

POLICY NOTE

THE POST-16 EDUCATION (SCOTLAND) ACT 2013 (COMMENCEMENT No. 3 AND TRANSITORY AND SAVINGS PROVISIONS) ORDER 2014

SSI 2014/21 (C.1)

1. The above instrument is made in exercise of the powers conferred by section 23(2) and (3) of the Post-16 Education (Scotland) Act 2013 (“the 2013 Act”).

Policy objectives

2. The instrument forms part of an implementation package for the 2013 Act. The provisions in the 2013 Act are being commenced in several stages.

3. This Order makes 3 March 2014 a significant day in terms of college and university reform, as it commences most of the remaining provisions in the 2013 Act, leaving only reforms in multi-college regions for a later point in the year.

4. Given the way the 2013 Act is constructed it would be complex to commence many of the provisions separately from each other. For example, many contain new terminology introduced by the 2013 Act, such as “post-16 education body”¹. The Scottish Government considers that the natural ‘trigger date’ for the majority of the new provisions is when colleges are designated as regional colleges².

5. It would, among other things, enable Ministers to exercise relevant new powers to impose terms and conditions on the Scottish Funding Council in relation to the 2014/15 Scottish Government offer of grant to the Funding Council.

Transitory provisions: regional strategic bodies

6. Some provisions in the 2013 Act relate to the establishment of regional strategic bodies and will not be commenced until later this year. Article 3 provides that where provisions being commenced include references to provisions relating to regional strategic bodies that are not being commenced now, they are to be read as if the provisions are not being commenced, or as though references to a regional strategic body are omitted.

Transitory provisions: colleges of further education

7. The transitory provisions in articles 4 (transitory modification) and 5 (transitory saving) for colleges of further education provide that changes to the following provisions brought into force by this Order do not apply to incorporated colleges listed in Schedule 2 to the Order until a college is either designated as a regional college or assigned to a regional

¹ A “post-16 education body” is defined in section 35(1)(iv) of the Further and Higher Education (Scotland) Act 2005, as amended by paragraph 8(23) of the Schedule to the 2013 Act. It is a collective term for learning providers that are generally eligible to be funded either by the Scottish Funding Council or a regional strategic body.

² The Designation of Regional Colleges (Scotland) Order 2014, which was laid on the same day as this Order, designates each incorporated college in a single college region as a regional college with effect from 3 March 2014.

strategic college. Schedule 2 lists all incorporated colleges that are not included in the Designation of Regional Colleges (Scotland) Order 2014³.

8. The relevant provisions are:
 - a) section 26A of the 2005 Act (equal opportunities: post-16 education bodies etc.), which is inserted by section 19 of the 2013 Act
 - b) amendments to Schedule 2 to the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) (Constitution and proceedings of boards of management), which are made by section 6(1) of, and paragraph 2(7) of the schedule, to the 2013 Act
 - c) the substituted section 24 of the 1992 Act (Mismanagement by boards of management), which is inserted by 7 of the 2013 Act.

9. The transitory provisions in Article 4 and 5 cease to have effect when section 7D(7) to (9) is inserted into the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”), which provide that Scottish Ministers seek to ensure that every incorporated college is either designated as a regional college or assigned to a regional strategic body. The Scottish Ministers do not intend to bring sections 7D(7) to (9) of the 2005 Act into force until all incorporated colleges are either designated as regional or assigned to a regional strategic body.

Commencement

10. Sections 22 (Ancillary provision), 23 (Commencement) and 24 (Short title) came into force on the day following Royal Assent (i.e. 7 August 2013) by virtue of section 23(1).

11. The first Commencement Order, the Post-16 Education (Scotland) Act 2013 (Commencement No. 1) Order 2013 (S.S.I. 2013/281), was made on 24th September 2013. The second Commencement Order, the Post-16 Education (Scotland) Act 2013 (Commencement No. 2) Order 2013 (S.S.I. 2013/348), was made on 10th December 2013. They each commenced further provisions of the 2013 Act (details of which can be found in the note as to earlier commencement orders which accompanies this Order).

12. Article 2 of this Order appoints 3rd March 2014 as the day on which the provisions specified in column 1 of Schedule 1 come into force. Some come into force only for the specific purposes which are listed in column 3.

13. This Order commences **section 2**, which inserts section 9A into the 2005 Act, which makes provision for good governance in higher education institutions.

14. It commences **section 3**, which inserts section 9C into the 2005 Act, which makes provision for the Scottish Ministers to impose terms and conditions on the Scottish Funding Council (SFC) in relation to widening access to higher education.

15. It commences **section 4**, which inserts section 9D into the 2005 Act, which makes provision for the Scottish Ministers to impose a condition on the SFC in relation to a fee cap for students liable for higher education fees.

