



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1 **S**

### FURTHER AND HIGHER EDUCATION ETC.

#### *Establishment of the Scottish Further and Higher Education Funding Council*

#### **1 Scottish Further and Higher Education Funding Council **S****

- (1) There is established a body to be known as the Scottish Further and Higher Education Funding Council.
- (2) Schedule 1 makes provision about the constitution of the Council and about certain administrative and other matters with respect to the Council.

#### **Commencement Information**

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

#### **2 Dissolution of other funding bodies **S****

The following bodies are dissolved on such date as the Scottish Ministers may by order appoint—

- (a) the Scottish Further Education Funding Council (established under section 7(1) of the 1992 Act); and
- (b) the Scottish Higher Education Funding Council (established by section 37(1) of that Act).

#### **Commencement Information**

**I2** S. 2 in force at 8.9.2005 by [S.S.I. 2005/419](#), [art. 2\(2\)](#)

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

*Provision of further and higher education etc.*

### 3 The Council: general duty **S**

It is the duty of the Council to exercise its functions for the purposes of securing the—

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

#### Textual Amendments

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

#### Commencement Information

- I3** S. 3 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

### 4 The Scottish Ministers: general duty **S**

(1) It is the duty of the Scottish Ministers to provide support for—

- (a) the provision of fundable further education and fundable higher education by the [<sup>F3</sup>post-16 education] bodies; and
- (b) the undertaking of research among the [<sup>F4</sup>post-16 education] bodies.

(2) The Scottish Ministers are to do so—

- (a) by—
  - (i) making grants to the Council under section 9 or 10 (or both); and
  - (ii) such other means as they consider appropriate; and
- (b) to such extent as they may determine.

#### Textual Amendments

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

#### Commencement Information

- I4** S. 4 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

### 5 Fundable further and higher education **S**

(1) In this Act (subject to subsection (2)), “fundable further education” means any programme of learning (which is not school education within the meaning of the 1980 Act) which—

- (a) prepares a person for a vocational qualification;
- (b) prepares a person for—

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- (i) a qualification awarded by the Scottish Qualifications Authority; or
    - (ii) a General Certificate of Education qualification of England and Wales or Northern Ireland;
  - (c) prepares a person for access to a course of fundable higher education;
  - (d) is designed to assist persons whose first language is not English to achieve any level of competence in English language;
  - (e) provides instruction for persons who are participating in a programme of learning referred to in this subsection and who have support needs; or
  - (f) prepares a person for participation in any programme of learning referred to in this subsection.
- (2) In this Act, “fundable further education” also includes education of a type described in subsection (5)(b)(ii) to (iv) of section 1 (duty of education authorities to secure provision of education) of the 1980 Act.
- (3) In this Act, “fundable higher education” means any course of education which—
- (a) is a course at a higher level in preparation for a higher diploma or certificate;
  - (b) is a first degree course;
  - (c) is a course for the education and training of teachers;
  - (d) is a course of post-graduate studies (including a higher degree course);
  - (e) is a course at a higher level in preparation for a qualification from a professional body;
  - (f) is a course at a higher level not referred to in any of paragraphs (a) to (e);
  - (g) provides instruction for persons who are participating in a course of education referred to in this subsection and who have support needs; or
  - (h) is designed predominantly to prepare a person for participation in any course of education referred to in this subsection.
- (4) For the purposes of subsection (3)(a), (e) and (f), a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses in preparation for examinations for—
- (a) the Scottish Vocational Qualification Level 3;
  - (b) the Scottish Certificate of Education at Advanced Higher;
  - (c) the General Certificate of Education of England and Wales or Northern Ireland at advanced level; or
  - (d) the Scottish Qualifications Authority national certificate.
- (5) For the purposes of subsection (3)(d), post-graduate studies includes a course following the award of a higher diploma or certificate.
- (6) The Scottish Ministers may by order modify subsections (1) to (5).
- (7) Before making an order under subsection (6), the Scottish Ministers must consult the Council.

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**Commencement Information**

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

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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## 6 Fundable bodies **S**

[<sup>F5</sup>(1) In this Act, “ fundable body ” means—

- (a) any body specified in schedule 2; and
- (b) any regional strategic body (see section 7B).]

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

### Textual Amendments

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

### Commencement Information

- I6** S. 6 in force at 3.10.2005 by S.S.I. 2005/419, art. 2(1)

## 7 Fundable bodies: further provision **S**

(1) The Scottish Ministers may by order modify schedule 2 by—

- (a) adding or removing any entry relating to a body; or
- (b) varying any such entry,

but only if the Council has proposed, or has approved, the making of the modification.

(2) For the purposes of considering whether or not to propose or approve any modification under subsection (1), the Council must have regard to the desirability of ensuring that every entry in schedule 2 relates to a body for which there is, in the Council's opinion, suitable—

- (a) provision in relation to the governance and management of the body;
- (b) provision for the appointment of an officer who is responsible for—
  - (i) signing the accounts of the expenditure and receipts of the body;
  - (ii) ensuring the propriety and regularity of the finances of the body; and
  - (iii) ensuring that the resources of the body are used economically, efficiently and effectively;

- (c) procedures for—
  - (i) assessing; and
  - (ii) enhancing,

the quality of the activities funded by financial support given to the body by the Council;

- (d) procedures for considering and resolving any grievances arising from the carrying on of the body's activities;
- (e) provision for the purposes of—
  - (i) planning for the carrying on of the body's activities; and
  - (ii) development of the body's activities;

