STATUTORY INSTRUMENTS

1978 No. 1085 (S. 97)

EDUCATION, SCOTLAND

The Aberlour Child Care Trust Scheme 1978

Made - - - -	24*th July* 1978
Coming into Operation	24*th July* 1978

ARRANGEMENT OF PARAGRAPHS

PART I

CITATION AND INTERPRETATION

Paragraph

1. Citation
2. Interpretation

PART II

THE GOVERNING BODY

3. Reconstitution of governing body
4. Composition of governing body
5. *Ex officio* governor
6. Governors nominated by subscribers
7. Other nominated governors
8. Co-opted governors
9. Demission of office
10. Procedure on occurrence of vacancies
11. Eligibility for further periods of office
12. Validity of proceedings of governing body
13. Execution of deeds
14. Transitional arrangements

PART III

ADMINISTRATIVE ARRANGEMENTS

15. Chairman and vice-chairman
16. Committees
17. Administrative staff
18. Retiring allowances
19. Meetings of governing body
20. Quorum of governing body
21. Rules and standing orders

PART IV

FINANCIAL ARRANGEMENTS

22. Transfer and vesting of endowment
23. Transfer of cash balances, books, deeds and papers
24. Application of income
25. Capital expenditure
26. Additional donations
27. Powers of investment

PART V

TRUST PURPOSES

28. Provision and maintenance of accommodation and services
29. Staff
30. Training facilities for staff
31. Admission of beneficiaries
32. Terms of admission
33. Maintenance, education and after-care of beneficiaries
34. Facilities for former beneficiaries

PART VI

MISCELLANEOUS AND GENERAL PROVISIONS

35. Names of founders
36. Copies of scheme
37. Revocation

SCHEDULE—PARTICULARS OF ENDOWMENT TO WHICH THIS SCHEME RELATES

In exercise of the powers conferred on him by section 118(1) of the Education (Scotland) Act 1962(a) and section 125(5) of the said Act as substituted by section 19 of the Education (Scotland) Act 1969(b) and all other powers enabling him in that behalf and after—

(*a*) preparing a draft scheme for the future management of the endowment specified and described in the Schedule to this Scheme,

(*b*) carrying out the procedure specified in section 125(1) of the said Act,

(a) 1962 c. 47. (b) 1969 c. 49.

(*c*) receiving and considering proposed amendments to the draft scheme,

(*d*) framing a scheme under section 125(3) of the said Act to take account of the proposed amendments received,

(*e*) carrying out the procedure specified in section 125(4) of the said Act, and

(*f*) no petition or appeal having been presented to the Court of Session and no petition having been presented to him,

the Secretary of State hereby makes the following scheme: —

PART I

CITATION AND INTERPRETATION

Citation

1. This scheme may be cited as the Aberlour Child Care Trust Scheme 1978.

Interpretation

2.—(1) In this scheme, unless the context otherwise requires—

"beneficiaries" means—

children and young persons who are in need of care, protection, assistance and training, or who, in the opinion of the governing body are in such circumstances that it is in their best interests that they be admitted to the benefits of the Trust;

"governing body" means the body reconstituted under paragraph 3(1), and

"Trust" means the Aberlour Child Care Trust.

(2) The Interpretation Act 1889(a) shall apply for the interpretation of this scheme as it applies for the interpretation of an Act of Parliament.

(3) References in this scheme to any enactment, regulation or scheme shall, except where the context otherwise requires, be construed as references to that enactment, regulation or scheme as amended by or under any other enactment, regulation or scheme or as contained in any other enactment, regulation or scheme substituted for that enactment, regulation or scheme.

(4) References in this scheme to a Part, paragraph or schedule shall, except where the context otherwise requires be construed as references to a Part, paragraph of or a schedule to this scheme as the case may be.

(a) 1889 c. 63.

PART II

THE GOVERNING BODY

Reconstitution of governing body

3.—(1) For the purpose of carrying this scheme into effect the governing body constituted and incorporated under the Aberlour Trust Scheme 1968 with the name of "The Governors of the Aberlour Trust" shall be and is hereby reconstituted under the name of "The Governors of the Aberlour Child Care Trust" with perpetual succession and a common seal, and with all rights, powers and privileges of a body corporate.

