
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 182

EDUCATION

**The Kilmarnock College (Transfer
and Closure) (Scotland) Order 2013**

<i>Made</i>	- - - -	<i>29th May 2013</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>31st May 2013</i>
<i>Coming into force</i>	- -	<i>1st August 2013</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1) (c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992⁽¹⁾ and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which Kilmarnock College is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of Ayr College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the Kilmarnock College (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st August 2013.

Interpretation

2. In this Order—

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

“Ayr” means the institution named Ayr College being a college of further education prescribed under section 11(1) of the 1992 Act⁽²⁾;

(1) [1992 c.37](#). Section 3(1) was amended by the Further and Higher Education (Scotland) Act [2005 \(asp 6\)](#) (“the 2005 Act”), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by [S.S.I. 2006/216](#). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c.46\)](#).

(2) Ayr College is prescribed by [S.I. 1992/1597](#).

“the Ayr Board” means the Board of Management of Ayr College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021177;

“enactment” has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010⁽³⁾;

“Kilmarnock” means the institution named Kilmarnock College being a college of further education prescribed under section 11(1) of the 1992 Act⁽⁴⁾; and

“the Kilmarnock Board” means the Board of Management of Kilmarnock College established as a body corporate by section 11(2) of the 1992 Act.

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of the Kilmarnock Board are transferred to and vested in the Ayr Board.

(2) Any reference to Kilmarnock or the Kilmarnock Board in any instrument is to be construed as a reference to either Ayr or the Ayr Board as may be appropriate.

(3) Any action or proceeding by or against the Kilmarnock Board pending or current, immediately before this Order comes into force, may be continued by or against the Ayr Board.

(4) For the purposes of this article, “instrument” does not include enactment.

Property provided with grand aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989⁽⁵⁾ applied to the Kilmarnock Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the Ayr Board in respect of such land and buildings.

Transfer of staff

5.—(1) All employees of the Kilmarnock Board are transferred to the Ayr Board and the contract of employment of each such employee has effect as if originally made between each such employee and the Ayr Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the Kilmarnock Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the Ayr Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to the Kilmarnock Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the Ayr Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee’s contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the Kilmarnock Board, which is to come into effect after the coming into force of this article and

⁽³⁾ 2010 asp 10.

⁽⁴⁾ Kilmarnock College is prescribed by S.I. 1992/1597.

⁽⁵⁾ S.I. 1989/433, amended by S.I. 1993/489.

who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

Closure of institution

6. Kilmarnock is closed and the Kilmarnock Board is wound up and dissolved.

St Andrew's House, Edinburgh
29th May 2013

MICHAEL RUSSELL
A member of the Scottish Government

Status: *This is the original version (as it was originally made). Scottish Statutory Instruments are not carried in their revised form on this site.*

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st August 2013 Kilmarnock College will cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Board of Management of Kilmarnock College to the Board of Management of Ayr College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of Kilmarnock College to transfer to employment with Ayr College without a break in their employment (article 5). It provides for Kilmarnock College to be closed and its Board of Management to be wound up and dissolved (article 6).