

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

[AS INTRODUCED]

CONTENTS

Section

PART 1

FUNCTIONS OF THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL

General duties of the Council and the Scottish Ministers

- 1 General duty of the Council to secure high-quality learning
- 2 General duty of the Scottish Ministers to support delivery

Funding for national training programmes

- 3 Funding for national training programmes

Scottish apprenticeships

- 4 Scottish apprenticeships

Funding for Scottish apprenticeships and work-based learning

- 5 Funding for Scottish apprenticeships and work-based learning

Information sharing

- 6 Information sharing

Notifications to the Council by post-16 education bodies

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

Recommendations to fundable bodies

- 8 Recommendations to fundable bodies

Monitoring of financial sustainability of post-16 education bodies

- 9 Financial sustainability of post-16 education bodies

Guidance by the Council to fundable bodies

- 10 Guidance to fundable bodies

Exercise of functions by the Council

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

- 12 Consideration of skills needs and socio-economic issues

Amendment of lists of fundable bodies

- 13 Amendment of lists of fundable bodies in schedule 2 of 2005 Act

PART 2

GOVERNANCE OF THE COUNCIL

Membership of the Council

- 14 Appointment of members of the Council

- 15 Skills and experience of members of the Council

Co-opted members of the Council

- 16 Co-opted members of the Council

Apprenticeship committee

- 17 Apprenticeship committee

PART 3

STUDENT SUPPORT

- 18 Designation of private providers of higher and further education

- 19 Directions relating to student support

- 20 Transfer or delegation of functions relating to student support

PART 4

FINAL PROVISIONS

- 21 Interpretation

- 22 Ancillary provision

- 23 Regulation-making powers

- 24 Commencement

- 25 Short title

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 57-EN), a Financial Memorandum (SP Bill 57-FM), a Policy
Memorandum (SP Bill 57-PM), a Delegated Powers Memorandum (SP Bill 57-DPM) and
statements on legislative competence (SP Bill 57-LC).**

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

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the functions and governance of the Scottish Further and Higher Education Funding Council; to make provision about financial support for students in further and higher education; and for connected purposes.

PART 1

FUNCTIONS OF THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL

General duties of the Council and the Scottish Ministers

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

- (1) The Further and Higher Education (Scotland) Act 2005 is modified as follows.
- (2) In section 3 (the Council: general duty), for the words from “securing” to the end substitute “securing—
 - (a) the coherent provision (as a whole) of—
 - (i) a high quality of fundable further education and fundable higher education, and
 - (ii) a high quality of Scottish apprenticeships and work-based learning, and
 - (b) the undertaking of research among the post-16 education bodies.”.

2 General duty of the Scottish Ministers to support delivery

- (1) The 2005 Act is modified as follows.
- (2) In section 4 (the Scottish Ministers: general duty), for subsections (1) and (2) substitute—
 - “(1) It is the duty of the Scottish Ministers to provide support for—
 - (a) the provision of—
 - (i) fundable further education and fundable higher education, and
 - (ii) Scottish apprenticeships and work-based learning, and

- (b) the undertaking of research among the post-16 education bodies.
- (2) The Scottish Ministers are to do so—
 - (a) by—
 - (i) making grants to the Council under sections 9, 10, 12C or 12I, and
 - (ii) such other means as they consider appropriate, and
 - (b) to such extent as they may determine.”.

Funding for national training programmes

3 Funding for national training programmes

- (1) The 2005 Act is modified as follows.
- (2) In section 11 (administration of funds), in subsection (2)(b), after “purposes” insert “, except any funds made available to it under section 12C”.
- (3) After section 12B insert—

“Funding for national training programmes

12C Grants to the Council for national training programmes

- (1) The Scottish Ministers may make grants to the Council for the purpose of securing the delivery of programmes of training for employment.
- (2) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular, require—
 - (a) that a specified programme is to be secured,
 - (b) that a programme to achieve a specified outcome is to be secured,
 - (c) that a programme directed at specified persons or specified descriptions of persons is to be secured,
 - (d) that, when making a payment to any person under section 12D, the Council is to impose a specified condition.
- (4) In subsection (3), “specified” means specified in the terms and conditions.

12D Administration of funds by the Council for national training programmes

- (1) The Council is responsible for administering all grants made to it under section 12C for the purpose of securing the delivery of programmes of training for employment.
- (2) The Council may make grants, loans or other payments to any person in respect of expenditure incurred or to be incurred by the person for the purpose of the delivery of programmes of training for employment.
- (3) A payment made under subsection (2)—
 - (a) may be subject to such terms and conditions as the Council considers it appropriate to impose, but

- (b) must be subject to any terms and conditions imposed by the Scottish Ministers by virtue of section 12C.”.

