



Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART I

FURTHER EDUCATION

CHAPTER III

COLLEGES OF FURTHER EDUCATION

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

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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

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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

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

[^{F1}15A Collective bargaining framework for college staff

- (1) Before making regulations under section 3(6) of this Act which prescribe requirements which relate to collective bargaining arrangements in respect of any contracts entered into in pursuance of section 12(2)(h)(i) of this Act, the Scottish Ministers must—
 - (a) establish an advisory committee, to be known as the National Pay and Conditions Advisory Committee for Scotland's Colleges, for the purpose of making recommendations to them, by such time as they may specify, about—
 - (i) the outcomes which the regulations should seek to achieve; and
 - (ii) how the regulations should seek to achieve those outcomes; and
 - (b) have regard to any recommendations made by the committee.
- (2) When making any such regulations, the Scottish Ministers must have regard to the desirability of ensuring that the regulations are framed in accordance with any guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS) which relates to the form of schemes which govern how employees' terms and conditions may be negotiated or determined.
- (3) A committee established under subsection (1)(a) above is to be comprised of—
 - (a) 4 persons who appear to the Scottish Ministers to be representative of the interests of boards of management;
 - (b) 4 persons who appear to the Scottish Ministers to be representative of the interests of trade unions recognised by boards of management or who otherwise appear to them to be representative of the teachers and other staff employed by boards of management;
 - (c) a person appointed by the Council (such person being a member of the Council or an employee of the Council); and
 - (d) other persons appointed by the Scottish Ministers.
- (4) The Scottish Ministers may—
 - (a) make or authorise the Council to make further provision about the constitution, remit or procedure of the committee;
 - (b) provide or authorise the Council to provide the committee with financial or other support (including by paying allowances to members of the committee in respect of expenses).]

Textual Amendments

F1 S. 15A inserted (13.1.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), ss. 18, 23(2); S.S.I. 2013/348, art. 2, Sch.

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