

TERTIARY EDUCATION AND TRAINING (FUNDING AND GOVERNANCE) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Tertiary Education and Training (Funding and Governance) (Scotland) Bill introduced in the Scottish Parliament on 5 February 2024.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 57–EN);
 - a Financial Memorandum (SP Bill 57–FM);
 - a Delegated Powers Memorandum (SP Bill 57–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP 57–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives for the Bill

4. There are four main policy objectives for the Bill, summarised briefly below.

Consolidating funding for provision

5. In the Scottish Parliament on 5 December 2023¹, the Minister for Higher and Further Education; and Minister for Veterans committed to:

“... bringing learner support funding together in one place, and funding for apprenticeship provision together in one place.”

6. Whilst learner support can be brought together administratively, legislation is required to bring funding for apprenticeship provision together. Consequently, this Bill was announced in the Programme for Government 2024-25², published on 4 September 2024:

¹ [Meeting of the Parliament: 05/12/2023 | Scottish Parliament Website](#)

² [Programme for Government 2024-25: Serving Scotland - gov.scot](#)

“The Post School Education Reform Bill will simplify the post-school funding body landscape. We are currently consulting on proposals to bring funding for learner support into one place, and funding for apprenticeships together into one place, benefiting learners, employers, the economy and wider society.”

7. The primary policy objective of the Bill is to enable funding for tertiary education and training provision to be more responsive to the needs of learners and the economy. The Bill does this by consolidating responsibility for securing and funding all forms of tertiary education and training provision, including National Training Programmes (“NTPs”), apprenticeships and work-based learning in a single public body, the Scottish Funding Council (“the SFC”). This will simplify the funding landscape by reducing the number of funding bodies involved in tertiary education and training.

8. There are three principal public bodies which help to run Scotland’s tertiary education and skills system: the SFC; Skills Development Scotland (“SDS”); and the Student Awards Agency Scotland (“SAAS”).

9. The Bill will enable the transfer of responsibility for funding and securing NTPs, apprenticeships and work-based learning from SDS to the SFC. At present, SDS exercises these functions administratively under arrangements made by the Scottish Ministers, by virtue of section 2 of the Employment and Training Act 1973, for the purpose of training for employment. The SFC has statutory functions in respect of the securing and funding of FE and HE provision and research. As the SFC is a statutory body, it is necessary to expand the functions in its governing legislation to include the funding and securing the delivery of NTPs, apprenticeships and work-based learning. This will allow the SFC to take on the responsibility for the type of arrangements currently delivered through SDS.

10. The policy aim is to facilitate different, more transparent ways of funding apprenticeships, alongside further and higher education, so that the system is easier for learners to navigate. This will also help to ensure learners have access to the skills and training that employers need.

11. In the 2025-26 Budget, the Scottish Government allocated over £2 billion to fund provision³ through Scotland’s post-school education, skills and research system. This supports around 500,000 people in any given year to pursue opportunities to learn, develop their skills and fulfil their potential at our colleges and universities⁴ and around 40,000 modern and graduate apprentices in training⁵, who can earn as they learn.

12. This Bill is an essential enabling step in reforming the funding arrangements for tertiary education and training. By bringing responsibility for securing and funding all forms of tertiary education and training provision together at the SFC, the Bill aims to:

³ The funding that universities, colleges and training providers receive to deliver high-quality education and training provision.

⁴ This is a combination of [College Statistics 2022-23 - Scottish Funding Council](#) (see Figure 1 - college headcount of 248,907) and [HESA Higher Education Student Data 2022-23](#) (see Figure 4 - university student enrolments of 292,240 at HEIs in Scotland). Note that the 41,875 FE providers in the HESA Figure 4 is included in the college headcount.

⁵ See [SDS Modern Apprenticeship Statistics](#), specifically [Quarter 4 for 2023-24](#): 38,607 modern apprentices in training (page 25) and 1,250 FTE graduate apprenticeship starts (page 6, footnote).

- deliver better services for learners and employers;
- simplify the operating environment for colleges, universities, training providers and employers; and
- ensure best value from our public funds.

13. To achieve this, Part 1 of the Bill expands the functions of the SFC by conferring powers and duties on it in respect of funding and securing the delivery of NTPs, apprenticeships and work-based learning. Part 1 does this by amending the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”), which established the SFC and set out its functions.

Improving the operation of the SFC

14. The Bill also provides the opportunity to make improvements to the SFC’s existing functions in relation to the fundable bodies (broadly speaking colleges and higher education institutions), whilst also integrating the new functions created by Part 1.

15. As well as consolidating funding for provision (see above), Part 1 of the Bill makes provision to:

- ensure a greater focus on protecting and promoting the interests of current and prospective learners, generally and when the SFC is reviewing fundable body’s performance;
- improve the timeliness and efficiency with which financial and other information is provided to the SFC, including by giving the Scottish Ministers a regulation-making power to set out the circumstances in which information must be proactively notified by post-16 education bodies and by placing the SFC under a duty to monitor their financial sustainability;
- ensure persons or bodies receiving SFC funding under the new provisions to deliver NTPs, apprenticeships or work-based learning provide the SFC with appropriate information, mirroring existing requirements on fundable bodies;
- give the SFC the power to issue guidance to any person or organisation to which it provides funding;
- give a statutory basis for the SFC to make recommendations to a fundable body following an efficiency study into its performance; and
- recognise SFC’s role in promoting knowledge exchange and innovation from the research of, and among, the post-16 education bodies.

Improving the governance of the SFC

16. Part 2 of the Bill makes improvements to the governance arrangements of the SFC. Part 2 modifies provision at paragraphs 2 and 3 of schedule 1 of the 2005 Act to improve the arrangements for reappointing members of the Council and to adjust the matters to which the Scottish Ministers are to have regard when appointing members to the Council.

17. Part 2 of the Bill also gives the SFC powers to co-opt additional members to the Council to provide advice or challenge on particular topics on a limited-term basis. Part 2 of the Bill requires the SFC establish a new apprenticeship committee to assist with the administration of the new functions conferred by Part 1.

Designation of private providers for student support

18. Part 3 of the Bill aims to ensure that Scottish-domiciled students undertaking courses of education with approved private providers based in Scotland, or elsewhere in the UK, can receive student support. These are technical changes to clarify provision in the Education (Scotland) Act 1980 (“the 1980 Act”).

19. Student support is a collective term that can include payment to cover the tuition fee costs of the course, bursary support, tuition fee loans (where relevant) and maintenance loans. While SAAS is currently responsible for the administration of student support for students studying at higher education institutions, student support for those studying at further education institutions and those undertaking apprenticeships is currently administered via SFC and SDS.

20. A number of students undertake further and higher education courses run by approved private providers based in Scotland or elsewhere in the UK (“rUK”). These are education providers that are not post-16 education bodies in terms of the 2005 Act. Broadly speaking, they are not colleges or higher education institutions receiving public funding.

21. Part 3 of the Bill gives the Scottish Ministers a power to designate a private provider of further or higher education on application from that provider. The effect of a designation is that the private provider is then treated as providing a course of education for the purposes of considering the eligibility of students at that private provider for student support. This Part also gives the Scottish Ministers a power to make regulations that will set out the designation process and the effect of a designation and withdrawal of a designation.

Consultation

22. The Scottish Government conducted a public consultation⁶ between 25 June 2024 and 20 September 2024 which sought views on three of the four policy objectives set out above.

23. The consultation sought views on three proposals to simplify responsibilities for apprenticeships and student support; both proposals for change consolidate funding for provision.

24. The consultation also asked questions about how the SFC’s governance needed to evolve in response to the proposed expansion to its remit, in particular how it would ensure that employers’ views informed decision making. That included proposals for changes to the skills and experience that should be reflected in membership of the Council.

⁶ [Post-school education and skills reform legislation: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/post-school-education-and-skills-reform-legislation-consultation)

25. Finally, the consultation asked about improving the operation of the SFC through enhanced powers for the SFC, not least so that it could get the right information from all the organisations it might fund to provide tertiary education and training.

26. The consultation did not extend to the designation of private providers provision for which is made in Part 3 of the Bill. These are technical and clarificatory provisions to the enabling powers in the 1980 Act which allow for regulations to be made relating to student support.

27. In total, 194 consultation responses were received, comprising 133 responses from organisations and 61 from individuals. The report on the consultation⁷ was published on 22 January 2025. The consultation findings are summarised in the discussion of each of the Parts of the Bill below; the report contains more detailed analysis.

Terminology

Provision funding versus student support

28. The distinction is made between “provision funding”, which refers to the funding for organisations (higher education institutions, colleges and training providers) to provide high-quality education and training provision), and “student support funding”, which refers to the funding which individuals (learners) receive to access the education and training of their choosing.

References to sections

29. Unless the context demands otherwise, a reference to a section (e.g. “section 14”) is to that in the Bill; a reference to a section in the 2005 Act (or other legislation) will be labelled (e.g. “section 6 of the 2005 Act” or “new section 12”).

The SFC and the Council

30. “The SFC” is shorthand for the Scottish Funding Council or, more properly, the Scottish Further and Higher Education Funding Council, established by section 1 of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”). The SFC has statutory functions in respect of the securing and funding of further education (“FE”) and higher education (“HE”) provision and research. The 2005 Act provides for appointment to the Scottish Funding Council (“the Council”) but note that those members are commonly referred to as the SFC Board, including by the SFC.

Tertiary education

31. There are 18 Scottish higher education institutions (“HEIs”), of which 15 are universities. The first university was founded in St Andrews in the fifteenth century. HEIs may have the power to award undergraduate and postgraduate degrees; since 1992, this power is granted by the Privy Council, as is the right to be called a university. “Higher education” is defined at section 6 of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”). Higher education for which

⁷ The report can be found here: [Post-School Education and Skills Reform: Consultation on legislation - Scottish Government consultations - Citizen Space](#)

the SFC can provide funding, “fundable higher education”, is defined at section 5 of the 2005 Act. Broadly speaking, higher education is study at a higher level than can be completed at school⁸.

32. Colleges have been in existence for over 150 years in Scotland; the first college was established in 1865. The colleges referred to in this Bill are public sector bodies in Scotland. Colleges generally deliver further education. “Further education” is also defined at section 6 of the 1992 Act; and “fundable further education” at section 5 of the 2005 Act. Broadly speaking, further education is study after secondary education which is not higher education (i.e. not part of an undergraduate or postgraduate degree)⁹.

33. Further education is offered by colleges but colleges can also provide higher education (e.g. to first and second year undergraduate students).

34. Tertiary education encompasses both further and higher education and is synonymous with post-school education.

Fundable bodies and education bodies

35. In this policy memorandum, the terms “post-16 education body” and “fundable body” are both used to describe publicly-funded tertiary education institutions and related bodies.

36. Section 35 of the 2005 Act defines a “post-16 education body” to include:

- fundable post-16 education bodies; and
- colleges of further education assigned to a regional strategic body under section 7C(1) of the 2005 Act.

37. The term “fundable post-16 education body” is defined at section 6(2) of the 2005 Act and means the colleges and higher education institutions set out in schedule 2 of the 2005 Act.

38. So “post-16 education body” encompasses colleges of further education (including those assigned to a regional strategic body) and higher education institutions. In simple terms, the “front line” institutions where the education takes place.

39. The term “fundable body” (defined at section 6(1) of the 2005 Act) includes any fundable post-16 education body (as at paragraph 37 above) and any “regional strategic body” listed in schedule 2A of the 2005 Act, i.e. the Regional Board for Glasgow Colleges; New College Lanarkshire; and the University of the Highlands and Islands. In simple terms, the bodies responsible for securing coherent provision. In many cases, the post-16 education body and fundable body are the same body, the difference is where there is a regional strategic body with assigned colleges.

⁸ Learning normally at SCQF level 7 and above, see the [Interactive Framework - Scottish Credit and Qualifications Framework](#).

⁹ Learning normally at SCQF level 6 and below.

40. The Scottish Government consulted on a proposal to review and reform the role of Regional Strategic Bodies within the Glasgow and Lanarkshire college regions in summer 2024¹⁰. The Scottish Government announced changes to regional structures following this consultation in December 2024¹¹. These changes are being taken forward separately from this Bill, through subordinate legislation under existing powers in the 2005 Act.

National Training Programmes Directorate in Skills Development Scotland

41. Skills Development Scotland (“SDS”) staff working on apprenticeships are based predominantly in what is known as the National Training Programme Directorate in SDS. Note that this is not the structure followed by the Bill: apprenticeship functions sit apart from National Training Programme (“NTP”) functions; the apprenticeship programme is not a type of NTP in the Bill.

¹⁰ [Glasgow and Lanarkshire college regions - Regional Strategic Bodies review: consultation - gov.scot](#)

¹¹ [Written question and answer: S6W-32198 | Scottish Parliament Website](#)

PART 1: FUNCTIONS FOR THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL¹²

National Training Programmes, apprenticeships and work-based learning

Background

Proposals for consolidating funding for provision

42. The consultation set out proposals informed by research and evidence from previous reviews and stakeholder engagement. Of particular importance are the following two documents, published in June 2023:

- the Purpose and Principles for Post-School Education, Research and Skills¹³ (“the Purpose and Principles”) which sets the vision and objectives for the wider post-school education and skills reform programme; and
- the Independent Review of the Skills Delivery Landscape¹⁴ by James Withers (“the Withers Review”) which makes 15 recommendations for change in skills delivery. This includes reform of the functions of two of the principal public bodies which help run the post-school education and skills system, SDS and the SFC.

43. Published alongside the Purpose and Principles were: a set of logic models¹⁵ showing the detailed outcomes to be achieved under each principle; an evidence report¹⁶ providing a high-level summary of the evidence then available against the long-term outcomes for each of the principles; and the Diversity of Provision Report¹⁷ which described the current funding system. An updated set of logic models¹⁸ was published on 22 January 2025.