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- (f) arrangements for making use of any credit and qualification framework promoted by the Council under section 14;
  - [<sup>F8</sup>(fa) arrangements for the purpose of seeking to ensure that the interests of the body's students are represented by a students' association;]
  - (g) arrangements for taking into account the educational and related needs (including support needs) of persons who are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of the body;
  - (h) arrangements for taking into account, when determining what programmes of learning and courses of education to provide, the range of fundable further education and fundable higher education provided at the other [<sup>F9</sup>post-16 education] bodies; <sup>F10</sup>...
  - [<sup>F11</sup>(ha) where the body is a regional strategic body, procedures and arrangements for the administration by the body of the funds mentioned in section 12A(2) and for the exercise of its other functions as a regional strategic body; and]
  - (i) provision, procedures or arrangements of such other kind as the Scottish Ministers may by regulations specify.
- [<sup>F12</sup>(2A) Paragraph (ha) of subsection (2) applies only where the Council is considering whether to remove the entry relating to the body concerned from schedule 2.]
- (3) When proposing or approving a modification under subsection (1) which adds to schedule 2 an entry relating to a body, the Council may make a recommendation to the Scottish Ministers as regards the application to the body of paragraph 92(1) of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11).
  - (4) The Scottish Ministers may by order modify paragraphs (a) to [<sup>F13</sup>(ha)] of subsection (2).
  - (5) The Scottish Ministers may issue guidance in relation to any of the matters referred to in paragraphs (a) to (i) of subsection (2).
  - (6) Subsection (2) does not apply where the modification in question is required by reason only of a change of name of, or closure of, a body.

#### Textual Amendments

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

#### Commencement Information

- I7** S. 7 in force at 3.10.2005 by [S.S.I. 2005/419](#), art. 2(1)

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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

- (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.]

#### Textual Amendments

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

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

- (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.]

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

### Textual Amendments

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

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

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



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- (a) sets out the conclusions which it has reached;
  - (b) explains why it has reached those conclusions; and
  - (c) makes any recommendations for action in consequence of those conclusions as it considers appropriate.
- (9) References in this Act to a regional strategic body's colleges are references to the governing bodies of the colleges assigned to it by an order under this section.]

#### Textual Amendments

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

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

- (1) This subsection applies to—
- (a) any order under section 7A(1) which designates a regional college (or which revokes such a designation); and
  - (b) any order under section 7C(1) which assigns a college of further education to a regional strategic body (or which revokes such an assignation).
- (2) An order to which subsection (1) applies may—
- (a) make provision about the membership of the board of management of the college of further education concerned;
  - (b) make such additional provision (not being provision mentioned in paragraph (a)) as is considered appropriate in relation to the change of status of the college concerned.
- (3) Subsection (2)(a) applies only where the college of further education concerned is one whose board of management is established in pursuance of Part 1 of the 1992 Act.
- (4) Provision under subsection (2)(a) may include provision—
- (a) authorising the Scottish Ministers to make arrangements for, or otherwise providing for, the continuing in office, or the removal from office, of persons who are members of the board immediately before the day on which the designation or assignation has, or ceases to have, effect;
  - (b) for the appointment by the Scottish Ministers, on terms and conditions determined by them, of persons who are to be members of the board from that day;
  - (c) deeming persons who continue in office, or who are appointed in pursuance of paragraph (b), to hold office from that day as if appointed under such provision of paragraph 3 or, as the case may be, 3A of Schedule 2 to the 1992 Act as may be specified in the order.
- (5) But such an order may not make provision in pursuance of subsection (4)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (f) or, as the case may be, 3A(2)(a) or (f) of Schedule 2 to the 1992 Act.
- (6) Subsections (1) to (5) do not prejudice the generality of powers conferred by section 34(2).



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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (7) The Scottish Ministers must, in pursuance of sections 7A to 7C, seek to ensure—
- (a) that every college of further education whose governing body is established in pursuance of Part 1 of the 1992 Act is either—
    - (i) designated as a regional college; or
    - (ii) assigned to a regional strategic body; and
  - (b) that at least two colleges of further education are assigned to each regional board.
- (8) Where, despite subsection (7)(a), a college of further education whose governing body is so established is not so designated or assigned, the college is (subject to any contrary provision made under section 33 or 34(2) of this Act or section 22 of the Post-16 Education (Scotland) Act 2013) to be treated for the purposes of this Act, the 1992 Act and any other enactment as having been designated as a regional college.
- (9) Nothing in subsections (7) and (8) affects the power to make an order under section 7C(1) in relation to a college of further education whose governing body is not so established.]

#### Textual Amendments

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

## 8 Support needs **S**

- (1) In this Act, a person has “support needs” if the person needs support for the purposes of overcoming a difficulty in learning, or a difficulty in participating in learning, which the person has.
- (2) And—
- (a) a person has a difficulty in learning if the person has significantly greater difficulty in learning than the majority of other persons within the same age group as the person; and
  - (b) a person has a difficulty in participating in learning if the person has greater difficulty in participating in learning than the majority of other persons within the same age group as the person.
- (3) But a person is not to be taken as having a difficulty in learning, or a difficulty in participating in learning, solely because the language (or form of the language) in which the person is, or will be, taught is different to a language (or form of a language) which has at any time been spoken in the person's home.

