

School Boards
**guide to the
legislation**



SCOTTISH EXECUTIVE

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legislation**

School Boards (Scotland) Act 1988
School Boards (Scotland) Regulations 1989
School Boards (Financial Information) (Scotland) Regulations 1990
Education (Scotland) Act 1996
Standards in Scotland's Schools etc. Act 2000
School Education (Amendment) (Scotland) Act 2002

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INTRODUCTION

This guide offers assistance in interpreting the meaning and the intention behind the provisions of the School Boards (Scotland) Act 1988. A guide of this kind cannot, however, give a definitive interpretation of the law: that is the function of the courts. Any Board or other person seeking advice on the meaning of the Act in relation to particular circumstances, is strongly advised to take professional legal advice.

The School Boards (Scotland) Act 1988 came into force on 1 April 1989. The Act provides that every education authority school in Scotland (except nursery schools) should, except in limited circumstances, form a School Board. Boards comprise elected parent and staff members and members co-opted from the local community. They deal with school matters and provide a focus for the involvement of parents in the running of the school.

The Act is not an isolated piece of legislation and has to be considered in the context of education and local government legislation. This is particularly important when considering the legal obligations which fall on education authorities and which Boards have to pay attention to in the discharge of their functions. At present, the main statutory provisions relating to education and local government are to be found in the Education (Scotland) Act 1980 and the Local Government (Scotland) Act 1973.

The School Boards (Scotland) Act 1988 sets fairly broad parameters for most aspects of the running and functioning of Boards. This allows the maximum degree of operational flexibility. Boards, for example, are to regulate their own proceedings. Boards can set up committees, up to one-half of which can be non-Board members. Boards can invite anybody they wish to give advice to the Boards. Provided they satisfy the basic requirements established by the Act, it is for Boards themselves to decide the detail of how they wish to organise themselves and conduct their business. The Act also provides Boards with wide powers to seek and require information, even on matters which the Act prevents the Board from controlling. While a Board cannot, for example, regulate the curriculum, it can ask questions about the curriculum and make representations to the headteacher and, if need be, the education authority. Boards can (and indeed should) become involved in all aspects of school life, by exercising their powers under the Act, by seeking delegated functions or by asking questions and making their views known.

The Act gives Boards a number of powers, duties and rights. Taken together, these place Boards in a unique position as a mechanism for the two-way flow of information between parents, schools and education authorities. Perhaps one of the most important functions a Board will ever perform is the collection and dissemination of essential information for the wider parent body. Establishing a dialogue with the wider

parent body is crucial if parents are to share in the running of their children's schools and become involved in their children's education. Boards also have important powers in relation to headteacher and senior staff appointments and in the approval of the headteacher's proposals for spending on books and other teaching materials.

This second edition of the Guide to the Legislation incorporates changes to the 1988 Act since its implementation, made mainly by the Education (Scotland) Act 1996 and the Standards in Scotland's Schools etc. Act 2000. The 1996 Act came into effect on 18 September 1996, and the majority of the provisions of the 2000 Act came into effect on 13 October 2000.

The principal changes made by the 1996 Act were to introduce a uniform timetable for the election of members of School Boards; regularise School Board members' terms of office; provide transitional arrangements to bring the terms of office of existing members and those members elected outwith the regular election periods into line with the general rule; and empower a School Board to co-opt parent members to fill parental vacancies that arise after a regular election or during members' term of office. Other changes introduced by the 1996 Act adjust the arrangements for holding by-elections to fill casual vacancies for staff members; apply conflict of interest provisions to meetings of the School Board and appointment committees; define the extent of eligibility of peripatetic teachers as 'staff members'; and enable School Boards to use surplus funds allocated by the education authority for the benefit of the school. The circumstances under which Boards are disestablished are clarified, as is the position of staff in relation to serving on appointment committees.

The 2000 Act places a new duty on Boards to carry out their functions with a view to raising the standard of education at the school; streamlines procedures for filling parental vacancies that arise either following a regular election or during members' term of office; amends the provisions relating to the right of local councillors to be a member of a School Board; removes the formal powers for School Boards to challenge a refusal by the education authority of a request by the Board for delegation of functions; and streamlines the role of the Board in headteacher appointment procedures.

Throughout this guide, where the legislation refers to the Secretary of State, you should read it as referring to Scottish Ministers.

The text on the left hand pages sets out the legislation as amended. On the facing page there are notes expanding some of the legislative provision where this is not particularly clear. As stated above, these notes cannot be seen as a definitive interpretation of the legislation. This is a matter for the courts.

SCHOOL BOARDS (SCOTLAND) ACT 1988 PART 1

Constitution of School Boards **1.** (1) Every education authority shall (subject to section 20 of this Act) establish, in accordance with this Act, a board, to be known as a “School Board”, for each school in their area.

(2) A School Board shall, in respect of the school for which they are established, exercise

(a) the functions assigned to them by this Act; and

(b) any functions delegated to them under section 15 of this Act.

and they shall exercise those functions with a view to raising standards of education in the school and shall support the endeavours of those managing the school to secure improvement in the quality of education which the school provides.

(3) Where, before the commencement of Schedule 4 to this Act, a School Board are established for a school, any school council appointed under section 125(1) of the 1973 Act to discharge functions under that section in relation to that school shall cease to discharge them in respect of that school.

(4) A School Board are established on the first occasion following the commencement of this section (or following a period of disestablishment under section 20 of this Act) when elections for members of the Board have taken place and the number of parent members prescribed under section 2 of this Act is duly elected.

(5) A School Board shall cease to exist when the school for which they are established is discontinued.

PART I

SCHOOL BOARDS (SCOTLAND) ACT 1988

Section 1: CONSTITUTION OF BOARDS

This section provides for the establishment, functions and discontinuance of School Boards.

Section 1(1) requires every education authority to establish a School Board for each school in their area. "School" is defined in section 22(2) of the Act and means a public school other than a nursery school. The effect is, therefore, to require the establishment of a Board for every public primary, secondary or special school. Nursery schools have been excluded because authorities are not required by statute to provide them and because they have a relatively transient population. Staff and parents of children in a nursery class in a primary school will, however, be able to vote and stand for election to the Board for that school. Provision for the case of a very small school which cannot support a Board, and for the case where there are insufficient parent members to form a Board following any election is made in section 20. In such cases, no Board need be established and these provisions are included as exceptions to the general duty imposed by section 1.

Section 1(2) requires a School Board to exercise first, the basic functions that are specified in sections 8-14 and 18 of the Act and second, any other function that may be delegated to it by the education authority under section 15. The Standards in Scotland's Schools etc. Act 2000 introduced a requirement for a Board to exercise its

functions with a view to raising standards of education in the school and to support those managing the school to secure improvement in the quality of education provided by the school. In practice, this should help focus Boards' activities and reaffirm what successful Boards already do.

Section 1(4) provides that a School Board is established when elections for parent and staff members have been held and the required number of parent members, as prescribed in regulations (see Part II) (pages 60 to 61) made under section 2(3)(a) of the Act have been elected. (The express reference to the required number of parent members is necessary because, under section 20, a Board cannot be established without the full number of parent members. It can, however, be established in the absence of sufficient members in other categories.) A Board is therefore established after elections held after a period in which a Board has been disestablished under the provisions of section 20. (Although a Board is established following the election of parent members, the Board is required to choose its co-opted members "as soon as practicable" after it is established (section 2B(1)). The actions of a group of elected members who unreasonably delay co-opting members might, therefore, be open to challenge.)

Section 1(5) provides that a Board shall cease to exist when the school for which it was established is discontinued: that is, closed or amalgamated with another school.



Composition of
Boards

2. (1) A School Board shall consist of

(a) persons (to be known as “parent members”) who are, and who shall be elected by, parents of pupils in attendance at the school;

(b) (except in the case of a school which has no staff, as defined in subsection (13) below) persons (to be known as “staff members”) who are, and who shall be elected by, members of staff of the school; and

(c) persons (to be known as “co-opted members”), who shall be co-opted by the Board, in such numbers as shall be prescribed; 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

(2) Parent members including co-opted parent members shall form a majority of every School Board.

(3) Regulations

(a) shall specify the numbers of parent, staff and co-opted members, and different provision may be made for different schools and for different classes of schools;

(b) may specify the dates at which the number of pupils in attendance at a school is to be determined for the purposes of any regulations made under paragraph (a) above;

(c) shall specify, in relation to schools in existence at the commencement of section 1 of this Act (except where a decision has been taken, in accordance with section 20(1) of this Act, not to have a School Board), the date by which an education authority shall hold the first elections of parent and staff members to School Boards under this section;

(d) may provide for the making by education authorities, within such time as may be prescribed, of arrangements to adjust the composition of School Boards in consequence of variation of regulations made under this section or changes in the circumstances of a school, including

(i) provision enabling authorities to hold elections or to direct co-options;

(ii) provision enabling authorities to direct the early termination of office of any member;

(iii) provision enabling authorities to determine the term of office of any person elected or co-opted under such arrangements.

(4) A person who is eligible for election to a School Board as a staff member shall not be eligible for election to that Board as a parent member.

(5) A person who is eligible for election to a School Board shall not be eligible to be a co-opted member of that Board.

(6) A person may not be a member of a School Board in more than one capacity (as parent, staff or co-opted member) at any one time.

(7) Where a school is a denominational school

(a) transferred to the education authority under section 16(1) of the 1980 Act (transference of denominational schools to education authorities); or

(b) provided by the authority under section 17(2) of the 1980 Act (which relates, among other things, to the provision by the education authority of denominational schools),

one of the co-opted members shall be a person nominated by the church or denominational body in whose interest the school is conducted.

(13) In subsection (1)(b) above, “staff” (in relation to a school) means teachers, and instructors, whether full-time or part-time, employed by the authority for the purpose of providing education at that school, whether or not they are also so employed at other schools, but does not include

(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.

Section 2: COMPOSITION OF BOARDS

This section sets out the categories of Board membership; deals with basic questions of eligibility; lays down the broad framework for elections along with Schedule 1; and provides for the Scottish Ministers to make regulations to determine matters of detail such as the composition of Boards.

Section 2(1) provides for three categories of membership of School Boards, (parent, staff and co-opted). Parent members are elected by parents of pupils at the school. "Parent" is defined in section 22(2) as amended by Schedule 4, paragraph 46 of the Children (Scotland) Act 1995 as a pupil's natural parent or any other person who is the pupil's guardian, who has parental responsibilities in relation to the pupil, or who has care of or is liable to maintain the pupil.

"Staff" members are elected by members of staff at the school. "Staff" is defined in subsection (13) of section 2 and means teachers and instructors (both full and part-time) employed by the authority for the purposes of providing education for more than 40% of the working hours of a full time teacher at the school. Provided they meet these criteria, members of staff such as nursery nurses and classroom assistants are eligible to be staff members. For the purposes of Board membership and also for staff elections, a headteacher is not a "member of staff". By virtue of regulations made under section 2(3)(b) (see Part II – pages 60 to 61) Boards of single teacher schools have no staff member. Headteachers are ineligible to vote in staff elections. (The headteacher is excluded from membership of the Board for his or her school under section 5(3)(b) of the Act.)

- *Section 2 (3) paragraph (d)* specifically provides that the regulations may enable education authorities:
 - (i) to hold further elections or to direct the Board to make co-options. (For example, where additional members are required because of an increase in a Board's membership);
 - (ii) to direct early termination of office. (In the case where a reduction in the membership is needed); and
 - (iii) to fix the terms of office of new members. (This is intended to be used to maintain or restore the pattern of elections.)

(Part II of this guide deals with the regulations made under this subsection – see pages 58 to 65).

Section 2(4) provides that a person who is eligible to stand for election as a staff member of a Board may not stand for election as a parent member of the same Board. This restriction does **not** apply where the person is a member of staff of a school different from that attended by his or her children; nor does it affect the eligibility of a member of staff who is also a parent at his or her school to vote in elections for parent members.

Section 2(5) provides that a person who is eligible for election as a parent or staff member to a School Board shall not be eligible to be a co-opted member of that Board. Subsections (4) and (5) therefore make categories of Board membership mutually exclusive.

Section 2(6) prohibits membership of the same Board in more than one capacity at any one time. It should be noted that the provisions of this subsection do not prevent someone from serving, in the same or different capacities, on more than one Board.

Section 2(8) to (12) of the 1988 Act were repealed by section 28(1) of the Education (Scotland) Act 1996.

Section 2(13) defines the term "staff" for the purposes of Board membership. In addition to teachers (but not the headteacher) the term includes instructors involved in education. The definition covers both full-time and part-time members of staff employed at the school, whether or not they are also employed at other schools. It is possible therefore for a member of staff to be eligible to stand and to vote at elections to the School Board of more than one school. It should be noted, however, that administrative and domestic staff of the school are excluded and are therefore ineligible to stand for election as staff members and to vote in such an election. Since they are not "staff" for these purposes, such people would be eligible for consideration as co-opted members (provided that they were not parents of pupils at the school). The subsection also makes clear that the definition of "staff" includes peripatetic staff i.e. teachers or instructors who teach at more than one school and who travel between them in the normal course of their day-to-day employment, subject to the qualification that such staff may only stand and vote as staff members in schools where they would normally spend at least 40% of the working-time of a full-time teacher.

Elections

2A. (1) Subject to subsections (2) to (3A) 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.

(3A) In the case of a school which, by virtue of section 17 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6), ceases to be a school which is a self-governing school, the first election for members of the School Board shall be held as soon as practicable after pupils first attend the school following that change in status of the school.

(4) In the event of a lesser number of parent members being elected than is necessary to make up the number for the time being prescribed for the purposes of subsection (1)(a) of section 2 of this Act, then not more than three months after the election up to two persons from among the parents of pupils in attendance at the school may be co-opted by the Board; and a person so co-opted shall be a parent member of the Board and not a co-opted member within the meaning given in subsection (1)(c) of that section.

