



# Further and Higher Education (Scotland) Act 2005

2005 asp 6

## PART 1

### FURTHER AND HIGHER EDUCATION ETC.

#### *Provision of further and higher education etc.*

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

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

- (a) coherent provision by the fundable bodies (as a whole) of a high quality of fundable further education and fundable higher education; and
- (b) undertaking of research among the fundable bodies.

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

(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 fundable bodies; and
- (b) the undertaking of research among the fundable 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.

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

(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—

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*Status: This is the original version (as it was originally enacted).*

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

## **6 Fundable bodies**

- (1) Schedule 2 specifies certain bodies for the purposes of this Act.
- (2) In this Act, any reference to a fundable body means a body specified in that schedule.

## 7 Fundable bodies: further provision

- (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;
  - (f) arrangements for making use of any credit and qualification framework promoted by the Council under section 14;
  - (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 fundable bodies; and
  - (i) provision, procedures or arrangements of such other kind as the Scottish Ministers may by regulations specify.
- (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 (h) 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.

## **8 Support needs**

- (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.