



Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART II **S**

HIGHER EDUCATION

The funding council

F137 Scottish Higher Education Funding Council. **S**

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Textual Amendments

F1 S. 37 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

38 Meaning of higher education. **S**

- (1) In this Part of this Act “higher education” is education provided by means of any of the courses falling, for the time being, within this section.
- (2) A course falls within this section if it is—
 - (a) a course at a higher level in preparation for a higher diploma or certificate;
 - (b) a first degree course;
 - (c) a course for the education and training of teachers;
 - (d) a course of post-graduate studies (including a higher degree course);
 - (e) a course at a higher level in preparation for a qualification from a professional body;
 - (f) a course at a higher level not falling within any of paragraphs (a) to (e) above.

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

- (3) For the purposes of paragraphs (a), (e) and (f) of subsection (2) above a course shall be regarded as providing education at higher level if its standard is higher than the standard of courses in preparation for examinations for—
 - (a) the Scottish Certificate of Education at higher grade;
 - (b) the Certificate of Sixth Year Studies;
 - (c) the General Certificate of Education of England and Wales or Northern Ireland at advanced level; or
 - (d) the [^{F2}Scottish Qualifications Authority] national certificate.
- (4) For the purposes of paragraph (d) of subsection (2) above, post-graduate studies includes a course following the award of a higher diploma or certificate.
- (5) The Secretary of State may by order, from time to time, following consultation with the Council, amend
 - [^{F3}(a)] subsection (2) above by adding or removing any entry relating to a course or by varying any such entry [^{F4}; and
 - (b) subsection (3) above.]

Textual Amendments

F2 Words in s. 38(3)(d) substituted (1.4.1997) by 1996 c. 43, s. 36, **Sch. 5 para. 9(a)**; S.I. 1997/365, **art.2**

F3 Words in s. 38(5) inserted (1.4.1997) by 1996 c. 43, s. 36, **Sch. 5 para. 9(b)(i)**; S.I. 1997/365, **art. 2**

F4 Word "and" and sub-para. (b) inserted (1.4.1997) in s. 38(5) by 1996 c. 43, s. 36, **Sch. 5 para. 9(b)(ii)**; S.I. 1997/365, **art. 2**

Modifications etc. (not altering text)

C1 S. 38: Power to modify conferred (3.5.2001) by 2001 asp 6, **ss. 1(6), 5(2)**

Commencement Information

I1 S. 38 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

^{F5}39 Assessment of quality of education provided by institutions. S

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Textual Amendments

F5 Ss. 39-43 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

Funds

^{F5}40 Administration of funds. S

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

Textual Amendments

F5 Ss. 39-43 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

^{F5}41 Administration of funds: supplementary. S

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Textual Amendments

F5 Ss. 39-43 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

^{F5}42 Grants. S

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Textual Amendments

F5 Ss. 39-43 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

Further functions

^{F5}43 Further functions. S

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Textual Amendments

F5 Ss. 39-43 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

Designated institutions

44 Designation of institutions. S

- (1) The Secretary of State may^{F6}, for the purposes of this Part of this Act, by order designate any institution providing higher education (whether or not it also provides education of any other kind or carries on any other activities).]
- (2) In this Part of this Act “designated institution” means an institution in relation to which a designation under this section has effect.
- (3) An order made under this section may make such amendments of the provisions of any subordinate legislation as appear to the Secretary of State to be necessary or expedient in consequence of such order being made.

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

Textual Amendments

- F6** Words in s. 44(1) substituted (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(1\)\(c\)](#); S.S.I. 2005/419, art. 2(1)

Commencement Information

- I2** S. 44 wholly in force; s. 44 not in force at Royal Assent see s. 63(2); s. 44 in force at 25.4.1992 for specified purpose only and fully in force at 16.5.1992 by [S.I. 1992/817](#), art. 3(1)(a)(2), [Sch. 1](#)

45 Power of Privy Council in relation to designated institutions. **S**

- (1) The Privy Council may by order make such provision as regards designated institutions as is mentioned in this section.
- (2) An order of the Privy Council made under this section may—
 - (a) make provision with regard to the constitution of the governing body of any designated institution;
 - (b) prescribe the general functions to be discharged by the governing body, and confer on the governing body such powers as they may consider necessary or expedient for the efficient discharge of those functions; and
 - (c) without prejudice to Part VI of the 1980 Act, revoke, amend or re-enact any provision of any endowment relating to any designated institution,

and where an order under this section makes provision with regard to the constitution of the governing body of an institution as mentioned in paragraph (a) above if neither the institution nor the governing body is, immediately before the order is made, a body corporate, the governing body of the institution shall, by virtue of this subsection, be a body corporate.
- (3) Without prejudice to the generality of subsection (2) above, an order made under this section may—
 - (a) prescribe the administrative and other arrangements to be adopted by the governing body for the purpose of discharging its functions and in particular provide for the delegation of such of its functions as may be prescribed in the order to persons or bodies of persons to be appointed in such manner as may be so prescribed;
 - (b) provide for the appointment, remuneration, discipline and dismissal by the governing body of administrative, teaching and other staff, and for the payment by the governing body of pensions, allowances or gratuities to or in respect of members of such staff on their death or retirement;
 - (c) prescribe the procedure to be followed in cases of alleged breaches of discipline by students in attendance at any such institution;
 - (d) provide for the constitution of bodies representative of students in attendance at such institutions and confer on any such bodies such functions as may be prescribed in the order; and
 - (e) provide for any of the purposes specified in paragraphs (a) to (e) of section 105(1) of the 1980 Act.
- (4) An order made under this section may authorise the governing body to make rules regulating its own procedures and the conduct of the designated institution.

