



# Post-16 Education (Scotland) Act 2013

2013 asp 12

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 26th June 2013 and received Royal Assent on 7th August 2013**

An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people's involvement in education and training; and for connected purposes.

VALID FROM 10/10/2013

## *Introductory*

### **1 Interpretation **S****

In this Act—

- “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,
- “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005.

VALID FROM 03/03/2014

## *Terms and conditions of higher education funding*

### **2 Higher education institutions: good governance **S****

After section 9 of the 2005 Act insert—

#### **“9A Higher education institutions: good governance**

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution

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under section 12(1), require the institution to comply with any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions.”.

### 3 **Widening access to higher education** **S**

After section 9B of the 2005 Act, inserted by section 14, insert—

#### “9C Widening access to fundable higher education

- (1) The Scottish Ministers may, under section 9(2), impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.
- (2) The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement which makes provision in relation to—
  - (a) any socio-economic group which the Scottish Ministers reasonably consider to be under-represented in fundable higher education; and
  - (b) other socio-economic groups, if any, which the Council and the institution agree are under-represented in fundable higher education.
- (3) A “widening access agreement” is an agreement between a higher education institution and the Council under which the institution is to take actions specified in the agreement for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).
- (4) Before entering into a widening access agreement in pursuance of this section, a higher education institution must consult—
  - (a) the representatives of any trade union which the institution recognises or which otherwise appears to it to be representative of its staff; and
  - (b) the institution's students' association.
- (5) For the purposes of this section, a socio-economic group is to be treated as under-represented in fundable higher education if participation in such education by persons in that group is disproportionately low.
- (6) The Scottish Ministers, the Council and higher education institutions may take into account any social or economic characteristics which they consider appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of this section.”.

### 4 **Fee cap: students liable for higher education fees** **S**

After section 9C of the 2005 Act, inserted by section 3, insert—

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#### **“9D Fee cap: students liable for higher education fees**

- (1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1)—
  - (a) where the payment is made to a fundable post-16 education body which provides fundable higher education, impose on that body a condition that it complies with the requirement set out in subsection (2);
  - (b) where the payment is made to a regional strategic body, impose on that body a condition that it must, when making a payment under section 12B(1) to any of its colleges which provides fundable higher education, impose on the college a condition that it complies with the requirement set out in subsection (2).
- (2) The requirement is that the post-16 education body to whom the payment is made is to secure that the fees paid to it—
  - (a) by persons in respect of whom it is authorised or required to charge higher fees by virtue of regulations made under section 1 of the Education (Fees and Awards) Act 1983 (or by such class of such persons as the Scottish Ministers may by order specify);
  - (b) in connection with their attending in an academic year such courses of education as the Scottish Ministers may by order specify,do not exceed such amount as the Scottish Ministers may by order specify.
- (3) The Scottish Ministers, when making an order under this section, must seek to ensure—
  - (a) that, subject to any exceptions which they consider appropriate, it applies only in relation to fees payable by persons who have a connection with the United Kingdom; and
  - (b) that the amount of fees payable by a person attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees which that person would by virtue of any enactment be liable to pay if attending any higher education course provided elsewhere in the United Kingdom during that year.
- (4) The Scottish Ministers may not specify courses under subsection (2)(b) in such a way as to discriminate between different 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.
- (5) References in this section to the United Kingdom include references to the Channel Islands and the Isle of Man.”.

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VALID FROM 10/10/2013

### *College reorganisation*

VALID FROM 13/01/2014

## **5 Regional colleges** **S**

(1) After section 7 of the 2005 Act insert—

### **“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—
  - (a) the board of management of the college to which the order relates (where that board is already established);
  - (b) the representatives of any trade union which the college recognises or which otherwise appears to the Scottish Ministers to be representative of its staff;
  - (c) the college's students' association;
  - (d) the local authority for the area in which the college is situated;
  - (e) the Council; and
  - (f) any other person appearing to the Scottish Ministers as likely to be affected by the order.”.

(2) After section 23 of the 2005 Act insert—

### *“Regional colleges: functions*

#### **23A Regional colleges: general duty**

- (1) It is the duty of a regional college 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 locality of the regional college.
- (2) In doing so, the regional college must have regard to any fundable further education and fundable higher education provided by other post-16 education bodies in the locality of the regional college.

