

*Draft Order laid before the Scottish Parliament under section 103(5)(a) and (b) of the Charities and Trustee Investment (Scotland) Act 2005 and section 22(3)(a) of the Post-16 Education (Scotland) Act 2013, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

**EDUCATION**

**The Post-16 Education (Scotland) Act 2013  
(Modification of Legislation) Order 2015**

*Made* - - - -

*Coming into force* - -

The Scottish Ministers make the following order in exercise of the powers conferred by sections 7(5) and 19(8) and (9) of the Charities and Trustee Investment (Scotland) Act 2005<sup>(1)</sup>, section 34(2) of, and paragraph 18(1) of schedule 2B to, the Further and Higher Education (Scotland) Act 2005<sup>(2)</sup> and section 22(1) of the Post-16 Education (Scotland) Act 2013<sup>(3)</sup> and all other powers enabling them to do so.

In accordance with paragraph 18(2) of schedule 2B to the Further and Higher Education (Scotland) Act 2005, the Scottish Ministers have consulted the Regional Board for Glasgow Colleges and such other persons as they considered appropriate.

In accordance with section 103(5)(a) and (b) of the Charities and Trustee Investment (Scotland) Act 2005<sup>(4)</sup> and section 22(3)(a) of the Post-16 Education (Scotland) Act 2013, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Post-16 Education (Scotland) Act 2013 (Modification of Legislation) Order 2015 and comes into force on 31st March 2015.

**Modification of legislation**

2. The modifications specified in the Schedule have effect.

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(1) 2005 asp 10.

(2) 2005 asp 6. Schedule 2B to the Further and Higher Education (Scotland) Act 2005 was inserted by section 11(2) of the Post-16 Education (Scotland) Act 2013 (asp 12).

(3) 2013 asp 12.

(4) Section 103(5) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Post-16 Education (Scotland) Act 2013 (Modification of Legislation) Order 2015 No. 153

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St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## SCHEDULE

Article 2

### PART 1

#### Modifications of Primary Legislation

##### **Education (Scotland) Act 1980**

1. In section 72 of the Education (Scotland) Act 1980 (expenses of secretary of state)(**5**)—
  - (a) for subsection (4)(b) substitute—

“(b) is not a post-16 education body.”;
  - (b) after subsection (4) insert—

“(5) In subsection (4)(b), “post-16 education body” shall be construed in accordance with the Further and Higher Education (Scotland) Act 2005(**6**).”.

##### **Further and Higher Education (Scotland) Act 1992**

- 2.—(1) The Further and Higher Education (Scotland) Act 1992(**7**) is amended in accordance with paragraphs (2) to (4).
  - (2) In section 36(1) (interpretation of part I)(**8**) after the definition of “land” insert—

““recognised”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992(**9**), and “recognises” is to be construed accordingly;”.
  - (3) In paragraph 3(4) of Schedule 2 (persons not eligible for appointment as chairing member of regional college)(**10**)—
    - (a) insert “or” at the end of sub-sub-paragraph (c);
    - (b) omit sub-sub-paragraph (e) (and the word “or” immediately preceding it).
  - (4) In paragraph 5B(4) of Schedule 2 (removal of college board members)(**11**), for “3A(2)(f)” substitute “3A(2)(a) or (f)”.

##### **Further and Higher Education (Scotland) Act 2005**

- 3.—(1) The Further and Higher Education (Scotland) Act 2005 is amended in accordance with paragraphs (2) to (4).
  - (2) In section 23N(7)(a) (directions to assigned colleges)(**12**), for “direct a college to transfer any” substitute “give directions in relation to the transfer of any”.

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(5) 1980 c.44. Section 72(4) was inserted by [S.S.I. 2012/102](#).

(6) The definition of “post-16 education body” was inserted into section 35(1) of the Further and Higher Education (Scotland) Act 2005 ([asp 6](#)) (“the 2005 Act”) by paragraph 8(23) of the schedule to the Post-16 Education (Scotland) Act 2013 ([asp 12](#)) (“the 2013 Act”).

