Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART I

FURTHER EDUCATION

CHAPTER I

DUTIES IN RELATION TO FURTHER EDUCATION

1 Duty of Secretary of State to secure provision of further education.

[F1](1) . . . . . .

[F1](2) . . . . . .

(3) In this Part of this Act "further education" means any programme of learning, not being school education, provided for persons over school age, being a programme falling, for the time being, within section 6 of this Act.

[F1](4) . . . . . .

[F1](5) . . . . . .

[F1](6) . . . . . .

Textual Amendments

F1 S. 1(1)(2)(4)-(6) repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(a)**; S.S.I. 2005/419, art. 2(1)

Status: *Point in time view as at 03/10/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part I. (See end of Document for details)*

Commencement Information

I1 S. 1 wholly in force; s. 1 not in force at Royal Assent see s. 63(2); s. 1(3)(4)(5) in force at 16.5.1992 and s. 1(1)(2)(6) in force at 1.4.1993 by S.I. 1992/817, art. 3(2), Schs. 1, **4**

2 Function of education authorities.

Section 1 of the 1980 Act (duty of education authorities to secure provision of education) shall be amended as follows—

(a) in subsection (1) for the words "subsection (2)" there shall be substituted the words " subsections (2) and (2A) "; and

(b) after subsection (2) there shall be inserted the following subsection—

"(2A) The duty imposed on an education authority by subsection (1) above shall not include the provision of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, but an education authority shall have power to provide such further education for their area."

Commencement Information

I2 S. 2 wholly in force at 1.4.1993 see s.63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

3 Powers of Secretary of State.

(1) The Secretary of State [F2]... may, subject to subsection (3) below—

(a) establish new colleges of further education;

(b) merge two or more colleges of further education;

(c) close colleges of further education.

(2) The powers of the Secretary of State in relation to the matters mentioned in paragraphs (a) to (c) of subsection (1) above shall be exercised by order; and an order under subsection (1)(a) above establishing a college of further education or under subsection (1)(b) above merging two or more colleges of further education shall contain provision—

(a) designating the name; and

(b) establishing a body corporate to be known as "the Board of Management of",

the college so established or, as the case may be, created by merger.

(3) The power conferred by paragraphs (b) and (c) of subsection (1) above shall be exercised only in relation to colleges for which boards of management have been established in pursuance of this Part of this Act.

[[F3](4) The governing body (within the meaning of Part II of this Act) of a college of further education may, with the consent of the Scottish Ministers, change the name of the college or of the governing body.**]**

(5) The Secretary of State may by order amend Schedule 2 to this Act to make different provision to that contained, for the time being, in paragraphs 2 to 18 of that Schedule.

(6) The Secretary of State may by regulations prescribe requirements with which boards of management shall comply in discharging their functions under this Part of this Act.

Textual Amendments

F2 Words in s. 3(1) repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(1)(a)**; S.S.I. 2005/419, art. 2(1)

F3 S. 3(4) substituted (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), **ss. 30**, 36(2); S.S.I. 2005/419, art. 2(1)

Commencement Information

I3 S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 63(2); s. 3(5) in force at 16.5.1992 and s. 3(1)-(4)(6) in force at 1.4.1993 by S.I. 1992/817, art. 3(2), Schs. 1, **4**

[F4]4 Funding of further education.

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Textual Amendments

F4 S. 4 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

5 Requirement on Secretary of State to consult.

(1) Where, in relation to any college of further education, the Secretary of State proposes to exercise any power to which this section applies, he shall consult the education authority for the area in which the college is or, as the case may be, is to be situated and any other person appearing to the Secretary of State to be affected by the proposal.

(2) This section applies to—

(a) the power of the Secretary of State under section 3 of this Act—

(i) to establish a new college of further education;

(ii) to close a college of further education; or

(iii) to merge two or more colleges of further education; and

(b) the power of the Secretary of State under section 44 of this Act to designate an institution for the purposes of Part II of this Act, if the institution is a college of further education in respect of which a board of management has been established in pursuance of this Part of this Act.

Commencement Information

I4 S. 5 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

6 Further education to which section 1 applies.

(1) A programme of learning falls within this section if it—

(a) prepares a person for a vocational qualification;

(b) prepares a person for—

(i) a **[**[F5]qualification awarded by the Scottish Qualifications Authority**]**; or

(ii) a General Certificate of Education qualification of England and Wales or Northern Ireland;

(c) provides instruction for persons who are participating in a programme of learning which falls within this section and who have a learning difficulty;

(d) prepares a person for access to higher education;

(e) is designed to assist persons whose first language is not English to achieve any level of competence in English language;

(f) is designed predominantly to prepare a person for participation in any programme of learning which falls within this section.

(2) The Secretary of State may by order, from time to time, amend subsection (1) above by adding or removing any entry relating to a programme of learning or by varying any such entry.

(3) An order shall not be made under subsection (2) above unless the Secretary of State has consulted—

(a) such persons or organisations appearing to him to be representative of boards of management and education authorities; and

(b) such other persons,

as appear to him to be appropriate as to the amendments proposed to be made by the order.

Textual Amendments

F5 Words in s. 6(1)(b)(i) substituted (1.4.1997) by 1996 c. 43, s. 36, **Sch. 5**, para. 8; S.I. 1997/365, **art. 2**

Commencement Information

I5 S. 6 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

CHAPTER II

SCOTTISH FURTHER EDUCATION FUNDING COUNCIL

[F6]7 Scottish Further Education Funding Council.

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Textual Amendments

F6 Ss. 7-10 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

[F6]8 Advisory functions of the Funding Council.

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Textual Amendments

F6 Ss. 7-10 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

[F6]9 Power of Secretary of State as regards functions of the Funding Council.

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Textual Amendments

F6 Ss. 7-10 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

[F6]10 Payment of grants etc., to the Funding Council.

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Textual Amendments

F6 Ss. 7-10 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

CHAPTER III

COLLEGES OF FURTHER EDUCATION

Management of colleges

11 First transfer of colleges.

(1) With effect from 1st April 1993 or such other date as the Secretary of State may by order appoint (in this section referred to as "the first transfer date") each college of further education as may be prescribed shall cease to be under the management of the education authority which, immediately before that date, was responsible for its management, and the college council for each such college shall, with effect from that date, cease to exist.

