

Tertiary Education and Training (Funding and Governance) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Tertiary Education and Training (Funding and Governance) (Scotland) Bill, introduced in the Scottish Parliament on 5 February 2025.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 57–FM);
 - a Policy Memorandum (SP Bill 57–PM);
 - a Delegated Powers Memorandum (SP Bill 57–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 57–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. These Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.
5. In these Notes, the Further and Higher Education (Scotland) Act 2005 is referred to as “the 2005 Act” and the Scottish Further and Higher Education Funding Council is referred to as “the Council”.

Crown application

6. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”) provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, technically this Bill applies to the Crown in the same way as it applies to everyone else.

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However, the substantive provisions of the Bill will almost exclusively be inserted into the 2005 Act, and also into the Education (Scotland) Act 1980. Those Acts, as they predated ILRA, did not bind the Crown when enacted, and so the amendments to them made by the Bill will also not bind the Crown.

Overview of the Bill

7. The purpose of the Bill is to reform and simplify the framework for the funding of post-school education and skills training in Scotland. The Bill does so primarily by making provision for the Council to take full responsibility for securing the delivery of national training programmes (NTPs) and apprenticeships, a role previously carried out by Skills Development Scotland. The Council already funds the provision of further and higher education through arrangements established under the 2005 Act. The Bill also changes some of the Council's governance rules.

8. The Bill is in four Parts:

- Part 1 confers new functions on the Council relating to securing and funding the delivery of NTPs, apprenticeships and work-based learning, and also amends and augments several of the Council's supporting functions in Part 1 of the 2005 Act;
- Part 2 makes minor reforms to the governance arrangements of the Council in schedule 1 of the 2005 Act;
- Part 3 makes provision relating to financial support for students at private providers of further and higher education, extending existing powers under the Education (Scotland) Act 1980, and creating a new power for the Scottish Ministers to designate private providers for the purposes of student financial support;
- Part 4 contains the final and general provisions for the Bill.

Commentary on provisions

Part 1 – Functions of the Scottish Further and Higher Education Funding Council

General duties of the Council and the Scottish Ministers

Section 1: General duty of the Council to secure high-quality learning

9. Section 3 of the 2005 Act places a duty on the Council to exercise its functions for the purposes of securing the coherent provision of a high quality of fundable further and higher education by post-16 education bodies (i.e. colleges and higher education institutions) as a whole, and the undertaking of research among those bodies.

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10. Section 1 of the Bill amends this duty so that it also extends to the securing of the coherent provision of a high quality of apprenticeships and work-based learning.

Section 2: General duty of the Scottish Ministers to support delivery

11. Section 4 of the 2005 Act places a duty on the Scottish Ministers to provide support for the provision of fundable further and higher education in Scotland, and the undertaking of research among the post-16 education bodies, through the exercise of their grant-making powers in the 2005 Act, and by such other means as they consider appropriate.

12. Section 2 of the Bill amends this duty so that it also extends to supporting the provision of Scottish apprenticeships and work-based learning.

Funding for national training programmes

Section 3: Funding for national training programmes

13. This section of the Bill inserts two new sections into the 2005 Act, relating to the funding of NTPs.

14. New section 12C(1) gives the Scottish Ministers a power to make grants to the Council for the purpose of securing the delivery of programmes of training for employment, subject to such terms and conditions as Ministers consider it appropriate to impose. Section 12C(3) sets out a non-exhaustive list of what such terms and conditions may require – including requiring that the Council itself impose a specified condition when making a payment to another person under its new power to administer funds in section 12D.

15. New section 12D(1) places responsibility on the Council for administering all grants made to it under section 12C for the purpose of securing the delivery of programmes of training for employment, and section 12D(2) gives the Council a corresponding power to make grants, loans or other payments to any person to deliver training programmes. Such funding may be subject to such terms and conditions as the Council considers it appropriate to impose, but must be subject to any terms and conditions imposed by Ministers when making grants to the Council by virtue of new section 12C.

16. Section 3(2) of the Bill adjusts the existing duty of the Council in the 2005 Act to administer funds received so that it does not apply to these new functions.

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Scottish apprenticeships

Section 4: Scottish apprenticeships

17. This section of the Bill inserts several new sections into the 2005 Act, creating a new legislative framework for Scottish apprenticeships.