(7) 1992 c.37.

(8) Section 36(1) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) was amended by paragraph 2(5) of the schedule to the 2013 Act.

(9) 1992 c.52.

(10) Paragraph 3 of Schedule 2 to the 1992 Act was substituted by section 6 of the 2013 Act.

(11) Paragraph 5B of Schedule 2 to the 1992 Act was inserted by paragraph 2(7)(c) of the schedule to the 2013 Act.

(12) Section 23N of the 2005 Act was inserted by section 10 of the 2013 Act.

(3) In the definition of “recognised” in section 35(1) (interpretation)(13), after “1992” insert “, and “recognise” and “recognises” are to be construed accordingly”.

(4) In paragraph 17(1)(b) of schedule 2B (accounts), for “31st March” substitute “31st July”.

#### **Protection of Vulnerable Groups (Scotland) Act 2007**

4. In section 97(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (general interpretation)(14), in the definition of “organisation”, after paragraph (c)(ii), insert—

“(ia) a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act(15),”.

#### **Sexual Offences (Scotland) Act 2009**

5. In section 44 of the Sexual Offences (Scotland) Act 2009 (interpretation of section 43)(16), in the definition of “further or higher education institution”, after “2005 (asp 6)” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.

## **PART 2**

### **Modifications of Subordinate Legislation**

#### **Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003**

6. In paragraph 1 of Part 2 of Schedule 2 to the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 (specified institutions)(17), for “Any fundable body within the meaning of section 6” substitute “Any post-16 education body within the meaning of section 35(1)”.

#### **Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005**

7. In article 2(a) of the Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005 (appropriate agencies)(18), for “fundable bodies within the meaning of section 6 of, and schedule 2 to,” substitute “post-16 education bodies within the meaning of section 35(1) of”.

#### **Charities Accounts (Scotland) Regulations 2006**

8. In regulation 1(2) of the Charities Accounts (Scotland) Regulations 2006 (interpretation)(19), in the definition of “further and higher education institution”, for “body listed in Schedule 2” substitute “post-16 education body within the meaning of section 35(1)”.

#### **Protection of Charities Assets (Exemption) (Scotland) Order 2006**

9.—(1) The Protection of Charities Assets (Exemption) (Scotland) Order 2006(20) is amended in accordance with paragraphs (2) to (4).

(13) The definition of “recognised” was inserted into section 35(1) of the 2005 Act by paragraph 8(23)(a)(iv) of the schedule to the 2013 Act.

(14) 2007 asp 14.

(15) Section 7C of the 2005 Act was inserted by section 8(3) of the 2013 Act.

(16) 2009 asp 9.

(17) S.S.I. 2003/176. Schedule 2 was substituted by S.S.I. 2011/5.

(18) S.S.I. 2005/325, amended by S.S.I. 2010/276.

(19) S.S.I. 2006/218, to which there are no relevant amendments.

(20) S.S.I. 2006/220, as amended by S.S.I. 2007/525, S.S.I. 2007/171 and S.S.I. 2008/413.

- (2) Paragraph (c) of article 2 (protection of assets) is omitted<sup>(21)</sup>.  
(3) For Part 2 of the Schedule<sup>(22)</sup> substitute—

## “PART 2

### Further Education Colleges

Newbattle Abbey College

Sabhal Mòr Ostaig

The Board of Management of Ayrshire College

The Board of Management of Borders College

The Board of Management of City of Glasgow College

The Board of Management of Dumfries and Galloway College

The Board of Management of Dundee and Angus College

The Board of Management of Edinburgh College

The Board of Management of Fife College

The Board of Management of Forth Valley College of Further and Higher Education

The Board of Management of Glasgow Clyde College

The Board of Management of Glasgow Kelvin College

The Board of Management of Inverness College

The Board of Management of Lews Castle College

The Board of Management of Moray College

The Board of Management of New College Lanarkshire

The Board of Management of North East Scotland College

The Board of Management of Perth College

The Board of Management of South Lanarkshire College

The Board of Management of The North Highland College

The Board of Management of West College Scotland

The Board of Management of West Lothian College

West Highland College UHI”.

