

EDUCATION TAX (AMENDMENT) ACT 1998

Act No. 40

[22nd December 1998]

Commencement

THE FEDERAL MILITARY GOVERNMENT hereby
decrees as follows:-

1. The Education Tax Act 1993 (in this Act referred to as
"the principal Act") is hereby amended as set out in this Act.

Amendment of
1993 No. 7

2. Section 3 of the principal Act is amended -

Amendment of
Section 3

(a) by inserting immediately after subsection (1) thereof
the following new subsection (2), that is -

"(2) The Fund -

(a) shall be a body corporate with perpetual succession
and a common seal; and

(b) may sue and be sued in its corporate name."

(c) by renumbering the existing subsection (2) as
subsection (3).

3. Section 4 of the principal Act is amended by
substituting therefor the following new section, that is -

Amendment of
Section 4.

"4.-(1) There is hereby established for the management of the Fund, an Education Trust Fund Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of -

(a) a Chairman;

(b) eight other members;

(c) a representative each of the Federal Ministries of Finance and Education who shall not be below the rank of a Permanent Secretary; and

(d) the Executive Secretary who shall be the secretary to the Board of Trustees.

(2) The membership of the Board of Trustees shall reflect the six geo-political zones of the Federation.

(3) The members of the Board of Trustees shall -

(a) be persons with considerable experience from both the public and private sectors to represent the business, financial and education sectors;

(b) be appointed by the Head of State, Commander-in-Chief of the Armed Forces on the recommendation of the Minister;

(c) other than the *ex-officio* members, each hold office for a term of 4 years in the first instant and may be eligible for appointment for a further term of 4 years and no more;

(d) be paid such remuneration and allowances as the

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Head of State, Commander-in-Chief of the Armed Forces may, from time to time, determine.

(4) The Board of Trustees shall meet for the conduct of its business at such times, places on such days as the Chairman may appoint not being less than four times in a year.

(5) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein."

5. Immediately after the existing section 4 of the principal Act there shall be inserted the following new sections, that is -

insertion of new sections and 4B

4A.-(1) A member of the Board of Trustees shall cease to hold office if -

"Cessation of member

(a) he becomes of unsound mind; or

(b) he becomes bankrupt or makes a compromise with his creditors; or

(c) he is convicted of a felony or any offence involving dishonesty; or

(d) he is guilty of serious misconduct in relation to his duties.

(2) A member of the Board of trustees may be removed from office by the Head of State, Commander-in-Chief of the Armed Forces, if he is satisfied that it is not in the interest of the Fund or the interest of the Public that the member should continue in office.

(3) A member of the Board of Trustees, other than an ex-

officio member, may resign his appointment by a notice in writing under his hand, addressed to the Head of State, Commander-in-Chief of the Armed Forces.

(4) Where a vacancy occurs in the membership of the Board of Trustees, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest and shall be appointed by the Head of State, Commander-in-Chief of the Armed Forces.

4B. The Board of Trustees shall have responsibility to -

- (a) monitor and ensure collection of tax by the Federal Inland Revenue Service and ensure transfer to the Fund;
- (b) manage and disburse the tax;
- (c) liaise with the appropriate Ministries or bodies responsible for collection or safe keeping of the tax;
- (d) receive requests and approve admissible projects after due consideration;
- (e) ensure disbursement to various levels and categories of education.
- (f) monitor and evaluate execution of the projects;
- (g) invest funds in appropriate and safe securities;
- (h) update the Federal Government on its activities and progress through annual and audited reports;
- (i) review progress and suggest improvement within the

Functions
of the
Board of
Trustees.

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provisions of this Act;

(j) do such other things as are necessary or incidental to the objects of the Fund under this Act or as may be assigned by the Federal Government."

5. Section 5 of the principal Act is amended -

Amendment of
section 5.

(a) in subsection (1) -

(i) paragraph (b), by substituting for the figure "40 per cent" the figure "30 per cent".

(ii) paragraph (c), by substituting for the figure "10 per cent" the figure "20 per cent";

(b) in subsection (3) by inserting immediately thereafter the following new subsections, that is -

"(4) The Board of Trustees shall administer, manage and disburse the tax imposed by this Act on the basis of -

(a) equality among the six geo-political zones of the Federation;

(b) equality among the States within a zone;

(c) equality among the Local Governments or Area Councils within a State or the Federal Capital Territory, Abuja respectively.

(5) Notwithstanding the provisions of subsections (1), (2), (3) and (4) of this section, the Board of Trustees shall have power to give due consideration to the peculiarities of each geo-political zone in the disbursement and management of the tax imposed

by this Act between the various levels of education."

6. Immediately after the existing section 5 of the principal Act there shall be inserted the following new sections, that is -

Insertion of sections 5A and 5B

5A. There shall be for the Fund an Executive Secretary who shall -

Appointment of the Executive Secretary and other staff of the Fund.

(a) be appointed by the Head of State, Commander-in-Chief of the Armed Forces on the recommendation of the Minister;

(b) be a person with good knowledge in administrative matters;

(c) be the chief executive and accounting officer of the Fund;

(d) have such qualifications and experience as are appropriate for a person required to perform the functions of that office under this Act; and

(e) hold office for a period of 5 years in the first instance and may be eligible for re-appointment for a further term of 5 years and no more and on such terms and conditions of service as may be specified in his letter of appointment.