#### Commencement Information

**I8** S. 8 in force at 3.10.2005 by [S.S.I. 2005/419](#), art. 2(1)

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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*Funding of further and higher education etc.*

**9 Funding of the Council S**

- (1) The Scottish Ministers may make grants to the Council.
- (2) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular—
  - (a) relate to—
    - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
    - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
  - (b) include [<sup>F18</sup>any of the conditions referred to in subsections (4) to (5A)].
  - [<sup>F19</sup>(c) include any terms or conditions referred to in sections 9A to 9D.]
- (4) The condition is that, before the Council makes a payment to a fundable body under section 12(1) of such amount or description as the Scottish Ministers may in the condition specify, the fundable body [<sup>F20</sup>—
  - (a) where it is a fundable post-16 education body, is to comply with any matters concerning fundable post-16 education bodies or any class of them as the Scottish Ministers may specify;
  - (b) where it is a regional strategic body, is—
    - (i) to comply with any matters concerning regional strategic bodies generally as the Scottish Ministers may specify; or
    - (ii) when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any matters concerning post-16 education bodies or any class of them as the Scottish Ministers may specify.]
- (5) The condition is that—
  - (a) when making a payment to a fundable [<sup>F21</sup>post-16 education] body under subsection (1) of section 12; and
  - (b) in such cases as the Scottish Ministers may in the condition specify, the Council is (under subsection (2) of that section) to impose on the body a condition making the requirement referred to in subsection (6).
- [<sup>F22</sup>(5A) The condition is that—
  - (a) when making a payment to a regional strategic body under subsection (1) of section 12; and
  - (b) in such cases as the Scottish Ministers may in the condition specify, the Council is (under subsection (2) of section 12) to impose on the regional strategic body a condition that it must, when making a payment to any of its colleges under section 12B(1), impose on the college a condition making the requirement referred to in subsection (6).]
- (6) The requirement is that the [<sup>F23</sup>post-16 education] body to whom the payment is being made is to secure that the fees paid to the [<sup>F23</sup>post-16 education] body—
  - (a) by such class of persons as the Scottish Ministers may by order specify; and
  - (b) in connection with their attending—

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- (i) such programmes of learning as the Scottish Ministers may by order specify; or
  - (ii) such courses of education as the Scottish Ministers may by order specify,are equal to such fees as are, in relation to those persons attending those programmes and courses, payable under subsection (7).
- (7) For the purposes of subsection (6), the Scottish Ministers may (in relation to those persons attending those programmes and courses) by order—
  - (a) specify, by reference to a particular academic year (“year A”), fees payable; and
  - (b) make provision authorising the Scottish Ministers to determine, in relation to subsequent academic years, fees payable that are—
    - (i) in each case, no higher than the fees specified by reference to year A; or
    - (ii) in any case, higher than the fees specified by reference to year A provided that any increase in fees is no greater than is required in order to maintain the value in real terms of the fees specified by reference to year A.
- (8) A condition imposed on a fundable [<sup>F24</sup>post-16 education] body by virtue of subsection (5) is to make provision that is to apply if the fundable [<sup>F24</sup>post-16 education] body fails to comply with the requirement referred to in subsection (6).
- (9) A condition imposed on a fundable [<sup>F25</sup>post-16 education] body by virtue of subsection (5) 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 (c. 40), 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.
- (10) The Scottish Ministers may not specify programmes or courses under subsection (6) (b) in such a way as to discriminate between different programmes or 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.
- (11) Terms and conditions imposed under subsection (2) may not, except [<sup>F26</sup>where imposed in pursuance of subsection (4)(a) or (b)(ii) or section 9A or 9B], relate to the provision of financial support by the Council [<sup>F27</sup>or a regional strategic body] in respect of activities carried on by any particular <sup>F28</sup>... body or bodies.
- (12) Terms and conditions imposed under subsection (2) may not—
  - (a) except in so far as provided for in subsections (5) to (7) [<sup>F29</sup>and in section 9D], be framed by reference to particular programmes of learning, courses of education or research (including the contents of such programmes or courses or the manner in which they are taught, supervised or assessed); <sup>F30</sup>...
  - (b) be framed by reference to the criteria for—
    - (i) the selection or appointment of academic staff; or
    - <sup>F31</sup>(...) .....

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- [<sup>F32</sup>(c) except where imposed in pursuance of section 9C, be framed by reference to the criteria for the admission of students.]
- (13) Before laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must—
- (a) lay before the Parliament—
    - (i) a copy of the proposed draft order; and
    - (ii) a statement of their reasons for proposing to make the order;
  - (b) publicise the proposed draft order in such manner as they consider appropriate;
  - (c) invite written representations on the proposed draft order, in particular from—
    - (i) the Council;
    - (ii) at least one body of persons which appears to them to be representative of students of the [<sup>F33</sup>post-16 education] bodies; and
    - (iii) such governing bodies of [<sup>F34</sup>post-16 education bodies, and such regional strategic bodies,] as they consider appropriate; and
  - (d) have regard to any written representations about the proposed draft order that are made to them within 60 days of the date on which the invitation under paragraph (c) was issued.
- (14) When laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must also lay a statement summarising—
- (a) all representations about the proposed draft order to which they have had regard under subsection (13)(d);
  - (b) the changes (if any) made to the proposed draft order in light of the representations; and
  - (c) any reasons for making, or not making, changes in light of the representations.
- (15) The body known as the National Union of Students Scotland is to be invited under subsection (13)(c)(ii) to make representations.
- (16) The Scottish Ministers may by order modify subsection (15).
- (17) For the purposes of subsection (7)(b)(ii), the Scottish Ministers may have regard to any retail price index.