44. The Withers Review and the Purpose and Principles identified a range of issues with the current post-school funding body landscape. These included complexity of the landscape, funding streams and funding models, as well as lack of clarity on roles and responsibilities of each funding body. To address these issues, James Withers recommended “*[establishing] a new single funding body, which brings together responsibility for all post-school learning and training funding functions from SFC, SDS and, potentially, the SAAS.*”

45. The Scottish Government accepted the premise of this recommendation, and the Purpose and Principles Initial Priorities¹⁹, also published in June 2023, committed Scottish Ministers to “*...investigate the options to deliver a single funding body, including tuition and living cost support, paying regard to issues such as the status and scope of the body’s responsibilities*”.

46. The Scottish Government considered a range of alternative options to achieve this commitment, including business as usual. A Strategic Outline Case (“SOC”) was developed to set

¹² Also known as the Scottish Funding Council, “the SFC” or “the Council”.

¹³ [Post-school education, research and skills - purpose and principles - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/post-school-education-research-and-skills-purpose-and-principles/pages/summary.aspx)

¹⁴ [Skills delivery landscape: independent review - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/skills-delivery-landscape-independent-review/pages/summary.aspx)

¹⁵ [Post school education, research and skills outcomes for the purpose and principles \(www.gov.scot\)](https://www.gov.scot/publications/post-school-education-research-and-skills-outcomes-for-the-purpose-and-principles/pages/summary.aspx)

¹⁶ [Evidence Report on the Purpose and Principles for Post-School Education, Research and Skills \(www.gov.scot\)](https://www.gov.scot/publications/evidence-report-on-the-purpose-and-principles-for-post-school-education-research-and-skills/pages/summary.aspx)

¹⁷ [Diversity of Provision \(www.gov.scot\)](https://www.gov.scot/publications/diversity-of-provision/pages/summary.aspx)

¹⁸ Purpose and Principles for Post-School Education, Research and Skills: Full Logic Models

¹⁹ [Post-school education, research and skills - initial priorities \(www.gov.scot\)](https://www.gov.scot/publications/post-school-education-research-and-skills-initial-priorities/pages/summary.aspx)

out the strategic context and case for change for simplifying the post-school education and skills funding body landscape. The considerations underpinning the SOC were summarised in chapter 2 of the consultation paper. There was no viable approach for simplification which could be achieved entirely administratively because the SFC plays a central and statutory role in provision funding (set out in the 2005 Act).

47. The following objectives were used to assess the long list of options in the SOC and remain relevant to the Bill:

- a) To simplify operational responsibility across the post-school funding landscape – ensuring fairness, transparency and maximising value for public investment.
- b) To reduce costs and increase efficiencies in the operation of the system – enabling more of the investment made by the Scottish Government to flow directly to learners and employers by reducing the costs of administering the system.
- c) To improve availability and quality of data collection to inform investment decisions, skills planning priorities and careers advice – ensuring the system is more responsive to the needs of learners, employers, the economy and society.
- d) To enable targeted and equitable distribution of funding to support the learner – ensuring that people, at every stage in life, have the opportunity and means to develop the skills, knowledge, values and attributes to fulfil their potential and to make a meaningful contribution to society.

48. The SOC assessed a long list of options against a wide range of factors including constraints, dependencies, non-financial and unquantifiable factors, and possible collateral effects, as well as unintended consequences. As a result of the assessment, three short-listed options were taken forward as proposals in the consultation:

- a) **Proposal 1:** Business as usual. Post-school education and skills funding would continue to be delivered as now through the three public bodies: the SFC, SDS and SAAS.
- b) **Proposal 2:** Consolidating all provision funding within in the SFC and all student support within SAAS. This means:
 - (i) moving NTP and apprenticeship funding and functions from SDS to the SFC; and
 - (ii) moving college student support funding and functions from the SFC to SAAS so that all student support funding is delivered through SAAS.
- c) **Proposal 3:** Consolidate all provision funding and all student support funding with the SFC. This means:
 - (i) moving NTP and apprenticeship funding and functions from SDS to the SFC; and
 - (ii) moving SAAS student support funding and functions to the SFC.

49. An Outline Business Case (“OBC”) was developed in parallel with the consultation. The OBC comprises five cases: strategic, socio-economic, commercial, financial and management cases. The OBC considered the relative merits of the three proposals. The findings of both the

analysis of the consultation responses and the OBC²⁰, informed the Scottish Government's decision to proceed with proposal 2, announced on 22 January 2025²¹.

50. Both proposals for change (proposals 2 and 3 in the consultation paper) include consolidation of provision funding and functions at the SFC and require the same legislative underpinning. The movement of student support between SAAS and SFC, which differentiates proposal 2 from 3, can be achieved administratively and under existing powers in the Education (Scotland) Act 1980. This allowed the Bill to be developed and drafted in parallel with the development of the evidence to support the Scottish Ministers' decision on the preferred proposal.

National Training Programmes

51. SDS and, in some cases the SFC, have delivered National Training Programmes (NTPs). To date, they have included the funding for, and oversight of, delivery of training to learners by a range of organisations. This could be through: securing training from the organisation; routing the funding via the learner; or supporting employers in delivering training.

52. A broad range of NTPs have been delivered by SDS and the SFC with a variety of aims from helping people who had been made redundant to find employment to upskilling and reskilling existing employees. The Financial Memorandum includes a few examples.

53. The Bill refers to NTPs as “programmes of training for employment”. Note that not every previous programme which would have been categorised as an NTP is necessarily within scope of the Bill provisions; for example, Individual Training Accounts which provided direct funding for training to individuals actively seeking employment or in underpaid work through powers in the Education and Training (Scotland) Act 2000. Furthermore, there may be some activities, programmes or parts of programmes responsibility for which logically continue to sit with SDS in view of its continuing functions, for example in relation to providing careers advice, or with local authorities.

Apprenticeships and work-based learning

Types of apprenticeship

54. There are three types of existing apprenticeships, principally funded by the SFC and SDS:

- **Foundation apprenticeships** offer work-based learning for individuals in the senior phase (S4 to S6) of school. This learning is part of the curriculum and is unpaid. Young people spend time out of school with their training provider (college, local authority or independent learning provider) and time with a local employer and complete the foundation apprenticeship alongside their other subjects like National 5s and Highers. (Note that this falls outside the definition of an apprenticeship for England²² and the UK Government guidance on what constitutes an apprenticeship in England, both of which include working for reward as an essential condition.)

²⁰ [Post-school funding body landscape simplification: outline business case - gov.scot](#)

²¹ [Delivering a world-class skills system - gov.scot](#), 22 January 2025.

²² Section A1 of the [Apprenticeships, Skills, Children and Learning Act 2009](#) sets out the meaning of an “approved English apprenticeship” at subsection (3).

- **Modern apprenticeships** provide new and existing employees with industry relevant qualifications and apprentices earn as they learn. Organisations involved in the delivery of modern apprenticeships include employers (including local authorities, public sector, private sector and third sector), colleges and alternative providers (such as independent training providers).
- **Graduate apprenticeships** provide new and existing employees with industry relevant degree qualifications (up to Master's degree level) and apprentices earn as they learn. All are delivered by universities.

55. At present, the SFC funds graduate apprenticeships and around half of foundation apprenticeships under its statutory powers for securing FE and HE provision. The modern apprenticeship programme, and the remainder of the foundation apprenticeship programme, are secured and overseen by SDS. Foundation apprenticeships are unpaid and therefore not regarded as true apprenticeships by many stakeholders.

56. Scottish Government funding supported expenditure of approximately £185 million across SDS, SAAS and the SFC on apprenticeships in 2023-24²³. Apprenticeships are a key part of the post-school education and skills system, providing learners with employment whilst being able to learn and develop skills. They enable employers to invest in their workforce, providing the skills the economy needs both now, and in the future. They provide people of all ages with the opportunity to upskill and reskill and help them to progress within their chosen career path.

57. SDS delivers funding for apprenticeships largely through public service contracts to independent training providers, colleges, employers and public sector organisations. This includes funding for up to 25,500 modern apprenticeship starts and up to 2,500 foundation apprenticeship starts in 2024-25; and graduate apprenticeships for those who started training prior to 2021-22. In addition to administration of the funding, SDS is also responsible for the development, enhancement and improvement of apprenticeships, learner experience, quality assurance and outcomes.

58. The SFC provides funding to colleges through its credit-based funding model and to universities on a FTE place basis. It assigns funding to different institutions for student teaching costs, taking into account demand and Ministerial priorities. This includes funding for up to 2,500 foundation apprenticeship starts each year in addition to those funded by SDS, and around 1,400 graduate apprenticeship starts each year for those starting training from 2021-22.

59. Whilst funding for modern apprenticeships is primarily routed through SDS, colleges can access SFC funding through its credit-based model to supplement SDS funding. This tends to happen in subjects like engineering and construction, where there is a large element of college-based teaching. This is particularly so where apprentices are required to complete an HNC/D alongside their work-based qualification. The SFC funding for modern apprenticeships is not transparent to training providers beyond colleges and not consistent, or widely known, beyond the apprenticeship community.

²³ The Student Awards Agency Scotland (SAAS) contributes to the funding of graduate apprenticeships.

Governance of apprenticeships

60. SDS sponsors the Scottish Apprenticeship Advisory Board (“the SAAB”) which is an independent, industry-led group aiming to ensure that apprenticeships are demand-led, fit for purpose and future orientated.

61. The Standards and Frameworks Group (“the SFG”), is part of the SAAB, and oversees apprenticeship standards and framework development for the apprenticeship family in Scotland. The SFG ensures standards and frameworks are aligned with industry, economic growth, job and progression opportunities and develop transferable skills for occupations which have common currency across the UK.

62. The Apprenticeship Approvals Group (“the AAG”) has responsibility for approving all Scottish apprenticeships. It is an employer-led group aimed at ensuring Scottish apprenticeships meet the needs of employers. The AAG’s role and purpose is to:

- approve all Scottish apprenticeships;
- ensure that apprenticeships fit with policy; and
- oversee and ensure quality assurance in apprenticeship development activity.

63. The AAG works closely with the SFG.

64. The SAAB will be wound up by the end of April 2025, although a combination of the SFG and the AAG will be retained to ensure apprenticeship frameworks continue to be developed and updated as needed during the passage of the Bill and in the transition period. The Scottish Government is developing proposals to ensure that employers continue to be engaged in reforms during the transition period. The future governance arrangements will be shaped by, and around, the new apprenticeship committee of the SFC, required under new paragraph 12A of schedule 1 of the 2005 Act, inserted by section 17 of the Bill.

Scottish apprenticeships

65. The Bill contains the first statutory definition of a Scottish apprenticeship. However, the SAAB recommended a set of principles and guidance in their *Definition of an Apprenticeship* which received Ministerial approval in 2019²⁴; and this is being updated by the short-life working group set up in 2024. Provision in the Bill has been shaped by engagement with SAAB and the short-life working group and the updated principles and guidance are expected to help to inform implementation.

English and Welsh apprenticeships

66. The [Apprenticeships, Skills, Children and Learning Act 2009](#) makes provision for English apprenticeships.

67. The King’s Speech in July 2024 included the [Skills England Bill](#). The Bill, now named [the Institute for Apprenticeships and Technical Education \(Transfer of Functions etc\) Bill](#), was

²⁴ [definition-of-an-apprenticeship-principles-and-guidance.pdf \(skillsdevelopmentscotland.co.uk\)](#)

introduced in the UK Parliament on 9 October 2024. The Bill transfers functions from the Institute for Apprenticeships and Technical Education (IfATE), to Skills England, a newly established body which is currently operating in shadow form within the Department for Education.

68. The [Tertiary Education and Research \(Wales\) Act 2022](#) makes provision for Welsh apprenticeships. The policy behind the provision in the Bill has been developed cognisant of the existing legislation in England and Wales.

Policy objectives

69. The Scottish Government plans to transfer responsibility for NTPs, apprenticeships and work-based learning from SDS to the SFC; transferring the funding and functions from SDS.

70. SDS is an Executive Non-Departmental Public Body and is a company limited by guarantee of which the Scottish Ministers are the sole Member; whereas the SFC is a statutory body established under the 2005 Act and has express statutory functions.

71. Recent reviews, including the Withers Review, the OECD report on [Strengthening Apprenticeships in Scotland](#) and the Audit Scotland report on [Modern Apprenticeships](#), have set out improvements that could be made to apprenticeships in Scotland. Evidence from the Withers Review suggests that the administration and funding of apprenticeships is complicated, not always transparent, and sometimes slow to respond to demand. There is also evidence of a perception of apprenticeships as being detached from the rest of university and college learning.

72. The policy objective in bringing provision funding into one place is to allow for greater flexibility, not only within the apprenticeship family, but across all tertiary education and training provision. Establishing the SFC as the one organisation responsible for securing and funding provision is intended to allow changes to be more easily and regularly made to the benefit of learners, institutions and employers.

73. This change is intended to improve the quality and comparability of data across tertiary education and training provision and will enable a clearer understanding of the outcomes from different provision pathways, informing our national careers service, curriculum design and development and future skills planning priorities. A simpler system will enable new approaches to funding to be developed that will improve flexibility and agility in response to national and regional skills planning priorities. This will support achievement of parity of esteem between academic and vocational pathways by giving them equal prominence within a single organisation, the SFC.

74. The Bill defines Scottish apprenticeships and work-based learning, and confers functions upon the SFC to secure their delivery and maintain oversight. The Bill provisions would allow for the current policy and delivery model to be replicated by the Scottish Government. This means an apprenticeship and work-based learning programme could be established with similar eligibility, funding and administration as applies to the current graduate, foundation and modern apprenticeships. But the Bill leaves open the possibility for change and innovation by future Scottish Administrations, for example in developing new types of apprenticeship.

75. The aims of the apprenticeship provision in the Bill are to support an evolving apprenticeship programme which:

- combines theoretical learning from training providers with practical on-the-job training with employers;
- promotes cooperation between government, educational institutions, trade unions and employers;
- ensures apprentices acquire the qualifications, skills and competencies necessary to compete in, and meet the demands of, the labour market; and
- establishes a legally recognised pathway that culminates in formal certification of professional competence.