(2) With effect from the first transfer date there shall be established for each college of further education prescribed by an order made under subsection (1) above a body corporate to be known as "the Board of Management of" that college.

(3) The education authority which, immediately before the first transfer date, was responsible for the management of such a college of further education shall, on that date or as soon as is reasonably practicable thereafter, provide to the board of management of the college all such information held by the authority, or available to it, as relates to the college, its administration, management, fabric, students and staff.

(4) Nothing in subsection (3) above shall require the disclosure of any information in contravention of any provision contained in any enactment (including an enactment contained in a subordinate instrument) restricting or prohibiting the disclosure of such information.

(5) A college of further education shall not be prescribed under subsection (1) above unless it provides at least one full-time programme of further education.

Commencement Information

I6 S. 11 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

12 Boards of management.

(1) A board of management shall have the duty of—

(a) managing and conducting their college; and

(b) ensuring that their college provides (either by itself or by arrangement with any other person) suitable and efficient further education to students of the college,

and in carrying out their duty under paragraph (b) above, the board shall have regard to the provision **[**[F7]of managing and conducting their college.**]**

(2) A board of management shall have the power—

(a) to provide or secure the provision of further education (within the meaning of section 1(5)(b) of the 1980 Act);

[[F8](aa) to provide part-time and full-time courses of instruction for persons of school age;**]**

(b) to charge fees for or in connection with the provision by them of any form of further education **[**[F9]or any course of instruction provided under sub-paragraph (aa)**]**;

(c) to provide to students of the college such assistance of a financial or other nature (including waiving or granting remission of fees) as they may consider appropriate;

(d) for the purpose of the administration and management of the college, to receive any property, rights, liabilities and obligations transferred to the board under or in pursuance of any provision of this Part of this Act;

(e) to provide facilities of any description appearing to the board to be necessary or expedient for the purpose of or in connection with the carrying on of any of the activities mentioned in this subsection or in subsection (1) above (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students who have learning difficulties and disabled staff);

(f) to supply goods and services;

(g) subject to subsection (7)(a) below and section 18 of this Act, to acquire, hold and dispose of land and other property;

(h) to enter into contracts, including in particular—

(i) contracts for the employment of teachers and other staff for the purpose of or in connection with the carrying on of any such activities as are mentioned in this subsection or in subsection (1) above; and

(ii) contracts with respect to the carrying on by the board of any of such activities;

(i) to form or promote, or to join with any other person in forming or promoting, companies (within the meaning of the [M1]Companies Act 1985);

(j) subject to subsection (7)(a) below and the said section 18, to borrow such sums as the board think fit for the purpose of carrying on any of the activities they have power to carry on or for meeting any liability or obligation transferred to them under or in pursuance of any provision of this Part of this Act and, in connection with such borrowing, to grant such security or give such guarantee or indemnity as they think fit;

(k) to invest any sums not immediately required by the board for the purpose of their carrying on any of the activities which they have power to carry on or for meeting any liability or obligation transferred to them under or in pursuance of any provision of this Part of this Act;

(l) subject to subsection (7)(a) below and the said section 18, to raise funds, accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of carrying on any of the activities which they have power to carry on; and

(m) to do all such other things as are calculated to facilitate or are incidental or conducive to the carrying on of any of the activities which the board have power to carry on.

(3) In carrying out their functions under this section a board of management shall have regard to the requirements of persons [F10]... who have learning difficulties.

(4) A board of management may delegate the performance of any of their functions to their chairman, to any committee appointed by them or to any member of their staff.

(5) A board of management may pay to persons appointed to be members of the board such allowances and expenses as they may determine; and any allowances and expenses to be paid by virtue of this subsection shall be calculated by reference to such criteria as the Secretary of State may determine.

(6) A board of management shall make such reports or returns and give such information to the Secretary of State as he may require for the purposes of the exercise of his powers and the performance of his duties under this Part of this Act.

(7) A board of management shall not, without the prior consent, given in writing, of the Secretary of State —

(a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of their property; or

(b) effect any material change in the character of their college.

(8) The Secretary of State may by order amend the provisions of subsection (2) above by varying, adding to or removing the powers conferred by that subsection.

(9) An order shall not be made under subsection (8) above unless the Secretary of State has consulted such persons or organisations appearing to him to be representative of boards of management and such other persons as appear to him to be appropriate as to the amendments proposed to be made by the order.

(10) Schedule 2 to this Act shall have effect with respect to the constitution and proceedings of and other matters relating to every board of management established in pursuance of any provision of this Part of this Act.

Textual Amendments

F7 Words in s. 12(1) substituted (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(1)(b)(i)**; S.S.I. 2005/419, art. 2(1)

F8 S. 12(2)(aa) inserted (14.11.2003) by Further and Higher Education (Scotland) Act 1992 Amendment Order 2003 (S.S.I. 2003/487), arts. 1, **2(2)**

F9 Words in s. 12(2)(b) inserted (14.11.2003) by Further and Higher Education (Scotland) Act 1992 Amendment Order 2003 (S.S.I. 2003/487), arts. 1, **2(3)**

F10 Words in s. 12(3) repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(1)(b)(ii)**; S.S.I. 2005/419, art. 2(1)

Commencement Information

I7 S. 12 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch.1**

Marginal Citations

M1 1985 c. 6.

13 Subsequent transfers of colleges.

(1) As regards any college of further education which is under the management of an education authority and in respect of which the management is not transferred from the authority on the first transfer date, the Secretary of State may by order appoint a date with effect from which the college shall cease to be under the management of such education authority.

(2) An order appointing a date under subsection (1) above for the purposes of a college of further education shall establish, with effect from such date as the Secretary of State may prescribe, a body corporate to be known as "the Board of Management of" the college.

(3) An order made under subsection (1) above may provide that such of the provisions of this Part of this Act as appear to the Secretary of State to be necessary or expedient shall, subject to such modifications as appear to him to be appropriate, apply to the transfer of the college.

