



# Further and Higher Education (Scotland) Act 1992

## 1992 CHAPTER 37

An Act to make new provision about further and higher education in Scotland; and for connected purposes. [16th March 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### FURTHER EDUCATION

#### CHAPTER I

##### DUTIES IN RELATION TO FURTHER EDUCATION

#### **1 Duty of Secretary of State to secure provision of further education**

- (1) It shall be the duty of the Secretary of State to secure adequate and efficient provision of further education in Scotland.
- (2) In discharging his duty under subsection (1) above, the Secretary of State shall have regard to the requirements of persons over school age who have learning difficulties.
- (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.
- (4) Subject to subsection (5) below, for the purposes of subsection (2) above, a person has a learning difficulty if—

- (a) he has significantly greater difficulty in learning than the majority of persons over school age; or
  - (b) he suffers from a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for persons in colleges of further education.
- (5) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.
- (6) The Secretary of State shall, as soon as is practicable after the end of each calendar year, prepare a report as to the discharge of his duties under this Part of this Act; and he shall lay a copy of each such report before each House of Parliament.

## 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.”

## 3 Powers of Secretary of State

- (1) The Secretary of State shall have the power to do all that is necessary or expedient for the purposes of the exercise of his duty under section 1 of this Act, and in particular he 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.
- (4) The Secretary of State may by order, after such consultation as appears to him to be appropriate, change the name of any college of further education and of the board of management of the college.

- (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.

#### **4 Funding of further education**

- (1) The Secretary of State may—
  - (a) pay to the board of management of a college of further education in respect of any expenditure incurred or to be incurred by them in connection with their functions under or by virtue of this Part of this Act in relation to the college; and
  - (b) in order to facilitate the carrying out of his duty under section 1 of this Act, pay to such other persons as appear to him to be appropriate in respect of the expenditure of such persons incurred or to be incurred for the purposes of or in connection with the provision of further education,  
grants, loans or other payments of such amounts as he may determine.
- (2) A grant, loan or other payment paid under this section may be made subject to such conditions as the Secretary of State thinks appropriate and such conditions—
  - (a) may be imposed before, after or at the time such grant, loan or other payment is made; and
  - (b) may relate to any time, whether before or after such time.
- (3) The terms and conditions on which the Secretary of State may make any grants, loans or other payments under this section may include in particular conditions—
  - (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid,  
but shall not relate to the application by the person to whom the grants, loans or other payments are made of any sums derived otherwise than from the Secretary of State.
- (4) A condition imposed in pursuance of subsection (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

#### **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

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- (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.

## **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 Scottish Examination Board qualification; 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.

## **CHAPTER II**

### SCOTTISH FURTHER EDUCATION FUNDING COUNCIL

## **7 Scottish Further Education Funding Council**

- (1) The Secretary of State may by order establish a body corporate to be known as “the Scottish Further Education Funding Council” (referred to in this Part of this Act as the “Funding Council”).
- (2) An order establishing the Funding Council shall prescribe such of the functions of the Secretary of State under this Part of this Act, not being functions mentioned in subsection (3) below, as may be exercised on his behalf by the Funding Council.
- (3) The functions referred to in subsection (2) above are—
  - (a) any power of the Secretary of State under this Part of this Act—
    - (i) to make orders or regulations; or

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- (ii) to give directions;
  - (b) the giving of consent by the Secretary of State, other than the giving of consent under section 12(7) or 18 of this Act;
  - (c) the carrying out of consultation by the Secretary of State under any of sections 3(4), 5(1), 6(3), 12(9), 19(4) and 20(2) of this Act;
  - (d) the making of a determination by the Secretary of State under section 12(5) of this Act;
  - (e) the appointment by the Secretary of State of members of the college council in pursuance of Schedule 6 to this Act;
  - (f) the power of the Secretary of State under section 12(6) of and paragraph 2(2) of Schedule 5 to this Act to require reports and returns to be made and information to be given; and
  - (g) the giving of notice by the Secretary of State under section 24(2) of this Act.
- (4) For the purposes of subsection (3) above, the functions there specified include such functions as applied or modified in pursuance of an order made under this Part of this Act.
- (5) The Funding Council shall, notwithstanding that they are exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions in all respects as if the Funding Council were acting as a principal; and all proceedings for enforcement of such rights and liabilities shall be brought by or against the Funding Council in their own name.
- (6) Schedule 1 to this Act shall have effect as regards the constitution and supplementary powers of and other matters relating to the Funding Council.

## **8 Advisory functions of the Funding Council**

- (1) Without prejudice to section 7 of this Act, the Funding Council shall provide to the Secretary of State advice and assistance in connection with such of his functions under this Part of this Act as he may, from time to time, determine.
- (2) The Funding Council shall provide to the Secretary of State such information and advice as he may, from time to time, require as regards the provision of further education (within the meaning of section 1(5)(b) of the 1980 Act) in Scotland.
- (3) The Funding Council may provide to the Secretary of State such information and advice as they think fit as regards the provision of further education (within the meaning of section 1(5)(b) of the 1980 Act) in Scotland.
- (4) Advice, assistance or information provided by the Funding Council in pursuance of this section shall be provided in such manner as the Secretary of State may, from time to time, determine.

## **9 Power of Secretary of State as regards functions of the Funding Council**

- (1) The Secretary of State may give the Funding Council directions of a general or specific character with regard to the discharge of their functions, other than their functions under section 8 of this Act; and it shall be the duty of the Funding Council to comply with such directions.

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- (2) A direction given under subsection (1) above may be varied or revoked by a subsequent direction so given.
- (3) Nothing in section 7 of this Act or in any order made under that section shall be taken to prohibit the exercise by the Secretary of State of any function conferred on him by this Part of this Act whether or not such function has been or has purported to have been exercised by the Funding Council in pursuance of that section or any such order.

## **10 Payment of grants etc., to the Funding Council**

- (1) The Secretary of State may pay to the Funding Council in respect of any expenditure incurred or to be incurred by them in connection with their functions under or by virtue of this Part of this Act grants or other payments of such amounts as he may determine.
- (2) A grant or other payment paid under this section may be made subject to such conditions as the Secretary of State thinks appropriate and such conditions—
  - (a) may be imposed before, after or at the time such grant or other payment is made; and
  - (b) may relate to any time, whether before or after such time.
- (3) The terms and conditions on which the Secretary of State may make any grants or other payments under this section may include in particular conditions—
  - (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid,
 but shall not relate to the application by the Funding Council of any sums derived otherwise than from the Secretary of State.
- (4) A condition imposed in pursuance of subsection (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

## **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.

## 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 of education in the area in which the college is situated and to the likely needs of persons desirous of becoming students of the 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);
  - (b) to charge fees for or in connection with the provision by them of any form of further education;
  - (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—

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- (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 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 over school age 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.

### **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 Secretary of State to either House of Parliament that he intends to exercise his 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.

### **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

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- (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.

### *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

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- (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.

*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;
  - (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.

## 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

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- (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 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.

## **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.

### *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.

## **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.

### *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.



## **22 College development plans**

- (1) Every board of management shall, not later than such date in every financial year as the Secretary of State may determine, submit to the Secretary of State a college development plan in respect of their college.
- (2) The college development plan shall be prepared in respect of the academic year commencing in the next following financial year and the succeeding two academic years.
- (3) The college development plan shall contain a statement of—
  - (a) the number of persons the board estimates will be students of the college;
  - (b) the programmes of learning of further education (within the meaning of section 1(5)(b) of the 1980 Act) which the board proposes to provide or secure the provision of;
  - (c) the capital expenditure proposed by the board and their estimate of the recurrent expenditure and income of the college; and
  - (d) such other matters as may be determined by the Secretary of State, as regards each academic year to which the plan relates.
- (4) In preparing their development plan, a board of management—
  - (a) shall have regard to any guidance issued to them by the Secretary of State; and
  - (b) shall consult with the education authority in whose area the college is situated and the local enterprise company for the area in which the college is situated, and in this subsection “local enterprise company” has the meaning given by paragraph 3(5) of Schedule 2 to this Act.
- (5) A development plan prepared in pursuance of this section shall be in such form as the Secretary of State may determine.
- (6) Any power of the Secretary of State under this section to make a determination may be exercised differently in respect of different colleges.

## **23 Duty of boards of management as regards recorded children**

A board of management shall, when requested to do so by an education authority in whose area their college is situated, provide to the authority as soon as is reasonably practicable such information or advice as the authority may reasonably request from the board to facilitate the carrying out by the authority of their duty under section 65B of the 1980 Act (provision for recorded children over school age) to consider in relation to any recorded child what provision would benefit him after he ceases to be of school age and to make a report thereon.

## **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.

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- (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.

## **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.
- (2) An order made for the purposes mentioned in subsection (1) above may include provision—
  - (a) for the property, rights, liabilities and obligations of the board of management to transfer to and vest in—
    - (i) the Secretary of State;
    - (ii) subject to subsection (7) below, such other board of management established or to be established in pursuance of this Part of this Act as may be specified in the order; or
    - (iii) subject to subsection (7) below, such other person as may be so specified;
  - (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 under subsection (1) above shall not contain provision transferring and vesting property, rights, liabilities and obligations as mentioned in sub-paragraph (ii) or (iii) of subsection (2)(a) above unless the body or person mentioned in that sub-paragraph has consented to the transfer and vesting.

## **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.

## **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.

## 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 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.

## **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,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.

## **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.

*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 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 section 278 of the Town and Country Planning (Scotland) Act 1972 (general vesting declarations on compulsory acquisition).
- (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.

## **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.

### **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 Employment Protection (Consolidation) Act 1978,
 the contract shall be void and of no effect.

#### *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 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.

## 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 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,

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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 Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

### **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 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.

## PART II

### HIGHER EDUCATION

#### *The funding council*

#### **37 Scottish Higher Education Funding Council**

- (1) There shall be established a body corporate to be known as the Scottish Higher Education Funding Council (referred to in this Part of this Act as the “Council”).
- (2) The Council shall consist of not less than twelve nor more than fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) In appointing members of the Council the Secretary of State shall have regard to the desirability of including—
  - (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of higher education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of higher education and, in appointing such persons, he shall have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision; and
  - (b) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (4) In this Part of this Act references to institutions in Scotland are to institutions whose activities are carried on, or principally carried on, there and include the Open University.
- (5) Schedule 7 to this Act has effect with respect to the Council.

#### **38 Meaning of higher education**

- (1) In this Part of this Act “higher education” is education provided by means of any of the courses falling, for the time being, within this section.
- (2) A course falls within this section if it is—
  - (a) a course at a higher level in preparation for a higher diploma or certificate;
  - (b) a first degree course;
  - (c) a course for the education and training of teachers;
  - (d) a course of post-graduate studies (including a higher degree course);
  - (e) a course at a higher level in preparation for a qualification from a professional body;
  - (f) a course at a higher level not falling within any of paragraphs (a) to (e) above.
- (3) For the purposes of paragraphs (a), (e) and (f) of subsection (2) above a course shall be regarded as providing education at higher level if its standard is higher than the standard of courses in preparation for examinations for—
  - (a) the Scottish Certificate of Education at higher grade;
  - (b) the Certificate of Sixth Year Studies;

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- (c) the General Certificate of Education of England and Wales or Northern Ireland at advanced level; or
  - (d) the Scottish Vocational Education Council national certificate.
- (4) For the purposes of paragraph (d) of subsection (2) above, post-graduate studies includes a course following the award of a higher diploma or certificate.
- (5) The Secretary of State may by order, from time to time, following consultation with the Council, amend subsection (2) above by adding or removing any entry relating to a course or by varying any such entry.

