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TET ACT: COMMENCEMENT REGULATIONS NO. 1

Today, the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026 (Commencement No. 1) Regulations 2026 ("the Regulations") have been laid at the Scottish Parliament. Whilst these Regulations are not subject to a prescribed procedure, I thought it would be helpful to set out for the Committee the thinking behind commencing these provisions now.

The primary objective of the Tertiary Education and Training (Funding and Governance) Act 2026 ("the Act") is to enable the simplification of the funding body landscape in Scotland by consolidating funding for all provision within a single body, the Scottish Further and Higher Education and Funding Council ("the Council"). The Scottish Government is planning for this to happen on 1 April 2027.

The Regulations commence provisions to enable the Council to undertake the preparatory work required to assume its new responsibilities for securing and funding the delivery of national training programmes ("NTPs"), apprenticeships and work-based learning on 1 April 2027. The Regulations also commence provisions to enhance the governance of the Council and its oversight of the financial sustainability of colleges and universities.

Section numbers refer to the Act, unless otherwise specified.

Provision coming into force on 1 October 2026

Section 2: General duty of the Council

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

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research among those bodies. Section 2 amends this duty so that it also extends to securing the coherent provision of a high quality of apprenticeships and work-based learning.

Prior to 1 April 2027, this means the Council will be obliged to carry out preparatory activities with a view to achieving that coherency across the tertiary education and training system in order to ensure this will have full effect from 1 April 2027. The commencement of this section does not, in itself, make any immediate practical demands on the Council during the preparatory period, over and above those for which the Council was already anticipating and planning.

Preparatory activities include the establishment of the new apprenticeship committee (section 31) and it is important that the Council considers how to do this in the context of both its existing and new responsibilities from 1 April. For example, the Council will need to consider the role and functions of its statutory skills committee, alongside the apprenticeship committee, so that the Council is well-placed to comply with its broadened general duty.

Section 3: General duty of the Scottish Ministers

Section 4 of the 2005 Act places a duty on the Scottish Ministers to provide support for the provision of fundable further and higher education in Scotland by the post-16 education bodies, and the undertaking of research among the post-16 education bodies, through the exercise of their grant-making powers in the 2005 Act, and by such other means as they consider appropriate. Section 3 of the Act amends this duty so that it also extends to supporting the provision of apprenticeships and work-based learning. When exercising this duty, the Scottish Minsters must have regard to the need for the provision to address current and future economic needs.

This is being commenced on 1 October 2026 so that the Scottish Ministers can frame their support to the Council during the transition period and beyond in a way which is consistent with the Council's broadened general duty at section 3 of the 2005 Act.

Section 10: Funding for national training programmes

Section 10 gives the Scottish Ministers the power to make grants to the Council to secure the delivery of programmes of training for employment (the NTPs). The Council is responsible for administering those grants and has the power to make grants, loans or other payments to persons for the purpose of securing the delivery of NTPs. This is being commenced on 1 October 2026 in case it is needed to enable the Council to undertake necessary preparatory work; the Council will not be funding any NTPs using this power before 1 April 2027.

Section 11: Scottish apprenticeships

Section 11 puts apprenticeships in Scotland on a statutory footing and makes provision for apprenticeship agreements, apprenticeship frameworks and apprenticeship certificates. Section 11 will be commenced in phases. The Regulations commence the provision in respect of the definition of a Scottish apprenticeship and the power for the Council to prepare and publish Scottish apprenticeship frameworks to enable the Council to undertake necessary preparatory work.

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Provision allowing others to ask the Council to prepare a new apprenticeship framework or amend an existing framework is not needed for 1 April 2027 and is expected to come into force during 2027-28. From 1 April 2027, the apprenticeship committee will proactively consider new frameworks and changes to frameworks.

Provision for the Council to issue apprenticeship certificates is not needed for 1 April 2027 (existing arrangements with MA on-line will continue) and is expected to be come into force in 2029-30, allowing time for the Council to have the relevant systems and processes in place. This is expected to form part of a wider implementation of the new model for apprenticeship delivery.

