



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 2

### GENERAL

#### 32 Amendment of enactments

Schedule 3 amends enactments for the purposes of and in consequence of this Act.

#### Commencement Information

**II** [S. 32](#) in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

#### 33 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

#### 34 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
  - (b) different provision for different purposes.
- (3) A statutory instrument containing an order or regulations under this Act, apart from an order under section 36(2), is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Parliament.
- (4) A statutory instrument containing—

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- (a) regulations under section 7(2)(i);
- (b) an order under section 5(6), [F17(4)] or 9(6) or (7); F2 ...
- [F3(ba) an order under section 7(1) (other than an order which is made only in consequence of a body changing its name or being closed);
- (bb) an order under section 7B(2)(a) which establishes a regional board;
- (bc) an order under section 7B(2)(b) which adds or removes an entry (but not including an order which removes an entry relating to a body which has been closed, wound up or has otherwise ceased to exist);
- (bd) an order under section 7C(1) for which a proposal or approval under section 7C(2) is required;
- (be) an order under section 9D(2) (other than an order which does no more than increase the amount specified in a previous order by an amount that is no greater than the amount which the Scottish Ministers, having had regard to any retail price index, consider is required in order to maintain the value of the previously specified amount in real terms);
- (bf) an order under section 23O(11);]
- (c) an order under section 33 which amends an Act[F4; or
- (ca) an order under paragraph 18 of schedule 2B (other than an order which does no more than vary the minimum number of members of a regional board or vary the maximum number of members which may be appointed in pursuance of paragraph 3(2)(f)),]

is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

#### Textual Amendments

- F1** Word in s. 34(4)(b) substituted (10.10.2013) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(22\)\(a\)](#); S.S.I. 2013/281, art. 2, Sch.
- F2** Word in s. 34(4) omitted (10.10.2013) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(22\)\(b\)](#); S.S.I. 2013/281, art. 2, Sch.
- F3** S. 34(4)(ba)-(bf) inserted (10.10.2013 for specified purposes, 3.3.2014 for specified purposes, 31.3.2015 in so far as not already in force) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(22\)\(c\)](#); S.S.I. 2013/281, art. 2, Sch.; S.S.I. 2014/21, art. 2, Sch. 1; S.S.I. 2015/82, art. 2
- F4** S. 34(4)(ca) and preceding word inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(22\)\(d\)](#); S.S.I. 2014/79, art. 2(1), Sch. 1

## 35 Interpretation

<sup>F5F6</sup>(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c. 44);

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 (c. 37);

[<sup>F7</sup>college of further education ” means the governing body of a body—

(a) by which fundable further education or fundable higher education is provided; and

(b) which is not a higher education institution;]

“the Council” means the Scottish Further and Higher Education Funding Council;

“fundable body” is to be construed in accordance with section 6(2);

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“fundable further education” is to be construed in accordance with section 5(1) and (2);

“fundable higher education” is to be construed in accordance with section 5(3);

[<sup>F6</sup> “ fundable post-16 education body ” is to be construed in accordance with section [<sup>F8</sup>6(1)];

“ higher education institution ” means an institution which is—

- (a) a university; or
- (b) a designated institution (within the meaning of section 44(2) of the 1992 Act);]

“ local authority ” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“ the Parliament ” means the Scottish Parliament.

[<sup>F5</sup> “ post-16 education body ” means—

- (a) any fundable post-16 education body; and
- (b) any college of further education assigned to a regional strategic body by order made under section 7C(1);

“ recognised ”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992[<sup>F9</sup>, and “recognise” and “recognises” are to be construed accordingly];

“ regional board ” is to be construed in accordance with section 7B(1)(b);

“ regional college ” means a college of further education designated as a regional college by order made under section 7A(1);

“ regional strategic body ” is to be construed in accordance with section 7B(1)(a); ]

(2) In this Act, any reference to the governing body of a <sup>F10</sup>... body means—

- (a) in the case of a <sup>F10</sup>... body conducted by a body corporate, that body corporate;
- (b) in the case of a <sup>F10</sup>... body not falling within paragraph (a), the executive body which has responsibility for the management and administration of the revenue and property of the <sup>F10</sup>... body and the conduct of its affairs;
- (c) in the case of any other <sup>F10</sup>... body not falling within paragraph (a) or (b) for which the Scottish Ministers 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 <sup>F10</sup>... body or any person responsible for the management of the <sup>F10</sup>... body, whether or not formally constituted as a governing body or board of governors.

[<sup>F11</sup>(3) In this Act—

- (a) any reference to the locality of a college of further education is a reference to any locality in which the college provides fundable further education or fundable higher education (other than by way of distance or open learning); and
- (b) any reference (other than in sections 23A and 23E) to the locality in which fundable further education or fundable further education is provided does not include reference to any such education which is provided by way of distance or open learning.]

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### Textual Amendments

- F5** Words in s. 35(1) inserted (13.1.2014 for specified purposes, 31.3.2015 in so far as not already in force) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(a)(iv)**; S.S.I. 2013/348, art. 2, Sch.; S.S.I. 2015/82, art. 2
- F6** Words in s. 35(1) inserted (13.1.2014 for specified purposes, 31.3.2015 in so far as not already in force) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(a)(iii)**; S.S.I. 2013/348, art. 2, Sch.; S.S.I. 2015/82, art. 2
- F7** Words in s. 35(1) inserted (13.1.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(a)(i)**; S.S.I. 2013/348, art. 2, Sch.
- F8** Word in s. 35(1) substituted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(a)(ii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F9** Words in s. 35(1) inserted (31.3.2015) by The Post-16 Education (Scotland) Act 2013 (Modification of Legislation) Order 2015 (S.S.I. 2015/153), art. 1, **sch. para. 3(3)**
- F10** Word in s. 35(2) omitted (3.3.2014) by virtue of Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(b)**; S.S.I. 2014/21, art. 2, Sch. 1
- F11** S. 35(3) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(23)(c)**; S.S.I. 2014/21, art. 2, Sch. 1

## 36 Short title and commencement

- (1) This Act may be cited as the Further and Higher Education (Scotland) Act 2005.
- (2) This Act, except sections 33 to 35 and this section, comes into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be so appointed for different provisions and for different purposes.

**Changes to legislation:**

There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 2.