(4) The provisions referred to in subsection (3) above may include any provision restricting the right of an education authority—

(a) to enter into certain contracts; and

(b) to dispose of or remove or cause to be removed or enter into any agreement or unilateral obligation for the disposal or removal of certain property,

and for the purposes of any modification made under the said subsection (3), any reference in any provision of this Part of this Act to 21st or, as the case may be, 22nd March 1991 shall be construed, respectively, as a reference to the date of or, as the case may be, the date following an announcement by the **[**[F11]Scottish Ministers to the Scottish Parliament that they intend to exercise their**]** power under this section.

(5) For the purposes of any modification made by virtue of subsection (3) above to section 33 of this Act, the reference in that section to 4th November 1991 shall be construed as a reference to the date of such announcement as is mentioned in subsection (4) above.

(6) An order shall not be made under subsection (1) above as regards a college of further education unless, at the date the order is made, the college is providing at least one full-time programme of further education.

Textual Amendments

F11 Words in s. 13(4) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(3)(c), 4, **Sch. 2 Pt. I para. 108(2)**

Commencement Information

I8 S. 13 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

14 Transfer of colleges of further education not under local authority management.

(1) This section applies to any college of further education which—

(a) is not under the management of a board of management or of an education authority;

(b) provides at least one full-time programme of further education; and

(c) is in receipt of grant paid out of money provided by Parliament.

(2) The management of a college of further education to which this section applies may be transferred from the persons responsible for its management or control if, and only if—

(a) those persons have consented to the transfer; and

(b) where the premises of the college are owned by another person or by a trust, such person or, as the case may be, the trustees of the trust have consented to the transfer.

(3) Where such consent as is mentioned in subsection (2) above is obtained, the Secretary of State may by order made under this subsection transfer the management of the college with effect from such date as may be specified in the order to a body corporate established under the order to be known as "the Board of Management of" the college.

(4) Where any college in respect of which an order is made under subsection (3) above is subject to a trust deed the Secretary of State may, with the consent of—

(a) the trustees; and

(b) where any other person is empowered, by whatever means, to modify the trust deed, such person,

by order made under this subsection amend such trust deed to make such provisions as appear to him necessary or expedient for the purposes of such transfer.

(5) An order made under subsection (3) above may provide that so much of sections 15, 19(2) and 34 of and Schedule 5 to this Act as appear to the Secretary of State to be necessary or expedient shall, subject to such modifications as appear to him to be appropriate, apply to the transfer of the college.

Commencement Information

I9 S. 14 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

Staff

15 Transfer of staff.

(1) Subject to subsection (3) below, this section applies to any person (in this section referred to as a "qualifying person") who, immediately before the first transfer date, is employed by an education authority if—

(a) it is a condition of his contract of employment that he is employed to work exclusively at a college of further education under the management of the education authority, being a college which is prescribed under section 11 of this Act; or

(b) it is not such a condition of his contract of employment but he is assigned by the education authority so to work; or

(c) it is a condition of his contract of employment that he is employed to work both at the college and elsewhere or that he is assigned so to work by the authority; but that he is subject, for the purposes of this section, to a designation by the Secretary of State.

(2) A designation mentioned in subsection (1)(c) above is a designation under a direction made by the Secretary of State that a person or class or description of persons to whom a condition mentioned in that subsection applies or, as the case may be, who are assigned as so mentioned, shall be a qualifying person or, as the case may be, a class or description of qualifying persons, in relation to a particular college of further education.

(3) Where the Secretary of State proposes to make a direction in terms of subsection (2) above he shall consult—

(a) in the case of a direction designating a person, that person; and

(b) in the case of a direction designating a class or description of persons, such persons as appear to the Secretary of State to be representative of the class or description of persons,

as to the proposed designation.

(4) A person is not a qualifying person if—

(a) his contract of employment terminates on the day immediately before the first transfer date;

(b) prior to the first transfer date he is appointed or assigned by the education authority to work exclusively at some place other than the college and the appointment or assignation is to take effect on that date;

(c) the education authority, with effect from the first transfer date, withdraws him from work at the college; or

(d) he is employed in connection with the provision of meals, unless the meals are provided solely for consumption by persons at the college.

(5) The contract of employment between a qualifying person and the education authority shall have effect from the first transfer date as if originally made between him and the board of management of the college at which he is employed or assigned to work or in relation to which he is designated as a qualifying person in pursuance of subsection (2) above.

(6) Without prejudice to subsection (5) 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 paragraph be transferred to the board of management of the college on the first transfer date; and

(b) anything done before that date by or in relation to the education authority in respect of that contract or the qualifying person shall be deemed from that date to have been done by or in relation to the board of management.

(7) Subsections (5) and (6) above are without prejudice to any right of a qualifying person to terminate his contract of employment if the terms and conditions of his employment are changed substantially to his detriment; but such change shall not be taken to have occurred by reason only of the fact that his employer is changed by virtue of this section.

(8) Where a person—

(a) has, prior to the first transfer date, entered into a contract of employment with an education authority which is to come into effect on or after that date; and

(b) would, if the contract had come into effect before that date, have been a qualifying person,

he shall be treated for the purposes of this section as if he were a qualifying person.

(9) In this section references to the terms and conditions of a person's contract of employment with an education authority shall be construed as including references to any rights (whether accrued or contingent) under any pension or superannuation scheme of which he was a member by virtue of his employment with the authority.

Commencement Information

I10 S. 15 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Property

16 Transfer of property etc. to boards of management.

(1) Except as the Secretary of State otherwise directs, on the first transfer date there shall be transferred to and vest in the board of management of each college of further education specified in an order made under section 11 of this Act all property, rights, liabilities and obligations mentioned in subsection (2) below.

(2) The property, rights, liabilities and obligations referred to in subsection (1) above are—

(a) all land or other property (including corporeal and incorporeal moveable property) which—

(i) immediately before the first transfer date was owned by an education authority; and

(ii) at any time during the relevant period was used, held or obtained by them for or in connection with the purposes of the college;

(b) all moveable property (whether corporeal or incorporeal) which, immediately before the first transfer date, was owned by the college council for the college;

(c) all rights, liabilities and obligations of the authority which, immediately before the first transfer date, subsisted in respect of the college;

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(d) all rights, liabilities and obligations of the college council for the college which subsisted immediately before that date,

but excluding such property, rights, liabilities and obligations as are mentioned in subsection (5) below.