Scottish apprenticeships

4 Scottish apprenticeships

- (1) The 2005 Act is modified as follows.
(2) After section 12D (as inserted by section 3(3)) insert—

“Scottish apprenticeships

12E Definition of Scottish apprenticeship

- (1) For the purposes of this Part, a Scottish apprenticeship means an arrangement where—
- (a) an apprentice works for a person (“the employer”) for reward in an occupation or activity included in a Scottish apprenticeship framework,
 - (b) the apprentice receives training to meet the relevant requirements specified in a Scottish apprenticeship framework,
 - (c) there is an apprenticeship agreement in place between the apprentice and the employer, and
 - (d) any other criteria set out in regulations made by the Scottish Ministers are satisfied.
- (2) The Scottish Ministers may by regulations modify the definition of a Scottish apprenticeship in subsection (1).
- (3) In subsection (1), an “apprenticeship agreement” means an agreement which provides for an apprentice to receive training in order to assist the apprentice to meet the relevant requirements specified in an apprenticeship framework.

12F Scottish apprenticeship frameworks

- (1) The Council may prepare and publish Scottish apprenticeship frameworks.
- (2) A framework is to set out the relevant requirements for a Scottish apprenticeship in respect of different occupations or activities, including—
- (a) the required standards or qualifications to be achieved by apprentices during an apprenticeship, and
 - (b) the required types or amount of training.
- (3) The Council may amend or revoke a Scottish apprenticeship framework.
- (4) The Scottish Ministers may by regulations make further provision about—
- (a) the requirements for Scottish apprenticeships which are to be specified in a framework, and
 - (b) the process to be followed by the Council in preparing, publishing, amending and revoking frameworks.

12G Requests for apprenticeship frameworks

- (1) A person may request the Council to prepare or amend a Scottish apprenticeship framework for a particular occupation or activity.
- (2) The Council must consider any request made to it under subsection (1).
- (3) The Council may charge a reasonable fee to cover the cost, in whole or in part, of preparing or amending a framework as requested.
- (4) Subsections (2) and (3) of section 12F apply to a framework requested to be prepared or amended under this section.
- (5) The Scottish Ministers may by regulations make provision about—
 - (a) the process to be followed by the Council in responding to requests to prepare or amend a framework,
 - (b) the amount of the fee that the Council may charge for preparing or amending a framework,
 - (c) the circumstances in which the fee is to be waived by the Council.

12H Scottish apprenticeship certificates

- (1) An individual who is or has been an apprentice, or another person on behalf of such an individual, may apply to the Council for a Scottish apprenticeship certificate.
- (2) The Council may issue a Scottish apprenticeship certificate where it is satisfied that the individual in respect of whom an application has made has completed a Scottish apprenticeship.
- (3) The Council may charge a reasonable fee for issuing a Scottish apprenticeship certificate.
- (4) The Scottish Ministers may by regulations make provision about—
 - (a) the process for requesting and issuing apprenticeship certificates, and
 - (b) the amount of the fee that the Council may charge for issuing a certificate.”.
- (3) In section 35 (interpretation), in subsection (1), after the definition of “regional strategic body” insert—

““Scottish apprenticeship” has the meaning given by section 12E,”.

Funding for Scottish apprenticeships and work-based learning

5 Funding for Scottish apprenticeships and work-based learning

- (1) The 2005 Act is modified as follows.
- (2) In section 11 (administration of funds), in subsection (2)(b), after “12C” (as inserted by section 3(2)) insert “or 12I”.
- (3) After section 12H (as inserted by section 4(2)) insert—

“Funding for Scottish apprenticeships and work-based learning

12I Grants to the Council for Scottish apprenticeships and work-based learning

- (1) The Scottish Ministers may make grants to the Council for the purpose of securing the delivery of Scottish apprenticeships and work-based learning.
- (2) In this Part, “work-based learning” means training received by an individual—
- (a) in a working environment, and
 - (b) on the basis of a work-based learning agreement.
- (3) In subsection (2), a “work-based learning agreement” means an agreement which sets out the educational and vocational standards to be met by an individual and provides for the individual to receive education and training in order to meet those standards.
- (4) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (5) The Scottish Ministers may by regulations make further provision about—
- (a) what activities constitute work-based learning, and
 - (b) the requirements of work-based learning.

