Further and Higher Education (Scotland) Act 2005

2005 asp 6

PART 1

FURTHER AND HIGHER EDUCATION ETC.

Establishment of the Scottish Further and Higher Education Funding Council

1 Scottish Further and Higher Education Funding Council

(1) There is established a body to be known as the Scottish Further and Higher Education Funding Council.

(2) Schedule 1 makes provision about the constitution of the Council and about certain administrative and other matters with respect to the Council.

Commencement Information
I1 S. 1 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

2 Dissolution of other funding bodies

The following bodies are dissolved on such date as the Scottish Ministers may by order appoint—

(a) the Scottish Further Education Funding Council (established under section 7(1) of the 1992 Act); and

(b) the Scottish Higher Education Funding Council (established by section 37(1) of that Act).

Commencement Information
I2 S. 2 in force at 8.9.2005 by S.S.I. 2005/419, **art. 2(2)**

Provision of further and higher education etc.

3 The Council: general duty

It is the duty of the Council to exercise its functions for the purposes of securing the—

(a) coherent provision by the fundable bodies (as a whole) of a high quality of fundable further education and fundable higher education; and

(b) undertaking of research among the fundable bodies.

Commencement Information

I3 S. 3 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

4 The Scottish Ministers: general duty

(1) It is the duty of the Scottish Ministers to provide support for—

(a) the provision of fundable further education and fundable higher education by the fundable bodies; and

(b) the undertaking of research among the fundable bodies.

(2) The Scottish Ministers are to do so—

(a) by—

(i) making grants to the Council under section 9 or 10 (or both); and

(ii) such other means as they consider appropriate; and

(b) to such extent as they may determine.

Commencement Information

I4 S. 4 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

5 Fundable further and higher education

(1) In this Act (subject to subsection (2)), "fundable further education" means any programme of learning (which is not school education within the meaning of the 1980 Act) which—

(a) prepares a person for a vocational qualification;

(b) prepares a person for—

(i) a qualification awarded by the Scottish Qualifications Authority; or

(ii) a General Certificate of Education qualification of England and Wales or Northern Ireland;

(c) prepares a person for access to a course of fundable higher education;

(d) is designed to assist persons whose first language is not English to achieve any level of competence in English language;

(e) provides instruction for persons who are participating in a programme of learning referred to in this subsection and who have support needs; or

(f) prepares a person for participation in any programme of learning referred to in this subsection.

(2) In this Act, "fundable further education" also includes education of a type described in subsection (5)(b)(ii) to (iv) of section 1 (duty of education authorities to secure provision of education) of the 1980 Act.

(3) In this Act, "fundable higher education" means any course of education which—

(a) is a course at a higher level in preparation for a higher diploma or certificate;

(b) is a first degree course;

(c) is a course for the education and training of teachers;

(d) is a course of post-graduate studies (including a higher degree course);

(e) is a course at a higher level in preparation for a qualification from a professional body;

(f) is a course at a higher level not referred to in any of paragraphs (a) to (e);

(g) provides instruction for persons who are participating in a course of education referred to in this subsection and who have support needs; or

(h) is designed predominantly to prepare a person for participation in any course of education referred to in this subsection.

(4) For the purposes of subsection (3)(a), (e) and (f), a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses in preparation for examinations for—

(a) the Scottish Vocational Qualification Level 3;

(b) the Scottish Certificate of Education at Advanced Higher;

(c) the General Certificate of Education of England and Wales or Northern Ireland at advanced level; or

(d) the Scottish Qualifications Authority national certificate.

(5) For the purposes of subsection (3)(d), post-graduate studies includes a course following the award of a higher diploma or certificate.

(6) The Scottish Ministers may by order modify subsections (1) to (5).

(7) Before making an order under subsection (6), the Scottish Ministers must consult the Council.

Commencement Information

I5 S. 5 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

6 Fundable bodies

(1) Schedule 2 specifies certain bodies for the purposes of this Act.

(2) In this Act, any reference to a fundable body means a body specified in that schedule.

Commencement Information

I6 S. 6 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

Status: *Point in time view as at 01/04/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005. (See end of Document for details)*

7 Fundable bodies: further provision

(1) The Scottish Ministers may by order modify schedule 2 by—
- (a) adding or removing any entry relating to a body; or
- (b) varying any such entry,

but only if the Council has proposed, or has approved, the making of the modification.