(3) Subject to subsection (7) below, the land and other property referred to in subsection (2)(a) above includes any land or other property which, at any time during the relevant period—

(a) was used, held or obtained for or in connection with the purposes of more than one college of further education; or

(b) was used, held or obtained partly for or in connection with the purposes of one or more such colleges and partly for or in connection with other purposes,

to the extent that it was so used, held or obtained for or in connection with the purposes of any such college.

(4) Subject to subsection (7) below, the rights, liabilities and obligations referred to in subsection (2)(c) above include any rights, liabilities or obligations which, immediately before the first transfer date—

(a) subsisted in relation to more than one college of further education; or

(b) subsisted partly in relation to one or more such colleges and partly in relation to some other purpose,

to the extent that they subsisted in relation to any such college.

(5) Subsection (1) above shall not apply to—

(a) any right, liability or obligation deriving from a contract of employment relating to a person to whom section 15 of this Act does not apply;

(b) any obligation or liability of an education authority in respect of compensation for premature retirement of any person formerly employed by them;

(c) any liability of such an authority in respect of the principal of, or any interest on, any loan obtained by them for the purposes of a college of further education referred to in that subsection where—

(i) the loan was obtained before 1st April 1991; or

(ii) the loan was obtained, without the consent of the Secretary of State given under this Part of this Act, during the period commencing on 1st April 1991 and ending on the day immediately before the first transfer date;

(d) any liability of such an authority arising under—

(i) delict;

(ii) any enactment (including an enactment contained in a subordinate instrument); or

(iii) any rule of strict liability,

arising out of an act or omission where the cause of action accrued before the first transfer date;

(e) any property which to any extent has, with the prior consent, given in writing, of the Secretary of State and the college council, ceased to be used or held for or in connection with the purposes of the college, to the extent that it has ceased to be so used or held; and

(f) any property, right, liability or obligation in respect of which an agreement or determination is required under section 17 of this Act.

(6) The vesting of property, rights, liabilities and obligations under this section shall have effect notwithstanding—
  (a) anything to the contrary in; or
  (b) any condition relating to the transfer of such property, rights, liabilities or obligations contained in,

any enactment (including an enactment contained in a subordinate instrument whether passed or made before or after the coming into force of this section), rule of law or obligation.

(7) Schedule 3 to this Act shall have effect as regards—
  (a) the transfer of property effected by this section; and
  (b) the apportionment of such property between colleges of further education or, as the case may be, between education authorities and such colleges.

(8) Schedule 4 to this Act shall have effect as regards commissioners for further education assets.

(9) In this section "the relevant period" is the period commencing on the 22nd March 1991 and ending immediately before the first transfer date.

Commencement Information
I11 S. 16 wholly in force at 1.9.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 3**

17 Surpluses and deficits.

(1) Not later than such date as the Secretary of State may direct, the education authority and the board of management shall, in respect of each college of further education prescribed by an order made under section 11 of this Act, arrive at a written agreement as to—
  (a) the amount of any surplus or deficit in the accounts of the college council for the college as at the day immediately before the first transfer date; and
  (b) which of the education authority or board of management any such surplus or deficit or any proportion of such surplus or deficit is to be transferred to and vest in,

and, where the agreement provides for the amount of any surplus or deficit, or any proportion of such surplus or deficit to be transferred and vest as mentioned in paragraph (b) above, such amount together with interest on that amount from the day mentioned in paragraph (a) above, shall be transferred and vest as at the date so directed.

(2) Before making a direction under subsection (1) above as to the date by which an education authority and a board of management are to arrive at a written agreement, the Secretary of State shall consult the education authority and the board of management.

(3) An agreement made under subsection (1) above shall be conclusive evidence of the matters contained therein.

(4) Where it appears to an education authority or a board of management that it is unlikely that they will be able to arrive at a written agreement as mentioned in subsection (1) above the authority or the board may refer the matter to the Secretary of State who shall appoint a commissioner for further education assets.

(5) Where the education authority and the board of management have failed to arrive at an agreement as mentioned in subsection (1) above and neither of them has applied to the Secretary of State under subsection (4) above, the Secretary of State may appoint a commissioner as if a reference had been made to him under the said subsection (4).

(6) Where the failure of an education authority and a board of management to arrive at a written agreement is referred to a commissioner for further education assets under subsection (4) or (5) above, the commissioner shall, after consulting the authority and the board, determine the matter and issue a written determination to them; and a determination under this subsection—

(a) may include any provision which could have been included in an agreement made under subsection (1) above; and

(b) shall have effect for all purposes as if it were an agreement made under that subsection.

(7) No application for the rectification of an agreement made under subsection (1) above or a determination under subsection (6) above may be made to the court under section 8 of the [M2]Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) by—

(a) in the case of such an agreement, the education authority or board of management who were a party to it; and

(b) in the case of such a determination, the commissioner or an education authority or board of management who are affected by the determination,

without the prior consent, given in writing, of the Secretary of State.

(8) The education authority and the board of management who are parties to a dispute referred to a commissioner for further education assets under subsection (4) or (5) above shall provide the commissioner with such information and records of accounts as he may require for the purpose of enabling him to make a determination under that subsection.

Commencement Information

I12 S. 17 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

Marginal Citations

M2 1985 c. 73.

18 Disposal of certain property.

(1) Subject to subsection (4) below, the board of management of a college of further education shall not dispose of any property to which this section applies without the prior consent, given in writing, of the Secretary of State.

(2) Property to which this section applies is—

(a) property transferred to the board under or in pursuance of any of the provisions of this Part of this Act;

(b) property acquired by the board wholly or partly with assets which represent or in any way derive from any part of the proceeds of or any consideration for the disposal of property so transferred; and

(c) property acquired, improved or maintained wholly or partly, directly or indirectly, out of funds provided under or in pursuance of this Part of this Act by the Secretary of State or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained.