(2) The governing body reconstituted under the last foregoing sub-paragraph shall if so requested grant the governing body in office on 24th July 1978 a discharge of their intromissions.

Composition of governing body

4.—(1) The governing body shall consist of an *ex officio* governor who shall be the Primus of the Episcopal Church in Scotland or a person appointed by him from time to time at his discretion, 6 nominated governors and, if the *ex officio* governor or his appointee and the nominated governors so resolve, not more than 4 co-opted governors.

(2) The following persons shall be the nominated governors, that is to say—

(*a*) 3 persons to be nominated by the Executive Committee of the Representative Church Council of the Episcopal Church in Scotland;

(*b*) 1 person to be nominated by the Convention of Scottish Local Authorities; and

(*c*) 2 persons to be nominated by subscribers at the Annual General Meeting of subscribers to the Trust.

(3) The 4 persons who may be co-opted as governors shall be persons of experience which the *ex officio* governor or his appointee and the nominated governors consider will be of value to them in the exercise of their functions under this scheme.

(4) A person who is employed by the governing body shall not be eligible to appointment, nomination or co-option as a governor under the provisions of this paragraph.

Ex officio governor

5.—(1) When a Primus of the Episcopal Church in Scotland ceases to hold office as Primus, he or his appointee shall cease to be a governor of the Trust. Within 3 months of his appointment as Primus the succeeding Primus may accept office as a governor of the Trust or shall appoint a person to act in his place.

(2) The Primus may at any time terminate his appointee's tenure of office as a governor, may take office as a governor or may make a further appointment.

Governors nominated by subscribers

6.—(1) The first nominations by subscribers to the Trust shall be made at a special meeting of subscribers to the Aberlour Trust held within 3 months of 24th July 1978.

(2) The second and subsequent nominations shall be made at annual meetings of the subscribers to the Aberlour Child Care Trust. All persons who during the 3 financial years immediately preceding any annual meeting of subscribers—

(*a*) have given a donation of £10 or more to the Aberlour Trust or to the governing body, or

(*b*) have subscribed not less than £1 per annum to the Trust during the said period

shall be entitled to attend and vote at the said meeting. Any firm, trust, voluntary association or body corporate which has donated or subscribed as aforesaid shall be entitled to appoint a representative to attend and vote at the said meeting. The governing body shall cause a roll of donors and subscribers to be kept and shall insert an advertisement in such number of newspapers as the governing body shall decide not less than 14 days before the date appointed for the said meeting intimating the date, time and place thereof and the business to be transacted.

(3) The chairman of the governing body or in his absence the vice-chairman of the governing body or in the absence of both the chairman and the vice-chairman one of the other governors chosen by the majority of the governors present at any meeting shall preside at meetings to which the foregoing sub-paragraph (2) applies.

(4) The governing body may make rules under paragraph 21 for, or may other wise direct, the mode of conducting business at the meetings to which sub-paragraph (2) of this paragraph applies.

(5) Subject to the provisions of paragraph 9, each governor to whom this paragraph applies shall hold office as a governor for a period of 1 year.

Other nominated governors

7.—(1) The nomination of governors (other than those appointed or nominated in terms of paragraphs 5 and 6) shall be made at ordinary meetings of the respective nominating bodies or at meetings summoned for the purpose which shall be convened and conducted according to the ordinary rules and practice of the said bodies.

(2) The first nominations under this paragraph shall be made within 3 months of 24th July 1978 and the names of the persons nominated shall be intimated to the Director of the Aberlour Trust as soon as practicable thereafter.

(3) Subject to the provisions of paragraph 9 and the following sub-paragraph, the governors to whom this paragraph applies shall hold office for periods of 3 years.

(4) Of the governors first nominated by the Executive Committee of the Representative Church Council of the Episcopal Church in Scotland, one shall hold office for 3 years, one for 2 years and one for 1 year.

Co-opted governors

8.—(1) The co-option of governors shall be made at meetings convened and conducted in accordance with the provisions of this scheme.