### **39 Assessment of quality of education provided by institutions**

- (1) The Council shall, after consultation with such organisations as appear to the Council to be representative of institutions within the higher education sector—
- (a) secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support under this Part of this Act; and
  - (b) establish a committee, to be known as the “Quality Assessment Committee”, with the function of giving them advice on the discharge of their duty under paragraph (a) above and such other functions as may be conferred on the committee by the Council,
- and in performing their functions under this subsection the Council shall have regard to such provision as is made as regards the assessment of the quality of education provided in institutions within the higher education sector in England and Wales in pursuance of section 70(1)(a) of the Further and Higher Education Act 1992 (assessment of the quality of education provided by institutions in England and Wales).
- (2) The majority of the members of the committee shall be—
- (a) persons who are not members of the Council; and
  - (b) persons appearing to the Council to have experience of, and to have shown capacity in, the provision of higher education; and in appointing such persons the Council shall have regard to the desirability of their being currently engaged in the provision of such higher education or in carrying responsibility for such provision.
- (3) A committee established under this section shall be treated as if it were a committee established under paragraph 8 of Schedule 7 to this Act.

### *Funds*

### **40 Administration of funds**

- (1) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State and others for the purposes of providing financial support for activities eligible for funding under this section.
- (2) The activities eligible for funding under this section are—
- (a) the provision of education and the undertaking of research by such institutions in Scotland as are within the higher education sector;

- (b) the provision of any facilities, and the carrying on of any other activities, by such institutions in Scotland as are within the higher education sector which the governing bodies of those institutions consider it necessary or desirable to provide or carry on for the purpose of or in connection with education or research;
- (c) the provision of services by any person for the purpose of, or in connection with, the provision of education or the undertaking of research by such institutions in Scotland as are within the higher education sector;
- (d) the provision of such courses of higher education as the Secretary of State may direct as are provided in colleges of further education within the meaning of section 36(1) of this Act; and
- (e) the provision of such courses in such other institutions in Scotland under the management of or receiving assistance by way of payments from education authorities as the Secretary of State may direct.

(3) The Council may—

- (a) make grants, loans or other payments to the governing body of any institution within the higher education sector in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (2)(a) or (b) above;
- (b) make grants, loans or other payments to any person in respect of expenditure incurred or to be incurred by him for the purpose of the provision of any services eligible for funding under this section by virtue of subsection (2)(c) above; and
- (c) make grants, loans or other payments to the board of management of a college of further education within the meaning of Part I of this Act, an education authority or such other person as they consider appropriate in respect of expenditure incurred or to be incurred by them for the purpose of the provision as mentioned in subsection (2)(d) and (e) above of such courses of higher education as the Secretary of State may direct,

subject in each case to such terms and conditions as the Council think fit.

(4) The terms and conditions on which the Council may make any grants, loans or other payments under this section may in particular—

- (a) enable the Council to require the repayment, in whole or in part, of sums paid by the Council if any of the terms and conditions subject to which the sums were paid is not complied with; and
- (b) require the payment of interest in respect of any period during which a sum due to the Council in accordance with any of the terms and conditions remains unpaid,

but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council.

#### **41 Administration of funds: supplementary**

(1) Before exercising their discretion under section 40(3)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, the Council shall consult such of the following bodies as appear to the Council to be appropriate to consult in the circumstances—

- (a) such bodies representing the interests of institutions within the higher education sector as appear to the Council to be concerned; and

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- (b) the governing body of any particular institution within that sector which appears to the Council to be concerned.
- (2) In exercising their functions in relation to the provision of financial support for activities eligible for funding under section 40 of this Act the Council shall have regard to the desirability of not discouraging any institution for whose activities financial support is provided under that section from maintaining or developing its funding from other sources.
  - (3) In exercising the functions mentioned in subsection (2) above, the Council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any institution within that sector for whose activities financial support is provided under the said section 40.

## 42 Grants

- (1) The Secretary of State may make grants to the Council of such amounts and subject to such terms and conditions as he may determine.
- (2) The terms and conditions subject to which grants are made by the Secretary of State to the Council—
  - (a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the Council in respect of activities carried on by the institution; but
  - (b) shall not otherwise relate to the provision of financial support by the Council in respect of activities carried on by any particular institution or institutions.
- (3) Such terms and conditions may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students.
- (4) Such terms and conditions may in particular—
  - (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with; and
  - (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

### *Further functions*

## 43 Further functions

- (1) The Council—
  - (a) shall provide the Secretary of State with such information or advice relating to the provision of higher education in Scotland as he may, from time to time, require; and

- (b) may provide him with such information or advice relating to such provision as they think fit,  
and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.
- (2) The Council shall keep under review activities eligible for funding under section 40 of this Act.
- (3) The Council may provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the Department's functions relating to higher education in Northern Ireland.
- (4) Where—
- (a) any land or other property is or was used or held for the purposes of an institution; and
  - (b) the Secretary of State is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event,
- then, if the institution is within the higher education sector, the Secretary of State may direct that all or any of his functions in respect of the property shall be exercisable on his behalf by the Council, and the functions shall be so exercised in accordance with such directions as he may, from time to time, give.
- (5) The Secretary of State may by order confer or impose on the Council such supplementary functions relating to the provision of education as he thinks fit.
- (6) The Secretary of State shall not make an order under subsection (5) above unless he has consulted—
- (a) the Council; and
  - (b) such organisations as appear to him to be representative of institutions within the higher education sector.
- (7) For the purposes of subsection (5) above a function is a supplementary function if it is exercisable for the purposes of—
- (a) the exercise by the Secretary of State of functions of his under any enactment; or
  - (b) the doing by the Secretary of State of anything he has power to do apart from any enactment,
- and it relates to, or to the activities of, any institution mentioned in subsection (8) below.
- (8) The institutions mentioned in subsection (7) above are—
- (a) institutions within the higher education sector;
  - (b) institutions which are—
    - (i) colleges of further education (within the meaning of section 36(1) of this Act); or
    - (ii) under the management of or receiving assistance by way of payments from education authorities,being institutions by which such courses of higher education as the Secretary of State may direct are, for the time being, provided.

*Designated institutions***44 Designation of institutions**

- (1) The Secretary of State may by order designate any institution providing higher education (whether or not it also provides education of any other kind or carries on any other activities) as an institution eligible to receive support from funds administered by the Council.
- (2) In this Part of this Act “designated institution” means an institution in relation to which a designation under this section has effect.
- (3) An order made under this section may make such amendments of the provisions of any subordinate legislation as appear to the Secretary of State to be necessary or expedient in consequence of such order being made.

**45 Power of Privy Council in relation to designated institutions**

- (1) The Privy Council may by order make such provision as regards designated institutions as is mentioned in this section.
- (2) An order of the Privy Council made under this section may—
  - (a) make provision with regard to the constitution of the governing body of any designated institution;
  - (b) prescribe the general functions to be discharged by the governing body, and confer on the governing body such powers as they may consider necessary or expedient for the efficient discharge of those functions; and
  - (c) without prejudice to Part VI of the 1980 Act, revoke, amend or re-enact any provision of any endowment relating to any designated institution,

and where an order under this section makes provision with regard to the constitution of the governing body of an institution as mentioned in paragraph (a) above if neither the institution nor the governing body is, immediately before the order is made, a body corporate, the governing body of the institution shall, by virtue of this subsection, be a body corporate.

- (3) Without prejudice to the generality of subsection (2) above, an order made under this section may—
  - (a) prescribe the administrative and other arrangements to be adopted by the governing body for the purpose of discharging its functions and in particular provide for the delegation of such of its functions as may be prescribed in the order to persons or bodies of persons to be appointed in such manner as may be so prescribed;
  - (b) provide for the appointment, remuneration, discipline and dismissal by the governing body of administrative, teaching and other staff, and for the payment by the governing body of pensions, allowances or gratuities to or in respect of members of such staff on their death or retirement;
  - (c) prescribe the procedure to be followed in cases of alleged breaches of discipline by students in attendance at any such institution;
  - (d) provide for the constitution of bodies representative of students in attendance at such institutions and confer on any such bodies such functions as may be prescribed in the order; and



- (e) provide for any of the purposes specified in paragraphs (a) to (e) of section 105(1) of the 1980 Act.
- (4) An order made under this section may authorise the governing body to make rules regulating its own procedures and the conduct of the designated institution.
- (5) An order made under this section may amend, vary, repeal or revoke the provisions of—
  - (a) any regulations made under section 77 of the 1980 Act relating to a designated institution as regards which the order is made; and
  - (b) any enactment (including an enactment contained in a subordinate instrument), any scheme, articles of association, trust deed or other instrument relating to the institution,to the extent that any such provision appears to the Privy Council to be inconsistent with the order.
- (6) An order made under this section may contain such incidental, supplementary and consequential provision as appears to the Privy Council to be necessary or expedient.
- (7) This section shall apply to a designated institution notwithstanding that its name includes, by virtue of section 49 of this Act, the word “university”.

#### **46 Establishment of new institutions by the Secretary of State**

The Secretary of State may by order establish institutions for the provision of any form of higher education.

#### **47 Closure of institutions**

- (1) Notwithstanding anything in any enactment (including an enactment contained in a subordinate instrument), the Secretary of State may by order close any designated institution and wind-up the governing body of such institution.
- (2) An order under subsection (1) above may include provision—
  - (a) for the property, rights, liabilities and obligations of the institution to transfer to and vest in—
    - (i) the Secretary of State; or
    - (ii) such other person as may be specified in the order;
  - (b) for the transfer of the staff of the institution to such other institution in Scotland as the Secretary of State may prescribe, being an institution providing any form of higher education;
  - (c) for the payment by the Secretary of State of any expenses incurred in the closure and winding-up;
  - (d) imposing on the governing body of the institution such additional powers and duties in relation to the closure and winding-up as the Secretary of State considers appropriate;
  - (e) for the appointment of a person to administer the closure and winding-up, and a 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;

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- (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 and winding-up.
- (3) Any property transferred by virtue of an order under subsection (1) above shall remain subject to any trust or condition (whether contained in a scheme made or approved under Part VI of the 1980 Act or otherwise) to which it was subject immediately before such transfer.
- (4) An order under this section may amend, vary, repeal or revoke the provisions of—
  - (a) any regulations made under section 77 of the 1980 Act relating to a designated institution as regards which the order has been made; and
  - (b) any enactment (including an enactment contained in a subordinate instrument), any scheme, articles of association, trust deed or other instrument relating to the institution,
 to the extent that any such provision appears to the Secretary of State to be inconsistent with the order.
- (5) An order under subsection (1) above shall not be made unless the Secretary of State has consulted—
  - (a) the Council; and
  - (b) the governing body of the institution proposed to be closed.
- (6) When the winding-up of the governing body of an institution under this section is completed the Secretary of State shall by order dissolve the governing body of that institution.
- (7) In this section references to the closure of a designated institution include references to the institution being merged with one or more other designated institutions; and different provision may be made under this section as regards different institutions to be merged with one another.