Specific provisions

General duty of the Council to secure high quality learning

76. Section 1 modifies section 3 of the 2005 Act to place a general duty on the SFC to secure high quality Scottish apprenticeships and work-based learning alongside fundable higher and further education, as well as undertaking of research among post-16 education bodies. Modified section 3 places the SFC under an overarching obligation to exercise its functions to secure the coherent provision of high quality apprenticeships and work-based learning. This coherency extends across what is already provided for in the 2005 Act, so that the SFC is to be obliged to consider all aspects of tertiary education and training in securing the coherency of high quality provision.

77. This duty does not extend to NTPs. Firstly, this is because they are discretionary, so there may be none. Secondly, they are likely to be more varied and transient in nature, whereas further education, higher education, apprenticeships and work-based learning are intended to be permanent features of the education landscape.

78. Finally, NTPs may deliberately be targeted. They are called National Training Programmes because they will be funded centrally and the SFC, as the national funding body, will be responsible for securing them. However, any particular NTP could be targeted locally or regionally, for example to deal with the aftermath of a major employer closing or moving away from an area. In this context, “coherency” is not meaningful because there can be no expectation of a permanent, nationwide NTP or collection of NTPs.

General duty of the Scottish Ministers to support delivery

79. Section 2 modifies section 4 of the 2005 Act to expand the general duty on Scottish Ministers to provide support and make grants to the SFC for the purpose of securing high-quality delivery of apprenticeships and work-based learning. Again, NTPs do not feature. This is because the Scottish Ministers need not fund any NTPs at any given time.

Funding for national training programmes

80. Section 3 modifies the 2005 Act to insert new sections 12C and 12D. New section 12C of the 2005 Act give the Scottish Ministers the power to make grants to the SFC to secure the delivery

of programmes of training for employment (the NTPs). New section 12D of the 2005 Act makes the SFC responsible for administering those grants and in doing so gives the SFC the ability to make grants, loans or other payments to persons for the purpose of securing the delivery of NTPs as set out under new section 12C.

81. The Scottish Ministers will be responsible for setting the policies in respect of all NTP-related activities and will have the power to fund the SFC to provide one or more NTP; or to determine that no funding will be provided. The provision allows for a variety of approaches to NTP provision.

82. At one end of the spectrum, the Scottish Ministers could provide funding to the SFC for NTPs without specifying further how the funding is to be used. For example, the Scottish Ministers could simply provide grant funding and ask SFC to establish such NTPs as are required to support the Scottish Government's priorities: eradicating child poverty, growing the economy, tackling the climate emergency, and ensuring high quality and sustainable public services. The SFC would then establish and operate one or more NTPs in response.

83. At the other end of the spectrum, the Scottish Ministers could provide grant funding for specific NTPs for specific purposes and with an assigned budget to each. E.g. a specified budget to fund an NTP to help a group of workers made redundant from one setting to retrain to work in another setting. New sections 12C(2) and (3) give the Scottish Ministers powers to attach conditions on how the SFC uses the grant funding provided under new section 12C(1).

84. The SFC must deliver any NTP specified in terms and conditions of grants provided for such purposes by the Scottish Ministers (new section 12C(3)(a)). In practice, the Scottish Ministers would be expected to engage with the SFC before requesting a specific NTP.

85. New section 12C(3)(b) means that the Scottish Ministers can require that a programme to achieve a particular outcome is secured (e.g. upskilling on domestic retrofit to meet net zero targets). New section 12C(3)(c) means that the Scottish Ministers can require a programme to be targeted at particular groups of people (e.g. a group of workers made redundant).

86. The Scottish Ministers can set conditions which the SFC are required to apply to the recipients of NTP funding provided by SFC by virtue of section 12D(3)(d).

87. There is no obligation on the Scottish Ministers to provide funding for any particular NTP; nor any obligation on SFC to deliver an NTP without Scottish Government funding. The Bill allows for there to be no NTP delivery at all.

88. There is no barrier to NTP funding being used in conjunction with funding from other sources, e.g. co-funding by employers.

Scottish apprenticeships

89. This Bill establishes for the first time a statutory framework for apprenticeships in Scotland. Section 4 of the Bill modifies the 2005 Act to include new sections 12E to 12H to define Scottish apprenticeships.

Definition of a Scottish apprenticeship

90. New section 12E provides a definition of a Scottish apprenticeship which means an arrangement that meets the requirements in subsection (1)(a) to (d).

91. Subsection (1)(a) requires that the apprentice works for reward. This excludes voluntary work. This is not least because voluntary work is likely to be episodic. It would also be out of step with other European countries where apprentices are in paid employment.

92. Subsection (1)(a) also requires that the apprentice works for another person for reward. This excludes self-employed people from being Scottish apprentices. The principal reason for this is because it is unclear from whom they would be learning their skills and who would assess their competency. There is also uncertainty as to who would provide the mentoring, coaching, on-the-job training and assessment and quality of delivery. In the case of self-employed individuals, there is no obvious way to overcome the fact that the employer is also the employee and apprentice, and this creates a barrier to ensuring adherence to the standards and quality requirements. The employee, employer and learning provider relationship is central to ensuring quality and standards are maintained.

93. Subsection (1)(a) also requires that the work is in an occupation or activity included in a Scottish apprenticeship framework. The framing “occupation or activity” is used because of concerns that “occupation” alone might be problematic. Occupations can change rapidly and this could limit future developments, including around so-called “shared apprenticeships” which could help micro-businesses access apprentices. “Activity” captures a broader range of circumstances.

94. Subsection (1)(b) requires the apprentice to receive training to meet the requirements in a Scottish apprenticeship framework. The ultimate purpose of an apprenticeship is to achieve competence, rather than necessarily any particular qualification. There is a difference between skills relating to *occupational* competence versus *employment* competence; the former is transferable between employers and is the focus of apprenticeships. Employers will always need to arrange some employer-specific onboarding.

95. Subsection (1)(c) requires there to be an apprenticeship agreement between the apprentice and the employer. The purpose of this agreement is to ensure that both parties are clear on the commitment to training and the outcomes intended to be achieved. The training commitment would need to be consistent with what was set out in the relevant apprenticeship framework but it can be tailored to that individual and employer’s circumstances. A Scottish apprenticeship framework sets out requirements that apprenticeships must meet at occupation or activity level. Whereas the apprenticeship agreement is between a particular apprentice and their particular employer, for the purposes of ensuring the training will meet the relevant requirements in an apprenticeship framework.

96. To support this, the SFC could set out model apprenticeship agreements in guidance (under new section 17A of the 2005 Act, inserted by section 10(2) of the Bill) or make it a condition of funding that the model apprenticeship agreements are to be used (under new section 12J(4) of the 2005 Act, inserted by section 5(3) of the Bill).

97. Subsection (1)(d) gives the Scottish Ministers the power to set out other criteria for Scottish apprenticeships in regulations. There are two common issues where stakeholders have expressed mixed views, as to whether or not the legislation should set out specific requirements: firstly, around specifying an appropriate duration for an apprenticeship; secondly, specifying the proportion of the training which should be off-the-job (noting a 20% requirement in England²⁵). There could be unintended consequences to setting any requirements around either of these in primary legislation. It is important to be able to have flexibility around the specific individual, journey and business.

98. One unintended consequence of setting a training requirement could be that off-the-job learning is reduced to a 20% target; for some apprenticeships, this would be far too little. This flexibility around off-the-job training is perceived as a strength of the current Scottish system; as each framework is developed or updated, employers advise on the time required to complete off-the-job training. Different frameworks and sectors require differing levels of off-the-job training. However, the OECD report, *Strengthening Skills in Scotland (2020)*, recommended defining a minimum proportion of off-the-job training for apprenticeships.

99. These are examples of conditions that could, in theory, be set by the Scottish Ministers in secondary legislation, following consultation and careful consideration of all the implications.

Scottish apprenticeship frameworks

100. New section 12F gives the SFC the power to prepare and publish Scottish apprenticeship frameworks. The frameworks set out the relevant requirements for a Scottish apprenticeship in respect of particular occupations or activities, including the required standards or qualifications to be achieved by apprentices during an apprenticeship and the required types or amount of training. Training could be provided by employers, educational institutions or other training providers; the provision retains appropriate flexibility for this.

101. The Scottish Ministers would set out the policy objectives for apprenticeships when allocating grant funding, which should be reflected in the range of, and content of, Scottish apprenticeships frameworks prepared by the SFC.

102. Scottish apprenticeships frameworks can set out the competency and professional standards for those involved in the delivery, assessment, verification, quality assurance and scrutiny of apprenticeship programmes. The role of employers and industry can be set out in the frameworks and supporting documentation.

²⁵ UK Government guidance on [What is an apprenticeship? \(apprenticeships.gov.uk\)](https://www.apprenticeships.gov.uk) (for England).

103. Scottish apprenticeships frameworks will set out the relevant qualifications for each type of apprenticeship. Whilst the frameworks will specify the relevant qualifications, the qualifications themselves will be developed and certified by other bodies, such as, but not limited to, the SQA²⁶.

104. New section 12F(4) gives the Scottish Ministers a regulation-making power to set out what must be included in an apprenticeship framework and the process to be followed by the SFC in preparing, publishing, amending, and revoking the frameworks.

105. The functions and responsibilities of the SFG and AAG are important in setting apprenticeship standards and delivery, including the preparation of frameworks and approval of frameworks, and relevant qualifications within these, under current arrangements. The Bill does not specify in detail how these functions and responsibilities would be discharged in future but the SFC will have overall responsibility and the apprenticeship committee, provided for at section 17 of the Bill, would be expected to take on some of these functions.

Requests for apprenticeship frameworks

106. New section 12G allows persons to request that the SFC prepares an apprenticeship framework, or amends an existing one. It is expected that the requester will normally be an employer, or group of employers. The purpose of this provision is to enable employers to identify a need and request a framework where one otherwise would not exist. The SFC must consider such requests for frameworks but the SFC is not obliged to agree them. The SFC might refuse the request, for example, where the SFC considers it unnecessary or to run contrary to the SFC's (and the Scottish Minister's) objectives. This would be subject to any regulations made by the Scottish Ministers about the process to be followed.

107. New section 12G(3) gives the SFC the power to charge a reasonable fee to cover the cost of preparing or amending a framework as requested. The purpose of this is to allow the SFC to recoup their costs in doing so, especially in the case that there is significant demand for this.

108. New section 12G(5) gives the Scottish Ministers the power to make regulations governing the process to be followed by the SFC in responding to requests for a framework (or amended framework) and the amount of the fee that may be charged and circumstances in which it is to be waived. This might be used, for example, to allow the Scottish Ministers to fund requested or amended frameworks that aligned with the Scottish Government's priorities.

Apprenticeship certificates

109. At present, training providers pay for a service called [MA on-line](#) from the Federation for Industry Sector Skills and Standards (FISSS) to register a modern apprenticeship and obtain a completion certificate to evidence completion of a modern apprenticeship. This is submitted to SDS to release their final payment in respect of that apprentice.

110. New section 12H allows an individual who is, or has been an apprentice, or another person on their behalf, to apply to the SFC for an apprenticeship certificate. New section 12H(3) allows the charging of a reasonable fee for issuing a certificate and new section 12H(4) gives a power to

²⁶ The SQA is set to be superseded by Qualifications Scotland under provision in the Education (Scotland) Bill.

the Scottish Ministers to set out in regulations the process for requesting and issuing apprenticeship certificates and the amount of the fee that can be charged.

111. An important purpose of this provision is to help an apprentice demonstrate that they have completed their apprenticeship to a subsequent employer. Section 12H(2) requires the SFC to be satisfied that a Scottish apprenticeship has been completed by the individual. Apprenticeships can comprise a range of training, experience and qualifications, so it is helpful to bring the evidence together into a single certificate. As the SFC will be responsible for securing and funding apprenticeships, it would not need the certification to release funding from itself.

112. It is expected that it the employer or training provider would normally pay for the certificate, as part of the administration of the apprenticeship. At present, training providers pay to obtain a completion certificate for modern apprenticeships. The Bill provision would allow this to continue. In some cases, it may be administratively more convenient for the apprentice and the employer, especially in the case of larger employers with a number of apprentices, for the employer to make applications for certificates.

Funding for Scottish apprenticeships and work-based learning

113. Section 5 of the Bill modifies the 2005 Act to include new sections 12I to 12J to make provision for the funding of Scottish apprenticeships and work-based learning.

Work-based learning

114. Work-based learning is defined at new section 12I(2) of the 2005 Act. It means training received by an individual in a working environment and under a work-based learning agreement. There is no requirement that individual is paid, unlike an apprentice. The Scottish Ministers will have power to make further provision about what activities constitute work-based learning, and the requirements of work-based learning, in regulations.

115. Work-based learning is capable of including school pupils attending college and workplaces in order to gain experience and qualifications. It is intended primarily to be a pre-employment route to an apprenticeship, further and higher education or other employment, although the Bill does not limit it as such. (If appropriate, the Scottish Ministers could use the power at section 12I(5) to restrict the activities that constitute work-based learning.) The provision is silent on the parties to the work-based learning agreement to allow for flexibility. The agreement could be a three-way agreement between the individual, the school (or other educational establishment) and the organisation in whose working environment the training is taking place. The agreement sets out the education and vocational standards to be met by the individual (and would include any qualifications to be attained) and is intended to provide clarity to the objectives of the work-based learning and the commitment to the individual that the appropriate education and training will be provided.

Funding

116. New section 12I(1) gives the Scottish Ministers the power to make grants to the SFC for the purposes of securing the delivery of Scottish apprenticeships and work-based learning. New section 12J(1) places the SFC under a duty to administer these grants for those purposes.

117. New section 12J(2) gives the SFC the power to make grants, loans or other payments to training providers for the purpose of securing the delivery of apprenticeships and work-based learning. The SFC is to be able to attach terms and conditions to any payments made under this provision (including in relation to repayment) under new section 12J(4).

