

1990 No. 1637 (S.163)

EDUCATION, SCOTLAND

**The College Councils (Scotland) (No.2) Regulations
1990**

<i>Made</i> - - - -	<i>6th August 1990</i>
<i>Laid before Parliament</i>	<i>20th August 1990</i>
<i>Coming into force</i>	<i>15th September 1990</i>

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The Secretary of State, in exercise of the powers conferred on him by sections 54(3) and (5), 55(2), 56(4), 57(2) and 78 of the Self-Governing Schools etc. (Scotland) Act 1989(a), as read with section 80(1)(b) of that Act, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I

CITATION, COMMENCEMENT, INTERPRETATION AND REVOCATION

Citation and commencement

1. These Regulations may be cited as the College Councils (Scotland) (No.2) Regulations 1990 and shall come into force on 15th September 1990.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them—

“academic year” means the period of 12 months commencing on 1st August in any calendar year;

“college” means a college of further education;

“college development plan” shall be construed in accordance with regulation 13(1)(a);

“community education” means such further education as is referred to in section 1(5)(b)(iii) of the Education (Scotland) Act 1980(c);

“financial year” means the period of 12 months commencing on 1st April in any calendar year, so however that for the purposes of these Regulations the first financial year shall be the period of 12 months commencing on 1st April 1991;

“local authority” has the meaning assigned to it by section 235(1) of the Local Government (Scotland) Act 1973(d);

“personnel management” includes the training, career development and appraisal of the staff of a college;

“premises” includes any land or building;

“staff member” means a member of the college council, other than the principal, who is employed at the college or was so employed at the time of his appointment;

“student load” means, in respect of an academic year, the figure calculated by adding together the number of hours of attendance required of all students at the college (including where open and flexible learning arrangements apply to any student the number of hours of attendance at college which otherwise would have been required for the student to complete a course) and dividing the total by 800;

“student member” means a member of the college council who is a student at the college or was such a student at the time of his appointment;

(a) 1989 c.39.

(b) See the definition of “prescribed” in section 80(1).

(c) 1980 c.44; section 1(5)(b)(iii) was amended by the Local Government and Planning (Scotland) Act 1982 (c.43), Schedule 3, paragraph 37(b) and Schedule 4, Part I and by S.I. 1982/1397, Schedule 2.

(d) 1973 c.65.

“the Act” means the Self-Governing Schools etc. (Scotland) Act 1989(a).

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number.

Revocation

3. The College Councils (Scotland) Regulations 1990(b) are hereby revoked.

PART II

COLLEGE COUNCILS

Disapplication of requirement to establish a college council

- 4.—(1) Section 54(1) of the Act shall not apply to any college if—
 - (a) the college, at the date by which a college council would require to be established under section 54(1), will be administered either as part of a school or wholly or mainly for the provision of community education; or
 - (b) it appears to the education authority that the average student load of the college, calculated in accordance with paragraph (2), is less than 100.
- (2) The average student load shall be calculated, for the purposes of paragraph (1)—
 - (a) in the case of a college which, at the date by which a college council would require to be established under section 54(1), will have existed for at least 3 complete academic years since its establishment or amalgamation, by calculating the student load for each of the last 3 complete academic years and taking the average of those student loads;
 - (b) in the case of a college which, at that date, will have existed for less than 3 complete academic years since its establishment or amalgamation, by calculating the student load for each complete academic year since its establishment or amalgamation, estimating the expected student load for the subsequent academic year, and taking the average of those student loads.
- (3) Section 54(2) of the Act shall not apply to any college if—
 - (a) the education authority propose that on being established or amalgamated the college will be administered either as part of a school or wholly or mainly for the provision of community education; or
 - (b) it appears to the education authority that the student load for the first whole academic year in which the college will be fully in operation is likely to be less than 100.