#### **48 Power to award degrees etc**

- (1) The Privy Council may by order specify any institution within the higher education sector as competent to grant such awards and distinctions in pursuance of this section as they may specify.
- (2) An institution for the time being specified in such an order may grant a degree, diploma, certificate or other academic award or distinction to any person who—
  - (a) completes, on or after the date specified in the order, an appropriate course of study or programme of supervised research; and
  - (b) passes an appropriate examination or demonstrates by such other means as the institution may determine the attainment of such standards as the institution may determine.
- (3) An institution specified in such an order may—
  - (a) grant honorary degrees; and
  - (b) grant degrees to members of the academic and other staff of the institution.
- (4) Any power conferred on an institution by this section to grant awards and distinctions includes power—

- (a) to do so jointly with another institution (whether or not such institution is specified in an order under subsection (1) above);
  - (b) to authorise other institutions to do so on behalf of the institution; and
  - (c) to deprive any person of any award or distinction granted to him by or on behalf of the institution in pursuance of this section (or, in the case of an award granted to him by the institution and another institution jointly, to do so jointly with the other institution).
- (5) It shall be for the institution to determine in accordance with any relevant provisions of the instruments relating to or regulating the institution—
- (a) the courses of study or programmes of research, and the examinations or other means of demonstrating attainment of standards, which are appropriate for the grant of any award or distinction and the other terms and conditions on which any grant may be made in pursuance of this section by or on behalf of the institution; and
  - (b) the terms and conditions on which the institution may deprive any person of any award or distinction granted to him by or on behalf of the institution in pursuance of this section.
- (6) A determination made under subsection (5)(b) above shall, as regards an award or distinction granted jointly with another institution, be made jointly with that other institution.

#### **49 Change of name by institutions**

- (1) Subject to subsection (2) below, the governing body of a designated institution may, with the consent of the Privy Council, change the name of the institution or of its governing body.
- (2) Where, as regards a designated institution, there is in any enactment (including an enactment contained in a subordinate instrument) or any other document having legal effect any express prohibition or restriction on the power of the governing body to change the name of the institution or governing body, nothing in subsection (1) above shall empower a governing body to change the name of an institution or its governing body without complying with any requirement of such enactment or other document as to such change of name.
- (3) Where any power is exercised under this section to change the name of a designated institution or of its governing body, the Privy Council shall have regard to the need to avoid any name which would be capable of causing confusion with the name of any other institution in the higher education sector.
- (4) This section is without prejudice to any other power to change the name of a designated institution or its governing body.
- (5) Nothing in this section or in any other power to change the name of a designated institution or of its governing body shall authorise the inclusion of the word “university” in the name of the institution or its governing body unless the consent of the Privy Council is given to such inclusion.

### General

#### 50 Duty to give information to the Council

Each of the following shall give the Council such information as they may require for the purposes of the exercise of any of their functions—

- (a) an education authority;
- (b) the governing body of any institution within the higher education sector; and
- (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided.

#### 51 Efficiency studies

- (1) The Council may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of any institution in the higher education sector.
- (2) A person promoting or carrying out such studies at the request of the Council may require the governing body of such institution—
  - (a) to furnish the person, or any person authorised by him, with such information; and
  - (b) to make available to him, or any person so authorised, for inspection such of their accounts and such other documents,as the person may reasonably require for that purpose.

#### 52 Exercise of powers of Privy Council

- (1) Any power vested in the Privy Council by this Part of this Act may be exercised by any two or more of the lords and others of the Council.
- (2) Any act of the Privy Council under this Part of this Act shall be sufficiently signified by an instrument signed by the clerk of the Council, and an order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council, and an instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.

#### 53 Inspection of accounts

- (1) The accounts of—
  - (a) any university; and
  - (b) any designated institution,shall be open to the inspection of the Comptroller and Auditor General.
- (2) In the case of any university or institution mentioned in subsection (1) above—
  - (a) the power conferred by that subsection; and
  - (b) the powers under sections 6 and 8 of the National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act,

shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the governing body of the university or, as the case may be, institution in respect of which grants, loans or other payments are made to them under this Part of this Act.

#### **54 Directions**

- (1) In exercising their functions, the Council shall comply with any directions under this section, and such directions shall be contained in an order made by the Secretary of State.
- (2) The Secretary of State may give general directions to the Council about the exercise of their functions.
- (3) If it appears to the Secretary of State that the financial affairs of any institution within the higher education sector have been or are being mismanaged, he may, after consulting the Council and the institution, give such directions to the Council about the provision of financial support in respect of the activities carried on by the institution as he considers are necessary or expedient by reason of the mismanagement.

#### **55 Amendment of section 7 of the Teaching Council (Scotland) Act 1965**

- (1) The Teaching Council (Scotland) Act 1965 shall be amended as follows.
- (2) In section 7 (regulation of admission to courses of training for teachers and conditions for registration of teachers), for subsections (1) and (2) there shall be substituted the following subsections—
  - “(1) Subject to the following provisions of this section, the Secretary of State may make regulations as to—
    - (a) the provision of education and training for teachers in relevant institutions;
    - (b) the admission of students to courses of education and training for teachers;
    - (c) matters connected with the recommendation of students by the governing bodies of such institutions to the Council for registration; and
    - (d) so far as it relates to the matters mentioned in paragraphs (b) and (c) above, the fitness of persons to become teachers.
  - (2) Regulations under subsection (1) above may contain provision—
    - (a) as to the content, nature and duration of courses of education and training for teachers provided by relevant institutions and as to requirements for the assessment of students participating in such courses;
    - (b) as to the functions of the governing bodies, the principals and members of staff of relevant institutions;
    - (c) after consultation with the Council, conferring on the Council such functions as the Secretary of State considers appropriate; and
    - (d) as to such matters as are to be determined or approved by the Secretary of State or by such persons as may be prescribed,

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and such regulations may make different provision for different institutions or classes of institution and for different circumstances.”

(3) In section 17 (interpretation) after subsection (3) there shall be inserted—

“(3A) In this Act—

- (a) “relevant institution” means an institution within the higher education sector which provides courses for the education and training of teachers; and
- (b) references to institutions within the higher education sector shall be construed as in Part II of the Further and Higher Education (Scotland) Act 1992.”

## 56 Interpretation of Part II

(1) In this Part of this Act—

“designated institution” has the meaning given by section 44(2) of this Act; “governing body”, in relation to an institution, means—

- (a) in the case of an institution conducted by a body corporate, that body;
  - (b) in the case of a university not falling within paragraph (a) above, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs;
  - (c) in the case of any other institution not falling within paragraph (a) or (b) above for which the Secretary of State by regulations or the Privy Council by order has constituted a governing body, that governing body; and
  - (d) in any other case, any board of governors of the institution or any person responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors; and
- “higher education” has the meaning given by section 38 of this Act.

(2) In this Part of this Act, references to institutions within the higher education sector are to—

- (a) universities; and
- (b) designated institutions.

(3) Any reference in any enactment (including an enactment contained in a subordinate instrument) passed or made before the passing of this Act to a college of education shall be construed as a reference to a designated institution which provides courses for the education and training of teachers.

## PART III

### MISCELLANEOUS

## 57 Finance

There shall be defrayed out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred under this Act; and

- (b) any increase attributable to this Act in the sums so payable under any other enactment.

## **58 Stamp duty**

Stamp duty shall not be chargeable in respect of any agreement made or any transfer effected under or by virtue of any of the provisions of this Act.

## **59 Temporary exclusion of section 5 of Data Protection Act 1984 in relation to data transferred to new bodies**

- (1) Where personal data are transferred under or by virtue of any provision of this Act to a body corporate established in pursuance of this Act, section 5(1) of the Data Protection Act 1984 (prohibition of unregistered holding etc. of personal data) shall not apply in relation to the holding by that body corporate of the data so transferred or any data of the same description as the data so transferred until the end of the period of six months beginning with the relevant date.
- (2) In subsection (1) above, “the relevant date” means—
  - (a) in relation to a body corporate established in pursuance of section 11 of this Act, the first transfer date (within the meaning of Part I of this Act) or, if the body corporate was established under section 3, 13 or 14 of this Act the date appointed or, as the case may be specified, in the order establishing the body;
  - (b) in relation to a body established under Part II of this Act, the date on which the body was established.
- (3) Expressions used in subsection (1) above and in the said Act of 1984 shall have the same meaning in that subsection as in that Act.

## **60 Regulations and orders**

- (1) Any power under this Act of the Secretary of State to make regulations or orders or of the Privy Council to make orders shall, subject to subsection (2) below, be exercisable by statutory instrument subject, other than an order made under section 63(2) of this Act, to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) above shall not apply to an order made under section 14(4), 19(3) or 20(1) or of paragraph 18(4) of Schedule 2 to this Act.
- (3) Regulations and orders made under this Act may make different provision as to different cases or circumstances; and such regulations or orders may contain such incidental, supplementary or transitional provision as the Secretary of State or, as the case may be, the Privy Council, think fit.

## **61 Interpretation**

In this Act, unless the context otherwise requires—

“the 1980 Act” means the Education (Scotland) Act 1980; and

“prescribed” means prescribed by order or by regulations made by the Secretary of State.

**62 Transitional provisions, miscellaneous amendments and repeals**

- (1) The transitional, consequential and saving provisions contained in Schedule 8 to this Act shall have effect.
- (2) The enactments specified in Schedule 9 to this Act shall have effect subject to the amendments specified in that Schedule.
- (3) The enactments specified in Schedule 10 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

**63 Short title, commencement and extent**

- (1) This Act may be cited as the Further and Higher Education (Scotland) Act 1992.
- (2) This Act shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) An order under subsection (2) above may make such transitional and saving provisions as appear to the Secretary of State necessary or expedient in connection with the provision brought into force by the order.
- (4) Subject to subsection (5) below, this Act extends to Scotland only.
- (5) The amendment by this Act of an enactment which extends to England and Wales or Northern Ireland extends also to England and Wales or, as the case may be, Northern Ireland.



## SCHEDULES

### SCHEDULE 1

Section 7.

#### THE SCOTTISH FURTHER EDUCATION FUNDING COUNCIL

##### *Status*

- 1 The Funding Council shall not—
- (a) be regarded as the servants or agents of the Crown;
  - (b) have any status, immunity or privilege of the Crown,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.