118. New section 12J(3) defines training provider. The definition is deliberately broad, tied only to what the person does, rather than the type of person. This means that a training provider could be any of the following, for example: a post-16 education body; a local authority; a public body or service provider, such as police, fire or health services; a private sector or third sector employer; or any organisation more commonly understood to be a training provider. New section 12J(3)(b) gives the Scottish Ministers the power to set out further criteria in regulations. This could be used, for example, to ensure that training providers met certain standards.

Consultation

Whether to consolidate provision funding

119. The consultation sought views on proposed changes to the role of public bodies, with the aim of simplifying responsibilities in relation to NTPs, apprenticeships and student support. The majority (almost 80%) of respondents favoured either proposal 2 or 3, both of which consolidate provision funding within the SFC; i.e. give the SFC responsibility for securing the provision of NTPs and apprenticeships.

120. Differing views on the need for reform shaped support for these proposals. There was comment in favour of reform objectives set out in the consultation paper, but some of those supporting business as usual wished to retain current strengths of the system and saw proposed reforms as incurring unnecessary resource and opportunity costs.

121. Others were of the view that significant reform, as would be delivered through proposals 2 or 3, was required to address challenges facing the post-school education and skills system. It was suggested that consolidating funding for provision and student support could enable a more holistic and consistent approach across skills sectors and models of provision.

122. Concerns around equity of funding were reflected in comments supporting a more coherent and consistent approach. Equity was highlighted in terms of ensuring fair access to funding support across learner groups, and access to provision funding for different provider types. This included concern that prioritisation of colleges and universities could adversely impact access to funding for other training providers.

123. The responsiveness of the post-school education and skills system also emerged as a common theme for those who saw a need for a more streamlined and coherent approach. It was suggested that greater consolidation of funding would enable a more responsive post-school education and skills system, for example through a more coordinated approach to information and advice for learners, and ensuring provision could better meet the diverse needs of learners. In this context, respondents wished to see reforms place learners at the centre of the system.

124. Securing efficiencies was highlighted as a key positive for proposed reforms. These respondents suggested that a more streamlined and centralised funding system could deliver significant resource savings, reflecting a view that overlapping roles and duplication of effort across public bodies was an issue for the system. However, it was also suggested that efficiency savings could take time to be realised.

125. Other challenges were raised for implementation of reforms, particularly around ensuring access to sufficient resources. There was concern that the Scottish Government should not underestimate the investment of time and resources required to implement reforms successfully. This was seen as a key issue in the context of current financial challenges across skills sectors, and there was concern around the potential to divert the SFC's energy and focus at a critical time for the skills system.

126. The potential for disruption associated with implementation of reforms was a common concern amongst respondents. This was raised as an issue for learners, employers, institutions, providers and other users of the post-school education and skills system. There was reference to the potential scale of change required to current roles and responsibilities, to operational issues such as technical and staffing changes, and to challenges in achieving the required change of culture across funding bodies.

SDS's fourth proposal

127. SDS's consultation response²⁷ proposed an alternative proposal to the three set out in the consultation paper. In summary, the proposal suggested that SDS kept its responsibilities for apprenticeship delivery and took on enhanced responsibility for colleges, with a focus on just transition and expanding and developing Scotland's current and future workforce. Under this proposal, the SFC would be reformed to focus exclusively on the university sector.

128. The Scottish Government discussed the proposals with SDS in October 2024. Some areas of alignment between the proposals and the reform programme were identified, as well as opportunities for further collaborative working. This included, for example, engaging SDS in work to develop different co-investment models for colleges.

129. The approach proposed by SDS has not been taken forward, as it failed to meet the objectives and criteria set out in the Strategic Outline Case for shortlisted options. Significantly, it would not deliver simplification by reducing the number of public bodies with funding responsibility.

Apprenticeship functions

130. Whilst some respondents acknowledged the need for a statutory definition of apprenticeship functions in order for the SFC to take responsibility for securing their provision, there was very little detail on how that should be achieved. With the benefit of hindsight, the consultation paper could have asked some more questions to draw more insight from respondents.

²⁷ Consultation responses were published on 22 January 2025: [Post-School Education and Skills Reform: Consultation on legislation - Scottish Government consultations - Citizen Space](#)

Alternative approaches to apprenticeships and work-based learning

131. As the consultation responses provided little detail on what apprenticeship provision might look like, the Scottish Government engaged in detailed discussions with the SFC, SDS and the SAAB Short-Life Working Group on apprenticeship definition, collectively called “the Apprenticeships Group” for the rest of this section. Engagement with these stakeholders, after the public consultation had closed, provided very helpful insight into the operation of current apprenticeship arrangements and how the legislation might best support future evolution.

132. A discussion paper was tabled for a meeting with SDS and the SFC on 9 September 2024 and at a meeting of the SAAB Short-Life Working Group on 10 September 2024. Based on feedback from these meetings and in correspondence, an updated discussion paper was tabled at a subsequent, combined meeting of the Apprenticeships Group on 1 October 2024. This meeting provided further refinement to the discussion paper and, again, comments were taken in correspondence afterwards. This Policy Memorandum summarises the outputs from those discussions.

133. The Apprenticeships Group raised important considerations that were carefully considered during the drafting of provisions including:

- a) the terminology to be used for types of apprenticeship;
- b) where the apprentice is based or the work or training takes place;
- c) focussing on the development of competence, rather than the apprenticeship being completed by virtue of gaining a qualification;
- d) considering the rights of the employee as an apprentice and the balance of on-the-job and off-the-job training;
- e) making sure that the roles and responsibilities of employees and employers are clear;
- f) excluding self-employment and unpaid work for the voluntary sector; and
- g) allowing for flexibility in the future evolution of apprenticeships.

Terminology

134. The Apprenticeships Group did not want the terms “modern apprenticeship”, “foundation apprenticeship” nor “graduate apprenticeship” to appear in primary legislation, but wanted to allow flexibility for future evolution. Indeed, many employers do not like the term “foundation apprenticeship” because school pupils are not in a contract of employment and it is perceived as devaluing apprenticeships, notwithstanding the value of foundation apprenticeships for what they achieve.

135. The Apprenticeships Group wanted to distinguish apprentices under a contract of employment from “pre-employment” apprentices (such as foundation apprentices). The term apprentice(ship) should be used in respect of employed persons only; “work-based learning” was suggested as the term for foundation apprenticeships (and any other “pre-employment apprenticeships”). This terminology has been adopted in the Bill; and arrangements for what are currently foundation apprenticeships could go on to be made under the work-based learning provisions in the Bill.

Residency requirements

136. The Apprenticeships Group considered whether an apprentice needed to be ordinarily resident in Scotland (or similar). (There are parallels with eligibility for student support.) The Apprenticeships Group considered it reasonable to have a geographic residency condition on the apprentice, but not a geographic condition on where the work is done, for reasons given below.

137. This has not been set out as a requirement of a Scottish apprentice in primary legislation because the requirement is unlikely to be the same across all apprenticeships. It will be possible for the Scottish Ministers to explore issues around location and residency in developing regulations under new section 12E(1)(d).

Location of the work of an apprentice

138. There was consideration as to whether to specify where the work of an apprentice takes place. A reason for doing so would be to try to ensure that Scottish public funding was used to benefit the Scottish people and economy; funding an apprentice to work outside of Scotland might have less benefit for Scotland. However, the Scottish Government decided not to do this, informed by the views of the Apprenticeships Group, because of the following issues:

- challenges for UK-wide employers in managing graduate rotation schemes;
- travel to work areas, highlighting the “Severn Bridge problem” for England and Wales, where an apprentice lives in Wales and works in England;
- low-volume, but critical, apprenticeships where it was necessary to relax the work geography condition, such as farriers; and
- concerns around the physical base of the employee versus their output location, such as a “field-based” supermarket employee based in Edinburgh, for example, for whom 80-90% of outputs were directed to England.

Qualifications gained by the apprentice

139. There was consideration as to whether to set out in legislation the qualifications to be obtained by the apprentice whilst on the apprenticeship. However, this is problematic. Modern and foundation apprenticeships are “wraparounds”, i.e. they comprise more than the qualifications. There are also qualifications awarded by bodies other than the SQA, for example with regard to accounting (by ACCA and AAT) and engineering (by EAL) which makes it difficult to be too specific, for example, about the awarding body.

140. For some apprenticeships, there are professional qualifications that form part of the relevant framework, which are defined when the framework is developed. Furthermore, many awarding organisations offer the same approved qualifications, as they are created from National Occupational Standards (NOS). So it could be unduly limiting to name specific awarding organisations in legislation.

Voluntary work and self-employed apprentices

141. The reasons for excluding voluntary work are set out at paragraph 91 above.

142. The Apprenticeships Group also cautioned against the inclusion of self-employed people as apprentices. There was a concern that it could undervalue the ethos of mastery and competence, and risk gaming of the system by those with less integrity. This is because the employer plays a central role in ensuring that an employee receives the right training and gains the relevant experience to become competent in the relevant occupation or activity. It is hard to construct an equivalent role without an employer.

Contracts of employment and redundancy

143. The Apprenticeships Group suggested that one criteria in defining a Scottish apprenticeship could be that the apprentice has a contract of employment for a longer period than it would take to normally complete the apprenticeship. A tight framing would be that: an apprentice is an employee of an employer; with a contract of employment; and the contract refers to the apprenticeship.

144. This approach has not been taken in the Bill. The Bill avoids any interference in the employment contract and employment rights, as this is not thought to be necessary or even helpful in achieving the policy aims. Furthermore, the law of employment rights is largely reserved to the UK Government.

145. The Apprenticeships Group also considered situations around redundancies in an organisation where some employees were apprentices. Clearly, there may be circumstances where an employer needs to make redundancies and apprentices have not completed their apprenticeships. Again, the Scottish Government has concluded that no special provision is appropriate.

Additionality of training

146. There was consideration as to trying to frame an additionality condition along the lines of the support, skills or training not being otherwise provided in an equivalent form or manner. This would be with the aim of trying to safeguard public expenditure.

147. However, the cost of employing an apprentice is largely borne by the employer (wages, national insurance, training support for the work element) with Scottish Government funding making only a small contribution, even where a significant contribution to training is provided. Without Scottish Government funding, employers would still invest in training. The Apprenticeships Group considered that the primary benefit of a national approach to apprenticeships is the consistency, validity and competence that is common across industry.

148. Instead, the approach taken in the Bill is to allow employers (or others) to make a request for an apprenticeship framework under new section 12G of the 2005 Act. This is a different way of providing an additionality requirement. Where a new apprenticeship framework would provide added value to an employer, or group of employers, they can request and pay a reasonable fee for it.

Apprenticeship certificates

149. Consideration was given to whether or not to make the provision at new section 12H of the 2005 Act for the requesting, issuing and charging for apprenticeship certificates. As explained at

paragraph 109 above, training providers currently pay for a service called MA on-line to register a modern apprenticeship and obtain a completion certificate for modern apprenticeships. Whether or not that arrangement had continued, the individual should have a set of component certificates for their modern apprenticeship for any completed Scottish Vocational Qualifications and core skills from the relevant awarding bodies, including the SQA.

150. On balance, it was considered that there is a benefit in the SFC, as the body who will secure and monitor apprenticeship provision in future, being able to certify that an individual has completed a Scottish apprenticeship. One reason for this is that it allows flexibility in the future evolution of apprenticeships and the potential emergence of new types of apprenticeship.

Other functions of the SFC

151. The other functions of the SFC considered in this part of the Policy Memorandum concern sections 6 to 12 of the Bill:

- powers to request information from funded persons (section 6);
- notifications to the SFC by post-16 education bodies (section 7);
- powers to make recommendations to fundable bodies (section 8);
- duty to monitoring the financial sustainability of post-16 education bodies (section 9);
- power to issue guidance to fundable bodies (section 10);
- duties in relation to protecting the interests of learners, and promoting knowledge exchange and innovation (section 11); and
- duties in relation to consideration of skills needs and socio-economic issues (section 12).

152. This part of the Policy Memorandum also explains the changes to schedule 2 of the 2005 Act made by section 13 of the Bill.

Background

Gaps in information

153. Recent reviews of the post-school landscape by both the SFC and the Scottish Government have identified gaps in the collecting and reporting of consistent information on performance, impact, outcomes and value for money.

154. In 2020, Scottish Government asked the SFC to review the coherence of further and higher education provision. One conclusion in the [Coherence and Sustainability: A Review of Tertiary Education and Research](#) report was that there was a need for a new approach to accountability and assurance which “... makes outcomes and expectations clear for everyone (institutions, students, researchers, employers, government, and tax-payers) and more clearly connects with Scotland’s National Performance Framework.”

155. One of the challenges highlighted in the Purpose and Principles (as set out in the [Evidence Report](#)) was that: “*There is a lack of a comparable system-wide evidence base and regulatory framework which can describe the current successes and challenges, the desired outcomes and metrics and allow for accountability and assurance.*”

156. Within this, specific challenges identified included:

- Little evidence on the community-level impacts of learning provision across the system, particularly in relation to how the presence of institutions within a community setting affects other areas of local public service delivery (transport, housing, leisure and entertainment, noise and nuisance behaviours etc.).
- While there is a vast array of data and reporting mechanisms for specific elements of delivery, there is little in the way of consistent data collection on performance and outcomes across different providers or learner journeys (particularly for colleges and universities).

157. The SFC is already rolling out and introducing a new form of assurance and accountability for academic year 2024-25 which is shifting the focus from targets to what has actually been delivered. The Single Tertiary Quality Enhancement Framework was developed with the sector and creates a consistent framework for assessing the quality of learning and teaching across colleges and higher education institutions. The SFC suggests that the framework will increase sector-level enhancement activity as it beds in. It builds on existing information collection and monitoring, including through Financial Memoranda.