#### **23B Regional colleges: planning, consultation and collaboration**

- (1) A regional college must plan for—
  - (a) how it proposes to provide fundable further education and fundable higher education; and

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- (b) how it intends to exercise its other functions.
- (2) When making plans, a regional college must have regard to the importance of ensuring that funds made available to it under section 12 are used as economically, efficiently and effectively as possible.
- (3) A regional college must, where it considers it appropriate to do so in the exercise of its functions, consult—
- (a) the representatives of any trade union which it recognises or which otherwise appears to it to be representative of its staff;
  - (b) its students' association;
  - (c) the local authority for the area in which the regional college is situated;
  - (d) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of the regional college;
  - (e) any other regional college or regional strategic body whom it considers likely to have an interest in the matter concerned;
  - (f) any person who appears to it to be representative of employers in the locality of the regional college;
  - (g) any person who appears to it to be representative of the interests of any sector for which the regional college provides specialist education or training;
  - (h) The Open University;
  - (i) The Skills Development Scotland Co. Limited;
  - (j) the Scottish Qualifications Authority; and
  - (k) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).
- (4) Any particular requirement for consultation imposed on a regional college by virtue of this or any other enactment is without prejudice to subsection (3).
- (5) A regional college must, so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the regional college of the following persons—
- (a) the representatives of any trade union which the regional college recognises or which otherwise appears to it to be representative of its staff;
  - (b) the regional college's students' association;
  - (c) the local authority for the area in which the regional college is situated;
  - (d) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of the regional college;
  - (e) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;
  - (f) The Open University;
  - (g) The Skills Development Scotland Co. Limited;
  - (h) the Scottish Qualifications Authority; and

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- (i) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).
- (6) The Scottish Ministers may by order modify subsection (3) or (5) by—
  - (a) 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.
- (7) But such an order may not modify paragraph (a) or (b) of subsection (3).

### **23C Regional colleges: improvement of economic and social well-being**

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

### **23D Regional college to have regard to particular matters**

- (1) In exercising its functions, a regional college is to have regard to—
  - (a) skills needs in the locality of the regional college;
  - (b) issues affecting the economy of the locality of the regional college;
  - (c) social and cultural issues in the locality of the regional college; 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 college is to have regard to the desirability of the achieving of sustainable development.
- (3) In exercising its functions, a regional college is to have regard to the—
  - (a) United Kingdom context; and
  - (b) international context,
 in which it carries on its activities.
- (4) In exercising its functions, a regional college is to have regard to the educational and related needs (including support needs) of persons who

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are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of the college.

- (5) In exercising its functions, a regional college is to 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 college reasonably considers to be under-represented in such education.
- (6) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which appears to the regional college—
  - (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 college—
  - (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 college 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 college 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.”.

## 6 Colleges: boards of management **S**

(1) For paragraph 3 of Schedule 2 to the 1992 Act substitute—

- “3
- (1) The board of a regional college is to consist of no fewer than 15 nor more than 18 members.
  - (2) The board is to be comprised of—
    - (a) a person appointed by the Scottish Ministers to chair meetings of the board (the “chairing member”);
    - (b) the principal of the college;

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- (c) a person appointed by being elected by the teaching staff of the college from among their own number;
  - (d) a person appointed by being elected by the non-teaching staff of the college from among their own number;
  - (e) two persons appointed by being nominated by the students' association of the college from among the students of the college; and
  - (f) other members appointed by the board.
- (3) An appointment made in pursuance of sub-paragraph (2)(f) has effect only if approved by—
- (a) the chairing member; and
  - (b) the Scottish Ministers.
- (4) A person is not eligible for appointment as the chairing member under sub-paragraph (2)(a) if the person is—
- (a) a member of the Scottish Parliament;
  - (b) a member of the House of Lords;
  - (c) a member of the House of Commons;
  - (d) a member of the European Parliament; or
  - (e) the principal of the college,
- but such a person may otherwise be appointed as a member of the board.
- 3A (1) The board of a college which is not a regional college is to consist of no fewer than 13 nor more than 18 members.
- (2) The board is to be comprised of—
- (a) a person appointed by the regional strategic body to chair meetings of the board (the “chairing member”);
  - (b) the principal of the college;
  - (c) a person appointed by being elected by the teaching staff of the college from among their own number;
  - (d) a person appointed by being elected by the non-teaching staff of the college from among their own number;
  - (e) two persons appointed by being nominated by the students' association of the college from among the students of the college; and
  - (f) other members appointed by the regional strategic body.
- 3B (1) An election to appoint members in pursuance of paragraph 3(2)(c) or (d) or 3A(2)(c) or (d) is to be conducted in accordance with rules made by the board.
- (2) Before making, varying or replacing rules about elections to be held in pursuance of paragraph 3(2)(c) or 3A(2)(c), the board must consult the representatives of any trade union which the board recognises as being, or which otherwise appears to the board to be, representative of the teaching staff of the college.



