

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.

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.
- 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;

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- (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.

Disqualification from membership

- 4 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.

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.
- (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.

Chief executive

- 6 (1) The Council is to employ a chief executive.

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- (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.

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.
- (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.

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

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- (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.

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.

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.

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

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.

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.

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.

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

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- (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.