

Memorandum concerning the form of Contract for Training College Students and procedure for release from Service Obligations submitted by the Hon. Minister of Education, Culture and Tourism.

For a number of years, students entering the Training Colleges have been required to bind themselves to complete their course, and eventually to serve Government for three years, by means of an undertaking based on the enclosed form. According to the wording of this form, any Teacher requiring release from obligations to serve Government under the terms of the contract was released, if necessary, from such obligations by the Minister responsible for Education under Clause 8 of the form.

It has been the policy to grant such releases in the case of Teachers who leave the service in order to:

- (i) get married (in the case of Female Teachers);
- (ii) join a religious order, or try a priestly vocation;
- (iii) emigrate.

No doubt arose regarding the validity of such a procedure until a case which did not fall within the above headings was referred to the Ministry of Finance, Customs and Port. The whole position was then reviewed and legal advice sought. The ruling of the Crown Advocate General on this matter is shown in enclosed copy of minute dated 25th March, 1971 in file Educ. 119/71.

According to this ruling, the correct procedure is for the Minister to grant permission to a student to interrupt his/her course or to a Teacher to be released from his/her service obligations provided that such release is granted before such interruption or resignation takes place.

If, however, such request is not made before resignation, a financial liability is automatically incurred under the contract, and this may only be written off by the authority of the Secretary, Ministry of Finance, Customs and Port, or if above £50, by the Minister of Finance, Customs and Port.

...../2 cont.

The result is that, as no emphasis was made in the past on the importance of Ministerial authority being given before resignation (in fact, in the cases stated at para. 2 above the matter was taken for granted) there is a number of cases where financial liability had been incurred, but for which formal writing off was never requested.

It is felt that, particularly as the teachers or students involved were not aware of the situation at the time, it would be embarrassing to claim such amounts which legally speaking are due to Government in terms of the advice tendered by the Crown Advocate General, in some cases years after resignation took place.

In the circumstances, it is suggested that the following line of action be taken:

- (a) with regard to past cases, agreement be given in principle by Cabinet to grant releases from service obligations, or interruptions of courses at the Training College and to write off any financial obligations incurred;
- (b) that present members of staff and Training College students be immediately notified by circular of the proper procedure to be followed in such cases (draft circular attached);
- (c) that the proper procedure indicated by the Crown Advocate General be followed in future.

21.5.71

PRIMARY SCHOOL TEACHER

I, the undersigned, _____ son
daughter of _____, born at _____
and residing at _____, about
to undergo a course of training (Teachers' Training Course)
at St. Michael's/Mater Admirabilis Training College, hereby
declare that I fully agree to the conditions of training
and service as laid down hereunder.

2. My admission to the College is subject to my under-
going a medical examination and being found fit.

3. I agree to undergo training at St. Michael's/Mater
Admirabilis Training College and bind myself to complete
the prescribed course of training extending from October
1970 to June 1972.

4. I further agree and undertake to render service
in the Department of Education as a teacher, if and when I
am appointed by the Government in such capacity, under the
conditions of payment and service obtaining at the time,
for a period of three years from date successfully complet-
ing my course of training.

5. Failure on my part to fulfil any of the above
conditions will entitle the Government to claim the payment
of the surety of one hundred pounds (£100) as set out in
paragraph 6 below, or the refund of such a sum as Government
may, on the advice of the Director of Education, decide as
will have been expended on my education and training at
the college.

6. As a security for the above, I am producing the
suretyship of _____ here undersigned,
who, having been accepted by Government, binds himself/
herself to a surety of one hundred pounds (£100) for the
proper fulfilment of the above obligation. Such a surety will
lapse on my terminating three years' service as teacher,
or at such time as may be decided by the Director of
Education.

7. For the purpose of this agreement and as an essential
condition of the validity and of the operation thereof, I
solemnly declare that I am a Citizen of Malta and satisfy
the requirements prescribed by Government in this respect.

8. I am aware that interruption of the course of
training and/or release from the obligation to teach for a
period of three years will be allowed only for a reasonable

L-ARKIVI NAZZJONALI TA' MALTA

cause at the discretion of the Hon. Minister of Education, Culture and Tourism whose decision shall be for all intents and purposes binding and final, and the Hon. Minister of Education, Culture and Tourism, in consultation with the Principal of the Training College, may, if he thinks fit on account of unsatisfactory conduct or work on the part of the student, terminate the course of any student.

9. And I, _____, the Asst./Director of Education, on behalf of the Government of Malta accept the obligations assumed by the said Mr/Miss _____ in consideration of the training given to him/her.

This _____ day of _____, 1970.

Candidate Signature _____

Sgd. _____
Asst./Director of Education

Eduo. 533/69
534/69

I, the undersigned, _____, (state trade or profession) _____ son/daughter of _____ born at _____ and residing at _____ hereby stand surety to the amount of one hundred pounds (£100) in solidum with Mr/Miss _____ for the proper fulfilment of the obligations undertaken by the said Mr/Miss _____ as per above instrument of the conditions and terms of which I am fully aware.

