

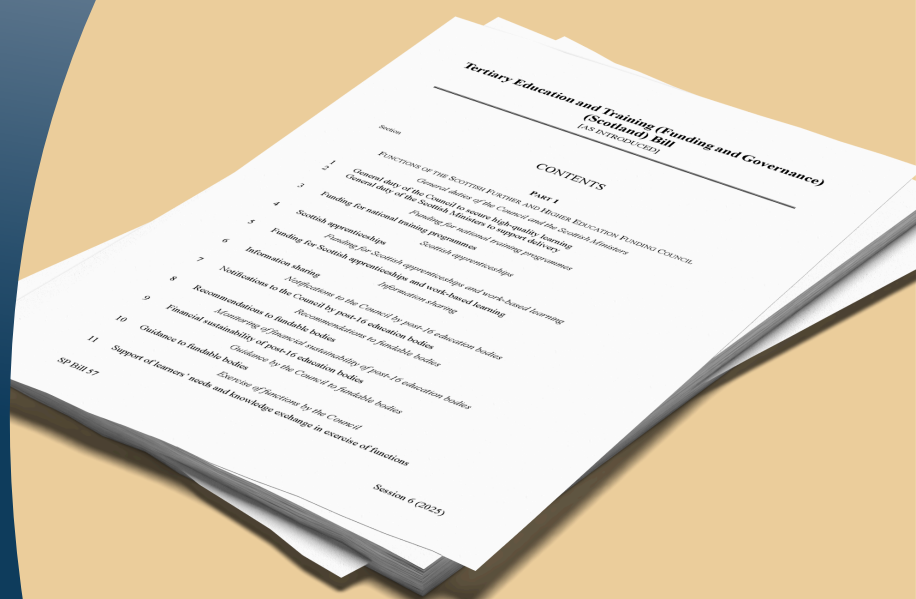


SPICe Briefing
Pàipear-ullachaidh SPICe

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

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The Tertiary Education and Training (Funding and Governance) (Scotland) Bill is a Government Bill introduced in the Parliament on 5 February 2025. It aims to simplify the funding landscape for tertiary education and training, and forms part of the Scottish Government's implementation of the recommendations from the 2023 Independent Review of the Skills Delivery Landscape.



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Summary

The Tertiary Education and Training (Funding and Governance) (Scotland) Bill was introduced to the Scottish Parliament on 5 February 2025. The Education, Children and Young People Committee is the designated lead committee scrutinising the Bill.

The Bill is in four parts:

Part 1 gives the Scottish Funding Council (SFC) new functions in relation to securing and funding delivery of national training programmes, apprenticeships and work-based learning. It introduces a statutory framework for apprenticeships.

In addition, Part 1 places a new duty on the SFC to monitor the financial sustainability of post-school institutions. It strengthens the SFC's existing functions and provides a regulation-making power for Scottish Ministers to set out matters about which post-16 education bodies must notify the SFC.

Part 2 makes reforms to the governance arrangements of SFC, with a focus on the appointment of members to the Council (the governing board of SFC). It places a new requirement on SFC to establish an apprenticeship committee to advise on matters concerning apprenticeships.

Part 3 puts into legislation a mechanism for private providers of further and higher education to become 'designated providers' approved for the purposes of student support. The aim of this is to ensure that Scottish-domiciled students undertaking courses with approved private providers can receive student support.

Part 4 contains the final and general provisions for the Bill.

This briefing explores the provisions of the Bill in more detail. It also considers the policy context and background, and where the Bill fits into the Scottish Government's wider programme of tertiary education reform.

Glossary

Legislation

The legislation referred to throughout the Bill and in this SPICe briefing is set out below:

Further and Higher Education (Scotland) Act 2005 (the 2005 Act)¹ : Defines the Scottish Funding Council's current responsibilities and functions. It also defines the "fundable bodies" (post-16 education bodies and regional strategic bodies) eligible to receive public funding.

Education (Scotland) Act 1980 (the 1980 Act)² : Describes the role of education authorities and sets out arrangements regarding functions related to student support administration.

Student Support (Scotland) Regulations 2022 (the Student Support Regulations)³ : Regulations setting out the general provision of student support in Scotland.