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- (3) Before making, varying or replacing rules about elections to be held in pursuance of paragraph 3(2)(d) or 3A(2)(d), the board must consult the representatives of any trade union which the board recognises as being, or which otherwise appears to the board to be, representative of the non-teaching staff of the college.
- 3C (1) In appointing members under paragraph 3(2) or 3A(2) and in extending the period of appointment of any member so appointed, the board or, as the case may be, regional strategic body must have regard to any guidance issued by the Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).
- (2) Before issuing guidance under sub-paragraph (1), the Scottish Ministers must consult—
- (a) any board to which the guidance relates;
  - (b) where it relates to the board of a college which is not a regional college, the regional strategic body for the college;
  - (c) the local authority for any area in which the board to which the guidance relates is situated;
  - (d) the relevant students' associations;
  - (e) the representatives of any trade union which is recognised by a board to which the guidance relates or which otherwise appears to the Scottish Ministers to be representative of its staff;
  - (f) the Council;
  - (g) any body which appears to the Scottish Ministers to be representative of colleges of further education;
  - (h) any body which appears to the Scottish Ministers to be representative of local authorities;
  - (i) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally; and
  - (j) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland.
- (3) Different guidance may be issued for different purposes.”.
- (2) The Scottish Ministers may make such arrangements in relation to a board of management of a college of further education as they consider appropriate in connection with the coming into force of subsection (1) and may, in particular—
- (a) appoint on terms and conditions determined by them persons who are, from the day on which that subsection comes into force, to hold office as a member of the board 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, or
  - (b) in the case of persons who are members of the board immediately before that day—
    - (i) make arrangements for them to continue in 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 they may determine, or
    - (ii) remove them from office.

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## 7 Colleges: mismanagement **S**

For section 24 of the 1992 Act substitute—

### “24 Mismanagement by boards

- (1) This section applies where—
  - (a) it appears to the Scottish Ministers that the board of management of any college of further education—
    - (i) have committed or are committing a serious breach of any term or condition of a grant made to them under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”);
    - (ii) have committed or are committing repeated breaches of such terms or conditions;
    - (iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;
    - (iv) have failed, or are failing, to discharge any of their duties properly; or
    - (v) have mismanaged, or are mismanaging, their financial or other affairs; or
  - (b) the Council has informed the Scottish Ministers that a college of further education whose board of management is established in pursuance of this Part is not, or is no longer, a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act.
- (2) Where this section applies, the Scottish Ministers may by order—
  - (a) remove any or all of the members of the board (other than the principal of the college); and
  - (b) where a removed member was appointed under paragraph 3(2)(a) or (f) or 3A(2)(a) or (f) of Schedule 2, appoint another person in place of the removed member.
- (3) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.
- (4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.
- (5) An appointment made under subsection (2)(b) has effect as if made under the provision of Schedule 2 under which the removed member was appointed.”.

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*Regional strategic bodies*

**8 Regional strategic bodies** **S**

(1) After section 7A of the 2005 Act, inserted by section 5(1), insert—

**“7B Regional strategic bodies**

(1) In this Act—

- (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.”.

(2) After schedule 2 to the 2005 Act insert—

**“SCHEDULE 2A** **S**  
*(introduced by section 7B(1))*

REGIONAL STRATEGIC BODIES

.....  
.....

(3) After section 7B of the 2005 Act, inserted by subsection (1), insert—

**“7C Assignment of colleges**

(1) The Scottish Ministers may by order assign colleges of further education to a regional strategic body.

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- (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.
- (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.

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- (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.”.

## **9 Funding of and by regional strategic bodies** **S**

- (1) In section 12 of the 2005 Act—

- (a) in subsection (1)—

- (i) in paragraph (a), after “fundable” insert “ post-16 education ”,  
(ii) in paragraph (b)(i), after “fundable” insert “ post-16 education ”,  
(iii) after paragraph (b) insert—

“(c) to a regional strategic body.”,

- (b) in subsection (2), omit “subsection (5) of”,

- (c) in subsection (5)(b), for “fundable bodies” substitute “ post-16 education bodies, or regional strategic bodies, ”.

- (2) After section 12 of the 2005 Act insert—

### **“12A Regional strategic bodies: administration of funds**

- (1) A regional strategic body 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 funds made available to it under section 12(1)(c); 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 regional strategic body's colleges;  
(b) the undertaking of research among those colleges;  
(c) the—  
(i) provision of such facilities; and  
(ii) carrying on of such other activities,

by those colleges 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 those colleges or any other person for the purposes of or in connection with an activity specified in paragraph (a) or (b).

### **12B Funding of assigned colleges**

- (1) A regional strategic body may make grants, loans or other payments—

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- (a) to any of its colleges in respect of expenditure incurred or to be incurred by the college for the purposes of any of the activities specified in subsection (3)(a) and (b) of section 12A;
  - (b) to—
    - (i) any of its colleges; or
    - (ii) any other person,in respect of expenditure incurred or to be incurred by the college 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 in pursuance of conditions imposed on the regional strategic body under section 9) be subject to such terms and conditions as the regional strategic body 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 the regional strategic body may specify;
  - (b) the interest payable in respect of any period during which a sum due to the regional strategic body is outstanding.
- (4) A condition imposed on any of the regional strategic body's colleges in pursuance of section 9(5A) is to make provision that is to apply if the college fails to comply with the requirement referred to in section 9(6).
- (5) A condition imposed on any of the regional strategic body's colleges in pursuance of section 9(5A) 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, 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.
- (6) Terms and conditions imposed under subsection (2) may not relate to the application by the college of any sums which were not derived from the Council.
- (7) Before imposing terms and conditions under subsection (2), a regional strategic body must—
  - (a) except where it considers that it is not expedient to do so, consult the college 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 its colleges or any class of them.
- (8) In making payments under subsection (1), the regional strategic body is to have regard to the desirability of—
  - (a) encouraging its colleges to maintain or develop funding from other sources;
  - (b) preserving any distinctive characteristics of particular colleges.”.

