

## SCHEDULE MODIFICATION OF ENACTMENTS

### *Further and Higher Education (Scotland) Act 2005 (asp 6)*

- 8 (1) The 2005 Act is amended as follows.
- (2) In section 3—
- (a) in paragraph (a), for first “fundable” substitute “post-16 education”,
  - (b) in paragraph (b), for “fundable” substitute “post-16 education”.
- (3) In section 4(1)—
- (a) in paragraph (a), for third “fundable” substitute “post-16 education”,
  - (b) in paragraph (b), for “fundable” substitute “post-16 education”.
- (4) In section 6—
- (a) for subsection (1) substitute—
    - “(1) In this Act, “fundable body” means—
      - (a) any body specified in schedule 2; and
      - (b) any regional strategic body (see section 7B).”
  - (b) in subsection (2)—
    - (i) after “fundable” insert “post-16 education”,
    - (ii) for “that schedule” substitute “schedule 2”.
- (5) In section 7—
- (a) in subsection (2)—
    - (i) after paragraph (f) insert—
      - “(fa) arrangements for the purpose of seeking to ensure that the interests of the body’s students are represented by a students’ association;”
    - (ii) in paragraph (h), for third “fundable” substitute “post-16 education”,
    - (iii) omit the word “and” appearing after paragraph (h),
    - (iv) after paragraph (h) insert—
      - “(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”
  - (b) after subsection (2) insert—
    - “(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.”
  - (c) in subsection (4), for “(h)” substitute “(ha)”.
- (6) After section 7C, inserted by section 8(3), insert—

### **“7D Orders under sections 7A to 7C: supplemental**

- (1) This subsection applies to—

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- (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 assignment).
- (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 assignment 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).
- (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

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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.”.

(7) In section 9—

(a) in subsection (3)—

(i) in paragraph (b), for the words from “the” to “both” substitute “any of the conditions referred to in subsections (4) to (5A)”,

(ii) after paragraph (b) insert—

“(c) include any terms or conditions referred to in sections 9A to 9D.”,

(b) in subsection (4), for the words from second “is” to second “specify” substitute “—

(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.”,

(c) in subsection (5)(a), after “fundable” insert “post-16 education”,

(d) after subsection (5) insert—

“(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).”,

(e) in subsection (6), for “fundable”, in both places, substitute “post-16 education”,

(f) in subsection (8), after “fundable”, in both places, insert “post-16 education”,

(g) in subsection (9), after “fundable” insert “post-16 education”,

(h) in subsection (11)—

(i) for “in so far as provided for in subsection (4)” substitute “where imposed in pursuance of subsection (4)(a) or (b)(ii) or section 9A or 9B”,

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- (ii) after “Council” insert “or a regional strategic body”,
    - (iii) omit the word “fundable”,
  - (i) in subsection (12)—
    - (i) in paragraph (a), after “(7)” insert “and in section 9D”,
    - (ii) omit the word “or” appearing after paragraph (a),
    - (iii) in paragraph (b), omit sub-paragraph (ii),
    - (iv) after paragraph (b) insert—
      - “(c) except where imposed in pursuance of section 9C, be framed by reference to the criteria for the admission of students.”,
  - (j) in subsection (13)(c)—
    - (i) in sub-paragraph (ii), for “fundable” substitute “post-16 education”,
    - (ii) in sub-paragraph (iii), for “fundable bodies” substitute “post-16 education bodies, and such regional strategic bodies.”.
- (8) In section 10—
  - (a) in subsection (2)(a)—
    - (i) for “the fundable” substitute “post-16 education”,
    - (ii) after second “bodies” insert “and restructuring involving regional strategic bodies”,
  - (b) in subsection (2)(c), for “the fundable bodies” substitute “post-16 education bodies and, where appropriate, between those bodies and regional strategic bodies”,
  - (c) in subsection (6), for “fundable” substitute “post-16 education”.
- (9) In section 11—
  - (a) in subsection (1)—
    - (i) omit the word “and” appearing after paragraph (a),
    - (ii) after paragraph (a) insert—
      - “(aa) providing support (whether financial or otherwise) to regional strategic bodies; and”,
  - (b) in subsection (3)—
    - (i) in paragraph (a), after third “fundable” insert “post-16 education”,
    - (ii) in paragraph (b), after “fundable” insert “post-16 education”,
    - (iii) in paragraph (c), after “fundable” insert “post-16 education”,
    - (iv) in paragraph (d), after “fundable” insert “post-16 education”.
- (10) In section 13—
  - (a) in subsection (1), for third “fundable” substitute “post-16 education”,
  - (b) in subsection (2), for “fundable” substitute “post-16 education”.
- (11) After section 13 insert—

**“13A Performance of regional strategic bodies**

The Council is to secure that provision is made for—

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

the performance of regional strategic bodies.”.