- (4) In Part 3 of the Schedule (higher education institutions)—
- (a) in the first and second columns, omit the entry for “Edinburgh College of Art” and its governing body;
  - (b) in the first column, for “Royal Scottish Academy of Music and Drama” substitute “Royal Conservatoire of Scotland”;
  - (c) after the entry for “Royal Scottish Academy of Music and Drama”, insert “SRUC” in the first column and “Board of Directors” in the second column;
  - (d) in the first and second columns, omit the entry for “UHI Millennium Institute” and its governing body;

<sup>(21)</sup> Paragraph (c) of article 2 was inserted by [S.S.I. 2007/525](#).

<sup>(22)</sup> Part 1 of the Schedule to [S.S.I. 2006/220](#) is to be amended by S.S.I. 2015/XXX (the Charity Test (Specified Bodies) and the Protection of Charities Assets (Exemption) (Scotland) Amendment Order 2015) which was laid in the Scottish Parliament on 30th January 2015 and is due to come into force on 1st April 2015.

- (e) after the entry for “University of Glasgow”, insert “University of the Highlands and Islands” in the first column and “Board of Governors” in the second column.

#### **Student Fees (Specification) (Scotland) Order 2006**

**10.** In article 1(2)(b), (c), (ca)(i), (ea) and (f), 2(2), (3) and (4) and 4(2) of the Student Fees (Specification) (Scotland) Order 2006(23), for “fundable” wherever it appears substitute “post-16 education”.

#### **Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007**

**11.** In regulation 2(a) of the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007 (prescribed requirements)(24), for “body specified in schedule 2” substitute “post-16 education body within the meaning of section 35(1)”.

#### **Education (Fees and Awards) (Scotland) Regulations 2007**

**12.** For regulation 3(a) of the Education (Fees and Awards) (Scotland) Regulations 2007 (providers of courses)(25), substitute—

- “(a) a post-16 education body within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005 which provides fundable higher education in terms of section 5(3) of that Act;”.

#### **Land Managers Skills Development Grants (Scotland) Regulations 2008**

**13.** In regulation 5(e)(ii) of the Land Managers Skills Development Grants (Scotland) Regulations 2008 (eligible bodies)(26), after “2005” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.

#### **The Charity Test (Specified Bodies) (Scotland) Order 2008**

**14.** For the Schedule in the Charity Test (Specified Bodies) (Scotland) Order 2008(27) substitute—

“SCHEDULE

Article 2

#### **SPECIFIED BODIES**

The Board of Management of Ayrshire College  
The Board of Management of Borders College  
The Board of Management of City of Glasgow College  
The Board of Management of Dumfries and Galloway College  
The Board of Management of Dundee and Angus College  
The Board of Management of Edinburgh College  
The Board of Management of Fife College  
The Board of Management of Forth Valley College of Further and Higher Education

(23) S.S.I. 2006/401. Article 1(2) and 4 were amended by S.S.I. 2011/455.

(24) S.S.I. 2007/105. Regulation 2 was substituted by S.S.I. 2012/170.

(25) S.S.I. 2007/152, to which there are no relevant amendments.

(26) S.S.I. 2008/162, to which there are no relevant amendments.

(27) S.S.I. 2008/268, as amended by S.S.I. 2008/413.

The Board of Management of Glasgow Clyde College  
The Board of Management of Glasgow Kelvin College  
The Board of Management of Inverness College  
The Board of Management of Lews Castle College  
The Board of Management of Moray College  
The Board of Management of New College Lanarkshire  
The Board of Management of North East Scotland College  
The Board of Management of Perth College  
The Board of Management of South Lanarkshire College  
The Board of Management of The North Highland College  
The Board of Management of West College Scotland  
The Board of Management of West Lothian College”.