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VALID FROM 01/08/2014

## 10 **Regional strategic bodies: functions** **S**

After section 23D of the 2005 Act, inserted by section 5(2), insert—

*“Regional strategic bodies: functions*

### **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.
- (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,

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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.

### **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



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- (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
  - (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—

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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.
- (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;
  - (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 or Highlands and Islands Enterprise (as appropriate).

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- (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 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.

### **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.

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- (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 direct a college to transfer 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.

### **230 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.
- (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.

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- (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;
  - (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

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(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)."

VALID FROM 10/10/2013

*Regional boards*

VALID FROM 01/05/2014

**11 Regional boards: constitution** **S**

(1) After section 23O of the 2005 Act, inserted by section 10, insert—

*“Regional boards: constitution etc.*

**23P Regional boards: constitution**

Schedule 2B makes provision about the constitution of a regional board, about the general powers of such a board and about certain administrative and other matters with respect to such a board.”

(2) After schedule 2A to the 2005 Act, inserted by section 8(2), insert—

“**SCHEDULE 2B** **S**  
*(introduced by section 23P)*

**REGIONAL BOARDS**

*Regional boards*

- 1 (1) References in this schedule to “the board” are references to a regional board specified in Part 1 of schedule 2A.
- (2) The board is to be known by the name by which it is described in that Part.

*Status*

- 2 (1) The board is a body corporate.
- (2) The board—
  - (a) is not a servant or agent of the Crown;

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(b) has no status, immunity or privilege of the Crown, and its property is not to be regarded as property of, or held on behalf of, the Crown.

#### *Membership*

- 3 (1) The board is to consist of no fewer than 15 members.
- (2) The board is to be comprised of—
- (a) a person appointed by the Scottish Ministers to chair meetings of the board (the “chairing member”);
  - (b) subject to sub-paragraph (4), the chairing member of each of the board's colleges;
  - (c) a person appointed by being elected by the teaching staff of the board's colleges from among their own number;
  - (d) a person appointed by being elected by the non-teaching staff of the board's colleges from among their own number;
  - (e) two persons appointed in accordance with paragraph 4; and
  - (f) up to 10 other members appointed by the board.
- (3) A person is not eligible for appointment as the chairing member if the person is—
- (a) a member of the Scottish Parliament;
  - (b) a member of the House of Lords;
  - (c) a member of the House of Commons;
  - (d) a member of the European Parliament; or
  - (e) the chief officer of the board.
- (4) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(b) if the person has previously been removed from the board under section 23Q.
- (5) An appointment made in pursuance of sub-paragraph (2)(f) has effect only if approved by—
- (a) the chairing member; and
  - (b) the Scottish Ministers.
- (6) In appointing members under sub-paragraph (2)(f) and in extending the period of appointment of any member so appointed, the board must have regard to any guidance issued by the Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).
- (7) Before issuing guidance under sub-paragraph (6), the Scottish Ministers must consult—
- (a) any regional board to which the guidance relates;
  - (b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;
  - (c) the local authority for any area in which such a college is situated;
  - (d) the students' association for each such college;

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- (e) the representatives of any trade union which is recognised by any such college or which otherwise appears to the Scottish Ministers to be representative of its staff;
- (f) the Council;
- (g) any body which appears to the Scottish Ministers to be representative of colleges of further education;
- (h) any body which appears to the Scottish Ministers to be representative of local authorities;
- (i) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally; and
- (j) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland.

(8) Different guidance may be issued for different purposes.

#### *Student members*

- 4
- (1) The students' associations of the board's colleges are each entitled to nominate students for appointment in pursuance of paragraph 3(2)(e).
  - (2) Where only two students are so nominated, those students are to be so appointed.
  - (3) Members are otherwise to be so appointed by being elected by the students of all the board's colleges from among the students so nominated.
  - (4) Sub-paragraphs (1) to (3) do not apply where only two colleges are assigned to the board and, in such a case, the students' association of each college is to appoint one member from among the students of their respective colleges.

#### *Election of staff and student members*

- 5
- (1) An election to appoint members in pursuance of paragraph 3(2)(c) or (d) or 4(3) is to be conducted in accordance with rules made by the board.
  - (2) Before making, varying or replacing election rules, the board must consult—
    - (a) its colleges;
    - (b) in the case of rules about elections in pursuance of paragraph 3(2)(c), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the teaching staff of its colleges;
    - (c) in the case of rules about elections to be held in pursuance of paragraph 3(2)(d), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the non-teaching staff of its colleges; and
    - (d) in the case of rules about elections in pursuance of paragraph 4(3), the students' associations of each of its colleges.



