



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1

### FURTHER AND HIGHER EDUCATION ETC.

#### *<sup>F1</sup>Regional strategic bodies: functions*

#### Textual Amendments

- F1** Ss. 23E-23O and cross-heading inserted (1.8.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 10**, 23(2); S.S.I. 2014/79, art. 2(2), Sch. 2

#### **23E Regional strategic bodies: general duty**

- (1) It is the duty of a regional strategic body to exercise its functions with a view to securing the coherent provision of a high quality of fundable further education and fundable higher education in the localities of its colleges.
- (2) In doing so, the regional strategic body must have regard to any fundable further education and fundable higher education provided by other post-16 education bodies in the localities of its colleges.

#### **23F Regional strategic bodies: planning**

- (1) A regional strategic body must plan for—
  - (a) how it proposes its colleges should provide fundable further education and fundable higher education; and
  - (b) how it intends to exercise its functions,and the body's colleges must, where appropriate, have regard to those plans when exercising their functions.

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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: Regional strategic bodies: functions. (See end of Document for details)*

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- (2) When making plans, a regional strategic body must have regard to the importance of ensuring that funds made available to it under section 12(1)(c) are used as economically, efficiently and effectively as possible.

**23G Performance monitoring**

- (1) A regional strategic body must monitor the performance of its colleges.
- (2) This may, in particular, include—
- (a) monitoring or assessing the quality of fundable further education and fundable higher education provided by its colleges;
  - (b) monitoring the impact which providing that education has on the well-being of—
    - (i) the students and former students of its colleges;
    - (ii) the localities in which its colleges are situated; or
    - (iii) Scotland;
  - (c) monitoring its colleges' financial and other affairs.
- (3) A regional strategic body must, when considering whether to take any action under subsection (1), have regard to the desirability of preventing any unnecessary duplication of any action taken, or likely to be taken, by the Scottish Ministers or the Council in relation to the performance of its colleges.

**23H Promotion of Council's credit and qualification framework**

A regional strategic body is to promote the use by its colleges of such credit and qualification framework as the Council may adopt in pursuance of section 14.

**23I Efficiency studies: assigned colleges**

- (1) A regional strategic body may secure the promotion or carrying out of studies designed to improve economy, efficiency and effectiveness in the management or operations of any of its colleges.
- (2) A college 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.

**23J Right to address college meetings**

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

- (a) attend any meeting of the college; and
- (b) address the meeting on those matters.

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### **23K Regional strategic bodies: improvement of economic and social well-being**

- (1) A regional strategic body is to exercise its functions with a view to improving the economic and social well-being of the localities of its colleges.
- (2) In doing so, the regional strategic body is to have regard to—
  - (a) social and economic regeneration needs in those localities; and
  - (b) social cohesion and social inclusion issues in those localities.
- (3) For the purposes of subsection (2)(a), “needs” means needs which appear to the regional strategic body—
  - (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.
- (4) For the purposes of subsection (2)(b), “issues” means issues which appear to the regional strategic body—
  - (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.

### **23L Regional strategic body to have regard to particular matters**

- (1) In exercising its functions, a regional strategic body is to have regard to—
  - (a) skills needs in the localities of its colleges;
  - (b) issues affecting the economy of the localities of its colleges;
  - (c) social and cultural issues in the localities of its colleges; and
  - (d) the needs and issues in relation to Scotland identified by the Council for the purposes of section 20(1).
- (2) In exercising its functions, a regional strategic body is to—
  - (a) have regard to the desirability of the achieving of sustainable development; and
  - (b) in particular, encourage its colleges to contribute (so far as reasonably practicable for them to do so) to the achievement of sustainable development.
- (3) In exercising its functions, a regional strategic body is to have regard to the—
  - (a) United Kingdom context; and
  - (b) international context,in which any of its colleges may carry on its activities.
- (4) In exercising its functions, a regional strategic body 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 its colleges.
- (5) In exercising its functions, a regional strategic body is to—
  - (a) have regard to the desirability of enabling, encouraging and improving participation in fundable further education and fundable higher education by persons belonging to any socio-economic group which the regional strategic body reasonably considers to be under-represented in such education; and