Composition of college councils

5. A college council, in addition to satisfying the requirements of section 54(5)(a) of the Act, shall include within their membership not less than—

- (a) one member who is a student at the college;
- (b) one member from the teaching staff employed at the college; and
- (c) one member employed at the college who is not one of the teaching staff:

Provided that where a college council are established at a time when there are no students in attendance at the college either by reason of a college vacation, or because, in the case of a new or amalgamated college, the students have not yet first enrolled at the college, the requirement of paragraph (a) above shall not apply until, following the resumption or commencement, as the case may be, of student attendance at the college, it is reasonably practicable for that requirement to be satisfied.

(a) 1989 c.39.

(b) S.I. 1990/183.

Duration of college council appointments

6.—(1) Subject to paragraph (3), appointments of college council members other than the principal of the college and members who are students shall be for a period of 4 years.

(2) Appointments of college council members who are students shall be for a period of 1 year.

(3) One half of the members to whom paragraph (1) applies (chosen by agreement among them or, failing agreement, by lot) of the first college council established for each college after these Regulations come into force shall retire after 2 years' membership.

(4) Where there is an odd number of members to whom paragraph (1) applies the requirements of paragraph (3) shall be satisfied by the retirement of the largest number less than half.

(5) A member of a college council, other than the principal of the college, may resign at any time by giving notice in writing to the education authority or to the secretary of the college council.

Procedure for filling casual vacancies

7.—(1) Where a casual vacancy occurs in the membership of a college council the education authority shall appoint a person to fill the vacancy, and in so doing shall comply with the requirements of section 54(5) of the Act.

(2) A person who fills a casual vacancy shall do so only until the end of the period during which the member he replaces would have been a member.

(3) Prior to filling a casual vacancy the education authority shall consult only such interests as they deem appropriate in the circumstances.

(4) The education authority shall (subject to paragraph (5)) fill casual vacancies as soon as possible and in any event no later than 6 months after the vacancy occurs.

(5) Casual vacancies which occur within 6 months of the end of the period of membership of the person whose place is vacant need not be filled.

Disqualification from membership

8.—(1) A person shall be disqualified from becoming or remaining a member of a college council if—

- (a) he is a person who would be disqualified for seeking election as, or for being, a member of a local authority by virtue of subsection (1)(b) (as read with subsections (2) and (3)) or subsection (1)(c) of section 31 of the Local Government (Scotland) Act 1973(a);
- (b) he is subject to legal incapacity (except where he is aged 16 years or more and no cause of legal incapacity other than minority exists or occurs); or
- (c) being a person who has been nominated by an employer, or by an employer organisation, for appointment to the college council in accordance with section 54(5)(a)(ii) of the Act, he is a full-time student at the college, or a member or employee of a local authority,

and the education authority shall declare vacant the place of a member so disqualified.

(2) A person shall be disqualified from remaining a member of a college council and the education authority shall declare his place vacant if he—

- (a) fails to attend all meetings both of the college council and of any committee of the college council to which he has been appointed during a period of 6 months, without the consent of the college council;
- (b) is unable, due to physical or mental illness or incapacity, to perform his duties as a member of the college council;
- (c) has failed to comply with the requirements of regulation 9(2) or (7).

(3) The education authority may declare that a person shall cease to be a member of a college council, and in such case shall declare his place vacant, if —

(a) 1973 c.65; section 31(2) was amended by the Bankruptcy (Scotland) Act 1985 (c.66), Schedule 7, paragraph 12.

- (a) being a student or a staff member, he has ceased to be a student or to be employed, as the case may be, at the college; or
- (b) being a member who, when he was appointed, was a member or employee (other than a person employed at any educational establishment) of either the education authority or any other local authority, he has ceased to be such a member or employee, as the case may be,

for a period of at least 6 months.

(4) A retiring member of a college council shall not be disqualified (by reason of such retirement) from further election.

Meetings and proceedings of college councils

9.—(1) Subject to paragraphs (2) to (5), the principal of a college may attend and speak at any meeting of a committee of the college council, but shall not be entitled to vote at any such meeting unless he is a member of the committee.

