



Further and Higher Education (Scotland) Act 1992

1992 CHAPTER 37

PART II

HIGHER EDUCATION

The funding council

37 Scottish Higher Education Funding Council

- (1) There shall be established a body corporate to be known as the Scottish Higher Education Funding Council (referred to in this Part of this Act as the “Council”).
- (2) The Council shall consist of not less than twelve nor more than fifteen members appointed by the Secretary of State, of whom one shall be so appointed as chairman.
- (3) In appointing members of the Council the Secretary of State shall have regard to the desirability of including—
 - (a) persons who appear to him to have experience of, and to have shown capacity in, the provision of higher education or to have held, and to have shown capacity in, any position carrying responsibility for the provision of higher education and, in appointing such persons, he shall have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision; and
 - (b) persons who appear to him to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession.
- (4) In this Part of this Act references to institutions in Scotland are to institutions whose activities are carried on, or principally carried on, there and include the Open University.
- (5) Schedule 7 to this Act has effect with respect to the Council.

38 Meaning of higher education

- (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.
- (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 Scottish Vocational Education Council 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 subsection (2) above by adding or removing any entry relating to a course or by varying any such entry.

39 Assessment of quality of education provided by institutions

- (1) The Council shall, after consultation with such organisations as appear to the Council to be representative of institutions within the higher education sector—
 - (a) secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support under this Part of this Act; and
 - (b) establish a committee, to be known as the “Quality Assessment Committee”, with the function of giving them advice on the discharge of their duty under paragraph (a) above and such other functions as may be conferred on the committee by the Council,and in performing their functions under this subsection the Council shall have regard to such provision as is made as regards the assessment of the quality of education provided in institutions within the higher education sector in England and Wales in pursuance of section 70(1)(a) of the Further and Higher Education Act 1992 (assessment of the quality of education provided by institutions in England and Wales).
- (2) The majority of the members of the committee shall be—
 - (a) persons who are not members of the Council; and
 - (b) persons appearing to the Council to have experience of, and to have shown capacity in, the provision of higher education; and in appointing such persons the Council shall have regard to the desirability of their being currently

engaged in the provision of such higher education or in carrying responsibility for such provision.

- (3) A committee established under this section shall be treated as if it were a committee established under paragraph 8 of Schedule 7 to this Act.

Funds

40 Administration of funds

- (1) The Council shall be responsible, subject to the provisions of this Part of this Act, for administering funds made available to the Council by the Secretary of State and others for the purposes of providing financial support for activities eligible for funding under this section.
- (2) The activities eligible for funding under this section are—
- (a) the provision of education and the undertaking of research by such institutions in Scotland as are within the higher education sector;
 - (b) the provision of any facilities, and the carrying on of any other activities, by such institutions in Scotland as are within the higher education sector which the governing bodies of those institutions consider it necessary or desirable to provide or carry on for the purpose of or in connection with education or research;
 - (c) the provision of services by any person for the purpose of, or in connection with, the provision of education or the undertaking of research by such institutions in Scotland as are within the higher education sector;
 - (d) the provision of such courses of higher education as the Secretary of State may direct as are provided in colleges of further education within the meaning of section 36(1) of this Act; and
 - (e) the provision of such courses in such other institutions in Scotland under the management of or receiving assistance by way of payments from education authorities as the Secretary of State may direct.
- (3) The Council may—
- (a) make grants, loans or other payments to the governing body of any institution within the higher education sector in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding under this section by virtue of subsection (2)(a) or (b) above;
 - (b) make grants, loans or other payments to any person in respect of expenditure incurred or to be incurred by him for the purpose of the provision of any services eligible for funding under this section by virtue of subsection (2)(c) above; and
 - (c) make grants, loans or other payments to the board of management of a college of further education within the meaning of Part I of this Act, an education authority or such other person as they consider appropriate in respect of expenditure incurred or to be incurred by them for the purpose of the provision as mentioned in subsection (2)(d) and (e) above of such courses of higher education as the Secretary of State may direct,
- subject in each case to such terms and conditions as the Council think fit.
- (4) The terms and conditions on which the Council may make any grants, loans or other payments under this section may in particular—

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- (a) enable the Council to require the repayment, in whole or in part, of sums paid by the Council if any of the terms and conditions subject to which the sums were paid is not complied with; and
- (b) require the payment of interest in respect of any period during which a sum due to the Council in accordance with any of the terms and conditions remains unpaid,

but shall not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council.

