



Self-Governing Schools etc. (Scotland) Act 1989

1989 CHAPTER 39

PART II

FURTHER EDUCATION

College Councils

54 Establishment of college councils

- (1) Every education authority shall, by 1st April 1990 or such later date as the Secretary of State may in relation to any education authority or college of further education direct, establish a body, to be known as a “college council”, for each such college in their area for the purpose of exercising such functions as may be delegated to it by that authority by a delegation scheme made under section 56 of this Act.
- (2) Where an education authority propose—
 - (a) to establish a new college of further education; or
 - (b) to amalgamate into one college a number of existing such colleges,they shall, as soon as they consider appropriate but in any event before students are first enrolled in the new or, as the case may be, amalgamated college, establish a college council for that college.
- (3) Subsections (1) and (2) above shall not apply in relation to such classes of college of further education as may be prescribed.
- (4) The members of a college council shall, subject to subsection (5) below and, in relation to casual vacancies, section 55(2)(b) of this Act, be appointed by the education authority after consultation with such organisations, including employer and trade union or other organisations—
 - (a) as appear to them to be representative of interests relevant to the work of the college; or

- (b) as may be prescribed.
- (5) The principal of a college of further education shall be a member of the college council *ex officio* and, in appointing the remaining members of a college council, the education authority shall—
- (a) secure that—
- (i) the total number of members does not exceed 20;
 - (ii) not less than half the members are selected from persons nominated by employers, or by employer organisations consulted by the authority under subsection (4) above; and
 - (iii) not more than one fifth of the members appointed by the authority are members or employees (other than persons employed at any educational establishment) of either that authority or of any other local authority;
- and
- (b) comply with such further conditions as to the composition of the council as may be prescribed.
- (6) As from—
- (a) the first occasion on which a college council established under this section discharge functions delegated to them by virtue of section 56 of this Act; or
 - (b) 1st October 1990 (in relation to colleges to which subsections (1) and (2) above do not apply);
- any college council appointed under section 125 of the 1973 Act (schools and college councils) for the college in question shall cease to exist.
- (7) Notwithstanding the repeal by this Act of—
- (a) section 125 of the 1973 Act; and
 - (b) references to college councils in section 126 of and Schedule 10 to that Act,
- those provisions shall remain in force in relation to any college council appointed under the said section 125 for so long as that council remains in existence.

55 Proceedings of college councils

- (1) Every college council shall elect one of their number, who shall not be—
- (a) an employee of an education authority; or
 - (b) a student or a representative of students at the college,
- to be the council chairman.
- (2) The Secretary of State may by regulations make provision as to—
- (a) the duration of appointments to college councils;
 - (b) the procedure for filling casual vacancies on councils;
 - (c) the grounds on which a person may be disqualified from being a member of a council; and
 - (d) the meetings and proceedings of councils.
- (3) Subject to any regulations made by the Secretary of State under subsection (2) above, a college council may determine their own procedure and, without prejudice to the generality of the foregoing, they may—
- (a) arrange for the discharge of any of their functions by—

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

- (i) a committee appointed by them;
 - (ii) the chairman of the council; or
 - (iii) a member of the staff of the college; and
 - (b) delegate to any member of the council or any member of the staff of the college power to execute documents on behalf of the council.
- (4) The proceedings of a college council or of any committee appointed by them under subsection (3)(a) above shall not be invalidated by reason of—
- (a) any vacancy among the members; or
 - (b) any defect in the appointment of any member.

56 Functions of college councils

- (1) Subject to the provisions of this section, every education authority shall, by 1st October 1990 or such later date as the Secretary of State may in relation to any education authority or college council direct, make an instrument, to be known as a “delegation scheme”, in respect of each college council in their area, delegating, subject to such conditions as the authority think appropriate, such of the authority’s functions—
- (a) in relation to the management, supervision and financial control of the college; and
 - (b) under sections 61 to 63 of this Act,
- as they consider to be appropriate.
- (2) The functions which may be delegated by a scheme under subsection (1) above do not include any power—
- (a) to enter into contracts of employment with, or to dismiss, staff of the college; or
 - (b) to make loans to any companies formed by the authority by virtue of section 61(1)(a) of this Act.
- (3) Paragraph (a) of subsection (2) above is without prejudice to an authority’s power under this section to delegate matters relating to—
- (a) the selection of persons suitable to be employed at the college; and
 - (b) the career development, including redeployment, of members of the staff of the college;
- (4) Subject to subsection (2) above, the Secretary of State may make regulations—
- (a) as to the functions which are to be included in or excluded from a scheme made under subsection (1) above; and
 - (b) as to the conditions subject to which functions are to be delegated.
- (5) Where a scheme made under subsection (1) above becomes inconsistent with regulations made by the Secretary of State under subsection (4) above the authority concerned shall, so soon as is practicable, make the amendments necessary to make the scheme consistent with any such regulations.
- (6) The education authority may at any time amend a scheme made under subsection (1) above in so far as it relates to functions or conditions other than those mentioned in any regulations made under subsection (4) above, but the authority shall give the college council concerned—
- (a) not less than 3 months’ notice of any such amendment; and