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### *Disqualification from membership*

- 6 (1) A person is not eligible for appointment as a member of the board if the person—
- (a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;
  - (b) is an undischarged bankrupt; or
  - (c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any regional board).
- (2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—
- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
  - (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
  - (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;
  - (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
  - (e) who has been adjudged bankrupt (and has not been discharged); or
  - (f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.
- (3) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(b).

### *Terms and conditions*

- 7 (1) Subject to the other provisions of this Act—
- (a) the chairing member holds and vacates office on such terms and conditions as the Scottish Ministers may determine; and
  - (b) other members (unless holding office in pursuance of paragraph 3(2)(b)) hold and vacate office on such terms and conditions as the board may in each case determine.
- (2) Subject to sub-paragraphs (3) to (8), paragraph 9 and section 23Q—
- (a) the chairing member is to hold office for such period (not exceeding 4 years) as the Scottish Ministers may determine;
  - (b) a member appointed in pursuance of paragraph 3(2)(b) is to hold office until the person ceases to be a chairing member of any of the board's colleges;

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- (c) a member appointed by being elected in pursuance of paragraph 3(2)(c) or (d) is to hold office for 4 years;
  - (d) a member appointed in pursuance of paragraph 3(2)(e) is to hold office until 31 August following appointment; and
  - (e) a member appointed under paragraph 3(2)(f) is to hold office for such period (not exceeding 4 years) as the board may determine.
- (3) The Scottish Ministers may extend the period of appointment of the chairing member for a single further period not exceeding 4 years.
- (4) The board may extend the period of appointment of a member it appoints for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).
- (5) The chairing member is to vacate office if the chairing member becomes a person of the type described in paragraph 3(3).
- (6) A member appointed under paragraph 3(2)(c) or (d) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of one of the board's colleges before the member's period of appointment ends.
- (7) A member appointed in pursuance of paragraph 3(2)(e) is to vacate office if the member ceases to be a student of one of the board's colleges before the member's period of appointment ends.
- (8) On ceasing to be a member, a person is eligible for reappointment (provided that the person is not ineligible by virtue of any other provision).

#### *Remuneration and allowances*

- 8 (1) The board is to pay to its chairing member such remuneration as the Scottish Ministers may in each case determine.
- (2) The board is to pay to its members such allowances as the Scottish Ministers may in each case determine.

#### *Resignation and removal of members*

- 9 (1) The chairing member may by giving notice in writing to the Scottish Ministers resign office as a member.
- (2) Any other member (except for a member appointed in pursuance of paragraph 3(2)(b)) may by giving notice in writing to the board resign office as a member.
- (3) The Scottish Ministers must, by giving notice in writing to the chairing member, remove the chairing member from office if—
- (a) the chairing member—
    - (i) is sentenced as mentioned in paragraph 6(1)(a);
    - (ii) has become a person to whom paragraph 6(1)(b) applies;
    - or
    - (iii) is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any other regional board); or

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- (b) they are satisfied that the chairing member—
  - (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
  - (ii) is otherwise unable or unfit to discharge the functions of the chairing member.
- (4) The board must, by giving notice in writing to the member, remove any other member from office if—
  - (a) the member—
    - (i) is sentenced as mentioned in paragraph 6(1)(a); or
    - (ii) has become a person to whom paragraph 6(1)(b) applies; or
  - (b) it is satisfied that the member—
    - (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
    - (ii) is otherwise unable or unfit to discharge the functions of a member.
- (5) Sub-paragraph (4) does not apply in relation to a member appointed in pursuance of paragraph 3(2)(b).
- (6) The Scottish Ministers must, by giving notice in writing to the member, remove a member (other than the chairing member) from office if the member is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any other regional board).
- (7) Where a member removed under sub-paragraph (6) was appointed under paragraph 3(2)(f), the Scottish Ministers may appoint another person in place of the removed member.
- (8) An appointment made under sub-paragraph (7) has effect as if made under paragraph 3(2)(f).

#### *Staff*

- 10 (1) The board may (subject to any directions given under sub-paragraph (4)) appoint a chief officer and such other employees as it considers appropriate on such terms and conditions as the board may determine.
- (2) The board may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed by the board.
- (3) Arrangements under sub-paragraph (2) may include—
  - (a) the making of contributions or payments towards provision for pensions, allowances or gratuities; and
  - (b) the establishment and administration of pension schemes.
- (4) The board must comply with any directions given by the Council as regards—

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- (a) the appointment of employees;
- (b) terms and conditions determined under sub-paragraph (1); or
- (c) payments or arrangements made under sub-paragraph (2).

*Proceedings of the board*

- 11 (1) The board may regulate its own procedure (including any quorum).
- (2) The validity of any proceedings of the board is not affected—
- (a) by a vacancy in membership (or in a category of membership); or
  - (b) by any defect in the appointment of a member.