Terms

There are a number of terms used throughout the Bill, its supporting documentation and in this briefing. These are defined below:

College: An educational institution delivering further and higher education, usually up to [SCQF Level 8](#).

University: An educational institution delivering higher education at [SCQF Level 7](#) and above and research.

Further Education: Courses studied at [SCQF Level 6](#) or below, such as National 4 and 5, Higher and vocational courses.

Higher Education: Courses studied at [SCQF Level 7](#) and above, including Higher National Certificates and Diplomas (HNC/HNDs), Degrees, Honours Degrees, Graduate Apprenticeships, Masters Degrees and Doctorates.

Fundable bodies: These are public post-16 education bodies and regional strategic bodies which are defined in the 2005 Act and receive public funding.

Private providers: Providers of further and higher education which are not eligible for funding by the SFC (i.e. not listed in the 2005 Act).

National Training Programmes (NTP): These are programmes which have been delivered by Skills Development Scotland (SDS) and the SFC with a focus on helping people who have been made redundant, or upskilling or reskilling the existing workforce.

Scottish Funding Council (the SFC): The Scottish Further and Higher Education Funding Council is more commonly known as the Scottish Funding Council (the SFC). It was established by the 2005 Act.

Accountable to Scottish Ministers, the SFC has statutory functions in respect of the securing and funding of further and higher education provision and research. It monitors

the impact of funding it provides to institutions against delivery of educational, social and economic outcomes. The SFC is also the statistical authority for colleges in Scotland, and works with the Higher Education Statistical Authority (HESA) at UK-level to provide data on universities.

The SFC currently provides colleges with funding for tuition fee waivers and bursaries for eligible further education students.

The 2005 Act provides for appointment of members to the Scottish Funding Council (the Council). Council members are commonly referred to collectively as the 'the SFC Board'.

Student Awards Agency Scotland (SAAS): The Student Awards Agency Scotland (SAAS) is an [executive agency](#) of the Scottish Government. SAAS assesses how much financial support eligible higher education students in colleges and universities are entitled to. This funding includes tuition fees, bursaries and loans.

SAAS does not currently provide colleges with funding for the provision of further education student support. The Scottish Government intends for SAAS to take on this role.

Skills Development Scotland (SDS): Skills Development Scotland (SDS) is the national skills body for Scotland, working with employers, independent training providers, colleges and universities to deliver apprenticeships. SDS also provides careers advice and guidance services and has a role in skills planning.

SDS exercises the functions of funding and securing delivery of national training programmes, apprenticeships and what the Bill defines as work-based learning, under arrangements made by Scottish Ministers under section 2 of the Employment and Training Act 1973. ⁴ The Bill confers functions for securing the delivery of national training programmes, Scottish apprenticeships and worked based learning upon the SFC with the intention that responsibility for them transfers from SDS to the SFC.

Background: Post-school education reform

Work to reform the post-school education landscape has been under discussion since 2020. During the COVID-19 pandemic, concerns around the future sustainability of tertiary education in Scotland led the Scottish Government to commission the SFC's 2021 [Review of Coherent Provision and Sustainability](#).

The review report set out recommendations for change to the college and university landscape, calling on the Scottish Government to establish an overall vision and strategy for further and higher education, increase collaboration between colleges and universities and move to multi-year funding assumptions.

The Scottish Government then commissioned the [Independent Review of the Skills Delivery Landscape](#). Carried out by James Withers, the review was published in June 2023, setting out 15 recommendations for transforming the skills delivery landscape. These included calls for the Scottish Government to:

- take responsibility for skills planning at national level
- create a single funding body bringing together many of the functions of the SFC, Skills Development Scotland (SDS) and the Student Awards Agency Scotland (SAAS) and taking in all learning pathways and flexible and part-time modes of study
- introduce a universal skills framework with consistent language around qualifications and develop a clear map of the post-school system to help learners navigate it
- explore greater private sector investment in the post-school learning system, for example through in-work learning opportunities.

In evidence to the Education, Children and Young People Committee on 15 November 2023, James Withers told Members that a 10-year timescale for skills reform is “not unrealistic”, and that “establishing a vision for what good looks like ... should be the north star” in order to ensure clarity about what the reform agenda seeks to achieve.⁵

As an initial step toward reform, the Scottish Government published '[Purpose and Principles for Post-School Education, Research and Skills](#)' in June 2023. This is a framework intended to set the overarching policy direction for higher and further education.