12J Administration of funds by the Council for Scottish apprenticeships and work-based learning

- (1) The Council is responsible for administering all grants made to it under section 12I for the purpose of securing the delivery of Scottish apprenticeships and work-based learning.
- (2) The Council may make grants, loans or other payments to a training provider in respect of expenditure incurred or to be incurred by the provider for the purpose of the delivery of Scottish apprenticeships or work-based learning.
- (3) In subsection (2), a “training provider” means a person who—
- (a) provides either work-based learning or the training of an apprentice required under a Scottish apprenticeship framework, and
 - (b) meets criteria set out in regulations made by the Scottish Ministers.
- (4) A payment made under subsection (2) may be subject to such terms and conditions as the Council considers it appropriate to impose.”.
- (4) In section 35 (interpretation), in subsection (1), after the definition of “Scottish apprenticeship” (as inserted by section 4(3)) insert—
- ““work-based learning” has the meaning given by section 12I(2).”.

Information sharing

6 Information sharing

- (1) The 2005 Act is modified as follows.
- (2) After section 12J (as inserted by section 5(3)) insert—

“12K Information sharing on national training programmes, apprenticeships and work-based learning

Any person to whom the Council makes grants, loans or other payments under section 12D or 12J must provide the Council with such information as the Council may request for the purposes of or in connection with the programme of training for employment, Scottish apprenticeship or work-based learning (as the case may be) for which the payments are made.”.

- (3) In section 17 (advisory functions), in subsection (1), before paragraph (a) insert—
 “(za) provision and funding of programmes of training for employment, apprenticeships and work-based learning,”.

Notifications to the Council by post-16 education bodies

7 Notifications to the Council by post-16 education bodies

- (1) The 2005 Act is modified as follows.
 (2) After section 14A insert—

“14B Notifications to the Council by post-16 education bodies

- (1) The Scottish Ministers may by regulations—
 (a) require post-16 education bodies to notify the Council of matters specified in the regulations,
 (b) specify the form and manner in which notifications are to be made to the Council, including the periods within which the Council is to be notified.
 (2) Before laying a draft of regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
 (a) the Council,
 (b) the post-16 education bodies, and
 (c) such other persons as the Scottish Ministers consider appropriate.”.

Recommendations to fundable bodies

8 Recommendations to fundable bodies

- (1) The 2005 Act is modified as follows.
 (2) In section 15 (efficiency studies), after subsection (2) insert—
 “(3) A study under subsection (1) may include consideration of the extent to which the needs and interests of students are being met.
 (4) The Council may issue recommendations to a fundable body following a study carried out under subsection (1).
 (5) The Council may publish any recommendations issued under subsection (4) as it considers appropriate.”.

Monitoring of financial sustainability of post-16 education bodies

9 Financial sustainability of post-16 education bodies

- (1) The 2005 Act is modified as follows.
- (2) After section 15 insert—

“15A Monitoring of financial sustainability of post-16 education bodies

- (1) The Council must secure the monitoring of the financial sustainability of post-16 education bodies.
- (2) The Scottish Ministers may request the Council to provide them with information and advice in relation to the financial sustainability of post-16 education bodies.
- (3) The Council—
 - (a) must provide such information and advice when requested by the Scottish Ministers, and
 - (b) otherwise may provide such information and advice whenever it considers it appropriate to do so.”.

Guidance by the Council to fundable bodies

10 Guidance to fundable bodies

- (1) The 2005 Act is modified as follows.
- (2) After section 17 insert—

“17A Guidance to fundable bodies and others

- (1) The Council may issue guidance to—
 - (a) fundable bodies, and
 - (b) any other persons to whom it makes payments under section 12, 12D or 12J.
- (2) A person must have regard to any guidance issued under subsection (1) about activities in respect of which the person is in receipt of payments from the Council.
- (3) Before issuing guidance under subsection (1), the Council must consult—
 - (a) the Scottish Ministers,
 - (b) the persons mentioned in subsection (1), and
 - (c) such other persons as the Council considers appropriate.
- (4) The Council may publish any guidance issued under subsection (1) as it considers appropriate.”.

Exercise of functions by the Council

11 Support of learners’ needs and knowledge exchange in exercise of functions

- (1) The 2005 Act is modified as follows.

(2) In section 20 (Council to have regard to particular matters)—

(a) after subsection (3) insert—

“(3A) In exercising its functions, the Council is to have regard to the desirability of protecting and promoting the interests of current and prospective learners.”,

(b) after subsection (4B) insert—

“(4C) In exercising its functions, 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.”.

12 Consideration of skills needs and socio-economic issues

(1) The 2005 Act is modified as follows.