- (b) an opportunity to make representations to, and to be heard by, the authority concerning the proposed amendment.
- (7) Subject to subsections (1) to (6) above, a college council may do anything which is calculated to facilitate the exercise of the functions delegated to them by their education authority and, without prejudice to the foregoing generality, may—
- (a) enter into contracts and agreements;
 - (b) raise funds by any means (other than borrowing);
 - (c) receive gifts; and
 - (d) invest money.

57 Financing of college councils and financial information

- (1) Every education authority shall, in respect of each financial year, before the beginning of that financial year, and in accordance with regulations made under subsection (2) below, determine for each college council in their area, after consultation with the council, what sum of money within the authority's budget is required by the council for—
- (a) carrying out any functions delegated to the council by a delegation scheme made under section 56 of this Act; and
 - (b) meeting the administrative expenses and other outgoings of the council.
- (2) Regulations made by the Secretary of State under this subsection may include provision—
- (a) as to the rules in accordance with which the determination mentioned in subsection (1) above is to be carried out;
 - (b) as to the extent to which a college council may retain any income or gift received by them;
 - (c) as to the extent to which any income of the college council may be taken into account by the education authority in making the determination described in subsection (1) above; and
 - (d) in respect of—
 - (i) the manner in which any surplus or deficit in the income and expenditure of a college council in any financial year is to be calculated; and
 - (ii) whether and, if so, to what extent the education authority are to take any such surplus or deficit into account in the determination made by them under subsection (1) above.
- (3) An education authority shall make available to each college council in their area the money determined under this section for that council at such times as that money is required.
- (4) Subject to any regulations made under subsection (2) above, if, during any financial year, it appears to an education authority appropriate to do so, they may—
- (a) increase; or
 - (b) reduce,
- the sum determined under this section for any college council.
- (5) An education authority shall in each financial year, by such date and in such form as may be prescribed, provide to every college council in their area a statement of—

- (a) money paid out by the authority in the previous financial year in respect of—
 - (i) the running costs of the college; and
 - (ii) capital expenditure related to that college; and
 - (b) money proposed to be paid out for those purposes by the authority in the financial year in which the statement is made.
- (6) Without prejudice to section 58(5) of this Act, an education authority shall comply with any reasonable request from a college council for information relating to past, or proposed future, expenditure in respect of that college, whether or not the information sought relates to functions which have been delegated to that council.

58 College council to be agent of education authority

- (1) A college council exercising any function delegated to them by virtue of section 56 of this Act shall be treated, as regards relations with third parties, as the agent of their education authority, whether or not the exercise complies with this Act or with any conditions or restrictions imposed by virtue of this Act.
- (2) The members of a college council shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of any of the council's functions.
- (3) In the exercise of any of their functions, a college council shall ensure that any duty of their education authority under statute or any rule of law is duly complied with.
- (4) A college council shall comply with any reasonable request from their education authority for information relating to the exercise of any of the council's functions.
- (5) An education authority shall comply with any reasonable request from a college council for information relating to the exercise of any of the council's functions.

59 Power to enforce duties of college councils

- (1) An education authority shall not exercise functions which they have delegated to a college council by a delegation scheme made under section 56 of this Act except in so far as—
 - (a) conditions imposed under that section provide; or
 - (b) this section provides.
- (2) Where an education authority are satisfied that a college council in their area have seriously or persistently failed, in relation to any function delegated to them by virtue of the said section 56—
 - (a) to comply with any condition imposed under that section;
 - (b) to comply with this Act or any regulations made under this Act; or
 - (c) to exercise the function so as to ensure that any duty of the authority under statute or any rule of law is complied with,the authority may to the extent that it appears to them necessary to do so suspend the delegation of the function and themselves exercise the function.
- (3) An education authority who intend to suspend the delegation of any function under subsection (2) above shall give the college council not less than four weeks' notice of that intention, unless they are satisfied that gross mismanagement has occurred or that

an emergency exists, when they may by notice suspend the delegation of the function with immediate effect.

