



# Further and Higher Education (Scotland) Act 1992

## 1992 CHAPTER 37

### PART I

#### FURTHER EDUCATION

#### CHAPTER IV

##### TRANSITORY AND TRANSITIONAL PROVISIONS

##### *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,

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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>M1</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,

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.

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#### Textual Amendments

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

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#### Commencement Information

**I1** S. 31 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

**M1** 1947 c. 42.

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## 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

**I2** S. 32 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

## 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,

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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>M2</sup>Employment Protection (Consolidation) Act 1978,

the contract shall be void and of no effect.

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**Commencement Information**

**I3** S. 33 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**

**M2** 1978 c. 44.

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