#### Textual Amendments

- F18** Words in s. 9(3)(b) substituted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(a\)\(i\)](#); S.S.I. 2014/79, art. 2(1), Sch. 1
- F19** S. 9(3)(c) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F20** Words in s. 9(4) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(2))
- F21** Words in s. 9(5)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(c\)](#); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(2))
- F22** S. 9(5A) inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(d\)](#); S.S.I. 2014/79, art. 2(1), Sch. 1
- F23** Words in s. 9(6) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(7\)\(e\)](#); 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, Part 1. (See end of Document for details)*

- F24** Words in s. 9(8) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(f)**; S.S.I. 2014/21, art. 2, Sch. 1
- F25** Words in s. 9(9) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(g)**; S.S.I. 2014/21, art. 2, Sch. 1
- F26** Words in s. 9(11) substituted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(h)(i)**; S.S.I. 2014/21, art. 2, Sch. 1
- F27** Words in s. 9(11) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(h)(ii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F28** Word in s. 9(11) omitted (3.3.2014) by virtue of Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(h)(iii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F29** Words in s. 9(12)(a) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(i)(i)**; S.S.I. 2014/21, art. 2, Sch. 1
- F30** Word in s. 9(12) omitted (3.3.2014) by virtue of Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(i)(ii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F31** S. 9(12)(b)(ii) omitted (3.3.2014) by virtue of Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(i)(iii)**; S.S.I. 2014/21, art. 2, Sch. 1
- F32** S. 9(12)(c) inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(i)(iv)**; S.S.I. 2014/21, art. 2, Sch. 1
- F33** Words in s. 9(13)(c)(ii) substituted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(j)(i)**; S.S.I. 2014/21, art. 2, Sch. 1
- F34** Words in s. 9(13)(c)(iii) substituted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), s. 23(2), **Sch. para. 8(7)(j)(ii)**; S.S.I. 2014/21, art. 2, Sch. 1

#### Commencement Information

- I9** S. 9 in force at 3.10.2005 by S.S.I. 2005/419, art. 2(1)

#### [<sup>F35</sup>9A Higher education institutions: good governance **S**

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

#### Textual Amendments

- F35** S. 9A inserted (3.3.2014) by Post-16 Education (Scotland) Act 2013 (asp 12), ss. 2, 23(2); S.S.I. 2014/21, art. 2, Sch. 1

#### [<sup>F36</sup>9B Further education institutions: good governance **S**

- (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

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (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.]

#### Textual Amendments

**F36** S. 9B inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), ss. 14, 23(2); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(2))

### [<sup>F37</sup>9C **Widening access to fundable higher education** **S**

- (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. ]

#### Textual Amendments

**F37** S. 9C inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), ss. 3, 23(2); 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, Part 1. (See end of Document for details)*

[<sup>F38</sup>9D **Fee cap: students liable for higher education fees** **S**

- (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.]

**Textual Amendments**

**F38** S. 9D inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), ss. 4, 23\(2\)](#); [S.S.I. 2014/21, art. 2, Sch. 1 \(with art. 3\(2\)\)](#)

**10 Additional grants** **S**

- (1) In addition to any grants made under section 9, the Scottish Ministers may make further grants to the Council.



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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (2) In particular, a grant under subsection (1) may be made for the purposes of supporting—
- (a) restructuring among [<sup>F39</sup>post-16 education] bodies (including the merger or demerger of such bodies [<sup>F40</sup>and restructuring involving regional strategic bodies]);
  - (b) innovation in the provision of fundable further education and fundable higher education; or
  - (c) collaboration between [<sup>F41</sup>post-16 education bodies and, where appropriate, between those bodies and regional strategic bodies].
- (3) In making a grant under subsection (1), the Scottish Ministers must specify the purposes for which the grant is made.
- (4) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (5) Terms and conditions imposed under subsection (4) may, in particular—
- (a) relate to—
    - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
    - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
  - (b) include the condition referred to in subsection (4) of section 9.
- (6) But, except in the case of a grant made for the purposes of supporting any of the matters referred to in paragraphs (a) to (c) of subsection (2)—
- (a) the purposes specified under subsection (3);
  - (b) terms and conditions imposed under subsection (4),
- may not be framed by reference to a particular [<sup>F42</sup>post-16 education] body.

#### Textual Amendments

- F39** Words in s. 10(2)(a) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(8\)\(a\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F40** Words in s. 10(2)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(8\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F41** Words in s. 10(2)(c) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(8\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F42** Words in s. 10(6) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(8\)\(c\)](#); S.S.I. 2014/21, art. 2, Sch. 1

#### Commencement Information

- I10** S. 10 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 11 Administration of funds **S**

- (1) The Council is, for the purposes of—
- (a) providing support (whether financial or otherwise) for the activities specified in subsection (3); <sup>F43</sup> ...

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

- [<sup>F44</sup>(aa) providing support (whether financial or otherwise) to regional strategic bodies; and]
- (b) exercising its other functions,  
responsible for administering the funds mentioned in subsection (2).
- (2) The funds are—
- (a) all grants made to it under sections 9 and 10; 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 fundable [<sup>F45</sup>post-16 education] bodies;
- (b) the undertaking of research among the fundable [<sup>F46</sup>post-16 education] bodies;
- (c) the—
- (i) provision of such facilities; and
- (ii) the carrying on of such other activities,  
by the fundable [<sup>F47</sup>post-16 education] bodies 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 the fundable [<sup>F48</sup>post-16 education] bodies or any other person for the purposes of or in connection with an activity specified in paragraph (a) or (b).

#### Textual Amendments

- F43** Word in s. 11(1) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(a\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F44** S. 11(1)(aa) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F45** Words in s. 11(3)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(b\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F46** Words in s. 11(3)(b) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(b\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F47** Words in s. 11(3)(c) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(b\)\(iii\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F48** Words in s. 11(3)(d) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(9\)\(b\)\(iv\)](#); S.S.I. 2014/21, art. 2, Sch. 1

#### Commencement Information

- I11** S. 11 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 12 Funding of fundable bodies **S**

- (1) The Council may make grants, loans or other payments—
- (a) to the governing body of any fundable [<sup>F49</sup>post-16 education] body in respect of expenditure incurred or to be incurred by the body for the purposes of any of the activities specified in subsection (3)(a) and (b) of section 11;
- (b) to—
- (i) the governing body of any fundable [<sup>F50</sup>post-16 education] body; or
- (ii) any other person,

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

in respect of expenditure incurred or to be incurred by the body or person for the purposes of any of the activities specified in subsection (3)(c) and (d) of that section.