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- (b) in particular, promote collaboration and sharing of good practice between its colleges in relation to enabling, encouraging and improving such participation.
- (6) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which appears to the regional strategic body—
  - (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.
- (7) For the purposes of subsection (1)(b) and (c), “issues” means issues which appear to the regional strategic body—
  - (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.
- (8) For the purposes of subsection (5), a socio-economic group is to be treated as under-represented in fundable further education or fundable higher education if participation in such education by persons in that group is disproportionately low.
- (9) A regional strategic body may take into account any social or economic characteristics which it considers appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of subsection (5).
- (10) A regional strategic body is to have regard to the under-represented socio-economic groups identified by the Council for the purposes of section 20(4A) when determining—
  - (a) which groups are to constitute “socio-economic groups” for the purposes of subsection (5); and
  - (b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.

### **23M Regional strategic bodies: consultation and collaboration**

- (1) A regional strategic body must, where it considers it appropriate to do so in the exercise of its functions, consult—
  - (a) its colleges;
  - (b) the representatives of—
    - (i) any trade union recognised by any of its colleges; and
    - (ii) any other trade union which appears to it to be representative of staff of any of its colleges;
  - (c) the students' association of any of its colleges;
  - (d) the local authorities for the areas in which its colleges are situated;
  - (e) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of any of its colleges;
  - (f) any other regional college or regional strategic body whom it considers likely to have an interest in the matter concerned;
  - (g) any person who appears to it to be representative of employers in the same locality as any of its colleges;

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- (h) any person who appears to it to be representative of the interests of any sector for which any of its colleges provides specialist education or training;
  - (i) The Open University;
  - (j) The Skills Development Scotland Co. Limited;
  - (k) the Scottish Qualifications Authority; and
  - (l) Scottish Enterprise [<sup>F2</sup>, South of Scotland Enterprise] or Highlands and Islands Enterprise (as appropriate).
- (2) Any particular requirement for consultation imposed on a regional strategic body by virtue of this or any other enactment is without prejudice to subsection (1).
- (3) A regional strategic body must, so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the body of any or all of the following persons—
- (a) its colleges;
  - (b) the representatives of any trade union recognised by any of its colleges or which otherwise appears to it to be representative of the staff of any of its colleges;
  - (c) the students' associations of its colleges;
  - (d) the local authorities for the areas in which its colleges are situated;
  - (e) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of any of its colleges;
  - (f) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;
  - (g) The Open University;
  - (h) The Skills Development Scotland Co. Limited;
  - (i) the Scottish Qualifications Authority; and
  - (j) Scottish Enterprise [<sup>F3</sup>, South of Scotland Enterprise] or Highlands and Islands Enterprise (as appropriate).
- (4) The Scottish Ministers may by order modify subsection (1) or (3)—
- (a) by adding or removing persons, or types of persons, to which those provisions apply; or
  - (b) varying the description of any such person or type of person.
- (5) But such an order may not modify paragraph (a), (b) or (c) of subsection (1) or paragraph (a) of subsection (3).
- (6) A regional strategic body must, in relation to the provision of fundable further education and fundable higher education—
- (a) promote collaboration between its colleges; and
  - (b) promote such other collaboration between its colleges and other post-16 education bodies as it considers appropriate.

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#### Textual Amendments

**F2** Words in s. 23M(1)(l) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(4\)\(a\)](#); S.S.I. 2019/308, reg. 2

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**F3** Words in s. 23M(3)(j) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(4\)\(b\)](#); S.S.I. 2019/308, reg. 2

### **23N Assigned colleges: information and directions**

- (1) A regional strategic body's colleges must provide the regional strategic body with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.
- (2) A regional strategic body may give such directions to its colleges, or to any of them, as it considers appropriate.
- (3) Directions given under this section may be of a general or specific character.
- (4) Before giving directions under this section, a regional strategic body must consult—
  - (a) any college to which the proposed directions relate;
  - (b) the representatives of any trade union recognised by such a college or which otherwise appears to the regional strategic body to be representative of its staff; and
  - (c) the students' association of every such college.
- (5) A college must comply with directions given to it under this section.
- (6) Directions given under this section may be varied or revoked.
- (7) Nothing in this section allows a regional strategic body—
  - (a) to [<sup>F4</sup>give directions in relation to the transfer of any] staff, property, rights, liabilities or obligations; or
  - (b) to give directions to a college whose governing body is not a board of management established in pursuance of Part 1 of the 1992 Act.

