



Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART I

FURTHER EDUCATION

CHAPTER III

COLLEGES OF FURTHER EDUCATION

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;

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- (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.

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

- (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.

Commencement Information

II [S. 16](#) wholly in force at 1.9.1992 see [s. 63\(2\)](#) and [S.I. 1992/817](#), [art. 3\(2\)](#), [Sch. 3](#)

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
 - (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.

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

- (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 ^{M1}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.

Commencement Information

I2 S. 17 wholly in force at 1.4.1993 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 4

Marginal Citations

M1 1985 c. 73.

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

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- (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 [^{F1}such educational charity as the Scottish Ministers may direct,] 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.
- [^{F2}(6) In this section, “educational charity” means a body entered in the Scottish Charity Register which has the advancement of education as one of its charitable purposes.]

Textual Amendments

- F1** Words in s. 18(5) substituted (9.3.2009) by [Further and Higher Education \(Scotland\) Act 1992 Modification Order 2009 \(S.S.I. 2009/28\)](#), arts. 1, **2(a)**
- F2** S. 18(6) inserted (9.3.2009) by [Further and Higher Education \(Scotland\) Act 1992 Modification Order 2009 \(S.S.I. 2009/28\)](#), arts. 1, **2(b)**

Commencement Information

- I3** S. 18 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817](#), art. 3(2), **Sch. 1**

Changes to legislation:

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