



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1

### FURTHER AND HIGHER EDUCATION ETC.

#### *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 [<sup>F1</sup>post-16 education] bodies (as a whole) of a high quality of fundable further education and fundable higher education; and
- (b) undertaking of research among the [<sup>F2</sup>post-16 education] bodies.

#### **Textual Amendments**

- F1** Words in s. 3(a) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(2\)\(a\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F2** Words in s. 3(b) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(2\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1

#### **Commencement Information**

- I1** 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 [<sup>F3</sup>post-16 education] bodies; and
  - (b) the undertaking of research among the [<sup>F4</sup>post-16 education] bodies.
- (2) The Scottish Ministers are to do so—

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- (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.

#### Textual Amendments

- F3** Words in s. 4(1)(a) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(3\)\(a\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1
- F4** Words in s. 4(1)(b) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(3\)\(b\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1

#### Commencement Information

- I2** 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.

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- (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.

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#### Commencement Information

**I3** S. 5 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 6 Fundable bodies

- [<sup>F5</sup>(1) In this Act, “ fundable body ” means—
- (a) any body specified in schedule 2; and
  - (b) any regional strategic body (see section 7B).]

(2) In this Act, any reference to a fundable [<sup>F6</sup>post-16 education] body means a body specified in [<sup>F7</sup>schedule 2].

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#### Textual Amendments

- F5** S. 6(1) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(4\)\(a\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1
- F6** Words in s. 6(2) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(4\)\(b\)\(i\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1
- F7** Words in s. 6(2) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(4\)\(b\)\(ii\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1

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#### Commencement Information

**I4** S. 6 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 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.

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- (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;
  - [<sup>F8</sup>(fa) arrangements for the purpose of seeking to ensure that the interests of the body's students are represented by a students' association;]
  - (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 [<sup>F9</sup>post-16 education] bodies; <sup>F10</sup>...
  - [<sup>F11</sup>(ha) where the body is a regional strategic body, procedures and arrangements for the administration by the body of the funds mentioned in section 12A(2) and for the exercise of its other functions as a regional strategic body; and]
    - (i) provision, procedures or arrangements of such other kind as the Scottish Ministers may by regulations specify.
- [<sup>F12</sup>(2A) Paragraph (ha) of subsection (2) applies only where the Council is considering whether to remove the entry relating to the body concerned from schedule 2.]
- (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 [<sup>F13</sup>(ha)] of subsection (2).

**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Cross Heading: Provision of further and higher education etc.. (See end of Document for details)

- (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.

#### Textual Amendments

- F8** S. 7(2)(fa) inserted (10.10.2013) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(a)(i)**; S.S.I. 2013/281, art. 2, Sch. 1
- F9** Words in s. 7(2)(h) substituted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(a)(ii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F10** Word in s. 7(2) omitted (1.5.2014) by virtue of Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(a)(iii)**; S.S.I. 2014/79, art. 2(1), Sch. 1
- F11** S. 7(2)(ha) inserted (1.5.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(a)(iv)**; S.S.I. 2014/79, art. 2(1), Sch. 1
- F12** S. 7(2A) inserted (1.5.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(b)**; S.S.I. 2014/79, art. 2(1), Sch. 1
- F13** Word in s. 7(4) substituted (1.5.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(5)(c)**; S.S.I. 2014/79, art. 2(1), Sch. 1

#### Commencement Information

- I5** S. 7 in force at 3.10.2005 by S.S.I. 2005/419, art. 2(1)

#### [<sup>F14</sup>7A Regional colleges

- (1) The Scottish Ministers may by order designate as a regional college any college of further education whose board of management is (or is to be) established in pursuance of Part 1 of the 1992 Act.
- (2) Before making an order under this section, the Scottish Ministers must consult—
- the board of management of the college to which the order relates (where that board is already established);
  - the representatives of any trade union which the college recognises or which otherwise appears to the Scottish Ministers to be representative of its staff;
  - the college's students' association;
  - the local authority for the area in which the college is situated;
  - the Council; and
  - any other person appearing to the Scottish Ministers as likely to be affected by the order.]

#### Textual Amendments

- F14** S. 7A inserted (13.1.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), **ss. 5(1), 23(2)**; S.S.I. 2013/348, art. 2, Sch.

#### [<sup>F15</sup>7B Regional strategic bodies

- (1) In this Act—

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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Cross Heading: Provision of further and higher education etc.. (See end of Document for details)

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- (a) any reference to a regional strategic body is a reference to a body specified in schedule 2A;
  - (b) any reference to a regional board is a reference to a body specified in Part 1 of that schedule.
- (2) The Scottish Ministers may by order—
- (a) modify Part 1 of schedule 2A so as to establish, abolish or re-name a regional board;
  - (b) modify Part 2 of schedule 2A by adding, removing or varying any entry relating to a fundable post-16 education body.
- (3) Before making an order under subsection (2), the Scottish Ministers must consult—
- (a) the Council;
  - (b) the local authority for any area in which post-16 education bodies provide, or are to provide, fundable further education or fundable higher education which is funded, or is to be funded, by the regional strategic body to which the order relates;
  - (c) where it relates to a regional strategic body which already exists, the regional strategic body and its colleges; and
  - (d) any other person appearing to the Scottish Ministers as likely to be affected by the order.]