(2) For the purposes of considering whether or not to propose or approve any modification under subsection (1), the Council must have regard to the desirability of ensuring that every entry in schedule 2 relates to a body for which there is, in the Council's opinion, suitable—
- (a) provision in relation to the governance and management of the body;
- (b) provision for the appointment of an officer who is responsible for—
  - (i) signing the accounts of the expenditure and receipts of the body;
  - (ii) ensuring the propriety and regularity of the finances of the body; and
  - (iii) ensuring that the resources of the body are used economically, efficiently and effectively;
- (c) procedures for—
  - (i) assessing; and
  - (ii) enhancing,

  the quality of the activities funded by financial support given to the body by the Council;
- (d) procedures for considering and resolving any grievances arising from the carrying on of the body's activities;
- (e) provision for the purposes of—
  - (i) planning for the carrying on of the body's activities; and
  - (ii) development of the body's activities;
- (f) arrangements for making use of any credit and qualification framework promoted by the Council under section 14;
- (g) arrangements for taking into account the educational and related needs (including support needs) of persons who are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of the body;
- (h) arrangements for taking into account, when determining what programmes of learning and courses of education to provide, the range of fundable further education and fundable higher education provided at the other fundable bodies; and
- (i) provision, procedures or arrangements of such other kind as the Scottish Ministers may by regulations specify.

(3) When proposing or approving a modification under subsection (1) which adds to schedule 2 an entry relating to a body, the Council may make a recommendation to the Scottish Ministers as regards the application to the body of paragraph 92(1) of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11).

(4) The Scottish Ministers may by order modify paragraphs (a) to (h) of subsection (2).

(5) The Scottish Ministers may issue guidance in relation to any of the matters referred to in paragraphs (a) to (i) of subsection (2).

(6) Subsection (2) does not apply where the modification in question is required by reason only of a change of name of, or closure of, a body.

Commencement Information
I7 S. 7 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

8 Support needs

(1) In this Act, a person has "support needs" if the person needs support for the purposes of overcoming a difficulty in learning, or a difficulty in participating in learning, which the person has.

(2) And—

(a) a person has a difficulty in learning if the person has significantly greater difficulty in learning than the majority of other persons within the same age group as the person; and

(b) a person has a difficulty in participating in learning if the person has greater difficulty in participating in learning than the majority of other persons within the same age group as the person.

(3) But a person is not be to be taken as having a difficulty in learning, or a difficulty in participating in learning, solely because the language (or form of the language) in which the person is, or will be, taught is different to a language (or form of a language) which has at any time been spoken in the person's home.

Commencement Information
I8 S. 8 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

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

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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).

(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—

(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.

Commencement Information

I9 S. 9 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

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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.

(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.

Commencement Information
I10 S. 10 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

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).

Commencement Information

I11 S. 11 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

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

(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.

Commencement Information
I12 S. 12 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

The Council: functions

13 Quality of fundable further and higher education

(1) The Council is to secure that provision is made for—
(a) assessing; and
(b) enhancing,
the quality of fundable further education and fundable higher education provided by fundable bodies.

(2) In exercising the function under subsection (1), the Council must, 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.

Commencement Information
I13 S. 13 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

14 Credit and qualification framework

(1) The Council is to promote the use by the fundable bodies of such credit and qualification framework as it may adopt.

(2) The Council must—
(a) have regard to any representations about any particular credit and qualification framework, and about credit and qualification frameworks in general, made to it by—
(i) the Scottish Ministers; or
(ii) the governing body of any fundable body; and
(b) so far as the Council considers appropriate, have regard to any representations about those matters made to it by any other person.

(3) For the purposes of subsections (1) and (2), a "credit and qualification framework" is a system of evaluation relating to fundable further education and fundable higher education (as a whole) through which programmes of learning and courses of education may be compared and understood in relation to each other.

Commencement Information
I14 S. 14 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

15 Efficiency studies

(1) The Council may secure the promotion or carrying out of studies designed to improve economy, efficiency and effectiveness in the management or operations of any fundable body.