Section 12: Funding for Scottish apprenticeships and work-based learning

Section 12 makes provision for the funding of Scottish apprenticeships and work-based learning, inserting new sections 12I and 12J into the 2005 Act. Section 12 is commenced to enable the Council to undertake necessary preparatory work; the Council will not be directly funding any apprenticeships or work-based learning using this power before 1 April 2027. The exception to the commencement is the insertion of section 12J(5) into the 2005 Act.

The Council's obligations to secure the delivery of apprenticeships and work-based learning (new section 12J of the 2005 Act) are engaged when the Scottish Ministers provide grants to the Council for this purpose (under new section 12I of the 2005 Act). As and when the Scottish Ministers make such grants in respect of activities undertaken before 1 April, they will attach such terms and conditions to the funding as are appropriate to this preparatory period.

Section 12J of the 2005 Act allows the Council to make payments to training providers for the purpose of the delivery of Scottish apprenticeships or work-based learning. Section 12J(5) of the 2005 Act requires the Council to determine the appropriate percentage that a training provider acting as managing agent may retain as a reasonable fee for managing delivery, and make that a condition of funding. The purpose of this is to limit managing agent fees, following concerns during the passage of the Bill about the amount of funding for modern apprenticeships being retained by managing agents.

Whilst some work has been undertaken to establish the amount of funding retained by managing agents, we do not yet have a complete picture and further work is required to establish this. We anticipate the procurement process for modern apprenticeship contracts for 2027-28 to provide some further information. It is our intention to commence this provision at the same time as wider changes to the apprenticeship model. It needs to be implemented in a considered, evidence-based way so that it has only positive effects on the operation and efficiency of apprenticeship delivery.

Section 14: Information sharing

Section 14 ensures that persons receiving funding from the Council to deliver NTPs, apprenticeships or work-based learning are required to share information with the Council about this when the Council requests it. This is commenced now in readiness for when the Council undertakes its expanded responsibilities from 1 April 2027.

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Sections 16, 17 18 and 20: Provision relevant to financial sustainability

These purpose of these sections is to ensure that the Scottish Government, the Council 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 Council.

Section 16 gives the Scottish Ministers a power to require institutions to notify the Council of certain matters to be set out in regulations. Section 16 has no effect until regulations are made; but commencing that power allows the regulations to be laid thereafter.

Section 17 expands the scope of efficiency studies to include the needs and interests of learners and to give the Council the power to make recommendations to institutions following an efficiency study.

Section 18 requires the Council to secure the monitoring of the financial sustainability of institutions.

Section 20 is commenced for the purposes of the Council preparing and publishing a report on the financial sustainability of the further and higher education sector. The Council is preparing to publish such a report imminently.

Section 21: Duty to have regard to particular matters in exercise of functions

Section 20 of the 2005 Act sets out certain matters that the Council must have regard to in exercising its statutory functions.

Section 21 amends section 20 of the 2005 Act and adds four new standalone requirements for the Council to consider, including the promotion of fair work principles. These new requirements apply across the Council's functions as a whole and are not limited to apprenticeships and work-based learning.

These changes build on work already carried out by the Council.

The Council is to have regard to the policy priorities of the Scottish Ministers in exercising its functions. These priorities inform the annual Letter of Guidance to the Council and sit behind the terms and condition of grant.

The Council is to have regard to the desirability of protecting and promoting the interests of current and prospective learners. These might be relevant factors to consider when the Council determines the terms and conditions of grant funding or in considering what capital projects to take forward. This is a change of emphasis in matters that the Council already considers.

The Council is to have regard to the desirability of protecting and promoting fair work principles of employment. The Scottish Ministers are given the power, under new subsection (11), to give directions to the Council on the definition of "fair work principles" for these purposes, and the Council is required to comply with such a direction. The Council already requires colleges and universities in receipt of funding to meet the following two Fair Work First criteria: payment of at least the real Living Wage; and provision of appropriate channels for effective workers' voice, such as trade union recognition.