*Committees*

- 12 (1) The board may establish committees.
- (2) The board is to determine—
- (a) the composition of any committees;
  - (b) the terms and conditions of membership of any committee; and
  - (c) the procedure (including any quorum) of any committee.
- (3) A committee may include persons who are not members of the board (but such persons are not to be entitled to participate in making decisions).
- (4) The board is to pay to the members of its committees (whether or not they are also members of the board) such allowances as the Scottish Ministers may determine.

*Participation at meetings*

- 13 Unless the chairing member determines otherwise, a person who is the principal of one of the board's colleges but who is not a board member is entitled to participate in any deliberations (but not in making decisions) at meetings of the board.

*General powers*

- 14 (1) The board may (subject to sub-paragraphs (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;
  - (d) accepting gifts of money, land or other property;
  - (e) forming or promoting (whether alone or with another) companies under the Companies Act 2006.
- (2) The board may not borrow money.
- (3) The board is not to—

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- (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 board is not to dispose of any property to which this sub-paragraph applies without the written consent of the Scottish Ministers.
- (5) Consent, for the purposes of sub-paragraphs (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 sub-paragraph (4), is not required for a disposal of land which is or forms part of property to which that sub-paragraph applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.
- (7) But the board is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which sub-paragraph (4) applies.
- (8) Where property to which sub-paragraph (4) applies is disposed of, the board 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 board, determine.
- (9) Sub-paragraph (4) applies to—
- (a) any property which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of funds provided by the Council under section 12; and
  - (b) any proceeds of, or any consideration for, the disposal of any such property.

#### *Goods and services*

- 15 The board may, for the purposes of providing support for the provision of fundable further education or fundable higher education, provide (and make charges in respect of the provision of) goods or services—
- (a) to any of its colleges;
  - (b) to any other post-16 education body;
  - (c) to any other regional strategic body; or
  - (d) to any other person.

#### *Delegation of functions*

- 16 (1) The board may authorise—
- (a) the chairing member;
  - (b) any of its committees; or
  - (c) any of its employees,
- to exercise such of its functions to such extent as it may determine.

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- (2) Sub-paragraph (1) does not affect the responsibility of the board for the exercise of its functions.

#### *Accounts*

- 17 (1) The board must—
- (a) keep proper accounts and accounting records;
  - (b) prepare a statement of accounts in respect of each yearly period ending on 31 March; and
  - (c) send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give.
- (2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

#### *Modification*

- 18 (1) The Scottish Ministers may by order modify this schedule (other than paragraph 2) by varying, adding to or removing any provision relating to a regional board's constitution, functions or administrative arrangements.
- (2) Before making an order under this paragraph, the Scottish Ministers must consult—
- (a) any board to which the order relates; and
  - (b) such other persons as they consider appropriate.”.

VALID FROM 01/05/2014

## **12 Regional boards: mismanagement S**

After section 23P of the 2005 Act, inserted by section 11(1), insert—

### **“23Q Mismanagement by regional boards**

- (1) This section applies where it appears to the Scottish Ministers that a regional board—
- (a) has committed or is committing—
    - (i) a serious breach of any term or condition of a grant made to it under section 12(1)(c); or
    - (ii) repeated breaches of such terms or conditions;
  - (b) has failed or is failing—
    - (i) properly to discharge its responsibility for administering the funds made available to it under that section in respect of its colleges; or
    - (ii) to discharge any of its duties properly; or
  - (c) has mismanaged, or is mismanaging, its financial or other affairs.
- (2) Where this section applies, the Scottish Ministers may by order—
- (a) remove any or all of the members of the regional board; and

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- (b) where a removed member was appointed under paragraph 3(2)(a) or (f) of schedule 2B, appoint another person in place of the removed member.
- (3) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.
- (4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.
- (5) An appointment made under subsection (2)(b) has effect as if made under the provision of paragraph 3 of schedule 2B under which the removed member was appointed.”.

### 13 **Establishment and abolition of regional boards: supplemental** **S**

After section 23Q of the 2005 Act, inserted by section 12, insert—

#### “**23R Establishment and abolition of regional boards: supplemental**

- (1) The Scottish Ministers may make such arrangements as they consider appropriate in anticipation of the establishment of a regional board by virtue of an order under section 7B or the coming into force of section 8 of the Post-16 Education (Scotland) Act 2013.
- (2) They may, in particular, appoint on terms and conditions determined by them persons who are, from the day on which the board is established, to hold office as if appointed under paragraph 3(2)(a) or, as the case may be, (f) of schedule 2B.
- (3) An order under section 7B(2)(a) which abolishes a regional board may, in particular, make provision—
  - (a) for the transfer of the regional board's staff, property, rights, liabilities or obligations to such other person as may be specified in the order;
  - (b) for the Scottish Ministers to pay any expenses incurred in connection with the abolition;
  - (c) imposing such duties or conferring such additional powers in relation to the abolition as the Scottish Ministers consider appropriate;
  - (d) for the exercise of any of the regional board's functions by any member of the board specified in the order;
  - (e) appointing a person to administer the abolition (and giving that person such powers and duties as appear to the Scottish Ministers to be necessary or expedient for such purposes as are specified in the order).
- (4) Such an order—
  - (a) must ensure that any transferred property and rights which, before the transfer, were to be applied for the purpose of the advancement of education are to continue to be applied for that purpose after the transfer;

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(b) may contain provision for the transfer of staff, property, rights, liabilities or obligations only if the person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer.