(2) The governing body of a fundable body must—

(a) provide any person promoting or carrying out studies by virtue of subsection (1) with such information; and

(b) make available to the person for inspection such accounts and other documents,

as the person may reasonably require for the purposes of the studies.

Commencement Information

I15 S. 15 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

16 Council's right to address meetings

Where the Council is concerned about any matters relating to the financial support which a fundable body receives (or might receive) from the Council, a member of the Council is entitled to—

(a) attend any meeting of the governing body of the fundable body; and

(b) address the meeting on those matters.

Commencement Information

I16 S. 16 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

17 Advisory functions

(1) The Council must provide the Scottish Ministers with such information, advice and assistance relating to the—

(a) provision and funding of fundable further education and fundable higher education; and

(b) undertaking of research at bodies which provide fundable further education or fundable higher education,

as the Scottish Ministers may reasonably require.

(2) The Council may provide the Scottish Ministers with other information and advice relating to those matters whenever it considers it appropriate to do so.

(3) Any information, advice or assistance under subsections (1) and (2) is to be provided in such manner as the Scottish Ministers may determine.

Commencement Information

I17 S. 17 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

18 Functions regarding certain property

(1) The functions of the Scottish Ministers as respects the property to which this subsection applies are exercisable by the Council on their behalf to such extent and in such manner as the Scottish Ministers may require.

(2) Subsection (1) applies to any land or other property—
- (a) which is or was used or held for the purposes of a fundable body; and
- (b) in respect of which the Scottish Ministers—
  - (i) are entitled to any right or interest; or
  - (ii) would be so entitled on the occurrence of any event.

Commencement Information
I18 S. 18 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

19 Administration of certain support

(1) After section 73 (power of Scottish Ministers to make grants to education authorities and others) of the 1980 Act there is inserted—

"**73ZA Administration of certain sums**

(1) The Scottish Ministers may direct—
- (a) the Scottish Further and Higher Education Funding Council; or
- (b) any other body or person,

to administer any sums applied by the Scottish Ministers for a purpose referred to in paragraph (a), (c) or (f) of section 73 of this Act.

(2) A body or person to whom a direction is given under subsection (1) above shall administer those sums—
- (a) in such manner and to such extent; and
- (b) subject to such conditions,

as the Scottish Ministers may in the direction specify.

(3) The reference in subsection (1) above to a purpose referred to in paragraph (a), (c) or (f) of section 73 of this Act is a reference to that purpose only in so far as relating to support for persons—
- (a) undertaking; or
- (b) who have undertaken,

courses of education provided by fundable bodies.

(4) In subsection (3) above, "fundable bodies" shall be construed in accordance with the Further and Higher Education (Scotland) Act 2005 (asp 6).".

(2) In section 73A (transfer or delegation of functions relating to student support) of that Act—
- (a) in subsection (3), for the words "73(f)" there is substituted " 73(a), (c) or (f) ";
- (b) in subsection (6)(a)(i)—
  - (i) after the word "making" there is inserted " payments, "; and
  - (ii) for the words "73(f)" there is substituted " 73(a), (c) or (f) "; and

(c) after subsection (9) there is added—

"(10) The references in subsections (3) and (6)(a)(i) above to regulations under section 73(a) or (c) of this Act are references to those regulations only in so far as relating to support for persons—

(a) undertaking; or

(b) who have undertaken,

courses of education provided by fundable bodies.

(11) In subsection (10) above, "fundable bodies" shall be construed in accordance with the Further and Higher Education (Scotland) Act 2005 (asp 6).".

Commencement Information

I19 S. 19 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

The Council: exercise of functions

20 Council to have regard to particular matters

(1) In exercising its functions, the Council is to have regard to—

(a) skills needs in Scotland;

(b) issues affecting the economy of Scotland; and

(c) social and cultural issues in Scotland.

(2) In exercising its functions, the Council is to—

(a) have regard to the desirability of the achieving of sustainable development; and

(b) in particular, encourage the fundable bodies to contribute (so far as reasonably practicable for them to do so) to the achievement of sustainable development.

(3) In exercising its functions, the Council is to have regard to the—

(a) United Kingdom context; and

(b) international context,

in which any of the fundable bodies may carry on their activities.

