STATUTORY INSTRUMENTS

1982 No. 647 (S. 95)

EDUCATION, SCOTLAND

The General Anderson Trust Scheme 1982

Made - - - - 4*th May* 1982
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SCHEDULE—Particulars of the endowment to which this scheme relates.

In exercise of the powers conferred on him by sections 105(1) and 112(5) of the Education (Scotland) Act 1980(**a**) and all other powers enabling him in that behalf and after:—

(a) preparing a draft scheme for the future management of the endowment known as Anderson's Institution, Elgin,

(b) carrying out the procedure specified in section 112(1) of the said Act,

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

(d) framing a scheme under section 112(3) of the said Act to take account of the objections or proposed amendments received,

(**a**) 1980 c. 44.

(e) carrying out the procedure specified in section 112(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 General Anderson Trust Scheme 1982.

Interpretation

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

"governing body" means the Governors of the General Anderson Trust (formerly Anderson's Institution, Elgin);

"trust" means the General Anderson Trust; and

"beneficiary" means a person referred to in paragraph 34.

(2) References in this scheme to a Part, paragraph or Schedule shall, unless the context otherwise requires, be construed as references to a Part or paragraph of, or the Schedule to, this scheme, as the case may be.

PART II

THE GOVERNING BODY

Re-constitution of governing body

3.—(1) For the purpose of carrying this scheme into effect and subject to the provisions of paragraph 11(1), the governing body constituted and incorporated under the Anderson's Institution Scheme 1933 with the name "The Governors of Anderson's Institution, Elgin" shall be and is hereby reconstituted under the name of "the Governors of the General Anderson Trust" as a body corporate with perpetual succession and a common seal, with power to purchase, acquire, hold and dispose of lands and other property, heritable and moveable, to sue and be sued and with all rights, powers and privileges of a body corporate.

(2) The governing body re-constituted under the preceding sub-paragraph shall if so requested grant the governing body in office on the coming into operation of this scheme a discharge of their intromissions.

Composition of governing body

4.—(1) The governing body shall consist of two *ex officio* governors, eight appointed governors and not more than four co-opted governors.

(2) The following persons shall be *ex officio* governors:—

The Sheriff from time to time presiding over the Sheriff Court District of Elgin (hereinafter referred to as "the Sheriff"); and

The Minister of St Giles Church, Elgin.

(3) The following shall be the appointed governors:—

(a) three persons appointed by Grampian Regional Council;

(b) three persons appointed by Moray District Council; and

(c) two persons appointed by the Church of Scotland Presbytery of Moray, one of whom shall be from the landward area of the former County of Moray.

(4) The following shall be the co-opted governors:—

(a) one person to be co-opted from among ministers of religion in the area of the former County of Moray not being ministers of the Church of Scotland; and

(b) three persons to be co-opted from among persons of experience which in the opinion of the governing body will be of value to the governing body in the exercise of their powers under this scheme.
A person who is employed by the governing body shall not be eligible for co-option under the provisions of this sub-paragraph.

Ex officio governors

5.—(1) Each *ex officio* governor shall be entitled either to accept office as a governor or to appoint a person to act as governor in his place. Such nominee shall, subject to the provisions of sub-paragraphs (4) and (5), hold office for a period of five years.

(2) Within three months of the coming into operation of this scheme, the Sheriff shall intimate to the clerk to the governing body his acceptance of the office of governor or the name of the person appointed as a governor by him.

(3) A Sheriff shall at any time after accepting office as a governor be entitled to resign that office and shall then appoint his nominee to be a governor.

(4) A Sheriff who has appointed a nominee may at any time revoke his nomination and take office as governor or make a further nomination.

(5) A Sheriff shall be deemed to have vacated office on his ceasing to hold the office by virtue of which he is a governor. A Sheriff's nominee shall continue in office until an acceptance of appointment has been made under sub-paragraph (6).

(6) The successor as Sheriff shall within three months of his appointment intimate to the clerk to the governing body his acceptance of office as a governor or the name of the person appointed by him.