Financial Memoranda

158. The 2005 Act gives the SFC powers to attach conditions to funding. The SFC has [Financial Memoranda](#) with colleges and higher education institutions which set out the formal accountability relationship between the institution and the SFC. Colleges and higher education institutions need to follow these requirements to get public funding:

- Fundable bodies must have regular, timely, accurate and adequate information to monitor performance and account for the use of public funds. This information must be made available to the SFC on request. Colleges specifically are required to provide data returns by the deadlines and to the standards specified.
- The chief executive officer of the fundable body must inform the SFC’s Accountable Officer without delay of any circumstance that is having, or is likely to have, a significant adverse effect on the ability of the institution to deliver its education programmes, research and other related activity.
- Fundable bodies are also required to submit annual financial returns. There are various conditions relating to the conduct and content of audits and the submission of accounts, including the requirement to follow the SFC’s Accounts Direction.
- The chief executive officer of a fundable body must inform the SFC’s Accountable Officer without delay of any serious weakness, such as a significant and immediate threat to the institution’s financial position, significant fraud or major accounting breakdown, or any material non-compliance with any requirement of the Financial Memorandum.

159. In addition, what colleges and higher education institutions plan to deliver each year is set out in outcome agreements.

160. The implications of this current tying of information sharing responsibilities to funding include:

- If a fundable body does not comply with conditions relating to information sharing, the only direct recourse that the SFC has relates to recovery or limitation of funds. However, punitive action in relation to funding is not desirable (not least because it would adversely affect learners) and not something the SFC does.
- The effectiveness of using funding as the lever is relative to the proportion of a fundable body's income derived from SFC funding. Many higher education institutions generate the majority of their income from other sources, such as from fees from overseas students.

Data on finance and performance

161. Statistical data on finance and performance are already collected. These include data on financial forecasts, college performance indicator returns, the [Higher Education Statistics Agency \(HESA\)](#) data for higher education, and apprenticeship activity.

Policy objectives

162. The Scottish Government's policy objective is to ensure that it, the SFC, and other stakeholders as appropriate, receive the right quality and frequency of information on financial health, coherence of provision and delivery, performance and outcomes from organisations funded by the SFC. This would make it easier to understand the benefits to individuals, the Scottish economy and society deriving from people undertaking tertiary education and training.

163. The Scottish Government, the SFC, and other stakeholders as appropriate, need to be assured that further and higher education sectors are well-governed and financially and environmentally sustainable.

164. The Bill confers additional functions on the SFC in relation to NTPs, apprenticeships and work-based learning. The 2005 Act now, and as amended by section 1 of the Bill, places the SFC under a duty to secure "coherent provision". As amended, this coherence applies across both existing fundable further education and fundable higher education functions and new Scottish apprenticeships and work-based learning functions. The duty applies to provision, which is broader than the landscape of institutions and providers. Coherence goes beyond performance, which tends to be more about numbers enrolled, attainment and withdrawal. For example, to be assured of coherent provision of engineering education and skills, the SFC needs to be able to gather and present information on courses in higher education institutions and colleges, and engineering apprenticeships.

165. In the context of constrained public sector funding, it is vital that the Scottish Government gets the possible best value from its significant public investment.

166. The provision in the Bill, in this respect, is not intended to generate additional work for the SFC, education bodies, independent training providers or employers. Rather, it is intended to integrate the new functions of the SFC into its existing operations and allow both existing and new functions to be carried out effectively.

167. With regard to its engagement with fundable bodies, the SFC is already active in many of these areas and the Bill is not generating new activity. For example, the SFC already works with fundable bodies to try to ensure that fundable bodies are well-governed and financially sound. The Bill aims to improve the speed and efficiency of the engagement of the SFC.

168. With regard to new relationships with independent training providers and employers, much of the provision is expected to substitute for the information flows which those organisations have with SDS. That is to say, there are currently obligations on independent training providers and employers through the terms and conditions of contract. The Bill allows the SFC to continue with a very similar model for apprenticeship policy and delivery, if that were the decision of a future Scottish Administration.

169. The Scottish Government's intention is that the provision in the Bill, combined with the existing provision in the 2005 Act, work together as a coherent whole. The paragraphs below set out some of the more specific objectives of each provision, as they each address a particular issue or set of issues, but they are interdependent in delivering the objective set out at paragraph 162 above.

Specific provision

Information sharing

170. Under section 22(4) of the 2005 Act, fundable bodies (amongst others) are under duty to provide the SFC with such information as the SFC may reasonably require for the purposes of, or in connection with, the exercise of any of its functions.

171. Section 6(2) of the Bill modifies the 2005 Act to include new section 12K which creates a similar duty in respect of persons receiving SFC funding, under the new NTP, apprenticeship or work-based learning functions. The duty only extends to the activities funded by the SFC. For example, a training provider may only devote a small part of their business to deliver apprenticeship training and it would not proportionate to require them to provide information to the SFC which does not relate to the apprenticeship training.

172. Section 17(1) of the 2005 Act obliges the SFC to provide the Scottish Ministers with such information, advice and assistance relating to fundable further and higher education and research as the Scottish Ministers may reasonably require. Section 17(2) enables the SFC to provide with such other information and advice relating to these matters as it considers appropriate. Section 6(3) of the Bill inserts new section 17(1)(za) into the 2005 Act to expand the provision at section 17 of the 2005 Act so that the SFC can be required, and has the power to, provide information, advice and assistance in relation to the new functions of training for employment (NTPs), work-based learning and Scottish apprenticeships. This is needed to ensure there are no gaps in the information available to the Scottish Ministers.

Notifications to the Council

173. The requirement to provide information to SFC at section 22(4), and new section 12K of the 2005 Act, is a “pull” of information, which the SFC can only ask for if it knows it exists or may exist (known unknowns). However, it is also important that post-16 education bodies proactively notify SFC of certain developments of which the SFC might otherwise be unaware (unknown unknowns); a “push” of information.

174. Section 7 of the Bill modifies the 2005 Act to include new section 14B to give the Scottish Ministers a power to require the post-16 education bodies to notify the SFC of certain matters, where these matters have been set out by the Scottish Ministers in subordinate legislation. The Bill does not specify what those matters are; new section 14B(1) gives the Scottish Ministers a power to specify matters in regulations.

175. The intention is that the Scottish Ministers would prescribe situations where there is potentially serious jeopardy to post-16 education bodies or to the SFC’s ability to perform its functions. These situations may relate to something happening to the body (some kind of external threat); a material change in its circumstances; or an action that the body proposes to take itself (such as a significant scaling back of its operations). In these situations, the SFC would be better positioned to provide assistance to the body, or sector as appropriate, with earlier engagement.

176. Examples of the types of situations that might be prescribed include where a body:

- has experienced a major data breach through a cyberattack (external threat);
- has reached a certain threshold in a rapidly worsening financial viability situation (material change in its circumstances); or
- is planning voluntary or compulsory severance (action).

177. New section 14B(1)(b) gives the Scottish Ministers the power to specify the form and manner in which notification is to be made to the SFC, including time periods within in which the SFC is to be notified. The intention is that the time periods are sufficient to allow the SFC to take meaningful action to avert further, or unnecessary, cost or harm.

178. The regulations are to be made under the affirmative procedure, given that they could potentially place significant obligations on post-16 education bodies. For this reason too, the Scottish Ministers are under a duty to consult with the SFC, the post-16 education bodies and such other persons as they consider appropriate, as part of developing the regulations.

Recommendations to education bodies

179. Section 15 of the 2005 Act gives the SFC the power to secure efficiency studies and this provides a gateway for the SFC to monitor performance of the fundable bodies in respect of improving their economy, efficiency and effectiveness in operational matters. Section 16 of the 2005 Act gives the SFC the right to attend and address meetings of the governing body of a fundable body where they have concerns relating to the financial support a fundable body receives. However, there is no such right where the matters are not related to financial support.

180. Section 8 of the Bill amends section 15 of the 2005 Act to expand the scope of efficiency studies to include the needs and interests of learners and to give the SFC the power to make recommendations to fundable bodies following an efficiency study.

Needs and interests of learners

181. The policy intention is that the SFC should be able to be able to address a broader range of matters to assist with performance improvement. New section 15(3) makes provision to include the needs and interests of learners as within scope of an efficiency study. Note that the needs and interests of students or learners might need to be met by other fundable bodies in the case of course closures at the body in question.

182. The policy intention is that the SFC could, particularly where notified of certain adverse circumstances (such as course closures), instigate studies or reviews of the impact on students and learners so that assistance could be provided to ensure they are not negatively impacted. For example, if a college was heading towards needing to close courses before students could complete them, the SFC could help to make arrangements for the students to continue their education at different colleges.

Making recommendations

183. Addressing meetings (as provided for by section 16 of the 2005 Act) may not be the most appropriate or useful course of action; a set of written recommendations following an efficiency study may be more useful.

184. New section 15(4) gives the SFC the power to issue recommendations to a fundable body following an efficiency study. Recommendations could include setting specific improvement targets and requiring the development of an improvement plan, for example.

185. It may also be appropriate, in some circumstances, for the SFC to publish its recommendations and new section 15(5) gives the SFC the power to do this. This might be where there is wider interest amongst institutions, or the public, in the recommendations and they are not sensitive. For example, if the SFC makes recommendations in respect of the implementation of fair work conditions, these might be of general interest and assistance.

186. As with the SFC's right to address meetings, already provided for in section 16 of the 2005 Act, there is no corresponding duty on the fundable body to do anything in response to the recommendations. However, as a matter of good governance and practice, the Scottish Government would expect the fundable body to consider them appropriately.

Financial sustainability of post-16 education bodies

187. There can be challenges for SFC in getting information from post-16 education bodies about their financial sustainability. Some post-16 education bodies have expressed a desire for a clearer pathway to raise financial issues with the SFC.

188. Section 9 of the Bill inserts new section 15A into the 2005 Act to place a requirement on the SFC to secure the monitoring of the financial sustainability of post-16 education bodies. New

section 15A(2) allows the Scottish Ministers to seek information and advice from the SFC relating to post-16 education bodies, this could be an individual body or the bodies as a whole. Section 15A(3) requires the SFC to respond to any such request from the Scottish Ministers and the SFC may also offer information proactively when it considers it appropriate to do so. This is necessary because unforeseen circumstances may arise of which the Scottish Ministers might otherwise be unaware (and so would not know to enquire).

189. New section 15A is capable of intersecting with provision in section 15 (as to be amended) and section 16 of the 2005 Act, as well as new section 14B. The SFC may be moved to conduct an efficiency study under powers at section 15 by information which comes to its attention through monitoring of the financial sustainability under new section 15A. Equally, the SFC may be moved to do so by a notification received under new section 14B in relation to a financial deterioration. Taken together, these provisions could be used by the SFC to inform and issue recommendations to fundable bodies specifically addressing areas of concern around financial sustainability.

Guidance

190. The SFC already issues guidance to fundable bodies on a range of matters. For example, the SFC has consulted and developed guidance on the implementation of the Tertiary Quality Enhancement Framework. The SFC also advises and engages with fundable bodies on a range of matters which may not be codified in a guidance document.

191. At present, the SFC guidance issued to fundable bodies is purely administrative (i.e. it has no statutory basis). Section 10 of the Bill inserts new section 17A into the 2005 Act to give the SFC the power to issue guidance to the fundable bodies and any other person in receipt of funding under the new functions conferred by the Bill (NTPs, Scottish apprenticeships and work-based learning). These bodies and persons must have regard to it in the carrying out of their particular funded activities.

192. The SFC may want to take the opportunity to issue additional guidance in respect of its new or revised functions and consider and develop guidance for independent training providers and employers.

193. The SFC must consult the Scottish Ministers and the bodies or persons to whom the guidance relates, under new section 17A(3). The SFC could choose to issue guidance covering all bodies and persons in receipt of SFC funding or to issue guidance targeted at particular types of organisation, such as fundable bodies providing fundable further education.

Support of learners' needs and knowledge exchange in exercise of functions

194. There are a number of matters which the SFC must have regard to in carrying out its functions, as set out in section 20 of the 2005 Act. These include, for example: skills needs in Scotland; issues affecting the economy of Scotland; and social and cultural issues in Scotland. These duties naturally extend to carrying out the new functions created in the Bill.

Protecting and promoting the interests of learners

195. Section 11(2)(a) of the Bill inserts new section 20(3A) into the 2005 Act to place a duty on the SFC, in carrying out all its functions, to have regard to the desirability of protecting and promoting the interests of current and prospective learners. Learners includes those who are undertaking, or may be interested in undertaking, fundable further and higher education, apprenticeships or work-based learning under existing and new functions. These might be relevant factors to consider in determining the terms and conditions of grant funding or considering what capital projects to take forward.

196. The SFC will also be able to factor in their compliance with this obligation in providing information, advice and assistance to the Scottish Ministers under section 17 of the 2005 Act (as amended by section 6 of the Bill).

Knowledge exchange and research

197. The SFC, in its response to the consultation, suggested it would be helpful for it to have an express requirement in respect of the promotion of knowledge exchange and innovation from research. Translating excellent academic research in Scotland into business and economic activity in Scotland is an important focus in terms of the Scottish Government's priority around economic growth.

198. Section 11(2)(a) of the Bill inserts new section 20(4C) into the 2005 Act to require the SFC, in exercising its functions, to have regard to the desirability of promoting knowledge exchange and innovation from the research of and among the post-16 education bodies.

199. This provision is consistent with the SFC's existing practice and ongoing activity to promote knowledge exchange and innovation. The SFC does this through investment in initiatives such as Innovation Centres, Interface and Converge, which are designed to harness research to deliver impact.

Consideration of skills needs and socio-economic issues

200. Section 20(1) of the 2005 Act requires the SFC to have regard to: skills needs in Scotland; issues affecting the economy of Scotland; and social and cultural issues in Scotland. Section 20(5) and (6) of the 2005 Act define "skills needs" and "issues" respectively. In both cases, the need or issue needs to be live or anticipated and to be capable of being addressed by fundable further education or fundable higher education.

