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STATUTORY INSTRUMENTS

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**1992 No. 817 (C.28) (S.87)**

**EDUCATION, SCOTLAND**

**The Further and Higher Education (Scotland) Act 1992  
(Commencement No.1 and Saving Provisions) Order 1992**

*Made - - - - 16th March 1992*

The Secretary of State, in exercise of the powers conferred on him by section 63(2) of the Further and Higher Education (Scotland) Act 1992<sup>(1)</sup>, and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation**

1. This Order may be cited as the Further and Higher Education (Scotland) Act 1992 (Commencement No.1 and Saving Provisions) Order 1992.

**Interpretation**

2. In this Order—

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

“the 1989 Act” means the Self-Governing Schools etc. (Scotland) Act 1989<sup>(2)</sup>; and

“the 1990 Act” means the Education (Student Loans) Act 1990<sup>(3)</sup>.

**Appointed days**

3.—(1) The day appointed for the coming into force of—

(a) section 44 of the Act for the purpose only of authorising the making under that section of an Order which is expressed to come into force on or after 16th May 1992, is 25th April 1992;

(b) section 63 of the Act is 25th April 1992; and

(2) The days appointed for the coming into force of the provisions of the Act specified in column (1) of each of Schedules 1, 2, 3 and 4 to this Order to the extent that they do not come into force on 25th April 1992, are 16th May, 1st June and 1st September 1992 and 1st April 1993 respectively, but where a particular purpose or extent is specified in relation to any such provision that provision shall come into force only for that purpose or to that extent.

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(1) 1992 c. 37.

(2) 1989 c. 39.

(3) 1990 c. 6.

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**Saving provision**

4. The saving provision in Schedule 5 to this Order shall have effect.

St Andrew's House,  
Edinburgh  
16th March 1992

*Michael B. Forsyth*  
Minister of State, Scottish Office

## SCHEDULE 1

Article 3(2)

## Provisions coming into force on 16th May 1992

Column (1) Provision of the Act	Column (2) Subject matter
Section 1(3) to (5)	Meaning of “further education” and person who has a learning difficulty for the purposes of Part I
Section 3(5)	Power by order to amend certain provisions of Schedule 2
Section 6	Further education to which section 1 applies
Section 11	First transfer of colleges
Section 12	Boards of management
Section 15	Transfer of staff
Section 18	Disposal of certain property
Section 26	Abolition of college councils
Section 27	Information as to provision of further education
Sections 28 to 34	Transitory and transitional provisions
Section 35	Service of documents etc.
Section 36	Interpretation of Part I
Section 38	Meaning of higher education
Section 44	Designation of institutions
Section 45	Power of Privy Council in relation to designated institutions
Section 46	Establishment of new institutions by Secretary of State
Section 47	Closure of institutions
Section 48	Power to award degrees, etc.
Section 49	Change of name by institutions
Section 52	Exercise of powers of Privy Council
Section 55	Amendment of section 7 of the Teaching Council (Scotland) Act 1965(4)
Section 56	Interpretation of Part II
Section 57	Finance
Section 58	Stamp duty

(4) 1965 c. 19.

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Column (1) Provision of the Act	Column (2) Subject matter
Section 59	Temporary exclusion of section 5 of Data Protection Act 1984 <sup>(5)</sup> in relation to data transferred to new bodies
Section 60	Regulations and orders
Section 61	Interpretation
Section 62, so far as relating to the provisions of Schedules 8, 9 and 10 specified below	Transitional provisions, miscellaneous amendments and repeals
Schedule 2	Constitution and proceedings of boards of management
Schedule 5	Transitional provisions for college councils
Schedule 6	Transitional composition of college councils
Schedule 8	Transitional, consequential and saving provisions
In Schedule 9— paragraph 1 paragraph 2, for the purposes of subparagraphs (b) and (c) thereof paragraph 3 paragraph 4(1), (2), (4), (5) and (6) paragraph 5(1), (2), (4) and (5) paragraph 6 paragraph 7(1) and (7) paragraph 8(1) and (2) paragraph 12(1) and (2) paragraph 13, for the purposes of subparagraphs (b) and (c) thereof	Miscellaneous and consequential amendments
In Schedule 10— the entries relating to—  Section 29 of the Employment Protection (Consolidation) Act 1978 <sup>(6)</sup> ;	Repeals

<sup>(5)</sup> 1984 c. 35.  
<sup>(6)</sup> 1978 c. 44.