(7) Acceptances, nominations, revocations and resignations under this paragraph shall be intimated to the clerk to the governing body as soon after they take place as can conveniently be arranged.

(8) The foregoing provisions of this paragraph shall with the necessary

modifications apply to the other *ex officio* governor and to his nominees as they apply to the Sheriff and his nominees.

Appointed governors

6.—(1) The first appointments to the office of appointed governor shall be made as soon as possible after the coming into operation of this scheme and the names of the persons appointed shall be intimated to the clerk to the governing body immediately thereafter.

(2) The governing body shall satisfy themselves that appointments were made at ordinary meetings of the bodies concerned or at meetings summoned for the purpose which were convened and conducted according to the ordinary rules and practice of those bodies.

(3) The appointed governors shall, subject to the provisions of paragraphs 6(4) and 8, hold office for periods of five years from the date of their appointment, which shall in the case of the original appointments made under this scheme be reckoned from the date of the first meeting of the governing body.

(4) Of the governors first appointed under paragraphs 4(3)*(a)*, *(b)* and *(c)* respectively, one shall hold office for a period of three years and one of the governors appointed shall hold office for a period of four years. The periods of appointment thereafter shall be for five years in accordance with paragraph 6(3).

(5) Subject to the provisions of paragraph 8, appointed governors shall be eligible for re-appointment.

Co-opted governors

7.—(1) The co-option of persons to be governors shall be made by the governing body at meetings convened and conducted in accordance with the provisions of this scheme.

(2) Subject to the provisions of paragraphs 7(3) and 8, co-opted governors shall hold office and be eligible for re-co-option on the same terms as appointed governors.

(3) Of the governors co-opted under paragraph 4(4)*(b)*, one shall hold office for a period of three years and one shall hold office for a period of four years. The periods of co-option thereafter shall be in accordance with paragraph 7(2).

Vacation of office

8. Any appointed or co-opted governor shall be deemed to have vacated office as a member of the governing body and the governing body shall declare his place vacant in any of the following circumstances:—

(a) where he intimates in writing to the governing body his resignation as governor;

(b) where he has had his estate sequestrated or has made a trust deed for his creditors;

(c) where he has otherwise become in the opinion of the governing body incapacitated to act as a governor; or

(d) where he has during the period of one year attended no meetings of the governing body and has failed to show reasonable cause for such non-attendance.

Procedure on occurrence of vacancies

9.—(1) Every vacancy among the appointed or co-opted governors, whether occasioned by expiry of a period of tenure of office or by resignation, death, or any other cause, shall be entered in the minutes.

(2) Each vacancy among the appointed governors shall be intimated by the clerk of the governing body to the body entitled to appoint a successor. In the case of a vacancy caused by the expiry of the period of tenure of office, the intimation shall be made not less than one month before the date of the vacancy. In other cases, the vacancy shall be intimated as soon as may be after its occurrence. Within three months of the date of the intimation, a successor shall be appointed by the body entitled to make the appointment.

(3) If the body concerned fails to appoint a governor within the said period of three months, it shall be in the power of the governing body to appoint a successor, provided that the person appointed shall be a person eligible to be appointed by the said appointing body. Any appointment under this subparagraph shall be deemed to be an appointment by the body entitled to make the appointment.

(4) On the vacation of office by a co-opted governor the governing body shall consider filling the vacancy under the procedure laid down in paragraph 7.

(5) A governor appointed or co-opted in place of a governor who has died or otherwise vacated office before the end of his normal tenure of office as a governor shall, subject to the provisions of paragraphs 6(5) and 7(2), hold office only during the unexpired portion of the said governor's period of tenure of office.

Validity of proceedings of governing body

10. The proceedings of the governing body shall not be invalidated by any vacancy among the governors or by any defect in the appointment or co-option of any of the governors, provided that the number of governors validly elected and in office at the time of the said proceedings is not less than seven.