201. Now that the SFC has a wider remit including apprenticeships and work-based learning, it is appropriate that the means of addressing these needs or issues is expanded to encompass this wider remit. Section 12 of the Bill modifies section 20 of the 2005 Act accordingly.

Amendment of lists of fundable bodies in schedule 2 of the 2005 Act

202. "Fundable body" is defined at section 6 of the 2005 Act to mean any body specified in schedule 2 and any regional strategic body (defined in section 7B of the 2005 Act).

203. The headings in schedule 2 of the 2005 Act distinguish between three types of institution: those formerly eligible for funding by the Scottish Further Education Funding Council; those formerly eligible for funding by the Scottish Higher Education Funding Council; and other institutions. Whilst the headings do not have any legal effect, they appear to contribute to the misconception that funding of institutions under the 2005 Act is limited to the fundable further or higher education depending on the type of educational institution.

204. Section 13 of the Bill substitutes schedule 2 of the 2005 Act with a consolidated version comprising a single list of fundable bodies in alphabetical order, with some updates to remove out-of-date references to bodies who no longer exist (due to closure or merger) or where there has been a change of name. It may be necessary to make consequential amendments to other enactments which rely on referring to the current groupings or headings in the 2005 Act; this would be a technical matter that could be delivered through implementation of the Bill.

Consultation findings

205. The consultation asked respondents for views on placing additional duties on organisations receiving public funds, on proposals to improve information collection as well as on additional powers that the SFC might need to ensure the quality of the post-school education and skills system.

206. Just under half (46%) of respondents who answered the question (question 8) saw a need for new duties on all organisations in receipt of public funding to provide better information to SFC. The majority of respondents who answered the questions also saw a need to strengthen existing data collection (question 9, 66%) and reporting systems and processes (question 9, also 66%).

207. Comments on the importance of data collection and reporting included ensuring best value and evidencing impact, supporting SFC oversight and governance, and enabling prospective learners to make more informed choices. Respondents also highlighted the role of accurate and meaningful data in enabling the system to respond to skills needs. This included reference to shaping improvement in skills provision, and informing forward planning to ensure programmes align with wider economic needs and policy priorities.

208. There was support for consistency of information requirements, with a single system applying to colleges, employers and training providers. However, views differed on whether and how a single system should apply across all stakeholders. Some also expressed a view that data collection and reporting for the FE and HE sectors currently works well, although there was perceived scope to make better use of this data. It was suggested that there may be a need for better data collection and reporting for private skills providers.

209. Discussion of specific information to be collected included a particular focus on: financial information including the level and profile of funding awards, and financial sustainability; the profile and uptake of funded provision; information on capacity and governance for funded organisations; and delivery of outcomes. There was also a perceived need for more agile data systems that can reduce the lag in reporting timelines and provide real-time data. Respondents

referred to potential for integration of datasets to support a more joined up approach, and comparability across sectors and internationally was highlighted.

210. Additional powers for the SFC were seen to be needed by the Scottish Government, the SFC and some stakeholders in order for the SFC to deliver its expanded functions. Respondents highlighted that any new powers should be tailored and proportionate to SFC's role and duties. It was also suggested that new powers must enable SFC to support a diversity of funded organisations.

211. Given the SFC's current and future central role, particular attention was paid to the consultation response from the SFC, and previous engagement with SFC, on how their functions might be improved. This led to further detailed engagement after the consultation had concluded which has informed the Bill provision.

Alternative approaches

Issuing codes of conduct

212. Section 10 of the Bill amends the 2005 Act to insert new section 17A, giving the SFC the power to issue statutory guidance. Consideration was given as to whether the SFC should have the power to issue codes of conduct, for example to address concerns around breaches of fair work conditions. However, statutory guidance provides a way of setting out clearly the Scottish Government's expectations for the sector in relation to fair work conditions.

213. The power for the SFC to issue codes of conduct was not taken forward. One concern was that it might have complex interactions with other requirements on institutions, including other codes of conduct. This might have unintended consequences through, for example, the potential for conflicting requirements between codes issued by the SFC, professional bodies and regulators or diminishing the autonomy of institutions. It would also require appropriate enforcement mechanisms.

Audit and investigation

214. Consideration was given to giving the SFC more powers to conduct audits and investigations, or inspect documents or premises. One concern is that the audit and investigation of fundable bodies requires the full agreement and cooperation of the body under current arrangements. The only sanction currently available to the SFC is to withhold grants.

215. Consideration was given as to whether the SFC should have the power to require an institution to accept a third party conducting an audit or investigation. This would enable the right knowledge and expertise to be applied to the audit or investigation; the third party would be approved by SFC to ensure independence from the institution under investigation.

216. These powers were not taken forward in the Bill. The SFC aims to work collaboratively with institutions, where possible and appropriate to do so; the power to require an audit is a move towards a more interventionist SFC, considered further below. Secondly, Audit Scotland already has powers to inspect the accounts and accounting records of any fundable body under section 28 of the 2005 Act. Finally, section 8 of the Bill amends section 15 of the 2005 Act to give the SFC

the power to make recommendations to a fundable body (and the power to publish them, if appropriate). Recommendations could include matters in relation to audit, including seeking third party input or advice.

Enforcement and intervention action

217. Consideration was given as to whether the SFC should have stronger enforcement and intervention powers, for example: serving enforcement notices; public reporting; removing, suspending or appointing officers or governing body members; restricting activities; directing asset transfers; imposing monetary penalties where appropriate; monitoring arrangements for student transfers following an adverse event.

218. These powers might help the SFC to have proportionate ways to help address issues when they arise, particularly where institutions were not actively addressing them. These powers would only be expected to be used in exceptional circumstances.

219. However, this would be quite a major step towards the SFC being a regulator, rather than primarily a funder, of the sector. This was not progressed in this Bill because:

- it would stray significantly beyond the terms of the consultation;
- it would be a fundamental change to SFC's role which requires more careful consideration (and consultation);
- of the need to strike the right balance between maintaining suitable degrees of institutional autonomy and internal accountability;
- it could deter good candidates from coming forward for appointment into governing body roles;
- it would require an appropriate sanctions regime to be developed, as additional powers for the SFC without sanctions would be unlikely to remedy situations where a significant issues was an institution was failing to comply with existing legislation; and
- sanctions involving financial penalties could have the net effect of removing money from the system, potentially making matters worse.

220. Furthermore, the existing and new powers in the 2005 Act, combined with a review of the governance apparatus (appointment letters, framework documents etc), are anticipated to be more effective. For example, the terms of board appointment letters might set out more clearly the grounds for removal of a board member and could be explicit that the SFC has the power to escalate concerns to the Scottish Ministers.

Consent to certain matters

221. Consideration was given as to whether the fundable bodies should be under a duty to seek the consent of the SFC to certain constitutional changes or to taking forward compulsory redundancies. This was not progressed, not least because of concerns about safeguarding the independence of institutions and their need to have freedom to take action to meet their good governance and financial obligations. (Note that it is a requirement of the Scottish Public Finance

Manual for public bodies to seek approval for voluntary redundancy schemes because these tend to be more expensive than compulsory redundancies.)

222. However, section 7 of the Bill inserts a new section 14B into the 2005 Act which gives the Scottish Ministers the power to set out in regulations the matters to be notified by fundable bodies to SFC. This means that the SFC could be made aware of certain matters earlier than they might otherwise be. For example, if the bodies were placed under a duty to notify the SFC of plans to make compulsory redundancies in advance of any action taken to implement them, then the SFC would have the chance to assist or intervene before any redundancies were made, perhaps helping to find alternative solutions and ensuring they were a last resort.

The name of the SFC

223. Consideration was given as to whether the Bill should make provision for a change of name for the SFC. This question was not asked by the Scottish Government in the public consultation or in other stakeholder engagement; nor was it raised in responses.

224. There is no need to do this. The name of the body has no legal effect or limit on its functions. Furthermore, the body can be known administratively by a different name from its statutory name. This is presently the case with the SFC, which is more accurately the Scottish Further and Higher Education Funding Council in the 2005 Act. Finally, the expanded remit and new functions of the SFC remain broadly in the territory of further education, so its current long name remains appropriate.

225. However, a change of name might better reflect this next stage of SFC's identity and evolution and have symbolic benefit. Stakeholders might consider that a change of name was justified or expected in relation to its expanded functions. Symbolically, it helps to demonstrate strategic and cultural change.

226. As there has been no discussion with stakeholders on this (nor was it an explicit question in the consultation), nor any legal necessity, the Scottish Government has decided that any such name change should be taken forward administratively.

Designation of fundable bodies

227. A few stakeholders wanted to see more flexibility in legislation to allow merged tertiary institutions (colleges and universities coming together into a new type of institution). This is a misunderstanding of the 2005 Act: there is no requirement for fundable further education to be delivered exclusively by colleges, or fundable higher education to be delivered by HEIs. Section 13 of the Bill tidies up schedule 2 of the 2005 Act, not least to help avoid misunderstandings around its effect.

Understanding of the 2005 Act

228. Through consultation and stakeholder engagement it has become apparent that there are some misunderstandings about the 2005 Act and what it allows or prohibits, see paragraph 227 above, for example. The provision in the Bill responds to genuine need for change in the 2005 Act. There have been a number of suggestions and requests which could be taken forward under

This document relates to the Tertiary Education and Training (Funding and Governance) (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 5 February 2025

existing 2005 Act powers or administratively. The Scottish Government intends to work with stakeholders to improve understanding of the existing 2005 Act powers and limitations in parallel with the Scottish Parliament's consideration of the Bill.

PART 2: GOVERNANCE OF THE COUNCIL

Policy objectives

229. The policy objectives of Part 2 of the Bill are to:

- address issues with current provision around governance of the SFC, in particular the appointment and reappointment of members of the Council;
- make enhancements, in particular new powers for the SFC to co-opt members; and
- ensure the governance arrangements support the expanded remit and functions of the SFC.

Appointment of members of the Council

Background

230. The Council is made up of members, including a Chair, who are appointed by the Scottish Ministers. In practice, these members operate as a board of management and have collective responsibility for the proper conduct of the SFC's affairs. The members are not appointed as representatives of individual organisations.

231. The 2005 Act specifies the length of initial appointment term and number of reappointments for members. The members (including the Chair) may be appointed for a single term of up to four years with the option for Ministers to extend that appointment for a single further term of up to four years. This does not provide sufficient flexibility to allow for effective succession planning, nor to respond quickly to pressures or temporary challenges.

232. The consultation invited views on making changes to the governance arrangements of the SFC, including on removing the time limit on appointments, restriction on reappointment.

Policy objective

233. The policy objective is to address issues with current arrangements for the reappointment of members of the Council so that appointment and reappointment rounds can be conducted more effectively and the SFC can benefit from better succession planning.

Specific provision

234. Section 14 of the Bill amends paragraph 2 of schedule 1 of the 2005 Act to provide for more flexibility around reappointment of Council members. Firstly, there is no limit to the number of times that a member can be reappointed. Secondly, there is flexibility on the duration of the member's reappointment. Thirdly, clarification is made that a member's appointment does not need to have come to an end before the appointment can be made.

235. The Ethical Standards Commissioner's Code of Practice for Ministerial Appointments to Public Bodies ("the Code") will continue to apply. The Code as currently in force limits the maximum duration of appointment to no more than eight years. The Code also requires the Scottish Ministers to be satisfied that the appointee's performance has been effective and the

appointment continues to meet the needs of the Board. There is no requirement in the Code for a minimum term of appointment or any limit on the number of reappointments.

236. The Code requires the Scottish Ministers to make effective arrangements for succession planning and determine the period for which an appointment, reappointment or extension to an appointment term is to be made based on the needs of the Board or body.

237. Challenges with the 2005 Act were evident during an appointment round for the Council which concluded in June 2024. For a variety of reasons, the conclusion of the appointment round was delayed, which would have resulted in the Council falling below the statutory minimum number of members. It would have been preferable to extend the appointment of the current experienced members to allow time for the recruitment and onboarding of new members. However, as these members were already on their single second period of appointment permitted under the 2005 Act, new interim members were appointed, under a variation of the Code to allow appointment without open recruitment. The use of interim appointments has been necessary on several occasions previously.

238. Around half of consultation responses who answered the question (question 5) wished to see reform of SFC governance arrangements to remove time limits on Board appointments and restriction on reappointments. This included 48% who supported removal of restrictions in relation to both term and reappointments, and 6% for term or reappointment only. These responses took the view that greater flexibility was needed to enable the SFC to adapt quickly to challenges and to allow for more effective and agile succession planning. Almost all of the remaining responses (46%) ticked the box indicating they a different suggestion, although a specific alternative was not always provided in their comments. Some respondents, including those identifying as individual educators, training providers, fundable education bodies, and other public sector, did not support potential changes and thought the current arrangements should remain in place.

Alternative approaches

239. Various options were considered, and consulted upon, including removing the restrictions in either length of appointment or reappointment, or on both.

240. The response to the consultation showed support for removing restrictions in relation to both term and reappointments. It was argued that this would allow for greater flexibility and would ensure that the Council has the skills, knowledge and experience required to understand a complex, changing landscape. Having this right mix of skills, knowledge and experience was also seen by respondents as key for the effectiveness of the Council as this would provide the ability to adapt quickly to challenges and allow for more effective and agile succession planning.

241. However, several respondents raised concerns that Council appointments of too long a duration could stifle innovation and suggested that there should be sufficiently frequent turnover of membership. There were also suggestions relating to the need for regular training for Council members, as well as evaluating the effectiveness of the Council. Some respondents overlooked the requirements of the Code which limits the maximum appointment term for a member to eight years.

242. Having considered the consultation responses, the 2005 Act requirement limiting the initial period of appointment to a maximum of four years is unchanged.

Skills and experience of members of the Council

Background

243. The Council is made up of members, including a Chair, who are appointed by the Scottish Ministers. In practice, these members operate as a board of management and have collective responsibility for the proper conduct of the SFC's affairs. The members are not appointed as representatives of individual organisations.

