

# HIGHER EDUCATION GOVERNANCE (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Governance Arrangements**

#### *Chapter 3: Key definitions*

#### *Section 18: Meaning of higher education institution*

35. [Section 18\(1\)](#) provides a definition of the term “higher education institution” which applies for the purposes of Part 1 of the Act. Section 18(1) provides that the term has the same meaning as in the 2005 Act, but that it includes an institution here only if it is also listed in schedule 2 to the 2005 Act. The definition of HEI, however, explicitly excludes the Open University (subsection (1)(b)).
36. The 2005 Act definition of “higher education institution” is found in section 35(1) of that Act where it is defined as (1) a university or (2) a designated institution within the meaning of section 44(2) of the 1992 Act. In practice, the only non-universities which are currently designated under that section are:
  - the Royal Conservatoire of Scotland (which was designated by [SI 1992/1025](#) under its former name, the Royal Scottish Academy of Music and Drama),
  - Glasgow School of Art (which was also designated under [SI 1992/1025](#)), and
  - SRUC, or Scotland’s Rural College (which was designated by [SSI 2008/177](#) under its former name, the Scottish Agricultural College).
37. Any institution listed in schedule 2 to the 2005 Act is a fundable post-16 education body, meaning that it is currently eligible to receive funding from the Scottish Further and Higher Education Funding Council. However, the further education colleges listed under the first italic heading in that schedule will not be caught, as they are not covered by the definition of higher education institution in section 35(1) of the 2005 Act.
38. The effect of the definition is to capture institutions which provide higher education in Scotland only if they are eligible for public funding, while excluding the Open University on the basis that it is a single institution established elsewhere and operating across multiple jurisdictions which might otherwise be made subject to conflicting governance requirements.
39. [Section 18\(2\)](#) provides that the Scottish Ministers may by regulations modify the definition of “higher education institution” in subsection (1). This would enable the Scottish Ministers to exclude a particular HEI from that definition (in addition to the Open University, which is already excluded). There is no power for the Scottish Ministers to add a particular HEI, but all new HEIs will automatically be included

*These notes relate to the Higher Education Governance (Scotland)  
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within the definition as long as they are fundable post-16 education bodies. Section 18(3) provides that such regulations will be subject to the negative procedure.