(5) In a case where, under section 28(1) of the Standards in Scotland’s Schools etc. Act 2000 (asp.6), a by-election falls to be held, it shall be held not more than three months after the vacancy occurs.

(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

(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 section 28(1) of the Standard’s in Scotland’s Schools etc. Act 2000 (asp.6) or, as the case may be, subsection (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.

Section 2A: ELECTIONS

Section 2A introduces a uniform timetable for the election of parent members so that biennial elections are all held between 1 September and 30 November in every odd year (i.e. from 1997 and in every second year thereafter); adjusts the arrangements for the holding of a by-election to fill a casual vacancy (i.e. a vacancy falling outwith the biennial election process) for a parent member and adjusts the arrangements for the holding of a by-election to fill a vacancy for a staff member.

Section 2A(3) provides in the case of a school for which no School Board is established at the commencement of section 28 of the 1996 Act as follows: first, where a School Board has been disestablished, or where 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 the 1988 Act (either when requested by parents or during the regular election period) and second, 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. (This provision introduced by the Standards in Scotland's Schools etc. Act 2000 is a consequential provision following from sections 17 to 23 of the 2000 Act dealing with abolition of self-governing schools.)

Section 2A(4) provides that, where fewer parent members are elected at an election than is necessary to make up the number prescribed for the purposes of subsection (1)(a) of section 2 of the 1988 Act, then up to two people from among the parents of pupils in attendance at the school may be co-opted on to the Board within three months of the election. A person co-opted in these circumstances will be classed as a parent member of the Board and not a co-opted member within the meaning given in section 2(1)(c). (An amendment to section 20 of the 1988 Act clarifies the provisions on disestablishment so that a Board shall be disestablished where, following a by-election, no person is elected as a parent member and no person is co-opted as a parent member.)

Section 2A(5) provides that by-elections to fill parental vacancies that are to be held under the terms of section 28(1) of the Standards in Scotland's Schools etc Act 2000 shall occur within three months of the vacancy arising. Further provisions in relation to vacancies outwith the regular election process, sometimes referred to as "casual vacancies", are set out in sections 2A(8) and 2B(3) of the 1988 Act.

Section 2A(9) – Schedule 1 (pages 48 to 49) specifies the procedural features required for all elections. Education authorities are required to arrange for elections to be held and must prepare a scheme of arrangements in accordance with the specific provisions of the Schedule and any guidance issued by the Scottish Ministers).



STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

28. Vacancies for parent members of School Board
- (1) In the event of a vacancy arising for a parent member of a School Board –
- (a) a by-election shall not be held to fill the place unless, within two months after the vacancy occurs, the education authority receive a request in writing for such a by-election from whichever is the lesser of –
- (i) thirty parents of pupils in attendance at the school; or
 - (ii) a number of such parents equal to at least a quarter of those who were entitled to vote at the most recently held regular election of parent members; and
- (b) the education authority shall, as soon as practicable, take such steps as appear to the authority to be reasonable to inform the parents of the pupils in attendance at the school
- (i) that the vacancy has arisen; and
 - (ii) of what paragraph (a) above provides.
- (2) In the event of a lesser number of parent members being elected than is necessary to make up the number for the time being prescribed for the purposes of section 2(1)(a) of the 1988 Act (which relates to the composition of a School Board), a by-election shall not be held to fill the place.
- (3) Schedule 1 to this Act (which contains amendments to that Act consequential on subsections (1) and (2) above) shall have effect.

STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

Section 28: VACANCIES FOR PARENT MEMBERS OF SCHOOL BOARDS

Section 28 came into force on 23 August 2000. Subsection 28(1) makes provision for vacancies which occur during members' term of office. These vacancies are often referred to as "casual vacancies" to distinguish them from vacancies that occur when insufficient parents are elected at a regular election.¹ Provision for vacancies that occur as a result of insufficient parents being elected at a regular election is made in subsection 28(2).

Section 28(1) provides that a by-election will only take place if a casual vacancy arises during a parent member's term of office and 30 parents, or a quarter of the electoral roll (whichever is the smaller number) sign a request for a by-election to fill the vacancy within two months of the vacancy arising. If no request is made within the two month period, the Board can co-opt a parent member under section 2B(3) of the 1988 Act. The subsection also provides that the education authority will take reasonable steps to notify parents that a vacancy has arisen and the circumstances in which a by-election will be held.

Section 28(2) provides that if fewer than the required number of parents are elected at a regular election of parents, a by-election will not be held. In these circumstances, a Board can move immediately to co-opt up to two parent members in terms of section 2A(4) of the Act, without there being a by-election. A Board that has more than two parental vacancies following a regular election would be disestablished under the terms of subsection 20(6) of the 1988 Act.

[*Section 28* responds to concerns that, under the previous arrangements, where vacancies arose, a School Board could be disestablished despite the fact that there may have been parents willing to serve on a Board, but who were apprehensive about standing for election. In order to balance the principle that the majority of parent members of a School Board should be elected, the section provides that parents have the opportunity to request that a casual vacancy is filled by election rather than co-option and restricts the number of parents that can be co-opted to fill vacancies following a regular election.]



¹ Regular elections are held between 1 September and 30 November in any year or at such other period as may be prescribed.

Co-option

2B. (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) Where a vacancy for a parent member of a Board arises and –

(a) no by-election falls to be held, then the Board may, in accordance with this Act, co-opt, within three months after it does so arise;

(b) a by-election falls to be held but on its being held no parent member is elected, the Board may, in accordance with this Act, co-opt, within three months after the by-election,

from among the parents of pupils in attendance at the school another person in his place; and a person so co-opted shall be a parent member of the Board and not a co-opted member within the meaning given in section 2(1)(c) of this Act.

Section 2B: CO-OPTION

Section 2B sets out the general duty for Boards to co-opt members and the specific power to co-opt parents to fill vacancies which arise during parent members' term of office.

Section 2B(1) provides that a Board shall, as soon as is practicable after their establishment, co-opt members in accordance with section 2(1) of the 1988 Act. Co-option enables a Board to secure additional expertise or experience, for example, by co-opting a member of the business community or a senior pupil to the Board. The numbers of co-opted members that Boards must have are set out in Regulation 4 of the School Boards (Scotland) Regulations 1989.

Section 2B(2) requires a Board to fill any vacancy for a co-opted member of a Board by the co-option of another person in his or her place. The rules for eligibility for co-option (sections 2(5) to 2(7)) apply to co-opted members and parent members who are co-opted to fill vacancies that arise during parent members' term of office.

Section 2B(3) provides that where a vacancy for a parent member arises and no by-election falls to be held (i.e. if no request to hold a by-election is received from 30 parents, or a quarter of the electoral roll within two months of the vacancy arising), the Board can co-opt a parent member within three months of the vacancy arising. The subsection also provides that when a by-election is held and no parent is elected, the Board can co-opt within three months of the by-election. The

subsection sets out that a person co-opted in these circumstances will be classed as a parent member of the Board and not a co-opted member within the meaning given in section 2(1)(c).

[This subsection replaces section 2B(3) introduced by the Education (Scotland) Act 1996 which provided that no more than two co-opted parents could be members of a Board at any time. There is no such restriction on numbers under the subsection, and a Board can co-opt to fill all parental vacancies that occur between regular elections. The term of office of a parent member co-opted in these circumstances runs until the end of the regular election period in the next relevant year² after the co-option takes place. A co-opted parent member would therefore hold office for no more than two years.

[*Section 2B(3)* was enacted in response to concerns that, under the previous arrangements, where vacancies arose a School Board could be disestablished despite the fact that there may have been parents willing to serve on a Board, but who were apprehensive about standing for election. In order to balance the principle that the majority of parent members of a School Board should be elected the subsection provides that the length of time that a co-opted parent member can only hold office until the end of the next regular period in the next relevant year. Under the terms of section 2A(4) of the 1988 Act, a Board can co-opt to fill up to two vacancies following a regular election of parents. A Board that has more than two parental vacancies following a regular election would be disestablished under the terms of subsection 20(6) of the 1988 Act.

² Relevant year means 1997 and every second year thereafter.

Terms of office

3. (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.

(4A) The term of office of a parent member co-opted under section 2A(4) of this Act shall expire at the end of the regular election period in the second relevant year after the election which gave rise to the co-option.

(4B) The term of office of a member co-opted under section 2B(3) of this Act shall expire at the end of the regular election period in the next relevant year after the co-option takes place.

(5) The term of office of a member elected at a by-election shall expire when the term of office of the member he is elected 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.

Section 3: TERMS OF OFFICE

This section provides for the term of office of members of School Boards to begin, as a general rule, on 1 December in the year of their election and to expire on 30 November four years later and on-going transitional arrangements to bring into line with the general rule, the expiry dates of the terms of office of elected members of School Boards established outwith the regular election period in a relevant year (1 September to 30 November in an odd year). Transitional arrangements to bring into line with the general rule the expiry dates of the terms of office of members of School Boards elected before the commencement of section 29 are covered by subsections (2) to (7) of that section (see Annex A).

The effect of the subsection is that the term of office of a School Board member elected at a regular election shall be four years, except as provided for by subsection (3).

Section 3(3) provides that the term of office of half of the parent members, to be selected by agreement or by drawing lots, elected when a Board is first established shall expire depending on when the Board is established. Where a Board is established during or up to 12 months after a regular election period, their term of office shall expire at the end of the next regular election period, and where a Board is established up to 9 months before the start of a regular election period, their term of office shall expire at the end of the second regular election period after the Board is established. 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.

In selecting the half of parent members, they might decide on the basis of the number of votes cast at the election, the likely length of interest in the school (for example, the parent of a pupil in P5 may find a 2 year term more desirable), or any other basis. If they cannot agree, the selection is to be made by drawing lots. This provision has the effect that half of the parent members elected when a Board is first established shall hold office for only two years so that half the parent members will come up for election every two years. It also makes provision in the case of Boards established outwith a regular election period (1 September to 30 November in an odd year) to bring the terms of office of members of such Boards into line with the fixed biennial pattern established by section 2A.

Section 3(4) provides that the term of office of a co-opted member shall expire 4 years after the date of his co-option.

Section 3(4A) makes provision for the term of office of a parent member co-opted under section 2A(4) to fill a vacancy arising as a result of insufficient parents being elected at a regular election of parent members. It provides that the term of office of such a member shall expire at the end of the regular election period in the second relevant year after the election which gave rise to the co-option. A parent co-opted following the 2001 regular election would, for example, serve until 30 November 2005.

Section 3(4B) makes provision for the term of office of a member co-opted under section 2B(3) to fill a vacancy arising during a parent member's term of office. It provides that the term of office of such a member shall expire at the end of the regular election period in the next relevant year after the co-option takes place. The co-opted person would be a member for up to two years. A person co-opted in June 2001 would, for example, serve until 30 November 2001 and a person co-opted in December 2001 would serve until 30 November 2003.

Section 3(6) provides that parent members of a School Board who cease to be eligible to serve in the capacity in which they were elected or co-opted, may continue as members of the Board until the next regular election, provided that their remaining term of office is less than 2 years. If their remaining term of office is more than 2 years, they must step down at the time they cease to be eligible to serve in that capacity.

Section 3(7) provides that a member of a Board may resign at any time, by giving written notice to the Clerk to the Board or to the education authority. In most cases, written notice will be given to the Clerk to the Board but there may be instances when the notice has to be given to the authority, for example, where there is no Clerk or when a Board member who is also the Clerk wishes to resign. It is important that the education authority are notified as soon as possible to allow them to inform parents that a vacancy has arisen and the circumstances under which a by-election will be held within the timescales provided by section 28(1) of the 2000 Act and 2A(5) of 1988 Act.

Section 3(8) empowers a School Board to remove any member whom they are satisfied is unable to carry out his or her duties because of illness or incapacity. It also empowers the Board to remove a member where they are satisfied that that member has failed without good cause to attend meetings for a continuous period of at least 6 months provided that he or she has also failed without good cause to attend three consecutive meetings. There is no power to remove a disruptive member simply for that reason.



Qualification and
disqualification
of members

4. (1) Persons who would be disqualified for seeking election as, or for being

(a) members of a local authority by virtue of section 31(1)(b) or (c), (2) or (3) of the 1973 Act; or

(b) members of the education authority for the area within which the school is situated by virtue of section 31(1)(d) of that Act,

shall be disqualified for seeking election as, or from being a member of a School Board.

(2) A young person may be a co-opted member of a School Board.

(3) Subject to subsection (2) above, persons subject to legal incapacity may not be nominated for election to or be members of School Boards.

(4) A retiring member of a School Board shall not be disqualified (by reason of such retirement) from further election or co-option.

Section 4: QUALIFICATION AND DISQUALIFICATION OF MEMBERS

This section sets out the general conditions for disqualification for membership of School Boards and make certain specific provisions on qualification.

Section 4(1) specifies the conditions under which a person is disqualified from seeking election to, or for being a member of, a School Board, by reference to provisions in the Local Government (Scotland) Act 1973 dealing with disqualification for membership of local authorities and education authorities. The subsection therefore generally provides that if a person is disqualified from seeking election to a local authority or from being a member of the education authority, then that person is disqualified from seeking election to, or for being a member of, a School Board. Section 31(1)(a) of the 1973 Act (which would have the effect of disqualifying education authority employees for membership of School Boards) is **not** applied. Subsections (1) and (3) of section 5 of the 1988 School Boards Act qualify this general provision. The Director of Education, education authority officials who represent the authority at Board meetings, and the headteacher, cannot be members of the Board.

Paragraph (a), applies to sections 31(1)(b) and (c), (2) and (3) of the 1973 Act. These relate to disqualification by virtue of sequestration, bankruptcy, or criminal conviction leading to a sentence of imprisonment of not less than 3 months passed within the previous 5 years.

Paragraph (b), applies section 31(1)(d) of the 1973 Act. This relates to disqualification under Part III of the Representation of the People Act 1983. Sections 159 and 160 of the 1983 Act provide that anyone who has been found guilty of an offence in connection with an election to public office will be disqualified for voting in or standing for election to any public office for a number of years. The period of disqualification is dependent on the nature of the offence and is specified in the 1983 Act.

