

## POLICY NOTE

### THE POST-16 EDUCATION (SCOTLAND) ACT 2013 (COMMENCEMENT No. 1) ORDER 2013

#### SSI 2013/281 (C. 23)

1. The above instrument is made in exercise of the powers conferred by section 23(2) of the Post-16 Education (Scotland) Act 2013 (“the 2013 Act”).

#### Policy objectives

2. The instrument forms part of an implementation package for the 2013 Act. The provisions in the Act will be commenced in several stages.

#### Commencement

3. Sections 22 (Ancillary provision), 23 (Commencement) and 24 (Short title) came into force on the day following Royal Assent (i.e. 7 August 2013) by virtue of section 23(1).

4. Article 2 of this Order appoints 10 October 2013 as the day on which the provisions specified in column 1 of the Schedule come into force. Some come into force only for specific purposes. Where this is the case, these purposes are listed in column 3.

5. This Order commences **section 1**, which makes provision for the interpretation of the 2013 Act.

6. It commences **section 6(2)**, which makes provision for the Scottish Ministers to make arrangements ahead of the coming into force of section 6(1), which makes provision to amend Schedule 2 to the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) so far as it makes provision in relation to the membership of boards of management of incorporated colleges<sup>1</sup>.

7. It commences **section 13**, which inserts section 23R into the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”), which makes provision for the Scottish Ministers to make arrangements in anticipation of the establishment of a regional board. But section 13 is commenced only for the purpose of allowing the Scottish Ministers to make arrangements under section 23R(1) and (2) of the 2005 Act.

8. It commences **section 21** but only for the purpose of enabling the paragraphs of the schedule to the Act listed in column 1 of the Schedule to this Order to be brought into force (where relevant for only the specific purpose listed in column 3).

9. It commences **paragraph 2(7)(d)** of the schedule to the Act, but only for the purpose of omitting paragraph 6 of Schedule 2 to the 1992 Act. This removes the restriction on appointment of a person as a member of an incorporated college board where the person has already served for more than eight years on that board and also removes age restrictions on serving on an incorporated college board.

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<sup>1</sup> ‘Incorporated colleges’ are colleges with a board of management established under the 1992 Act.

10. It commences **paragraph 3** of the schedule to the Act, which amends section 21(2)(b) of the Education Act 1994 (“the 1994 Act”). Section 21 details the establishments to which the students’ unions provisions in Part II of the 1994 Act apply. The particular amendment updates the reference to incorporated colleges.

11. It commences **paragraph 8(5)(a)(i)** of the schedule to the Act, which amends section 7(2) of the 2005 Act to add a new paragraph (fa) so as to require the Scottish Further and Higher Education Funding Council (“SFC”), in considering whether or not to propose or approve any modification to schedule 2 to the 2005 Act (list of bodies eligible for direct funding from the SFC in connection with the provision of fundable further education and fundable higher education and the undertaking of research) to give consideration to the desirability that every entry in that schedule should relate to a body which has suitable arrangements for the purpose of seeking to ensure that the interests of the body’s students are represented by a students’ association. The provisions in section 7(2) of the 2005 Act will also be relevant to the powers of Ministers to remove board members of incorporated college boards (section 24 of the 1992 Act, as substituted by section 7 of the 2013 Act) and to the SFC’s powers to propose or approve the assignation of a college of further education to a regional strategic body (section 7C(3) of the 2005 Act, as inserted by section 8(3) of the 2013 Act) and to review assigned colleges (section 7C(7) of the 2005 Act, as inserted by section 8(3) of the 2013 Act).

12. It commences **paragraph 8(22)(a), (b) and (c)** of the schedule to the Act (in the case of paragraph 8(22)(c) only for the specific purpose of inserting new paragraph (ba) into section 34(4) of the 2005 Act). Section 34 of the 2005 Act makes provision in relation to the making of orders and regulations. The principal effect of these amendments is to change the Parliamentary procedure to which some orders made under section 7(1) of the 2005 Act (orders to make changes to the list of bodies in schedule 2 to the 2005 Act) are subject. Such orders will remain subject to affirmative procedure except where made only in consequence of a body changing its name or being closed in which case they will be subject to negative procedure.

### **Consultation**

13. The SFC was consulted on the provisions in this Order.

### **Impacts**

14. A partial Business Regulatory Impact Assessment and an Equality Impact Assessment was carried out for the Post-16 Education (Scotland) Bill. The partial Business Regulatory Impact Assessment and a results summary of the Equality Impact Assessment are available on the Scottish Government website.

**Scottish Government  
Colleges and Adult Learning Division  
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