#### **Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010**

15. In paragraph 6(c) of Schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (contact details for referring bodies)(28), after “2005,” insert “a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act,”.

#### **Public Services Reform (General Teaching Council for Scotland) Order 2011**

16. In article 3 of the Public Services Reform (General Teaching Council for Scotland) Order 2011 (interpretation)(29), in the definition of “further education institution”, after “2005” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act,”.

#### **Education (Fees) (Scotland) Regulations 2011**

17.—(1) Regulation 2(1) of the Education (Fees) (Scotland) Regulations 2011 (interpretation)(30) is amended in accordance with paragraphs (2) to (4).

(2) In the definitions of “excluded medical student”, “new deferred student” and “post 2011/12 student”, for “fundable” wherever it appears substitute “post-16 education”.

(3) The definition of “fundable body” is omitted.

(4) After the definition of “parent” insert—

““post-16 education body” means a post-16 education body within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005 which provides fundable higher education in terms of section 5(3) of that Act;”.

#### **Student Fees (Specification) (Scotland) Order 2011**

18. In articles 2(d) and 3(2) of the Student Fees (Specification) (Scotland) Order 2011 (specification of fees)(31), for “fundable” substitute “post-16 education”.

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(28) S.S.I. 2010/181.

(29) S.S.I. 2011/215, to which there are no relevant amendments.

(30) S.S.I. 2011/389, to which there are no relevant amendments.

(31) S.S.I. 2011/455.

### **Scottish Police Authority (Provision of Goods and Services) Order 2013**

**19.**—(1) Paragraphs 1.(g), 2.(g) and 4.(f) of column 2 (types of person) of the table in Schedule 1 to the Scottish Police Authority (Provision of Goods and Services) Order 2013<sup>(32)</sup> are amended in accordance with paragraph (2).

(2) In each entry beginning “The board of management” and in each entry beginning “The governing body”—

- (a) for “fundable” substitute “post-16 education”;
- (b) for “6(2)” substitute “35(1)”.

### **Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013**

**20.** In paragraph 5 of Part 2 of Schedule 2 to the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 (qualifications of food examiners)<sup>(33)</sup>, for “fundable body within the meaning” substitute “post-16 education body within the meaning of section 35(1)”.

## **PART 3**

### **Transitional Modification Of Primary Legislation**

**21.** The reference in paragraph 17(1)(b) of schedule 2B to the Further and Higher Education (Scotland) Act 2005 Act to “each yearly period ending on 31st July” is to be read, in relation to 31st July 2015, as a reference to “the period beginning on 1st May 2014 and ending on 31st July 2015”<sup>(34)</sup>.

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### **EXPLANATORY NOTE**

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

This Order makes modifications to primary legislation (Part 1 of the Schedule) and secondary legislation (Part 2 of the Schedule) in connection with the Post-16 Education (Scotland) Act 2013 ([asp 12](#)) (“the 2013 Act”). It also makes a number of other modifications.

Paragraphs 1, 4 to 8, 10 to 13 and 15 to 20 of the Schedule to the Order amend references to “fundable bodies” and to bodies listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 ([asp 6](#)) (“the 2005 Act”), to reflect changes made by the 2013 Act and to ensure that relevant provisions include colleges that are assigned to a regional strategic body.

Paragraph 2 of the Schedule amends the Further and Higher Education (Scotland) Act 1992 ([c.37](#)) as follows:

- paragraph 2(2) inserts into section 36(1) a definition of “recognised” in relation to a trade union;

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<sup>(32)</sup> [S.S.I. 2013/73](#).

<sup>(33)</sup> [S.S.I. 2013/84](#).