(4) In exercising its functions, the Council is to have regard to the educational and related needs (including support needs) of persons who are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of any of the fundable bodies.

(5) For the purposes of subsection (1)(a), "skills needs" means any requirement or desirability for skills or knowledge which, following consultation with the Scottish Ministers, appears to the Council—

(a) to exist for the time being or be likely to exist in the future; and

(b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

(6) For the purposes of subsection (1)(b) and (c), "issues" means issues which, following consultation with the Scottish Ministers, appear to the Council—

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(a) to exist for the time being or be likely to exist in the future; and
(b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

Commencement Information
I20 S. 20 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

21 Equal opportunities

(1) The Council must exercise its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(2) In subsection (1), "equal opportunities" and "equal opportunity requirements" have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

Commencement Information
I21 S. 21 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

22 Consultation and collaboration

(1) The Council must, in the exercise of its functions—
(a) where it considers it appropriate to do so, consult any or all of the persons referred to in subsection (5); and
(b) so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the Council of those persons.

(2) The Council must, where it considers it appropriate to do so in the exercise of its functions, consult—
(a) a trade union which appears to it to be representative of staff of the fundable bodies; or
(b) a body of persons which appears to it to be representative of students of the fundable bodies.

(3) Any particular requirement for consultation imposed on the Council by virtue of this Act is without prejudice to subsections (1)(a) and (2).

(4) The persons referred to in subsection (5) must provide the Council with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.

(5) The persons are—
(a) any local authority;
(b) the governing body of any fundable body;
(c) the governing body of any other body which provides fundable further education or fundable higher education;
(d) the Scottish Qualifications Authority;
(e) Scottish Enterprise;

(f) Highlands and Islands Enterprise;

(g) any local enterprise company;

(h) Scottish University for Industry (that is, the organisation comprised of Scottish UFI Limited and Scottish UFI Trust); and

[[F1](i) the Scottish Housing Regulator.**]**

(6) In subsection (5)(g), "local enterprise company" means a person who is responsible, by virtue of an agreement made under section 19 (delegation of certain functions and powers) of the Enterprise and New Towns (Scotland) Act 1990 (c. 35), for the discharge of any functions of Scottish Enterprise or Highlands and Islands Enterprise.

(7) The Scottish Ministers may by order modify subsections (5) and (6).

(8) The Council must, in relation to the provision of fundable further education and fundable higher education, promote collaboration between the fundable bodies.

Textual Amendments

F1 S. 22(5)(i) substituted (1.4.2012) by Housing (Scotland) Act 2010 (asp 17), s. 166(2), **Sch. 2 para. 12**; S.S.I. 2012/39, art. 2, Sch. 1 (with Sch. 2) (as amended (1.4.2012) by S.S.I. 2012/91, art. 4)

Commencement Information

I22 S. 22 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

23 General powers

(1) The Council may (subject to subsections (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—

(a) acquiring and disposing of land and other property;

(b) entering into contracts;

(c) investing sums not immediately required for the purpose of the discharge of its functions; and

(d) accepting gifts of money, land or other property.

(2) The Council may not borrow money.

(3) The Council is not to—

(a) give any guarantee or indemnity over or in respect of any property; or

(b) create any trust or security over or in respect of any property,

without the written consent of the Scottish Ministers.

(4) The Council is not to dispose of any property to which this subsection applies without the written consent of the Scottish Ministers.

(5) Consent, for the purposes of subsection (3) or (4), may be given—

(a) in respect of any case or class of case; and

(b) subject to such conditions as the Scottish Ministers may determine.

(6) Consent, for the purposes of subsection (4), is not required for a disposal of land which is or forms part of property to which that subsection applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.

(7) But the Council is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which subsection (4) applies.

(8) Where property to which subsection (4) applies is disposed of, the Council is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the Council, determine.

(9) Subsection (4) applies to any property of the Council which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of—
   (a) funds provided by the Scottish Ministers under section 9 or 10; or
   (b) the proceeds of, or any consideration for, the disposal of any property so acquired, improved or maintained.

Commencement Information
I23 S. 23 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

The Scottish Ministers: requirements and directions

24 Requirements as to Council's functions

(1) The Scottish Ministers may by order impose requirements on the Council as regards the exercise of its functions.