(2) Subject to paragraph (4), any member who becomes aware before or during any meeting of the college council or committee thereof that he or any person connected with him has, directly or indirectly, an interest or duty relevant to the matter under discussion which is material and which conflicts or may conflict with the interests of the council shall declare such interest and shall not then attend or take part in discussion of, or vote upon, that matter.

(3) For the purposes of paragraph (2), a person is connected with a council member in the circumstances specified, in respect of directors of companies, in section 346 of the Companies Act 1985(a).

(4) Paragraph (2) shall not apply to the principal of the college, or a staff or student member, in respect of any interest or duty which he has relevant to the matter under discussion solely by reason of being principal or an employee or student at the college, or a representative of such employees or students.

(5) A member of a college council who is the principal of the college, or a staff or student member, shall not at any meeting of the council or committee thereof attend or take part in the discussion of any matter relating to—

- (a) in the case of the principal, his terms of employment, his suspension, dismissal or any other disciplinary measures in relation to him, or the appointment of his successor;
- (b) in the case of a staff member, his terms of employment, or those of a group of employees to which he belongs, his promotion, suspension, dismissal or any other disciplinary measures in relation to him;
- (c) in the case of a student member—
 - (i) his academic performance or any disciplinary measures in relation to him; or
 - (ii) the terms of employment of any person employed at the college, that person's promotion, suspension, dismissal or any other disciplinary measures in relation to him,

unless invited to do so by virtue of a resolution of the other members of the council or committee, as the case may be, present at the meeting; and any such person who is so invited shall not vote upon any matter discussed.

(6) The Director of Education, or an officer of his education authority nominated by him for the purpose, shall be entitled to attend and speak at any meeting of a college council, or committee thereof, in the authority's area, but shall not be entitled to vote at any such meeting unless he is a member of the college council or committee thereof which is holding the meeting.

(7) Any information presented in confidence to a college council or any matter discussed in confidence at a meeting of a college council, or committee thereof, shall be treated as confidential to the college council by any person—

- (a) to whom such information has been presented; or
- (b) who was present during any such discussion of it.

(a) 1985 c.6.

Availability of documents relating to college council proceedings

10.—(1) Subject to paragraph (2), a college council shall, as soon as practicable, make available at the college for inspection by any person who wishes to see it a copy of each of the following documents:—

- (a) the agenda for every meeting of the council;
- (b) the draft minutes of every such meeting if they have been approved by the chairman of the meeting;
- (c) the minutes of every such meeting as approved by the council; and
- (d) any report or other document considered at such a meeting.

(2) There may be excluded from any document required to be made available under paragraph (1) anything relating to the following subjects:—

- (a) a particular person employed at, formerly employed at, or who has applied to be employed at, the college;
- (b) a particular person who is, has been, or is likely to be, a student at the college;
- (c) any information which the council are legally obliged not to disclose; and
- (d) any information or matter which requires to be treated as confidential in accordance with regulation 9(7), or which the council are satisfied should be so treated because of its commercial or other confidential nature.

(3) This regulation shall apply to a committee of a college council as it applies to a college council.

PART III

DELEGATION OF FUNCTIONS TO AND FINANCING OF COLLEGE COUNCILS

Delegation schemes

11. Subject to regulations 12 and 13 and to section 56(2) of the Act, the functions delegated by a delegation scheme shall include—

- (a) the management, supervision and financial control of the college, which, without prejudice to the foregoing generality, shall include—
 - (i) the provision of further education at the college, including the selection of the courses of further education to be provided at the college and any qualifications to which those courses would lead, in respect of the range of subjects which the education authority have determined is to be provided at the college;
 - (ii) the use (including the determination of any change of use for the purposes of the college), management and maintenance of all premises of the college, including the hiring out of any such premises other than by way of lease;
 - (iii) the acquisition, holding, use, management, maintenance and disposal of all moveable property used or held for the purposes of the college; and
 - (iv) the selection, discipline, assignment and personnel management of the staff of the college and the determination of the complement and grading of the posts of such staff;
- (b) the supply of goods and services through the college, whether by virtue of section 61 of the Act or in pursuance of any other powers exercisable by the education authority; and
- (c) the formation of companies under section 1 of the Companies Act 1985(a) whether by virtue of the said section 61 or otherwise so far as is calculated to facilitate or is conducive or incidental to the discharge of any functions delegated in accordance with paragraph (b).