(2) In section 20 (Council to have regard to particular matters)—

(a) in subsection (5)(b), for “or fundable higher education” substitute “, fundable higher education, programmes of training for employment, Scottish apprenticeships or work-based learning”,

(b) in subsection (6)(b), for “or fundable higher education” substitute “, fundable higher education, programmes of training for employment, Scottish apprenticeships or work-based learning”.

Amendment of lists of fundable bodies

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

(1) The 2005 Act is modified as follows.

(2) For schedule 2 substitute—

“SCHEDULE 2 *(introduced by section 6)*

FUNDABLE BODIES

Abertay University

Ayrshire College

Borders College

City of Glasgow College

Dumfries and Galloway College

Dundee and Angus College

Edinburgh College

Edinburgh Napier University

Fife College

Forth Valley College of Further and Higher Education

Glasgow Caledonian University

Glasgow Clyde College

Glasgow Kelvin College
Glasgow School of Art
Heriot-Watt University
Inverness College
5 Moray College
New College Lanarkshire
Newbattle Abbey College
North East Scotland College
The Open University (so far as carrying on activities in or as regards Scotland)
10 Orkney College
Perth College
Queen Margaret University, Edinburgh
Robert Gordon University
Royal Conservatoire of Scotland
15 Sabhal Mòr Ostaig
South Lanarkshire College
SRUC
University of Aberdeen
University of Dundee
20 University of Edinburgh
University of Glasgow
University of the Highlands and Islands
UHI North, West and Hebrides
University of St Andrews
25 University of Stirling
University of Strathclyde
University of the West of Scotland
West College Scotland
West Lothian College”.

30

PART 2

GOVERNANCE OF THE COUNCIL

Membership of the Council

14 Appointment of members of the Council

- (1) The 2005 Act is modified as follows.

- (2) In paragraph 2 of schedule 1 (membership of the Council)—
- (a) sub-paragraph (3) is repealed,
 - (b) in sub-paragraph (6), for “is, on ceasing to be a member,” substitute “who is, or has been, a member is”,
 - (c) after sub-paragraph (6) insert—
- “(7) In this schedule, references to a member’s appointment include that member’s reappointment.”.

15 Skills and experience of members of the Council

- (1) The 2005 Act is modified as follows.
- (2) In paragraph 3 of schedule 1 (considerations when appointing members)—
- (a) in sub-paragraph (1), after sub-sub-paragraph (a) insert—
- “(aa) persons who—
- (i) have experience of, and have shown capacity in, the provision of Scottish apprenticeships or work-based learning, or
 - (ii) have held, and have shown capacity in, any position carrying the responsibility for the provision of Scottish apprenticeships or work-based learning,
- (ab) persons who have experience, and have shown capacity, relating to research or the application of research,”
- (b) sub-paragraphs (2) and (3) are repealed.

Co-opted members of the Council

16 Co-opted members of the Council

- (1) The 2005 Act is modified as follows.
- (2) After paragraph 2 of schedule 1 insert—
- “2A(1) The Council may, with the approval of the Scottish Ministers, appoint persons as co-opted members of the Council.
- (2) No more than 2 persons may be appointed as co-opted members at any time.
 - (3) A co-opted member is to be appointed by the Council on such terms and conditions as the Council may, with the approval of the Scottish Ministers, determine.
 - (4) A co-opted member is to be appointed for a period not exceeding 1 year.
 - (5) A person who is, or has been, a co-opted member is eligible for reappointment.
 - (6) A co-opted member—
 - (a) may take part in proceedings of the Council to the extent the Council determines, but
 - (b) may not vote.
 - (7) Paragraph 4 applies to the appointment of, and the holding of office by, a co-opted member as it applies to a member of the Council.

- (8) Otherwise, references in this schedule to a member of the Council do not apply to a co-opted member.”.

Apprenticeship committee

17 Apprenticeship committee

- (1) The 2005 Act is modified as follows.
- (2) After paragraph 12 of schedule 1 insert—
- “12A(1) The Council must establish a committee (an “apprenticeship committee”) for the purposes of advising the Council on matters concerning apprenticeships.
- (2) The Council is to appoint one of its members to chair meetings of the apprenticeship committee.
- (3) In appointing members of the apprenticeship committee, the Council is to have regard to any guidance issued to it under sub-paragraph (4)(a).
- (4) The Scottish Ministers may issue to the Council guidance about—
- (a) the composition of the apprenticeship committee, and
- (b) the committee’s functions.”.
- (3) In paragraph 14(1)(a) of schedule 1, for “and 12(2) and (3)” substitute “, 12(2) and (3) and 12A(2) and (3)”.