<sup>(34)</sup> Paragraph 17(1)(b) of schedule 2B was inserted into the 2005 Act by section 11(2) of the 2013 Act and is modified by paragraph 3(4) of the Schedule to this Order in order to change the end date of the yearly period for preparation of a statement of accounts by a regional board.



- paragraph 2(3) amends paragraph 3(4) of Schedule 2 (persons not eligible for appointment as the charring member of a regional college) to remove the reference in sub-sub-paragraph (e) to the principal of the college;
- paragraph 2(4) amends paragraph 5B(4) of Schedule 2 to give the Scottish Ministers the power to appoint a new chair of an assigned incorporated college board in place of a chair who has been removed as member of the college board under paragraph 5B(3) of that Schedule.

Paragraph 3 of the Schedule amends the 2005 Act as follows:

- paragraph 3(2) amends section 23N(7)(a) to make it clear that a regional strategic body cannot use the powers of direction in that section to direct a college to transfer staff, property, rights, liabilities or obligations or to receive such a transfer;
- paragraph 3(3) amends the definition of “recognised” in section 35(1) to include “recognise” and “recognises”;
- paragraph 3(4) amends paragraph 17(1)(b) of schedule 2B to change the end of the yearly period in respect of which a regional board must prepare a statement of accounts from 31st March to 31st July. Paragraph 21 in Part 3 of the Schedule to the Order makes transitional provision in relation to this amendment for the Regional Board for Glasgow Colleges, which is currently the only regional board, to provide that the yearly period in paragraph 17(1)(b) is to be read as beginning on 1st May 2014 (which is the date that regional board was established) and ending on 31st July 2015.

Paragraph 9 of the Schedule amends the Protection of Charities Assets (Exemption) (Scotland) Order 2006 ([S.S.I. 2006/220](#)) (“the 2006 Order”) and paragraph 14 amends the Charity Test (Specified Bodies) (Scotland) Order 2008 ([S.S.I. 2008/268](#)) (“the 2008 Order”) in order to update the Schedules to those Orders and to reflect changes of name of a number of colleges of further education—

- Aberdeen College of Further Education has changed its name to North East Scotland College
- Ayr College has changed its name to Ayrshire College
- Cardonald College has changed its name to Glasgow Clyde College
- Carnegie College has changed its name to Fife College
- Clydebanks College has changed its name to West College Scotland
- Dundee College has changed its name to Dundee and Angus College
- Edinburgh’s Telford College has changed its name to Edinburgh College
- Glasgow Metropolitan College has changed its name to City of Glasgow College
- Motherwell College has changed its name to New College Lanarkshire
- North Glasgow College has changed its name to Glasgow Kelvin College.

The entries in the Schedules to the 2006 Order and the 2008 Order relating to the further education colleges of: Angus College of Further Education; Anniesland College; Banff and Buchan College of Further Education; Barony College; Central College Glasgow; Coatbridge College; Cumbernauld College; Elmwood College; Glasgow College of Nautical Studies; James Watt College of Further and Higher Education; Jewel and Esk College; John Wheatley College; Kilmarnock College; Langside College; Oatridge College; Reid Kerr College; Stevenson College Edinburgh; Stow College; and The Adam Smith College, Fife are omitted to reflect transfers of property, rights, liabilities and obligations to other colleges and consequential closures of institutions. Orkney College and Shetland College are also omitted from the Schedule to the 2006 Order. The entries in the Schedule to the 2006 Order in relation to higher education institutions are also amended to reflect the following changes of name—

- Royal Scottish Academy of Music and Dance has changed its name to Royal Conservatoire of Scotland

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- The Scottish Agricultural College has changed its name to SRUC
- UHI Millennium Institute has changed its name to University of the Highlands and Islands.

The entry in the Schedule to the 2006 Order in relation to Edinburgh College of Art is omitted to reflect the transfer of property, rights, liabilities and obligations to University of Edinburgh.