(a) 1985 c.6.

Exclusions from delegation schemes

12. The functions delegated by a delegation scheme shall not include—
- (a) the determination of the range of subjects in respect of which provision of further education is to be made at the college in any academic year (without prejudice to the right of the college council to select the courses to be provided, and any qualifications to which those courses would lead, within that range of subjects);
 - (b) the issue of final warnings of dismissal to staff of the college; or
 - (c) the structural alteration or structural repair of the premises of the college.

Conditions of delegation

13.—(1) Conditions subject to which functions are delegated by a delegation scheme shall include conditions to the following effect:—

- (a) the college council shall before the beginning of each financial year, submit to the education authority a college development plan, which shall contain a statement of—
 - (i) the number of students expected to be in attendance at the college;
 - (ii) the courses of further education which they propose to provide, in respect of the range of subjects which the education authority have determined is to be provided at the college, and any qualifications to which those courses would lead;
 - (iii) any other activities which they propose should be undertaken in respect of the college; and
 - (iv) the estimated expenditure and income in respect of the college,for the period of each of at least 3 consecutive academic years, the first of which shall commence in that financial year;
- (b) the college council shall, when preparing each college development plan, have regard to any policy of the education authority in respect of the provision of further education in the area of the authority and to any guidance issued by the Secretary of State in respect of the provision of further education and the qualifications to which courses of further education should lead;
- (c) each college development plan shall require to be approved by the education authority and for the purposes of such approval may be modified by the education authority, and once so approved shall in respect of each academic year to which it applies supersede any previous such plan applying to that year;
- (d) the college council shall, in the exercise of their functions, have regard to the current college development plan approved by the education authority;
- (e) the function of the supply of goods and services through the college may be exercised by the education authority to such extent as the college council and the education authority may at any time agree;
- (f) where the college council exercise the function of selecting a person to hold the post of principal of the college they shall first submit to the education authority a short list of the names of candidates for that post, which the education authority may approve, with or without modification, or reject in whole, save that no such modification shall reduce the short list to less than three names, or, where the short list contained less than three names, to less than that number of names;
- (g) such functions as the college council exercise in respect of the staff of the college which could result in the education authority making such staff redundant, or otherwise dismissing them, or agreeing to their early retirement, shall be exercised in accordance with any policy of the education authority on redundancies, dismissals and early retirement;
- (h) where the college council exercise the function of the discipline, including the suspension, of the staff of the college, they shall—
 - (i) have regard to any guidance issued by the education authority on disciplinary procedure;
 - (ii) ensure that each member of staff has a right of appeal to the college council in respect of any disciplinary decision, or any decision relating to a grievance, taken in respect of him by the principal of the college; and
 - (iii) in the case of the principal of the college, exercise that function only to the extent of issuing, an oral warning or reprimand;

- (i) where the college council exercise the function of the personnel management of the staff of the college, they shall do so in accordance with any guidance issued by the education authority in respect of that function;
- (j) where the college council exercise the function of the use, management and maintenance of the premises of the college they shall, save to the extent that works are required to effect any structural alteration or structural repair, ensure that such premises are kept in a state of repair satisfactory to the education authority; and
- (k) the college council shall, in respect of each academic year, and as soon as practicable after the conclusion of that year, submit to the education authority a report on the exercise of their functions in respect of the college and shall make that report available to the public.

