



Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART I

FURTHER EDUCATION

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.

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- (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—
 - (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

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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
 - (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.