Alongside the Purpose and Principles, the Scottish Government also published an [Initial Priorities document](#). This identified development of “a new model of public funding for all forms of provision”. As part of this, the possibility of delivering a single funding body for the sector was raised.

On 5 December 2023, the Minister for Higher and Further Education; and Minister for Veterans Graeme Dey MSP (the Minister) gave a [Ministerial Statement on post-school reform plans](#). During the statement, the Minister stated the Scottish Government intended to develop and lead a national approach to skills planning, whilst also strengthening it at the regional level. On the future funding landscape, the Minister said:

“ James Withers called for the creation of a single funding body, and we do not rule that out. As an initial step, I commit to bringing learner support funding together in one place, and funding for apprenticeship provision together in one place. We will work closely with SFC, SAAS and SDS on how we will make that happen. ⁶ ”

The Minister also stated that some of the proposed reforms would require legislation, while some could progress without it. ⁶

Scottish Government Consultation

A consultation on [Post-school education and skills reform legislation](#) was launched on 25 June 2024. The consultation set out three options for change in relation to the functions and responsibilities of SFC, Skills Development Scotland (SDS) and the Student Awards Agency Scotland (SAAS):

1. business as usual.
2. consolidate all provision funding within the SFC and all student support funding within SAAS
3. consolidate all provision funding and all student support funding within the SFC.

Currently, the SFC and SDS are each responsible for delivering funding for different parts of the apprenticeship system; and the SFC and SAAS both deliver different elements of student support. The SFC delivers financial support to further education students indirectly via colleges, while SAAS delivers financial support to higher education students directly.

Option 2 proposed moving SDS’s current responsibilities for apprenticeship funding to the SFC and giving the SFC’s current responsibilities for administering further education student support to SAAS.

Option 3 proposed giving the SFC responsibility for funding for all provision and student support. This would be in line with the Withers review recommendation for the creation of a single funding body.

The consultation also sought views on changes to the governance arrangements and functions of the SFC, specifically:

- removal of restrictions around appointments to the Council
- skills and knowledge of Council members if the SFC was to take on responsibility for apprenticeship funding
- provision of information to the SFC from those in receipt of funding
- strengthening of systems and processes for collecting, reporting and publishing data
- whether the SFC requires additional powers and, if so, what these should be.

Consultation analysis

There were 194 respondents to the consultation. 133 of these were from groups or organisations and 61 were from members of the public. Published responses can be [viewed on the Scottish Government’s consultation website](#).

An independent analysis of responses to the consultation was carried out by Craigforth on behalf of the Scottish Government. In response to questions on apprenticeships and student support funding, it found that: ⁷

- 44% of respondents favoured the proposal for the SFC to manage all provision funding and SAAS to manage all student support funding
- 35% favoured the proposal for all provision and student support funding to be consolidated with the SFC
- 21% favoured 'business as usual'.

In response to questions on the governance of the SFC, the consultation analysis found:

- 48% of respondents supported proposals to remove time limits on Council appointments and restrictions on reappointments
- 3% said restrictions on appointments should be removed for Council term only
- 3% said only restrictions on reappointments should be removed
- 46% of respondents had a different suggestion. Further information about suggestions put forward can be found in the [consultation analysis document](#).

In response to questions on enhanced functions for the SFC, the analysis found:

- 46% of respondents stated there was a need for new duties on all organisations receiving public funding to provide better information to the SFC
- 66% also saw a need for strengthened data collection, reporting systems and processes.

Outline business case

In January 2025, the Scottish Government published its [outline business case \(OBC\) appraisal](#) of the three shortlisted options. This set out the case for change, along with the proposed objectives and benefits of the [three options included in the consultation](#). ⁸ This exercise concluded that there was clearly a need to move away from business as usual:

“ The economic appraisal partially accounted for this, showing clear support for the case for change set out in the Strategic Case, with Option 1 seen as unlikely to be sustainable or affordable longer term as well as unlikely to deliver on the business needs set out in the Strategic Case. However, the analysis suggests it is less clear which of the 'change' options should be taken forward.”