#### **Textual Amendments**

**F4** Words in s. 23N(7)(a) substituted (31.3.2015) by [The Post-16 Education \(Scotland\) Act 2013 \(Modification of Legislation\) Order 2015 \(S.S.I. 2015/153\)](#), art. 1, [Sch. para. 3\(2\)](#)

### **23O Transfer of staff and property etc.**

- (1) A regional strategic body may require any of its colleges to transfer such of its staff, property, rights, liabilities or obligations as may be specified in the requirement—
  - (a) to another of its colleges; or
  - (b) to the regional strategic body.
- (2) Such a requirement may be made—
  - (a) for the purpose of transferring responsibility for providing any particular programmes of learning or courses of education from one of the regional strategic body's colleges to another of its colleges;
  - (b) for the purpose of transferring responsibility for providing any particular service; or
  - (c) for any other purpose relating to the functions of the regional strategic body or any of its colleges.

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- (3) Before making a requirement under subsection (1), the regional strategic body must consult—
  - (a) any college to which the proposed transfer relates;
  - (b) the representatives of any trade union recognised by such a college or which otherwise appears to the regional strategic body to be representative of its staff; and
  - (c) the students' association of every such college.
- (4) Consultation under subsection (3)(a) is to be undertaken with a view to seeking the agreement of the college to the proposed transfer.
- (5) A requirement under subsection (1) may make such further provision in relation to the transfer as the regional strategic body considers appropriate.
- (6) Any transfer of staff effected by virtue of subsection (1) is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (7) All property and rights transferred by virtue of subsection (1) are to be applied for the purpose of the advancement of education.
- (8) Subject to subsection (9), a requirement made under subsection (1) is binding on any college to which it relates.
- (9) A requirement made under subsection (1) is binding on a college falling within subsection (10) only if the college consents to the making of the requirement.
- (10) A college falls within this subsection if—
  - (a) its governing body is not a board of management established in pursuance of Part 1 of the 1992 Act;
  - (b) it is the college from which staff, property, rights, liabilities or obligations are to be transferred in pursuance of the requirement and the transfer is to be made to a college whose governing body is not a board of management established in pursuance of Part 1 of the 1992 Act; or
  - (c) the regional strategic body to which it is assigned is a body included in Part 2 of schedule 2A.
- (11) The Scottish Ministers may by order modify subsection (10) to provide that a college, or type of college, specified in the order is or is not to fall within that subsection (other than by virtue of paragraph (a) or (b) of that subsection).
- (12) Such an order may not modify paragraph (a) or (b) of subsection (10).
- (13) Before making an order under subsection (11), the Scottish Ministers must consult—
  - (a) any regional strategic body to which the order relates;
  - (b) the representatives of any trade union which is recognised by such a regional strategic body or which otherwise appears to the Scottish Ministers to be representative of the staff of such a body;
  - (c) any college of further education which is assigned to such a regional strategic body by order made under section 7C(1);
  - (d) the students' association of each such college;
  - (e) the representatives of any trade union which is recognised by each such college or which otherwise appears to the Scottish Ministers to be representative of the staff of such a college;

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- (f) the Council;
  - (g) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally;
  - (h) any body which appears to the Scottish Ministers to be representative of colleges of further education;
  - (i) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and
  - (j) any other person whom the Scottish Ministers consider likely to be affected by the order.
- (14) Where any of a regional strategic body's staff are transferred to any of its colleges by virtue of any other arrangements made between the regional strategic body and that college, the transfer is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).]

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