SCOTTISH STATUTORY INSTRUMENTS

2012 No. 237

EDUCATION

The Elmwood College, Oatridge College and The Barony College (Transfer and Closure) (Scotland) Order 2012

Made - - - -	*28th August 2012*
Laid before the Scottish Parliament - - - -	*30th August 2012*
Coming into force - -	*1st October 2012*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992(**1**) and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which each of Elmwood College, Oatridge College and The Barony College is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, The Scottish Agricultural College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the Elmwood College, Oatridge College and The Barony College (Transfer and Closure) (Scotland) Order 2012 and comes into force on 1st October 2012.

Interpretation

2. In this Order—

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992;

"Barony" means the institution named The Barony College being a college of further education prescribed under section 11(1) of the 1992 Act(**2**);

"the Barony Board" means the Board of Management of The Barony College established as a body corporate by section 11(2) of the 1992 Act;

(**1**) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) ("the 2005 Act"), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**2**) The Barony College is prescribed by S.I. 1992/1597.

"Elmwood" means the institution named Elmwood College being a college of further education prescribed under section 11(1) of the 1992 Act(**3**);

"the Elmwood Board" means the Board of Management of Elmwood College established as a body corporate by section 11(2) of the 1992 Act;

"enactment" has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(**4**);

"Oatridge" means the institution named Oatridge College being a college of further education prescribed under section 11(1) of the 1992 Act(**5**);

"the Oatridge Board" means the Board of Management of Oatridge College established as a body corporate by section 11(2) of the 1992 Act; and

"The Scottish Agricultural College" means The Scottish Agricultural College, a charitable company limited by guarantee registered in Scotland with company number SC103046 and charity number SC003712, having its registered office at West Mains Road, Edinburgh EH9 3JG and being an institution designated under section 44 of the 1992 Act(**6**).

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of each of the Barony Board, the Elmwood Board and the Oatridge Board are transferred to and vested in The Scottish Agricultural College.

(2) Any references to Barony, the Barony Board, Elmwood, the Elmwood Board, Oatridge or the Oatridge Board in any instrument are to be construed as a reference to The Scottish Agricultural College.

(3) Any action or proceeding by or against any or all of the Barony Board, the Elmwood Board, and the Oatridge Board pending or current, immediately before this Order comes into force, may be continued by or against The Scottish Agricultural College.

(4) For the purposes of this article "instrument" does not include enactment.

Property provided with grant aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(**7**) applied to any of the Barony Board, the Elmwood Board or the Oatridge Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to The Scottish Agricultural College in respect of such land or buildings.

Transfer of staff

5.—(1) All employees of each of the Barony Board, the Elmwood Board and the Oatridge Board are transferred to The Scottish Agricultural College and the contract of employment of each such employee has effect as if originally made between each such employee and The Scottish Agricultural College.

(2) In particular—

(**3**) Elmwood College is prescribed by S.I. 1992/1597.
(**4**) 2010 asp 10.
(**5**) Oatridge College is prescribed by S.I. 1992/1597. The name of Oatridge College was changed from "Oatridge Agricultural College" on 22nd March 2007 in accordance with section 3(4) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). Section 3(4) of the 1992 Act was amended by section 30 of the 2005 Act.
(**6**) The Scottish Agricultural College is designated by S.S.I. 2008/177.
(**7**) S.I. 1989/433, amended by S.I. 1993/489.

(a) all the rights, powers, duties and liabilities of each of the Barony Board, the Elmwood Board and the Oatridge Board under or in connection with a contract to which paragraph (1) applies are transferred to The Scottish Agricultural College; and

(b) anything done before the transfer by or in relation to each of the Barony Board, the Elmwood Board and the Oatridge Board in respect of that contract or the employee shall be deemed to have been done by or in relation to The Scottish Agricultural College.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that their employer is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with one of the Barony Board, the Elmwood Board or the Oatridge Board which is to come into effect after the coming into force of this article, and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

Closure and winding up

6. Barony, Elmwood and Oatridge are closed and each of the Barony Board, the Elmwood Board and the Oatridge Board is wound up and dissolved.

St Andrew's House,
Edinburgh
28th August 2012

MICHAEL RUSSELL
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st October 2012 The Barony College, Elmwood College and Oatridge College will cease to exist.

The Order transfers the whole property, rights, liabilities and obligations of the Boards of Management of each of The Barony College, Elmwood College and Oatridge College to The Scottish Agricultural College (Article 3). It makes consequential provisions regarding property provided with the aid of a grant (Article 4). It provides for staff of The Barony College, Elmwood College and Oatridge College to transfer to employment with The Scottish Agricultural College without a break in their employment (Article 5). It provides for The Barony College, Elmwood College and Oatridge College to be closed and their Boards of Management wound up and dissolved (Article 6).