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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 268**

**EDUCATION**

**The Banff and Buchan College of Further Education  
(Transfer and Closure) (Scotland) Order 2013**

*Made - - - - 12th September 2013*  
*Laid before the Scottish*  
*Parliament - - - - 17th September 2013*  
*Coming into force - - 1st November 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1) (c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992<sup>(1)</sup> and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which Banff and Buchan College of Further Education is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of Aberdeen College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

**Citation and commencement**

1. This Order may be cited as the Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st November 2013.

**Interpretation**

2. In this Order—

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992;

“Aberdeen” means the institution named Aberdeen College being a college of further education prescribed under section 11(1) of the 1992 Act<sup>(2)</sup>; and

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(1) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) (“the 2005 Act”), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Aberdeen College is prescribed by S.I. 1992/1597. The name of Aberdeen College was changed from “Aberdeen College of Further Education” by S.I. 1993/1891.

“the Aberdeen Board” means the Board of Management of Aberdeen College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021174;

“Banff and Buchan” means the institution named Banff and Buchan College of Further Education being a college of further education prescribed under section 11(1) of the 1992 Act<sup>(3)</sup>;

“the Banff and Buchan Board” means the Board of Management of Banff and Buchan College of Further Education established as a body corporate by section 11(2) of the 1992 Act; and

“enactment” has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(4)</sup>.

### **Transfer of property, rights, liabilities and obligations**

**3.—**(1) All property, rights, liabilities and obligations of the Banff and Buchan Board are transferred to and vested in the Aberdeen Board.

(2) Any reference to Banff and Buchan or the Banff and Buchan Board in any instrument is to be construed as a reference to either Aberdeen or the Aberdeen Board as may be appropriate.

(3) Any action or proceeding by or against the Banff and Buchan Board pending or current, immediately before this Order comes into force, may be continued by or against the Aberdeen Board.

(4) For the purposes of this article, “instrument” does not include enactment.

### **Property provided with grand aid**

**4.** Where the Grant-aided Colleges (Scotland) Grant Regulations 1989<sup>(5)</sup> applied to the Banff and Buchan Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the Aberdeen Board in respect of such land and buildings.

### **Transfer of staff**

**5.—**(1) All employees of the Banff and Buchan Board are transferred to the Aberdeen Board and the contract of employment of each such employee has effect as if originally made between each such employee and the Aberdeen Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the Banff and Buchan Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the Aberdeen Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to Banff and Buchan Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the Aberdeen Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee’s contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the Banff and Buchan Board, which is to come into effect after the coming into force of this article

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<sup>(3)</sup> Banff and Buchan College of Further Education is prescribed by [S.I. 1992/1597](#).

<sup>(4)</sup> [2010 asp 10](#).

<sup>(5)</sup> [S.I. 1989/433](#), amended by [S.I. 1993/489](#).

and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

**Closure of institution**

6. Banff and Buchan is closed and the Banff and Buchan Board is wound up and dissolved.

St Andrew's House, Edinburgh  
12th September 2013

*MICHAEL RUSSELL*  
A member of the Scottish Government

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**Status:** *This is the original version (as it was originally made). Scottish Statutory Instruments are not carried in their revised form on this site.*

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

On 1st November 2013 Banff and Buchan College of Further Education will cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Board of Management of Banff and Buchan College of Further Education to the Board of Management of Aberdeen College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of Banff and Buchan College of Further Education to transfer to employment with Aberdeen College without a break in their employment (article 5). It provides for Banff and Buchan College of Further Education to be closed and its Board of Management wound up and dissolved (article 6).