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

- (5) An order made under this section may amend, vary, repeal or revoke the provisions of—
- (a) any regulations made under section 77 of the 1980 Act relating to a designated institution as regards which the order is made; and
 - (b) any enactment (including an enactment contained in a subordinate instrument), any scheme, articles of association, trust deed or other instrument relating to the institution,
- to the extent that any such provision appears to the Privy Council to be inconsistent with the order.
- (6) An order made under this section may contain such incidental, supplementary and consequential provision as appears to the Privy Council to be necessary or expedient.
- (7) This section shall apply to a designated institution notwithstanding that its name includes, by virtue of section 49 of this Act, the word “university”.

Commencement Information

I3 S. 45 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

46 Establishment of new institutions by the Secretary of State. S

The Secretary of State may by order establish institutions for the provision of any form of higher education.

Commencement Information

I4 S. 46 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

47 Closure of institutions. S

- (1) Notwithstanding anything in any enactment (including an enactment contained in a subordinate instrument), the Secretary of State may by order close any designated institution and wind-up the governing body of such institution.

[^{F7}(1A) An order under subsection (1) above—

- (a) shall include provision for the property and rights of the institution to transfer to and vest in a charity; and
- (b) may include provision for the liabilities and obligations of the institution to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.]

- (2) An order under subsection (1) above may include provision—

- ^{F8}(a)
- (b) for the transfer of the staff of the institution to such other institution in Scotland as the Secretary of State may prescribe, being an institution providing any form of higher education;
- (c) for the payment by the Secretary of State of any expenses incurred in the closure and winding-up;

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

- (d) imposing on the governing body of the institution such additional powers and duties in relation to the closure and winding-up as the Secretary of State considers appropriate;
 - (e) for the appointment of a person to administer the closure and winding-up, and a person so appointed shall have such powers and duties as appear to the Secretary of State necessary or expedient for such purposes and as are specified in the order;
 - (f) of such incidental, supplementary, transitional or ancillary nature as appears to the Secretary of State to be necessary or expedient for the purposes of the closure and winding-up.
- (3) Any property transferred by virtue of an order under subsection (1) above shall remain subject to any trust or condition (whether contained in a scheme made or approved under Part VI of the 1980 Act or otherwise) to which it was subject immediately before such transfer.
- (4) An order under this section may amend, vary, repeal or revoke the provisions of—
- (a) any regulations made under section 77 of the 1980 Act relating to a designated institution as regards which the order has been made; and
 - (b) any enactment (including an enactment contained in a subordinate instrument), any scheme, articles of association, trust deed or other instrument relating to the institution,
- to the extent that any such provision appears to the Secretary of State to be inconsistent with the order.
- (5) An order under subsection (1) above shall not be made unless the Secretary of State has consulted—
- (a) the Council; and
 - (b) the governing body of the institution proposed to be closed.
- (6) When the winding-up of the governing body of an institution under this section is completed the Secretary of State shall by order dissolve the governing body of that institution.
- (7) In this section references to the closure of a designated institution include references to the institution being merged with one or more other designated institutions; and different provision may be made under this section as regards different institutions to be merged with one another.
- [^{F9}(8) An order as mentioned in subsection (1A) above shall not contain provision for transferring and vesting property, rights, liabilities or obligations unless the body or person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer and vesting.
- (9) All property and rights vested in a charity by virtue of an order as mentioned in subsection (1A) above shall be applied for the purpose of the advancement of education.
- (10) In this section, a “ charity ” means a body entered in the Scottish Charity Register.]

Textual Amendments

- F7** S. 47(1A) inserted (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), **ss. 29(2)(a)**, 36(2); [S.S.I. 2005/419](#), art. 2(1)

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

- F8** S. 47(2)(a) repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), ss. 29(2)(b), 36(2); S.S.I. 2005/419, art. 2(1)
- F9** S. 47(8)-(10) added (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), ss. 29(2)(c), 36(2); S.S.I. 2005/419, art. 2(1)

