



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1

### FURTHER AND HIGHER EDUCATION ETC.

#### *Fundable bodies: miscellaneous*

#### [<sup>F1</sup>26 Academic freedom

- (1) A post-16 education body must aim to—
  - (a) uphold (so far as the body considers reasonable) the academic freedom of all relevant persons, and
  - (b) ensure (so far as the body considers reasonable) that the matters mentioned in subsection (2) are not adversely affected by the exercise of academic freedom by any relevant persons.
- (2) The matters are—
  - (a) appointments held or sought, and
  - (b) entitlements or privileges enjoyed,at the post-16 education body by those relevant persons.
- (3) In this section, “relevant persons” in relation to a post-16 education body means persons engaged in—
  - (a) teaching, or the provision of learning, at the body, or
  - (b) research at the body.
- (4) For the purposes of this section, “academic freedom” in relation to relevant persons includes their freedom within the law to do the following things—
  - (a) hold and express opinions,
  - (b) question and test established ideas or received wisdom,
  - (c) develop and advance new ideas or innovative proposals,
  - (d) present controversial or unpopular points of view.]

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

#### Textual Amendments

- F1** S. 26 substituted (30.12.2016) by [Higher Education Governance \(Scotland\) Act 2016 \(asp 15\)](#), ss. **23(2)**, 26(2); S.S.I. 2016/382, reg. 2(1)

### [<sup>F2</sup>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. ]

#### Textual Amendments

- F2** S. 26A inserted (3.3.2014 for specified purposes, 1.5.2014 in so far as not already in force) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), ss. **19**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1; S.S.I. 2014/79, art. 2(1), Sch. 1

## 27 Remit of the Scottish Public Services Ombudsman

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

“(7) Her Majesty may by Order in Council amend Part 3 of schedule 2 so as to—

    - (a) modify any entry in it,
    - (b) remove any entry from it, or
    - (c) add to it any entry relating to a person, or class of persons, providing fundable further education or fundable higher education (within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6)).
- (8) An Order in Council under subsection (7) adding an entry to that Part of that schedule relating to a person, or class of persons, whose business (whether commercial, charitable or otherwise) includes matters other than the activities which fundable bodies (within the meaning of that Act) generally carry on—
  - (a) must, as regards that person or class, provide for this Act to apply only in relation to those activities; and
  - (b) may do so subject to such modifications or exceptions as may be specified in the Order in Council.
- (9) No recommendation to make an Order in Council under subsection (7)(c) is to be made to Her Majesty unless every person to whom the Order relates has been consulted.”.

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

### “PART 3

#### OTHER ENTRIES AMENDABLE BY ORDER IN COUNCIL

##### Further and Higher Education

- 92 (1) Any fundable body within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6).
- (2) Sub-paragraph (1) does not include the Open University (so far as it is a fundable body).

93 The Scottish Agricultural College.”.

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

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

##### Commencement Information

**II** S. 27 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 28 Inspection of accounts

- (1) The Auditor General for Scotland may, at any reasonable time, inspect the accounts and accounting records of any fundable body [<sup>F3</sup>or of any of a regional strategic body's colleges].
- (2) But the function under subsection (1) is exercisable only in relation to accounts and records which relate to a financial year in which expenditure to which this subsection applies is incurred.
- (3) Subsection (2) applies to expenditure which has been funded (in whole or part) by payments made by the Council under section 12 [<sup>F4</sup>or, as the case may be, by a regional strategic body under section 12B].

##### Textual Amendments

**F3** Words in s. 28(1) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), s. 23(2), [Sch. para. 8\(20\)\(a\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1

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

**F4** Words in s. 28(3) inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(20\)\(b\)](#); [S.S.I. 2014/79](#), art. 2(1), Sch. 1

#### Commencement Information

**I2** S. 28 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 29 Educational use of certain property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) shall include provision for the property and rights of the institution to transfer to and vest in a charity; and
- (b) may include provision for the liabilities and obligations of the institution to transfer to and vest in the Scottish Ministers or such other body or person as may be specified in the order.”;

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- (b) in subsection (2), paragraph (a) is repealed; and
- (c) after subsection (7) there is added—

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

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

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

#### Commencement Information

**I3** S. 29 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

### 30 Change of name by certain bodies

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

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

#### Commencement Information

**I4** S. 30 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

### 31 Information about recorded children

A [<sup>F5</sup>post-16 education] body must provide a local authority with such information or advice as the authority may reasonably require for the purposes of the exercise by the authority of its functions under section 65B (provision for recorded children) of the 1980 Act.

#### Textual Amendments

**F5** Words in s. 31 substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(21\)](#); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

#### Commencement Information

**I5** S. 31 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Cross Heading: Fundable bodies: miscellaneous.