(3) The consent of the Secretary of State may be given in respect of a particular disposal of property or of disposals of any class or description and may be given subject to such conditions as the Secretary of State may determine.

(4) The consent of the Secretary of State is not required for the disposal of land which is or forms part of property to which this section applies where the disposal is in consequence of the compulsory acquisition of such land by any authority in pursuance of any power of compulsory acquisition under any enactment; but the board of management shall inform the Secretary of State of any such compulsory acquisition.

(5) Where any property to which this section applies is disposed of, the board of management shall pay to the Secretary of State such portion of the proceeds or value of the consideration for the disposal, after deduction of such expenses as appear to the Secretary of State to have been reasonably incurred in the disposal, as the Secretary of State may, after consultation with the board, determine.

Commencement Information

I13 S. 18 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Educational endowments and trusts

19 Educational endowments.

(1) Where, immediately before the first transfer date in relation to any college of further education prescribed by the Secretary of State under section 11 of this Act, an educational endowment is to any extent vested in an education authority or an officer of such an authority solely for the purposes of benefiting—

(a) the college; or

(b) students of the college,

such endowment shall, on that date, to that extent and for those purposes, be transferred to and vest in the board of management of the college.

(2) Where, immediately before the first transfer date, an educational endowment is vested in an education authority or one of their officers —

(a) for the benefit of all colleges of further education in the area of the authority; or

(b) for the benefit of any group of such colleges; or

(c) for the benefit of students of such colleges,

and any such college is a college prescribed as mentioned in subsection (1) above, the authority or, as the case may be, their officer shall continue to apply such endowment for the benefit of such college or, as the case may be, students of such college as if it had not been so prescribed.

(3) The Secretary of State may by order make such modifications as he thinks fit—

(a) to the purposes to which any relevant educational endowment may be applied; and

(b) to any conditions or provisions regarding such application,

provided that following any such modifications the purposes to which the endowment may be applied shall continue to be charitable purposes within the meaning of the Income Tax Acts.

(4) Before making any modifications under subsection (3) above to the purposes to which a relevant educational endowment may be applied, the Secretary of State shall, so far as it appears to him practicable to do so, consult—

(a) the board of management; and

(b) where any other person is empowered, by whatever means, to modify the purposes to which the endowment may be applied, that person.

(5) For the purposes of subsections (3) and (4) above, a "relevant educational endowment" is an educational endowment which is transferred to and vested in the board of management of a college of further education as mentioned in subsection (1) above.

Commencement Information

I14 S. 19 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

20 Variation of trust deeds.

(1) Without prejudice to section 19(3) of this Act, the Secretary of State may by order make such modifications as he thinks fit of any trust deed relating to any land or other property held by any person for the purposes of any college of further education prescribed under section 11 of this Act.

(2) Before making any modifications under subsection (1) above of any trust deed the Secretary of State shall, so far as it appears to him practicable to do so, consult—

(a) the board of management of the college; and

(b) where any other person is empowered, by whatever means, to modify the trust deed, that person.

Commencement Information

I15 S. 20 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

Miscellaneous

21 Directions by Secretary of State.

(1) The Secretary of State may give boards of management directions of a general or specific character with regard to the discharge of their functions; and it shall be the duty of a board of management to whom any such directions are given to comply with the directions.

(2) A direction given under this section may be varied or revoked by a subsequent direction so given.

(3) A direction given under this section may be addressed to one or to more than one board of management.

Commencement Information

I16 S. 21 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

[F12]22 College development plans.

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Textual Amendments

F12 S. 22 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

[F13]23 Duty of boards of management as regards recorded children.

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Textual Amendments

F13 S. 23 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1) and expressed to be repealed (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), s. 35(1), **Sch. 3 para. 7(a)**; S.S.I. 2005/564, art. 2

24 Mismanagement by boards.

(1) If it appears to the Secretary of State that the affairs of the board of management of any college of further education have been or are being mismanaged, he may by order—

(a) remove all of the members of the board or any of them (other than the principal of the college); and

(b) as regards those members not appointed in pursuance of sub-paragraphs (b), (c) and (d) of paragraph 3(2) of Schedule 2 to this Act, appoint new members to the board in place of those so removed.

(2) Where the Secretary of State exercises the power conferred by subsection (1) above to remove members of the board, he shall give notice in writing to any members and to the board of such removal.

(3) In making any appointment under this section the Secretary of State shall comply with the requirements of paragraphs 2, 3, 6 and 7 of Schedule 2 to this Act as to the appointment of members of boards of management; and any reference in those paragraphs to the board of management doing or being required to do anything shall, for the purposes of this section, be construed as a reference to the Secretary of State doing or being required to do that thing.

(4) An appointment made under this section shall have effect as if made under paragraph 3 of the said Schedule 2.

(5) A person appointed under this section shall hold office until the expiry of the period of office of the person he was appointed to replace.

Commencement Information

I17 S. 24 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

25 Closure of colleges and dissolution of boards of management.

(1) Where the Secretary of State determines, after such consultation as is required by section 5 of this Act, to make an order—

(a) closing a college of further education; or

(b) designating a college such as is mentioned in paragraph (b) of subsection (2) of that section as a designated institution within the meaning of Part II of this Act,

the order shall contain provision winding-up the board of management of the college, and the provisions of this section shall have effect.

[[F14](1A) An order made for the purpose mentioned in subsection (1)(a) above—

(a) shall include provision for the property and rights of the board of management to transfer to and vest in a charity; and

(b) may include provision for the liabilities and obligations of the board of management to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.

(1B) An order made for the purpose mentioned in subsection (1)(b) above may include provision—

(a) for the property and rights of the board of management to transfer to and vest in a charity; and

(b) for the liabilities and obligations of the board of management to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.**]**

(2) An order made for the purposes mentioned in subsection (1) above may include provision—

[F15](a) . . . . . .

(b) for the payment by the Secretary of State of any expenses incurred in the closure or winding-up;

(c) imposing such duties or conferring such additional powers in relation to the closure or winding-up as the Secretary of State may consider appropriate;

(d) for the exercise of any of the board's functions by any member of the board specified by the Secretary of State in the order;

(e) for the appointment of a person to administer the closure or winding-up, and any person so appointed shall have such powers and duties as appear to the Secretary of State necessary or expedient for such purposes and as are specified in the order;

(f) of such incidental, supplementary, transitional or ancillary nature as appears to the Secretary of State to be necessary or expedient for the purposes of the closure or winding-up.