- [<sup>F51</sup>(c) to a regional strategic body.]
- (2) A payment made under subsection (1) may (in addition to any condition which is imposed by virtue of <sup>F52</sup>... section 9) be subject to such terms and conditions as the Council 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 they may specify;
  - (b) the interest payable in respect of any period during which a sum due to the Council is outstanding.
- (4) But terms and conditions imposed under subsection (2) may not relate to the application by the body of any sums which were not derived from the Scottish Ministers.
- (5) Before imposing terms and conditions under subsection (2), the Council must—
- (a) except where it considers that it is not expedient to do so, consult the governing body of the fundable body 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 [<sup>F53</sup>post-16 education bodies, or regional strategic bodies,] or any class of them.
- (6) In making payments under subsection (1), the Council is to have regard to the desirability of—
- (a) encouraging fundable bodies to maintain or develop funding from other sources;
  - (b) preserving any distinctive characteristics of particular fundable bodies.

#### Textual Amendments

- F49** Words in s. 12(1)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 9(1)(a)(i)**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1
- F50** Words in s. 12(1)(b)(i) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 9(1)(a)(ii)**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1
- F51** S. 12(1)(c) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 9(1)(a)(iii)**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1
- F52** Words in s. 12(2) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 9(1)(b)**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1
- F53** Words in s. 12(5)(b) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 9(1)(c)**, 23(2); S.S.I. 2014/21, art. 2, Sch. 1

#### Commencement Information

- I12** S. 12 in force at 3.10.2005 by [S.S.I. 2005/419](#), **art. 2(1)**

### [<sup>F54</sup>12A Regional strategic bodies: administration of funds **S**

- (1) A regional strategic body is, for the purposes of—

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

- (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).

#### Textual Amendments

**F54** S. 12A, 12B inserted (1.5.2014 for the insertion of s. 12A) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), [ss. 9\(2\), 23\(2\)](#); [S.S.I. 2014/79](#), art. 2(1)(3), Sch. 1

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

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

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (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—
- except where it considers that it is not expedient to do so, consult the college to which the payment is to be made; and
  - 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—
- encouraging its colleges to maintain or develop funding from other sources;
  - preserving any distinctive characteristics of particular colleges.]

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**Textual Amendments**

**F54** S. 12A, 12B inserted (1.5.2014 for the insertion of s. 12A) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), **ss. 9(2), 23(2)**; S.S.I. 2014/79, art. 2(1)(3), Sch. 1

*The Council: functions*

**13 Quality of fundable further and higher education** **S**

- (1) The Council is to secure that provision is made for—
- assessing; and
  - enhancing,
- the quality of fundable further education and fundable higher education provided by [<sup>F55</sup>post-16 education] bodies.
- (2) In exercising the function under subsection (1), the Council must, if it considers it appropriate to do so, consult such persons as appear to it to represent the interests of [<sup>F56</sup>post-16 education] bodies or any class of them.

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**Textual Amendments**

**F55** Words in s. 13(1) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), s. 23(2), **Sch. para. 8(10)(a)**; S.S.I. 2014/21, art. 2, Sch. 1

**F56** Words in s. 13(2) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), s. 23(2), **Sch. para. 8(10)(b)**; 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, Part 1. (See end of Document for details)

#### Commencement Information

**I13** S. 13 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

### [<sup>F57</sup> 13A Performance of regional strategic bodies **S**

The Council is to secure that provision is made for—

- (a) assessing; and
- (b) enhancing,

the performance of regional strategic bodies.]

#### Textual Amendments

**F57** S. 13A inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(11\)](#); [S.S.I. 2014/79](#), [art. 2\(1\)](#), [Sch. 1](#)

### 14 Credit and qualification framework **S**

- (1) The Council is to promote the use by the fundable [<sup>F58</sup>post-16 education] bodies of such credit and qualification framework as it may adopt.
- (2) The Council must—
  - (a) have regard to any representations about any particular credit and qualification framework, and about credit and qualification frameworks in general, made to it by—
    - (i) the Scottish Ministers; <sup>F59</sup> ...
    - (ii) the governing body of any fundable [<sup>F60</sup>post-16 education body; or]
    - [<sup>F61</sup>(iii) any regional strategic body; and]
  - (b) so far as the Council considers appropriate, have regard to any representations about those matters made to it by any other person.
- (3) For the purposes of subsections (1) and (2), a “credit and qualification framework” is a system of evaluation relating to fundable further education and fundable higher education (as a whole) through which programmes of learning and courses of education may be compared and understood in relation to each other.

#### Textual Amendments

**F58** Words in s. 14(1) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(12\)\(a\)](#); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

**F59** Word in s. 14(2)(a) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(12\)\(b\)\(i\)](#); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

**F60** Words in s. 14(2)(a)(ii) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(12\)\(b\)\(ii\)](#); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

**F61** S. 14(2)(a)(iii) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(12\)\(b\)\(iii\)](#); [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#)

#### Commencement Information

**I14** S. 14 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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**[<sup>F62</sup>14A Review of fundable further and higher education S**

- (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.
- (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.]



*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

#### Textual Amendments

**F62** S. 14A inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), ss. 17, 23(2); S.S.I. 2014/21, art. 2, Sch. 1 (with art. 3(1))

### 15 Efficiency studies **S**

- (1) The Council may secure the promotion or carrying out of studies designed to improve economy, efficiency and effectiveness in the management or operations of any fundable body.
- (2) The governing body of a fundable body 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.