Section 4(2) enables a young person to be co-opted to a School Board. A “young person” is defined in section 135(1) of the Education (Scotland) Act 1980 as someone between the ages of 16 and 18 years of age. Thus a senior pupil of a secondary school could be co-opted to the Board for that school if the other Board members wished.

Section 4(3) makes it clear that subject to the provision in section 4(2) for young persons to be capable of membership of a School Board, any person who is subject to legal incapacity is not eligible to be elected or become a member of a Board.

Section 4(4) provides that there need be no fixed limit to the number of terms any Board member may serve. A retiring member could, however, be elected or co-opted for a further term only if he or she is still eligible for membership and has not been disqualified.



Advice to
Boards

5. (1) An officer of an education authority shall be entitled to attend and to speak at any meeting of a School Board in the authority's area, but shall not be a member of the Board.

(2) A councillor for an electoral ward which falls wholly or partly within the catchment area of a school shall be entitled to attend and to speak at, any meeting of a School Board for the time being established for that school; but no councillor shall be a member of a School Board for the time being established for a school situated within the area of the council.

(3) The headteacher of a school shall

- (a) have the right and, if requested by the School Board, the duty to give advice to the Board on any matter within the Board's competence;
- (b) have the right to be present and to speak at meetings of the School Board, but shall not be a member of the Board.

(4) An education authority shall give advice to a School Board in their area when requested on any matter within the Board's competence.

(5) A School Board shall consider any advice given to them under subsection (3)(a) or (4) above.

(6) Every education authority shall take such steps as are appropriate to ensure that the headteacher and staff of each school in their area are available when necessary for the purposes of

- (a) fulfilling the headteacher's duties by or under this Act in respect of the School Board; and
- (b) giving effect to any competent decisions of the Board.

(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.

Section 5: ADVICE TO BOARDS

This section provides for an education authority official to attend and to speak at Board meetings. The same rights are given to councillors whose electoral ward covers either part or the whole of the school's catchment area. It also provides that the education authority is required to give advice to the Board on request. The section also defines the role of the headteacher as the Board's principal adviser and sets out the position of the headteacher and school staff in relation to the conduct of the Board's business. It therefore provides for Boards to receive advice from a wide range of sources.

Section 5(1) provides for an education authority official to attend and to speak at any meeting of a School Board in the authority's area. The official is not obliged to attend each and every Board meeting, nor need it always be the same person who attends the meetings of a particular Board. The subsection prohibits the official from becoming a member of any Board within the authority's area, in their capacity as an education authority official. However, if they are the parent of a pupil at a school, they can be a member of that school board in their personal capacity.

Section 5(2) gives councillors the right to attend and to speak at Board meetings of any school that has a catchment area either partly or wholly within his or her electoral ward. Councillors are not obliged to attend meetings. The subsection prohibits councillors from being a member of any School Board which is within his or her council's area. The provision does not affect councillors who were already Board members on 13 October 2000 who can continue to serve out their term of office under the provisions of section 3 of the 1988 Act. In addition, the provision does not prevent a councillor from being a member of a Board in another local authority area in any appropriate capacity.

[Under the previous provisions, councillors were only prohibited from being members of a School Board if their

electoral ward fell wholly or partly within the catchment area of the school. The extension of the prohibition has been made to avoid a conflict of interest which might arise if a councillor was both a parent member of a Board and on the Education Committee making decisions relating to that school.]

Section 5(3) deals with the role of the headteacher. In effect the headteacher will be principal professional adviser to the Board. It would be competent for an acting headteacher to exercise any of the functions of a headteacher under the Act, except chairing appointments committees under Schedule 2, if they themselves are a candidate for appointment.

Paragraph (a) gives the headteacher the right to give advice to the Board on any matter that is within the Board's competence. It also places a duty on the headteacher to provide the Board with such advice if the Board so requests. Advice may be given orally or in writing or both.

Paragraph (b) entitles, but does not require, the headteacher to attend and to speak at Board meetings, and also determines that the headteacher is not to be a member of the Board. The Act places certain other duties on the headteacher and also confers certain rights. Section 10(2), for example, provides that the headteacher must give the Board, when established, a statement of the policies being applied at the school, and section 10(3) provides that the headteacher must give the Board an annual report. Other rights and duties are contained in sections 9, 12 and 18.

Taken together sections 5(1), 5(2) and 5(3) prevent any person who becomes an adviser to the Board under the terms of the Act from being a member of the Board.

Section 5(6) requires authorities "to take such steps as are appropriate" to ensure the availability of the headteacher and staff, thus providing that authorities need not require more than is possible under any agreement on terms and conditions of service that may be in force.



Conflict of interest

5A. (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 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 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.

Section 5A: CONFLICT OF INTEREST

This section introduces conflict of interest provisions to members of School Boards and their committees, and to persons entitled to attend and speak at such meetings. Under this section, Board members and members of committees constituted by the Board must declare any material interest they, or a person connected with them, have in relation to any matter being considered; must withdraw from meetings where such a matter is under consideration; and must not vote on any question relating to the matter. In addition, any person entitled to attend and speak at Board meetings by virtue of section 5 of the 1988 Act (i.e. an officer of the education authority, local councillors whose wards fall partly or wholly in the catchment area of the school and the headteacher) must similarly declare any material interest they, or a person connected with them, have in relation to any matter being considered by the Board. Such declaration must be recorded in the minutes. The only exception from the requirement to declare a material interest is an interest which arises solely from membership of the Board as a parent or staff member.

Section 5A(1) – It is for individual members to decide the circumstances under which such an interest should be declared. The section does not restrict such interest to the purely financial, but requires the declaration of

“material” interests. This might, for example, be in terms of association with an individual or a company being discussed by the Board, or where the member concerned or a party connected to them stands to gain an advantage, financial or otherwise, as a result of a decision taken by the Board.

Section 5A(2) provides that nothing in subsection (1) shall require a parent member or staff member of a Board or committee to declare an interest or withdraw, or prohibit him from voting in relation to any matter where his interest exists only by reason of his being a parent or staff member. Thus a person’s interest in the school as a parent or a member of staff does not prevent their participation.

Section 5A(4) provides that section 346(2) of the Companies Act 1985 (meaning of “connected person”) applies for the purpose of determining whether a person is connected with a Board or committee member or any person mentioned in subsection (3) as being entitled to attend and speak at a meeting, as it applies for the purposes of determining whether a person is connected with a company director. The definition in section 346(2) includes a person’s spouse, children and stepchildren, as well as a range of corporate bodies and other persons associated with the person or his spouse, children or stepchildren.



Proceedings

6. (1) Every School Board shall elect a chairman and vice-chairman from among the members (other than the staff members) of the Board.

(2) In the case of an equality of votes at any meeting of the Board the chairman or in his absence the vice-chairman shall have a second or casting vote, except where the matter which is the subject of the vote relates to the appointment

(a) of a co-opted member, or

(b) to any particular office or committee,

in which case the decision shall be by lot.

(3) A School Board may establish committees of the Board whose membership shall include at least one member of the Board, and the Board may regulate the meetings and proceedings (including the quorum) of such committees.

(4) A School Board may empower any of their members or the Clerk to execute documents on their behalf and any legal proceedings or other document to be served on a Board shall be deemed to have been duly served if served at the school on the Clerk or, if no Clerk has been appointed, on the chairman or vice-chairman.

(5) A School Board shall have power to regulate their proceedings, so far as is consistent with this Act.

(6) The quorum of a School Board shall be not less than one third of the total number of members prescribed under section 2 of this Act and proceedings of the Board shall not be invalidated by any vacancy in the membership or by any defect in the qualifications, election or co-option of any member.

(7) Minutes of the proceedings of a meeting of a School Board, or of any committee of a Board, shall be drawn up and shall be signed at the same or next following meeting by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(8) Where their education authority so require, a School Board shall send to the authority a copy of the minutes signed under subsection (7) above in relation to any meeting.

(9) The Scottish Ministers may by regulations –

(a) require School Boards and any committee established by them to make available to such persons or classes of person as may be prescribed such documents and information relating to their meetings and proceedings as may be prescribed; and

(b) prescribe the extent to which meetings of the Board and of any such committee are to be open to the public.

(10) A School Board shall appoint a person to be Clerk to the Board who may, unless he is a member of the Board, be paid for his services.

(11) A School Board may invite to attend any of their meetings and to speak any person whose presence they consider to be desirable for the purpose of giving advice to the Board regarding, or representing persons interested in, the matters under discussion.

Section 6: BOARD PROCEEDINGS

This section makes a number of specific provisions about a School Board's conduct of its proceedings; provides for the Board to regulate its own proceedings in detail; and empowers the Scottish Ministers to make regulations about public access to the Board's documents and meetings. The provisions regarding public access are contained in the School Boards (Scotland) Regulations 1989 (see Part II).

Section 6(1) requires every Board to elect a chairman and vice-chairman from among the parent and co-opted members. All members, including staff members, are able to vote in this election. Since co-opted members are eligible to hold office, it follows that it is logical for new Boards to wait until they have co-opted members before electing their chairmen and vice-chairmen.

Section 6(3) empowers School Boards to establish committees to consider and report to the Board on matters referred to them by the Board. These committees do not have substantive decision-making powers and must include at least one Board member. A School Board is empowered to regulate the meetings and proceedings of its committees, including determination of the quorum. Committees allow Boards to receive advice and consult with a variety of groups and agencies who might have a particular interest in the school. Where a school is a community school, for example, the Board might establish a committee to consider community school use

and invite representatives of the user groups to be committee members.

Section 6(5) provides that Boards will normally regulate their proceedings by drawing up and adopting "standing orders".

Section 6(6) The quorum of a Board of seven members is, for example, three. If there is a vacancy on that Board, the quorum remains at three.

Section 6(9) empowers the Scottish Ministers to make regulations determining the extent to which the public have access to Board papers and meetings (see Part II – pages 66 to 67). The regulations provide protection for documents and discussions relating to confidential issues, such as appointments, but otherwise provide for meetings and papers to be open to the public.

Section 6(11) empowers a Board to invite to its meetings anyone it wishes to receive advice from; a Board can also invite anyone who represents people interested in matters under discussion. The power to invite advice and representation from sources outside the immediate school and education authority structure, and to include non-Board members on committees of the Board (*section 6(3)*), gives Boards considerable freedom to develop their own structures. These powers may be particularly useful to Boards whose schools have wide community links or which provide specialised services, for example, to pupils with special needs.



Combined
schools

7. (1) Where a school is constituted by the amalgamation of 2 or more existing schools, it shall be known as a “combined school” for the purposes of this Act, whether or not it –

- (a) occupies the buildings previously used by; or
- (b) is called by the same name as,

one of the schools it replaces.

(2) Where a decision has been taken by an education authority to constitute a combined school, the members of the School Boards of the existing schools shall, meeting together, constitute an *Interim* School Board which shall have the functions given to a School Board by the provisions of this Act mentioned in subsection (5) below in relation to the combined school.

(3) In the event of any of the School Boards for the schools constituting the combined school ceasing to exist (before a School Board are established for the combined school), the members of that School Board shall remain members of the *Interim* Board, but no vacancy arising in their membership shall be filled.

(4) An *Interim* Board shall cease to exist when a School Board have been established for the combined school.

(5) Section 3(4) and (5), 4 to 6, 8 to 14 and 17 to 19 of this Act shall (with the necessary modifications) apply to an *Interim* Board as they apply to a School Board.

Section 7: COMBINED SCHOOLS

When any new school is established, a School Board must be established for it as soon as is practicable after the first pupils are admitted, (sections 1(1) and 2(9)). To provide for the circumstance where new schools are created by the amalgamation of 2 or more existing schools, section 7 makes additional provision for the establishment of Interim School Boards for “combined schools”. As the name suggests, these Interim Boards are expected to have a short life, covering the period from the decision to set up the school until establishment of its School Board. Their main purpose will be to play a part in the selection of the headteacher for the new school.

Section 7(2) provides that an Interim Board will be established in the case of a combined school as soon as the decision to constitute it has been taken. This Interim Board is to comprise the members of the School Boards for the schools being amalgamated, meeting together, or, where only one of the schools concerned has a Board, the members of that Board. (In those circumstances, the Board will no doubt wish to consider how best to involve parents of the pupils at the school(s) concerned.) Their functions as an Interim Board will relate only to the proposed new school. The existing Board(s) will remain responsible for the old school(s) so long as they continue.

Section 7(3) provides that, in the event of any of the School Boards for the schools being amalgamated ceasing to exist (for example, as a result of the closure of the school concerned), before a School Board is established for the combined school, the members of that School Board are to continue as members of the Interim Board. In that event, however, no vacancy arising in the membership of the Interim Board is to be filled. In other words, the old Board will continue as part of the Interim Board but there will be no requirement to hold “ghost” elections if casual vacancies arise.

Section 7(4) determines that an Interim Board is to cease to exist when a School Board has been established for the

combined school. This should occur as soon as practicable after the first pupils are admitted (sections 1(1) and 2A(2)).

Section 7(5) provides for certain of the provisions of the Act relating to Boards to apply to Interim Boards. Broadly speaking, Interim Boards are to act in the same way as other School Boards, except that the Interim Boards are not to be able to have additional functions delegated to them. Section 7(5) applies to Interim Boards the following provisions of the Act:

Sections 3(4) and (5) of the 1988 Act providing that members of an Interim Board may resign or be removed.

Section 4 which provides the basic terms of qualification and disqualification from membership. (It should be noted that the provisions on terms of office and election etc. are not applied: Interim Board membership will change with variations on the membership of the Boards which make up the Interim Board. By definition, there will be no readily identifiable constituency for the Interim Board.)

Section 5 which gives an Interim Board rights to advice and allows the education authority, local councillors and the headteacher to take part in the meetings of the Board.