244. The 2005 Act sets out the specific skills, knowledge and experience that Scottish Ministers are to consider when appointing new members. The new functions conferred upon the SFC in this Bill in respect of NTPs, apprenticeships and work-based learning will significantly expand the SFC's remit. The Council needs to include people with the right skills, knowledge and experience to oversee these new responsibilities.

245. The consultation invited views on making changes to the governance arrangements of the SFC, including updating the skills, knowledge and experience for new members.

Policy objective

246. The policy objective is to ensure the Council has members with relevant skills and experience, including with regard to its new functions.

Specific provision

247. Paragraph 3 of schedule 1 of the 2005 Act sets out the specific skills, knowledge and experience that Scottish Ministers are to consider when appointing new members. These are primarily related to the provision of fundable further or higher education both past and current; industrial, commercial or financial matters; and both current and past research.

248. Section 15(2)(a) of the Bill amends paragraph 3 of schedule 1 of the 2005 Act to expand the matters to which the Scottish Ministers are to have regard in appointing members of the Council. The Scottish Ministers are additionally to have regard to the desirability of including persons who have experience of, and shown capacity in, the provision of Scottish apprenticeships or work-based learning.

249. Section 15(2)(b) amends paragraph 3 of schedule 1 of the 2005 Act to remove the requirement for the Scottish Ministers to have regard to appointing members who are currently engaged in, or carry responsibility for the provision of, fundable further education or fundable higher education. Similarly, the requirement for the Scottish Ministers to have regard to appointing members who are currently engaged in research or the application of research are also removed. Although appointing members is at the discretion of Ministers and the duty is to "have regard", some stakeholders read current provision as implying that the Council "should" include some members currently engaged in the provision of, or having responsibility for, these activities.

250. A significant number of current Council members are actively employed or engaged in the college or higher education sectors, potentially creating conflicts of interest. A key role of the SFC, as a grant awarding body, is to approve funding allocations to the college and higher education sectors. This presents two related issues: firstly, there could be a perceived conflict of interest; and, secondly, where there is an identified conflict, members recuse themselves, which can create issues with quorum and delivery of business. The Bill signifies a shift away from an emphasis on appointing Council members who are actively employed or engaged in the college or higher education sectors, whilst retaining flexibility to ensure the presence of relevant expertise.

251. As the requirement on the Scottish Ministers is to have regard to these matters, they are not obliged to ensure representation of people with any of these skills or experiences; equally, they may appoint members who have skills and experiences not listed in paragraph 3 of schedule 1 of the 2005 Act. Ultimately, the decision on who to appoint is at the discretion of the Scottish Ministers, as before.

Alternative approaches

252. Consideration was given as to whether the additional skills and experience to which the Scottish Ministers should have regard should extend beyond Scottish apprenticeships and work-based learning.

253. Consultation respondents made specific suggestions. Several respondents looked beyond their own sector or interests. For example, respondents from third sector/charitable organisations and fundable education bodies supported employer and industry representation on the Council. Similarly, student or learner involvement was suggested by respondents from sector and business representative bodies, third sector and charities, local authorities and schools and fundable education bodies.

254. Suggestions included:

- a) knowledge of work-based learning, vocational and apprenticeship pathways, apprenticeship models and frameworks, and models of provision;
- b) experience of working with employers and apprentices, direct experience of being an apprentice or delivering apprenticeships;
- c) understanding how training providers operate;
- d) understanding commissioning, funding and financial management in vocational training, and the Apprenticeship Levy;
- e) skills in cost-benefit analysis, evaluation, data collection and analysis, performance management and reporting, and data driven decision-making;
- f) awareness of education and skills frameworks; and
- g) understanding current and future skills needs, workforce development issues, labour market and demographics.

255. In relation to the skills, knowledge and experience of Council members, there were respondents who considered that it was important that Council members had an understanding of the structure, delivery and value of apprenticeship and work-based learning. Comments were also

made on the need of parity of esteem between vocational learning and higher education and the need for a balance between industry and academia on the Council.

256. Diversity and inclusion were also highlighted by respondents as areas that should be considered and understood by Council members. Respondents also wished to ensure that the decision-making processes by the Council included input from a diversity of stakeholder interests.

257. These are points that merit consideration. The approach taken in the Bill is to make the essential changes in respect of the expanded remit of the SFC and the shifting emphasis around conflict-of-interest. The other matters raised by stakeholders will be considered administratively as the approach to Council appointments is refreshed as part of the transition.

258. An alternative approach was considered to managing conflicts-of-interest for Council members. This involved restricting the number of members serving on the Board whilst currently engaged with the college or university sectors. However, this was considered problematic for a number of reasons. Firstly, it would not eliminate the perception of conflict-of-interest. Secondly, depending on numbers, it might not resolve the issues with quorum. Thirdly, setting such a restriction on the face of the legislation would limit the Scottish Ministers' discretion. On balance, the approach to managing conflict-of-interest is best determined and set out administratively, through documents relating to the appointment process and letters of appointment.

Co-opted members of the Council

Background

259. In the SFC's response to the consultation, it requested the ability to co-opt members for a short period of time to allow the Council to respond quickly to pressures or temporary challenges.

Policy objective

260. The Scottish Government wants to ensure that the SFC can be adaptable and flexible to changes in policy, circumstances and emerging issues and challenges. The Scottish Government agrees with the SFC that co-opted members could assist them with this.

Specific provision

261. Section 16 inserts new paragraph 2A into schedule 1 of the 2005 Act. This gives the SFC the ability to appoint co-opted members, with approval from the Scottish Ministers. This is intended to allow the SFC to invite individuals who have particular skills, knowledge and experience to serve as a new type of member on a temporary basis and provide advice to the SFC on issues outside the remit of its standard committees.

262. Co-opted members can provide advice to the SFC on issues outside the remit of its standard committees. Examples may include cross-cutting issues such as support on digital transformation or specialised advice on net zero actions. Co-opted members may also be useful for some transitional activities or time-limited such as appointing a change management expert to oversee the merger or restructuring of institutions or programmes. This approach allows for a measure of

impartiality and enables interrogation by the Council as a whole. A co-opted member may also provide a useful point of challenge.

263. New paragraph 2A(1) requires the SFC to seek the approval of the Scottish Ministers. The process for appointment of co-opted members is intended to be similar to the appointment of the chief executive of SFC, in that the SFC would be expected to provide a business case to the Scottish Ministers as part of the approval process. Co-opted members are not Ministerial public appointments and are therefore capable of being effected much more quickly²⁸.

264. New paragraph 2A(2) limits the number of co-opted members to a maximum of two at any given time. This is principally to ensure that the balance of the Council is maintained. Paragraph 2(1)(c) of schedule 1 of the 2005 Act requires there to be a minimum of 11 and a maximum of 14 members of the Board in post at any given time. (Note that these figures exclude co-opted members, by virtue of new paragraph 2A(8).) Two co-opted members may be needed at the same time, for example to advise on different concurrent challenges, but more than two would seem excessive.

265. New paragraph 2A(3) allows the SFC to set the terms and conditions for co-opted members. This flexibility may be needed in the case where unusual or premium skills are required. However, the expectation, as can be set out in the Financial Memorandum, is that co-opted members would normally be remunerated at the same day rate as Ministerially appointed members.

266. New paragraph 2A(4) limits the term of appointment to period of up to one year. Note that the same co-opted member can be reappointed under subparagraph (5). This might be important, for example, for continuity in a multi-year IT transformation programme.

267. New paragraph 2A(5) allows flexibility to reappoint a co-opted member before their current term of appointment has expired, ensuring continuity where needed.

268. New paragraph 2A(6) means that co-opted members cannot vote; their role is to advise and challenge, but not to decide, on relevant matters. Paragraph 2A(6)(a) allows the SFC to determine how and when a co-opted member participates in proceedings of the Council. In some cases, it may be appropriate for the co-opted member to be present at every Council meeting for the full duration of the meeting. In other cases, they may be called into some Council meetings and/or for particular agenda items only.

269. New paragraph 2A(7) disqualifies a person from being a co-opted member on the same grounds as a person is disqualified from being a Ministerially appointed member, as set out in paragraph 4 of schedule 1 to the 2005 Act. New paragraph 2A(8) disapplies all the other provisions of schedule 1 in respect of co-opted members, as they do not have the same role as Ministerially appointed members.

²⁸ Section 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 applies to appointments, or recommendations for appointment, made by the Scottish Ministers, but does not include approvals.

Alternative approaches

270. Consideration was given as to whether existing or new committees (which the SFC has the power to create under paragraph 13 of schedule 1 to the 2005 Act) could provide the equivalent support. Having co-opted members was deemed more appropriate as they could be recruited more quickly and provide direct advice and challenge to the Council, including at meetings of the Council as needed.

Apprenticeship committee

Background

271. The SFC has two statutory committees under the 2005 Act: a skills committee, known as the Skills, Enhancement, Access and Learning (SEAL) Committee, established under paragraph 11 of schedule 1; and a research committee established under paragraph 12 of schedule 1. Paragraph 13 gives the SFC powers to establish other committees for any purposes relating to its functions. Four further committees have been established covering: finance; audit and risk; capital; and remuneration.

Policy objective

272. The policy objective in establishing an apprenticeship committee is to provide the SFC with the right structures to manage its new apprenticeship functions.

Specific provision

273. Section 17 inserts a new paragraph 12A in schedule 1 of the 2005 Act to place the SFC under a duty to establish and maintain a new apprenticeship committee. Paragraph 12A follows a similar structure to paragraph 11 (the skills committee) and paragraph 12 (the research committee). The Scottish Ministers will set the strategic policy outcomes as part of providing grant funding to the SFC. The Financial Memorandum for the Bill anticipates the apprenticeship committee comprising 12 members; at present, the skills committee comprises 11.

274. The precise functions of the apprenticeship committee are expected to evolve but it is anticipated that the committee would be responsible for preparing Scottish apprenticeship frameworks. This apprenticeship committee would absorb at least some of the functions and responsibilities of various of the bodies and groups in the current apprenticeships landscape, such as the Standards and Frameworks Group and the Apprenticeships Approvals Group. The Scottish Ministers, in respect of their powers to issue guidance about the committee, and the SFC, in respect of its duties under new paragraph 12A of schedule 1 of the 2005 Act, will engage with these existing bodies and groups, as well as employers and independent training providers, to develop the detail of the new governance arrangements.

Alternative approaches

275. The 2005 Act gives the SFC the power to establish other committees for any purposes relating to its functions. Consideration was given as to whether this provision was sufficient; i.e. that the SFC could choose to establish an apprenticeship committee. This would also allow for the SFC to dissolve the apprenticeship committee at any point.

276. On balance, the Scottish Government considered that the new functions being conferred upon the SFC were sufficiently significant that establishing an apprenticeship committee via the Bill was necessary. It will play a central role in the new arrangements, superseding some of the existing groups. The Bill gives the SFC wide discretion on the functions of the committee.

PART 3: STUDENT SUPPORT

Background

Student support

277. Student support is a collective term that includes payment to cover the tuition fee costs of the course, bursary support, tuition fee loans (where relevant) and maintenance loans.

278. Higher education (HE) student support is the funding provided to help students access higher education at university or college. The Student Awards Agency Scotland (SAAS), an executive agency of the Scottish Ministers, has responsibility for provision of all HE student support across both universities and colleges, and students interact directly with SAAS. It is provided under the Student Support (Scotland) Regulations 2022 (“the Student Support Regulations”) made under powers at section 73 of the 1980 Act and includes:

- “allowances” – grant funding for living costs and to cover tuition (and sometimes other) fees; and
- “student loans” - loan funding²⁹ for living costs and to cover tuition fees for students eligible for this support and where the costs would not otherwise be covered by an allowance.

279. Further education (FE) student support is the grant funding provided to college students undertaking a course of further education to help with living costs and other expenses administered by the SFC. The SFC administers the funding for FE student support to colleges. FE student support is then provided by each college to their students. The Scottish Ministers direct the SFC and regional strategic bodies to administer and pay grants on their behalf. The direction-making power is contained in section 73ZA of the 1980 Act.

Apprentices and student support

280. With regard to the current apprenticeship arrangements:

- Modern apprentices are in paid employment and not entitled to any form of student support.
- Graduate apprentices are in paid employment and not eligible for living-cost support. However, they are eligible for tuition fee funding (applying via SAAS).
- Foundation apprentices are not eligible for FE student support. They can obtain Education Maintenance Allowance, if they are eligible, from their education authority; from the education authority, rather than the college, because they are still at school.

Private providers

281. A number of students undertake further and higher education courses run by private providers based in Scotland or in rUK; these are education providers that are not fundable post-16

²⁹ Powers at section 73A of the 1980 Act are relied upon for delegating the administration of student loans to the Student Loans Company (SLC).

education bodies in terms of the 2005 Act. The fundable bodies in the 2005 Act receive teaching grant (or provision funding) from the SFC; private providers do not.

282. SAAS provides funding to HE students studying at approved (or designated) private providers. This has been mainly, but not exclusively, in respect of creative courses such as dance, musical theatre and drama.

283. The SFC funds student support for students undertaking FE courses at private providers. Private providers offer FE courses on a range of subjects including veterinary science, dentistry, personal training, hairdressing, music and greenkeeping.

Designation of private providers

284. The practice of designation has evolved from the fact that private providers generally offered a type of provision that was not commonly delivered by publicly-funded colleges or universities.

285. The Student Support Regulations enable the Scottish Ministers to determine that a course of education is designated for the purposes of student loans. This Bill makes provision to enable this designation process for private providers to be clearly set out in regulations, enabling greater transparency in the process.

286. Section 73(f) of the 1980 Act provides that regulations can be made that enable the Scottish Ministers to pay allowances or loans to or in respect of persons undertaking or who have undertaken “courses of education”. “Allowances” are provided for in Part 2 of the Student Support Regulations and can include tuition fee payments and bursary support for students. “Course of education” is not defined in either the Student Support Regulations or in the 1980 Act, providing the Scottish Ministers with broad discretion on the courses that can attract tuition fee allowances and bursary funding.

