

SCHEDULES

SCHEDULE 3

Section 16.

TRANSFER AND APPORTIONMENT OF PROPERTY

Identification of land, other property, rights, liabilities and obligations

- 1 (1) In respect of each college of further education prescribed under section 11 of this Act, the education authority and the college council shall, not later than the first transfer date, so far as practicable, arrive at such written agreements and execute such other instruments as are necessary or expedient—
 - (a) to identify or define the land, other property, rights, liabilities and obligations to be transferred to and vest in the board of management for the college under section 16 of this Act; or
 - (b) for making any arrangements such as are mentioned in paragraph 2(2) below as will afford to the authority and the board as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.
- (2) Any such agreement shall contain provision so far as is expedient to enable the creation, variation or extinction of interests in land or land obligations and for the granting of indemnities.
- (3) The education authority shall supply the college council of such a college with such information, including all documents relating to interests in land and land obligations, as the college council may require for the purposes of this Schedule.
- (4) Where no such agreement is arrived at before the first transfer date, the Secretary of State may prescribe a different date by which such an agreement is to be arrived at, and an agreement arrived at in pursuance of this sub-paragraph shall be between the education authority and the board of management for the college and, for the purposes of an agreement arrived at in pursuance of this sub-paragraph, references in this Schedule to the college council shall be construed as references to the board of management.
- (5) In this paragraph “land obligations” has the same meaning as in section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970.
- 2 (1) The land, other property, rights, liabilities and obligations mentioned in section 16(3) or (4) of this Act shall, where their nature permits, be divided or apportioned among the education authority and the board of management of any college for the purposes of which the land or property was held, used or obtained or, as the case may be, in relation to which the rights, liabilities or obligations subsisted in such proportions as may be appropriate.
- (2) Any land or right in relation to land, other property, right, liability or obligation the nature of which does not permit its division or apportionment shall be transferred to the board of management of such a college or retained by the education authority according to—

Status: This is the original version (as it was originally enacted).

- (a) in the case of land or a right in relation to land, which of the education authority or the board of management of any such college appears, as at the first transfer date, to be likely to experience the greatest practical difficulty through not having possession of that land or, as the case may be, not being able to exercise the right, or where none of them appears likely to experience such difficulty to a greater extent than any other, which of them appears on that date to be likely to make use of the land or right to the greatest extent; or
- (b) in the case of any other property or of any right, liability or obligation, which of them appears on the first transfer date to be likely to make use of the property or right or, as the case may be, to be affected by the liability or obligation to the greatest extent,

subject (in either case) to such arrangements for the protection of any party to which the land or other property or right, liability or obligation has not been transferred as may be agreed between the education authority and the college council for any such college or determined by the commissioner for further education assets under paragraph 4 below.

- (3) Where any land or any right relating to land falls to be divided or apportioned under sub-paragraph (1) above any rent payable by or to any party in respect of that land and any rates, feu duties, stipend or other outgoings running with the land or right shall be correspondingly divided or apportioned.

Status of agreements etc. under paragraph 1

- 3 (1) An agreement made under paragraph 1 above or any other instrument executed in pursuance of that paragraph shall be conclusive evidence of the matters contained therein.
- (2) No application for the rectification of such an agreement or instrument may be made to the court under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) by an education authority or a college council who were a party to such an agreement or instrument without the prior consent, given in writing, of the Secretary of State.

Resolution of disputes

- 4 (1) Where it appears to an education authority or a college council that it is unlikely, in the case of any matter in respect of which an agreement is required to be arrived at under paragraph 1 above, that an agreement will be arrived at, the authority or college council may refer the matter to the Secretary of State.
- (2) Where a matter is so referred, the Secretary of State shall appoint a commissioner for further education assets (in this Schedule referred to as “the commissioner”) who shall, after consulting the education authority and any person whom he considers to have an interest in becoming vested in any property, right, liability or obligation to which such an agreement is intended to relate, determine the matter.
- (3) The commissioner shall issue a written determination to the education authority and any college council required to arrive at such an agreement and may include in such determination any provision which could have been included in an agreement or other instrument made under or in pursuance of paragraph 1 above.
- (4) A determination made under this paragraph shall have effect for all purposes as if it were an agreement made under paragraph 1 above.

Status: This is the original version (as it was originally enacted).

- (5) No application for the rectification of a determination under this paragraph may be made to the court under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) by the commissioner or by an education authority or a college council who are affected by the determination without the prior consent, given in writing, of the Secretary of State.
- (6) The education authority shall provide the commissioner with such information, including all documents relating to interests in land or land obligations, as he may require for the purpose of the exercise of his functions under this paragraph.

Right to production of documents of title

- 5 (1) Where any land or other property is, or rights, liabilities or obligations are, transferred to and vest in the board of management of any college under section 16 of this Act, the education authority shall deliver to the board of management all documents of title relating solely to such land or other property and all documents relating solely to such rights, liabilities or obligations.
- (2) Without prejudice to sub-paragraph (1) above, the board of management of any college to whom any land or other property has, or rights, liabilities or obligations have, been transferred in accordance with section 16 of this Act shall be entitled at any time to require any person having possession of any document of title or other document relating to such land, other property, rights, liabilities or obligations to produce to them such documents.
- (3) No charge may be made in respect of anything done in pursuance of this paragraph.

Third parties affected by vesting

- 6 (1) Any transfer of land or other property, rights, liabilities or obligations from an education authority to the board of management of any college under section 16 of this Act and any subsequent transfer of such land, other property, rights, liabilities or obligations shall be binding on all other persons.
- (2) Where any such transfer to the board of management of a college has an effect on the rights, liabilities or obligations of a third party—
- (a) in the case of a transfer to which paragraph 1 above applies, the education authority; and
- (b) in the case of a transfer to which paragraph 4 above applies, the commissioner,
- shall give notice in writing to the third party of such transfer.
- (3) Where, in consequence of any transfer such as is mentioned in sub-paragraph (1) above or the effect of any of the provisions of this Schedule—
- (a) the rights, liabilities or obligations of any person other than the education authority or any board of management which were enforceable against or by the authority become enforceable against the board of management mentioned in that sub-paragraph or partly against the authority and partly against the board of management of one or more colleges; and
- (b) the value of any property or interest of that person is thereby diminished,

Status: This is the original version (as it was originally enacted).

such compensation as may be just shall be paid to that person by the authority or the board of management of, as the case may be, one or more colleges or by all or any of them.

- (4) Any dispute as to whether, and if so how much, compensation is to be paid under sub-paragraph (3) above, or as to the person to or by whom it is to be paid, shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.

Failure to agree or to apply to Secretary of State under paragraph 4 above

- 7 Where the education authority and the college council have failed to arrive at an agreement under paragraph 1 above not later than the first transfer date and neither of them has applied to the Secretary of State under paragraph 4 above, the Secretary of State may appoint a commissioner as if an application had been made to him under the said paragraph 4.