Section 6 which allows an Interim Board to regulate its own proceedings and applies the same basic procedural rules as for a full Board.

Sections 8 to 14 and 17 to 19 which give an Interim Board the same basic functions and duties as a full Board, and allow the authority to pay allowances to Interim Board members.

(It should be noted that sections 15 and 16, dealing with the delegation of further functions to Boards are **not** applied.)



Exercise of
functions of
Boards

8. (1) Subject to this Act, a School Board may do anything which is calculated to facilitate the exercise of their functions including, without prejudice to the foregoing generality, power to enter into contracts and agreements (other than contracts or agreements relating to land) and to invest money.

(2) A School Board exercising any function given to them by or under this Act shall be treated, as regards relations with third parties, as the agent of their education authority, whether or not the exercise complies with this Act or with any conditions imposed under this Act.

(3) The members of a School Board shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of any functions given to them by or under this Act.

(4) In the exercise of any functions given to them by or under this Act, a School Board shall have regard, where any of the land or equipment of a school is used for the purposes of further education, to the requirements of that use and shall, in any case where the exercise of any such function is liable to affect such use, hold consultations with such of the following persons as they consider appropriate in the circumstances, namely

(a) their education authority;

(c) the person in charge of the institution providing the further education.

(5) In the exercise of any functions given to them by or under this Act, a School Board shall ensure that any duty of their education authority under statute or any rule of law is duly complied with.

(6) A School Board shall comply with any reasonable requests made to them from time to time by their education authority for information relating to the exercise of any function given to the Board by or under this Act.

Section 8: EXERCISE OF FUNCTIONS OF BOARDS

This section gives Boards a general power to act in the discharge of their functions, determines the relationship between Boards and education authorities, and limits the personal liabilities of Board members. It also requires Boards to take account of the interests of further education where the premises or equipment of a school are used for that purpose, and empowers education authorities to obtain information from Boards about the discharge of their functions.

Section 8(1) gives Boards the general powers which they need to carry out their functions. Included is the power to enter into contracts and agreements (other than those relating to land) and to invest money. The definition of "land" given in Schedule 1 to the Interpretation Act 1978 includes buildings. Thus the restriction on contracts relating to land prevents Boards from entering into ownership of land or buildings. The provision allowing Boards to invest money will allow Boards to keep funds (for example, funds raised or received under section 18) in interest-bearing accounts.

Section 8(2) provides that Boards exercising their functions, are to be treated, in relation to third parties, as the agents of their education authority. This provision applies whether or not the exercise of a function complies with the requirements of the Act or the conditions attached to a delegated function under section 15. This provision gives assurance to those

entering contracts with a Board or suffering any loss or injury caused by a Board's negligence that they will be able to pursue any claims against the education authority concerned, even if the Board is subsequently disestablished under section 20 or is otherwise unable to meet its obligations.

Section 8(3) is complementary to subsection 2 and provides that no personal liability is to be incurred by the members of a School Board where they have acted in good faith in what is, or in what they believe to be, the exercise of a function given to them under the Act.

Section 8(5) requires a School Board to ensure that, in the exercise of its functions under the Act, the Board does not place the education authority in breach of any duties placed on the authority by statute or rule of law. These include, for instance, the education authority's responsibility for school education for their area, the authority's duties under employment and health and safety legislation, and the common law duty of care which authorities bear in relation to pupils.

Section 8(6) requires a School Board to comply with any reasonable request from the education authority for information relating to the exercise of the Board's functions. This provision complements the authority's right to have a representative at Board meetings (section 5(1)) and the duty on the Board to make its minutes available to the authority (section 6(8)).



Books, materials,
etc.

9. (1) Every education authority shall, in every financial year, make available to the headteacher of every school in their area such funds as they think necessary for the purchase of books and other teaching materials for the school, and for such other purposes as they think fit.

(2) The headteacher

(a) shall from time to time make proposals to the School Board as to how the funds provided under this section should be spent; and

(b) shall not spend funds on any proposal unless it is approved by the Board.

(3) Where for any reason no School Board are for the time being established for a school, the headteacher shall spend the funds provided under this section in such manner as he thinks appropriate.

(4) The headteacher and the Board shall have regard, in exercising their respective functions under this section, to

(a) any guidance issued in relation to those functions by the education authority; and

(b) any policy of the education authority in relation to the curriculum of schools

and shall ensure that any relevant duty of the authority under statute or any rule of law is duly complied with.

Information and
reports

10. (1) Every education authority shall provide to every School Board in their area such information as the Board may from time to time reasonably request relating

(a) to the school for which the Board are established; or

(b) to the provision of education in the authority's area.

(2) Every headteacher shall provide to the School Board, at the time when the Board are established, a statement of the policies as regards

(a) curriculum;

(b) assessment of pupils; and

(c) discipline, rules and uniform,

which are being applied in the school, and thereafter shall advise the Board of any changes in those policies.

(3) Every headteacher shall provide to the School Board

(a) an annual report, including in particular a report on the level of attainment of the pupils in the school;

(b) such other reports and information concerning the school as the Board may from time to time reasonably require.

(4) The School Board may make representations with regard to information, statements and reports provided under this section to the education authority and to the headteacher who shall take account of those representations and shall reply to them.

Section 9: BOOKS, MATERIALS, ETC.

This section provides that the education authority must give to the headteacher of a school a budget for books, other teaching materials and other purposes. This is known as the capitation allowance. It also allows the School Board to approve the headteacher's plans for expenditure.

Section 9(1) requires every education authority in every financial year to make available a capitation allowance to the headteacher of every school in their area. The amount of the allowance is for the authority to decide, and must represent the amount the authority thinks is necessary for the purpose. The Board can make representations to the authority about the sum. The

authority also has the discretion to decide what items of expenditure the allowance should cover; this allows for the wide range of modern teaching materials in addition to books.

Section 9(2) requires the headteacher to make proposals to the School Board as to how the capitation allowance should be spent. It also prohibits the headteacher from spending funds on proposals which do not have the approval of the Board. The initiative for the submission of proposals lies with the headteacher. The headteacher is not obliged to proceed with proposals which are approved, nor is the headteacher prevented from submitting entirely new proposals to the Board if the Board does not approve part of the original proposals.



Section 10: INFORMATION AND REPORTS

This section requires education authorities to provide information to Boards and requires headteachers to give their Boards statements of policies applied in their schools. Headteachers are also required to provide annual reports and any other reports or information that the Board might reasonably require. Boards are given a right to comment on such information and reports and receive replies from the authority or headteacher.

Section 10(1) Boards may request information “from time to time”: this means that they can ask for information as and when they need it. They are not limited to receiving reports from their authorities at annual or other intervals.

Section 10(3) Other than information on the level of attainment, it will be for the Board and the headteacher to agree what information the annual report should contain. A headteacher cannot give the Board details of the performance of individual pupils.



Appointments

11. Schedule 2 to this Act shall have the effect in relation to the appointment of headteachers and deputy headteachers.

Relations
between Boards
and parents

12. (1) Every School Board shall promote contact between the school, parents of pupils in attendance at the school and the community and, in particular, shall encourage the formation of parent-teacher or parents' associations.

(2) Every School Board shall

(a) as often as appears to them to be necessary but, in any event

(i) not more than 12 months after their establishment; and

(ii) at intervals of not more than 12 months after the first such report,

make a report to parents of pupils in attendance at the school in order to inform parents of the Board's activities; and

(b) as often as appears to them to be necessary, ascertain the views of parents on matters which are the responsibility of the Board.

(3) The headteacher of the school shall provide the Board with information as to the arrangements applied in the school for consultation between parents and teachers, and the Board may make representations concerning these arrangements to the headteacher, who shall take account of those representations and shall reply to them.

**Section 11: APPOINTMENTS OF HEADTEACHERS
OR DEPUTIES**

This section gives effect to Schedule 2 which makes detailed provisions for the appointment of senior promoted staff. Schedule 2 is explained on pages 50 to 53.



**Section 12: RELATIONS BETWEEN BOARDS AND
PARENTS**

This section places certain duties on Boards and headteachers concerning communication and contact between the school, the Board, parents, and the wider community. It also provides Boards with rights in regard to these arrangements.

Section 12(2) Boards must report to parents at least once every 12 months after their establishment, but they have the discretion to report more frequently as and when they think necessary. Boards should not regard themselves as having fulfilled their duty to keep parents informed if they merely report once every 12 months. They should report frequently to parents, especially when major issues arise, and regularly seek parents' views. In this way, a dialogue will be established between

Boards and parents. A Board might, for example, seek parents' views on how it should spend a sizeable gift of money and then report back to parents on its final decision and its progress. It will be for Boards themselves to consider what form their reports to parents should take; it might, for example, be appropriate for the Board to publish an information bulletin for parents either at regular intervals or from time to time as particular issues of interest to parents arise.

Section 12(3) The intention here is for the Board to act as a source of practical advice as to how parent-teacher consultation could be made more effective. The Board could, for example, consult parents and advise the headteacher on the best timing of meetings and on topics of particular interest. The Board are not, however, empowered to impose new arrangements for consultation between parents and teachers.



Parents'
meetings

- 13.** (1) Where School Boards receive a request in writing from
- (a) 30 parents of pupils in attendance at the school; or
 - (b) a number of such parents equal to at least one quarter of those who were entitled to vote at the most recently-held regular election of parent members,
- whichever is less, they shall hold a meeting under this section.
- (2) A meeting under this section may be requested in order to enable parents
- (a) to make inquiries and to discuss matters relating to the activities of the Board;
 - (b) to make resolutions relating to the activities of the Board,
- and the request shall specify the purposes of the meeting and the matters to be raised or the resolutions which are to be proposed.
- (3) On receiving a request for a meeting under this section a Board shall
- (a) fix the earliest practicable date for the meeting, having regard to the desirability of giving all parents of pupils in attendance at the school notice thereof; and
 - (b) send to every such parent, by post, a notice specifying
 - (i) the date, time and place of the meeting;
 - (ii) the purposes for which the meeting has been requested; and
 - (iii) the matters which are to be raised and any resolution which is to be proposed.
- (4) The Board shall arrange for such of their members as they think appropriate to attend a meeting under this section, and for one of their members to chair the meeting.
- (5) Members of the Board, the headteacher, parents of pupils in attendance at the school and any other person invited by the Board may attend and speak at a meeting held under this section.
- (6) The procedure at a meeting under this section shall be determined by the chairman, who may refuse to permit discussion of any matter or resolution not specified in the request under subsection (2) above.
- (7) Only parents of pupils in attendance at the school may vote on any resolution put to a meeting under this section.
- (8) The Board shall consider any resolution passed at a meeting under this section.

Section 13: PARENTS' MEETINGS

This section provides parents with an opportunity to request meetings with the Board at which the activities of the Board can be discussed, the views of parents about the Board's activities can be made known to the Board, and resolutions, which the Board must subsequently consider, can be passed.

Section 13(1) While it is expected that as part of their general duty under section 12(2) to communicate with parents Boards will set up the necessary channels of communication, including parents' meetings, from time to time, this provision allows parents themselves, where

appropriate, to take the initiative and to call the Board to account.

Section 13(2) The request must be in writing and it must specify the purposes of the meeting, the matters to be raised, or any resolutions to be proposed.

Section 13(7) determines that only parents of children in attendance at the school may vote on a resolution put to a parents' meeting. This restriction is made because the purpose of a resolution would be to place before the Board a clear expression of the views of the parents at whose request the meeting had been arranged.



Use of premises
and occasional
holidays

14. (1) Every School Board shall, subject to any direction by their education authority (and to the authority's powers to fix charges, so far as not delegated under section 15 of this Act), control the use of the premises of the school outside school hours, and shall encourage the use of those premises by members of the community in which the school is situated.

(2) Every School Board shall have power, after consulting their education authority, to fix occasional holidays during school terms.

Section 14: USE OF PREMISES AND OCCASIONAL HOLIDAYS

This section provides for School Boards to control the use of the school premises out-of-hours and to fix occasional holidays; and for authorities to influence the exercise of these powers.

Section 14(1) The purpose of the restrictions is to provide for a degree of co-ordination of out-of-hours use on an authority-wide basis. It is expected that in fulfilling their duty to encourage the use of the school premises by the local community, Boards will take into account the views of that community generally, and of user groups within it, whether by setting up formal committees of the Board under section 6(3), or otherwise.

Section 14(2) allows School Boards to fix occasional holidays during school terms. These provisions do not

apply to the setting of term dates. Under the terms of Regulation 5 of the Schools General (Scotland) Regulations 1975 (as amended), public schools are to open for 190 days in every school year (the 'school year' is defined as 1 August to 31 July). Within the overall stipulation, education authorities establish term dates and make arrangements for occasional holidays. The requirement to ensure that schools are open for the necessary 190 days, taking account of the term dates set by the authority, will affect Boards' discretion to set occasional holidays. The subsection therefore stipulates that Boards are required to consult their education authorities before setting dates for occasional holidays. This will enable education authorities to ensure that Boards are aware of the relevant term dates and, for example, to inform Boards of the holidays proposed by other Boards in their area and to advise Boards of the authority's own plans for closures for reasons such as in-service training of teachers.



Delegation of
functions to
Boards

15. (1) Every education authority shall have power, by making an instrument to be known as a “delegation order”, to delegate, subject to subsections (2) and (3) below, any of the authority’s functions in relation to a school to the School Board.

(2) There shall not be delegated under this section

- (a) the function of giving employment to, or of dismissing or of removing from a school, any of the staff of the school;
- (b) the function of selecting a person to be appointed as headteacher, or as a deputy headteacher;
- (c) the regulation of the curriculum;
- (d) the assessment of pupils (without prejudice to the competency of delegating decisions as to the manner in which results of assessment are reported);
- (e) the function of discontinuing, changing the site of or amalgamating with another school a school (or part of a school); or
- (f) the function of setting up or discontinuing any stage of education in a school, or special classes in a school;
- (g) the function of determining admissions policy for a school.