(2) The Executive Secretary shall subject to the general direction of the Board of Trustees, be responsible -

(a) for the day to day administration of the Fund;

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(b) for keeping the books and proper records of the proceedings of the Board of Trustees;

(c) for -

(i) the administration of the secretariat of the Board of Trustees, and

(ii) the general direction and control of all other employees of the Fund.

(3) The Board of Trustees shall have power to -

(a) employ either directly or on transfer or secondment from any civil or public service in the Federation such number of employees as may, in the opinion of the Board of Trustees be required to assist the Board of Trustees and the Executive Secretary in the discharge of any of their functions under this Act; and

(b) pay to persons so employed such remuneration (including allowances) as the Board of Trustees may, after consultation with appropriate bodies, determine.

5B. -(1) Service in the Fund shall be approved service for purpose of the Pensions Act.

"Service in the Fund to be pensionable.
Cap. 346 LFN

(2) Employees of the Fund shall be entitled to pension, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the civil service of the Federation.

(3) Nothing in subsection (1) or (2) of this section or in this Act shall prevent the appointment of a

person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

(4) For the purposes of the application of the provisions of the Pensions Act any power exercisable thereunder by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Board of Trustees other than any other person or authority."

7. Section 6 of the principal Act is amended in subsection (3) by substituting therefor the following new subsection, that is -

Amendment of section 6.

"(3) The Board shall, with the approval of the Board of Trustees, remit in whole or in part a sum added to the unpaid tax under subsection (2) (a) of this section."

8. Immediately after the existing section 7 of the principal Act there shall be inserted the following new sections that is -

Insertion of sections 7A, 7B, 7C and 7D

7A.-(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Fund.

(2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Trustees, the Executive Secretary or any other officer or employee of the Fund for any act done in pursuance or execution of this Act or any other law or enactment, or of

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any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless -

(a) it is commenced within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

(3) No suit shall be commenced against a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund before the expiration of a period of one month after written notice of intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

7B. A notice, summons or other document required or authorized to be served upon the Fund under the Provisions of this Act or any other law or enactment may be served by delivering it to the Executive Secretary at the principal office of the Fund.

Service of documents.

7C.-(1) In any action or suit against the Fund, no execution or attachment of process in

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Restriction on execution against property of the Fund.

the nature thereof shall be issued against the Fund.

Indemnity of officers.

(2) Any sum of money which may by the judgement of any court be awarded against the Fund shall, subject to any direction given by court where notice of appeal of the said judgement has been given, be paid from the general reserve fund of the Fund.

7D. A member of the Board of Trustees, the Executive Secretary, any officer or employee of the Fund shall be indemnified out of the assets of the Fund against any proceeding, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund."

9. Immediately after the existing section 10 of the principal Act there shall be inserted the following new Schedule, that is -

Insertion of Schedule to the Act

"SCHEDULE Section 4 (5)
SUPPLEMENTARY PROVISIONS RELATING
TO THE BOARD OF TRUSTEES

Proceedings of the Board of Trustees

1.-(1) Subject to this Act and section 27 of the Interpretation Act, the Board of Trustees may make standing orders regulating its proceedings or those of any of its committees.

(2) The quorum of the Board of Trustees shall be five members and the quorum of any committee of the Board of Trustees shall be determined by the Board of Trustees.

2.-(1) The Board of the Trustees shall meet not less than four times in each year and subject thereto, the Board of Trustees shall meet whenever it is summoned by the Chairman; and if the Chairman is required to do so by the notice given to him by not less than three members, he shall summon a meeting of the Board of Trustees to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Board of Trustees, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

(3) Where the Board of Trustees desires to obtain the advice of any persons on a particular matter, the Board of Trustees may co-opt him to the Board of Trustees for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board of Trustees and shall not count towards a quorum.

Committees

3.-(1) The Board of Trustees may appoint one or more committees to carry out, on behalf of the Board of Trustees, such of its functions as the Board of Trustees may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board of Trustees) as may be determined by the Board of Trustees; and a person other than a member of the of the Board of Trustees shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Board of Trustees shall be of no effect until it is confirmed by the Board of Trustees.

Miscellaneous

4.-(1) The fixing of the seal of the Fund shall be authenticated by the signature of the Chairman, the Executive Secretary or of any other person authorized generally or specially to act for that purpose by the Board of Trustees.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the fund by the Chairman, Executive Secretary or any person generally or specially authorized to act for that purpose by the Board of Trustees.

(3) Any document purporting to be a document duly executed under the seal of the Fund shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

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5. The validity of any proceeding of the Board of Trustees or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board of Trustees or committee, or by any defect in the appointment of a member of the Board of Trustees or of a committee, or by reason that a person not entitled to do so took part in the proceeding of the Board of Trustees or committee."

11. This Act may be cited as the Education Tax (Amendment) Act 1998.

MADE at Abuja this 22nd day of December 1998.

GENERAL ABDULSALAMI ALHAJI ABUBAKAR,
*Head of State, Commander-in-Chief
Of the Armed Forces,
Federal Republic of Nigeria.*

EXPLANATORY NOTE

*(This note does not form part of the above Act but
is intended to explain its purport)*

The Act amends the Education Tax Act 1993 to provide,
among other things, for the reconstitution of the Board of
Trustees.