(2) Subject to the provisions of paragraph 9, a co-opted governor shall hold office for such period not exceeding 3 years as the governing body think fit.

Demission of office

9.—(1) Any governor who is nominated from the members of a particular body shall on ceasing to be a member of such body be deemed to have vacated office.

(2) Any governor who shall intimate in writing his resignation of office or who shall become bankrupt or incapacitated to act, or who shall for the space of 1 year and without reasonable cause fail to attend any meeting of the governing body shall be held to have vacated office.

Procedure on occurrence of vacancies

10.—(1) Each vacancy among the governors nominated under paragraph 4(2)(*a*) and (*b*) inclusive shall be intimated to the appropriate nominating body by the governing body. In the case of a vacancy caused by the expiry of the normal term of office intimation shall be made not less than 1 month before the date of the vacancy and in other cases as soon as may be after its occurrence. Within 3 months of the date of intimation a successor shall be nominated and intimated to the governing body by or on behalf of the appropriate nominating body:

Provided that if the appropriate nominating body fails to comply with the foregoing provisions the governing body may appoint a successor and any appointment under this proviso shall be deemed to be a nomination by that body.

(2) Any governor nominated or co-opted in place of a governor who has died or otherwise vacated office before the end of his normal term of office shall, subject to the provisions of paragraph 11, hold office only during the unexpired portion of the said governor's term of office.

Eligibility for further periods of office

11. Subject to the provisions of paragraph 9, all nominated and co-opted governors shall be eligible for further nomination or co-option.

Validity of proceedings of governing body

12. The proceedings of the governing body shall not be invalidated by any vacancy in the office of governor or by any defect in the appointment, nomination or co-option of any of the governors.

Execution of deeds

13. Subject to the proviso to paragraph 22, all deeds and other writings which are sealed with the common seal and signed by two of the governors and by a duly authorised officer of the governing body appointed for the purpose, shall be held to be validly executed on behalf of the governing body.

Transitional arrangements

14.—(1) All nominated governors shall be duly nominated prior to the first meeting as hereinafter provided, and the names of the persons nominated shall be intimated to the Director of the Aberlour Trust.

(2) Within 4 months of 24th July 1978 the Director of the Aberlour Trust shall convene the first meeting of the governing body which shall be presided over by the chairman of the said Trust until the appointment of a chairman has been made under paragraph 15.

(3) The governors of the Aberlour Trust in office at 24th July 1978 shall remain in office and shall continue to administer the Trust until the first meeting of the governing body held under this scheme.

PART III

ADMINISTRATIVE ARRANGEMENTS

Chairman and vice-chairman

15. The governing body shall appoint a chairman and a vice-chairman from their own number at an ordinary meeting held at such period of the year as the governing body may determine. In the absence of both the chairman and the vice-chairman at any meeting the governors present shall appoint one of their own number to preside at the meeting. The chairman and the vice-chairman shall hold office for 3 years or until their own periods of office as governors expire, whichever is the lesser period, and they shall be eligible for re-appointment.

Committees

16. The governing body may appoint such committees of their own number or otherwise as they think fit, appoint the convener of each committee, confer on each committee all such powers and give all such instructions as may appear expedient and fix the quorum of each committee.

Administrative staff

17. The governing body shall appoint such administrative officers as they consider necessary at such reasonable salaries and under such conditions of service as they may determine provided that in each contract of employment entered into by them the governing body shall take power to dismiss at pleasure any officer. Any officer of the governing body whose duties include intromissions with Trust funds shall find such caution as the governing body may require for his intromissions.

Retiring allowances

18.—(1) The governing body may grant a pension or retiring allowance in the form of a periodical payment or lump sum, or both, to any person who is or has been employed by them or by the governors of the Aberlour Orphanage Trust or by the governors of the Aberlour Trust, or enter into an agreement to grant such a pension or retiring allowance or to supplement the pension or retiring allowance so granted all on such terms and for such periods as the governing body may deem expedient.

(2) The governing body may grant an allowance in the form of a periodical payment or lump sum, or both, to the dependants of any person who has been employed by them or by the Governors of the Aberlour Orphanage Trust or by the governors of the Aberlour Trust, or supplement the allowance so granted all on such terms and for such periods as the governing body may deem expedient.