(3) A delegation order may be made for a specified period or without limit of time, and may include such conditions attached to the delegation of functions as (subject to Schedule 3 to this Act) the authority consider appropriate.

(4) Schedule 3 to this Act shall have effect in relation to the making and amendment of delegation orders.

(5) An education authority which revokes or amends an order under this section shall have power to adjust accordingly the monies made available to the School Board under section 17 of this Act.

Section 15: DELEGATION OF FUNCTIONS TO BOARDS

This section provides for School Boards to have additional functions delegated to them from education authorities. It specifies certain functions which may not be delegated and gives effect to Schedule 3 which sets out the procedure for making delegation orders. Schedule 3 is explained on pages 54 to 55.

Section 15(2) determines the functions of an education authority which cannot be delegated to a School Board. These relate to professional areas (such as the curriculum) and to certain management functions which extend beyond the interests of an individual school. The following functions cannot be delegated to a Board:

- Giving employment to school staff or removing them from it. (The term “staff” has its natural meaning here; the special definition used in section 2(1)(b) and defined in section 2(1) does not apply.) The Board is therefore prevented from becoming the employer of any of the staff of a school, whether teaching or non-teaching. It should be noted, however, that delegation of functions related to staff, short of employing or dismissing them, may be delegated. It would, for example, be quite possible for a Board to be given the function of the selection of staff for an individual school, provided that the education authority, having confirmed the Board’s choice, offered employment as the prospective employer.
- Independent selection of senior staff (deputy headteacher and headteacher). Boards are already involved in their selection as provided for in section 11 and Schedule 2 to the Act.

- The regulation of the curriculum and the assessment of pupils. These are areas of professional responsibility. Delegation of decisions as to how results of assessment are reported to parents is, however, permissible. Boards are also free to seek information on the curriculum and to make representations.
- Discontinuing or changing the site of the school or amalgamating the school with another.
- Setting up or discontinuing any stage of education in a school, or special classes in a school.
- Determining admissions policy for a school. Delegation of the administration of an admissions policy is, however, permissible.

Section 15(3) provides that delegation orders may be made for a specified period (a trial period, for example) or for an unlimited time. It also empowers education authorities to attach to a delegation order any condition that they consider appropriate; for example, a delegation order could contain the condition that contracts over a certain value must be referred to the authority for a decision. (Such periods or conditions are to be applied subject to the provisions of Schedule 3, which provides for Boards to be consulted about the terms of any delegation.)

Section 15(5) empowers an education authority to adjust the amount of money it has made available to a School Board (under the provisions of section 17) for the discharge of a delegated function if the delegation has been revoked or amended (see Schedule 3). This may be necessary in cases where a delegation is revoked or amended in the course of a financial year.



Powers of education authority to ensure due exercise of delegated functions

16. (1) An education authority shall not exercise functions which they have delegated to a School Board under section 15 of this Act except insofar as

- (a) conditions imposed under that section of this Act provide; or
- (b) section 20(8) of this Act or this section provides.

(2) Where an education authority are satisfied that a School Board in their area have, in relation to any function delegated to them under section 15 of this Act, seriously or persistently failed

- (a) to comply with any condition imposed under that section;
- (b) to comply with this Act; or
- (c) to exercise the function so as to ensure that any duty of the authority under statute or any rule of law is complied with,

the authority may to the extent that it appears to them necessary suspend the delegation of the function and may exercise the function themselves.

(3) Where an education authority have suspended the delegation of a function under this section they shall have power to adjust accordingly the monies made available to the School Board under section 17 of this Act.

(4) Where an education authority intend to suspend the delegation of any function of a School Board under subsection (2) above they shall give the Board not less than one month's notice of that intention, unless they are satisfied that gross mismanagement has occurred or that an emergency exists, when they may suspend the delegation of the function on immediate notice.

(5) An education authority shall give their reasons for suspending delegation of functions along with notice under subsection (4) above.

(6) A School Board shall be entitled to make representations with regard to any suspension under subsection (2) above, and to be heard

- (a) where a month's notice is given, before expiry of the notice;
- (b) otherwise within 4 weeks of the notice.

(7) An education authority may at any time revoke a suspension under this section entirely or to such extent as they think appropriate.

(8) Once the procedures described in subsections (4), (5) and (6) above have been exhausted, a School Board may appeal against a suspension under this section to the Secretary of State who may revoke the suspension entirely or to such extent as he thinks appropriate.

(9) A suspension under this section shall be reviewed by the education authority not less than 12 and not more than 14 months after the date of the suspension, and on such a review the education authority shall give the School Board an opportunity to make representations.

(10) An education authority, on a review under subsection (9) above, shall

- (a) revoke the suspension; or
- (b) as soon as is practicable, proceed under Schedule 3 to this Act to seek revocation of the delegation of the function,

and shall give the Board notice of their decision.

(11) In the event of the authority proceeding under subsection (10)(b) above and the Secretary of State refusing to consent to revocation, the suspension shall cease to have effect.

Section 16: EXERCISE OF DELEGATED FUNCTIONS

This section prevents an education authority from itself exercising a function which it has delegated to a School Board. It also gives education authorities the power, in appropriate circumstances, to suspend delegation of a function and provides for the review of the suspension, for revocation of suspension, and for appeals to the Scottish Ministers.

Section 16(2) The authority is entitled to suspend the delegation and exercise the function itself only to the extent that appears to be necessary. It would not generally be reasonable for an authority to suspend a delegation entirely because a Board has failed only to a minor extent.

Section 16(4) requires an education authority which intends to suspend delegation to give at least one month's notice to the School Board concerned. The

authority can suspend a delegation immediately if the authority is satisfied that gross mismanagement has occurred, or if an emergency exists. This exemption applies only to the period of notice of intention to suspend. The authority must still first satisfy itself that the provisions of section 16(2) have been met before suspension is competent.

Section 16(5) requires the notice of suspension to be accompanied by a statement of the authority's reasons for suspending delegation of functions.

Section 16(10) requires that when it has reviewed a suspension, an education authority must either revoke the suspension (that is, restore the delegated function to the Board) or use the provisions of Schedule 3, as soon as is practicable, to seek revocation of the delegation (that is, to take back the delegated function permanently). The authority must give the Board notice of its decision. The authority cannot extend the period of suspension.



Financing of
Boards and
financial
information

17. (1) Every education authority shall, in respect of each financial year, and before the beginning of that financial year, determine for each School Board in the authority's area allocations of such monies within the authority's budget as appear to the education authority, after consultation with the Board, to be reasonably required by the Board for

- (a) meeting administrative expenses, the expenses of training of members of the Board, and other outgoings; and
- (b) carrying out any functions delegated to the Board under this Act.

(2) Every education authority shall, in each financial year, make available to each School Board in their area the monies allocated under this section for them in respect of that year at such times as those monies are required.

(3) If, during any financial year, it appears to an education authority appropriate to do so, they may make monies in addition to those allocated under this section available to a School Board for the purposes described in subsection (1) above.

(4) Every education authority shall in each financial year, by such date and in such form as may be prescribed, provide to every School Board in their area a statement of

- (a) monies paid out by the authority in the previous financial year in respect of
 - (i) the running costs of the school; and
 - (ii) capital expenditure related to that school; and
- (b) monies proposed to be paid out by the authority in the financial year in which the statement is made for those purposes.

(5) A School Board shall be entitled to make representations to the education authority concerning the statements required for the purposes of subsection (4) above, and the education authority shall take account of such representations and shall reply to them.

(6) An education authority shall comply with any reasonable request made by a School Board for financial information relating to the school, or relating to schools in the education authority's area generally.

Surplus Funds

17A. (1) 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.

Section 17: BOARD FINANCES AND FINANCIAL INFORMATION

This section requires education authorities to make funds available to School Boards to cover Board's expenses and to enable them to carry out any delegated functions. It also requires education authorities to provide Boards with information on their school's costs and funding. The Scottish Ministers are given the power to make regulations prescribing the form in which the information is to be provided. This section also entitles School Boards to make representations to their education authorities about the financial statements.

Section 17(1) requires an education authority, before the beginning of each financial year, to consult with each of its Boards and then allocate sums to cover each Board's expenses and the costs of functions delegated to them. (Boards' expenses are to comprise administrative and training expenses and other outgoings.)

Section 17(2) requires each education authority to make available to Boards in their area the funds which have been allocated to them. Education authorities need not make the entire year's allocation available to a Board at the start of the year; funds have to be provided only when they are required. It is intended that the allocation of funds to Boards and Boards' expenditure should be conducted within the education authority's accounting and financial management systems. It should be noted, however, that certain delegated functions could involve Boards in the direct management of funds. In these circumstances, authorities should consider attaching

suitable conditions to the delegation order; these might include conditions relating to financial management and audit arrangements.

Section 17(3) gives education authorities the power to supplement the funds allocated to a Board during the financial year if it appears appropriate to do so. This provision allows the authority, amongst other things, to make up for any underestimation at the beginning of the year and to take account of new circumstances which arise during the year (for example, a new function delegated to a Board).

Section 17(4) The detailed form of these financial statements is specified by The School Boards (Financial Information) (Scotland) Regulations 1990. The Regulations (which are given at page 68) specify that authorities must provide the financial statements to their School Boards by 5th April each year. The effect of the provision is that education authorities should provide Boards with financial information in as detailed a form as they can supply.

Section 17(6) requires education authorities to comply with any reasonable request made by a School Board for financial information relating to the school or relating to schools in the education authority's area generally. This is in addition to the information which the authority will have to supply under section 17(4), and complements Boards' general right to seek information from authorities given under section 10(1) and the power to make representations conferred by section 10(4).

Section 17A: SURPLUS FUNDS

Under section 17, monies are made available to a School Board by the education authority to meet administrative and other expenses and for carrying out any functions delegated to the Board. Section 17A provides that if the amount provided to the School Board during the course of the year is less than the amount determined under section 17(1), the education

authority will make the surplus funds available to the School Board. This money must be used for the benefit of the school. The provision gives School Boards discretion to determine what the money should be spent on, after taking account of the views of the headteacher. The money might be used, for example, to buy additional books or classroom equipment for the school.

Financial powers
of Boards

18. (1) A School Board may

- (a) raise funds by any means (other than borrowing); and
- (b) receive gifts;

and may expend any sums so received at their discretion, taking account of the views of the headteacher, for the benefit of the school.

(2) A School Board shall keep proper accounts in relation to any sums received by them under subsection (1) above.

(3) Nothing in subsection (1) above shall entitle a School Board to make any charges or demand any fees in respect of the school education provided by their education authority.

(4) A School Board shall not acquire any interest in heritable property, whether by inheritance, gift or otherwise, and any provision in any instrument which contravenes this subsection shall be void.

(5) Where a School Board cease to exist by operation of section 1(5) of this Act (discontinuance of school), any property belonging to the Board shall pass to the education authority.

(6) Where a School Board are disestablished by operation of section 20(6) of this Act (insufficient parent members elected), any property belonging to the Board shall pass to the education authority, but

- (a) the authority shall use any such property for the benefit of the school in question; and
- (b) in the event of a School Board being re-established for that school, any such property remaining in the hands of the education authority shall pass to the new School Board.

(7) Any property belonging to an Interim School Board at the time when a School Board are established for the school in question shall pass to the School Board.

(8) All rights and obligations in relation to and arising in respect of property which passes under any of subsections (5) to (7) above shall pass with the property to the recipient.

Allowances for
members of
Boards

19. An education authority may pay to any member of a School Board in their area

- (a) in respect of his attendance at a meeting of the Board; or
- (b) in respect of his doing anything approved by the authority, or anything of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the Board,

such allowances, in the nature of those payable under section 46 of the 1973 Act (which relates to the payment of travelling and subsistence allowances to members of local authorities) as they think fit, being payments of such reasonable amounts as they may determine in any particular case or class of case and not exceeding the amounts specified under the said section 46 for the corresponding allowances under that section.

Section 18: FINANCIAL POWERS OF BOARDS

This section empowers Boards to raise and acquire funds and to spend the money for the benefit of the school. Boards must keep proper accounts for these monies. The section prohibits Boards from levying fees and charges for school education and from owning heritable property (land and buildings). It also provides how property of a Board is to be dealt with where the Board is disestablished or re-established, or where a permanent Board is established in place of an Interim Board.

Section 18(2) provides that Boards must keep proper accounts for the sums raised under subsection 1 and a corollary of this is that Boards must make arrangements to have these accounts audited. Boards are free to decide on their own audit arrangements for these funds, but they may wish to seek advice on these matters from their education authority.



Section 19: ALLOWANCES FOR MEMBERS OF BOARDS

This section gives an education authority a discretionary power to pay travelling and subsistence allowances to Board members for attending Board meetings or for doing anything approved by the education authority that is connected with the discharge of the Board's functions.

The arrangements for making such allowances are linked to the arrangements for paying similar allowances to

members of local authorities under section 46 of the Local Government (Scotland) Act 1973. The education authority is given the power to determine classes of approved activities and to set the amounts payable in particular cases, provided that the amounts are reasonable and that they do not exceed the maximum of similar allowances paid to authority members under section 46 of the 1973 Act. It should be noted that the terms of section 19 do not allow the payment of attendance or financial loss allowances to School Board members.



Schools without
a Board and
disestablishment
of Boards

20. (1) An education authority may decide not to establish a School Board for a school for which no School Board have been established or whose School Board are for the time being disestablished if

- (a) they are satisfied that by reason of the small number of pupils in attendance at the school there are insufficient parents of such pupils who are qualified to serve as parent members to satisfy the requirements of this Act; and
- (b) the Secretary of State consents to the decision.

(2) A decision under subsection (1) above shall be rescinded if a number of parents equal to the number of parent members prescribed for the Board for that school request it in writing, and a School Board shall be established for that school as soon as is practicable.