##### *Tenure of office*

- 2 (1) The Funding Council shall consist of not less than twelve nor more than fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (2) In appointing members of the Funding Council the Secretary of State —
- (a) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, the provision of further education (within the meaning of section 1(5)(b) of the 1980 Act) or to have held, and to have shown capacity in, any position carrying responsibility for the provision of such further education and, in appointing such persons, he shall have regard to the desirability of their being currently engaged in the provision of such further education or in carrying responsibility for such provision; and
  - (b) shall have regard to the desirability of including persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.

##### *House of Commons disqualification*

- 3 In Part III of Schedule I to the House of Commons Disqualification Act 1975 (disqualifying offices) there is inserted at the appropriate place—

“Any member of the Scottish Further Education Funding Council in receipt of remuneration.”

##### *Property and contracts*

- 4 Subject to paragraphs 5 and 6 below, the Funding Council shall have the power—
- (a) to acquire, hold and dispose of land and other property;
  - (b) to enter into contracts, including contracts for the employment of staff for the purposes of the discharge of their functions;

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- (c) to invest any sums not immediately required by the Funding Council for the purpose of their carrying on any of the activities which they have power to carry on; and
  - (d) to accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of the discharge of any of their functions.
- 5 The Funding Council shall not 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 which was acquired, improved or maintained wholly or partly, directly or indirectly out of funds provided by the Secretary of State under section 10 of this Act or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained.
- 6 (1) The Funding Council shall not dispose of any property acquired, improved or maintained wholly or partly, directly or indirectly out of funds provided by the Secretary of State under the said section 10 or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained without the prior consent, given in writing, of the Secretary of State.
  - (2) 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.
  - (3) The consent of the Secretary of State is not required for the disposal of land which is or forms part of property mentioned in sub-paragraph (1) above 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 Funding Council shall inform the Secretary of State of any such compulsory acquisition.
  - (4) Where any such property is disposed of, the Funding Council 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 Funding Council, determine.

#### *Execution of documents*

- 7 (1) For any purpose other than those mentioned in sub-paragraph (2) below, a document is validly executed by the Funding Council if it is signed on their behalf by a member of the Funding Council or by their secretary (or any person performing the duties of secretary to the Funding Council) or by any person authorised to sign the document on their behalf.
  - (2) For the purposes of any enactment or rule of law relating to the authentication of documents, a document is validly executed by the Funding Council if it is subscribed on their behalf by being executed in accordance with the provisions of sub-paragraph (1) above.
  - (3) A document which bears to have been executed by the Funding Council in accordance with sub-paragraph (2) above shall, in relation to such execution, be a probative document if the subscription of the document bears to have been attested by at least one witness.

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### *Reports and accounts*

- 8 The Funding Council 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.
- 9 (1) It shall be the duty of the Funding Council—
- (a) to keep proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each financial year of the Funding Council a statement of accounts; and
  - (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it;
  - (b) the manner in which the information contained in it is to be presented; or
  - (c) the methods and principles according to which the statement is to be prepared,
- and shall contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament.
- (3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph “financial year” means the period beginning with the date on which the Funding Council is established and ending with the second 31st March following that date, and each successive period of twelve months.

### *Additional provisions*

- 10 An order made under section 7 of this Act may contain such additional provisions—
- (a) relating to the membership, staff and proceedings of the Funding Council (including any committee of them);
  - (b) relating to salaries, pensions, allowances and any other payments to be paid to members of the Funding Council (including any such committee) and to staff; and
  - (c) as to the winding-up and dissolution of the Funding Council,
- as the Secretary of State may consider necessary or expedient.
- 11 Employment with the Council shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of “Other Bodies” there is inserted—
- “Scottish Further Education Funding Council.”

## SCHEDULE 2

Section 12.

## CONSTITUTION AND PROCEEDINGS OF BOARDS OF MANAGEMENT

*Status*

- 1 A board of management (in this Schedule referred to as “the board”) shall not—
- (a) be regarded as the servants or agents of the Crown;
  - (b) have any status, immunity or privilege of the Crown,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.

*Membership*

- 2 The board shall consist of not less than ten nor more than sixteen persons.
- 3 (1) Subject to paragraph 4 below, this paragraph shall have effect as regards the membership of the board.
- (2) The board shall include—
- (a) the person who is, for the time being, the principal of the college;
  - (b) a person appointed by being elected by the teaching staff of the college from among their own number;
  - (c) a person appointed by being elected by the non-teaching staff of the college from among their own number;
  - (d) a person appointed by being nominated by the students' association of the college from among students of the college.
- (3) Not less than one half of the total number of members of the board shall be appointed by the board from among persons, not being members of the staff or full-time students of the college, appearing to them to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession; and one such person shall be a person nominated by the local enterprise company for the area in which the college is located.
- (4) The remaining members shall be appointed by the board from among persons appearing to them to have, or to represent persons who have, an interest in the work of the college, having regard to the interests of the education authority for the area in which the college is situated in relation to the provision of any form of further education in their area.
- (5) In this paragraph, “local enterprise company” means any person with whom an agreement (not being one which has terminated) has been made in pursuance of section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that person of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise.
- (6) Any election to be held in pursuance of this paragraph shall be conducted in accordance with rules made by the board after consultation with such persons as appear to the board to be representative of each category of persons entitled to elect a person under this paragraph; and rules made in accordance with this sub-paragraph may be substituted or varied by further such rules.

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- 4
- (1) This paragraph shall have effect as regards the membership of the board with effect from the first transfer date.
  - (2) The persons who are, immediately before the first transfer date, the members of the college council for a college of further education by virtue of Schedule 6 to this Act shall become, on that date, the first members of the board of management of the college.
  - (3) Where a person becomes a member of the board in pursuance of sub-paragraph (2) above, he shall be taken to have become a member of the board in pursuance of the provision of paragraph 3 above in accordance with which, by virtue of paragraph 1 of Schedule 6 to this Act, he became a member of the college council.
  - (4) Where the number of persons who become the first members of the board in pursuance of sub-paragraph (2) above is less than sixteen, the board may appoint, in accordance with and having regard to the requirements of paragraph 3 above, such additional members as appears to them to be appropriate; provided that the total number of members of the board shall not at any time exceed sixteen.
  - (5) As soon as is practicable after the first transfer date and any appointment made under sub-paragraph (4) above, the members of the board shall determine by agreement among them, or failing agreement by ballot, that the persons who occupy the positions on the board mentioned in sub-paragraph (6) below shall hold office for a period of two years.
  - (6) The positions referred to in sub-paragraph (5) above are seven positions (other than the positions held by the principal and the person appointed by being nominated by the students' association of the college), whether or not at the time the board makes its determination any or all of such positions are occupied, identified in such manner as the board may so determine.

#### *Qualifications and tenure of office*

- 5
- (1) Subject to this paragraph and paragraphs 6 to 10 below, a member of the board shall hold and vacate office in accordance with the terms of his appointment, and, on such appointment ceasing, shall be eligible for re-appointment.
  - (2) Subject to paragraph 4(5) above, a member of the board, other than the person who is, for the time being, the principal of the college and the person appointed by being nominated by the students' association of the college, shall hold office for a period of four years.
  - (3) The person who is, for the time being, the principal of the college shall remain a member of the board while he is the principal; and nothing in paragraphs 6 to 9 below shall apply to the principal in his capacity as a member of the board.
  - (4) A person who is appointed by being nominated by the students' association of the college shall hold office until 31st August following his appointment.
  - (5) A member of the board, other than the principal of the college, may resign his office at any time by giving notice in writing to such person as the board may appoint for the purpose.
- 6
- (1) A person shall not be eligible for appointment as a member of the board—
    - (a) at any time when he is under the age of sixteen or over the age of seventy; but a person who attains the age of seventy during his appointment shall

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- be entitled to remain in office until his term of office otherwise expires in accordance with this Schedule; or
- (b) where the total number of years of any previous terms of office (whether or not consecutive) served as a member of that board exceeds eight.
- (2) For the purposes of sub-paragraph (1)(b) above, in calculating the number of years served no account shall be taken of any term of office served as a member of a college council.
- 7 (1) A person is not eligible for appointment as a member of the board if—
- (a) he has, within five years of the date his appointment would take effect, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
  - (b) his estate has been sequestrated, he has made an arrangement with his creditors, he has been adjudged bankrupt, he has granted a trust deed for his creditors or a composition contract;
  - (c) he is incapacitated by mental illness; or
  - (d) he has been removed from office by the Secretary of State under section 24 of this Act.
- (2) Where a person is disqualified under sub-paragraph (1)(b) above by reason of having had his estate sequestrated, the disqualification shall cease if and when—
- (a) the sequestration of his estate is recalled or reduced; or
  - (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.
- (3) Where a person is disqualified under that sub-paragraph by reason of having been adjudged bankrupt, the disqualification shall cease—
- (a) unless the bankruptcy order made against him is previously annulled, on his discharge from bankruptcy; and
  - (b) if the bankruptcy order is so annulled, on the date of the annulment.
- (4) Where a person is disqualified under that sub-paragraph by reason of his having made an arrangement with his creditors or granted a trust deed for his creditors or a composition contract, the disqualification shall cease when the arrangement or, as the case may be, trust deed or composition contract is no longer in force.
- 8 If at any time the board are satisfied that any of their members—
- (a) has been convicted as mentioned in sub-paragraph (a) of paragraph 7(1) above or has become a person to whom either of sub-paragraphs (b) and (c) of paragraph 7(1) above applies;
  - (b) has been absent, without the permission of the board, from all meetings of the board or any committee of theirs to which he has been appointed for a period longer than six consecutive months; or
  - (c) having been appointed in pursuance of paragraph 3(3) above, becomes a full-time student of the college or a member of the staff of the college,
- the board shall, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.
- 9 If at any time the board are satisfied that any of their members—
- (a) has failed to comply with any requirement of paragraph 14 or 15 below; or

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- (b) having been appointed by reason of being a student of the college or a member of the staff of the college, ceases to be such student or member of staff; or
    - (c) without prejudice to paragraph 8 above, has become unable or unfit to discharge his functions as a member of the board,
- the board may, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.
- 10 (1) Any casual vacancy among the members of the board may be filled by their appointing a person to fill the vacancy in like manner to that by which the person to be replaced was appointed.
- (2) Notwithstanding paragraph 5 above, a person appointed in pursuance of this paragraph shall hold office until the expiry of the period of office of the person he was appointed to replace.

#### *Proceedings*

- 11 (1) Subject to paragraphs 12 to 14 below, the board may regulate their own proceedings and those of any committee appointed by them.
- (2) The validity of any proceedings of the board or of any committee appointed by them shall not be affected by any defect in the appointment of any member of the board or any member of such committee or by a vacancy amongst the members of the board.
- (3) Subject to sub-paragraph (5) below, the board shall make available for inspection at the college at all reasonable times by anyone who wishes to inspect them copies of the documents to which this sub-paragraph applies.
- (4) The documents to which sub-paragraph (3) above applies are—
- (a) the agenda for any meeting of the board or of any committee of theirs;
  - (b) the draft minutes of any such meeting as approved by the chairman of the meeting;
  - (c) the minutes of such meeting as agreed by the board or, as the case may be, committee; and
  - (d) any report or other document considered by such meeting.
- (5) Sub-paragraph (3) above shall not apply to any document or part thereof which relates to—
- (a) an employee, former employee or applicant for employment in relation to the college;
  - (b) a person who is, has been, or is likely to be a student of the college;
  - (c) any information the disclosure of which is prohibited by anything in any enactment (including this Act and an enactment contained in a subordinate instrument) or rule of law;
  - (d) anything which it appears to the board should be treated as confidential because of its commercial nature or otherwise.