Commencement Information

- I5** S. 47 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

48 Power to award degrees etc. **S**

- (1) The Privy Council may by order specify any institution within the higher education sector as competent to grant such awards and distinctions in pursuance of this section as they may specify.
- (2) An institution for the time being specified in such an order may grant a degree, diploma, certificate or other academic award or distinction to any person who—
 - (a) completes, on or after the date specified in the order, an appropriate course of study or programme of supervised research; and
 - (b) passes an appropriate examination or demonstrates by such other means as the institution may determine the attainment of such standards as the institution may determine.
- (3) An institution specified in such an order may—
 - (a) grant honorary degrees; and
 - (b) grant degrees to members of the academic and other staff of the institution.
- (4) Any power conferred on an institution by this section to grant awards and distinctions includes power—
 - (a) to do so jointly with another institution (whether or not such institution is specified in an order under subsection (1) above);
 - (b) to authorise other institutions to do so on behalf of the institution; and
 - (c) to deprive any person of any award or distinction granted to him by or on behalf of the institution in pursuance of this section (or, in the case of an award granted to him by the institution and another institution jointly, to do so jointly with the other institution).
- (5) It shall be for the institution to determine in accordance with any relevant provisions of the instruments relating to or regulating the institution—
 - (a) the courses of study or programmes of research, and the examinations or other means of demonstrating attainment of standards, which are appropriate for the grant of any award or distinction and the other terms and conditions on which any grant may be made in pursuance of this section by or on behalf of the institution; and
 - (b) the terms and conditions on which the institution may deprive any person of any award or distinction granted to him by or on behalf of the institution in pursuance of this section.
- (6) A determination made under subsection (5)(b) above shall, as regards an award or distinction granted jointly with another institution, be made jointly with that other institution.

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

Commencement Information

I6 S. 48 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

49 Change of name by institutions. S

- (1) Subject to subsection (2) below, the governing body of a designated institution may, with the consent of the Privy Council, change the name of the institution or of its governing body.
- (2) Where, as regards a designated institution, there is in any enactment (including an enactment contained in a subordinate instrument) or any other document having legal effect any express prohibition or restriction on the power of the governing body to change the name of the institution or governing body, nothing in subsection (1) above shall empower a governing body to change the name of an institution or its governing body without complying with any requirement of such enactment or other document as to such change of name.
- (3) Where any power is exercised under this section to change the name of a designated institution or of its governing body, the Privy Council shall have regard to the need to avoid any name which would be capable of causing confusion with the name of any other institution in the higher education sector.
- (4) This section is without prejudice to any other power to change the name of a designated institution or its governing body.
- (5) Nothing in this section or in any other power to change the name of a designated institution or of its governing body shall authorise the inclusion of the word “university” in the name of the institution or its governing body unless the consent of the Privy Council is given to such inclusion.

Commencement Information

I7 S. 49 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**

General

F10 50 Duty to give information to the Council. S

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Textual Amendments

F10 S. 50 repealed (3.10.2005) by Further and Higher Education (Scotland) Act 2005 (asp 6), s. 36(2), **Sch. 3 para. 6(2)(b)**; S.S.I. 2005/419, art. 2(1)

F11 51 Efficiency studies. S

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

Textual Amendments

F11 S. 51 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

52 Exercise of powers of Privy Council. S

- (1) Any power vested in the Privy Council by this Part of this Act may be exercised by any two or more of the lords and others of the Council.
- (2) Any act of the Privy Council under this Part of this Act shall be sufficiently signified by an instrument signed by the clerk of the Council, and an order or act signified by an instrument purporting to be signed by the clerk of the Council shall be deemed to have been duly made or done by the Privy Council, and an instrument so signed shall be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof.

Commencement Information

I8 S. 52 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817](#), art. 3(2), [Sch. 1](#)

^{F12}53 Inspection of accounts. S

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Textual Amendments

F12 S. 53 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

^{F13}54 Directions. S

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Textual Amendments

F13 S. 54 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [Sch. 3 para. 6\(2\)\(b\)](#); S.S.I. 2005/419, art. 2(1)

^{F14}55 Amendment of section 7 of the Teaching Council (Scotland) Act 1965. S

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Textual Amendments

F14 S. 55 repealed (2.4.2012) by [The Public Services Reform \(General Teaching Council for Scotland\) Order 2011 \(S.S.I. 2011/215\)](#), art. 2, [Sch. 7](#)

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

56 Interpretation of Part II. **S**

- (1) In this Part of this Act—
- “designated institution” has the meaning given by section 44(2) of this Act;
- “governing body”, in relation to an institution, means—
- (a) in the case of an institution conducted by a body corporate, that body;
 - (b) in the case of a university not falling within paragraph (a) above, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs;
 - (c) in the case of any other institution not falling within paragraph (a) or (b) above for which the Secretary of State by regulations or the Privy Council by order has constituted a governing body, that governing body; and
 - (d) in any other case, any board of governors of the institution or any person responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors; and
- “higher education” has the meaning given by section 38 of this Act.
- (2) In this Part of this Act, references to institutions within the higher education sector are to—
- (a) universities; and
 - (b) designated institutions.
- (3) Any reference in any enactment (including an enactment contained in a subordinate instrument) passed or made before the passing of this Act to a college of education shall be construed as a reference to a designated institution which provides courses for the education and training of teachers.

Modifications etc. (not altering text)

C2 S. 56(2) applied (1.4.1993) by 1973 c. 50, s. 8(4)(b) (as substituted (1.4.1993) by 1993 c. 19, s. 45; S.I. 1993/2503, art. 2(3), Sch. 3).

Commencement Information

I9 S.56 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1

Changes to legislation:

There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, Part II.