsection (3) above.”

SCHEDULE 6

Section 36.

REPEALS

**Commencement Information**

- II** [Sch. 6](#) wholly in force at 1.4.1997; [Sch. 6](#) not in force at Royal Assent see [s. 37\(2\)](#); [Sch. 6](#) in force for certain purposes at 18.9.1996 by [S.I. 1996/2250](#), [arts. 2, 3](#); [Sch. 6](#) in force at 1.4.1997 insofar as not already in force by [S.I. 1997/365](#), [art. 2](#).

**Chapter**

**Short title**

**Extent of repeal**

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1980 c. 44.	The Education (Scotland) Act 1980.	In section 2, the word “general”.  In section 19(1), the word “general”.  In section 20, in subsection (1), the words “, subject to subsection (2) below,”; and subsections (2) and (3).  In section 65F, the word “general”.  Section 129.
1988 c. 47.	The School Boards (Scotland) Act 1988.	In section 2, subsections (8) to (12).  In Schedule 2, in paragraph 3, the words from “(other than” to “or sit”.
1989 c. 39.	The Self-Governing Schools etc. (Scotland) Act 1989.	In section 7(7), the word “general”.  Section 69(3).

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