(3) Notwithstanding that an order has been made for the winding-up of the board of management—

(a) the Secretary of State may continue to issue directions to the board of management under section 21 of this Act; and

(b) such board of management shall continue to comply with any directions given by the Secretary of State whether before or after the making of such an order.

(4) Directions under the said section 21 may be given to a person appointed under subsection (2)(e) above, and such person shall be under the like duty as the board of management to comply with any such directions.

(5) When the winding-up of the board of management of a college of further education under this section is completed, the Secretary of State shall by order dissolve the board of management of that college.

(6) In this section, references to the closure of a college include references to the college being merged with one or more other colleges; and different provision may be made under this section as regards different colleges to be merged with one another.

(7) An order **[**[F16]as mentioned in subsection (1A) or (1B) above shall not contain provision for transferring and vesting property, rights, liabilities or obligations unless the body or person to whom the transfer is being made (apart from the Scottish Ministers) **]** has consented to the transfer and vesting.

[[F17](8) All property and rights vested in a charity by virtue of an order as mentioned in subsection (1A) or (1B) above shall be applied for the purpose of the advancement of education.

(9) In this section, a " charity " means a body entered in the Scottish Charity Register. **]**

Textual Amendments

F14 S. 25(1A)(1B) inserted (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), **ss. 29(1)(a)**, 36(2); S.S.I. 2005/419, art. 2(1)

F15 S. 25(2)(a) repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), **ss. 29(1)(b)**, 36(2); S.S.I. 2005/419, art. 2(1)

F16 Words in s. 25(7) substituted (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), **ss. 29(1)(c)**, 36(2); S.S.I. 2005/419, art. 2(1)

F17 S. 25(8)(9) added (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), **ss. 29(1)(d)**, 36(2); S.S.I. 2005/419, art. 2(1)

Commencement Information

I18 S. 25 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 4**

26 Abolition of college councils.

(1) This section applies to any college of further education within the meaning of the 1989 Act, not being a college which is prescribed under section 11 of this Act.

(2) With effect from the first transfer date—

(a) the college council for every college of further education to which this section applies shall cease to exist;

(b) any functions delegated to such college council by virtue of a delegation scheme under section 56 of the 1989 Act shall revert to the education authority in whose area the college is situated; and

(c) any property, rights, liabilities and obligations of such college council shall, by virtue of this section, transfer to and vest in such education authority.

Commencement Information

I19 S. 26 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

27 Information as to provision of further education.

(1) The Secretary of State may by regulations require the board of management of a college of further education to publish such information as may be prescribed as to—

(a) the educational provision made or proposed to be made for students of the college (including students with learning difficulties);

(b) the educational achievements of such students while students of the college (including the results of examinations, tests and other assessments);

(c) the careers of such students after leaving the college; and

(d) the facilities provided or proposed to be provided for students of the college who have learning difficulties and disabled staff of the college.

(2) For the purposes of subsection (1)(c) above, a person's career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—

(a) the numbers of students not undertaking any career; and

(b) the persons providing students with education, training or employment.

(3) The information shall be published in such form and manner and at such times as may be prescribed.

(4) The published information shall not disclose the name of any student to whom it relates without the prior consent, given in writing, of such student.

Commencement Information

I20 S. 27 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

CHAPTER IV

TRANSITORY AND TRANSITIONAL PROVISIONS

Property and contracts

28 Control of disposal of certain land etc.

(1) This section applies to any land which, at any time during the period beginning on 22nd March 1991 and ending on the first transfer date, was owned, held, used or obtained by an education authority wholly or partly for or in connection with the purposes of a college of further education which, at any time during that period—

(a) was under the management of the education authority (whether or not any functions had been delegated to a college council in pursuance of a delegation scheme under section 56 of the 1989 Act); and

(b) was providing at least one full-time programme of further education.

(2) Subject to subsections (3) and (5) below, an education authority shall not dispose of or enter into any agreement or unilateral obligation for the disposal of any land to which this section applies without the prior consent, given in writing, of the Secretary of State.

(3) The consent of the Secretary of State is not required for the disposal of any land in pursuance of any requirement of an order of any court, anything in any enactment (including an enactment contained in a subordinate instrument) or any rule of law.

(4) Any consent for the purposes of this section may be given—

(a) either in respect of a particular disposal or in respect of disposals of any class or description; and

(b) either unconditionally or subject to conditions.

(5) Nothing in this section shall affect anything required to be done by an education authority in pursuance of an obligation entered into by them before 22nd March 1991 and, if the obligation is a unilateral obligation, notified by them to the beneficiary before that date.

(6) This section shall have effect notwithstanding anything in section 74 of the [M3]Local Government (Scotland) Act 1973 or in any other enactment (including an enactment contained in a subordinate instrument) relating to the disposal of land held by a local authority.

Commencement Information

I21 S. 28 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Marginal Citations

M3 1973 c. 65.

29 Control of disposal and removal of other property.

(1) This section applies to all property to which section 28 of this Act does not apply which, at any time during the period beginning on 22nd March 1991 and ending on the first transfer date, was owned, held, used or obtained by an education authority wholly or partly for or in connection with the purposes of a college such as is mentioned in that section.

(2) Subject to subsections (3) and (5) below, an education authority shall not, without the prior consent, given in writing, of the Secretary of State—

(a) dispose of or enter into any agreement or unilateral obligation for the disposal of; or

(b) remove or cause to be removed or enter into any agreement or unilateral obligation for the removal from any premises owned, held, used or obtained by them wholly or partly for or in connection with the purposes of such a college of,

Status: *Point in time view as at 03/10/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part I. (See end of Document for details)*

any property to which this section applies.

(3) The consent of the Secretary of State is not required for the disposal or removal of any property in pursuance of any requirement of an order of any court, anything in any enactment (including an enactment contained in a subordinate instrument) or any rule of law.