#### Commencement Information

**I15** S. 15 in force at 3.10.2005 by [S.S.I. 2005/419](#), art. 2(1)

### 16 Council's right to address meetings **S**

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

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

#### Commencement Information

**I16** S. 16 in force at 3.10.2005 by [S.S.I. 2005/419](#), art. 2(1)

### 17 Advisory functions **S**

- (1) The Council must provide the Scottish Ministers with such information, advice and assistance relating to the—
  - (a) provision and funding of fundable further education and fundable higher education; and
  - (b) undertaking of research at bodies which provide fundable further education or fundable higher education,as the Scottish Ministers may reasonably require.
- (2) The Council may provide the Scottish Ministers with other information and advice relating to those matters whenever it considers it appropriate to do so.
- (3) Any information, advice or assistance under subsections (1) and (2) is to be provided in such manner as the Scottish Ministers may determine.

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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**Commencement Information**

**I17** S. 17 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

**18 Functions regarding certain property S**

- (1) The functions of the Scottish Ministers as respects the property to which this subsection applies are exercisable by the Council on their behalf to such extent and in such manner as the Scottish Ministers may require.
- (2) Subsection (1) applies to any land or other property—
  - (a) which is or was used or held for the purposes of a fundable body [<sup>F63</sup>or of any of a regional strategic body's colleges]; and
  - (b) in respect of which the Scottish Ministers—
    - (i) are entitled to any right or interest; or
    - (ii) would be so entitled on the occurrence of any event.

**Textual Amendments**

**F63** Words in s. 18(2)(a) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(13\)](#); [S.S.I. 2014/21](#), art. 2, Sch. 1

**Commencement Information**

**I18** S. 18 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

**19 Administration of certain support S**

- (1) After section 73 (power of Scottish Ministers to make grants to education authorities and others) of the 1980 Act there is inserted—

**“73ZA Administration of certain sums**

- (1) The Scottish Ministers may direct—
  - (a) the Scottish Further and Higher Education Funding Council; or
  - (b) any other body or person,
 to administer any sums applied by the Scottish Ministers for a purpose referred to in paragraph (a), (c) or (f) of section 73 of this Act.
- (2) A body or person to whom a direction is given under subsection (1) above shall administer those sums—
  - (a) in such manner and to such extent; and
  - (b) subject to such conditions,
 as the Scottish Ministers may in the direction specify.
- (3) The reference in subsection (1) above to a purpose referred to in paragraph (a), (c) or (f) of section 73 of this Act is a reference to that purpose only in so far as relating to support for persons—
  - (a) undertaking; or
  - (b) who have undertaken,

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courses of education provided by fundable bodies.

(4) In subsection (3) above, “fundable bodies” shall be construed in accordance with the Further and Higher Education (Scotland) Act 2005 (asp 6).”.

(2) In section 73A (transfer or delegation of functions relating to student support) of that Act—

(a) in subsection (3), for the words “73(f)” there is substituted “ 73(a), (c) or (f) ”;

(b) in subsection (6)(a)(i)—

(i) after the word “making” there is inserted “ payments, ”; and

(ii) for the words “73(f)” there is substituted “ 73(a), (c) or (f) ”; and

(c) after subsection (9) there is added—

“(10) The references in subsections (3) and (6)(a)(i) above to regulations under section 73(a) or (c) of this Act are references to those regulations only in so far as relating to support for persons—

(a) undertaking; or

(b) who have undertaken,

courses of education provided by fundable bodies.

(11) In subsection (10) above, “fundable bodies” shall be construed in accordance with the Further and Higher Education (Scotland) Act 2005 (asp 6).”.

#### Commencement Information

**I19** S. 19 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

#### <sup>F64</sup>19A **Reviews of progress with widening access** **S**

(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.

(5) Those persons are—

(a) the Scottish Ministers;

(b) each regional strategic body; and

(c) each post-16 education body.

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*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (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.]

#### Textual Amendments

**F64** S. 19A inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 16, 23(2)**; [S.S.I. 2014/21](#), [art. 2](#), [Sch. 1](#) (with [art. 3\(1\)](#))

### *The Council: exercise of functions*

## 20 Council to have regard to particular matters **S**

- (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 <sup>F65</sup>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 <sup>F66</sup>post-16 education] bodies.

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*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- [<sup>F67</sup>(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 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.
- [<sup>F68</sup>(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.]

[<sup>F69</sup>(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).]

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#### Textual Amendments

**F65** 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

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

- F66** 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
- F67** 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
- F68** 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
- F69** 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

- I20** S. 20 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

## 21 Equal opportunities **S**

- (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

- I21** S. 21 in force at 3.10.2005 by S.S.I. 2005/419, **art. 2(1)**

## 22 Consultation and collaboration **S**

- (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 <sup>[F70]</sup>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 <sup>[F71]</sup>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;

*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

- (c) the governing body of any other body which provides fundable further education or fundable higher education;
- (d) the Scottish Qualifications Authority;
- (e) Scottish Enterprise;
- (f) Highlands and Islands Enterprise; [<sup>F72</sup>; <sup>F73</sup> ...
- (fa) The Skills Development Scotland Co. Limited; ]
- [<sup>F74</sup>(fb) South of Scotland Enterprise.]
- <sup>F75</sup>(g) .....
- <sup>F75</sup>(h) .....
- <sup>F75</sup>(i) .....
- <sup>F76</sup>(6) .....
- (7) The Scottish Ministers may by order modify [<sup>F77</sup>subsection (5)].
- (8) The Council must, in relation to the provision of fundable further education and fundable higher education, [<sup>F78</sup>—
  - (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

- F70** 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
- F71** 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
- F72** 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
- F73** 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
- F74** 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
- F75** 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
- F76** 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
- F77** 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
- F78** 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

- I22** S. 22 in force at 3.10.2005 by **S.S.I. 2005/419, art. 2(1)**

## 23 General powers **S**

- (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;



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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (b) entering into contracts;
  - (c) investing sums not immediately required for the purpose of the discharge of its functions; and
  - (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.