(2) But requirements imposed under this section may not relate to the Council's functions under section 7 or 17.

(3) Requirements imposed under this section may—
   (a) be of a general or specific character; and
   (b) make different provision for different cases or classes of case,

   but may not relate to a particular fundable body.

Commencement Information
I24 S. 24 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

25 Directions where financial mismanagement

(1) The Scottish Ministers are, if it appears to them that the financial affairs of a fundable body have been or are being mismanaged, to give the Council such directions about the provision of financial support for the activities carried on by the fundable body as they consider are necessary or expedient by reason of the mismanagement.

(2) Before giving directions under this section, the Scottish Ministers must consult the Council and the fundable body concerned.

(3) The Council must comply with directions given to it under this section.

Commencement Information
I25 S. 25 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

Fundable bodies: miscellaneous

26 Academic freedom

(1) A fundable body must have regard to the desirability of—
(a) ensuring the academic freedom of relevant persons; and
(b) ensuring that the matters mentioned in subsection (2) are not adversely affected by the exercise of a relevant person's academic freedom.

(2) Those matters are—
(a) the appointment held; and
(b) any entitlements or privileges enjoyed,
by the relevant person at the fundable body.

(3) In this section, a "relevant person" is a person who is engaged in—
(a) teaching, or the provision of learning, at a fundable body; or
(b) research at a fundable body.

(4) For the purposes of this section, "academic freedom" includes freedom (within the law) to—
(a) hold and express opinion;
(b) question and test established ideas and received wisdom; and
(c) present controversial or unpopular points of view.

Commencement Information
I26 S. 26 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

27 Remit of the Scottish Public Services Ombudsman

(1) In section 3 (persons liable to be investigated) of the Scottish Public Services Ombudsman Act 2002 (asp 11)—
(a) in subsection (1), for the words "and 2" there is substituted " , 2 and 3 "; and
(b) after subsection (6) there is added—

"(7) Her Majesty may by Order in Council amend Part 3 of schedule 2 so as to—
(a) modify any entry in it,
(b) remove any entry from it, or
(c) add to it any entry relating to a person, or class of persons, providing fundable further education or fundable higher education (within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6)).

(8) An Order in Council under subsection (7) adding an entry to that Part of that schedule relating to a person, or class of persons, whose business (whether commercial, charitable or otherwise) includes matters other than the activities which fundable bodies (within the meaning of that Act) generally carry on—

(a) must, as regards that person or class, provide for this Act to apply only in relation to those activities; and

(b) may do so subject to such modifications or exceptions as may be specified in the Order in Council.

(9) No recommendation to make an Order in Council under subsection (7)(c) is to be made to Her Majesty unless every person to whom the Order relates has been consulted.”.

(2) In section 24 (Orders in Council: general) of that Act, in subsection (2) after the words “3(2)” there is inserted “ or (7) ”.

(3) In schedule 2 (listed authorities) of that Act, after Part 2, there is added—

“**PART 3**

OTHER ENTRIES AMENDABLE BY ORDER IN COUNCIL

Further and Higher Education

92 (1) Any fundable body within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6).

(2) Sub-paragraph (1) does not include the Open University (so far as it is a fundable body).

93 The Scottish Agricultural College.”.

(4) In schedule 4 (matters which the Ombudsman must not investigate) of that Act, after paragraph 10, there is inserted—

“10A Action taken by or on behalf of any body falling within Part 3 of schedule 2 in the exercise of academic judgement relating to an educational or training matter.”.

Commencement Information

I27 S. 27 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

28 Inspection of accounts

(1) The Auditor General for Scotland may, at any reasonable time, inspect the accounts and accounting records of any fundable body.

(2) But the function under subsection (1) is exercisable only in relation to accounts and records which relate to a financial year in which expenditure to which this subsection applies is incurred.

(3) Subsection (2) applies to expenditure which has been funded (in whole or part) by payments made by the Council under section 12.

Commencement Information
I28 S. 28 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

29 Educational use of certain property

(1) In section 25 (closure of colleges and dissolution of boards of management) of the 1992 Act—

(a) after subsection (1) there is inserted—

"(1A) An order made for the purpose mentioned in subsection (1)(a) above—

(a) shall include provision for the property and rights of the board of management to transfer to and vest in a charity; and

(b) may include provision for the liabilities and obligations of the board of management to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.