#### *Chairman*

- 12 (1) The board shall appoint one of their members, not being a person who is—
- (a) a student of the college;
  - (b) an employee of the board;

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- (c) the principal for the time being of the college; or
- (d) a member (whether elected or appointed) or an employee of a local authority, to be chairman.

- (2) The board shall determine the period of appointment of the chairman and may remove him from office as chairman.
- (3) Where the chairman ceases to be a member of the board, he shall cease to be chairman.

#### *Committees*

- 13 (1) The board may establish committees for any purpose and any such committee may appoint sub-committees.
- (2) Such committees may include persons who are not members of the board; but such persons shall not be entitled to vote at meetings of a committee.
- (3) The principal of the college shall be entitled to attend and speak at any meeting of a committee of the board; but he shall be entitled to vote at such meeting only if he is a member of such committee.
- (4) The board may pay to the members of such committees (whether or not they are also members of the board) such allowances and expenses as they may determine; and any allowances and expenses to be paid by virtue of this sub-paragraph shall be calculated by reference to such criteria as the Secretary of State may determine.
- (5) Any reference in this Schedule to a committee of the board shall include a reference to any sub-committee appointed by such committee.

#### *Conflict of interest*

- 14 (1) Subject to sub-paragraph (4) below, where, whether before or during any meeting of the board or any committee of theirs, any member of the board or of such committee becomes aware that he or any person connected with him has a material interest in or relating to any matter to be or being considered by the board or, as the case may be, the committee, he shall declare such interest and withdraw from the meeting during such consideration and shall not vote on any question relating to the matter.
- (2) Notwithstanding sub-paragraph (1) above, where in relation to any member of the board or of a committee mentioned in sub-paragraph (3) below any matter referred to in that sub-paragraph is to be considered by any meeting of the board or any committee of theirs he shall, unless invited to remain by resolution of the other members of the board present, withdraw from the meeting during such consideration and shall not vote on any question relating to the matter.
- (3) The members of the board mentioned in sub-paragraph (2) above in relation to particular matters are—
  - (a) the principal of the college in relation to his terms and conditions of employment, his suspension or dismissal or any other disciplinary measure relating to him and the appointment of his successor;
  - (b) a member of the staff of the college in relation to his terms and conditions of employment, the terms and conditions of employment of any group of employees of the college to which he belongs, his promotion, suspension or dismissal or any other disciplinary measure relating to him; and



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- (c) a student of the college in relation to his academic performance, any disciplinary measures relating to him or the terms and conditions of employment, appointment, promotion, suspension or dismissal of or any other disciplinary measure relating to any employee of the college.
- (4) Subject to sub-paragraph (3) above, nothing in this paragraph shall require the principal or a member of staff or student to declare an interest or withdraw from consideration of any matter where his interest exists only by reason of his being the principal or, as the case may be, a member of staff or student.
- (5) Section 346(2) of the Companies Act 1985 (meaning of “connected person”) shall apply for the purpose of determining whether a person is connected with a member of the board or, as the case may be, a member of any committee of theirs as it applies for the purpose of determining whether a person is connected with a director of a company; and for such purpose references in that section to a director of a company shall be construed as if they were references to a member of the board or, as the case may be, member of such committee.

#### *Confidentiality of information*

- 15 Any information which is received or obtained by any person in connection with his functions as a member of the board or a member of a committee established under paragraph 13 above on the basis that such information shall be treated as confidential shall be treated by him as confidential to the board or, as the case may be, the committee.

#### *Staff*

- 16 Subject to section 15 of this Act, the board may appoint on such terms and conditions as they may determine such employees as they think fit.
- 17 (1) The board may, in the case of such of its employees or former employees as they may, subject to sub-paragraph (2) below, determine—
- (a) pay such pensions, allowances or gratuities to or in respect of those employees;
  - (b) make such payments towards provision of such pensions, allowances or gratuities; or
  - (c) make such arrangements for the provision and maintenance of such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,
- as they think fit.
- (2) Sub-paragraph (1) above shall not apply to any person who becomes an employee of the board under or by virtue of any provision of this Act (other than paragraph 16 above) unless that person, by notice given in writing, informs the board that he wishes it so to apply.
- (3) The reference in sub-paragraph (1) above to pensions, allowances or gratuities in respect of employees of the board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

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*Accounts*

- 18 (1) It shall be the duty of the board to keep proper accounts and other records.
- (2) The accounts shall be prepared and audited in respect of each financial year in such manner as the Secretary of State may direct and the accounts shall be submitted to the Secretary of State as soon as practicable after the end of each financial year.
- (3) The financial year of the board shall be from 1st April to 31st March.
- (4) The Secretary of State may by order provide that the board shall have a different financial year, and an order under this sub-paragraph may make such consequential provision as appears to the Secretary of State to be necessary or expedient.
- 19 The accounts of the board shall be open to the inspection of the Comptroller and Auditor General, but—
- (a) the power conferred by this paragraph; and
- (b) the powers under sections 6 and 8 of the National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act, shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the board in respect of which grants, loans or other payments are made to them under this Part of this Act.

*Execution of documents*

- 20 (1) For any purpose other than those mentioned in sub-paragraph (2) below, a document is validly executed by the board if it is signed on their behalf by a member of the board or by their secretary (or any person performing the duties of secretary to the board) or by any person authorised to sign the document on their behalf.
- (2) For the purposes of any enactment or rule of law relating to the authentication of documents, a document is validly executed by the board if it is subscribed on their behalf by being executed in accordance with the provisions of sub-paragraph (1) above.
- (3) A document which bears to have been executed by the board in accordance with sub-paragraph (2) above shall, in relation to such execution, be a probative document if the subscription of the document bears to have been attested by at least one witness.

*Provision of services*

- 21 The Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to certain public bodies) shall have effect as if the board were a public body within the meaning of that Act.

### SCHEDULE 3

Section 16.

#### TRANSFER AND APPORTIONMENT OF PROPERTY

##### *Identification of land, other property, rights, liabilities and obligations*

- 1 (1) In respect of each college of further education prescribed under section 11 of this Act, the education authority and the college council shall, not later than the first transfer date, so far as practicable, arrive at such written agreements and execute such other instruments as are necessary or expedient—
  - (a) to identify or define the land, other property, rights, liabilities and obligations to be transferred to and vest in the board of management for the college under section 16 of this Act; or
  - (b) for making any arrangements such as are mentioned in paragraph 2(2) below as will afford to the authority and the board as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.
- (2) Any such agreement shall contain provision so far as is expedient to enable the creation, variation or extinction of interests in land or land obligations and for the granting of indemnities.
- (3) The education authority shall supply the college council of such a college with such information, including all documents relating to interests in land and land obligations, as the college council may require for the purposes of this Schedule.
- (4) Where no such agreement is arrived at before the first transfer date, the Secretary of State may prescribe a different date by which such an agreement is to be arrived at, and an agreement arrived at in pursuance of this sub-paragraph shall be between the education authority and the board of management for the college and, for the purposes of an agreement arrived at in pursuance of this sub-paragraph, references in this Schedule to the college council shall be construed as references to the board of management.
- (5) In this paragraph “land obligations” has the same meaning as in section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970.
- 2 (1) The land, other property, rights, liabilities and obligations mentioned in section 16(3) or (4) of this Act shall, where their nature permits, be divided or apportioned among the education authority and the board of management of any college for the purposes of which the land or property was held, used or obtained or, as the case may be, in relation to which the rights, liabilities or obligations subsisted in such proportions as may be appropriate.
- (2) Any land or right in relation to land, other property, right, liability or obligation the nature of which does not permit its division or apportionment shall be transferred to the board of management of such a college or retained by the education authority according to—
  - (a) in the case of land or a right in relation to land, which of the education authority or the board of management of any such college appears, as at the first transfer date, to be likely to experience the greatest practical difficulty through not having possession of that land or, as the case may be, not being able to exercise the right, or where none of them appears likely to experience

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such difficulty to a greater extent than any other, which of them appears on that date to be likely to make use of the land or right to the greatest extent; or

- (b) in the case of any other property or of any right, liability or obligation, which of them appears on the first transfer date to be likely to make use of the property or right or, as the case may be, to be affected by the liability or obligation to the greatest extent,

subject (in either case) to such arrangements for the protection of any party to which the land or other property or right, liability or obligation has not been transferred as may be agreed between the education authority and the college council for any such college or determined by the commissioner for further education assets under paragraph 4 below.

- (3) Where any land or any right relating to land falls to be divided or apportioned under sub-paragraph (1) above any rent payable by or to any party in respect of that land and any rates, feu duties, stipend or other outgoings running with the land or right shall be correspondingly divided or apportioned.

*Status of agreements etc. under paragraph 1*

- 3 (1) An agreement made under paragraph 1 above or any other instrument executed in pursuance of that paragraph shall be conclusive evidence of the matters contained therein.
- (2) No application for the rectification of such an agreement or instrument may be made to the court under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) by an education authority or a college council who were a party to such an agreement or instrument without the prior consent, given in writing, of the Secretary of State.

*Resolution of disputes*

- 4 (1) Where it appears to an education authority or a college council that it is unlikely, in the case of any matter in respect of which an agreement is required to be arrived at under paragraph 1 above, that an agreement will be arrived at, the authority or college council may refer the matter to the Secretary of State.
- (2) Where a matter is so referred, the Secretary of State shall appoint a commissioner for further education assets (in this Schedule referred to as “the commissioner”) who shall, after consulting the education authority and any person whom he considers to have an interest in becoming vested in any property, right, liability or obligation to which such an agreement is intended to relate, determine the matter.
- (3) The commissioner shall issue a written determination to the education authority and any college council required to arrive at such an agreement and may include in such determination any provision which could have been included in an agreement or other instrument made under or in pursuance of paragraph 1 above.
- (4) A determination made under this paragraph shall have effect for all purposes as if it were an agreement made under paragraph 1 above.
- (5) No application for the rectification of a determination under this paragraph may be made to the court under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) by the commissioner or by an education authority or a college council who are affected

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

- (6) The education authority shall provide the commissioner with such information, including all documents relating to interests in land or land obligations, as he may require for the purpose of the exercise of his functions under this paragraph.