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**Commencement Information**

**I23** S. 23 in force at 3.10.2005 by [S.S.I. 2005/419](#), **art. 2(1)**

*[<sup>F79</sup>Regional colleges: functions*

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**Textual Amendments**

**F79** Ss. 23A-23D and cross-heading inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013](#) (asp 12), **ss. 5(2), 23(2)**; [S.S.I. 2014/21](#), **art. 2, Sch. 1**

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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

- (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** **S**

- (1) A regional college must plan for—
  - (a) how it proposes to provide fundable further education and fundable higher education; and
  - (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 [<sup>F80</sup>, South of Scotland 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;

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- (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
  - (i) Scottish Enterprise [<sup>F81</sup>, South of Scotland 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).

#### Textual Amendments

- F80** Words in s. 23B(3)(k) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(3\)\(a\)](#); S.S.I. 2019/308, reg. 2
- F81** Words in s. 23B(5)(i) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(3\)\(b\)](#); S.S.I. 2019/308, reg. 2

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

- (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 **S**

- (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;

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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (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 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.]

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*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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*[<sup>F82</sup>Regional strategic bodies: functions*

**Textual Amendments**

**F82** Ss. 23E-23O and cross-heading inserted (1.8.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 10, 23(2)**; [S.S.I. 2014/79](#), **art. 2(2)**, **Sch. 2**

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

- (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** **S**

- (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** **S**

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

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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

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 S**

- (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 S**

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 S**

- (1) A regional strategic body is to exercise its functions with a view to improving the economic and social well-being of the localities of its colleges.
- (2) In doing so, the regional strategic body is to have regard to—
  - (a) social and economic regeneration needs in those localities; and
  - (b) social cohesion and social inclusion issues in those localities.
- (3) For the purposes of subsection (2)(a), “needs” means needs which appear to the regional strategic body—
  - (a) to exist for the time being or be likely to exist in the future; and
  - (b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.
- (4) For the purposes of subsection (2)(b), “issues” means issues which appear to the regional strategic body—
  - (a) to exist for the time being or be likely to exist in the future; and
  - (b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

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

- (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;

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (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—
- (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—



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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (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** S

- (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 [<sup>F83</sup>, South of Scotland Enterprise] or Highlands and Islands Enterprise (as appropriate).
- (2) Any particular requirement for consultation imposed on a regional strategic body by virtue of this or any other enactment is without prejudice to subsection (1).
- (3) A regional strategic body must, so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the body of any or all of the following persons—
  - (a) its colleges;
  - (b) the representatives of any trade union recognised by any of its colleges or which otherwise appears to it to be representative of the staff of any of its colleges;
  - (c) the students' associations of its colleges;
  - (d) the local authorities for the areas in which its colleges are situated;
  - (e) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of any of its colleges;
  - (f) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;
  - (g) The Open University;

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- (h) The Skills Development Scotland Co. Limited;
  - (i) the Scottish Qualifications Authority; and
  - (j) Scottish Enterprise [<sup>F84</sup>, South of Scotland Enterprise] or Highlands and Islands Enterprise (as appropriate).
- (4) The Scottish Ministers may by order modify subsection (1) or (3)—
- (a) by adding or removing persons, or types of persons, to which those provisions apply; or
  - (b) varying the description of any such person or type of person.
- (5) But such an order may not modify paragraph (a), (b) or (c) of subsection (1) or paragraph (a) of subsection (3).
- (6) A regional strategic body must, in relation to the provision of fundable further education and fundable higher education—
- (a) promote collaboration between its colleges; and
  - (b) promote such other collaboration between its colleges and other post-16 education bodies as it considers appropriate.

#### Textual Amendments

- F83** Words in s. 23M(1)(l) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(4\)\(a\)](#); S.S.I. 2019/308, reg. 2
- F84** Words in s. 23M(3)(j) inserted (16.10.2019) by [South of Scotland Enterprise Act 2019 \(asp 9\)](#), s. 24(2), [sch. 2 para. 5\(4\)\(b\)](#); S.S.I. 2019/308, reg. 2

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

- (1) A regional strategic body's colleges must provide the regional strategic body with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.
- (2) A regional strategic body may give such directions to its colleges, or to any of them, as it considers appropriate.
- (3) Directions given under this section may be of a general or specific character.
- (4) Before giving directions under this section, a regional strategic body must consult—
- (a) any college to which the proposed directions relate;
  - (b) the representatives of any trade union recognised by such a college or which otherwise appears to the regional strategic body to be representative of its staff; and
  - (c) the students' association of every such college.
- (5) A college must comply with directions given to it under this section.
- (6) Directions given under this section may be varied or revoked.
- (7) Nothing in this section allows a regional strategic body—
- (a) to [<sup>F85</sup>give directions in relation to the transfer of any] staff, property, rights, liabilities or obligations; or
  - (b) to give directions to a college whose governing body is not a board of management established in pursuance of Part 1 of the 1992 Act.

*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

### Textual Amendments

**F85** Words in s. 23N(7)(a) substituted (31.3.2015) by [The Post-16 Education \(Scotland\) Act 2013 \(Modification of Legislation\) Order 2015 \(S.S.I. 2015/153\)](#), art. 1, [Sch. para. 3\(2\)](#)

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

- (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.
- (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

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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- 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
  - (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).]