(3) The governing body shall have power to pay to any person such pension, retiring allowance or allowance as may have been awarded to that person by the governors of the Aberlour Trust and to supplement such pension, retiring allowance or allowance all on such terms and for such periods as the governing body may deem expedient.

Meetings of governing body

19.—(1) The governing body shall hold at least 4 ordinary meetings in the year, at such places and times as they may determine.

(2) The chairman may at any time convene a special meeting of the governing body.

(3) Any 3 of the governors may for any cause which seems to them sufficient require a special meeting to be convened by giving notice in writing to the Director of the Trust.

(4) At least 14 days' notice of meetings shall be given and such notice, which shall be in writing, shall specify the date, time and place of the meeting and the business to be transacted:

Provided that the chairman or in his absence the vice-chairman or any governor duly authorised by the chairman may convene a meeting on less than 14 days' notice but no resolution or motion carried at that meeting shall be valid unless not less than two-thirds of the governors present have voted in favour of it or unless it is confirmed at a subsequent meeting held after an interval of not less than 14 days on the usual notice being given.

Quorum of governing body

20.—(1) At all meetings of the governing body 4 governors shall be a quorum and, subject to the proviso to paragraph 19(4), all questions shall be determined by a majority of the governors present. The chairman of any meeting shall in any case where there is an equality of votes have a second or a casting vote in addition to a deliberative vote.

(2) If at the time appointed for a meeting or if before the business of any meeting has been completed the number of governors present is less than 4, the governors present shall adjourn the meeting to such day or time as they may fix.

Rules and standing orders

21. Subject to the provisions of this scheme, the governing body may make rules and standing orders for the regulation of their proceedings and of the proceedings and the quorum of any committee appointed by them, for the keeping of records, execution of documents and such other matters connected with the business and functions of the governing body as they think fit:

Provided that any rules and standing orders made by the governing body under this paragraph may be revoked and replaced or varied by further rules and standing orders made by the governing body under this paragraph.

PART IV

FINANCIAL ARRANGEMENTS

Transfer and vesting of endowment

22. From and after 24th July 1978 the endowment named and described in the schedule shall be and is hereby transferred to and vested in the governing body without the necessity of any new instrument or conveyance. The said endowment under the name of "the Aberlour Child Care Trust" shall be held, administered and applied exclusively by the governing body in accordance with the provisions of this scheme:

Provided that, without prejudice to the foregoing generality, certificates for stocks and shares being assets of the Aberlour Trust or of the Aberlour Child Care Trust may if the governing body shall so resolve be held in Bank Nominee names and confirmatory instructions for the sale of such stocks and shares or the purchase of new or additional stocks and shares shall be validly given on behalf of the governing body if signed by two persons being officers or governors duly authorised to that effect by the governing body of the Aberlour Trust or the Aberlour Child Care Trust.

Transfer of cash balances, books, deeds and papers

23.—(1) As soon after 24th July 1978 as can conveniently be arranged the governors of the Aberlour Trust shall make over to the governing body all cash balances, books, deeds and papers which relate wholly or mainly to the endowment transferred to the governing body by paragraph 22 and to which they have right as governors of the Aberlour Trust.

(2) The governing body shall discharge such lawful debts of the endowment transferred to and vested in them by paragraph 22 as remain unpaid:

Provided that the liability of the governing body shall be limited to the amount which can be realised from the assets of the endowment and the governing body shall, after satisfactory audit of the accounts of the said endowment, grant to the governors of the Aberlour Trust a discharge of their intromissions with the funds of the endowment.

Application of income

24.—(1) The governing body, after paying all necessary expenses of management and other outgoings affecting the Trust, shall in each financial year apply as nearly as possible the whole of the free income of the Trust, including any unexpended balance of income carried forward from the previous financial year, in meeting the expenditure incurred by them in executing their functions under this scheme.

(2) If, notwithstanding the foregoing provisions of this paragraph, there is an unexpended balance of the free income of the Trust at the end of any financial year, the governing body shall carry the said balance or part thereof forward to the following financial year or shall add the said balance or part thereof to the capital of the Trust.

