



# 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 [<sup>F1</sup>any of the conditions referred to in subsections (4) to (5A)].
  - [<sup>F2</sup>(c) include any terms or conditions referred to in sections 9A to 9D.]
- (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 [<sup>F3</sup>—
  - (a) where it is a fundable post-16 education body, is to comply with any matters concerning fundable post-16 education bodies or any class of them as the Scottish Ministers may specify;
  - (b) where it is a regional strategic body, is—
    - (i) to comply with any matters concerning regional strategic bodies generally as the Scottish Ministers may specify; or

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- (ii) when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any matters concerning post-16 education bodies or any class of them as the Scottish Ministers may specify.]
- (5) The condition is that—
- (a) when making a payment to a fundable [<sup>F4</sup>post-16 education] 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).
- [<sup>F5</sup>(5A) The condition is that—
- (a) when making a payment to a regional strategic 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 section 12) to impose on the regional strategic body a condition that it must, when making a payment to any of its colleges under section 12B(1), impose on the college a condition making the requirement referred to in subsection (6).]
- (6) The requirement is that the [<sup>F6</sup>post-16 education] body to whom the payment is being made is to secure that the fees paid to the [<sup>F6</sup>post-16 education] 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 [<sup>F7</sup>post-16 education] body by virtue of subsection (5) is to make provision that is to apply if the fundable [<sup>F7</sup>post-16 education] body fails to comply with the requirement referred to in subsection (6).
- (9) A condition imposed on a fundable [<sup>F8</sup>post-16 education] 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

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- 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 [<sup>F9</sup>where imposed in pursuance of subsection (4)(a) or (b)(ii) or section 9A or 9B], relate to the provision of financial support by the Council [<sup>F10</sup>or a regional strategic body] in respect of activities carried on by any particular <sup>F11</sup>... 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) [<sup>F12</sup>and in section 9D], 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); <sup>F13</sup>...
  - (b) be framed by reference to the criteria for—
    - (i) the selection or appointment of academic staff; or
    - <sup>F14</sup>(...) .....
  - <sup>F15</sup>(c) except where imposed in pursuance of section 9C, be framed by reference to the criteria for 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 [<sup>F16</sup>post-16 education] bodies; and
    - (iii) such governing bodies of [<sup>F17</sup>post-16 education bodies, and such regional strategic 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

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- (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.

#### Textual Amendments

- F1** Words in s. 9(3)(b) substituted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(a\)\(i\)](#); S.S.I. 2014/79, art. 2(1), Sch. 1
- F2** S. 9(3)(c) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F3** Words in s. 9(4) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(2))
- F4** Words in s. 9(5)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(c\)](#); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(2))
- F5** S. 9(5A) inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(d\)](#); S.S.I. 2014/79, art. 2(1), Sch. 1
- F6** Words in s. 9(6) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(e\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F7** Words in s. 9(8) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(f\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F8** Words in s. 9(9) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(g\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F9** Words in s. 9(11) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(h\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F10** Words in s. 9(11) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(h\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F11** Word in s. 9(11) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(h\)\(iii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F12** Words in s. 9(12)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(i\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F13** Word in s. 9(12) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(i\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F14** S. 9(12)(b)(ii) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(i\)\(iii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F15** S. 9(12)(c) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(i\)\(iv\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F16** Words in s. 9(13)(c)(ii) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(j\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F17** Words in s. 9(13)(c)(iii) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(j\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1

#### Commencement Information

- I1** S. 9 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Section 9.