Transitional arrangements

11.—(1) The governors in office on the coming into operation of this scheme shall remain in office and shall continue to administer the trust until the first meeting of the governing body held under this scheme.

(2) The clerk to the governing body shall ensure that as far as possible, all appointed governors are appointed prior to the first meeting. Not less than one or more than four months after the coming into operation of this scheme the clerk shall convene the first meeting of the governing body, notice of which

shall be given by him to each member of the governing body or, if the names of such members have not been intimated to him, to the bodies entitled to appoint governors.

PART III

ADMINISTRATIVE ARRANGEMENTS

Chairman

12.—(1) The governing body shall appoint a chairman and a vice-chairman from their own number at an ordinary meeting held at such time in the year as they may determine. The chairman and vice-chairman shall hold office for five years or until their own periods of office as governors expire, whichever is the lesser, and shall be eligible for re-appointment, provided that they are also eligible for re-appointment as governors.

(2) The governing body shall make such standing orders under paragraph 18 as they think fit for supplying the place of the above-named office-bearers in the case of absence.

Committees

13.—(1) The governing body may appoint such committees of their number 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.

(2) The governing body may appoint as additional members of the committee persons not being members of the governing body whom the governing body deem specially fitted to assist in the work of such committee and any person so appointed shall hold office for such period as the governing body may determine but shall have no voting rights.

Administrative staff

14.—(1) The governing body shall appoint a clerk or factor or such other administrative officers as they consider necessary at such reasonable salaries and under such conditions of service as they may determine.

(2) Any officer of the governing body whose duties include intromissions with the funds vested in the governing body shall find such caution for his intromissions as the governing body may require.

(3) No governor acting as clerk or other officer of the trust shall be entitled to any remuneration.

Meetings of governing body

15.—(1) The governing body shall hold at least four ordinary meetings in each 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 three governors may, for any cause which seems to them sufficient, require a special meeting to be convened by giving notice in writing to the clerk to the governing body specifying the business to be transacted.

(4) Notice of every meeting shall be delivered or sent by post to each governor not less than fourteen days before the day on which the meeting is to be held. The notice shall specify the date, time and place of the meeting and the business to be transacted.

(5) Notwithstanding the provisions of sub-paragraph (4) above, the chairman may convene a meeting on less than fourteen days' notice. He may also authorise any governor to convene a meeting on his behalf on less than fourteen days' notice. No resolution or motion carried at such a meeting shall be valid unless it is voted for by not less than two-thirds of the governors then in office or it is confirmed by a subsequent meeting convened under the provisions of sub-paragraph (4) above.

Quorum of governing body

16.—(1) At all meetings of the governing body six governors shall be a quorum and, subject to the provisions of paragraph 15(5), all questions shall be determined by a majority of the governors present. In any case where there is an equality of votes, the chairman of any meeting shall have a second or casting vote in addition to a deliberative vote.

(2) If at any time appointed for a meeting or if before the business of any meeting has been completed the number of governors present is less than six, the governors present shall adjourn the meeting to such day or time as they may determine and the provisions of paragraph 15(4) shall apply.

Minute book

17. A minute book shall be kept by the governing body and the minutes of all proceedings shall be entered therein, including resolutions authorising the execution of all writings or deeds on their behalf.

Rules and standing orders

18. Subject to the provisions of this scheme, the governing body may make such rules and standing orders for the regulation of their proceedings, the keeping of records, the execution of documents and such other matters connected with the business of the governing body as they think fit.

Execution of deeds

19. All deeds and other writings, sealed with a common seal and signed by one of the governors and their clerk or other authorised officer, shall be held to be validly executed on behalf of the governing body.

Security measures

20. The governing body may make such arrangements as they consider adequate for the safe custody of all property heritable and moveable and of all

deeds and other documents belonging to them, for the banking of money and for the signing of cheques.