18. New section 12E defines a “Scottish apprenticeship” for the purposes of Part 1 of the 2005 Act. This is defined as an arrangement where an individual apprentice does paid work for an employer in an occupation or activity included in a Scottish apprenticeship framework; the apprentice receives training to meet the relevant requirements in a Scottish apprenticeship framework (see section 12F); and there is an apprenticeship agreement (as defined in section 12E(3)) in place between the apprentice and the employer. In addition, Ministers may set additional criteria in regulations (subject to the negative procedure) which must be satisfied here.

19. Section 12E(2) gives Ministers a separate regulation-making power, subject to the affirmative procedure, to change the definition of a Scottish apprenticeship in subsection (1).

20. New section 12F gives the Council powers to prepare, publish, amend and revoke Scottish apprenticeship frameworks, which are to set out the relevant requirements for a Scottish apprenticeship in respect of particular occupations or activities, including the training and standards required of apprentices. Section 12F(4) gives Ministers a regulation-making power to make further provision about the requirements for Scottish apprenticeships which are to be set out in an apprenticeship framework, and the process to be followed by the Council in preparing, publishing, amending and revoking frameworks.

21. New section 12G enables requests to be made to the Council to prepare or revise a Scottish apprenticeship framework for a particular occupation or activity. Section 12G(2) requires the Council to consider any such request made to it. Section 12G(3) allows the Council to charge a reasonable fee to cover the cost of preparing or amending a framework.

22. Section 12G(5) gives Ministers a regulation-making power to make provision about the process to be followed by the Council in responding to requests to prepare or amend an apprenticeship framework; the amount of fee that the Council may charge for preparing or amending a framework; and the circumstances in which the fee must be waived.

23. New section 12H allows apprentices who have completed their training, or someone on their behalf, to apply to the Council for a Scottish apprenticeship certificate. Under subsection (3), the Council may charge a reasonable fee for issuing a Scottish apprenticeship certificate.

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24. Section 12H(4) gives Ministers a regulation-making power to make provision about the process to be followed for requesting and issuing apprenticeship certificates, and the amount of fee that the Council may charge for issuing a certificate.

Funding for Scottish apprenticeships and work-based learning

Section 5: Funding for Scottish apprenticeships and work-based learning

25. This section of the Bill inserts two new sections into the 2005 Act, relating to the funding of Scottish apprenticeships and work-based learning.

26. New section 12I(1) gives the Scottish Ministers a power to make grants to the Council for the purpose of securing the delivery of Scottish apprenticeships and work-based learning, subject to such terms and conditions as Ministers consider it appropriate to impose. Section 12I(2) and (3) define the terms “work-based learning” and “work-based learning agreement”, with section 12I(5) giving Ministers a regulation-making power to supplement the meaning of “work-based learning”.

27. New section 12J(1) places responsibility on the Council for administering all grants made to it under section 12I for the purpose of securing the delivery of Scottish apprenticeships and work-based learning, and section 12J(2) gives the Council a corresponding power to make grants, loans or other payments to training providers to deliver apprenticeships or work-based learning. Such funding may be subject to such terms and conditions as the Council considers it appropriate to impose. Section 12J(3) defines a “training provider” for the purposes of the section, giving Ministers a regulation-making power, subject to the negative procedure, to set out criteria for a provider to satisfy in order to meet this definition.

28. Section 5(2) of the Bill adjusts the existing duty of the Council in the 2005 Act to administer funds received so that it does not apply to these new functions.

Information sharing

Section 6: Information sharing

29. This section of the Bill inserts a new section 12K into the 2005 Act, requiring persons in receipt of funding from the Council under the new powers set out in sections 12D and 12J (see sections 3 and 5 of the Bill respectively) to provide the Council with such information as the Council may request relating to the training programme, Scottish apprenticeship or work-based learning (as the case may be) for which the funding is made.

30. In addition, subsection (3) of this section amends section 17 of the 2005 Act so that the Council is obliged, when required to do so by Ministers, to provide information, advice and assistance to Ministers in relation to the provision and funding of training for employment, work-based learning and apprenticeships; otherwise the Council has

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discretion to provide the Scottish Ministers with information and advice relating to those matters whenever it considers it appropriate to do so.

Notifications to the Council by post-16 education bodies

Section 7: Notifications to the Council by post-16 education bodies

31. This section of the Bill inserts a new section 14B into the 2005 Act, placing a requirement on post-16 education bodies to notify the Council of matters specified in regulations made by Ministers. Those regulations may also specify the form and manner in which notifications are to be made to the Council. Ministers must consult with the persons listed in section 14B(2) before laying the regulations. The intention is to require notification where there is potentially serious jeopardy to a post-16 education body, for instance an external threat such as a cyberattack, or a material change in their circumstances such as a rapidly worsening financial situation.