#### Textual Amendments

- F15** S. 7B inserted (3.3.2014 for specified purposes, 31.3.2015 in so far as not already in force) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 8(1)**, 23(2); [S.S.I. 2014/21](#), art. 2, Sch. 1 (with art. 3(1)); [S.S.I. 2015/82](#), art. 2

#### [<sup>F16</sup>7C] **Assignment of colleges**

- (1) The Scottish Ministers may by order assign colleges of further education to a regional strategic body.
- (2) An order may assign a college which is not, immediately before the order is made, either—
- (a) a fundable post-16 education body; or
  - (b) assigned to another regional strategic body,
- only if the Council has proposed, or has approved, the assignation.
- (3) For the purposes of considering whether or not to propose or approve any assignation under subsection (2), the Council must have regard to the desirability of ensuring that the college concerned is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).
- (4) Without prejudice to section 34(2), the power to make an order under subsection (1) includes power to—
- (a) remove from schedule 2 any entry relating to a college to which the order relates;
  - (b) make such further provision in relation to such a college as the Scottish Ministers consider appropriate.

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- (5) But an order under subsection (1) may remove an entry relating to a college from schedule 2 only if the Council has proposed, or has approved, the removal.
- (6) Before making an order under this section, the Scottish Ministers must consult—
- (a) the regional strategic body (except where not already established);
  - (b) every college to which the order relates (except any not already established);
  - (c) the representatives of any trade union which is recognised by any college to which the order relates or which otherwise appears to the Scottish Ministers to be representative of the staff of such a college;
  - (d) the students' associations of the colleges to which the order relates;
  - (e) the Council;
  - (f) any local authority for an area in which any of the colleges to which the order relates is situated; and
  - (g) any other person appearing to the Scottish Ministers as likely to be affected by the order.
- (7) The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (1) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).
- (8) On completing a review, the Council must provide a report of the review to the Scottish Ministers which—
- (a) sets out the conclusions which it has reached;
  - (b) explains why it has reached those conclusions; and
  - (c) makes any recommendations for action in consequence of those conclusions as it considers appropriate.
- (9) References in this Act to a regional strategic body's colleges are references to the governing bodies of the colleges assigned to it by an order under this section.]

#### Textual Amendments

**F16** S. 7C inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 8(3)**, 23(2); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

#### [<sup>F17</sup>7D Orders under sections 7A to 7C: supplemental

- (1) This subsection applies to—
- (a) any order under section 7A(1) which designates a regional college (or which revokes such a designation); and
  - (b) any order under section 7C(1) which assigns a college of further education to a regional strategic body (or which revokes such an assignment).
- (2) An order to which subsection (1) applies may—
- (a) make provision about the membership of the board of management of the college of further education concerned;
  - (b) make such additional provision (not being provision mentioned in paragraph (a)) as is considered appropriate in relation to the change of status of the college concerned.

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- (3) Subsection (2)(a) applies only where the college of further education concerned is one whose board of management is established in pursuance of Part 1 of the 1992 Act.
- (4) Provision under subsection (2)(a) may include provision—
- (a) authorising the Scottish Ministers to make arrangements for, or otherwise providing for, the continuing in office, or the removal from office, of persons who are members of the board immediately before the day on which the designation or assignation has, or ceases to have, effect;
  - (b) for the appointment by the Scottish Ministers, on terms and conditions determined by them, of persons who are to be members of the board from that day;
  - (c) deeming persons who continue in office, or who are appointed in pursuance of paragraph (b), to hold office from that day as if appointed under such provision of paragraph 3 or, as the case may be, 3A of Schedule 2 to the 1992 Act as may be specified in the order.
- (5) But such an order may not make provision in pursuance of subsection (4)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (f) or, as the case may be, 3A(2)(a) or (f) of Schedule 2 to the 1992 Act.
- (6) Subsections (1) to (5) do not prejudice the generality of powers conferred by section 34(2).
- (7) The Scottish Ministers must, in pursuance of sections 7A to 7C, seek to ensure—
- (a) that every college of further education whose governing body is established in pursuance of Part 1 of the 1992 Act is either—
    - (i) designated as a regional college; or
    - (ii) assigned to a regional strategic body; and
  - (b) that at least two colleges of further education are assigned to each regional board.
- (8) Where, despite subsection (7)(a), a college of further education whose governing body is so established is not so designated or assigned, the college is (subject to any contrary provision made under section 33 or 34(2) of this Act or section 22 of the Post-16 Education (Scotland) Act 2013) to be treated for the purposes of this Act, the 1992 Act and any other enactment as having been designated as a regional college.
- (9) Nothing in subsections (7) and (8) affects the power to make an order under section 7C(1) in relation to a college of further education whose governing body is not so established.]

#### Textual Amendments

**F17** S. 7D inserted (3.3.2014 for specified purposes, 31.3.2015 in so far as not already in force) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(6\)](#); [S.S.I. 2014/21](#), art. 2, [Sch. 1](#); [S.S.I. 2015/82](#), art. 2



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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Cross Heading: Provision of further and higher education etc.. (See end of Document for details)

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## 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 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.

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### Commencement Information

**16** S. 8 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, Cross Heading: Provision of further and higher education etc..