Column (1) Provision of the Act	Column (2) Subject matter
Sections 3, 7, 77 and 135(1) of the Education (Scotland) Act 1980(7)	

## SCHEDULE 2

Article 3(2)

## Provisions coming into force on 1st June 1992

Column (1) Provision of the Act	Column (2) Subject matter
Section 37	Scottish Higher Education Funding Council
Section 39, so far as relating to institutions for whose activities the Council are considering providing financial support	Assessment of quality of education provided by institutions
Section 42(1) and (4)	Grants
Section 43(1) and (3) to (8)	Further functions
Section 50	Duty to give information to the Council
Section 51	Efficiency studies
Section 54(1) and (2)	Directions
Section 62(2), so far as relating to the provisions of Schedule 9 specified below	Miscellaneous amendments
Schedule 7	The Scottish Higher Education Funding Council
In Schedule 9—	Miscellaneous and consequential amendments
paragraphs 4(3) and 5(3), so far as relating to the Scottish Higher Education Funding Council	
paragraph 10	

## SCHEDULE 3

Article 3(2)

## Provisions coming into force on 1st September 1992

Column (1) Provision of the Act	Column (2) Subject matter
Section 16	Transfer of property etc. to boards of management
Schedule 3	Transfer and apportionment of property

(7) 1980 c. 44.

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Column (1) Provision of the Act	Column (2) Subject matter
Schedule 4	Commissioners for further education assets

## SCHEDULE 4

Article 3(2)

## Provisions coming into force on 1st April 1993

Column (1) Provision of the Act	Column (2) Subject matter
Section 1(1), (2) and (6)	Duty of Secretary of State to secure provision of further education
Section 2	Function of education authorities
Section 3(1) to (4) and (6)	Powers of Secretary of State
Section 4	Funding of further education
Section 5	Requirement on Secretary of State to consult
Section 13	Subsequent transfers of colleges
Section 14	Transfer of colleges of further education not under local authority management
Section 17	Surpluses and deficits
Section 19	Educational endowments
Section 20	Variation of trust deeds
Section 21	Directions by Secretary of State
Section 22	College development plans
Section 23	Duty of boards of management as regards recorded children
Section 24	Mismanagement by boards
Section 25	Closure of colleges and dissolution of boards of management
Section 39, so far as not already in force	Assessment of quality of education provided by institutions
Section 40	Administration of funds
Section 41	Administration of funds: supplementary
Section 42(2) and (3)	Grants
Section 43(2)	Review of activities eligible for funding
Section 53	Inspection of accounts
Section 54(3)	Directions

Column (1) Provision of the Act	Column (2) Subject matter
Section 62(2), so far as relating to the provisions of Schedule 9 specified below	Miscellaneous amendments
Section 62(3), so far as not already in force	Repeals
In Schedule 9—	Miscellaneous and consequential amendments
paragraph 2, so far as not already in force	
paragraph 7, so far as not already in force	
paragraph 8, so far as not already in force	
paragraph 9	
paragraph 11	
paragraph 12, so far as not already in force	
paragraph 13, so far as not already in force	
In Schedule 10— the entries relating to—	Repeals
Sections 8 and 22 of the School Boards (Scotland) Act 1988 <sup>(8)</sup>	
Sections 54 to 66 and 80 of the Self-Governing Schools etc. (Scotland) Act 1989	

SCHEDULE 5

Article 4

Saving Provision

Notwithstanding the coming into force on 16th May 1992 of the amendment to section 1(3) of the 1990 Act specified in paragraph 12(2) of Schedule 9 to the Act, colleges of further education which are managed by a company by virtue of section 65(1) of the 1989 Act shall continue to constitute “institutions receiving support from public funds” for the purposes of section 1 of the 1990 Act until the repeal of section 65 of the 1989 Act comes into force.

<sup>(8)</sup> 1988 c. 47.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force on 25th April 1992 section 44 of the Further and Higher Education (Scotland) Act 1992 (for a limited purpose only) and on 16th May, 1st June, 1st September 1992 and 1st April 1993 the provisions of that Act specified respectively in Sched ules 1, 2, 3 and 4 to the Order.

As regards further education, the creation of a new duty for the Secretary of State and the transfer of management of colleges from education authorities to boards of management are to take place on 1st April 1993. Preparation for such transfer of management is to be made in the period leading up to that date. Accordingly, the provisions brought into force—

- (a) on 16th May 1992, include the Secretary of State's powers to prescribe the colleges and staff to transfer, provisions protecting college property in the period beginning 22nd March 1991 and ending when the transfer takes place, provisions changing the composition of college councils and other transitional measures;
- (b) on 1st September 1992, deal with identification of property, rights, liabilities and obligations to transfer to boards of management on 1st April 1993 and resolution of disputes; and
- (c) on 1st April 1993, include those creating a new duty for the Secretary of State as regards further education, giving him associated powers, establishing boards of management with duties and powers and transferring colleges to them.

As regards higher education the provisions brought into force—

- (a) on 16th May 1992, relate to the meaning of higher education, the designation by the Secretary of State of institutions, the power of the Privy Council in relation to these designated institutions, the establishment of new institutions by the Secretary of State, the closure of institutions, the power to award degrees, change of name by institutions, amendment of the Teaching Council (Scotland) Act 1965, miscellaneous provisions and repeals;
- (b) on 1st June 1992, relate to the establishment of the Scottish Higher Education Funding Council and some of its functions including the assessment of quality of education, grants to the Council, efficiency studies, directions and amendments; and
- (c) on 1st April 1993, relate to the administration of funds by the Council and the functions associated with it including terms and conditions of grants, review of activities eligible for funding, inspection of accounts, and directions.