Scottish Government, 2025⁸

In terms of the rationale for proceeding with option 2 (two funding bodies) over option 3 (consolidating all funding in a single body), the Scottish Government states that:

- Option 2 was found to be more cost effective than option 3 by "a small margin" ⁸
- Option 2 was also seen as being most likely to remove complexity and be less

disruptive to deliver, particularly as it is less likely to be as disruptive for learners interacting with the skills and funding system

- Option 2 was also found to be less high risk and less complex than option 3.

The document highlighted that "significant further work" was needed to develop a detailed design and implementation plan, stating:

“ The OBC begins to set out some of the delivery capabilities, management strategies and Project and Programme governance that will require to be put in place for the next phase of development to deliver transformation to a high standard.”

Scottish Government, 2025⁸

What the Bill does

The [Tertiary Education and Training \(Funding and Governance\) Bill](#) was introduced to the Scottish Parliament on 5 February 2025. The Policy Memorandum accompanying the Bill lists its four main purposes as being to:

- consolidate funding for provision
- improve the operation of the SFC
- improve the governance of the SFC
- ensure Scottish-domiciled students undertaking courses with approved private providers of education can receive student support whilst studying. ⁴

The Bill proposes changes that will:

- consolidate responsibilities for securing national training programmes, apprenticeships and work-based learning in the SFC
- give Scottish Ministers the power to fund and commission the SFC to secure delivery of new national training programmes in order to address training needs
- give Scottish Ministers the power to provide grant funding to the SFC to secure delivery of apprenticeships and work-based learning
- introduce a definition of a 'Scottish apprenticeship' into legislation
- establish a statutory framework for apprenticeships in Scotland
- make changes to the SFC's governance and how it oversees tertiary education
- put into legislation a mechanism for private providers of further and higher education to become 'designated providers' for the purposes of student support.

The Bill will enable the Scottish Government to make the following changes:

- move from three funding bodies for tertiary education to two, by removing SDS's responsibilities for funding apprenticeships
- consolidate funding for NTPs with the SFC, where previously these have been delivered by both the SFC and SDS
- the moving of provision of further education support from the SFC to SAAS will be dealt with administratively (i.e. there is no provision required in the Bill to do this). This change will mean all student support is delivered by one public body rather than two. SAAS will continue to distribute higher education support to students, and take on responsibility for distribution of further education support to colleges.

Following the introduction of the Bill to the Scottish Parliament, the Minister said:

“ I want to be clear about why we are doing this. First and foremost, we want to deliver the best service that we can for learners and employers. Secondly, we want to make things simpler for colleges, universities, training providers and employers. Last but not least, we have to get maximum value from every pound that we invest. ⁹ ”

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

Part 1 of the Bill makes changes to the SFC's functions to bring provision for and funding of Scottish apprenticeships, work-based learning and national training programmes under the organisation's remit. It also introduces a statutory framework for apprenticeships.

In relation to the monitoring functions of the SFC, Part 1 of the Bill places a new duty on the SFC to [monitor the financial sustainability of post-school institutions](#). It also strengthens the SFC's existing functions and provides a [regulation-making power for Scottish Ministers](#) to set out matters that post-16 education bodies must notify the SFC about.

This follows recent calls for the SFC to have stronger powers of intervention ¹⁰. The Minister for Higher and Further Education; and Minister for Veterans, Graeme Dey MSP stated ahead of the Bill's introduction:

“ I am keen to take the opportunity through the legislation ... to ensure that the most robust set of powers is available to our regulators so that all of us as parliamentarians can be satisfied that public money is being used appropriately. ¹¹ ”

General duties of the Council and the Scottish Ministers

Section 1 of the Bill modifies section 3 of the [Further and Higher Education \(Scotland\) Act 2005](#) (the 2005 Act) to include coherent provision of apprenticeships and work-based learning within the SFC's general duties. This adds to the SFC's existing general duties under the 2005 Act to secure coherent provision of a high quality of fundable further and higher education, and the undertaking of research among post-16 education bodies.

Section 2 modifies section 4 of the 2005 Act to add a general duty for Scottish Ministers to provide support for the provision of Scottish apprenticeships and work-based learning. Support can be provided via the grant-making powers in the 2005 Act or by other appropriate means.

