



Further and Higher Education (Scotland) Act 2005

2005 asp 6

PART 1

FURTHER AND HIGHER EDUCATION ETC.

The Council: exercise of functions

20 Council to have regard to particular matters

- (1) In exercising its functions, the Council is to have regard to—
 - (a) skills needs in Scotland;
 - (b) issues affecting the economy of Scotland; and
 - (c) social and cultural issues in Scotland.
 - (2) In exercising its functions, the Council is to—
 - (a) have regard to the desirability of the achieving of sustainable development; and
 - (b) in particular, encourage the fundable bodies to contribute (so far as reasonably practicable for them to do so) to the achievement of sustainable development.
 - (3) In exercising its functions, the Council is to have regard to the—
 - (a) United Kingdom context; and
 - (b) international context,in which any of the [^{F1}post-16 education] bodies may carry on their activities.
 - (4) In exercising its functions, the Council is to have regard to the educational and related needs (including support needs) of persons who are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of any of the [^{F2}post-16 education] bodies.
- [^{F3}(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

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- persons belonging to any socio-economic group 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.]
- (5) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Scottish Ministers, appears to the Council—
- (a) to exist for the time being or be likely to exist in the future; and
- (b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.
- (6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Scottish Ministers, appear to the Council—
- (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.
- [^{F4}(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.]
- [^{F5}(10) The Council is to inform each regional college and each regional strategic body of—
- (a) the needs and issues in relation to Scotland identified by the Council for the purposes of subsection (1); and
- (b) the under-represented socio-economic groups identified by the Council for the purposes of subsection (4A).]

Textual Amendments

- F1** Words in s. 20(3) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(14\)\(a\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F2** Words in s. 20(4) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(14\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F3** S. 20(4A)(4B) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), [ss. 15\(2\)](#), 23(2); S.S.I. 2014/21, art. 2, Sch. 1

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- F4** S. 20(7)-(9) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), **ss. 15(3), 23(2)**; S.S.I. 2014/21, art. 2, Sch. 1
- F5** S. 20(10) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(14)(c)**; S.S.I. 2014/21, art. 2, Sch. 1

Commencement Information

- I1** S. 20 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

21 Equal opportunities

- (1) The Council must exercise its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

Commencement Information

- I2** S. 21 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

22 Consultation and collaboration

- (1) The Council must, in the exercise of its functions—
 - (a) where it considers it appropriate to do so, consult any or all of the persons referred to in subsection (5); and
 - (b) so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the Council of those persons.
- (2) The Council must, where it considers it appropriate to do so in the exercise of its functions, consult—
 - (a) a trade union which appears to it to be representative of staff of [^{F6}post-16 education bodies and regional strategic bodies;
 - (aa) any body which appears to the Council to be representative of trade unions in Scotland; or]
 - (b) a body of persons which appears to it to be representative of students of the [^{F7}post-16 education bodies generally].
- (3) Any particular requirement for consultation imposed on the Council by virtue of this Act is without prejudice to subsections (1)(a) and (2).
- (4) The persons referred to in subsection (5) must provide the Council with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.
- (5) The persons are—
 - (a) any local authority;
 - (b) the governing body of any fundable body;
 - (c) the governing body of any other body which provides fundable further education or fundable higher education;
 - (d) the Scottish Qualifications Authority;

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- (e) Scottish Enterprise;
- (f) Highlands and Islands Enterprise; [^{F8}, ^{F9} ...
- (fa) The Skills Development Scotland Co. Limited;]
- [^{F10}(fb) South of Scotland Enterprise.]
- ^{F11}(g)
- ^{F11}(h)
- ^{F11}(i)
- ^{F12}(6)
- (7) The Scottish Ministers may by order modify [^{F13}subsection (5)].
- (8) The Council must, in relation to the provision of fundable further education and fundable higher education, [^{F14}—
 - (a) promote collaboration between post-16 education bodies; and
 - (b) promote such collaboration between post-16 education bodies and regional strategic bodies as it considers appropriate.]

Textual Amendments

- F6** S. 22(2)(aa) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(a\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F7** Words in s. 22(2)(b) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F8** S. 22(5)(fa) and preceding word inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(b\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F9** Word in s. 22(5) omitted (16.10.2019) by virtue of [South of Scotland Enterprise Act 2019 \(asp 9\), s. 24\(2\), sch. 2 para. 5\(2\)\(a\)](#); S.S.I. 2019/308, reg. 2
- F10** S. 22(5)(fb) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\), s. 24\(2\), sch. 2 para. 5\(2\)\(b\)](#); S.S.I. 2019/308, reg. 2
- F11** S. 22(5)(g)-(i) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(b\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F12** S. 22(6) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(c\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F13** Words in s. 22(7) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(d\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F14** S. 22(8)(a)(b) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(15\)\(e\)](#); S.S.I. 2014/21, art. 2, Sch. 1

Commencement Information

- I3** S. 22 in force at 3.10.2005 by [S.S.I. 2005/419, art. 2\(1\)](#)

23 General powers

- (1) The Council may (subject to subsections (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—
 - (a) acquiring and disposing of land and other property;
 - (b) entering into contracts;
 - (c) investing sums not immediately required for the purpose of the discharge of its functions; and

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- (d) accepting gifts of money, land or other property.
- (2) The Council may not borrow money.
- (3) The Council is not to—
 - (a) give any guarantee or indemnity over or in respect of any property; or
 - (b) create any trust or security over or in respect of any property, without the written consent of the Scottish Ministers.
- (4) The Council is not to dispose of any property to which this subsection applies without the written consent of the Scottish Ministers.
- (5) Consent, for the purposes of subsection (3) or (4), may be given—
 - (a) in respect of any case or class of case; and
 - (b) subject to such conditions as the Scottish Ministers may determine.
- (6) Consent, for the purposes of subsection (4), is not required for a disposal of land which is or forms part of property to which that subsection applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.
- (7) But the Council is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which subsection (4) applies.
- (8) Where property to which subsection (4) applies is disposed of, the Council is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the Council, determine.
- (9) Subsection (4) applies to any property of the Council which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of—
 - (a) funds provided by the Scottish Ministers under section 9 or 10; or
 - (b) the proceeds of, or any consideration for, the disposal of any property so acquired, improved or maintained.

Commencement Information

I4 S. 23 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

Changes to legislation:

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