287. Courses that attract loan funding are however more tightly regulated. Regulation 13 of the 2022 Regulations sets out when a course is designated for the purposes of student loans (as defined by regulation 11(2) of the Student Support Regulations). Regulation 13(1) requires that the course be contained in schedule 4 of the Student Support Regulations, of at least one academic year’s duration and wholly provided by an educational institution or institutions in the UK maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the UK. It must also, where it is a postgraduate diploma or masters, be a full-time course or a part-time course wholly provided by a Scottish higher education institution. For any other course, it must be a full-time or sandwich course. Despite these statutory requirements in regulation 13, paragraph (4) contains a designation power for Scottish Ministers to determine that a course is “designated for the purposes of regulation 11(2) by reference to that particular course of education or to a particular category of courses of education”.

288. Scottish-domiciled students entitled to “home fee” status who are studying at rUK institutions are also eligible to apply for a student loan for tuition fees. This is because, although SAAS pays the tuition fees for “home fee” students studying at Scottish institutions, SAAS does

not pay tuition fees for students who would be “home fee” students if studying in Scotland but who have chosen to study at an rUK institution. Instead, these students are eligible for a “student loan for tuition fees” under regulation 12 of the Student Support Regulations. Regulation 14 (designated courses for student loans for tuition fees for rUK institutions) mirrors much of the course requirements set out in regulation 13 and importantly contains, at regulation 14(2), the power of Scottish Ministers to “determine that the course is designated for the purposes of regulation 12(2) by reference to that particular course of education or to a particular category of courses of education”.

Policy objectives

289. Part 3 of the Bill aims to put the designation of private providers for the purposes of student support on a clearer statutory footing. This is to enable greater transparency in the designation process which until now has been entirely administrative. The Bill allows the Scottish Ministers to make regulations that will set out the process for applying for designation, as well as the process the Scottish Ministers are to follow when making a designation. The Bill also contains provision to enable the Scottish Ministers to transfer or delegate their functions in relation to student support for those studying at the designated private providers to the SFC or other bodies.

290. The effect of designation is that the provider is then treated in the same way as a fundable body for the purposes of considering the eligibility of students at that private provider for student support. (Note that tuition fee support given to private providers is slightly lower than that given to fundable bodies, and no teaching grant is given.)

Specific provision

Designation of private providers of higher and further education

291. Section 18 of the Bill gives the Scottish Ministers a power to designate a private provider of further or higher education on application from that provider under a new section 74A in the 1980 Act. The effect of a designation is that the private provider is then treated in the same way as a fundable body for the purposes of considering the eligibility of students at that private provider for student support. The Bill puts existing custom and practice around private HE provider designation effected by SAAS onto a clearer legislative footing. New section 74A(4) gives the Scottish Ministers powers to set out the process of applying for designation and the process of designating providers in regulations. New section 74A(4) also gives the Scottish Ministers a power to charge private providers a fee to apply for designation to cover the cost of administering the processing of their application.

292. In respect of rUK private providers where Scottish students want to study, it is the policy intention that the regulations made under section 74A(4) would provide that they would be deemed to be designated if they have been approved to receive public funds by the Office for Students for England, the Medr (the Commission for Tertiary Education and Research) for Wales, or the Department for the Economy in Northern Ireland. They would not need to apply for formal designation from the Scottish Ministers and there would be minimal work for SAAS in recognising them. There is no intention to charge a fee to those private providers.

293. The definitions of further and higher education for new section 74A of the 1980 Act tie back to those in the 1992 Act; these broadly align with the definitions of fundable further and higher education in section 5 of the 2005 Act. The Scottish Ministers can amend these definitions (in both Acts) by way of subordinate legislation.

294. The effect of designation is that the private provider is eligible to receive tuition fee contributions from public funds and for students undertaking courses of education at those providers to be eligible for student support.

Directions relating to student support

295. Section 73ZA of the 1980 Act permits the Scottish Ministers to direct the SFC or any other body or person to administer sums provided by Scottish Ministers for the purposes referred to in section 73(a), (c) or (f) of the 1980 Act, so long as it is for student support for courses of education provided by post-16 education bodies. Section 19 of the Bill extends this power to cover student support for students undertaking courses of education provided by a body designated under the new section 74A of the 1980 Act.

Transfer or delegation of functions relating to student support

296. Section 73A of the 1980 Act gives a power to the Scottish Ministers to transfer or delegate functions relating to the funding of student support. Section 73A of the 1980 Act (inserted by section 29 of the Teaching and Higher Education Act 1998) allows the transfer or delegation of the Scottish Ministers' functions where these have been set out in regulations made under section 73(f)³⁰. These regulations relate to support for students undertaking, or who have undertaken, courses of education. This transfer can be done through a Ministerial determination under section 73A(1) or by way of delegation arrangements under section 73A(3)³¹. Section 20 of the Bill extends this power to cover student support funding for students undertaking courses of education provided by a body designated under the new section 74A of the 1980 Act.

297. Both sections 19 and 20 allow for flexibility in the future evolution of the responsibilities for the administration of student support.

Alternative approaches

298. The Scottish Government considered whether the above powers should be limited to higher education providers only (as is the case in the Higher Education and Research Act 2017 for England) or extend the powers to further education providers.

299. In rUK, further education courses are not eligible for student support (regardless of whether they are provided by private providers or publicly-funded colleges). However, further education students in Scotland are entitled to some forms of student support and there is also a desire for this

³⁰ This is mainly relied upon for student loans. It is the Student Support Regulations that govern the operation of the support; the main points are repeated in the determination for ease for the reader.

³¹ These arrangements are currently relied upon for the Student Loans Company to administer some aspects of student loans on behalf of the Scottish Ministers.

provision to allow for future policy development and evolution of further and higher education provision. Therefore, the power in the Bill covers both further and higher education.

Consultation

300. These Bill provisions are technical and clarificatory provisions to the enabling powers in the 1980 Act which allow for regulations to be made relating to student support. They clarify the legal basis for existing practice. These provisions were not the subject of public consultation. The Scottish Government engaged extensively with SAAS in the development of these provisions.

301. The procedure and fees for designation would be set out in regulations and these would be the subject of consultation and impact assessment.

PART 4: FINAL PROVISIONS

302. This part of the Bill includes provision on the interpretation, short title and commencement of the Bill. An amendment to the 2005 Act is made in order to apply the appropriate parliamentary procedure to regulations made under provisions inserted by the Bill.

303. The Bill also gives Scottish Ministers power to make any incidental, supplemental, 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.

304. Subject to the will of the Scottish Parliament and the next Scottish Administration, the expectation of the current Scottish Government is that most of the operative provisions of the Bill would be commenced from 2026-27. The financial modelling in support of the Financial Memorandum assumes a commencement date of 1 October 2026.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

305. An Equality Impact Assessment (EQIA) and Fairer Scotland Duty assessment have been carried out on the provisions of the Bill.

306. The Bill is expected to enable significant positive changes to the efficiency and effectiveness of the delivery of NTPs, apprenticeships and work-based learning. The Bill, of itself, does not have an impact on users or those who engage with, and form part of, the post-school education and skills system such as learners, employers, institutions, and other training providers. The Bill provisions offer potential opportunities to improve outcomes for people with protected characteristics through their participation in tertiary education and training as part of their lifelong learning journey. The EQIA sets out the potential for some positive impacts for these groups from the provision in the Bill, through: improving access to learning and training; greater attention to their needs when the SFC is conducting efficiency studies; improved or targeted guidance; greater regard to the needs and interests of learners; and a shift in emphasis in terms of the appointment of members of the Council. The implementation of the Bill will seek to maximise the positive impacts and this will be subject to further assessment to ensure this is the case.

307. The available equalities and fairer Scotland evidence was considered during the development of the provisions in the Bill. As a result of these considerations, provisions strengthening the SFC's functions in respect of the needs and interests of learners were included (at sections 8 and 11 of the Bill). The approach taken in Part 2 of the Bill in respect of the governance of the SFC is to make the essential changes in respect of the SFC's expanded remit. The other matters raised by stakeholders will be considered administratively, for example as the approach to appointment of members of the SFC is refreshed as part of the transition. Otherwise, no other changes to the Bill provisions were considered necessary, as the assessment of the available evidence suggests that there will be no impact on those who experience poverty or disadvantage. There will be further consultation on the development of subordinate legislation and on the detail of implementation, subject to the will of the Scottish Parliament and the decisions of a future Scottish Administration.

Human rights

308. The Scottish Government is satisfied that the provisions in the Bill are consistent with the European Convention on Human Rights. In particular, the Government considers the provisions of the Bill have a positive contribution to the realisation of the right to education (Article 2 of Protocol 1).

309. Article 2 of Protocol 1 provides that “no person shall be denied a right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions”.

310. The positive right to education has been established as extending to tertiary education. The European Court of Human Rights has also held that it is implicit in the right to education that “the

individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies...completed”³².

311. The Bill provisions are intended to further support the delivery and availability of tertiary education and training, including vocational education, in Scotland. This builds on the existing statutory framework for tertiary education and is intended to bring more coherency to, and recognition of, a broader spectrum of post-school learning.

312. In particular the Bill puts work-based learning and Scottish apprenticeships on a statutory footing. Currently, the majority of this type of education and training is provided in Scotland under non-statutory arrangements. Creating this new legislative framework provides greater recognition and certainty of the range of education and training available in Scotland.

313. The Bill (at section 2) amends section 3 of the 2005 Act to place responsibility on the SFC to secure the coherent delivery of the new functions of work-based learning and apprenticeships, as a whole, alongside the further and higher education and research (at institutions) it already funds. Section 2 of the Bill also amends section 4 of the 2005 Act by putting a duty on the Scottish Ministers, equivalent to the existing duty in respect of further and higher education, to provide such support as they determine appropriate, including by way of grants, for securing the delivery of work-based learning and apprenticeships.

314. The Bill also provides for statutory recognition for the first time in Scotland of the completion of a Scottish apprenticeship. Under new section 12H of the 2005 Act, inserted by section 4 of the Bill, the SFC will have the power to issue a Scottish apprenticeship certificate, which provides official recognition of the achievements of apprentices.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

315. The Cabinet Secretary for Education and Skills has made a statement in writing that, in her view, the provisions of the Bill are compatible with the UNCRC requirements.

Island communities

316. An Island Communities Impact Assessment (ICIA) has been carried out on the provisions of the Bill. The provisions in the Bill are intended to benefit all communities in Scotland and are not likely to have a significant differential impact on island communities.

317. The Bill, of itself, does not have an impact on those who engage with and form part of the post-school education and skills system such as learners, employers, institutions, and other training providers. It will be how the statutory functions are exercised (which will be the subject of future impact assessments) which will be significant.

³² [Sahin v Turkey \(2007\) 44 EHRR 5.](#)

318. The Bill enables the Scottish Ministers to secure NTP provision that can be targeted locally or regionally, but otherwise it is not regional or area-based, nor is it aimed at particular communities.

319. Any significant changes to policy and practice enabled by the Bill will be assessed and an ICIA will be carried out where appropriate.

Local government

320. The Scottish Government considers that this Bill does not have a significant impact on local government. The Bill affects local government as potential employers of apprentices but the Bill does not distinguish local government from any other type of employer. The costs to local government are set out in the Financial Memorandum and are negligible: there may be marginal impacts from the changes to arrangements for issuing apprenticeship certificates under Part 1 of the Bill and for those councils with departments designated as private providers under Part 3 of the Bill.

321. Local government is responsible for provision of school education and some school pupils access foundation apprenticeships. The Bill makes provision for work-based learning (section 5) under which future arrangements resembling foundation apprenticeships would be made. The Scottish Government and the SFC will consult and engage with local government, as well as with other employers, in relation to arrangements for securing the delivery of work-based learning.

Sustainable development

322. A Strategic Environmental Assessment pre-screening report has been completed on the provisions of the Bill. The Scottish Government considers that the Bill is likely to have minimal environmental effects.

323. There are two potential areas where the Bill could have an impact: firstly, in the way that policies and programmes are delivered; and secondly, on the environmental impact of the operation of the public bodies themselves.

324. Firstly, the Bill establishes a statutory framework for apprenticeships in Scotland and this is anticipated to facilitate different, more transparent ways of funding apprenticeships. This may, for example, result in more or different apprenticeships that have a focus on achieving net zero ambitions. Otherwise, provisions within the Bill are not expected to result in any significant environmental impacts.

325. Secondly, as the Bill makes provision which enables the SFC to take on functions which previously rested with SDS; this means that the SFC will become a larger organisation with possible consequences for its organisational carbon footprint.

326. The SFC plays a key role in supporting the delivery of the Scottish Government's target to reduce carbon emissions to net zero by 2045. The SFC published its [Net Zero & Sustainability Framework for Action](#) in November 2022. The SFC's corresponding Net Zero Delivery Plan, which outlines priorities and timescales, was finalised in December 2023. The SFC provides

annual updates on progress and actions to the Council. The SFC, as an organisation, aims to be net zero by 2045.

327. The Bill does not affect the SFC's commitment or actions to achieving its net zero ambitions as a non-departmental public body, supporting institutions and other providers in achieving their own net zero targets, undertaking key research and innovation into sustainability and net zero, and supporting the wider Scottish economy by supporting the development of future green skills.

328. The Bill does not have a significant direct effect on the Scottish Government's sustainable development goals, aside from No. 4 Quality Education. The Bill makes changes which will enable improvements to the delivery of education and training at college and university, and through apprenticeships and work-based learning.

Data protection

329. The Scottish Government has consulted the UK Information Commissioner's Office ("ICO") in relation to data processing by the SFC under the Bill, in compliance with the requirement of article 36(4) of the UK General Data Protection Regulation.

CROWN CONSENT

330. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

331. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

This document relates to the Tertiary Education and Training (Funding and Governance) (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 5 February 2025

TERTIARY EDUCATION AND TRAINING (FUNDING AND GOVERNANCE) (SCOTLAND) BILL

POLICY MEMORANDUM

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