



# Further and Higher Education (Scotland) Act 1992

## 1992 CHAPTER 37

### PART I

#### FURTHER EDUCATION

#### CHAPTER I

##### DUTIES IN RELATION TO FURTHER EDUCATION

#### **1 Duty of Secretary of State to secure provision of further education**

- (1) It shall be the duty of the Secretary of State to secure adequate and efficient provision of further education in Scotland.
- (2) In discharging his duty under subsection (1) above, the Secretary of State shall have regard to the requirements of persons over school age who have learning difficulties.
- (3) In this Part of this Act “further education” means any programme of learning, not being school education, provided for persons over school age, being a programme falling, for the time being, within section 6 of this Act.
- (4) Subject to subsection (5) below, for the purposes of subsection (2) above, a person has a learning difficulty if—
  - (a) he has significantly greater difficulty in learning than the majority of persons over school age; or
  - (b) he suffers from a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for persons in colleges of further education.
- (5) A person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

- (6) The Secretary of State shall, as soon as is practicable after the end of each calendar year, prepare a report as to the discharge of his duties under this Part of this Act; and he shall lay a copy of each such report before each House of Parliament.

## 2 Function of education authorities

Section 1 of the 1980 Act (duty of education authorities to secure provision of education) shall be amended as follows—

- (a) in subsection (1) for the words “subsection (2)” there shall be substituted the words “subsections (2) and (2A)”; and
- (b) after subsection (2) there shall be inserted the following subsection—

“(2A) The duty imposed on an education authority by subsection (1) above shall not include the provision of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, but an education authority shall have power to provide such further education for their area.”

## 3 Powers of Secretary of State

- (1) The Secretary of State shall have the power to do all that is necessary or expedient for the purposes of the exercise of his duty under section 1 of this Act, and in particular he may, subject to subsection (3) below—
  - (a) establish new colleges of further education;
  - (b) merge two or more colleges of further education;
  - (c) close colleges of further education.
- (2) The powers of the Secretary of State in relation to the matters mentioned in paragraphs (a) to (c) of subsection (1) above shall be exercised by order; and an order under subsection (1)(a) above establishing a college of further education or under subsection (1)(b) above merging two or more colleges of further education shall contain provision—
  - (a) designating the name; and
  - (b) establishing a body corporate to be known as “the Board of Management of”, the college so established or, as the case may be, created by merger.
- (3) The power conferred by paragraphs (b) and (c) of subsection (1) above shall be exercised only in relation to colleges for which boards of management have been established in pursuance of this Part of this Act.
- (4) The Secretary of State may by order, after such consultation as appears to him to be appropriate, change the name of any college of further education and of the board of management of the college.
- (5) The Secretary of State may by order amend Schedule 2 to this Act to make different provision to that contained, for the time being, in paragraphs 2 to 18 of that Schedule.
- (6) The Secretary of State may by regulations prescribe requirements with which boards of management shall comply in discharging their functions under this Part of this Act.

#### **4 Funding of further education**

- (1) The Secretary of State may—
  - (a) pay to the board of management of a college of further education in respect of any expenditure incurred or to be incurred by them in connection with their functions under or by virtue of this Part of this Act in relation to the college; and
  - (b) in order to facilitate the carrying out of his duty under section 1 of this Act, pay to such other persons as appear to him to be appropriate in respect of the expenditure of such persons incurred or to be incurred for the purposes of or in connection with the provision of further education,  
grants, loans or other payments of such amounts as he may determine.
- (2) A grant, loan or other payment paid under this section may be made subject to such conditions as the Secretary of State thinks appropriate and such conditions—
  - (a) may be imposed before, after or at the time such grant, loan or other payment is made; and
  - (b) may relate to any time, whether before or after such time.
- (3) The terms and conditions on which the Secretary of State may make any grants, loans or other payments under this section may include in particular conditions—
  - (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid,  
but shall not relate to the application by the person to whom the grants, loans or other payments are made of any sums derived otherwise than from the Secretary of State.
- (4) A condition imposed in pursuance of subsection (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

#### **5 Requirement on Secretary of State to consult**

- (1) Where, in relation to any college of further education, the Secretary of State proposes to exercise any power to which this section applies, he shall consult the education authority for the area in which the college is or, as the case may be, is to be situated and any other person appearing to the Secretary of State to be affected by the proposal.
- (2) This section applies to—
  - (a) the power of the Secretary of State under section 3 of this Act—
    - (i) to establish a new college of further education;
    - (ii) to close a college of further education; or
    - (iii) to merge two or more colleges of further education; and
  - (b) the power of the Secretary of State under section 44 of this Act to designate an institution for the purposes of Part II of this Act, if the institution is a college of further education in respect of which a board of management has been established in pursuance of this Part of this Act.

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*Status: This is the original version (as it was originally enacted).*

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## **6 Further education to which section 1 applies**

- (1) A programme of learning falls within this section if it—
  - (a) prepares a person for a vocational qualification;
  - (b) prepares a person for—
    - (i) a Scottish Examination Board qualification; or
    - (ii) a General Certificate of Education qualification of England and Wales or Northern Ireland;
  - (c) provides instruction for persons who are participating in a programme of learning which falls within this section and who have a learning difficulty;
  - (d) prepares a person for access to higher education;
  - (e) is designed to assist persons whose first language is not English to achieve any level of competence in English language;
  - (f) is designed predominantly to prepare a person for participation in any programme of learning which falls within this section.
- (2) The Secretary of State may by order, from time to time, amend subsection (1) above by adding or removing any entry relating to a programme of learning or by varying any such entry.
- (3) An order shall not be made under subsection (2) above unless the Secretary of State has consulted—
  - (a) such persons or organisations appearing to him to be representative of boards of management and education authorities; and
  - (b) such other persons,as appear to him to be appropriate as to the amendments proposed to be made by the order.