- (4) An education authority shall, in any notice given under subsection (3) above, give their reasons for the suspension in question.
- (5) A college council shall be entitled to make representations with regard to any suspension under subsection (2) or (3) above, and to be heard—
 - (a) where four weeks' notice is given, before expiry of the notice;
 - (b) otherwise within four weeks of the notice.
- (6) An education authority may at any time reverse a suspension under this section entirely or to such extent as they think appropriate.
- (7) Any suspension under this section shall be reviewed by the education authority in question, after giving the college council concerned an opportunity to be heard—
 - (a) within twelve months after the date of the suspension; and
 - (b) thereafter at intervals of not more than twelve months.
- (8) On any review under subsection (7) above the education authority shall, after considering the whole circumstances of the matter, including any representations made by the college council, determine whether the suspension continues to be justified and, in the light of that determination, may—
 - (a) continue the suspension; or
 - (b) reverse the suspension either entirely or to such extent as appears to them to be appropriate.
- (9) An education authority who suspend a function under this section shall have power to adjust accordingly the money made available or to be made available to the college council in question under section 57 of this Act.

60 Allowances for council members

An education authority may pay to any member of a college council in their area—

- (a) in respect of his attendance at a meeting of the council; or
- (b) in respect of his doing anything approved by the authority, or anything of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the council,

such allowances, in the nature of those payable under section 46 of the 1973 Act (which relates to the payment of travelling and subsistence allowances to members of local authorities) as they think fit, being payments of such reasonable amounts as they may determine in any particular case or class of case and not exceeding the amounts specified under the said section 46 for the corresponding allowances under that section.

Supply of goods and services

61 Powers of education authorities to enter agreements and to make loans

- (1) An education authority shall have power to enter into agreements for the supply of goods and services through a college of further education provided by them (such supply being construed in accordance with section 62 of this Act), and, in the exercise of that power, may—

- (a) form companies under section 1 of the Companies Act 1985;
 - (b) for the purposes of such agreements, and subject to section 63 of this Act, make loans to those companies.
- (2) Subject to the following provisions of this section, an education authority shall not under an agreement made under subsection (1) above supply goods or services for less than their open market value.
- (3) For the purposes of this section the open market value of goods or services shall be taken to be the amount of the consideration in money that would be payable for the supply of those goods or services by a person standing in no such relationship with any person as would affect that consideration.
- (4) Loans may be made under this section for the purposes of an agreement either before the agreement is made or during its currency.
- (5) Nothing in this section shall be construed as—
- (a) derogating from any powers exercisable by an education authority apart from this section; or
 - (b) authorising the carrying on through a college of further education of any commercial activities which are detrimental to the provision of further education at that college.

62 Supply of goods and services through colleges of further education

- (1) For the purposes of section 61 of this Act, goods are supplied through a college of further education if they are—
- (a) produced in the course of its educational activities;
 - (b) produced by the use of its facilities and the expertise of persons employed at it in the fields in which they are so employed; or
 - (c) derived from ideas of a person employed at it, or of one of its students, arising out of its educational activities.
- (2) For the purposes of the said section 61 services are supplied through such an establishment—
- (a) if they are provided by making available—
 - (i) its facilities; or
 - (ii) the expertise of persons employed at it in the fields in which they are so employed; or
 - (b) if they—
 - (i) are supplied in the course of its educational activities; or
 - (ii) are derived from ideas such as are mentioned in subsection (1)(c) above.
- (3) For the purposes of this section educational activities are—
- (a) the provision of teaching and industrial and vocational training;
 - (b) the carrying out of research; and
 - (c) any activity incidental or ancillary to any activity mentioned in paragraph (a) or (b) above.

63 Financial and accounting provisions

- (1) Loans made under section 61 of this Act shall carry interest at a rate not less than a rate determined by the Secretary of State with the consent of the Treasury, and—
 - (a) different rates may be so determined in respect of different categories of loans;
 - (b) a rate may be determined by reference to a rate—
 - (i) specified by or under any other enactment; or
 - (ii) ascertainable by such other means as the Secretary of State may with the consent of the Treasury specify.
- (2) Before determining a rate under subsection (1) above, the Secretary of State shall consult any education authorities and bodies representing education authorities with whom consultation appears to him to be desirable.
- (3) The accounts kept by a local authority under section 96 of the 1973 Act shall include a separate account of any expenditure incurred or income received by that authority in exercising their powers under section 61 of this Act.
- (4) The accounts kept by an authority under the said section 96 shall show the full cost to the authority of goods or services which are supplied by virtue of the said section 61 and which are relevant to the account kept by virtue of subsection (3) above; and for the purposes of this section “full cost” shall be calculated in such manner as the Secretary of State may direct.
- (5) An education authority shall use their best endeavours to secure that at the end of every financial year any account kept by them under the said section 96 in relation to the goods and services supplied by virtue of the said section 61 and relating to that year is in surplus.