(2) No condition subject to which functions are delegated by a delegation scheme shall have the effect of—

- (a) requiring any course of further education provided by the college council, or the selection of any qualifications to which those courses would lead, to be approved by the education authority;
- (b) permitting the education authority to exercise any such function by reason solely of their modification of or refusal to approve a proposal in a college development plan in respect of the exercise of that function by the college council;
- (c) requiring the college council to use the services of a local authority; or
- (d) restricting the college council from spending, as they see fit for the purposes of the college, such money as the education authority make available to them in accordance with section 57 of the Act; save that such a condition may require the college council, in respect of any part of a sum determined by the education authority under that section which the authority have identified as being required for the purposes of capital expenditure, to spend that part of the sum solely for those purposes.

Financing of college councils

14.—(1) In determining in respect of each financial year the sum of money required by each college council in their area, in accordance with section 57(1) of the Act, the education authority shall, subject to paragraph (2), have regard to the most recent college development plan approved by them in respect of each academic year which falls partly within that financial year and shall determine—

- (a) which activities of the college council it is appropriate to fund;
- (b) the extent to which it is appropriate to fund each of those activities;
- (c) the basis for the calculation of the funding in respect of each of those activities to that extent, whether determined on the basis of the student load or on such other basis as appears to them appropriate; and
- (d) the reasonable cost of providing each of those activities to that extent and on that basis, determined in such manner as appears to them appropriate,

and the sum of those costs together with the costs determined by the education authority in respect of the administrative expenses and other outgoings of the college council shall be the sum determined.

(2) In determining that sum the education authority shall not take into account any income of the college council, whether in the nature of cash or some other benefit, which the college council have received by way of gift, or any income which is derived from any such gift.

(3) As soon as practicable after the education authority have made their determination of that sum, they shall inform the college council of that determination and of how it was calculated, including a statement of each determination they have made in accordance with paragraph (1).

Right to retain gifts

15. A college council may retain the whole of any gift received by them.

Application of Part III of Regulations

16.—(1) This Part of these Regulations, other than regulations 14(2) and 15 and this regulation, shall not apply in respect of any college council where it appears to the education authority that—

- (a) the average student load of the college, calculated in accordance with regulation 4(2), is less than 150 at the date when these Regulations come into force;
- (b) the student load for the first whole academic year in which the college will be fully in operation is likely to be less than 150; or
- (c) the average student load of the college, calculated as the average of the student loads for each of the last 3 complete academic years, is less than 150 at the expiry of any academic year at a time not less than 3 years after a delegation scheme has first been made in respect of the college council in accordance with this Part of these Regulations.

(2) Where, in accordance with paragraph (1) and to the extent therein specified, this Part of these Regulations does not apply in respect of a college council, the reference in regulation 14(2) to "that sum" shall be construed as a reference to the sum which is to be determined for the college council in respect of each financial year in accordance with section 57(1) of the Act.

St Andrew's House, Edinburgh
6th August 1990

Ian Lang
Minister of State,
Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of the establishment of new college councils for colleges of further education under the management of education authorities in Scotland, the delegation of functions by those education authorities to such college councils and the financing of such college councils by those authorities.

Part II of the Regulations is concerned with the new college councils which, in accordance with Part II of the Self-Governing Schools etc. (Scotland) Act 1989, require to be established. It restates, with amendments, the provisions of the College Councils (Scotland) Regulations 1990, which are revoked by these Regulations. Part II provides for certain exemptions from the requirement to establish a college council. Provision is also made regarding the composition of college councils, the duration of appointments to them, the filling of casual vacancies, the grounds for disqualification of members, and the meetings and proceedings of councils and their committees, including the availability of documents relating to such meetings and proceedings.

