



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1

### FURTHER AND HIGHER EDUCATION ETC.

#### *Funding of further and higher education etc.*

#### **9 Funding of the Council**

- (1) The Scottish Ministers may make grants to the Council.
- (2) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular—
  - (a) relate to—
    - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
    - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
  - (b) include the condition referred to in subsection (4) or (5) (or both).
- (4) The condition is that, before the Council makes a payment to a fundable body under section 12(1) of such amount or description as the Scottish Ministers may in the condition specify, the fundable body is to comply with such matters concerning fundable bodies or any class of them as the Scottish Ministers may so specify.
- (5) The condition is that—
  - (a) when making a payment to a fundable body under subsection (1) of section 12; and
  - (b) in such cases as the Scottish Ministers may in the condition specify, the Council is (under subsection (2) of that section) to impose on the body a condition making the requirement referred to in subsection (6).

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- (6) The requirement is that the fundable body to whom the payment is being made is to secure that the fees paid to the fundable body—
- (a) by such class of persons as the Scottish Ministers may by order specify; and
  - (b) in connection with their attending—
    - (i) such programmes of learning as the Scottish Ministers may by order specify; or
    - (ii) such courses of education as the Scottish Ministers may by order specify,
 are equal to such fees as are, in relation to those persons attending those programmes and courses, payable under subsection (7).
- (7) For the purposes of subsection (6), the Scottish Ministers may (in relation to those persons attending those programmes and courses) by order—
- (a) specify, by reference to a particular academic year (“year A”), fees payable; and
  - (b) make provision authorising the Scottish Ministers to determine, in relation to subsequent academic years, fees payable that are—
    - (i) in each case, no higher than the fees specified by reference to year A; or
    - (ii) in any case, higher than the fees specified by reference to year A provided that any increase in fees is no greater than is required in order to maintain the value in real terms of the fees specified by reference to year A.
- (8) A condition imposed on a fundable body by virtue of subsection (5) is to make provision that is to apply if the fundable body fails to comply with the requirement referred to in subsection (6).
- (9) A condition imposed on a fundable body by virtue of subsection (5) does not apply in relation to any fees which are payable, in accordance with regulations under section 1 (fees at universities and further education establishments) of the Education (Fees and Awards) Act 1983 (c. 40), by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section.
- (10) The Scottish Ministers may not specify programmes or courses under subsection (6) (b) in such a way as to discriminate between different programmes or courses which are—
- (a) for the training of persons preparing to be teachers; and
  - (b) open only to persons holding a degree,
- on the basis of the subject in which such training is given.
- (11) Terms and conditions imposed under subsection (2) may not, except in so far as provided for in subsection (4), relate to the provision of financial support by the Council in respect of activities carried on by any particular fundable body or bodies.
- (12) Terms and conditions imposed under subsection (2) may not—
- (a) except in so far as provided for in subsections (5) to (7), be framed by reference to particular programmes of learning, courses of education or research (including the contents of such programmes or courses or the manner in which they are taught, supervised or assessed); or
  - (b) be framed by reference to the criteria for—

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- (i) the selection or appointment of academic staff; or
  - (ii) the admission of students.
- (13) Before laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must—
  - (a) lay before the Parliament—
    - (i) a copy of the proposed draft order; and
    - (ii) a statement of their reasons for proposing to make the order;
  - (b) publicise the proposed draft order in such manner as they consider appropriate;
  - (c) invite written representations on the proposed draft order, in particular from—
    - (i) the Council;
    - (ii) at least one body of persons which appears to them to be representative of students of the fundable bodies; and
    - (iii) such governing bodies of fundable bodies as they consider appropriate; and
  - (d) have regard to any written representations about the proposed draft order that are made to them within 60 days of the date on which the invitation under paragraph (c) was issued.
- (14) When laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must also lay a statement summarising—
  - (a) all representations about the proposed draft order to which they have had regard under subsection (13)(d);
  - (b) the changes (if any) made to the proposed draft order in light of the representations; and
  - (c) any reasons for making, or not making, changes in light of the representations.
- (15) The body known as the National Union of Students Scotland is to be invited under subsection (13)(c)(ii) to make representations.
- (16) The Scottish Ministers may by order modify subsection (15).
- (17) For the purposes of subsection (7)(b)(ii), the Scottish Ministers may have regard to any retail price index.

## **10 Additional grants**

- (1) In addition to any grants made under section 9, the Scottish Ministers may make further grants to the Council.
- (2) In particular, a grant under subsection (1) may be made for the purposes of supporting—
  - (a) restructuring among the fundable bodies (including the merger or demerger of such bodies);
  - (b) innovation in the provision of fundable further education and fundable higher education; or
  - (c) collaboration between the fundable bodies.
- (3) In making a grant under subsection (1), the Scottish Ministers must specify the purposes for which the grant is made.

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- (4) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (5) Terms and conditions imposed under subsection (4) may, in particular—
  - (a) relate to—
    - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
    - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
  - (b) include the condition referred to in subsection (4) of section 9.
- (6) But, except in the case of a grant made for the purposes of supporting any of the matters referred to in paragraphs (a) to (c) of subsection (2)—
  - (a) the purposes specified under subsection (3);
  - (b) terms and conditions imposed under subsection (4),
 may not be framed by reference to a particular fundable body.

## **11 Administration of funds**

- (1) The Council is, for the purposes of—
  - (a) providing support (whether financial or otherwise) for the activities specified in subsection (3); and
  - (b) exercising its other functions,
 responsible for administering the funds mentioned in subsection (2).
- (2) The funds are—
  - (a) all grants made to it under sections 9 and 10; and
  - (b) any other funds made available to it for those purposes.
- (3) The activities are—
  - (a) the provision of fundable further education and fundable higher education by the fundable bodies;
  - (b) the undertaking of research among the fundable bodies;
  - (c) the—
    - (i) provision of such facilities; and
    - (ii) the carrying on of such other activities,
 by the fundable bodies or any other person as are necessary or desirable for the purposes of or in connection with an activity specified in paragraph (a) or (b);
  - (d) the provision of services by the fundable bodies or any other person for the purposes of or in connection with an activity specified in paragraph (a) or (b).

## **12 Funding of fundable bodies**

- (1) The Council may make grants, loans or other payments—
  - (a) to the governing body of any fundable body in respect of expenditure incurred or to be incurred by the body for the purposes of any of the activities specified in subsection (3)(a) and (b) of section 11;
  - (b) to—
    - (i) the governing body of any fundable body; or

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- (ii) any other person,  
in respect of expenditure incurred or to be incurred by the body or person for the purposes of any of the activities specified in subsection (3)(c) and (d) of that section.
- (2) A payment made under subsection (1) may (in addition to any condition which is imposed by virtue of subsection (5) of section 9) be subject to such terms and conditions as the Council considers it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular, relate to—
  - (a) the repayment (in whole or in part) of a payment in such circumstances as they may specify;
  - (b) the interest payable in respect of any period during which a sum due to the Council is outstanding.
- (4) But terms and conditions imposed under subsection (2) may not relate to the application by the body of any sums which were not derived from the Scottish Ministers.
- (5) Before imposing terms and conditions under subsection (2), the Council must—
  - (a) except where it considers that it is not expedient to do so, consult the governing body of the fundable body to which the payment is to be made; and
  - (b) if it considers it appropriate to do so, consult such persons as appear to it to represent the interests of fundable bodies or any class of them.
- (6) In making payments under subsection (1), the Council is to have regard to the desirability of—
  - (a) encouraging fundable bodies to maintain or develop funding from other sources;
  - (b) preserving any distinctive characteristics of particular fundable bodies.