Capital expenditure

25.—(1) It shall be in the power of the governing body to incur capital expenditure for any of the purposes of Part V to which capital may properly be devoted.

(2) Where in the exercise of their functions under Part V the governing body require to incur expenditure which, in their opinion, by reason of the purpose for which such expenditure is incurred, may properly be met by borrowing, the governing body may borrow money for the purpose.

(3) All monies borrowed under the last foregoing sub-paragraph shall be repaid within such number of years not exceeding 60 as the governing body determine to be reasonable having regard to the purposes for which the said monies were borrowed.

Additional donations

26.—(1) The governing body may appeal to the public for and receive donations, legacies, annuities, subscriptions and other gifts (hereinafter referred to as "additional donations") for the purposes of this scheme, or for purposes connected therewith and such additional donations shall be applied in accordance with the directions of the respective testators or donors. In the absence of any specific direction relating thereto the governing body shall apply any additional donation to the capital or income of the Trust or to both capital and income in such proportions as they think fit.

(2) The governing body may incur such reasonable expenditure as they consider necessary in launching appeals under the foregoing sub-paragraph.

Powers of investment

27.—(1) The governing body may retain the investments in which the endowment to which this scheme relates was invested at 24th July 1978 and the investments in which any additional donations are invested when they are received by the governing body, and realise any of the said investments and any investments subsequently made as and when it appears to them to be necessary, desirable or expedient to do so.

(2) In addition and without prejudice to the powers of investment conferred upon trustees under the Law of Scotland the governing body may invest any money forming part of the Trust as follows—

(*a*) in the purchase of heritable property in Scotland;

(*b*) in or upon the public stocks or funds or government securities of any country;

(*c*) in or upon the deposit receipts, bonds, debentures, debenture stock, mortgages or securities of any corporation, company or body including municipal, railway, public utility, commercial, industrial, investment trust, mortgage, insurance or banking companies, corporations or bodies registered or incorporated in any country;

(*d*) in or upon the guaranteed, preference, preferred, ordinary, deferred or common stocks or shares of any such corporation, company or body; and

(*e*) upon any securities whatsoever issued or guaranteed by any such corporation, company or body, and, in the case of banks and insurance companies, whether or not there is a liability for calls or other payments.

PART V

TRUST PURPOSES

Provision and maintenance of accommodation and services

28.—(1) The governing body shall provide and maintain such accommodation or services or both as shall enable them to meet the needs of the beneficiaries and the needs of any person or persons related to or connected with any particular beneficiary such person or persons being hereinafter referred to as "specified persons" if, in the opinion of the governing body, it is essential for the well-being of the beneficiary that the needs of such person or persons be met.

(2) It shall be in the power of the governing body to purchase, feu, lease or otherwise acquire and hold such land and buildings as may in the opinion of the governing body be required, and to erect on land so acquired and on land vested in them at 24th July 1978 such buildings as the governing body may consider necessary. The governing body may alter, improve, enlarge and equip the buildings vested in them at 24th July 1978 and any other buildings acquired or built by them and may sell, feu or lease the existing and any future buildings and the lands connected therewith.

Staff

29. The governing body shall employ such suitably qualified staff as are necessary for the exercise of their functions under this Part provided that in any contract of employment entered into by them the governing body shall take power to dismiss at pleasure any member of staff.

Training facilities for staff

30. The governing body may assist members of their staff to take advantage of such training facilities as they may provide or as may be approved by them.

Admission of beneficiaries

31.—(1) The governing body shall admit such number of beneficiaries and specified persons as, in the judgment and at the sole discretion of the governing body, the accommodation or services provided by the governing body shall allow.

(2) Applicants for admission to accommodation or services provided by the governing body shall undergo such medical examination as the governing body think necessary to ensure that their state of health is not prejudicial to the other beneficiaries.

(3) Subject to the provisions of the foregoing sub-paragraph (2), no beneficiary who was admitted to the Aberlour Orphanage or to the accommodation or services provided by the Aberlour Trust before 24th July 1978 shall be deprived of any benefit to which he was thereby entitled by reason only of the coming into operation of this scheme.