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The Council is already looking to ensure that fundable post-16 education bodies aim to adopt all Fair Work First criteria from April 2027 by including these as a condition of grant. Given that these bodies will be at different stages of implementing the non-mandatory Fair Work First criteria, the Scottish Government acknowledges the need for appropriate transition periods and planning. Therefore, a fundable post-16 education body may be given a longer lead-in time to implement a specific criterion where they, in partnership with their recognised trade unions or worker representatives, can make a case to do this.

The Council is to have regard to the desirability of facilitating, encouraging and supporting knowledge exchange and innovation from the research of the post-16 education bodies. This provision is consistent with the Council's existing practice and ongoing activity to promote knowledge exchange and innovation. The Council does this through investment in initiatives such as Innovation Centres, Interface and Converge, which is designed to harness the research to deliver impact.

Section 22: Consideration of skills needs and socio-economic issues

Section 22 of the Act amends section 20 of the 2005 Act and qualifies the meaning of the term "skills needs". It expands the means of addressing such needs to include NTPs, apprenticeships or work-based learning, as well as through further education or higher education. Section 22 of the Act also qualifies the meaning of the term "issues" in section 20 of the 2005 Act in the same way.

Both of these matters ("skills needs" and "issues") are to be determined by the Council after consultation with the Scottish Ministers (as now). So the Scottish Government and the Council will continue to work closely together to ensure that policies and priorities are aligned.

These changes are important to frame the work of the Council as it prepares to take on new responsibilities on 1 April 2027. The Council needs to prepare for 2027-28 with its new responsibilities in mind and cognisant that it will be able to meet skills needs through securing the delivery of apprenticeships and work-based learning, as well as fundable further education and fundable higher education.

These changes are designed to ensure that the particular matters to which the Council is to have regard under section 20(1) of the 2005 Act remain coherent. This might result in a change of emphasis in the way that the Council exercises some of its functions; consideration of this is a natural part of preparation for expanded responsibilities.

Section 23: Consultation and collaboration with employers of apprentices and training providers

Section 22 of the 2005 Act sets out duties on the Council, where it considers appropriate, to consult and collaborate with certain persons in the exercise of its functions.

Section 23 of the Act adds to the list of persons that are to be consulted, as appropriate: persons who appear to the Council to be representative of apprentices, employers of apprentices or persons who appear to the Council to be representative of such employers, and training providers.

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The Council has already begun engaging with an expanded range of stakeholders in anticipation of assuming its new functions. This is new work for the Council but consistent with this provision. The Council is engaging directly with representatives of apprentices, employers and training providers and also indirectly through the knowledge, experience and engagement of SDS on an ongoing basis.

Sections 26, 28 and 30: Governance of the Council

Part 3 includes provision to: facilitate the reappointment of members of the Council, often referred to as the SFC Board in practice, (section 26); increase the number of members on the Council (section 28); and give the Council the power to co-opt up to two additional non-voting members (section 30). These provisions improve the governance of the Council.

Recruitment for five new Council members is currently underway, with the appointments due to be made this autumn. The increased size of the Council would allow for one or two new members to take up appointment before existing members have left. This could help with preparatory activities in the autumn.

Section 31: Apprenticeship committee

Establishing the apprenticeship committee before April 2027, which will have responsibility for advising the Council on matters concerning both apprenticeships and work-based learning, is necessary to support a smooth transition. The first set of statutory guidance on the apprenticeship committee is intended to be issued to the Council on 1 October 2026. The guidance will set out the composition of the committee, the appointment of the chair and the functions of the committee.

Provision coming into force on 1 January 2027

Sections 27 and 29: Membership and skills and experience of members of the Council

Section 27 requires that the Council membership must include at least two persons who appear to the Scottish Ministers to represent the interests of employers. Section 29 makes changes to the considerations to which the Scottish Ministers must have regard when appointing members of the Council, principally around relevant skills and experience.

Sections 27 and 29 are commenced on 1 January 2027, so that the current round of recruitment to the Council can completed before changes to the 2005 Act take effect. Of course, the recruitment round is being conducted cognisant of the forthcoming changes made by sections 27 and 29.

I hope this information is helpful to the Committee.



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