

POLICY NOTE

THE LANARKSHIRE COLLEGES ORDER 2014

SSI 2014/

1. The above instrument is made in exercise of the powers conferred by sections 3(5) and 60(3) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) and by sections 7A(1), 7B(2), 7C(1) and 34(2) of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”).

Policy objectives

2. The instrument forms part of an implementation package for the Post-16 Education (Scotland) Act (“the 2013 Act”).

3. The Government is reforming the college sector to better meet the needs of learners and employers in a region through a coherent and sustainable curriculum, with a sharper focus on outcomes; funding based on regional needs; and strong accountability for regional performance. This has involved, among other things, the creation of thirteen college regions¹.

4. There are three regions with more than one college². Each will have a regional strategic body that will have the role, among other things, to fund colleges assigned to it. Regional strategic bodies provide a way to achieve the benefits of taking a regional approach to college funding and planning in multi-college regions.

5. The 2013 Act includes a provision that would establish a stand-alone regional strategic body, the Regional Board for Lanarkshire Colleges. However, plans were revisited as a result of college mergers in the region. The plans now involve giving the larger college in the region, New College Lanarkshire, regional responsibilities instead of establishing a regional board.

Regional college

6. The Order designates the incorporated college New College Lanarkshire as a regional college with effect from 1 October 2014. This will create clear lines of accountability for the regional body; its chair would be appointed by Ministers. It is also a necessary consequence of section 7D(7)(a) of the 2005 Act³, which requires Ministers to seek to ensure that every incorporated college is either designated as a regional college or assigned to a regional strategic body. As New College Lanarkshire is to be a regional strategic body, it cannot be assigned to itself. The principal effects of being designated as a regional college will be to

¹ Aberdeen and Aberdeenshire, Ayrshire, Borders, Dumfries & Galloway, Edinburgh, Fife, Forth Valley, Glasgow, Highlands and Islands, Lanarkshire, Tayside, West and West Lothian.

² Glasgow, Highlands and Islands and Lanarkshire.

³ This provision has yet to be brought into force.

- a) cease the effect of articles 4 and 5 of the Post-16 Education (Scotland) Act 2013 (Commencement No.3 and Transitory and Savings Provisions) Order 2014 (“the 2014 Order”)(SSI 2014/21) which were to apply until any college of further education listed in Schedule 2 to the 2014 Order was either designated as a regional college or assigned to a regional strategic body.
- b) give it the board arrangements of a regional college, as provided for in Schedule 2 to the 1992 Act, as amended by the 2013 Act. It will also extend to it the effect of the provisions in section 26A of the 2005 Act (equal opportunities: post-16 education bodies etc.) and section 24 of the 1992 Act (mismanagement by boards).
- c) give it new functions, as provided for in sections 23A (regional colleges: general duty); 23B (regional colleges: planning, consultation and collaboration); 23C (regional colleges: improvement of economic and social well-being); and 23D (regional college to have regard to particular matters) of the 2005 Act, as inserted by section 5(2) of the 2013 Act.

Regional strategic body

7. The Order removes the entry for the “Regional Board for Lanarkshire Colleges” from the list of regional strategic bodies in schedule 2A to the 2005 Act. The provision was not brought into force, so the Regional Board has never existed. Rather than there being a Regional Board for Lanarkshire Colleges, New College Lanarkshire is added to the list of regional strategic bodies with effect from 1 October 2014. The principal effect of this is to give the college the functions of a regional strategic body in Schedule 2 to the 1992 Act and sections 12A, 12B and 23E to 23O of the 2005 Act.

Assigned college

8. The Order assigns the other publicly funded college in Lanarkshire (South Lanarkshire College) to the regional strategic body (New College Lanarkshire) with effect from 1 October 2014.

9. South Lanarkshire College is an incorporated college. The principal effect of the Order on the college will therefore be to cease the effect of articles 4 and 5 of the 2014 Order which were to apply until any college of further education listed in Schedule 2 to the 2014 Order was either designated as a regional college or assigned to a regional strategic body. Since this Order assigns South Lanarkshire College to New College Lanarkshire, this will give South Lanarkshire College the board arrangements of a college that is not a regional college, as provided for in Schedule 2 to the 1992 Act, as amended by the 2013 Act. It will also extend to it the effect of the provisions in section 26A of the 2005 Act (equal opportunities: post-16 education bodies etc.)⁴ and section 24 of the 1992 Act (mismanagement by boards)⁵.

