

POLICY NOTE

THE POST-16 EDUCATION (SCOTLAND) ACT 2013 (MODIFICATION OF LEGISLATION) ORDER 2015

SSI 2015 No. 153

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 7(5) and 19(8) and (9) of the Charities and Trustee Investment (Scotland) Act 2005, section 34(2) of, and paragraph 18(1) of schedule 2B to, the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”) and section 22(1) of the Post-16 Education (Scotland) Act 2013 (“the 2013 Act”).

Parliamentary procedure

2. The making of this Order is subject to the affirmative procedure.

Policy objectives

3. The instrument forms part of an implementation package for the 2013 Act.

4. The Government has reformed the college sector to better meet the needs of learners and employers in each region through a coherent and sustainable curriculum, with a sharper focus on outcomes; funding based on regional needs; and strong accountability for regional performance. This has involved, among other things, the creation of thirteen college regions¹.

5. There are three regions with more than one college². Each of these regions has a regional strategic body that has the role, among other things, of funding the colleges assigned to it. Regional strategic bodies provide a way to achieve the benefits of taking a regional approach to college funding and planning in multi-college regions.

Including references to assigned colleges

6. Paragraphs 1, 4 to 8, 10 to 13 and 15 to 20 of the Schedule to the Order amend references in legislation to publicly funded colleges to include colleges assigned to a regional strategic body.

7. Currently, being considered as a publicly funded college is synonymous with being listed in schedule 2 to the 2005 Act and so being eligible to receive funding directly from the Scottish Further and Higher Education Funding Council (“SFC”). As a result of the college reforms, publicly funded colleges will now also include colleges assigned to their regional strategic body. Colleges that are assigned to a regional strategic body will be removed from this list by order under section 7(1) of the 2005 Act when Ministers are satisfied that the new arrangements in those regions are working well.

¹ Aberdeen and Aberdeenshire, Ayrshire, Borders, Dumfries & Galloway, Edinburgh, Fife, Forth Valley, Glasgow, Highlands and Islands, Lanarkshire, Tayside, West and West Lothian.

² Glasgow, Highlands and Islands and Lanarkshire.

8. In some instances, the term “post-16 education body” is substituted. This term is defined in section 35(1) of the 2005 Act and includes both fundable post-16 education bodies (bodies listed in schedule 2 to the 2005 Act) and also colleges assigned to a regional strategic body.

9. These amendments will ensure that relevant provisions apply to assigned colleges, notwithstanding their removal from schedule 2 to the 2005 Act.

Financial Year End of Regional Boards

10. Paragraph 3(4) of the Schedule to the Order amends the financial year end (“FYE”) of regional boards from 31 March to 31 July so that it aligns with the FYE of the incorporated colleges assigned to those regional boards. Following recent agreement by HM Treasury, and in line with the wishes of the sector, the FYE of all incorporated colleges will be 31 July. Having a different FYE would incur an extra, and unintended, administrative burden on regional boards. Paragraph 21 in Part 3 of the Schedule to the Order makes transitional provision for the first FYE of the sole regional board in existence, the Regional Board for Glasgow Colleges.

Amendments to relevant charity orders

11. Paragraph 9 of the Schedule to the Order substitutes a new Part 2 of the Schedule to the Protection of Charities Assets (Exemption) (Scotland) Order 2006 (SSI 2006/220) (“the 2006 Order”). The new Part lists the governing bodies of all publicly funded colleges that are charities. This is necessary to reflect name changes, transfers, closures of institutions and the addition of colleges to schedule 2 to the 2005 Act. It also makes amendments to reflect changes of name and closures of relevant higher education institutions. Orkney College and Shetland College are removed from Schedule to the 2006 Order as they are not charities.

12. Paragraph 14 of the Schedule to the Order substitutes a new Schedule to the Charity Test (Specified Bodies) (Scotland) Order 2008 (SSI 2008/268) to reflect changes of name and closures of incorporated colleges³.

Other amendments

13. Paragraphs 2(2) and 3(3) of the Schedule to the Order insert into relevant legislation a definition of “recognised” (in relation to a trade unions) and variations of it.

14. Paragraph 2(3) of the Schedule to the Order removes an explicit reference to “principal” from the list of persons specifically prohibited from being the chair of a regional college in paragraph 3(4) of Schedule 2 to the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”). A principal is excluded from being the chair of a regional college by virtue of being separately listed in paragraph 3(2)(b) of that Schedule as a required member of the board. Their specific exclusion is therefore unnecessary and potentially confusing.

15. Paragraph 2(4) of the Schedule to the Order amends paragraph 5B(4) of Schedule 2 to the 1992 Act, giving Ministers powers to appoint persons in place of an assigned incorporated college chair who has been removed from office under paragraph 5B(3) of that

³ Colleges with a board of management under part 1 of the Further and Higher Education (Scotland) Act 1992 are known as “incorporated colleges”.

Schedule. Ministers have powers to appoint new regional board and regional college chairs and new non-executive board members of regional boards, regional college boards and assigned incorporated college boards in similar circumstances.

16. Paragraph 3(2) of the Schedule to the Order amends section 23N(7) of the 2005 Act to clarify that a regional strategic body cannot give directions under that section to its assigned colleges either to transfer or to receive a transfer of staff, property, rights, liabilities or obligations.

Consultation

17. As required, we consulted the Regional Board for Glasgow Colleges and other persons likely to be affected by the change of FYE of regional boards. We received responses from the Regional Board for Glasgow Colleges, Glasgow Clyde College Audit Scotland and the SFC. All were content with the proposed change.

18. We consulted the Office of the Scottish Charity Regulator (“OSCR”) on the proposed changes to the list of relevant colleges and universities. OSCR is content with the proposed changes.

Impact assessments

19. There are no significant equality impact issues arising from this Order.

Financial effects

20. The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or on business.

**Scottish Government
Colleges, Young Workforce and SFC Sponsorship Division
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