(3) The authority may review a decision under subsection (1) above at any time, and shall do so if there is in their view a significant increase in the number of pupils in attendance at the school: and shall, if they consider that there are sufficient parents qualified to serve as parent members, establish a School Board for that school as soon as is practicable.

(4) Section 10, 12(3) and 17(4) to (6) of this Act shall apply in relation to each parent of pupils in attendance at a school which does not have a School Board by reason of subsection (1) above as those provisions would apply to a School Board established for that school.

(6) Where –

- (a) so few parent members are elected that co-option under section 2A(4) of this Act would not be sufficient to make up the number for the time being prescribed for the purposes of section 2(1)(a) of this Act, the School Board shall not be established or, in the case of an existing Board, shall be disestablished; or
- (b) a vacancy occurs for a parent member and the case is –
 - (i) one where, under section 28(1) of the Standards in Scotland's Schools etc. Act 2000 (asp 6), a by-election falls to be held but on its being held no parent member is elected ; or
 - (ii) not one where, as is mentioned in sub-paragraph (i) above, a by-election falls to be held,

and, in either case, the Board choose not to, or are unable to or fail to, exercise their power under section 2B(3) of this Act so as to make up the number so prescribed, the Board shall be disestablished.

(7) Where by reason of subsection (6) above a Board are not established or are disestablished, unless it is decided in accordance with subsection (1) above not to establish a Board for the school, further elections for members of the Board shall be held

- (a) at any time when a number of parents equal to the number of parent members prescribed for the Board request it in writing;
- (b) in any event, at the time required by section 2A(1) of this Act.

(8) Where no School Board or Interim School Board are for the time being established for a school

- (a) any functions delegated to a Board for such a school which has become disestablished; and
- (b) the functions conferred on School Boards by section 14 of this Act,

shall be exercised by the education authority for the area in which the school is situated.

(9) A School Board re-established as a result of elections under subsection (7) above shall have all the delegated functions which they had before they became disestablished.

Section 20: SCHOOLS WITHOUT A SCHOOL BOARD AND DISESTABLISHMENT OF BOARDS

This section exempts an education authority from the duty to establish a School Board for very small schools. It sets out the action to be taken when the first of subsequent elections do not produce sufficient parent members to form a Board. This section also makes provision for the exercise of the functions of a Board where a Board has not been established or has been disestablished.

Section 20(1) permits an education authority to decide, with the consent of the Scottish Ministers, not to establish a Board where the authority is satisfied that the school is too small to provide the number of parent members specified in the regulations made under section 2. It may be apparent to the authority prior to elections that too few parent members will be available because of the size of a school's roll.

Section 20(2) provides for the decision not to establish a Board to be rescinded at the written request of a number of parents. This number must be at least equal to the number of parent members specified for a Board for a school of that size. The decision having been rescinded, a Board is to be established for the school as soon as is practicable. If, for any reason, it is still not possible to elect the necessary parent members, section 20(6) applies.

Section 20(3) As under the previous subsection, section 20(6) applies if the elections for parent members do not produce sufficient numbers.

Section 20(5) was repealed by Schedule 1 of the Standards in Scotland's Schools etc Act 2000.

Section 20(6) determines that, in the event of a regular election for parent Board members producing fewer members than are required to make up the numbers prescribed under section 2 of the 1988 Act, and co-option under section 2A(4) of the Act would not be sufficient to make up that number, the School Board shall not be established or, in the case of an existing Board shall be disestablished. Section 2A(4) provides that Boards can co-opt up to two people from amongst the parents of pupils at the school if fewer parents are elected at a regular election than is necessary to make up the number prescribed under section 2. This means that a Board would now not be established, or in the case of an

existing Board be disestablished if it had three or more parental vacancies following a regular election of parents.

The section also makes provision for cases where casual vacancies are not filled by election or co-option. It provides that when a casual vacancy arises and either no by-election is requested by parents (under the terms of section 28(1) of the Standards in Scotland's Schools etc. Act 2000), or parents request a by-election and no parent is elected, then the Board will be disestablished if the vacancies are not filled by co-option.

Section 20(7) requires further elections to be held where by-elections and co-options under section 20(6) do not result in a Board being formed. These further elections are to be held as soon as is practicable if required in writing by a number of parents at least equal to the number of parent members specified for that Board. If no such request is made, elections must be held at the time required by section 2A(1) of this Act, which provides that elections for School Board members are to be held during the regular election period in every relevant year. The effect is to require elections at least every two years or so until a Board is established, unless the education authority has competently decided not to establish a Board under the provisions of section 20(1) and the Scottish Ministers have consented.

Section 20(8) determines that when any Board, including an Interim Board, becomes disestablished, or if a Board is not established, the executive functions provided under section 14 are to be exercised by the education authority. These functions relate to the out-of-hours use of school premises and to occasional holidays. Similarly, any delegated function is to be exercised by the authority. (This provision is necessary in order to prevent the functions concerned falling into limbo and is cross-referenced in section 16(1)(b), where the exercise of delegated powers by an authority is prohibited in most cases.)

Section 20(9) provides that, on re-establishment, a School Board will automatically take up all of the delegated functions it had prior to becoming disestablished. Where a Board no longer wishes to exercise such functions, delegation may be revoked by agreement under the terms of paragraph 14 of Schedule 3. If the authority wishes to revoke delegation after re-establishment, the authority may do so by agreement under paragraph 14, or attempt to do so by appeal to the Scottish Ministers under paragraph 15 of Schedule 3.



Supplementary

- Public Money **21.** There shall be paid out of money provided by Parliament
- (a) any expenses of the Secretary of State under this Act; and
 - (b) any increase in the sums so payable under any other enactment.
- Interpretation **22.** (1) Except where express provision is made to the contrary, expressions used in this Act and in the 1980 Act shall have the same meaning in this Act as is given to them by section 135(1) of that Act.
- (2) In this Act
- “appointment committee” has the meaning given in Schedule 2 to this Act;
 - “combined school” has the meaning given in section 7 of this Act;
 - “co-opted members” has the meaning given in section 2(1)(c) of this Act;
 - “councillor” means a councillor elected under section 5 of the Local Government etc. (Scotland) Act 1994;
 - “denominational school” has the meaning given in section 2(7) of this Act;
 - “electoral ward” shall be construed in accordance with section 5 of the Local Government etc. (Scotland) Act 1994;
 - “financial year” means the financial year of a local authority in terms of the 1973 Act;
 - “parent” in relation to a pupil means his natural parent or any other natural person who is his guardian, who has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him or has care of him or who is liable to maintain him;
 - “parent members” has the meaning given in section 2(1)(a) of this Act;
 - “prescribed” means prescribed by regulation made by the Secretary of State;
 - “pupil” does not include any person over the age of 18 years;
 - “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;
 - “school” means a public school other than a nursery school;
 - “School Board” has the meaning given in section 1 of this Act;
 - “staff members” has the meaning given in section 2(1)(b) of this Act;
 - “the 1973 Act” means the Local Government (Scotland) Act 1973; and
 - “the 1980 Act” means the Education (Scotland) Act 1980.

Section 21: PUBLIC MONEY PROVISION

This section is a standard form of provision which provides that any expenses incurred by the Scottish Ministers as a consequence of the Act and any

consequential increase in the expenses incurred under other Acts, (for example, any increase in the Revenue Support Grant paid to local authorities), are to be paid out of money provided by the Scottish Parliament.

Section 22: INTERPRETATION

This section defines various terms used in the Act.

Regulations and minor and consequential amendments

23. (1) Any power of the Scottish Ministers to make regulations under this Act shall be exercised by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Regulations under this Act may make different provision for different cases or different circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.

(3) The enactments specified in Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential upon the provisions of this Act.

Short title, commencement and extent

24. (1) This Act may be cited as the School Boards (Scotland) Act 1988.

(2) This Act, except this section, shall come into force on such dates as the Secretary of State may by order made by statutory instrument appoint, and different dates may be so appointed for different purposes.

(3) This Act extends to Scotland only.

**Section 23: REGULATIONS AND MINOR AND
CONSEQUENTIAL AMENDMENTS**

This section is a formal provision setting out how the Scottish Ministers are to exercise their regulation-making powers; provides that regulations made under the Act can cater for different cases and circumstances in different ways; it gives the Scottish Ministers discretion to make incidental, supplemental or transitional provisions in the regulations and gives effect to Schedule 4 to the Act. Schedule 4 makes minor consequential amendments to other Acts (see pages 56 to 57).



**Section 24: SHORT TITLE, COMMENCEMENT AND
EXTENT OF ACT**

This formal section contains the necessary provisions relating to the Act's short title, commencement and extent.



SCHEDULES

Section 2.

SCHEDULE 1

ELECTORAL PROCEDURE

1. Every education authority shall make arrangements for the holding of elections under this Act for School Boards in their area, and for that purpose shall draw up a scheme of arrangements for such elections in accordance with

- (a) this Schedule; and
- (b) such guidance as to the form and content of such schemes as the Secretary of State may from time to time issue.

2. A scheme may make different provision for different schools or classes of school.

3. Every scheme shall include provision for the appointment by the education authority of a returning officer to ensure the proper conduct of the elections.

4. In the case of an election of a parent member, the arrangements under paragraph 1 above shall provide for every parent of a pupil in attendance at the school to have an opportunity to vote by post.

5. Subject to this Schedule and to any scheme made under paragraph 1 above, the education authority for the area in which a school is situated shall determine all matters relating to any election of members of the School Board for that school, and in particular all matters relating to eligibility to be a candidate or to vote including the date at which such eligibility is to be determined in respect of any particular election.

6. For the purposes of paragraph 5 above, the education authority shall, in respect of each school in their area, establish and maintain a list of the names of the parents of pupils in attendance at that school, and unless a parent's name appears on the list on the date determined by an authority under paragraph 5 above for the purposes of any election he shall not be eligible to be a candidate or to vote in that election.

7. Elections under this Act shall be held by secret ballot.

8. All practicable steps shall be taken to ensure that every person known to be a parent of a pupil in attendance at a school in their area

- (a) is informed of any forthcoming election under this Act of a parent member of the School Board for that school, and of his right to be a candidate and to vote; and
- (b) has an opportunity to be a candidate and to vote at any such election.

9. Every education authority shall, for the purposes of any election of parent members of a School Board for a school in their area, send to every parent eligible to vote in that election

- (a) a ballot paper;
- (b) a copy of a statement not exceeding 250 words by any candidate who has provided the authority with such a statement by such date as the authority shall have specified,

and the authority shall not issue any statements or material designed to influence the election other than the statement referred to in (b) above.

10. An education authority may arrange for any of their functions under this Schedule in relation to elections, apart from the making or variation of schemes, to be carried out in accordance with their directions by the School Board for the school.

11. For the purposes of this Schedule "election" includes a by-election.

Schedule 1: ELECTORAL PROCEDURE

This Schedule sets out the procedure for the election of School Board members. Education authorities are required to arrange for elections to be held and they must prepare a scheme of arrangements in accordance with the specific provisions of this Schedule and with any guidance about electoral schemes issued by the Scottish Ministers. The Schedule specifies the fundamental procedural features which are required for all elections; beyond this, there is scope for education authorities to make arrangements appropriate to local circumstances, subject to the Scottish Ministers' guidance.

Paragraph 1 requires every education authority to make arrangements for holding elections for parent and staff members of School Boards for its area. (Under the terms of paragraph 5 of Schedule 3, these electoral arrangements must also cover the circumstances of ballots of parents about proposed delegations of additional functions to School Boards.) Schemes must also conform with any guidance issued by the Scottish Ministers under this paragraph. Such guidance was issued in SED Circular No 3/89 on 19 April 1989.

Paragraph 4 provides that, in the case of elections for parent members, a scheme of arrangements must provide for electors to have the opportunity to vote by post. The

intention is to avoid the restriction on the number of parents voting which might arise if schemes required parents to attend an election meeting to vote.

Paragraph 5 empowers and requires the education authority to determine all matters concerning the Board elections in its area except those which are prescribed by the Schedule or by the electoral scheme. In particular, an authority is to decide on questions of eligibility to be a candidate or to vote in elections. This will involve determining who is eligible under the category of "staff" and who is to be regarded as a "parent".

Paragraph 6 provides for a rolling electoral register of parents eligible to vote in and be candidates for any particular election.

Paragraph 9 requires education authorities, when holding Board elections, to send to every parent eligible to vote, a ballot paper and a copy of a statement not exceeding 250 words by any candidate who has supplied such a statement. Candidates are not required to produce statements. Authorities will need to satisfy themselves that, as publisher of a candidate's statement, the content of the statement is appropriate. The education authority is empowered to fix a date by which candidates must submit their statements. Authorities are prohibited from issuing any other statements or material designed to influence the elections.



Section 11.

SCHEDULE 2

APPOINTMENT OF HEADTEACHERS OR DEPUTIES

1. Where an education authority intend to fill a post, other than on an acting basis, of headteacher or deputy headteacher of a school, they shall

- (a) advertise the post in such publications circulating throughout Scotland as they consider appropriate; and
- (b) if they decide to proceed further with the appointment, set up a committee (to be known as an "appointment committee") for the purpose of considering a short list of candidates provided by the education authority and making recommendations to the authority for the appointment of persons to fill posts in accordance with this Act.

2. Except where paragraph 4 below applies, an appointment committee shall consist

- (a) where the appointment of a headteacher is being considered, of equal numbers of persons nominated by the education authority (one of whose nominees shall be the chairman of the committee) and by the School Board;
- (b) in any other case, of an equal number of persons nominated by the education authority and by the School Board; and the headteacher of the school, who shall be chairman of the committee,

but pupils of the school and members of the staff (whether teaching or not) of the school other than the headteacher may not be members of an appointment committee.

3. Any vacancy occurring in the membership of an appointment committee shall be filled by a further nomination by the body which nominated the person whose place has become vacant.

4. Where for any reason no School Board are for the time being established for a school, an appointment committee shall consist of persons nominated by the education authority, together with, where paragraph 2(b) above applies, the headteacher of the school (who shall be the chairman).