Allowances

21. The governing body may pay to any of its members allowances in respect of:—

(a) expenses properly incurred in the performance of their duties;

(b) loss of remunerative time; and

(c) additional expenses (other than as aforesaid) necessarily incurred by them for the purpose of enabling them to perform their duties, being expenses to which they would not otherwise have been subject:

Provided that such allowances shall be at the same rates and on the same conditions as apply for the time being for similar allowances to members of local authorities in Scotland under the Local Government Act 1948(**a**) or sections 45(4) and 46 of the Local Government (Scotland) Act 1973(**b**).

Vested interests

22.—(1) It shall be in the power of the governing body to permit any individual who at the coming into operation of this scheme held any office, place, employment, pension, compensation allowance, bursary or emolument under or arising out of the endowment to which this scheme relates, to continue to hold the same subject to the conditions under which it was held before that date, provided that this course does not involve any departure from the other provisions of this scheme.

(2) In the event of the governing body not exercising the power conferred upon them under the previous sub-paragraph, the governing body shall make due compensation for the vested interests of any individual mentioned in paragraph 22(1) above.

Continuation of benefits

23. Any person who at the coming into operation of this scheme is a beneficiary under the trust shall continue to enjoy the said benefits subject always to the conditions under which they were admitted to those benefits.

Retiring allowances

24. 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 their predecessors, 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.

(**a**) 1948 c. 26.
(**b**) 1973 c. 65.

PART IV

FINANCIAL ARRANGEMENTS

Vesting of endowment

25.—(1) From and after the coming into operation of this scheme the properties heritable and moveable of the endowment as described in the schedule to this scheme together with all rights, interests and liabilities therein shall continue to be vested in the governing body without the necessity of any new instrument or conveyance and shall be held, administered and applied by them exclusively in accordance with the provisions of this scheme.

(2) Without prejudice to anything contained in sub-paragraph (1) above:—

(a) If the governing body think fit to complete a title to any part of the heritable property vested in them by virtue of this scheme by expeding a notarial instrument or notice of title or otherwise, this scheme shall be deemed to be and may be used as a general disposition or assignation as the case may be of such heritable property in favour of the governing body.

(b) Any person in whose name any part of the moveable property hereby vested in the governing body is registered shall if so required by the governing body execute a transfer of the said property to the governing body.

Additional donations

26. The governing body may accept donations, legacies, annuities, payments under deeds of covenant, subscriptions and other gifts (hereinafter referred to as "additional donations") for the purposes of this scheme, or for purposes connected therewith. Such additional donations shall be applied in accordance with the directions of the respective testators or donors. In the absence of any specific directions relating thereto the governing body shall apply any additional donation to the capital or the income of the trust or in such proportions as they think fit to both the said capital and income.

Powers of investment

27. The governing body shall have the powers of investment applicable to trustees under the Trustee Investment Act 1961(**a**). They shall be entitled to retain any investment received by them under paragraph 26 of this scheme.

Capital expenditure

28.—(1) The governing body may incur capital expenditure for any of the purposes set out in Part V for which capital may properly be used.

(2) The governing body may meet the cost of such capital expenditure by making drafts upon the capital of the trust or by borrowing from any other fund under their administration or from any body or person willing to lend.

(**a**) 1961 c. 62.

(3) Each loan upon capital shall be repaid by annual instalments or otherwise within such number of years, not exceeding 30, as the governing body consider reasonable having regard to the purpose for which the capital expenditure is required.

(4) The governing body shall be entitled to make drafts upon capital equivalent to any sums added to capital under paragraphs 29, 31(2) and 32(2)*(d)* of this scheme without setting aside annual income to repay such drafts.

Occasional profits

29. Any money arising from the sale of timber or from mines or minerals on the estate of the governing body or from any other source which is temporary or occasional shall be invested by the governing body and shall form part of the capital of the endowment.

Reserve fund

30. The governing body may establish a Reserve Fund and shall include in the revenue thereof any sums received under paragraph 26 or transferred under paragraph 31(2). It shall be in the power of the governing body to use the Reserve Fund either to supplement the ordinary income of the governing body in years in which the ordinary income is insufficient to meet the ordinary expenditure of the governing body or to defray extraordinary expenditure which the governing body may find it expedient to incur.