Terms of admission

32.—(1) The period during which any beneficiary or specified person may remain in the care of or continue to receive assistance from the governing body shall be at the sole discretion of the governing body.

(2) The governing body may require the removal from the accommodation or services provided by them of any beneficiary or specified person on grounds of behaviour or on medical grounds: Provided that the governing body before exercising the said power shall satisfy themselves that other suitable provision will be made for the care or assistance of the beneficiary or specified person by a local authority, or a voluntary body or another person.

(3) In cases in which the governing body admit a beneficiary to the accommodation or services provided by them at the request of the Department of Health and Social Security or a Regional Council, or of any other public body, or of a parent or guardian who is in a position to make payments for the support of the beneficiary or in any case in which a child or young person was admitted to the Aberlour Orphanage or to the care or services of the Aberlour Trust in similar circumstances before 24th July 1978 the governing body may make a charge on the said body or person who made the request towards the cost incurred or to be incurred in respect of the beneficiary.

(4) Without prejudice to the generality of the provisions of the foregoing sub-paragraph, in any case in which the governing body have provided accommodation or services for a specified person the governing body may make a charge on the said person towards the cost incurred in respect of him.

Maintenance, education and after-care of beneficiaries

33. In each case where a beneficiary is admitted to accommodation provided by the governing body—

(*a*) the governing body shall maintain, clothe and house him and provide for his moral training, physical welfare and, in accordance with the terms of Regulation 5 of The Administration of Children's Homes (Scotland) Regulations 1959(**a**), his religious education;

(*b*) the governing body may require him, until he attains school age, or such later age as may be approved by the Secretary of State, to attend a nursery school;

(*c*) the governing body shall cause him, if he is of school age and is not attending a nursery school under the provisions of the foregoing sub-paragraph (*b*), to attend a public or grant-aided school:

Provided that the governing body may, where in their opinion a special need exists, set up educational units which beneficiaries may attend and any beneficiaries may include beneficiaries other than those to whom this paragraph is applicable;

(*d*) the governing body shall determine after consultation with him and with such other person as they think fit whether or not he, after ceasing to be of school age, should continue to receive secondary education or should undergo further education; and

(*e*) the governing body shall not discharge him from the home unless they are reasonably assured that suitable provision has been made for his welfare and when he is discharged they shall, where practicable, keep in touch with, advise and befriend him.

Facilities for former beneficiaries

34. The governing body may provide facilities for clubs or reunions of former beneficiaries or assist financially or otherwise the activities of any association of former beneficiaries approved by them. The governing body may also if they think fit provide temporary accommodation or financial aid or both for former beneficiaries.

(**a**) S.I. 1959/834.

PART VI

MISCELLANEOUS AND GENERAL PROVISIONS

Names of founders

35. In the exercise of their functions under Part V the governing body shall, so far as is possible, maintain the names of the founders of the endowment to which this scheme relates.

Copies of scheme

36. The governing body shall maintain a supply of printed copies of this scheme and shall cause a copy to be kept available for inspection by every member and officer of the governing body and copies shall be made available for sale to the public at a reasonable price.

Revocation

37. Subject to the provisions of paragraph 14(3), the Aberlour Trust Schemes 1968 and 1970 shall cease to have effect on 24th July 1978.

Given under the seal of the Secretary of State for Scotland.

J. J.Farrell,
Assistant Secretary.

Scottish Education Department,
New St. Andrew's House,
Edinburgh.

24th July 1978.

SCHEDULE

PARTICULARS OF THE ENDOWMENT TO WHICH THIS SCHEME RELATES

Name of endowment (1)	*Founders* (2)	*Governing instrument* (3)
The Aberlour Trust	Miss Wilhelmina Mackay; Dame Fanny Lucy Cecilia Eden; Lord Mount Stephen; Mrs Jane E. Galt, and others.	The Aberlour Trust Scheme 1968 approved by Her Majesty in Council on 18th March 1969 (a) as amended by The Aberlour Trust (Amendment) Scheme 1970 made by the Secretary of State for Scotland on 31st August 1970 (b).

(a) S.I. 1969/381.

(b) S.I. 1970/1306.