

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

SCHEDULE 1

(introduced by section 1)

THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL

Status

- 1 (1) The Council is a body corporate.
- (2) The Council—
 - (a) is not a servant or agent of the Crown;
 - (b) has no status, immunity or privilege of the Crown,and its property is not to be regarded as property of, or held on behalf of, the Crown.

Commencement Information

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

Membership of the Council

- 2 (1) The Council is to consist of the following members—
 - (a) the person holding the post of chief executive;
 - (b) a person appointed by the Scottish Ministers to chair meetings of the Council (the “chairing member”); and
 - (c) no fewer than 11 nor more than 14 other members appointed by the Scottish Ministers.
- (2) Each member (apart from the chief executive) is to be appointed for a period not exceeding 4 years.
- (3) The Scottish Ministers may, on the expiry of a period of appointment of a member (apart from the chief executive), extend that appointment for a single further period not exceeding 4 years.
- (4) A member (apart from the chief executive)—
 - (a) may by giving notice in writing to the Scottish Ministers resign office as a member of the Council; and
 - (b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.
- (5) If the Scottish Ministers are satisfied that a member (apart from the chief executive)—
 - (a) has been absent from meetings of the Council for a period longer than 6 consecutive months without the permission of the Council; or
 - (b) is otherwise unable or unfit to discharge the functions of a member,the Scottish Ministers may by giving notice in writing to the member remove the member from office.
- (6) A person is, on ceasing to be a member, eligible for reappointment.

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Commencement Information

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

- 3 (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
- (a) persons who—
 - (i) have experience of, and have shown capacity in, the provision of fundable further education or fundable higher education; or
 - (ii) have held, and have shown the capacity in, any position carrying the responsibility for the provision of such education;
 - (b) persons who have experience of, and have shown capacity in industrial, commercial or financial matters or the practice of any profession; and
 - (c) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Council's functions.
- (2) In appointing members, the Scottish Ministers are also to have regard to the desirability of—
- (a) including persons who are currently engaged in the provision of, or carrying responsibility for the provision of, fundable further education or fundable higher education; and
 - (b) the membership of the Council (taken as a whole) having experience of, and having shown capacity in, a broad range of such education.
- (3) In appointing members, the Scottish Ministers are also to have regard to the desirability of including persons who—
- (a) have experience, and have shown capacity, relating to research or the application of research; and
 - (b) are currently engaged in research or the application of research.

Commencement Information

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

Disqualification from membership

- 4 ^[F1](1) A person is disqualified from appointment, and from holding office, as a member of the Council if that person is—
- (a) a member of the House of Lords;
 - (b) a member of the House of Commons;
 - (c) a member of the Scottish Parliament;
 - (d) a member of the European Parliament; or
 - (e) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.]
- ^[F2](2) A person is disqualified from appointment as a member of the Council if that person—
- (a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom,

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the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

- (b) is an undischarged bankrupt; or
- (c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any regional board).

(3) For the purposes of sub-paragraph (2)(b), “undischarged bankrupt” means a person

- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
- (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
- (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;
- (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
- (e) who has been adjudged bankrupt (and has not been discharged); or
- (f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

(4) A person is disqualified from holding office as a member of the Council if that person—

- (a) is sentenced as mentioned in sub-paragraph (2)(a);
- (b) has become a person to whom sub-paragraph (2)(b) applies; or
- (c) is removed from office as mentioned in sub-paragraph (2)(c).]

Textual Amendments

- F1** Sch. 1 para. 4 renumbered as Sch. 1 para. 4(1) (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(24\)\(a\)](#); S.S.I. 2014/21, art. 2, Sch. 1
- F2** Sch. 1 para. 4(2)-(4) inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [Sch. para. 8\(24\)\(b\)](#); S.S.I. 2014/21, art. 2, Sch. 1

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

Remuneration, allowances and pensions for members

- 5
- (1) The Council is to pay to its members (apart from the chief executive) such remuneration as the Scottish Ministers may in each case determine.
 - (2) The Council is to pay to its members such allowances as the Scottish Ministers may in each case determine.
 - (3) The Council is, in respect of any person who is or has been a member (apart from the chief executive), to pay, or make such payments towards the provision of, such pensions, allowances and gratuities as the Scottish Ministers may in each case determine.

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- (4) Where a person ceases to be a member (apart from the chief executive), the Scottish Ministers may, in special circumstances, direct the Council to make to the person a payment of such amount of compensation as the Scottish Ministers may determine.

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I5 Sch. 1 para. 5 in force at 3.10.2005 by [S.S.I. 2005/419](#) , [art. 2\(1\)](#)

Chief executive

- 6 (1) The Council is to employ a chief executive.
- (2) The person referred to in sub-paragraph (3) is (except where sub-paragraph (4) applies) transferred to the employment of, and becomes the first chief executive of, the Council.
- (3) That person is the person who, immediately before the coming into force of this paragraph, holds (by virtue of section 59A(1) and (2)(a) of the 1992 Act) appointments as both—
- (a) the chief officer of the Scottish Higher Education Funding Council; and
 - (b) the equivalent officer of the Scottish Further Education Funding Council.
- (4) But if—
- (a) there is no person holding both of those appointments immediately before coming into force of this paragraph; or
 - (b) the person holding both of those appointments immediately before the coming into force of this paragraph is unwilling, unable or unfit to be transferred to the employment of the Council,
- the Scottish Ministers are to make the first appointment of the chief executive of the Council on such terms and conditions as the Scottish Ministers may determine.
- (5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed by the Council on such terms and conditions as the Council may, with such approval, determine.