*[<sup>F86</sup> Regional boards: constitution etc.*

#### Textual Amendments

**F86** S. 23P and cross-heading inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 11(1), 23(2)**; [S.S.I. 2014/79](#), **art. 2(1), Sch. 1**

## 23P **Regional boards: constitution** **S**

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.]

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

### [<sup>F87</sup>23Q **Mismanagement by regional boards** S

- (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
  - (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.]

#### Textual Amendments

**F87** S. 23Q inserted (1.5.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), **ss. 12, 23(2)**; [S.S.I. 2014/79](#), art. 2(1), Sch. 1

### [<sup>F88</sup>23R **Establishment and abolition of regional boards: supplemental** S

- (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;

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*Changes to legislation:* There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (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;
  - (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.]

#### Textual Amendments

**F88** S. 23R inserted (10.10.2013 for specified purposes, 3.3.2014 in so far as not already in force) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), ss. 13, 23\(2\)](#); [S.S.I. 2013/281, art. 2, Sch.](#); [S.S.I. 2014/21, art. 2, Sch. 1](#)

### *The Scottish Ministers: requirements and directions*

## 24 Requirements as to Council's functions **S**

- (1) The Scottish Ministers may by order impose requirements on the Council as regards the exercise of its functions.
- (2) But requirements imposed under this section may not relate to the Council's functions under section 7<sup>F89</sup>, 14A] or 17.
- (3) Requirements imposed under this section may—
  - (a) be of a general or specific character; and
  - (b) make different provision for different cases or classes of case,
 but may not relate to a particular [<sup>F90</sup>post-16 education body or to a particular regional strategic body].

#### Textual Amendments

**F89** Word in s. 24(2) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(16\)\(a\)](#); [S.S.I. 2014/21, art. 2, Sch. 1](#)

**F90** Words in s. 24(3) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\), s. 23\(2\), Sch. para. 8\(16\)\(b\)](#); [S.S.I. 2014/21, art. 2, Sch. 1](#)

#### Commencement Information

**I24** S. 24 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, Part 1. (See end of Document for details)*

## 25 Directions where financial mismanagement **S**

(1) The Scottish Ministers are, if it appears to them that the financial affairs of a [<sup>F91</sup>post-16 education body or regional strategic] body have been or are being mismanaged, to give the Council such directions about the provision of financial support for the activities carried on by the <sup>F92</sup>... body as they consider are necessary or expedient by reason of the mismanagement.

[<sup>F93</sup>(1A) A direction made under subsection (1) in relation to any of a regional strategic body's colleges may, in particular, require the Council to provide such financial support to the regional strategic body as may be specified in the direction (subject to such terms and conditions as may be so specified).]

(2) Before giving directions under this section, the Scottish Ministers must consult[<sup>F94</sup>—  
(a) the Council;  
(b) the body to which the direction relates; and  
(c) where that body is assigned to a regional strategic body by an order made under section 7C(1), the regional strategic body].

(3) The Council must comply with directions given to it under this section.

### Textual Amendments

**F91** Words in s. 25(1) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(17\)\(a\)\(i\)](#); S.S.I. 2014/21, art. 2, Sch. 1

**F92** Word in s. 25(1) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(17\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, Sch. 1

**F93** S. 25(1A) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(17\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1

**F94** Words in s. 25(2) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(17\)\(c\)](#); S.S.I. 2014/21, art. 2, Sch. 1

### Commencement Information

**I25** S. 25 in force at 3.10.2005 by [S.S.I. 2005/419](#), art. 2(1)

## [<sup>F95</sup>25A Provision of information **S**

(1) A person mentioned in subsection (2) must provide the Scottish Ministers with such information as they may reasonably require for the purposes of or in connection with the exercise of any of their functions under this Act.

(2) Those persons are—

- (a) a regional strategic body; or
- (b) a college of further education which is—
  - (i) a regional college; or
  - (ii) assigned to a regional strategic body by order made under section 7C(1).]



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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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### Textual Amendments

**F95** S. 25A 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 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(18\)](#); S.S.I. 2014/21, art. 2, Sch. 1; S.S.I. 2014/79, art. 2(1), Sch. 1

### *Fundable bodies: miscellaneous*

#### [<sup>F96</sup>26 Academic freedom **S**

- (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.]

### Textual Amendments

**F96** 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>F97</sup>26A Equal opportunities: post-16 education bodies etc. **S**

- (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. ]

**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

### Textual Amendments

**F97** 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 **S**

(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.”.

(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 **S**

### 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).

*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

(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

**I26** S. 27 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 28 Inspection of accounts **S**

- (1) The Auditor General for Scotland may, at any reasonable time, inspect the accounts and accounting records of any fundable body [<sup>F98</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>F99</sup>or, as the case may be, by a regional strategic body under section 12B].

#### Textual Amendments

**F98** 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

**F99** 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

**I27** S. 28 in force at 3.10.2005 by [S.S.I. 2005/419](#), [art. 2\(1\)](#)

## 29 Educational use of certain property **S**

- (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—

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**Changes to legislation:** There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)

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- (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.”;
    - (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.”.

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*Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 2005, Part 1. (See end of Document for details)*

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**Commencement Information**

**I28** S. 29 in force at 3.10.2005 by [S.S.I. 2005/419](#), **art. 2(1)**

**30 Change of name by certain bodies** **S**

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**

**I29** S. 30 in force at 3.10.2005 by [S.S.I. 2005/419](#), **art. 2(1)**

**31 Information about recorded children** **S**

A [<sup>F100</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**

**F100** 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**

**I30** 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, Part 1.