Recommendations to fundable bodies

Section 8: Recommendations to fundable bodies

32. This section of the Bill amends section 15 of the 2005 Act, which gives a power to the Council to arrange studies designed to improve economy, efficiency and effectiveness in the management or operations of any fundable body, and places a corresponding obligation on such bodies to share information and documents with the person carrying out a study.

33. New subsection (3) of section 15, as inserted by the Bill, provides that a study may include consideration of the extent to which the needs and interests of the students are being met.

34. New subsection (4) gives the Council a power to issue recommendations to a fundable body following a study carried out under this section. As per new subsection (5), the Council has a discretion to publish any such recommendations as it considers appropriate.

Monitoring of financial sustainability of post-16 education bodies

Section 9: Financial sustainability of post-16 education bodies

35. This section of the Bill inserts a new section 15A into the 2005 Act on the monitoring of the financial sustainability of post-16 education bodies.

36. New section 15A(1) places a duty on the Council to secure the monitoring of the financial sustainability of those bodies. Section 15A(2) allows Ministers to request the Council to provide them with information and advice in relation to the financial sustainability of post-16 education bodies – and under section 15A(3) the Council is

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obliged to provide such information and advice when requested by Ministers, although it can also provide such information and advice whenever it considers it appropriate to do so.

Guidance by the Council to fundable bodies

Section 10: Guidance to fundable bodies

37. This section of the Bill inserts a new section 17A into the 2005 Act, giving the Council a power to issue guidance to fundable bodies and to persons in receipt of funding from the Council under the new powers set out in sections 12D and 12J (see sections 3 and 5 of the Bill respectively). Under section 17A(2) a person must have regard to any guidance issued by the Council about activities in respect of which the person is in receipt of funding.

38. Section 17A(3) requires the Council to consult the funded bodies and persons, the Scottish Ministers, and other persons they consider appropriate, before issuing any guidance. Section 17A(4) gives the Council a discretion to publish any guidance as it considers appropriate.

Exercise of functions by the Council

Section 11: Support of learners' needs and knowledge exchange in exercise of functions

39. Section 20 of the 2005 Act sets out certain matters that the Council must have regard to in exercising its statutory functions as a whole. Section 11 of the Bill adds two new requirements for the Council to consider here.

40. First, new subsection (3A) requires the Council to have regard to the desirability of protecting and promoting the interests of current and prospective learners.

41. Second, new subsection (4C) requires the Council to have regard to the desirability of facilitating, encouraging and supporting knowledge exchange and innovation from the research of the post-16 education bodies.

Section 12: Consideration of skills needs and socio-economic issues

42. Section 20 of the 2005 Act sets out certain matters that the Council must have regard to in exercising its statutory functions as a whole. This includes, under subsection (1), skills needs in Scotland, issues affecting the economy of Scotland, and social and cultural issues in Scotland.

43. Section 12 of the Bill qualifies the meaning of the term "skills needs" to include any requirement or desirability for skills or knowledge which appears to the Council to exist for the time being, or to be likely to exist in the future, and to be capable of being

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addressed by the provision of programmes of training for employment, Scottish apprenticeships or work-based learning – in addition to further education or higher education. Section 12 of the Bill also qualifies the meaning of the term “issues” in section 20 of the 2005 Act in the same way.

Amendment of lists of fundable bodies

Section 13: Amendment of lists of fundable bodies in schedule 2 of the 2005 Act

44. Schedule 2 of the 2005 Act lists the fundable post-16 education bodies, providing further and higher education, to which the 2005 Act’s provisions apply. These bodies appear under three separate headings in schedule 2, but there is no actual difference in legal terms between the bodies listed under the headings. Section 13 of the Bill therefore combines the three lists of bodies together with the purpose of trying to avoid any confusion on those grounds.

Part 2 – Governance of the Council

Membership of the Council

Section 14: Appointment of members of the Council

45. This section of the Bill amends paragraph 2 of schedule 1 of the 2005 Act, on the membership of the Council. The current limit on reappointment as a member of the Council for a single further term of up to 4 years is repealed by section 14(2)(a). Instead, sub-paragraph (6), as amended by section 14(2)(b), has the effect that a person who is or has been a member is to be generally eligible for reappointment.