*Discontinuance of college of further education***64 Discontinuance of college of further education**

- (1) A college council shall cease to exist when the college for which they are established is discontinued or is amalgamated with another college or ceases to be managed by an education authority.
- (2) All property, rights and obligations of a college council shall pass—
 - (a) on discontinuance of the college, to the education authority;
 - (b) on amalgamation, to the college council of the amalgamated college; and
 - (c) where the college ceases to be managed by an education authority, to the new managers of the college.

*Formation of companies to manage colleges of further education***65 Power of college councils to form companies to manage colleges of further education**

- (1) A college council may, with the consent of—
 - (a) the education authority; and
 - (b) the Secretary of State,

form companies under section 1 of the Companies Act 1985, for the purpose of enabling the education authority to transfer to any such company, in accordance with subsection (2) below, responsibility for managing a college, or colleges, of further education.

- (2) Where a company has been incorporated by virtue of subsection (1) above, the education authority and the company may, with the consent of the Secretary of State, agree a scheme providing for—
 - (a) the transfer from the authority to the company of responsibility for managing such of the authority's colleges of further education as may be specified therein;
 - (b) the provision by the company of further education at any such college or colleges;
 - (c) the transfer from the authority to the company of such property, rights and liabilities as may be agreed;
 - (d) subject to section 66 of this Act, the transfer to the employment of the company of such of the staff employed at the college or colleges as may be agreed;
 - (e) subject to such conditions as may be agreed, the making of payments by the authority to the company in respect of the provision by the latter of further education; and
 - (f) such other matters as may be agreed.
- (3) Subject to subsection (4) below, the education authority and the company may at any time, with the consent of the Secretary of State, amend or revoke a scheme agreed under subsection (2) above.
- (4) Where it appears to the Secretary of State that an amendment to a scheme agreed under subsection (2) above is desirable, he may, after consulting the authority and the company, direct that the scheme be amended accordingly; and the scheme shall thereafter have effect as so amended.
- (5) Nothing in this section shall be construed as authorising the carrying on through a college of further education managed by a company formed by virtue of subsection (1) above of any commercial activities which are detrimental to the provision of further education at that college.

66 Transfer of staff to companies formed by virtue of section 65

- (1) This section applies to any person who immediately before the transfer date in relation to a college of further education is employed by the education authority responsible for managing that college, and who in terms of a scheme agreed under subsection (2) of section 65 of this Act is to be transferred to the employment of a company formed by virtue of subsection (1) of that section.
- (2) The contract of employment between a person to whom this section applies and the education authority by whom he is employed shall have effect from the transfer date as if originally made between him and the company.
- (3) Without prejudice to subsection (2) above—
 - (a) all the education authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the company on the transfer date; and

- (b) anything done before that date by or in relation to the education authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the company.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this section.
- (5) For the purposes of this section—
 - “the transfer date”, in relation to a college of further education, is the date on which, in accordance with a scheme agreed under section 65 of this Act, responsibility for the management of that college is transferred from an education authority to a company formed by virtue of that section; and
 - “the company” means the company to which responsibility for managing the college of further education is transferred by such a scheme.

*Pay and conditions of service***67 Abolition of committee to consider pay and conditions of teaching staff employed in providing further education**

- (1) Subject to subsection (2) below, the committee established under section 94 of the 1980 Act (committee to consider pay and conditions of teaching staff employed in providing further education) is abolished, and accordingly sections 94 to 97 of the 1980 Act are repealed.
- (2) Where—
 - (a) an order made under section 92 of the 1980 Act (as originally enacted and not as substituted by the Education (Scotland) Act 1981) relating to the remuneration of teaching staff employed in providing further education; or
 - (b) a settlement formulated under section 94(1)(b) of the 1980 Act; or
 - (c) a determination or, as the case may be, an award made under section 97B of the 1980 Act,
 is still in force on the date on which this enactment comes into force the order, settlement, determination or award shall, subject to subsection (3) below, remain in force after that date.
- (3) Where, after this enactment comes into force—
 - (a) any group of teaching staff employed in or in connection with the provision of further education in Scotland and those employing them agree, whether expressly or impliedly, to an alteration of the remuneration payable to, or the terms and conditions of employment of, that group of teaching staff; or
 - (b) any such alteration as is mentioned in paragraph (a) above is arrived at in an agreed manner,
 that alteration shall, to the extent that it is concerned with the same matters, supersede any such order, settlement, determination or award as is referred to in paragraph (a), (b) or (c) of subsection (2) above.