*Right to production of documents of title*

- 5 (1) Where any land or other property is, or rights, liabilities or obligations are, transferred to and vest in the board of management of any college under section 16 of this Act, the education authority shall deliver to the board of management all documents of title relating solely to such land or other property and all documents relating solely to such rights, liabilities or obligations.
- (2) Without prejudice to sub-paragraph (1) above, the board of management of any college to whom any land or other property has, or rights, liabilities or obligations have, been transferred in accordance with section 16 of this Act shall be entitled at any time to require any person having possession of any document of title or other document relating to such land, other property, rights, liabilities or obligations to produce to them such documents.
- (3) No charge may be made in respect of anything done in pursuance of this paragraph.

*Third parties affected by vesting*

- 6 (1) Any transfer of land or other property, rights, liabilities or obligations from an education authority to the board of management of any college under section 16 of this Act and any subsequent transfer of such land, other property, rights, liabilities or obligations shall be binding on all other persons.
- (2) Where any such transfer to the board of management of a college has an effect on the rights, liabilities or obligations of a third party—
- (a) in the case of a transfer to which paragraph 1 above applies, the education authority; and
- (b) in the case of a transfer to which paragraph 4 above applies, the commissioner,
- shall give notice in writing to the third party of such transfer.
- (3) Where, in consequence of any transfer such as is mentioned in sub-paragraph (1) above or the effect of any of the provisions of this Schedule—
- (a) the rights, liabilities or obligations of any person other than the education authority or any board of management which were enforceable against or by the authority become enforceable against the board of management mentioned in that sub-paragraph or partly against the authority and partly against the board of management of one or more colleges; and
- (b) the value of any property or interest of that person is thereby diminished,
- such compensation as may be just shall be paid to that person by the authority or the board of management of, as the case may be, one or more colleges or by all or any of them.
- (4) Any dispute as to whether, and if so how much, compensation is to be paid under sub-paragraph (3) above, or as to the person to or by whom it is to be paid, shall

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be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.

*Failure to agree or to apply to Secretary of State under paragraph 4 above*

- 7 Where the education authority and the college council have failed to arrive at an agreement under paragraph 1 above not later than the first transfer date and neither of them has applied to the Secretary of State under paragraph 4 above, the Secretary of State may appoint a commissioner as if an application had been made to him under the said paragraph 4.

SCHEDULE 4

Section 16.

COMMISSIONERS FOR FURTHER EDUCATION ASSETS

*Appointment and tenure*

- 1 The appointment of a commissioner for further education assets (in this Schedule referred to as “the commissioner”) in pursuance of section 17(4) of or paragraph 4 of Schedule 3 to this Act, shall be in writing and shall specify the matters or class or classes of matters in respect of which he is appointed to make a determination.
- 2 Subject to paragraphs 4 and 5 below, the commissioner’s appointment shall come to an end when it appears to the Secretary of State that he has determined the matters or class or classes of matters to which his appointment relates.
- 3 The Secretary of State shall pay to the commissioner such remuneration as the Secretary of State thinks appropriate and any expenses reasonably incurred by him in carrying out his functions.
- 4 The commissioner may resign his office at any time by giving notice in writing to the Secretary of State.
- 5 The Secretary of State may, if it appears to him that the commissioner is unable or unfit to discharge his functions, terminate the commissioner’s appointment by giving notice in writing to him of such termination.

*Functions*

- 6 The commissioner may, with the prior consent, given in writing, of the Secretary of State, employ persons on such terms as the commissioner may determine to assist him in the performance of his functions.
- 7 The commissioner shall comply with any directions given to him by the Secretary of State in relation to the performance of his functions.
- 8 The commissioner shall not delegate any of his functions.

*Status*

- 9 The commissioner shall not be regarded as a servant or agent of the Crown, nor as enjoying any status, immunity or privilege of the Crown.

## SCHEDULE 5

Section 34.

### TRANSITIONAL PROVISIONS FOR COLLEGE COUNCILS

#### *Contracts of employment*

- 1 (1) The college council shall have power to enter into a contract of employment—
- (a) which is to take effect from a date on or after the first transfer date; or
  - (b) with a person employed by them only for or in connection with their functions relating to the transfer of the management of the college from the education authority to the board of management.
- (2) Where the college council enter into a contract of employment with any person such as is mentioned in sub-paragraph (1)(a) above, the contract shall have effect in all respects as if made between the board of management and that person.

#### *Information*

- 2 (1) The education authority shall provide the college council with all information which the college council may reasonably require for the purpose of the exercise of the college council's functions under this Part of this Act, including, in particular, such information as it is required to provide to a board of management under section 11 of this Act.
- (2) The college council shall make such reports or returns and give such information to the Secretary of State as he may require for the purpose of the exercise of his powers and the performance of his duties under this Part of this Act.

#### *Payment of grants by Secretary of State*

- 3 (1) The Secretary of State may make grants to a college council in respect of any expenditure incurred by them in pursuance of their functions under this Part of this Act in connection with the transfer of the management of their college from the education authority to the board of management.
- (2) Grants made under this paragraph may be made subject to such conditions as the Secretary of State thinks appropriate and such conditions—
- (a) may relate to any time, whether before or after the payment of the grant; and
  - (b) may be imposed before, after or at the time the grant is made.
- (3) The terms and conditions on which the Secretary of State may make any grants under this paragraph may include in particular conditions—
- (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid,
- but shall not relate to the application by the college council to which the grant is made of any sums derived otherwise than from the Secretary of State.
- (4) A condition imposed in pursuance of sub-paragraph (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

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#### *Directions*

- 4 (1) The Secretary of State may give college councils directions of a general or specific character with regard to the discharge of their functions under this Part of this Act; and it shall be the duty of every college council to whom such directions are given to comply with the directions.
- (2) A direction given under this paragraph—
- (a) may be varied or revoked by a subsequent direction so given;
  - (b) may be addressed to one or more than one college council.

#### *Allowances*

- 5 College councils may pay to their members in respect of the exercise of their functions under this Part of this Act such allowances as are payable to members of the board of management of a college of further education under this Part of this Act.

#### *College development plans*

- 6 Regulation 13(1)(a) of The College Councils (Scotland) (No. 2) Regulations 1990 (requirement on college councils to submit college development plans) shall not have effect as regards any requirement on a college council to prepare or submit a college development plan before the beginning of the financial year beginning on 1st April 1993.

#### *Accounts*

- 7 (1) It shall be the duty of the college council to keep proper accounts and other records.
- (2) The accounts shall be prepared and audited in respect of the transitional period in such manner as the Secretary of State may direct and the accounts shall be submitted to the Secretary of State by the board of management of the college as soon as is practicable after the end of that period.
- (3) The accounts of the college council shall be open to the inspection of the Comptroller and Auditor General.

#### *Continuity of exercise of functions*

- 8 (1) Any relevant thing done by or in relation to the college council for a college of further education before the date appointed in relation to that college for the purposes of section 11(1) of this Act shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the board of management of the college.
- (2) Any relevant thing which, immediately before that date, is in the process of being done by or in relation to the college council for a college of further education may be continued by or in relation to the board of management of the college.
- (3) In this paragraph “relevant” in relation to anything done by or in relation to the college council for a college before that date means anything which, if it were to be done on or after that date, would be done by or in relation to the board of management of the college.



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*Establishment of students' associations*

- 9 (1) Where, at the beginning of the transitional period, there is no students' association established for the students of the college, the college council shall, as soon as is practicable after that date (after consultation with such persons as appear to them to be representative of students of the college), make a scheme for the establishment of a students' association for students of the college.
- (2) The primary function of a students' association of a college established under this paragraph shall be to represent the interests of students of such college.
- (3) A scheme made under sub-paragraph (1) above shall include provision as to—
- (a) the date on which the scheme is to come into effect, being a date not later than the day immediately before the first transfer date; and
  - (b) the initial composition and constitution of the students' association.

*Status*

- 10 The college council shall not—
- (a) be regarded as the servants or agents of the Crown;
  - (b) have any status, immunity or privilege of the Crown,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.

SCHEDULE 6

Section 34.

TRANSITIONAL COMPOSITION OF COLLEGE COUNCILS

*Membership of college councils*

- 1 (1) Subject to sub-paragraph (2) below, during the transitional period, the composition of the college council for the college shall be determined in accordance with paragraphs 2 and 3 of Schedule 2 to this Act.
- (2) In the application of the said paragraphs of Schedule 2 to membership of a college council—
- (a) any reference to the board—
    - (i) in paragraphs 2 and 3(1), (2) and (6) and in paragraph 3(3) where such reference first occurs shall be construed as a reference to the college council; and
    - (ii) in paragraph 3(3) where such reference second occurs and in paragraph 3(4) shall be construed as a reference to the Secretary of State; and
  - (b) the rules to be made under the said paragraph 3(6) shall be made as soon as is practicable after the date prescribed in relation to the college for the purposes of section 34(3) of this Act.
- (3) If the number of persons who become members of the college council in pursuance of this paragraph is less than 12, the college council may appoint in accordance with the said paragraph 3 such additional members as they consider appropriate; provided that the total number of members appointed to the council does not at any time exceed 16.

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*Terms of appointment*

- 2 (1) Subject to the following provisions of this Schedule, a person who becomes a member of a college council in pursuance of paragraph 1 above shall hold and vacate office in accordance with the terms of his appointment.
- (2) A member of a college council, other than the principal of the college, may resign his office at any time by giving notice in writing to the Secretary of State.

*Eligibility for appointment*

- 3 (1) A person shall not be eligible for appointment to a college council at any time when he is under the age of sixteen or over the age of seventy; but a person who attains the age of seventy during his appointment shall be entitled to remain in office.
- (2) A person is not eligible for appointment to a college council if—
- (a) he has, within five years of the date his appointment would take effect, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
  - (b) his estate has been sequestrated, he has made an arrangement with his creditors, he has been adjudged bankrupt, he has granted a trust deed for his creditors or a composition contract; or
  - (c) he is incapacitated by mental illness.
- (3) Where a person is disqualified under sub-paragraph (2)(b) above by reason of having had his estate sequestrated, the disqualification shall cease if and when—
- (a) the sequestration of his estate is recalled or reduced; or
  - (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.
- (4) Where a person is disqualified under that sub-paragraph by reason of having been adjudged bankrupt, the disqualification shall cease—
- (a) unless the bankruptcy order made against him is previously annulled, on his discharge from bankruptcy; and
  - (b) if the bankruptcy order is so annulled, on the date of the annulment.
- (5) Where a person is disqualified under that sub-paragraph by reason of his having made an arrangement with his creditors or granted a trust deed for his creditors or a composition contract, the disqualification shall cease when the arrangement or, as the case may be, trust deed or composition contract is no longer in force.
- (6) Nothing in this paragraph or in paragraphs 4 and 5 below shall apply to the principal of the college in his capacity as a member of the college council.

*Disqualification from appointment*

- 4 If at any time the college council are satisfied that any member of the council—
- (a) has been convicted as mentioned in sub-paragraph (a) of paragraph 3(2) above or has become a person to whom either of sub-paragraphs (b) or (c) of paragraph 3(2) above applies; and
  - (b) has been absent, without the permission of the council, from all meetings of the council or any of their committees to which the member has been appointed for a period longer than six consecutive months,

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the council shall, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.