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- (12) In section 14—
- (a) in subsection (1), after “fundable” insert “post-16 education”,
  - (b) in subsection (2)(a)—
    - (i) omit the word “or” appearing after sub-paragraph (i),
    - (ii) in sub-paragraph (ii) for “body; and” substitute “post-16 education body; or”,
    - (iii) after sub-paragraph (ii) insert—  
“*(iii) any regional strategic body; and*”.
- (13) In section 18(2)(a), after “body” insert “or of any of a regional strategic body’s colleges”.
- (14) In section 20—
- (a) in subsection (3), for “fundable” substitute “post-16 education”,
  - (b) in subsection (4), for “fundable” substitute “post-16 education”,
  - (c) after subsection (9) (as inserted by section 15), insert—  
“(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).”.
- (15) In section 22—
- (a) in subsection (2)—
    - (i) in paragraph (a), for “the fundable bodies; or” substitute “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”,
    - (ii) in paragraph (b), for “fundable bodies” substitute “post-16 education bodies generally
  - (b) in subsection (5)—
    - (i) after paragraph (f) insert “; and
      - (fa) The Skills Development Scotland Co. Limited;”,
    - (ii) omit paragraphs (g) to (i),
  - (c) omit subsection (6),
  - (d) in subsection (7), for “subsections (5) and (6)” substitute “subsection (5)”,
  - (e) in subsection (8), for the words from “promote” to “bodies” substitute “—
    - (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.”.
- (16) In section 24—
- (a) in subsection (2), after “7” insert “, 14A”,
  - (b) in subsection (3), for “fundable body” substitute “post-16 education body or to a particular regional strategic body”.

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(17) In section 25—

- (a) in subsection (1)—
  - (i) for first “fundable” substitute “post-16 education body or regional strategic”,
  - (ii) omit second “fundable”,
- (b) after subsection (1) insert—
  - “(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).”
- (c) in subsection (2), for the words from second “the” to “concerned” substitute “—
  - (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”.

(18) After section 25 insert—

**“25A Provision of information**

- (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).”.

(19) In section 26—

- (a) in subsection (1), for “fundable” substitute “post-16 education”,
- (b) in subsection (2), for “fundable” substitute “post-16 education”,
- (c) in subsection (3), for “fundable”, where it appears in paragraphs (a) and (b), substitute “post-16 education”.

(20) In section 28—

- (a) in subsection (1), after “body” insert “or of any of a regional strategic body’s colleges”,
- (b) in subsection (3), after “12” insert “or, as the case may be, by a regional strategic body under section 12B”.

(21) In section 31, for “fundable” substitute “post-16 education”.

(22) In section 34(4)—

- (a) in paragraph (b), for “7(1) or (4)” substitute “7(4)”,

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- (b) omit the word “or” appearing after paragraph (b),
  - (c) after paragraph (b) insert—
    - “(ba) an order under section 7(1) (other than an order which is made only in consequence of a body changing its name or being closed);
    - (bb) an order under section 7B(2)(a) which establishes a regional board;
    - (bc) an order under section 7B(2)(b) which adds or removes an entry (but not including an order which removes an entry relating to a body which has been closed, wound up or has otherwise ceased to exist);
    - (bd) an order under section 7C(1) for which a proposal or approval under section 7C(2) is required;
    - (be) an order under section 9D(2) (other than an order which does no more than increase the amount specified in a previous order by an amount that is no greater than the amount which the Scottish Ministers, having had regard to any retail price index, consider is required in order to maintain the value of the previously specified amount in real terms);
    - (bf) an order under section 23O(11);”
  - (d) after paragraph (c) insert “; or”
    - (ca) an order under paragraph 18 of schedule 2B (other than an order which does no more than vary the minimum number of members of a regional board or vary the maximum number of members which may be appointed in pursuance of paragraph 3(2)(f)).”
- (23) In section 35—
- (a) in subsection (1)—
    - (i) after the definition of “the 1992 Act” insert—
      - ““college of further education” means the governing body of a body—
      - (a) by which fundable further education or fundable higher education is provided; and
      - (b) which is not a higher education institution;”
    - (ii) in the definition of “fundable body”, for “6(2)” substitute “6(1)”,
    - (iii) after the definition of “fundable higher education” insert—
      - ““fundable post-16 education body” is to be construed in accordance with section 6(2);
      - “higher education institution” means an institution which is—
      - (a) a university; or
      - (b) a designated institution (within the meaning of section 44(2) of the 1992 Act);”
    - (iv) after the definition of “the Parliament” insert—
      - ““post-16 education body” means—
      - (a) any fundable post-16 education body; and
      - (b) any college of further education assigned to a regional strategic body by order made under section 7C(1);

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“recognised”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992;

“regional board” is to be construed in accordance with section 7B(1)(b);

“regional college” means a college of further education designated as a regional college by order made under section 7A(1);

“regional strategic body” is to be construed in accordance with section 7B(1)(a);”;

- (b) in subsection (2), omit “fundable” in each of the seven places where it occurs,
- (c) after subsection (2) insert—

“(3) In this Act—

- (a) any reference to the locality of a college of further education is a reference to any locality in which the college provides fundable further education or fundable higher education (other than by way of distance or open learning); and
- (b) any reference (other than in sections 23A and 23E) to the locality in which fundable further education or fundable higher education is provided does not include reference to any such education which is provided by way of distance or open learning.”.

(24) In schedule 1, in paragraph 4—

- (a) the existing provision becomes sub-paragraph (1), and
- (b) after that sub-paragraph insert—

“(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, 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



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- 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).”.