(5) This section does not prejudice the generality of powers conferred by section 34(2) or by section 22 of the Post-16 Education (Scotland) Act 2013.”.

VALID FROM 03/03/2014

*Further education institutions: good governance*

**14 Further education institutions: good governance** **S**

After section 9A of the 2005 Act, inserted by section 2, insert—

**“9B Further education institutions: good governance**

- (1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.
- (2) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional strategic body under section 12(1), require it—
  - (a) to comply with any principles of governance which appear to the Council to be appropriate in relation to such a body; or
  - (b) to impose, when making a payment to any of its colleges under section 12B(1), a condition requiring the college to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.”.

VALID FROM 03/03/2014

*Duties of Funding Council in relation to widening access*

**15 Council to have regard to desirability of widening access** **S**

(1) Section 20 of the 2005 Act is amended as follows.

(2) After subsection (4) insert—

“(4A) In exercising its functions, the Council 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



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which the Council reasonably considers to be under-represented in such education; and

- (b) in particular, promote collaboration and sharing of good practice between the persons mentioned in subsection (4B) in relation to enabling, encouraging and improving such participation.

(4B) Those persons are—

- (a) post-16 education bodies;
- (b) regional strategic bodies; and
- (c) post-16 education bodies and regional strategic bodies.”.

(3) After subsection (6) insert—

“(7) For the purposes of subsection (4A), 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.

(8) The Council may take into account any social or economic characteristics which they consider appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of subsection (4A).

(9) The Council must consult the Scottish Ministers before determining—

- (a) which groups are to constitute “socio-economic groups” for the purposes of subsection (4A); and
- (b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.”.

## 16 Council to review progress with widening access **S**

After section 19 of the 2005 Act insert—

### “19A Reviews of progress with widening access

(1) The Council must conduct reviews of the extent to which progress is being made in enabling, encouraging and improving participation in fundable further education and fundable higher education by persons belonging to socio-economic groups which the Council reasonably considers to be under-represented in such education.

(2) The first such review must be completed before the end of the period of three years beginning with the date on which this section comes into force.

(3) Subsequent reviews must be completed before the end of the period of three years beginning with the date on which the immediately preceding review was completed.

(4) On completing a review, the Council must provide the persons mentioned in subsection (5) with a report of the review which—

- (a) sets out the conclusions 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.

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- (5) Those persons are—
  - (a) the Scottish Ministers;
  - (b) each regional strategic body; and
  - (c) each post-16 education body.
- (6) The bodies to which this subsection applies must provide the Council with such information, and make available such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.
- (7) Subsection (6) applies to—
  - (a) post-16 education bodies; and
  - (b) regional strategic bodies.
- (8) For the purposes of subsection (1), 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) The Council may take into account any social or economic characteristics which they consider appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of subsection (1).
- (10) The Council must consult the Scottish Ministers before determining—
  - (a) which groups are to constitute “socio-economic groups” for the purposes of subsection (1); and
  - (b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.”.

VALID FROM 03/03/2014

*Review of further and higher education*

**17 Review of further and higher education S**

After section 14 of the 2005 Act insert—

**“14A Review of fundable further and higher education**

- (1) The Council may, with the consent of the Scottish Ministers, review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.
- (2) A review may relate to—
  - (a) any aspect of the funding or provision of fundable further education or fundable higher education (generally or in particular areas); or
  - (b) any aspect of the legislation or administrative framework which governs the funding or provision of fundable further education or fundable higher education.

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- (3) When seeking the consent of the Scottish Ministers to conduct a review, the Council must provide a case for review which—
  - (a) describes the scope of the proposed review; and
  - (b) explains why it is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review.
- (4) When conducting a review, the Council must consult—
  - (a) the governing body of any post-16 education body and any regional strategic body to which the review relates;
  - (b) the representatives of any trade union recognised by any such body or which otherwise appears to the Council to be representative of its staff;
  - (c) any body which appears to the Council to be representative of trade unions in Scotland;
  - (d) the students' association of any post-16 education body to which the review relates; and
  - (e) any body which appears to be the Council to be representative of the interests of students of post-16 education bodies generally.
- (5) The bodies to which this subsection applies must provide the Council with such information, and make available for inspection such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.
- (6) Subsection (5) applies to—
  - (a) post-16 education bodies; and
  - (b) regional strategic bodies.
- (7) On completing a review, the Council must provide the Scottish Ministers, and any post-16 education body and regional strategic body to which the review relates, with a report of the review 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.
- (8) The Council, when conducting and reporting on a review, must have regard to the importance of ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.”.

