



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

Status: This is the original version (as it was originally enacted).

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.