PART 3

STUDENT SUPPORT

18 Designation of private providers of higher and further education

- (1) The Education (Scotland) Act 1980 is modified as follows.
- (2) After section 74 insert—
- “74A Designation of private providers of higher and further education**
- (1) The Scottish Ministers may, on application by a relevant education provider, designate the provider for the purpose of this section.
- (2) In this section, “relevant education provider” means a person or body which—
- (a) provides higher education or further education, and
- (b) carries on activities in Scotland or in another part of the United Kingdom.
- (3) A provider designated under this section is taken to provide courses of education in respect of which the Scottish Ministers can pay allowances or loans by virtue of section 73(f).
- (4) The Scottish Ministers may by regulations make provision about—
- (a) the process for applying for a designation,
- (b) the charging of a fee for applying for a designation, including—
- (i) the amount of the fee payable, and
- (ii) the circumstances in which the fee is to be waived by Ministers,

- (c) the process for making a designation (including provision about the factors which Ministers are to take into account when deciding whether to make a designation),
 - (d) the withdrawal of a designation (including provision about the factors which Ministers are to take into account when deciding whether to withdraw a designation),
 - (e) the effect of withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be taken to provide courses of education in respect of which Ministers can pay allowances or loans by virtue of regulations under section 73(f)).
- (5) Regulations under subsection (4) may make different provision for different purposes.
- (6) In this section—
- “further education” means a programme of learning which falls within section 6 of the Further and Higher Education (Scotland) Act 1992,
- “higher education” has the meaning given by section 38 of that Act.”.

19 Directions relating to student support

- (1) The Education (Scotland) Act 1980 is modified as follows.
- (2) In section 73ZA (administration of certain sums)—
- (a) in subsection (3), for the words from “persons—” to the end substitute “persons undertaking, or who have undertaken, courses of education provided by—
 - (a) a post-16 education body,
 - (b) a body designated by the Scottish Ministers under section 74A, or
 - (c) an educational institution (or institutions) in the United Kingdom but outside Scotland, which is (or are) maintained or assisted by recurrent grants out of public funds.”,
 - (b) in subsection (4), for “(3)” substitute “(3)(a)”.

20 Transfer or delegation of functions relating to student support

- (1) The Education (Scotland) Act 1980 is modified as follows.
- (2) In section 73A (transfer or delegation of functions relating to student support)—
- (a) in subsection (1), for “him by virtue of regulations made under section 73(f) of this Act” substitute “him—
 - (a) by virtue of regulations made under section 73(f) or 74A(4) of this Act, or
 - (b) under section 74A(1) of this Act,”
 - (b) in subsection (3), for “him” to the end substitute “him—
 - (a) by virtue of regulations made under section 73(a), (c) or (f) or 74A(4) of this Act, or
 - (b) under section 74A(1) of this Act.”.

PART 4

FINAL PROVISIONS

21 Interpretation

In this Act—

- 5 “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005,
 “the Council” means the Scottish Further and Higher Education Funding Council
 established under section 1 of the 2005 Act.

22 Ancillary provision

- 10 (1) The Scottish Ministers may by regulations make any incidental, supplementary,
consequential, transitional, transitory or saving provision they consider appropriate for
the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
 (a) make different provision for different purposes,
 (b) modify any enactment (including this Act).
- 15 (3) Regulations under this section—
 (a) are subject to the affirmative procedure if they add to, replace or omit any part
 of the text of an Act, but
 (b) otherwise are subject to the negative procedure.

23 Regulation-making powers

- 20 (1) The 2005 Act is modified as follows.
- (2) In section 34 (orders and regulations), in subsection (4)(a), after “7(2)(i)” insert “, 12E(2)
or 14B(1)”.

24 Commencement

- (1) This Part comes into force on the day after Royal Assent.
- 25 (2) The other provisions of this Act come into force on such day as the Scottish Ministers
may by regulations appoint.
- (3) Regulations under this section may—
 (a) include transitional, transitory or saving provision,
 (b) make different provision for different purposes.

25 Short title

- 30 The short title of this Act is the Tertiary Education and Training (Funding and
Governance) (Scotland) Act 2026.

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

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the functions and governance of the Scottish Further and Higher Education Funding Council; to make provision about financial support for students in further and higher education; and for connected purposes.

Introduced by: Jenny Gilruth
Supported by: Graeme Dey
On: 5 February 2025
Bill type: Government Bill

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