- 5 If at any time the college council are satisfied that any member of the council—
- (a) has failed to comply with any of the provisions of regulation 9(2) (conflict of interest) or 9(7) (confidentiality of information) of The College Council (Scotland) (No. 2) Regulations 1990 (provisions as to the composition of college councils);
  - (b) having been appointed by reason of being a student of the college or a member of the staff of the college, ceases to be such student or member of staff; or
  - (c) without prejudice to paragraph 4 above, has become unable or unfit to discharge his functions as a member of the council,
- the council may, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.

#### *Casual vacancy*

- 6 (1) Any casual vacancy among the members of a council may be filled by the council appointing a person to fill the vacancy in like manner to that by which the person to be replaced was appointed.
- (2) Notwithstanding paragraph 2 above, a person appointed in pursuance of this paragraph shall hold office until the expiry of the period of office of the person he was appointed to replace.

### SCHEDULE 7

Section 37.

#### THE SCOTTISH HIGHER EDUCATION FUNDING COUNCIL

#### *Supplementary powers*

- 1 (1) Subject to sub-paragraph (2) below, the Council may do anything which appears to them to be necessary or expedient for the purpose of or in connection with the discharge of their functions, including in particular—
- (a) acquiring and disposing of land and other property;
  - (b) entering into contracts;
  - (c) investing sums not immediately required for the purpose of the discharge of their functions; and
  - (d) accepting gifts of money, land or other property.
- (2) The Council shall not borrow money.

#### *Chief officer*

- 2 (1) One of the members of the Council shall be the chief officer.
- (2) The first chief officer shall be appointed as such by the Secretary of State and shall hold and vacate office in accordance with the terms of his appointment.

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- (3) Each subsequent chief officer shall be appointed by the Council with the approval of the Secretary of State on such terms and conditions (including terms with respect to tenure and vacation of office) as the Council may, with the approval of the Secretary of State, determine.
- (4) On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the Council and the terms and conditions of his appointment, the Secretary of State shall—
- (a) if that person is not already a member of the Council, appoint him as a member for the same term as the term of his appointment as chief officer; or
  - (b) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer ends, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer.

*Tenure of members of the Council*

- 3 (1) A person shall hold and vacate office as a member or as chairman or chief officer of the Council in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A person may at any time by notice given in writing to the Secretary of State resign his office as a member or as chairman of the Council.
- 4 If the Secretary of State is satisfied that a member of the Council—
- (a) has been absent from meetings of the Council for a period longer than six consecutive months without the permission of the Council; or
  - (b) is unable or unfit to discharge the functions of a member,
- the Secretary of State may by notice given in writing to that member remove him from office; and thereupon the office shall become vacant.

*Salaries, allowances and pensions for members*

- 5 (1) The Council—
- (a) shall pay to their members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State may determine; and
  - (b) shall pay, or make such payments towards the provision of, such pensions to or in respect of any of their members as the Secretary of State may determine.
- (2) If a person ceases to be a member of the Council and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Council to make to that person a payment of such amount as the Secretary of State may determine.
- (3) A determination or direction of the Secretary of State under sub-paragraph (1) or (2) above requires the approval of the Treasury.

*House of Commons disqualification*

- 6 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) there is inserted at the appropriate place—

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“Any member of the Scottish Higher Education Funding Council in receipt of remuneration.”

#### *Staff*

- 7
- (1) The Council may appoint such employees as they think fit.
  - (2) The Council shall pay to their employees such remuneration and allowances as the Council may determine.
  - (3) The employees shall be appointed on such other terms and conditions as the Council may determine.
  - (4) A determination under sub-paragraph (2) or (3) above requires the approval of the Secretary of State given with the consent of the Treasury.
  - (5) Employment with the Council shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of “Other Bodies” there is inserted—

“Scottish Higher Education Funding Council.”

- (6) The Council shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to sub-paragraph (5) above in the sums payable out of money provided by Parliament under that Act.
- (7) If an employee of the Council becomes a member of the Council and was by reference to his employment by the Council a participant in a pension scheme such as is mentioned in sub-paragraph (5) above—
  - (a) the Council may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Council whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 5 above; but
  - (b) if the Council determine as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Council shall be exercised only with the consent of the Secretary of State given with the approval of the Treasury.

#### *Committees*

- 8
- (1) The Council may establish a committee for any purpose.
  - (2) The number of the members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Council.
  - (3) Such a committee may include persons who are not members of the Council.
  - (4) The Council shall pay to the members of such committees (whether or not they are also members of the Council) such travelling, subsistence or other allowances as the Secretary of State may determine.
  - (5) The Council shall keep under review the structure of committees established under this paragraph and the scope of each committee’s activities.

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### *Delegation of functions*

- 9 The Council may authorise the chairman, the chief officer or any committee established under paragraph 8 above to exercise such of their functions as they may determine.

### *Proceedings*

- 10 Without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to the Council under this Act—
- (a) a representative of the Secretary of State shall be entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Council or of any committee of the Council; and
  - (b) the Council shall provide the Secretary of State with such copies of any documents distributed to members of the Council or of any such committee as he may require.
- 11 The validity of any proceedings of the Council or of any committee of the Council shall not be affected by a vacancy among the members or by any defect in the appointment of a member.
- 12 Subject to the preceding provisions of this Schedule, the Council may regulate their own procedure and that of any of their committees.

### *Execution of documents*

- 13 (1) For any purpose other than those mentioned in sub-paragraph (2) below, a document is validly executed by the Council if it is signed on their behalf by a member of the Council or by their secretary (or any person performing the duties of secretary to the Council) or by any person authorised to sign the document on their behalf.
- (2) For the purposes of any enactment or rule of law relating to the authentication of documents, a document is validly executed by the Council if it is subscribed on their behalf by being executed in accordance with the provisions of sub-paragraph (1) above.
- (3) A document which bears to have been executed by the Council in accordance with sub-paragraph (2) above shall, in relation to such execution, be a probative document if the subscription of the document bears to have been attested by at least one witness.

### *Accounts*

- 14 (1) It shall be the duty of the Council—
- (a) to keep proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each financial year of the Council a statement of accounts; and
  - (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts referred to in sub-paragraph (1)(b) above shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it;

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- (b) the manner in which the information contained in it is to be presented; or
- (c) the methods and principles according to which the statement is to be prepared,

and shall contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament.

- (3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph “financial year” means the period beginning with the date on which the Council is established and ending with the second 31st March following that date, and each successive period of twelve months.

#### *Status of the Council*

- 15 The Council shall not—
- (a) be regarded as the servants or agents of the Crown;
  - (b) have any status, immunity or privilege of the Crown,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.

### SCHEDULE 8

Section 62.

#### TRANSITIONAL, CONSEQUENTIAL AND SAVING PROVISIONS

#### **PART I**

##### PROVISIONS RELATING TO PART I OF THIS ACT

#### *Supply of services*

- 1 (1) Where, in relation to any college of further education—
- (a) there is in existence at the first transfer date an arrangement whereby any defined activity (being functional work) is undertaken by a local authority which is the education authority responsible, immediately before the first transfer date, for the management of the college;
  - (b) each of the six conditions is fulfilled; and
  - (c) the arrangement is to subsist for any period after that date,
- the arrangement shall be binding, as from the first transfer date, on the board of management of the college and may be enforced by the board or, as the case may be, the local authority as if it were a contract between them for the performance of the defined activity.
- (2) In the enforcement of any arrangement as mentioned in sub-paragraph (1) above, any provision under the arrangement in pursuance of section 8(3) of the Local Government Act 1988 for items to be credited or, as the case may be, debited to any account shall be taken to be a requirement on the local authority or, as the case may be, the board to make payments corresponding to such provision.

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(3) In this paragraph—

“defined activity” means a defined activity for the purposes of Part I of the Local Government Act 1988;

“local authority” has the same meaning as in section 1(3)(a) of that Act; and

“the six conditions” are the conditions referred to in section 6(1) of that Act.

*Appointment of staff by education authority*

- 2 Without prejudice to section 30 of this Act, with effect from such date as the Secretary of State may appoint in relation to a college of further education under section 34 of this Act, the education authority under whose management the college is shall not enter into a contract of employment relating to the employment of any person wholly or mainly for or in connection with the purposes of such college if the contract is to take effect on or after the first transfer date.

*General*

- 3 (1) The Secretary of State may by order make such consequential modifications of any provision of any local or private Act passed, or subordinate legislation made, before the first transfer date which refers to the college council for any college of further education as appear to him to be necessary or expedient.
- (2) The Secretary of State may, in relation to any particular functions of college councils, by order exclude, modify or supplement any provision of this Schedule, section 34 of and Schedules 3 and 5 to this Act and may make such other transitional provision as he considers necessary or expedient.
- (3) Nothing in this paragraph shall apply in relation to contracts of employment made by an education authority.

**PART II**

PROVISIONS RELATING TO PART II OF THIS ACT

*Saving for regulations under section 77 of the 1980 Act*

- 4 (1) Subject to sub-paragraph (2) below, the repeal by section 62(3) of and Schedule 10 to this Act of section 77 of the 1980 Act shall not affect any regulations made under that section.
- (2) This paragraph is without prejudice to the power of—
- (a) the Privy Council under section 45 of this Act; and
  - (b) the Secretary of State under section 47 of this Act,
- to amend, vary or revoke the provisions of any such regulations.



SCHEDULE 9

Section 62.

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS

*Teaching Council (Scotland) Act 1965 (c. 19)*

- 1 (1) The Teaching Council (Scotland) Act 1965 shall be amended as follows.
- (2) In the following table, the expressions specified in column 3 shall be substituted for the expressions specified in column 2 where they occur in the provisions specified in column 1.

<i>Provision</i>	<i>Existing expression</i>	<i>Expression to be substituted</i>
Sections 5 and 6.	“college of education”	“relevant institution”
Section 5 and Schedule 1, paragraphs 1, 2 and 6.	“colleges of education”	“relevant institutions”
Section 5 and Schedule 1, paragraph 1.	“colleges”	“institutions”
Section 5.	“college”	“institution”

- (3) In subsection (2) of section 2 (standards for entry to the teaching profession)—
- (a) for the word “conditions” there shall be substituted the word “matters”; and
  - (b) for the words “section 7” there shall be substituted the words “section 7(1)(b) to (d)”.
- (4) In subsection (1) of section 5 (duty of the teaching council in relation to colleges of education)—
- (a) in paragraph (a) for the words “nature of the instruction given” there shall be substituted the words “education and training of teachers”; and
  - (b) in paragraph (b) for the words from “section 81 of the Act of 1962” to the end of the subsection there shall be substituted the words “section 7 of this Act.”
- (5) In Schedule 1—
- (a) in paragraph 1(1)(b)(v), after the words “the central institutions” there shall be inserted the words “and such institutions in the higher education sector (other than universities) as are not relevant institutions”;
  - (b) in paragraph 1(3) for the words from “and to the central institutions” to the words “falls to be made;” there shall be substituted the words “, the central institutions and institutions in the higher education sector shall be construed, in relation to any appointment, as references to the universities of Scotland or, as the case may be, such institutions established at the time the appointment falls to be made;”;
  - (c) in paragraph 1(3)(b)(ii)—
    - (i) at the beginning there shall be inserted the words “a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;” and
    - (ii) after the word “attending” there shall be inserted the words “designated institutions;” and
  - (d) after paragraph 6 there shall be inserted the following paragraph—

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“6A In Part I of this Schedule, any reference to the principal of a relevant institution shall be construed, as regards a relevant institution which does not have as its sole or main activity the provision of courses for the education and training of teachers, as a reference to the person responsible to the principal of the institution for administering such courses.”