(4) Any consent for the purposes of this section may be given—
  (a) either in respect of a particular disposal or in respect of disposals of any class or description; and
  (b) either unconditionally or subject to conditions.

(5) Nothing in this section shall affect anything required to be done by an education authority in pursuance of an obligation entered into by them before 22nd March 1991 and, if the obligation is a unilateral obligation, notified by them to the beneficiary before that date.

Commencement Information
I22 S. 29 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

30 Restriction on education authority entering into certain contracts.

(1) This section applies to any contract which—
  (a) is entered into by an education authority after 21st March 1991 and before the first transfer date; and
  (b) would, if the college were prescribed under section 11 of this Act, be binding on the board of management of the college of further education with effect from the first transfer date.

(2) Notwithstanding any other provision of this Part of this Act, an education authority shall not enter into a contract to which this section applies without the prior consent, given in writing, of the college council for the college.

(3) Without prejudice to section 28 or 29 of this Act, an education authority shall not enter into a contract to which this section applies in respect of which the consideration or, where the consideration is not expressed as an amount of money, the value of the consideration exceeds £50,000 without the prior consent, given in writing, of the Secretary of State.

(4) For the purposes of subsection (3) above, the consideration or value of the consideration in respect of a contract of employment exceeds £50,000 if, in respect of any period of 12 months, the aggregate amount of the remuneration payable to and value of other benefits receivable by the employee exceeds £50,000.

(5) Any consent for the purposes of this section may be given in respect of a particular contract or in respect of contracts of any class or description; and such consent may be given unconditionally or subject to conditions.

(6) Where any contract entered into by an education authority whether on, before or after 21st March 1991 is varied after that date and the effect of such variation is as mentioned in paragraph (b) of subsection (1) above, the contract shall be treated, for the purposes of this section, as if it were a contract entered into after that date.

Commencement Information

I23 S. 30 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Enforcement of sections 28 to 30

31 Disposals and contracts without consent.

(1) This section and section 32 of this Act shall have effect in the case of any disposal or removal made by an education authority or any agreement or unilateral obligation for such disposal or removal entered into in contravention of section 28 or 29 of this Act or any contract entered into by them in contravention of section 30 of this Act.

(2) Where any land to which section 28 of this Act applies is disposed of by an education authority in contravention of that section, the board of management may, with the consent of the Secretary of State, compulsorily acquire the land.

(3) In any case where an education authority—

(a) has agreed to a disposal of land in contravention of section 28 of this Act; or

(b) has agreed to a disposal of other property or to the removal of any such property in contravention of section 29 of this Act; or

(c) has entered into a contract in contravention of section 30 of this Act; or

(d) has entered into a unilateral obligation to dispose of or remove any property in contravention of the said section 28 or 29,

and the agreement, contract or other obligation, has not been implemented, or has been implemented only in part, then to the extent that it has not been so implemented, the board of management may repudiate the agreement, contract or obligation in accordance with subsection (4) below.

(4) A repudiation under subsection (3) above shall be effected by the board of management serving notice in writing of the repudiation on the education authority and—

(a) in the case of an agreement or contract, on the parties to the agreement or contract and any other person who is a beneficiary under the agreement or contract;

(b) in the case of a unilateral obligation, on any beneficiary under the obligation.

(5) A repudiation under subsection (3) above shall have effect as if made by the education authority.

(6) The [M4]Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section as if this section had been in force immediately before the commencement of that Act and, in relation to such acquisition, the board of management shall be treated as if they were a local authority within the meaning of that Act.

(7) For the purposes of a compulsory acquisition of land under this section, the board of management shall be treated as a public authority for the purposes of **[**[F18]section 195 of the Town and Country Planning (Scotland) Act 1997**]** (general vesting declarations on compulsory acquisition).

Status: *Point in time view as at 03/10/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part I. (See end of Document for details)*

(8) For the purposes of this section and section 32 of this Act, references to the board of management shall be construed as references to—

(a) in the case of land disposed of in contravention of section 28 of this Act, the board of management of the college of further education for or in connection with the purposes of which the land was owned, held, used or obtained;

(b) in the case of other property disposed of or removed in contravention of section 29 of this Act, the board of management of the college of further education for or in connection with the purposes of which the property was owned, held, used or obtained; and

(c) in the case of a contract entered into in contravention of section 30 of this Act, the board of management of the college of further education which would, by virtue of section 16 of this Act, be bound by the contract,

and any reference in this subsection to the disposal of land or to the disposal or removal of other property shall include a reference to an agreement or unilateral obligation for such disposal or removal.

Textual Amendments

F18 Words in s. 31(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 52**

Commencement Information

I24 S. 31 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Marginal Citations

M4 1947 c. 42.

32 Recovery of loss and damages.

(1) Where an education authority has, in relation to any college of further education, done or permitted anything to be done in contravention of anything in sections 28 to 30 of this Act, the board of management of the college shall be entitled to recover from the education authority the amount of any loss or damage, as determined in accordance with this section, incurred by the board in consequence of—

(a) the doing of that thing; and

(b) any action taken by the board in pursuance of section 31 of this Act,

and the board of management may raise proceedings for the recovery of the amount of such loss or damage.

(2) The loss or damage referred to in subsection (1) above includes—

(a) where any land is compulsorily acquired in pursuance of subsection (2) of the said section 31, the amount of compensation paid in respect of such compulsory acquisition;

(b) in the case of any land which is not so acquired, the amount of the value of the land assessed as at the first transfer date;

(c) in the case of an agreement, contract or unilateral obligation which has been repudiated in pursuance of subsection (3) of the said section 31, the amount of any loss suffered by the board of management in consequence of the repudiation;

(d) in the case of an agreement, contract or unilateral obligation which has not been so repudiated, the amount of any loss sustained by the board of management in consequence of the implementation of the contract;

(e) in any case, any other loss or any expenses incurred by the board of management in consequence of the disposal or removal of property or an agreement, contract or unilateral obligation having been made or entered into,

together with interest on such amount or expenses from, in the case of loss or damage referred to in paragraph (b) above, the first transfer date and in any other case, such date after that date when the loss or damage occurred.