Section 15: Skills and experience of members of the Council

46. This section of the Bill amends paragraph 3 of schedule 1 of the 2005 Act, on the considerations which the Scottish Ministers must have regard to when appointing members of the Council. A requirement is added for Ministers to have regard to the desirability of appointing persons who have experience of the provision of Scottish apprenticeships or work-based learning – or persons who have held any position carrying the responsibility for the provision of Scottish apprenticeships or work-based learning. The existing requirement for Ministers to have regard to the desirability of appointing persons with experience of further education or higher education has been removed. The existing requirement to appoint persons with experience relating to research has been kept but relocated in the paragraph to sit alongside the new requirement.

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Co-opted members of the Council

Section 16: Co-opted members of the Council

47. This section of the Bill amends schedule 1 of the 2005 Act to add the ability for the Council to appoint persons as “co-opted members”, with the approval of the Scottish Ministers. No more than 2 persons may be appointed as co-opted members at any time, and appointments can only last for a maximum of 1 year. Co-opted members can take part in Council proceedings to the extent the Council decides, but do not have voting rights. Finally, paragraph 4 of schedule 1 on disqualification criteria applies to co-opted members as it does to ordinary members of the Council. Otherwise, co-opted members are not to be treated as though they are members of the Council.

Apprenticeship committee

Section 17: Apprenticeship committee

48. This section of the Bill amends schedule 1 of the 2005 Act, placing a new requirement on the Council to establish an apprenticeship committee, in order to advise it on matters concerning apprenticeships. Ministers may issue guidance to the Council about the membership of the committee and its functions, and the Council must have regard to guidance about membership of the committee. The Council must also appoint a member to chair meetings of the new apprenticeship committee.

Part 3 – Student support

Section 18: Designation of private providers of further and higher education

49. Section 73(f) of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to make regulations to pay allowances or loans in respect of persons in education. In practice, this is the legislative basis for government funding of student grants and loans in further and higher education.

50. This section of the Bill inserts a new section 74A into the 1980 Act. This gives Ministers the power to designate private providers of further and higher education on application: the effect of such a designation is that the provider is deemed to provide courses of education in respect of which the Scottish Ministers can pay allowances or loans by virtue of regulations made under section 73(f).

51. Section 74A(4) gives the Scottish Ministers a regulation-making power to make provision about the process for applying for a designation; the charging of a fee by Ministers for applications; the process for Ministers to make a designation; and about the withdrawal of a designation and the effect of withdrawal (including provision to ensure continuity of funding for students at a provider whose designation is withdrawn). This power is subject to the negative procedure by virtue of section 133(2) of the 1980 Act.

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52. Regulations under subsection (4) may also make different provision for different purposes, so for example could set different fee levels for different kinds of provider (e.g. those with charitable status or in receipt of some public funds as opposed to those that are wholly private).

Section 19: Directions relating to student support

53. Section 73ZA of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to direct the Council and other persons to administer funds for student support and other purposes. This section of the Bill amends and extends this power to include student support funding for students undertaking courses of education provided by a body designated under the new section 74A of the 1980 Act (as inserted by section 18 of the Bill) or an educational institution in the rest of the UK which is maintained or assisted by public funds.

Section 20: Transfer or delegation of functions relating to student support

54. Section 73A of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to transfer or delegate functions relating to the funding of student support. This section of the Bill extends this power to cover Ministers' new functions under section 74A of the 1980 Act (as inserted by section 18 of the Bill).

Part 4 – Final provisions

Section 21: Interpretation

55. This section provides that the Further and Higher Education (Scotland) Act 2005 is referred to throughout the Bill as the “2005 Act”, and that the Scottish Further and Higher Education Funding Council is referred to throughout as “the Council”.

Section 22: Ancillary provision

56. This section gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to, the Bill.

57. Subsection (2) allows such regulations to modify any legislation, including the Bill itself once it is enacted: if doing so the regulations would be subject to the affirmative procedure. Otherwise they will be subject to the negative procedure.

Section 23: Regulation-making powers

58. This section amends the 2005 Act in order to make the new regulation-making powers listed in subsection (2) subject to the affirmative procedure. Otherwise the powers inserted by the Bill into the 2005 Act will be subject to the negative procedure.

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Section 24: Commencement

59. This section provides that Part 4 of the Bill comes into force on the day after Royal Assent.

60. All other provisions of the Bill are to come into force on a day appointed by regulations made by the Scottish Ministers. These regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. These regulations are also required to be laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but they are not otherwise subject to any Parliamentary procedure.

Section 25: Short title

61. This section provides that the Bill, once enacted, will be referred to as the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026.

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