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.

Application of 1973 Act to appointment committees

5. The 1973 Act shall apply to appointment committees as it applies to sub-committees of an education authority appointed under that Act, but

- (a) sections 56 and 57 of that Act shall not apply to appointment committees;
- (aa) in respect of the performance of his duties as a member of an appointment committee, a person
 - (i) shall not, under or by virtue of that Act, be entitled to receive any allowance or expenses;
 - (ii) shall be entitled to receive under this sub-paragraph from the education authority such allowances and expenses as may be determined by the Secretary of State;
- (b) members of appointment committees shall not require to be members of the education authority; and
- (c) nothing in that Act shall
 - (i) enable functions of an appointment committee to be discharged by the education authority or by any other person or body;
 - (ii) enable the education authority to control the exercise of functions by an appointment committee; or
 - (iii) prevent an employee of the education authority being a member of an appointment committee.

Schedule 2: APPOINTMENT OF HEADTEACHERS OR DEPUTIES

This Schedule lays down procedures which education authorities are required to follow when they intend to fill a senior post in a school. The Schedule only applies when the post is to be filled on a substantive basis rather than on an acting basis. Where the post is to be filled on a substantive basis, education authorities are required to advertise vacancies for senior school staff and to establish appointment committees to consider candidates for those vacancies. The Schedule also determines the composition of the appointment committees; these must include the nominees of the School Board for whose school the appointment is to be made, nominees of the education authority and the headteacher (where appropriate). In the case of headteacher appointments, the Schedule also provides for the School Board to be consulted on the short list of candidates.

Paragraph 2 provides that, where a School Board exists for the school to which an appointment is to be made, the Board are to nominate one half of the members of the appointment committee. The Board cannot, however, nominate members of the school staff, whether teaching or not, nor pupils of the school (even when these are Board members). The amendment to the section introduced by the Education (Scotland) Act 1996 puts beyond doubt that both teaching staff and non-teaching staff are debarred from membership of an appointment committee on the grounds that it is not appropriate for members of staff to have a deliberative role in the appointment of more senior members of staff. The Board is not obliged to nominate only Board members (although it is expected they will normally wish to do so). There may be circumstances where there are insufficient Board members available to serve, or where the Board believes some additional person would represent important interests – perhaps a parent of a pupil at the school with special needs who is not a Board member.

The headteacher is automatically chairman of deputy headteacher appointment committees, but is not a Board nominee. (No minimum or maximum size for the appointment committee is set, but in setting up the committee the authority will need to take account of the size of the Board and the fact that they may not nominate staff members to the committee.) The remainder of the committee is to be nominated by the education authority. Like the Board, the authority may not nominate members of the staff of the school or pupils of the school to the committee. Again like the Board, the authority is not obliged to nominate only elected members or authority officers. In the case of the appointment of a headteacher, the chairman of the committee is to be one of the

authority's nominees. Other than the headteacher, no member of the staff of the school may serve on an appointment committee. Paragraph 4 deals with the case where there is no School Board for the school.

Paragraph 4 provides that, if for any reason a school does not have a School Board (or Interim Board), an appointment committee is to consist entirely of the nominees of the education authority with, in the case of deputy headteacher posts, the headteacher of the school as chairman. The other provisions of the Schedule apply to committees constituted under this paragraph.

Application of the Local Government (Scotland) Act 1973 to Appointment Committees

Paragraph 5 makes a general provision for matters such as procedure and allowances for members of appointment committees by applying the provisions of Schedule 10 to the Local Government (Scotland) Act 1973 to appointment committees as if they were sub-committees of an education authority appointed under that Act. The following exceptions are, however, made.

1. Sections 56 and 57 of and Schedule 10 to the 1973 Act (which allow for discharge of functions by officers and others) are not to apply to the work of appointment committees;

(aa) in respect of the performance of his duties as a member of an appointment committee, a person –

(i) shall not, under or by virtue of that Act, be entitled to receive any allowance or expenses;

(ii) shall be entitled to receive under this sub-paragraph from the education authority such allowances and expenses as may be determined by the Secretary of State;

2. It will not be necessary for members of appointment committees to be members of the education authority;

Nothing in the 1973 Act is to:

- enable the functions of an appointment committee to be discharged by the education authority or anyone else;
- enable the education authority to control the activities of an appointment committee; or
- prevent an employee of an education authority from being a member of an appointment committee.

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 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 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.

Short leet

6. Subject to paragraphs 7 and 8 below, a short leet shall consist of not less than 3 persons who have applied for the post and are eligible for it (in terms of any requirements by or under any enactment relating to eligibility for the post or for the class of post).

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.

Preparation of short leet

9. Subject to paragraph 10 below, the authority shall prepare the short leet and send it to the appointment committee; and the committee shall consider it and make their recommendation under paragraph 16 below.

10. The authority shall prepare the short leet in consultation with, and taking account of the views of –

- (a) the School Board, if the post to which the short leet relates is that of headteacher of a school for which such a Board is established; and
- (b) the headteacher, if the post is that of deputy headteacher.

Procedure of committee

14. The appointment committee and (where appropriate) the School Board shall

- (a) inform the education authority in advance of any meeting to be held by either of them in connection with appointment to any post;
- (b) consider any advice given by him or his nominee in relation to the appointment.

15. An officer of the education authority shall

- (a) be entitled to attend any proceedings of the appointment committee or a School Board; and
- (b) give the committee or, as the case may be, the Board such advice as he considers appropriate,

in relation to an appointment to which this Schedule applies.

16. The appointment committee shall, unless they consider that no person on the short leet is suitable for the post, recommend one candidate for appointment.

17. Where an appointment committee recommend the appointment of any person to a post to which this Schedule applies the education authority shall appoint that person accordingly, unless it appears to them that the candidate is not eligible for the post in which case they may refuse to appoint him.

18. Where an education authority refuse, under paragraph 17 above, to appoint the person recommended by the appointment committee, the authority shall, if they intend to fill the post, undertake fresh procedure under paragraph 1 above.

19. It shall not be competent for a deputy headteacher to exercise any of the functions of a headteacher under this Schedule.

Conflict of Interest

Appointment committees are subject to limited conflict of interest provisions as a result of the application of the Local Government (Scotland) Act 1973 under paragraph 5 above.

Paragraph 5A introduces wider provisions which apply to appointment committees in the same way as the conflict of interest provisions in section 5A of the Act apply to meetings of the School Board and its committees. As appointment committees are constituted by the education authority, they are not meetings of the Board hence the need for separate provisions in the Schedule. As under section 5A, the effect of paragraph 5A is that members of an appointment committee must declare any material interest they, or a person connected with them, have in relation to any matter being considered; must withdraw from meetings where such a matter is under consideration; and must not vote on any question relating to the matter. The only exception from the requirement to declare a material interest is an interest which arises solely from being either the headteacher of the school or a parent of a pupil in attendance at the school.

Paragraph 5A(3) provides that section 346(2) of the Companies Act 1985 (meaning of “connected person”) applies for the purpose of determining whether a person is connected with a member of the appointment committee as it applies for the purposes of determining whether a person is connected with a company director. The definition in section 346(2) includes a person’s spouse, children and stepchildren, as well as a range of corporate bodies and other persons associated with the person or his spouse, children or stepchildren.

Short leet

Paragraph 6 provides that generally, a short leet for consideration by an appointment committee is to consist of at least three eligible applicants for the post. (“Eligibility” means eligibility under section 90 of the 1980 Act which provides that teachers must be registered by the General Teaching Council before being employed in education authority schools and under section 21 of the 1980 Act which requires that teachers appointed to denominational schools be approved as regards their religious belief and character by representatives of the church in whose interest the school is conducted.)

Paragraph 7 provides that where there are fewer than 4 eligible applicants for the post, the education authority has the discretion to omit from the leet any candidates that they consider unsuitable. This is subject to the qualification set out in paragraph 8 below that the short leet may not be reduced to fewer than two candidates in order to ensure choice for an appointment committee.

Preparation of short leet

Paragraphs 9 and 10 were amended by section 30 of the Standards in Scotland’s Schools etc. Act 2000 and allow for a streamlined procedure whereby an authority prepares a short leet in consultation with the Board and the headteacher (if the post is that of deputy headteacher).

Paragraph 9 requires the education authority to prepare the short leet of candidates and send it to the appointment committee to consider and recommend one candidate for appointment unless the appointment committee considers that none of those on the leet is suitable.

Procedure of committee

Paragraphs 14 and 15 taken together give the education authority the opportunity to ensure that Boards and appointment committees are fully apprised of all the relevant professional issues and technical considerations in making senior appointments.

Paragraph 17 requires the education authority to appoint the person recommended by the committee unless the candidate is not eligible for the post. It is possible that a candidate who was (or appeared to be) eligible at the time the short leet was drawn up might have become ineligible by the time of the final recommendation. The education authority may not refuse to appoint a recommended candidate on grounds other than ineligibility. (The criteria for eligibility are defined in paragraph 6.)

Paragraph 19 prohibits any deputy headteacher from exercising the functions of a headteacher in relation to appointments. This provision therefore requires that any vacancy for the post of headteacher at a school has to be filled before permanent appointments to the post of deputy headteacher can be made. This reflects the importance of the headteacher as senior professional and manager in the school.



Section 15.

SCHEDULE 3

DELEGATION ORDERS

Delegation on education authority's initiative

1. Where an education authority propose making a delegation order under section 15 of this Act, they shall provide a draft of the order to the School Board and seek the agreement of the Board to the terms of the proposed order, without which agreement the order may not be made.

Amendment

14. An education authority may, with the consent of the School Board concerned, amend a delegation order by making a further order (which may include revocation of the delegation of a function, or of the whole delegation order).

15. Where an education authority has been unable to obtain the consent of the School Board to an order under paragraph 14 above, the authority may send a draft of the order to the Secretary of State who shall consider the views of the education authority and of the School Board, and –

- (a) may, if he is satisfied that continued delegation of any function would prejudice the good running of the school, consent to the revocation of the delegation of that function;
- (b) may, as he thinks fit, consent to an amendment which does not in his view amount to the revocation of the delegation of a function; and
- (c) in either case, may direct such alterations of the draft order as he thinks fit,

and the authority, if they decide to proceed to make an order, shall do so in accordance with his directions.

Schedule 3: DELEGATION PROCEDURES

This Schedule sets out the procedures for the delegation of additional functions from education authorities to School Boards. The Schedule was amended by the Standards in Scotland's Schools etc. Act 2000 to remove the right of School Boards to request the delegation of functions and to refer the request to the Scottish Ministers should the authority

refuse. It also provides the procedure for amending or revoking an existing delegation.

[Paragraphs 2 to 13 were repealed by section 31 of the Standards in Scotland's Schools etc. Act 2000. There are no longer formal powers for the Board to challenge a refusal by the authority of the Board's request for delegation of functions.]



Section 23.

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

The Local Government (Scotland) Act 1973 (c. 65)

1. In section 125(1) of the 1973 Act, before “educational” in both places where it occurs, insert “further”.
2. In section 125(2) of the 1973 Act, omit from “(a)” to “case” where it occurs in paragraph (b) of that subsection.
3. In section 125(3) of the 1973 Act, omit paragraph (a) and, in paragraph (b), “(a) or”.
4. In section 125 and 126 of and Schedule 10 to the 1973 Act, omit “school or” wherever it occurs.
5. In section 125(4) of the 1973 Act, omit “school and”.

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

6. In section 70 of the Education (Scotland) Act 1980 (which relates to the enforcement of duties imposed under that Act and other enactments), after the words “education authority”, in both places where they occur, insert “School Board,”.
7. In Schedule A1 to the Education (Scotland) Act 1980, in paragraph 7(d), omit “school council” and substitute “School Board”.

**Schedule 4: MINOR AND CONSEQUENTIAL
AMENDMENTS**

This Schedule makes consequential amendments to other Acts. The first paragraphs remove references to school councils from the Local Government (Scotland) Act 1973 and have the effect of removing the requirement on authorities to appoint school councils. Paragraph 6 amends the power of the Scottish Ministers (under section 70 of the Education (Scotland) Act 1980) to ensure discharge of statutory duties by education authorities, to include power to ensure discharge of the statutory duties of School Boards under the Act.

The Local Government (Scotland) Act 1973 – section 125 was amended by the 1988 Act but has subsequently been repealed.

The Education (Scotland) Act 1980

Paragraph 6 amends section 70(1) of the 1980 Act to read:

“If the Secretary of State is satisfied, either on complaint by any person interested or otherwise, that an education authority, a School Board, the managers of a school or educational establishment, or other

persons have failed to discharge any duty imposed on them by or for the purposes of this Act or of any other enactment relating to education, the Secretary of State may make an order declaring them to be in default in respect of that duty and requiring them before a date stated in the order to discharge that duty. If by the said date the education authority, a School Board, managers or other persons have not discharged the duty, one or other of the following steps may be taken to secure the discharge thereof –

(a) the Secretary of State may make such arrangements as he thinks fit for the discharge of the duty, and all expenses incurred by the Secretary of State in so doing shall be recoverable as a debt due by the authority, managers or other persons to the Secretary of State; or

(b) the Court of Session may, on the application of the Lord Advocate, order specific performance of the duty.”

Paragraph 7 amends paragraph 7(d) of Schedule A1 to the 1980 Act to read:

“A member of a School Board having functions in relation to such a school.”



PART II

The School Boards (Scotland) Regulations 1989

Made 25th February 1989

Laid before Parliament 9th March 1989

Coming into force 1st April 1989

The Secretary of State, in exercise of the powers conferred on him by sections 2(3), 6(9), 22(2) and 23(2) of the School Boards (Scotland) Act 1988(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the School Boards (Scotland) Regulations 1989 and shall come into force on 1st April 1989.