(1B) An order made for the purpose mentioned in subsection (1)(b) above may include provision—

(a) for the property and rights of the board of management to transfer to and vest in a charity; and

(b) for the liabilities and obligations of the board of management to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.";

(b) in subsection (2), paragraph (a) is repealed;

(c) in subsection (7), for the words from "under" to "sub-paragraph" in the second place where it occurs there is substituted " as mentioned in subsection (1A) or (1B) above shall not contain provision for transferring and vesting property, rights, liabilities or obligations unless the body or person to whom the transfer is being made (apart from the Scottish Ministers) "; and

(d) after subsection (7) there is added—

"(8) All property and rights vested in a charity by virtue of an order as mentioned in subsection (1A) or (1B) above shall be applied for the purpose of the advancement of education.

(9) In this section, a "charity" means a body entered in the Scottish Charity Register.".

(2) In section 47 (closure of institutions) of that Act—

(a) after subsection (1) there is inserted—

"(1A) An order under subsection (1) above—

(a) shall include provision for the property and rights of the institution to transfer to and vest in a charity; and

(b) may include provision for the liabilities and obligations of the institution to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.";

(b) in subsection (2), paragraph (a) is repealed; and

(c) after subsection (7) there is added—

"(8) An order as mentioned in subsection (1A) above shall not contain provision for transferring and vesting property, rights, liabilities or obligations unless the body or person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer and vesting.

(9) All property and rights vested in a charity by virtue of an order as mentioned in subsection (1A) above shall be applied for the purpose of the advancement of education.

(10) In this section, a "charity" means a body entered in the Scottish Charity Register.".

Commencement Information

I29 S. 29 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

30 Change of name by certain bodies

In section 3 (powers of the Scottish Ministers) of the 1992 Act, for subsection (4) there is substituted—

"(4) The governing body (within the meaning of Part II of this Act) of a college of further education may, with the consent of the Scottish Ministers, change the name of the college or of the governing body.".

Commencement Information

I30 S. 30 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

31 Information about recorded children

A fundable body must provide a local authority with such information or advice as the authority may reasonably require for the purposes of the exercise by the authority of its functions under section 65B (provision for recorded children) of the 1980 Act.

Commencement Information

I31 S. 31 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

PART 2

GENERAL

32 Amendment of enactments

Schedule 3 amends enactments for the purposes of and in consequence of this Act.

Commencement Information
I32 S. 32 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

33 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

34 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
- (b) different provision for different purposes.

(3) A statutory instrument containing an order or regulations under this Act, apart from an order under section 36(2), is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing—
- (a) regulations under section 7(2)(i);
- (b) an order under section 5(6), 7(1) or (4) or 9(6) or (7); or
- (c) an order under section 33 which amends an Act,

is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

35 Interpretation

(1) In this Act—

"the 1980 Act" means the Education (Scotland) Act 1980 (c. 44);

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992 (c. 37);

"the Council" means the Scottish Further and Higher Education Funding Council;

"fundable body" is to be construed in accordance with section 6(2);

"fundable further education" is to be construed in accordance with section 5(1) and (2);

"fundable higher education" is to be construed in accordance with section 5(3);

Status: *Point in time view as at 01/04/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005. (See end of Document for details)*

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

"the Parliament" means the Scottish Parliament.

(2) In this Act, any reference to the governing body of a fundable body means—

(a) in the case of a fundable body conducted by a body corporate, that body corporate;

(b) in the case of a fundable body not falling within paragraph (a), the executive body which has responsibility for the management and administration of the revenue and property of the fundable body and the conduct of its affairs;

(c) in the case of any other fundable body not falling within paragraph (a) or (b) for which the Scottish Ministers by regulations or the Privy Council by order has constituted a governing body, that governing body; and

(d) in any other case, any board of governors of the fundable body or any person responsible for the management of the fundable body, whether or not formally constituted as a governing body or board of governors.

36 Short title and commencement

(1) This Act may be cited as the Further and Higher Education (Scotland) Act 2005.

(2) This Act, except sections 33 to 35 and this section, comes into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

Status:
Point in time view as at 01/04/2012.

Changes to legislation:
There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005.