⁴ As inserted by section 19 of the 2013 Act.

⁵ As substituted by section 7 of the 2013 Act.

10. The functions of New College Lanarkshire as a regional strategic body in sections 12A, 12B and 23E to 23O of the 2005 Act⁶ are in respect of the South Lanarkshire College.

11. Ministers will make a separate Order under section 7(1) of the 2005 Act at a later date to remove South Lanarkshire College from the list of fundable post-16 education bodies in schedule 2 to the 2005 Act when they are satisfied that the new arrangements are working well. While it is a fundable post-16 education body, South Lanarkshire College will remain eligible in principle for funding from the Scottish Further and Higher Education Funding Council (SFC) and the SFC will retain functions in respect of it.

Amendment of Schedule 2 to the 1992 Act

12. The Order modifies some of the arrangements for the Board of Management of New College Lanarkshire set out in Schedule 2 to the 1992 Act. It requires the following members of the Board of Management of South Lanarkshire College to also be members of the New College Lanarkshire board – the (a) chair; (b) two elected staff members; and (c) principal of South Lanarkshire College.

13. The Order changes the provisions for the student members of the New College Lanarkshire board. One student member is nominated by the students' association of New College Lanarkshire and one student member is nominated by the students' association of South Lanarkshire College, rather than both being nominated by the students' association of New College Lanarkshire.

14. The Order also makes some consequential amendments, including changing the minimum and maximum board size to 19-22 (from 15-18) to accommodate the additional members from the Board of Management of South Lanarkshire College.

15. Article 5(2)(d) of the Order provides that, if the principal of South Lanarkshire College is removed from the Board of Management of New College Lanarkshire under section 24 of the 1992 Act, they are disqualified from the Board of Management of New College Lanarkshire. This is required because unlike the other persons appointed to the Board of Management of New College Lanarkshire by right of their position as board members of South Lanarkshire College, the principal of South Lanarkshire College would not be removed under paragraph 5B(3) of Schedule 2 to the 1992 Act from the Board of Management of South Lanarkshire College if removed from the Board of Management of New College Lanarkshire.

Consultation

16. In accordance with the requirements of the 2005 Act, the Scottish Government issued a consultation paper⁷ in October 2013, which among other things, sought views on the type of regional arrangements in Lanarkshire, including whether to designate New College Lanarkshire as a regional college, make it a regional strategic body and assign South Lanarkshire College to it, all with effect from August 2014. Ministers consulted with the boards of management of the colleges affected, the representatives of any trade union which the colleges recognise or which were otherwise representative of their staff, the colleges'

⁶ Section 12A and 12B are inserted into the 2005 Act by section 9(2) of the 2013 Act. Sections 23E to 23O will be inserted into the 2005 Act by section 10 of the 2013 Act.

⁷ <http://www.scotland.gov.uk/Publications/2013/10/7639/0>

students' associations, the local authorities for the areas in which the colleges are situated, the SFC and other persons likely to be affected by the order⁸.

17. Overall no consensus emerged from the consultation about the type of regional strategic body in Lanarkshire. There was, however, general support for assignation of colleges in August 2014. Following the period of consultation, New College Lanarkshire, South Lanarkshire College and the regional lead continued to work with the SFC and Scottish Government officials to explore and ultimately endorse New College Lanarkshire taking on regional functions with the college board having an amended composition to reflect this (provision for which is made in the Order).

Impact assessments

18. There are no significant equality impact issues arising from this Order.

Financial effects

19. The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or on business.

20. The Financial Memorandum to the Post-16 Education (Scotland) Bill⁹ estimated that the estimated cost to the Scottish Government of the appointment of twelve chairs (for regional colleges and Regional Boards), including staff costs, advertising and any travel and subsistence costs of external members of appointment panels, would be up to £90k. A pro-rata estimate for one chair of regional college is up to £7.5k.

**Scottish Government
Colleges and Adult Learning Division
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⁸ <http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance>

⁹ http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-en.pdf