*Veterinary Surgeons Act 1966 (c. 36)*

2 In Schedule 3 to the Veterinary Surgeons Act 1966 (exemptions from restrictions on practice of veterinary surgery), in the definition of “recognised institution” for the purposes of paragraph 5, in paragraph (b) of the definition—

(a) for sub-paragraph (i) there shall be substituted—

“(i) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;

(iA) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 which is managed by a board of management established under that Act;”;

(b) after sub-paragraph (ii) the word “or” shall be omitted; and

(c) after sub-paragraph (iii) there shall be inserted the words “or

(iv) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;”.

*Chronically Sick and Disabled Persons Act 1970 (c. 44)*

3 In subsection (2) of section 8 of the Chronically Sick and Disabled Persons Act 1970 (access to, and facilities at, university and school buildings) for paragraph (c) there shall be substituted the following paragraph—

“(c) educational establishments within the meaning of section 135(1) of the Education (Scotland) Act 1980.”

*Sex Discrimination Act 1975 (c. 65)*

4 (1) The Sex Discrimination Act 1975 shall be amended as follows.

(2) In section 22 (prohibition of discrimination in relation to certain educational establishments), in the Table—

(a) after paragraph 7A there shall be inserted the following paragraph—

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“7B. College of further education within the meaning of section 36(1) of the Further and Higher Education	Board of management.”;
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(Scotland) Act 1992 under the management of a board of management.

- (b) after paragraph 7B inserted by sub-paragraph (a) above there shall be inserted the following paragraph—

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“7C. Designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992.      Governing body.”

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- (3) After section 23A (discrimination by further and higher education funding councils for England and Wales) inserted by the Further and Higher Education Act 1992 there shall be inserted the following section—

**“23B Discrimination by Scottish Further and Higher Education Funding Councils**

It is unlawful for the Scottish Further Education Funding Council or the Scottish Higher Education Funding Council in carrying out any of their functions to do any act which constitutes sex discrimination.”

- (4) In sub-paragraph (c)(i) of subsection (6) of section 25 (bodies with a general duty to provide education without discrimination) for the words “7 or 7A” there shall be substituted the words “7, 7A, 7B or 7C”.
- (5) In section 82(1) (interpretation) after the definition of “board of management” there shall be inserted the following definition—

““Board of management” in relation to a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, has the same meaning as in that Part;”.

- (6) In paragraph 6 of Schedule 2 (applications by certain bodies for transitional exemption orders) for the words “7 or 7A” there shall be substituted the words “7, 7A, 7B or 7C”.

*Race Relations Act 1976 (c. 74)*

- 5 (1) The Race Relations Act 1976 shall be amended as follows.
- (2) In section 17 (prohibition of discrimination in relation to certain educational establishments), in the Table—
- (a) after paragraph 7A there shall be inserted the following paragraph—

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“7B. College of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 under the management of a board of management.      Board of management.”;

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- (b) after paragraph 7B inserted by sub-paragraph (a) above there shall be inserted the following paragraph—

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

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“7C. Designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992.      Governing body.”

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- (3) After section 18A (discrimination by further and higher education funding councils for England and Wales) inserted by the Further and Higher Education Act 1992 there shall be inserted the following section—

**“18B Discrimination by Scottish Further and Higher Education Funding Councils**

It is unlawful for the Scottish Further Education Funding Council or the Scottish Higher Education Funding Council in carrying out any of their functions to do any act which constitutes racial discrimination.”

- (4) In sub-paragraph (c)(i) of subsection (6) of section 19 (bodies with a general duty to provide education without discrimination) for the words “7 or 7A” there shall be substituted the words “7, 7A, 7B or 7C”.
- (5) In section 78(1) (interpretation) after the definition of “board of management” there shall be inserted the following definition—

““board of management” in relation to a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, has the same meaning as in that Part;”.

*Employment Protection (Consolidation) Act 1978 (c. 44)*

- 6      In section 29 of the Employment Protection (Consolidation) Act 1978 (persons holding certain offices to be allowed time off for public duties)—

- (a) in paragraph (e) of subsection (1) for the words “central institution or a college of education” there shall be substituted the words “designated institution or a central institution”;
- (b) in that subsection, after paragraph (ef) (as inserted by paragraph 7(a) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989) there shall be inserted the following paragraph—

“(eg) a member of the board of management of a college of further education; or”; and

- (c) in paragraph (c) of subsection (2) for the words from ““school or college council”” to the end there shall be substituted the words ““school council” means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, “board of management”, where it appears in paragraph (ef) as inserted by the Self-Governing Schools etc. (Scotland) Act 1989, “central institution” and “self-governing school” have the same meanings as in section 135(1) of the Education (Scotland) Act 1980, “school board” has the same meaning as in section 1(1) of the School Boards (Scotland) Act 1988, “board of management”, where it appears and “college of further education” have the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992 and “designated institution” has the same meaning as in Part II of that Act of 1992”.

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*Education (Scotland) Act 1980 (c. 44)*

- 7 (1) The Education (Scotland) Act 1980 shall be amended as follows.
- (2) After section 14 there shall be inserted the following section—
- “14ZA Meaning of pupil in sections 12 to 14**
- In sections 12 to 14 of this Act and in section 52 of this Act as it relates to the said section 13, any reference to a pupil shall include a reference to a student attending a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992.”
- (3) In section 17 (provision, maintenance and equipment of certain accommodation)—
- (a) in each of subsections (1) and (3) there shall be inserted at the beginning the words “Subject to subsection (6) below,”; and
- (b) after subsection (5) there shall be inserted the following subsection—
- “(6) Subsections (1) and (3) above shall have effect as regards further education only to the extent that the education authority is under a duty to do anything under the said sections 1 to 6.”
- (4) In section 65B (provision for recorded children who have ceased to be of school age) after subsection (6) there shall be inserted the following subsection—
- “(6A) Without prejudice to the generality of paragraph (c) of subsection (6) above, the reference in that paragraph to any other body shall include a reference to the board of management of a college of further education (within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992) making provision from which, in the opinion of the authority, the child might benefit.”
- (5) In section 66 (inspection of educational establishments) after the words “other educational establishment” there shall be inserted the words “(other than a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992)”.
- (6) In section 68 (power to require submission to medical examination)—
- (a) after the word “pupil” where it first occurs there shall be inserted the words “or other person enrolled at an educational establishment”; and
- (b) after the word “pupil” where it fourth and fifth occurs there shall be inserted the words “or other person”.
- (7) In subsection (1) of section 135 (interpretation) in the definition of “educational establishment”, in paragraph (ii) after the word “includes” there shall be inserted the words “a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992,”.

*Education (Fees and Awards) Act 1983 (c. 40)*

- 8 (1) Section 1 of the Education (Fees and Awards) Act 1983 (different fees for students not connected with the United Kingdom) shall be amended as follows.
- (2) In subsection (3), after paragraph (ca) inserted by the Further and Higher Education Act 1992 there shall be inserted the following paragraph—

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“(cb) any designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992; and”.

(3) In paragraph (d) of that subsection—

- (a) after the word “Scotland” there shall be inserted “(i)”; and
- (b) at the end of the paragraph there shall be inserted “; or
  - (ii) which is a college of further education for which there is a board of management established under Part I of the Further and Higher Education (Scotland) Act 1992.”

*Mental Health (Scotland) Act 1984 (c. 36)*

9 In section 11(1) of the Mental Health (Scotland) Act 1984 (training and occupation of the mentally handicapped)—

- (a) after the words “operation of” there shall be inserted “(a)”; and
- (b) after the word “mind” there shall be inserted the words “or
  - (b) section 1 of the Further and Higher Education (Scotland) Act 1992 (which imposes a duty on the Secretary of State to secure the provision of adequate and efficient further education in Scotland),”.

*Education Reform Act 1988 (c. 40)*

10 In section 235 of the Education Reform Act 1988 (general interpretation) after subsection (5) there shall be inserted the following subsection—

“(5A) Any reference in any provision of this Act which extends to Scotland to a higher education funding council shall, in the application of that provision to Scotland, be construed as a reference to the Scottish Higher Education Funding Council.”

*Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)*

11 In section 70 of the Self-Governing Schools etc. (Scotland) Act 1989 (power of Secretary of State to require regular appraisal of teachers) in subsection (1) for paragraph (d) there shall be substituted the following—

- “(d) the boards of management of colleges of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992,”.

*Education (Student Loans) Act 1990 (c. 6)*

12 (1) The Education (Student Loans) Act 1990 shall be amended as follows.

(2) In section 1 (loans for students), in subsection (3) for paragraph (b) there shall be substituted the following paragraph—

- “(b) educational establishments within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible, colleges of further education

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within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by boards of management established under Part I of that Act and designated institutions within the meaning of Part II of that Act of 1992”.

(3) In paragraph 2(2) of Schedule 2 (certificates to be issued by governing bodies) for the words from “a college of further education” there shall be substituted the following sub-paragraphs—

- “(a) an educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible, the education authority;
- (b) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 which is managed by a board of management established under Part I of that Act, the board of management.”

*Environmental Protection Act 1990 (c. 43)*

13 In section 98 of the Environmental Protection Act 1990 (definitions) in subsection (3)—

- (a) for paragraph (c) there shall be substituted the following paragraph—
  - “(c) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;
  - (cc) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by a board of management established under Part I of that Act;”;
- (b) for paragraph (d) there shall be substituted the following paragraph—
  - “(d) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;”;
- (c) in paragraph (f) for the words “1980 Act” there shall be substituted the words “Education (Scotland) Act 1980 (“the 1980 Act)”.

SCHEDULE 10

Section 62.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In section 29, in paragraph (e) of

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1980 c. 44.	The Education (Scotland) Act 1980.	subsection (1) the words “or college”. In section 3, in subsection (1) the words “and compulsory further education” and in subsection (6)(a) the word “voluntary”. In section 7, subsections (1), (2), (3), (7) and (8). Section 77. In section 135(1), the definition of “college of education” and in paragraph (ii) of the definition of “educational establishment” the words “a college of education”.
1988 c. 47.	The School Boards (Scotland) Act 1988.	In section 8, paragraph (b) of subsection (4). In section 22, in subsection (2) the definition of “college council”.
1989 c. 39.	The Self-Governing Schools etc. (Scotland) Act 1989.	Sections 54 to 66. In section 80, in subsection (1) the definition of “college of further education”.

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