The principal changes made by Part II, compared to the previous Regulations, are that: the exemptions from the requirement to establish a college council have been extended to include a college which is administered wholly or mainly for the provision of community education; the requirement that at least one student be appointed to a college council has been qualified such that, where a college council are established during a vacation, or in respect of a new or amalgamated college, the appointment need not be made until after the student body has resumed or commenced, as the case may be, their attendance at the college; the disqualifications from membership of a college council have been extended to provide that a person nominated by an employer or employer organisation may not be a full-time student at the college or a member or employee of a local authority, and to provide that the education authority may declare that a person shall cease to be a member of a college council if, being a student or a staff member, he has ceased to be a student or to be employed, as the case may be, at the college or, being a member who when he was appointed was a member or employee of a local authority, has ceased to be such a member or employee, and if in any such case that person has ceased to be so for a period of at least 6 months; additional provision has been made regarding the circumstances in which the principal of the college or a staff or student member is restricted from participating in council or committee meetings; the Director of Education, or his nominee, has been given a right to attend council or committee meetings; and provision has been made to require the college council, and any committee thereof, to make available for public inspection certain documents relating to their proceedings.

Part III of the Regulations deals with the delegation of functions by education authorities to college councils and the financing of such councils. Section 56(1) of the Self-Governing Schools etc. (Scotland) Act 1989 requires education authorities in Scotland to make delegation schemes delegating functions to college councils of colleges of further education. Subject to Regulations and the Act, it is for the education authority to determine what functions may be delegated and the conditions of delegation. Part III of the Regulations provides that the delegation scheme must include certain functions and exclude others; that it must include certain conditions of delegation and exclude others. Those provisions do not attempt to prescribe the whole terms of the delegation scheme. Part III also provides rules in respect of the financing of college councils by education authorities and makes provision for college councils to retain gifts.

Regulation 4 provides that councils need not be established where the college is administered as part of a school or wholly or mainly for the provision of community education, or where the average student load is less than 100. Provision is made for calculating the average student load.

Regulation 5 provides that the membership of a college council must include at least one student, one member of the college teaching staff, and one member of the non-teaching staff of the college. A proviso is made to regulation 5 to the effect that where a college council is established during a vacation, or in respect of a new or amalgamated college, the requirement that at least one student be appointed to the college council is postponed until it is reasonably

practicable to make such an appointment after the resumption or commencement, as the case may be, of the students' attendance at the college.

Regulations 6, 7 and 8 regulate the duration of college council appointments, the filling of casual vacancies, and the grounds for disqualification from membership.

Regulation 9 provides for the principal of a college to attend and speak at the meetings of college council committees of which he is not a member. That is subject to the qualification that any member of a college council, including the principal, is barred from participating in any council or committee business where he has a personal interest which may conflict with that of the council. It is also provided, however, that the bar does not apply to the principal or a staff or student member in respect of any interest or duty, relevant to the matter under discussion, which he has solely by reason of being principal or an employee or student at the college. But regulation 9 also provides that in specified circumstances, relating to the subject matter under discussion, the principal or a staff or student member must not attend or take part in a council or committee meeting without being invited to do so and under the restriction of not being allowed to vote on the matter discussed. Further, it provides for the Director of Education, or his nominee, to attend and speak at any council or committee meeting. It also preserves the confidentiality of information which is received in confidence by a council, or is so discussed at a council or committee meeting.

Regulation 10 requires a college council, or committee thereof, to make available for public inspection certain documents relating to their proceedings.

Regulation 11 prescribes those functions of an education authority which must be included in any delegation scheme made by an education authority in respect of a college council.

Regulation 12 prescribes those functions of an education authority which must not be included in any delegation scheme.

Regulation 13 prescribes the conditions which must be included in a delegation scheme and also prescribes those conditions which must not be imposed.

Regulation 14 provides rules in accordance with which an education authority is to carry out a determination under section 57(1) of the Self-Governing Schools etc. (Scotland) Act 1989 in respect of the annual funding of a college council.

Regulation 15 provides that where a college council have received a gift, they may retain the whole of that gift.

Regulation 16 provides that Part III of the Regulations, other than regulations 14(2), 15 and 16 itself, shall not apply in respect of a college council where: the average student load of the college is less than 150 at the date when these Regulations come into force; or where the student load for the first whole academic year in which the college will be fully in operation is likely to be less than 150; or where the average student load is less than 150 at the expiry of any academic year at a time 3 or more years after a delegation scheme first has been made in respect of the council.