



# Further and Higher Education (Scotland) Act 1992

## 1992 CHAPTER 37

### PART I

#### FURTHER EDUCATION

#### 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.

*Status: Point in time view as at 03/03/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Chapter IV. (See end of Document for details)*

- (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 <sup>M1</sup>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.

#### Commencement Information

**II** S. 28 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

#### Marginal Citations

**M1** 1973 c. 65.

## 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

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and, if the obligation is a unilateral obligation, notified by them to the beneficiary before that date.

**Commencement Information**

**I2** S. 29 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

**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.

**Commencement Information**

**I3** S. 30 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

*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.

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- (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 <sup>M2</sup>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 [F1section 195 of the Town and Country Planning (Scotland) Act 1997] (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,

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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.

#### Textual Amendments

**F1** Words in s. 31(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 52**

#### Commencement Information

**I4** S. 31 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

#### Marginal Citations

**M2** 1947 c. 42.

## 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.

#### Commencement Information

**I5** S. 32 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

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### 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 <sup>M3</sup>Employment Protection (Consolidation) Act 1978,
 the contract shall be void and of no effect.

#### Commencement Information

**I6** S. 33 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

#### Marginal Citations

**M3** 1978 c. 44.

### *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

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- (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 <sup>M4</sup>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.

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**Commencement Information**

**I7** S. 34 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

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**Marginal Citations**

**M4** S.I. 1990/1637.

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