VALID FROM 13/01/2014

*Collective bargaining framework for college staff*

**18 Collective bargaining framework for college staff** **S**

After section 15 of the 1992 Act insert—

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### **“15A Collective bargaining framework for college staff**

- (1) Before making regulations under section 3(6) of this Act which prescribe requirements which relate to collective bargaining arrangements in respect of any contracts entered into in pursuance of section 12(2)(h)(i) of this Act, the Scottish Ministers must—
  - (a) establish an advisory committee, to be known as the National Pay and Conditions Advisory Committee for Scotland's Colleges, for the purpose of making recommendations to them, by such time as they may specify, about—
    - (i) the outcomes which the regulations should seek to achieve; and
    - (ii) how the regulations should seek to achieve those outcomes; and
  - (b) have regard to any recommendations made by the committee.
- (2) When making any such regulations, the Scottish Ministers must have regard to the desirability of ensuring that the regulations are framed in accordance with any guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS) which relates to the form of schemes which govern how employees' terms and conditions may be negotiated or determined.
- (3) A committee established under subsection (1)(a) above is to be comprised of—
  - (a) 4 persons who appear to the Scottish Ministers to be representative of the interests of boards of management;
  - (b) 4 persons who appear to the Scottish Ministers to be representative of the interests of trade unions recognised by boards of management or who otherwise appear to them to be representative of the teachers and other staff employed by boards of management;
  - (c) a person appointed by the Council (such person being a member of the Council or an employee of the Council); and
  - (d) other persons appointed by the Scottish Ministers.
- (4) The Scottish Ministers may—
  - (a) make or authorise the Council to make further provision about the constitution, remit or procedure of the committee;
  - (b) provide or authorise the Council to provide the committee with financial or other support (including by paying allowances to members of the committee in respect of expenses).”.

VALID FROM 03/03/2014

### *Equal opportunities*

#### **19 Equal opportunities: post-16 education bodies etc. S**

After section 26 of the 2005 Act insert—

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### **“26A Equal opportunities: post-16 education bodies etc.**

- (1) Every post-16 education body and regional strategic body must, when making appointments to its governing body or exercising any of its other functions, do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities 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.”.

VALID FROM 13/01/2014

### *Information about young people's involvement in education and training*

#### **20 Duty to provide information to Skills Development Scotland S**

- (1) The Scottish Ministers may, by order, require a person to provide information the person holds about a young person to The Skills Development Scotland Co. Limited for the purposes of enabling or assisting it—
  - (a) to monitor that young person's involvement in education or training,
  - (b) to provide advice or support as regards that young person's education or training,
  - (c) to exercise any of its other functions in relation to that young person.
- (2) Such an order may specify—
  - (a) the persons who are to be required to provide information,
  - (b) the information, or type of information, which must be provided, and
  - (c) the form and manner in which it is to be provided.
- (3) The Scottish Ministers may, by order, require The Skills Development Scotland Co. Limited to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.
- (4) Such an order may specify—
  - (a) the information, or type of information, which must be provided, and
  - (b) the form and manner in which it is to be provided.
- (5) The Skills Development Scotland Co. Limited and any person who is required to provide information by virtue of this section must have regard to any guidance issued by the Scottish Ministers about the provision or use of such information.
- (6) In this section, “young person” means a person aged over 15 and under 25.
- (7) The Scottish Ministers may, by order, modify this section—
  - (a) by replacing the references in subsections (1), (3) and (5) to the person to whom information is to be provided in pursuance of subsection (1) and who may be required to provide information in pursuance of subsection (3) with references to such other person as they consider appropriate, or

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- (b) where that person changes its name, by modifying references to that person in subsections (1), (3) and (5) to reflect that change of name.
- (8) An order under this section may make different provision for different purposes.
- (9) An order under subsection (1) or (3) is subject to the affirmative procedure.
- (10) An order under subsection (7)(a) is subject to the negative procedure.

### General

VALID FROM 10/10/2013

#### 21 Modification of enactments **S**

The schedule to this Act (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

#### 22 Ancillary provision **S**

- (1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for the purposes of giving full effect to any provision made by, or by virtue of, this Act.
- (2) An order under this section may make different provision for different purposes.
- (3) An order under this section—
  - (a) if it adds to, replaces or omits any part of the text of this or any other Act, is subject to the affirmative procedure,
  - (b) is otherwise subject to the negative procedure.

#### 23 Commencement **S**

- (1) This section and sections 22 and 24 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

#### 24 Short title **S**

The short title of this Act is the Post-16 Education (Scotland) Act 2013.

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VALID FROM 10/10/2013

SCHEDULE **S**

(introduced by section 21)

MODIFICATION OF ENACTMENTS

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**Status:**

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**Changes to legislation:**

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