Application of income

31.—(1) After paying all necessary expenses of management and all other outgoings affecting the trust and such re-payments to capital as are due in respect of money borrowed under paragraph 28(2), the governing body 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 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 or to the Reserve Fund.

PART V

FUNCTIONS OF THE GOVERNING BODY

Provision and maintenance of home

32.—(1) The governing body shall continue to provide and maintain a home to be known as "Anderson's" for the benefit of the persons described in paragraph 34. The governing body shall, subject to the provisions of this scheme, have all the rights, powers and privileges necessary or expedient for carrying this paragraph into effect.

(2) The governing body may for the purposes of Part V:—

(a) alter, improve or enlarge the buildings vested in them at the coming into operation of this scheme and any future buildings;

(b) purchase, feu, lease or otherwise acquire and hold such land and buildings as may in their opinion be required;

(c) build on land so acquired and on land vested in them at the coming into operation of this scheme such buildings as they may consider necessary; and

(d) sell, feu or lease the existing and any future buildings and the lands connected therewith:

Provided that the proceeds of any sale, feu or lease shall be added in whole or in part to the capital of the trust or applied in whole or in part towards defraying the expenditure of the governing body in executing the purposes of this scheme.

(3) It shall be in the power of the governing body to provide such facilities and services as will, in their opinion, meet the needs of the beneficiaries.

Organisation and management of home

33. The governing body shall exercise a general supervision and control over the home and those resident there. They shall arrange for admissions to the home. No person shall be removed from the home without the express approval of the governing body, which shall be recorded in the minutes.

Admission of beneficiaries

34.—(1) The governing body shall admit to the home suitable persons who by reason of age are in need of care from amongst those ordinarily resident in the former Burgh of Elgin. If the number of vacancies exceeds the number of applications for admission, the governing body may admit persons ordinarily resident in the former County of Moray, whom failing persons ordinarily resident in any other area of Scotland, or from furth of Scotland, provided such a person has Scottish connections.

(2) The governing body shall satisfy themselves that the state of health of those admitted to the home is not prejudicial to the other residents.

Terms of admission

35.—(1) The period during which any beneficiary may remain in the home shall be at the sole discretion of the governing body.

(2) A beneficiary unless physically incapacitated shall perform such duties connected with the upkeep of the home as may be required by the staff with the approval of the governing body.

(3) In cases in which the governing body admit a beneficiary to the home at the request of the Department of Health and Social Security or a Regional Council, the governing body may make a charge on the body who made the request towards the cost incurred or to be incurred in respect of the said beneficiary.

(4) The governing body may, in the light of a beneficiary's financial circumstances, make a reasonable charge towards the cost incurred in respect of that beneficiary.

Employment of staff

36. It shall be in the power of the governing body to employ such domestic and other staff as they consider necessary for the proper maintenance of Anderson's, at such salaries and under such conditions of service as the governing body consider reasonable.

PART VI

MISCELLANEOUS PROVISIONS

Advertisement of vacancies

37. The governing body may advertise vacancies in the home in one or more of the newspapers circulating in the former County of Moray.

Copies of scheme

38. 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

39. The Anderson's Institution Trust Scheme 1933 shall cease to have effect on the coming into operation of this scheme.

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

I. L. Sharp,
Under Secretary.

Scottish Education Department,
New St. Andrew's House,
Edinburgh.
4th May 1982.

SCHEDULE

Paragraph 25

PARTICULARS OF THE ENDOWMENT TO WHICH THIS SCHEME RELATES

Name of Endowment (1)	Founder (2)	Governing Instrument (3)
The General Anderson Trust	General Anderson of the Honourable East India Company's Service	Anderson's Institution Scheme 1933

STATUTORY INSTRUMENTS

1982 No. 647 (S. 95)

EDUCATION, SCOTLAND

The General Anderson Trust Scheme 1982

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