Interpretation

2. In these Regulations “the Act” means the School Boards (Scotland) Act 1988.

Prescribed date for first elections for School Boards

3. In relation to schools in existence at the commencement of section 1 of the Act (except where a decision has been taken, in accordance with section 20(1) of the Act, not to have a School Board), an education authority shall hold the first elections of parents and staff members to School Boards under section 2 of the Act by 31st October 1989.





Composition of School Boards

4. (1) In relation to a school which has staff (as defined in section 2(13) of the Act) the numbers of parent, staff and co-opted members of the School Board shall be those specified, by reference to the number of pupils in attendance at the school, in the Schedule to these Regulations.

(2) For the purposes of the said Schedule, the number of pupils in attendance at the school shall be determined –

(a) in relation to the establishment of a School Board upon the first elections held under the Act, for a school in existence at the date of commencement of section 1 of the Act, at 31st August 1989;

(b) in relation to the establishment of a School Board upon the first elections held for that Board, for a school (including a combined school) which comes into existence after the commencement of section 1 of the Act –

(i) where pupils first attend the school on or before 1st August 1989, at 31st August 1989;

(ii) in any other case at a date 30 days after the date when pupils first attend the school;

(c) in relation to the establishment of a School Board in any other circumstances, at the 31st August preceding such establishment;

(d) for the purpose of determining whether the composition of a School Board should be altered, at the 31st August preceding each biennial election of parent members of the Board.

(3) In relation to a school which has no staff (as defined in section 2(13) of the Act) the number of parent members of the School Board shall be 3 and the number of co-opted members of that Board shall be 2.

SCHEDULE

Regulation 4

<i>Where the number of pupils in attendance at the school is</i>	<i>The number of parent members shall be</i>	<i>The number of staff members shall be</i>	<i>The number of co-opted members shall be</i>
1-500 pupils	4	1	2
501-1000 pupils	5	2	2
1001-1500 pupils	6	2	3
over 1500 pupils	7	3	3

**Regulation 4 and Schedule: COMPOSITION OF
BOARDS**

This regulation and the Schedule to the regulations prescribe the numbers of parents, staff and co-opted members which Boards must have. The number of members is generally related to the number of pupils in attendance at the school on a given date. Separate provision is made for single teacher schools.

Paragraph 1 and the Schedule provide the composition of Boards for schools which are not single teacher schools.

Paragraph 3 provides for the composition of a Board for a single teacher school to be 3 parent members and 2 co-opted members.



Adjustment of composition of School Board

- 5.** (1) Where at any time after a School Board is established
- (a) the number of pupils in attendance at the school, determined at 31st August preceding a biennial election of parent members of the Board, has altered; or
 - (b) the number of staff (as defined in section 2(13) of the Act) of the school has altered;

so as to require a change in the composition of the Board prescribed by regulation 4 above, the education authority shall be obliged to make arrangements to adjust the composition of the Board accordingly.

(2) Such arrangements shall be made in accordance with regulations 6 and 7 below, and shall be completed not later than 3 months after the first biennial election of parent members of the School Board which is held after the obligation to make the arrangements arose.

Increase in numbers of any category of member

6. (1) Where the number of parent, staff, or co-opted members of the School Board requires to be increased, or staff members are required where previously they were not required, the education authority shall proceed in accordance with this regulation.

(2) The education authority shall, in the first biennial election of parent members after the obligation to make arrangements to adjust arose, include the election any additional parent members required.

(3) The education authority shall –

- (a) where staff members are required where previously they were not required, hold an election of such members at the same time as the first biennial election of parent members after the obligation to make arrangements to adjust arose;
- (b) where there are existing staff members and a quadrennial election of staff members is held at the same time as the first biennial election of parent members after the obligation to make arrangements to adjust arose, include in such quadrennial election the election of any additional staff members required;
- (c) where there are existing staff members and no quadrennial election of staff members is held at the same time as the first biennial election of parent members after the obligation to make arrangements to adjust arose, hold by-elections for additional staff members required at the same time as that biennial election of parent members.

(4) The education authority shall direct the School Board to co-opt, after the first biennial election of parent members after the obligation to make arrangements to adjust arose, any additional co-opted members required.

(5) The education authority shall determine, in relation to staff members elected under paragraph (3)(c) of this regulation, or co-opted members co-opted under paragraph (4) of this regulation, that their term of office shall expire at the same time as the term of office of any existing staff or co-opted members respectively.

Regulation 5: ADJUSTMENT OF BOARD COMPOSITION

This regulation requires an education authority to take action to adjust the composition of a Board when there is a change in circumstances. Regulations 6 and 7 provide in detail the adjustment measures to be taken.

The circumstances are:

- where a change in the number of pupils at the school (determined at 31 August preceding a 2-yearly election of parent members) makes this necessary; or

- where a school becomes, or ceases to be, a single teacher school.

Any adjustment in a Board's composition has to be completed not later than 3 months after the 2-yearly election of parent members. This is to allow for any co-option of additional co-opted members. It is the intention, however, that most adjustments will take place at the time of the 2-yearly election of parent members.



Regulation 6: INCREASE IN NUMBERS OF MEMBERS

This regulation makes detailed provision for an increase in Board membership.

Paragraph 3 provides that:

- when a school ceases to be a single teacher school, the election of staff members is to take place at the same time as the 2-yearly election of parent members;

- where an increase in the number of existing staff members of a Board is required (and a normal 4-yearly election of staff members is to be held at the time of the 2-yearly election of parent members) the additional vacancies for staff members have to be included in the 4-yearly election; and

- where an increase in the number of existing staff members of a Board is required (and no 4-yearly election of staff members is to be held at the time of a 2-yearly election of parent members) the additional staff members are to be elected at the same time as the 2-yearly election of parent members.



Reduction in numbers of any category of member

7. (1) Where the number of parent, staff or co-opted members requires to be reduced, or the Board is to cease to have staff members, the education authority shall proceed in accordance with this regulation.

(2) The education authority shall –

- (a) refrain from holding a by-election for any casual vacancy among parent members, where such a by-election is not necessary to make up the reduced number of parent members; and
- (b) hold the first biennial election of parent members after the obligation to make arrangements to adjust arose in respect only of those vacancies which need to be filled to make up the reduced number of parent members.

(3) The education authority shall –

- (a) refrain from holding a by-election for any casual vacancy among staff members, where such a by-election is not necessary to make up the reduced number of staff members or the Board is to cease to have staff members;
- (b) where a quadrennial election of staff members falls due at the same time as the first biennial election of parent members after the obligation to make arrangements to adjust arose, hold that quadrennial election in respect only of those vacancies which need to be filled to make up the reduced number of staff members, and hold no such election where the Board is to cease to have staff members; and
- (c) where necessary direct that the School Board shall remove from office such number of staff members as is necessary to effect the adjustment, the members to be removed being determined, failing agreement among the staff members, by the drawing of lots.

(4) The education authority shall –

- (a) direct that the School Board shall not co-opt persons to fill vacancies for co-opted members, where such co-option is not necessary to make up the reduced number of co-opted members; and
- (b) where necessary, direct that the School Board shall remove from office such number of co-opted members as is necessary to effect the adjustment, the members to be removed being determined by the School Board, meeting for this purpose without its co-opted members.

Regulation 7: DECREASE IN NUMBERS OF MEMBERS

This regulation makes detailed provision for a decrease in Board membership. The adjustment has to take place no later than the first 2-yearly election of parent members after the obligation to make adjustments arises.



Availability of documents

8. (1) Subject to paragraph (2) below, a School Board shall, as soon as possible, make available at the school for inspection by any person who wishes to see it a copy of the following documents –

- (a) the agenda for every meeting of the Board;
- (b) the draft minutes of every such meeting if they have been approved by the chairman of the meeting;
- (c) the minutes of every such meeting as approved by the Board; and
- (d) any report or other document considered at such a meeting.

(2) There may be excluded from any document required to be made available under paragraph (1) above anything relating to the following subjects: –

- (a) a particular person employed at, formerly employed at, or who has applied to be employed at, the school;
- (b) a particular person who is, has been, or is likely to be, a pupil at the school;
- (c) any information which the Board are legally obliged not to disclose; and
- (d) any matter which the Board are satisfied should be dealt with on a confidential basis because of its nature.

(3) This regulation shall apply to an *Interim* School Board and to a committee of a School Board or *Interim* School Board as it applies to a School Board.

Public access to meetings

9. (1) Subject to paragraph (2) meetings of a School Board shall be open to persons not otherwise entitled under the Act to attend them.

(2) A School Board may exclude such persons from a meeting during consideration of any item of business relating to any of the subjects specified in regulation 8(2) above.

(3) This regulation shall apply to an *Interim* School Board and to a committee of a School Board or *Interim* School Board as it applies to a School Board.

Regulations 8 and 9: PUBLIC ACCESS TO BOARD MEETINGS AND PAPERS

These regulations prescribe the extent to which the public has access to Board papers and meetings. They have been framed around the general principle that the public should have access to Board papers and meetings unless there is a clear reason for access to be refused.

Regulation 9 provides for meetings of a Board or any of its committees to be open to the public (except when the subjects prescribed under regulation 8 are under discussion).

Although Boards have a discretionary power to exclude information relating to the categories mentioned above, they should ensure that they do not publish or discuss in a public forum any information which is of a personal and sensitive nature to a named individual. Nor should they

ever disclose information which they are legally obliged not to disclose. In this context, Boards will require to consider section 8(5) of the Act which requires them to ensure compliance with the legal duties placed on their education authorities. If an authority passes information to a Board which the authority are legally required to treat as confidential, the Board must also ensure that the information is treated confidentially. Boards have discretion not to disclose any information on any matter which Boards themselves are satisfied should be dealt with on a confidential basis because of its nature. A Board would not, however, be acting reasonably if the public were continually denied access to its papers and meetings simply because it decided for no good reason to deem the matters under discussion confidential. It is intended that Boards will only exercise this power when there are very good reasons why the public should not have access to the information; for example, when the Board might be discussing commercially sensitive information in the context of a tender for a contract or deciding whom to co-opt to the Board.

The School Boards (Financial Information) (Scotland) Regulations 1990

Made 16th June 1990

Laid before Parliament 29th June 1990

Coming into force 31st July 1990

The Secretary of State, in exercise of the powers conferred on him by section 17(4) of the School Boards (Scotland) Act 1988³ as read with section 22(2)⁴ of that Act, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the School Boards (Financial Information) (Scotland) Regulations 1990 and shall come into force on 31st July 1990.

Interpretation

2. References to “the outturn statement” and to “the budget statement” are references to the statements required to be provided by virtue of section 17(4)(a) and (b), respectively, of the School Boards (Scotland) Act 1988.

Provision of budget and outturn statements

3. (1) The budget and outturn statements shall be in or as nearly as may be in the form set out in the Schedule hereto.

(2) The budget statement, in the financial year in which these Regulations come into force, shall be provided by 1st September and, in each subsequent such year, shall be provided by 5th April.

(3) The outturn statement, in the financial year in which these Regulations come into force and in each subsequent such year, shall be provided by 1st September.

³ 1988 c.47.

⁴ See the definition of “prescribed in section 22(2).

SCHEDULE

Regulation 3

PRESCRIBED FORM FOR BUDGET AND OUTTURN STATEMENTS

BUDGET/OUTTURN (insert as appropriate) STATEMENT IN RESPECT OF (enter name of school) FOR THE FINANCIAL YEAR (enter year to which the statement relates) PROVIDED BY (enter name of education authority) ON (date) UNDER SECTION 17(4) OF THE SCHOOL BOARDS (SCOTLAND) ACT 1988

RUNNING COSTS

STAFF	(£'000)
(a) Teachers and instructors – permanent and temporary	
Teachers and instructors – supply (for outturn statement only)	
(b) School-based administrative and support staff	
(c) Janitors and manual grades	
(d) Other (including costs related to employment of staff)	_____
Total staff costs	
PREMISES	(£'000)
(a) Rent and Rates	
(b) Insurance	
(c) Repairs and maintenance of land, buildings and fixed plant (for outturn statement only)	
(d) Fuel, gas and electricity	
(e) Fixtures and fittings	
(f) Cleaning of school premises and land	
(g) Other	_____
Total premises costs	
SUPPLIES AND SERVICES	(£'000)
(a) Books, materials and educational equipment	
(b) Other	_____
Total supplies and services costs	
TRANSPORT	
(a) Purchases or leasing of vehicles or related equipment for the school (if not capital expenditure)	
(b) Repairs and maintenance of vehicles and equipment and other running costs	
(c) Other	_____
Total transport costs	

EXAMINATION ENTRY FEES	
Total examination entry fee costs	
SCHOOL BOARD RELATED COSTS	
(a) Cost of School Board administration and training	
(b) Cost of School Board administration of functions delegated to them under section 15 of the School Boards (Scotland) Act 1988	_____
Total school board related costs	
OTHER SCHOOL RUNNING COSTS	
(a) Cost of school hostels	
(b) Cost of school catering	
(c) Other	_____
Total	
TOTAL EXPENDITURE FOR ALL RUNNING COSTS	_____
CAPITAL EXPENDITURE	
(List each project or purchase, stating the cost in each instance)	
TOTAL CAPITAL EXPENDITURE	_____

THE SCHOOL BOARDS (FINANCIAL INFORMATION) (SCOTLAND) REGULATIONS 1990

Regulation 3: PROVISION OF BUDGET AND OUTTURN STATEMENTS

The Schedule to this regulation prescribes the form in which financial statements are to be provided by an education authority to a School Board.

This regulation prescribes the form that financial statements provided under section 17(4) of the School Boards (Scotland) Act 1988 must take. The information required to be provided to a School Board under that

provision is an annual statement of the monies paid out by the education authority in the previous financial year in respect of the running costs of and capital expenditure on the school (referred to in the regulations as “the outturn statement”), and an annual statement of the monies proposed to be paid out by the authority in respect of such costs and expenditure on the school in the financial year in which the statement is made (referred to in the regulations as “the budget statement”). The regulations also prescribe the dates by which such statements must be provided.

THE SCOTTISH EXECUTIVE

School Boards

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