Commencement Information

I6 Sch. 1 para. 6 in force at 3.10.2005 by [S.S.I. 2005/419](#) , [art. 2\(1\)](#)

Other staff

- 7 (1) All staff employed, immediately before the coming into force of this paragraph, by—
- (a) the Scottish Higher Education Funding Council;
 - (b) the Scottish Further Education Funding Council; and
 - (c) those Councils jointly,
- are transferred to the employment of the Council.
- (2) The Council may (subject to any directions given under sub-paragraph (3)) appoint such other employees on such terms and conditions as the Council may determine.

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- (3) The Scottish Ministers may give directions to the Council as regards the appointment of employees under sub-paragraph (2) and as regards terms and conditions of their employment.

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

Continuity of employment etc.

- 8 (1) The contract of employment of a person transferred by virtue of paragraph 6(2) or 7(1)—
- (a) is not terminated by the transfer; and
 - (b) has effect from the date of transfer as if originally made between the person and the Council.
- (2) Without prejudice to sub-paragraph (1), where a person is transferred to the employment of the Council by virtue of paragraph 6(2) or 7(1)—
- (a) all the rights, powers, duties and liabilities of the Scottish Further Education Funding Council or the Scottish Higher Education Funding Council under or in connection with the person's contract of employment are transferred to the Council on the date of transfer; and
 - (b) anything done before that date by or in relation to the Scottish Further Education Funding Council or the Scottish Higher Education Funding Council in respect of the person or that contract is to be treated from that date as having been done by or in relation to the Council.
- (3) Paragraphs 6(2) and 7(1) and sub-paragraphs (1) and (2) of this paragraph do not affect any right of any person to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those provisions.

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

Transfer of property and liabilities

- 9 (1) All property (including rights) and liabilities, subsisting immediately before the coming into force of this paragraph, of—
- (a) the Scottish Higher Education Funding Council; and
 - (b) the Scottish Further Education Funding Council,
- are transferred to, and vest in, the Council.
- (2) Sub-paragraph (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

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I9 Sch. 1 para. 9 in force at 3.10.2005 by [S.S.I. 2005/419](#) , [art. 2\(1\)](#)

Proceedings of the Council

- 10 (1) The Council may regulate its own procedure (including any quorum).
- (2) The validity of any proceedings of the Council is not affected by a vacancy in membership nor by any defect in the appointment of a member.

Commencement Information

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

Committees

- 11 (1) The Council must establish a committee (a “skills committee”) for the purposes of advising the Council on matters relating to skills.
- (2) The Council is to appoint one of its members to chair meetings of the skills committee.
- (3) In appointing members of the skills committee, the Council is to have regard to any guidance issued to it under sub-paragraph (4)(a).
- (4) The Scottish Ministers may issue to the Council guidance about—
- (a) the composition of the skills committee; and
 - (b) the committee's functions.

Commencement Information

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

- 12 (1) The Council must establish a committee (a “research committee”) for the purposes of advising the Council on matters concerning research.
- (2) The Council is to appoint one of its members to chair meetings of the research committee.
- (3) In appointing members of the research committee, the Council is to have regard to the desirability of including persons who—
- (a) have experience, and have shown capacity, relating to research or the application of research; and
 - (b) are currently engaged in research or the application of research.

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

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- 13 The Council may establish other committees for any purposes relating to its functions.

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

- 14 (1) The Council is to—
- (a) subject to paragraphs 11(2) and (3) and 12(2) and (3), determine the composition of its committees;
 - (b) determine the terms and conditions of committee membership; and
 - (c) determine the procedure (including any quorum) of its committees.
- (2) Any of the committees of the Council may include persons who are not members of the Council.
- (3) The Council is to pay to the members of its committees (whether or not they are also members of the Council) such allowances as the Scottish Ministers may determine.
- (4) The Council is to keep under review the structure of its committees and the scope of the activities of each.

Commencement Information

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

Delegation of functions

- 15 (1) The Council may authorise—
- (a) the chief executive;
 - (b) the chairing member; or
 - (c) any of its committees,
- to exercise such of its functions to such extent as it may determine.
- (2) Sub-paragraph (1) does not affect the responsibility of the Council for the exercise of its functions.

Commencement Information

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

Participation of Scottish Ministers at meetings

- 16 A representative of the Scottish Ministers is entitled to participate in any deliberations (but not in decisions) at meetings of the Council or of any committee of the Council.

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

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Accounts

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

Commencement Information

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

Reports and information

- 18 (1) As soon as practicable after the end of each financial year, the Council must prepare a report on its activities during that year and must—
- (a) send a copy of the report to the Scottish Ministers; and
 - (b) publish the report,
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Scottish Ministers must lay a copy of the report before the Parliament.
- (3) The Council must provide the Scottish Ministers with such other information (including information in the form of a document) relating to the exercise of its functions as the Scottish Ministers may reasonably require.

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

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