41 Administration of funds: supplementary

- (1) Before exercising their discretion under section 40(3)(a) of this Act with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, the Council shall consult such of the following bodies as appear to the Council to be appropriate to consult in the circumstances—
 - (a) such bodies representing the interests of institutions within the higher education sector as appear to the Council to be concerned; and
 - (b) the governing body of any particular institution within that sector which appears to the Council to be concerned.
- (2) In exercising their functions in relation to the provision of financial support for activities eligible for funding under section 40 of this Act the Council shall have regard to the desirability of not discouraging any institution for whose activities financial support is provided under that section from maintaining or developing its funding from other sources.
- (3) In exercising the functions mentioned in subsection (2) above, the Council shall have regard (so far as they think it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any institution within that sector for whose activities financial support is provided under the said section 40.

42 Grants

- (1) The Secretary of State may make grants to the Council of such amounts and subject to such terms and conditions as he may determine.
- (2) The terms and conditions subject to which grants are made by the Secretary of State to the Council—
 - (a) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the Council in respect of activities carried on by the institution; but
 - (b) shall not otherwise relate to the provision of financial support by the Council in respect of activities carried on by any particular institution or institutions.
- (3) Such terms and conditions may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students.

- (4) Such terms and conditions may in particular—
- (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with; and
 - (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

Further functions

43 Further functions

- (1) The Council—
- (a) shall provide the Secretary of State with such information or advice relating to the provision of higher education in Scotland as he may, from time to time, require; and
 - (b) may provide him with such information or advice relating to such provision as they think fit,
- and information and advice provided under this subsection shall be provided in such manner as the Secretary of State may from time to time determine.
- (2) The Council shall keep under review activities eligible for funding under section 40 of this Act.
- (3) The Council may provide, on such terms as may be agreed, such advisory services as the Department of Education for Northern Ireland or the Department of Agriculture for Northern Ireland may require in connection with the discharge of the Department's functions relating to higher education in Northern Ireland.
- (4) Where—
- (a) any land or other property is or was used or held for the purposes of an institution; and
 - (b) the Secretary of State is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event,
- then, if the institution is within the higher education sector, the Secretary of State may direct that all or any of his functions in respect of the property shall be exercisable on his behalf by the Council, and the functions shall be so exercised in accordance with such directions as he may, from time to time, give.
- (5) The Secretary of State may by order confer or impose on the Council such supplementary functions relating to the provision of education as he thinks fit.
- (6) The Secretary of State shall not make an order under subsection (5) above unless he has consulted—
- (a) the Council; and
 - (b) such organisations as appear to him to be representative of institutions within the higher education sector.
- (7) For the purposes of subsection (5) above a function is a supplementary function if it is exercisable for the purposes of—

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- (a) the exercise by the Secretary of State of functions of his under any enactment; or
- (b) the doing by the Secretary of State of anything he has power to do apart from any enactment,

and it relates to, or to the activities of, any institution mentioned in subsection (8) below.

- (8) The institutions mentioned in subsection (7) above are—
- (a) institutions within the higher education sector;
 - (b) institutions which are—
 - (i) colleges of further education (within the meaning of section 36(1) of this Act); or
 - (ii) under the management of or receiving assistance by way of payments from education authorities,
 being institutions by which such courses of higher education as the Secretary of State may direct are, for the time being, provided.

Designated institutions

44 Designation of institutions

- (1) The Secretary of State may 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) as an institution eligible to receive support from funds administered by the Council.
- (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.