Commencement Information

I25 S. 32 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

33 Avoidance of certain contractual terms.

(1) This section applies to any contract made during the period commencing on 4th November 1991 and ending on the day before the first transfer date (or made before but varied during that period) between an education authority and a person to whom this section applies, not being a contract made in contemplation of the employee's pending dismissal by the authority by reason of redundancy.

(2) This section applies to a person if—

(a) it is a condition of his contract of employment that he is employed to work exclusively at a college of further education under the management of the authority (whether or not any functions have been delegated to the college council for the college in pursuance of a delegation scheme under section 56 of the 1989 Act), being a college which at any time during the period beginning with 4th November 1991 and ending on the date the contract was made or, as the case may be, varied was providing at least one full-time programme of further education; or

(b) it is not such a condition of his contract of employment, but the terms of his contract are such that the authority is entitled to assign him to work at a college such as is mentioned in paragraph (a) above during the period mentioned in subsection (1) above.

(3) In so far as any contract to which this section applies provides that the employee—

(a) shall not be dismissed by reason of redundancy; or

(b) if he is so dismissed, shall be paid a sum in excess of the sum which the employer is liable to pay to him under section 81 of the [M5]Employment Protection (Consolidation) Act 1978,

the contract shall be void and of no effect.

Commencement Information

I26 S. 33 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Marginal Citations

M5 1978 c. 44.

Transitional

34 Transitional provisions as regards college councils.

(1) This section shall apply to the college council of every college of further education prescribed by order made under section 11 of this Act.

(2) During the transitional period a college council to which this section applies shall, subject to subsection (4) below, have such of the powers to be conferred by this Part of this Act on the board of management of the college—

(a) as are necessary or expedient to enable the college council to do anything they are required or enabled to do by this Part of this Act in connection with the transfer of the management of the college from the education authority to the board of management; and

(b) as will facilitate or enable the effective carrying on by the board of management of their functions after the first transfer date.

(3) In this section and in Schedules 5 and 6 to this Act, "the transitional period" in relation to the college council for a college of further education is the period beginning with such date as the Secretary of State may by order prescribe for the college and ending on the first transfer date.

(4) Subject to paragraph 1 of Schedule 5 to this Act, nothing in this section shall authorise a college council to enter into a contract of employment with any person.

(5) This section is without prejudice to Part II of the 1989 Act or any regulations made thereunder; but nothing in that Part or such regulations shall affect the exercise by any college council of any power or duty conferred on them by this Part of this Act.

(6) Nothing in section 58 of the 1989 Act (which makes provision as to the status of college councils, immunity from personal liability for members of college councils and the relationship for certain purposes of college councils to education authorities) shall apply to anything done or omitted to have been done by a college council or by any member of a college council under or in pursuance of this section.

(7) Schedule 5 to this Act, which makes provision for the transitional period as regards every college council to which this section applies, shall have effect.

(8) With effect from the date prescribed in pursuance of subsection (3) above, for the purposes of the determination of the composition of every college council to which this section applies—

(a) sections 54(4) and (5) and 55(2)(a), (b) and (c) of the 1989 Act and regulations 5, 6, 7 and 8 of the [M6]College Council (Scotland) (No. 2) Regulations 1990 (provisions as to the composition of college councils) shall cease to have effect; and

(b) Schedule 6 to this Act, which contains provision as to the composition of college councils during the transitional period, shall have effect.

Commencement Information

I27 S. 34 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Marginal Citations
M6 S.I. 1990/1637.

CHAPTER V

GENERAL

35 Service of documents etc.

(1) Any notice or document required or authorised to be given to or served on any person under or by virtue of this Part of this Act may be given or served—
  (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body; or
  (c) if the person is a firm, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the firm.

(2) For the purposes of this section and of section 7 of the [M7]Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
  (a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;
  (b) in the case of service on a firm or a partner or a person having the control or management of a firm it shall be the address of the principal office of the firm,

  and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a firm carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) If the name or address of any owner or occupier of land on whom any notice or document is to be given or served under or by virtue of this Part of this Act cannot, after reasonable inquiry, be ascertained, the notice or document may be given or served—
  (a) by addressing it to him as "the owner" or, as the case may be, "the occupier" of the land (which shall be described on the notice or document); and
  (b) by leaving it either in the hands of a person who is or appears to be resident or employed on the land or conspicuously affixed to some building or object on or near the land.

(4) This section shall not apply to any notice or document in relation to the service of which provision is made by rules of court.

(5) In this section "secretary", in relation to a local authority within the meaning of the [M8]Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

Commencement Information
I28 S. 35 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Status: *Point in time view as at 03/10/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part I. (See end of Document for details)*

Marginal Citations

M7 1978 c. 30.

M8 1973 c. 65.

36 Interpretation of Part I.

(1) In this Part of this Act and in Part I of Schedule 8 to this Act, unless the context otherwise requires—

"the 1989 Act" means the [M9]Self-Governing Schools etc. (Scotland) Act 1989;

"board of management" means a body corporate established in pursuance of section 3(2), 11(2), 13(2) or 14(3) of this Act, and references to "board" shall be construed accordingly;

"college of further education" means an educational establishment by which further education is provided;

"dispose" includes sell, transfer, grant, vary, create or extinguish any real right in, over or in respect of land; and "disposal" shall be construed accordingly;

"the first transfer date" has the meaning given by section 11 of this Act;

"further education" has the meaning given by section 1 of this Act;

"interest in land" means any estate in land or any right in or over land, including any right to occupy or to use land or to restrict the occupation or use of land; and

"land" includes, without prejudice to the meaning given to it by Schedule 1 to the Interpretation Act 1978, an interest in land within the meaning of this section.

(2) Any reference in this Part of this Act to a person who has a learning difficulty shall be construed in accordance with section 1(4) of this Act.

(3) Subject to subsection (1) above, expressions used in this Part of this Act and in the 1980 Act or the 1989 Act (or in both of those Acts) shall, unless the context otherwise requires, have the same meaning in this Part of this Act as in that Act.

Commencement Information

I29 S. 36 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

Marginal Citations

M9 1989 c. 39.

Status:
Point in time view as at 03/10/2005.

Changes to legislation:
There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part I.