Signed _____

Witness _____

1/6 Stamp

Director of Education

1. In the first instance, one is to keep quite distinct statutory provisions, such as those contained in the General Financial Regulations, 1966, which impose obligations on Ministers and public officers, and contractual provisions which govern the relations between a Department of the Government, as a party to a contract, and the private individual, as the other party to the same contract. The former provisions are overriding and, whatever the terms of the contract, a public officer in his internal relations within the public administration must observe them.

2. Clause 8 of the obligations assumed by a student undergoing a Teacher's Training Course with Government Aid (Red 4) states as follows:-

"I am aware that interruption of the course of training and/or release from obligation to teach for a period of three years will be allowed only for a reasonable cause at the discretion of the Hon. Minister of Education, Culture and Tourism whose decision shall be for all intents and purposes binding and final".

3. The said clause does not mean that the Minister of Education, Culture and Tourism may sanction the interruption of a course of training or release from the obligation to teach during the entire period of three years after that the said interruption has taken place or after that the teaching has been abandoned on the part of the student concerned, since in such case the student will have already incurred the financial sanctions ensuing from the non-fulfilment on his part of his contractual obligations, and such sanction, as explained below in paragraph 5, can only take place by authority of the Minister responsible for finance or his secretary, according to the amount involved.

4. But the said clause 8 empowers the Minister of Education, Culture and Tourism, to grant or refuse the application of any student, who is undergoing or has completed the course in question, to be released from his obligation which binds him to complete the course and the three years teaching period. In this case, the Minister of Education will consider the reasons stated for the application and the best interest of education, in granting or refusing such application. I do not think that the prior approval of the Minister responsible for finance would be necessary in such case, any more than it would be necessary if the Minister of Education, Culture and Tourism, in consultation with the Principal of the Training College, were to terminate the course of a student on account of his unsatisfactory conduct or work, under the same clause 8, even though such termination will involve profitless waste of public funds in relation to the period during which the student will have attended the course.

5. When, on the other hand, a student has abandoned the course, or withdrawn his services as a teacher before the lapse of three years, without having sought and obtained the prior permission of the Minister of Education, Culture and Tourism, then, the penalty of £100 or the refund of the sum mentioned in clause 5 of the obligations assumed by the student (red 4) is due "ipso iure" and its waiver is tantamount to the abandonment of a claim and constitutes a loss of public money which, as such, can only be authorised, in any one case where the amount exceeds £50 by the Minister of Finance, Customs and Port, and in all other cases by Secretary of Finance, Customs and Port, since, in terms of regulation 80 of the General Financial Regulations, 1966, the corresponding authority for the writing off of such losses is vested in them.

6. I have seen the advice tendered by Crown Counsel in his letter-minute marked Educ. PF 4268 and MEPP/3/65 dated 29th May, 1970, addressed to the Secretary of Finance, Customs and Port, concerning the interpretation of clause 5 mentioned above. With the greatest respect to the views expressed in regard to this matter by Crown Counsel whose opinion I hold in high esteem, I am unable to agree with his interpretation of this clause. Clause 5 states in an explicit manner that failure on the part of the student to fulfill any of his obligations will entitle the Government to claim either the payment of the penalty or the refund of expenses. The words "will entitle" denote that the Government's right ensues automatically and is acquired by Government "ipso iure" on the infringement on the part of the student of any of his obligations and the nature of such right is not affected by the circumstance that it is a right with two alternatives within the choice of the Government. I am to add that, since we are here dealing with a matter which is exclusively financial, for the same reasons for which the writing off of any claim is subject to the authority of the Minister of Finance, Customs and Port, or his Secretary, as the case may be, the option as to which alternative should be applied in each case - (unless authority to waive both alternatives has been exercised) - rests with the said Minister or his Secretary, (depending on the amounts involved) who would, of course, give due weight to the advice of the Director of Education.

A copy of this minute is being forwarded to the Secretary of Finance, Customs and Port to whom the said letter of 29th May, 1970, was addressed, and to the Director of Audit and Principal Assistant Secretary (Establishments) to whom the said letter was copied.

(M. Tufigno)
Crown Advocate General
25. 3. 71

S.O. No.

To All Members of Staff, and
Students at the Training Colleges

The attention of members of staff who had undergone courses of training at one of the Teacher Training Colleges, and of present Training College Students, is drawn to the fact that in accepting to undergo college training, they incur an obligation to complete their course and eventually to serve Government for the period stated in their contract.

In this connection, members of staff and students are asked to note that, should any circumstances arise on account of which they would not be in a position to satisfy such obligations, they are to apply for release immediately and not discontinue their course or relinquish their post before permission for such release is granted.

Failure to observe these instructions would imply that the student or teacher concerned would immediately incur a financial liability according to the conditions of his/her contract.

It is to be clarified that the above instructions apply to all cases, including marriage, religious vocations and emigration.

Applications for release as indicated above are to be addressed to the Director of Education and should normally reach this Office not later than eight weeks before resignation is contemplated.

DIRECTOR OF EDUCATION