³ It should be note that Coatbridge College is expected to close on 1 April 2014 as the college merges with New College Lanarkshire on this date.

16. It commences **section 5(2)**, which inserts section 23(A) (regional colleges: general duty), 23B (regional colleges: planning, consultation and collaboration), 23C (regional colleges: improvement of economic and social well-being) and 23D (regional colleges: college have regard to particular matters) into the 2005 Act.
17. It commences **section 6(1)**, which amends Schedule 2 to the 1992 Act, makes provision for the constitution and proceedings of boards of management of incorporated colleges (subject to the transitory provision in article 5 for colleges listed in Schedule 2 to the Order).
18. It commences **section 7**, which substitutes a new section 24 into the 1992 Act, which makes provision for the removal of board members of an incorporated college where there is board mismanagement of failure (subject to the transitory provision in article 5 for colleges listed in Schedule 2 to the Order).
19. It commences **section 8(1) and 8(2)**, which insert section 7B and schedule 2 into the 2005 Act, but only for the purpose of bringing into force the definitions of “regional board” and “regional strategic body” and for allowing the Scottish Ministers to make an Order under section 7B(2) of the 2005 Act (to establish, abolish or re-name a regional board or add, remove or vary an entry in the list of regional strategic bodies in relation to any other type of regional strategic body).
20. It commences **section 8(3)**, which inserts section 7C into the 2005 Act, which makes provision for the Scottish Ministers to assign colleges of further education to a regional strategic body.
21. It commences **section 9(1)**, which amends section 12 of the 2005 Act, which makes provision for the funding by the SFC of fundable bodies.
22. It commences the remainder of **section 13**, which inserts section 23R into the 2005 Act, which makes supplemental provision in relation to the establishment and abolition of regional boards.
23. It commences **section 14**, which inserts section 9B into the 2005 Act, which makes provision for good governance in further education institutions.
24. It commences **section 15**, which amends section 20 of the 2005 Act, which makes provision for the SFC to have regard to the desirability of widening access.
25. It commences **section 16**, which inserts section 19A into the 2005 Act, which makes provision for the SFC to review progress with widening access. The first review must be completed before 3 March 2017.
26. It commences **section 17**, which inserts section 14A into the 2005 Act, which makes provision for the SFC to review fundable further and higher education.
27. It commences **section 19**, which inserts section 26A into the 2005 Act, which makes provision for equal opportunities in relation to post-16 education bodies and regional strategic bodies, but only for the purpose of bringing into force provisions in relation to post-16

education bodies (subject to the transitory provision in article 4 for colleges listed in Schedule 2 to the Order).

28. It commences **section 21** but only for the purpose of enabling the paragraphs of the schedule to the 2013 Act listed in column 1 of the Schedule to this Order to be brought into force (where relevant for only the specific purpose listed in column 3).

29. It commences **paragraph 1** of the schedule, which amends the Education (Scotland) Act 1980.

30. It commences **paragraph 2(2), 2(3), 2(4)(b) and 2(5) to 2(7)** of the schedule, which amend the 1992 Act.

31. It commences **paragraph 5** of the schedule, which amends the Scottish Public Services Ombudsman Act 2002.

32. It commences **paragraph 7** of the schedule, which amends schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2002, but only for the purpose of adding the chair of a regional college.

33. It commences **paragraph 8(2) to 8(4), 8(5)(a)(ii), 8(7)(a)(ii) and (b), (c) and (e) to (j), 8(8) to 8(10), 8(12) to 8(17), 8(19), 8(20)(a), 8(21), and 8(23) to 8(24)**, which amend the 2005 Act. It also commences paragraph **8(6), 8(18) and 8(22)(c)** for the specific purpose listed in column 3 of Schedule 1 to the Order.

Consultation

34. In October 2013, the Scottish Government issued a consultation paper to colleges and other stakeholders on Ministers plans in single and multi-college regions⁴. Overall, respondents were supportive of plans to designate colleges in as regional colleges on 3 March. Respondents were given longer to submit responses in relation to multi-college regions. No decisions have been made yet in relation to multi-college regions.

35. The Scottish Government also consulted Colleges Scotland, Universities Scotland, NUS Scotland, STUC and the SFC in relation to the wider timetable for the commencement of the 2013 Act.

⁴ <http://www.scotland.gov.uk/Publications/2013/10/7639>

Impacts

36. A partial Business Regulatory Impact Assessment and an Equality Impact Assessment was carried out for the Post-16 Education (Scotland) Bill. The partial Business Regulatory Impact Assessment and a results summary of the Equality Impact Assessment are available on the Scottish Government website.

**Scottish Government
Colleges and Adult Learning Division**

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