45 Power of Privy Council in relation to designated institutions

- (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.
- (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”.

46 Establishment of new institutions by the Secretary of State

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

47 Closure of institutions

- (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.
- (2) An order under subsection (1) above may include provision—
 - (a) for the property, rights, liabilities and obligations of the institution to transfer to and vest in—

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- (i) the Secretary of State; or
 - (ii) such other person as may be specified in the order;
 - (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;
 - (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.

48 Power to award degrees etc

- (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.

49 Change of name by institutions

- (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.

General

50 Duty to give information to the Council

Each of the following shall give the Council such information as they may require for the purposes of the exercise of any of their functions—

- (a) an education authority;
- (b) the governing body of any institution within the higher education sector; and
- (c) the governing body of any institution at which prescribed courses of higher education are currently or have at any time been provided.

51 Efficiency studies

- (1) The Council may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of any institution in the higher education sector.
- (2) A person promoting or carrying out such studies at the request of the Council may require the governing body of such institution—
 - (a) to furnish the person, or any person authorised by him, with such information; and
 - (b) to make available to him, or any person so authorised, for inspection such of their accounts and such other documents,as the person may reasonably require for that purpose.

52 Exercise of powers of Privy Council

- (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.

53 Inspection of accounts

- (1) The accounts of—
 - (a) any university; and
 - (b) any designated institution,shall be open to the inspection of the Comptroller and Auditor General.
- (2) In the case of any university or institution mentioned in subsection (1) above—
 - (a) the power conferred by that subsection; and
 - (b) the powers under sections 6 and 8 of the National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act,shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the governing body of the university or, as the case may be, institution in respect of which grants, loans or other payments are made to them under this Part of this Act.

54 Directions

- (1) In exercising their functions, the Council shall comply with any directions under this section, and such directions shall be contained in an order made by the Secretary of State.
- (2) The Secretary of State may give general directions to the Council about the exercise of their functions.
- (3) If it appears to the Secretary of State that the financial affairs of any institution within the higher education sector have been or are being mismanaged, he may, after consulting the Council and the institution, give such directions to the Council about the provision of financial support in respect of the activities carried on by the institution as he considers are necessary or expedient by reason of the mismanagement.

55 Amendment of section 7 of the Teaching Council (Scotland) Act 1965

- (1) The Teaching Council (Scotland) Act 1965 shall be amended as follows.
- (2) In section 7 (regulation of admission to courses of training for teachers and conditions for registration of teachers), for subsections (1) and (2) there shall be substituted the following subsections—
 - “(1) Subject to the following provisions of this section, the Secretary of State may make regulations as to—
 - (a) the provision of education and training for teachers in relevant institutions;
 - (b) the admission of students to courses of education and training for teachers;
 - (c) matters connected with the recommendation of students by the governing bodies of such institutions to the Council for registration; and
 - (d) so far as it relates to the matters mentioned in paragraphs (b) and (c) above, the fitness of persons to become teachers.

- (2) Regulations under subsection (1) above may contain provision—
- (a) as to the content, nature and duration of courses of education and training for teachers provided by relevant institutions and as to requirements for the assessment of students participating in such courses;
 - (b) as to the functions of the governing bodies, the principals and members of staff of relevant institutions;
 - (c) after consultation with the Council, conferring on the Council such functions as the Secretary of State considers appropriate; and
 - (d) as to such matters as are to be determined or approved by the Secretary of State or by such persons as may be prescribed,
- and such regulations may make different provision for different institutions or classes of institution and for different circumstances.”

- (3) In section 17 (interpretation) after subsection (3) there shall be inserted—

“(3A) In this Act—

- (a) “relevant institution” means an institution within the higher education sector which provides courses for the education and training of teachers; and
- (b) references to institutions within the higher education sector shall be construed as in Part II of the Further and Higher Education (Scotland) Act 1992.”

56 Interpretation of Part II

- (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.