Funding for national training programmes

National training programmes for employment (NTPs) have been delivered by SDS and the SFC with a focus on upskilling or reskilling the existing workforce and helping people who have been made redundant. Recent examples of NTPs include:

- The **Flexible Workforce Development Fund** (FWDF) was available to apprenticeship levy paying employers and SMEs, providing funding to upskill and reskill existing workforce. The SFC piloted the FWDF in 2017-18, and the fund ceased in 2022-23.

- The **National Transition Training Fund** was a £25 million fund which aimed to tackle the increase in unemployment due to COVID-19. The SFC allocated the fund to colleges, which supported 8,000 individuals over two years.
- The **Young Persons Guarantee Fund** set an ambition that within two years every 16-24 year old in Scotland would either be in paid employment for a period of between 12 and 24 months, enrolled in education, actively involved on an apprenticeship or training programme, or engaged on a formal volunteering or supported activity programme.
- The **Teaching Bursary in Scotland** supports individuals who are career changers undertaking a one year Postgraduate Diploma in Education (PGDE) in order to enter teaching in the hardest to fill teaching subjects. The scheme provides 84 bursaries of £20,000 each over the one academic year. The scheme is operational in 2024-25. This scheme is administered by SDS.
- The **Land Based Pre-Apprenticeship Programme** is open for young people interested in following a career in agriculture. The programme offers six months' paid employment along with industry-recognised certificated training and employability modules with a view to moving on to a modern apprenticeship or full-time employment in the industry.
- **Digital Skills** provides match funding to inward investors innovative ideas for advancing digital technologies and provides bespoke in-house training to upskill employees in relation to these technologies. It aims to enhance connectivity to make Scotland more attractive to potential inward investors.

While apprenticeships could be considered to be a form of a national training programme, they are considered distinct from NTPs for the purposes of this Bill ⁴.

The Bill proposes 2 new sections in the 2005 Act:

1. To give Scottish Ministers the power to make grants to the SFC to deliver programmes of training for employment. This gives Scottish Ministers the power to attach terms and conditions to the award of funding to the SFC, for example requiring that a specific programme is funded.
2. To make the SFC responsible for administering these grants, and give the SFC power to make grants to other organisations responsible for delivering the training programmes.

Scottish apprenticeships

There are three types of apprenticeship offered in Scotland.

Foundation apprenticeships are for school pupils between S3 and S6. They lead to a qualification equivalent to a National 4, National 5 or Higher. There are currently 15 different foundation apprenticeships offered in Scotland, such as software development, and food and drink technologies.

Modern apprenticeships are mainly aimed at people from aged 16 to 24, although there is not an upper age limit. A modern apprentice is employed, and balances their

employment and on the job training with some formal study at a college or other learning provider. They last for between 1 and 4 years. There are currently over 100 different modern apprenticeship offered.

Graduate apprenticeships are for those aged over 16, with no upper age limit. A graduate apprentice is also employed, and works toward an ordinary or Masters degree by combining employment with study at a higher education institution. They last for between 2 and 5 years. There are currently 13 graduate apprenticeships offered in Scotland, including accounting and data science.

Apprenticeship funding in Scotland by type and organisation, 2023-24

Type of apprenticeship	SDS	SFC	SAAS	Total
Foundation	£8 million	£10 million	-	£18 million
Modern	£84 million	£50 million	-	£134 million
Graduate	£6 million	£23 million	£5 million	£33 million
Total	£98 million	£83 million	£5 million	£185 million

Scottish Government, 2025¹²

At present, funding for apprenticeships is delivered by SDS, the SFC and SAAS. The SFC funds graduate apprenticeships and around half of foundation apprenticeships under its statutory powers for securing further and higher education provision, as well as contributing to the costs of providing modern apprenticeships. The majority of the modern apprenticeship programme and the remainder of the foundation apprenticeship programme are secured and overseen by SDS. SDS also funds some legacy graduate apprenticeships. SAAS provides the tuition fee support for graduate apprenticeships.

Since being launched in 2008/09, there was a steady growth in the number of Modern Apprenticeships in Scotland, peaking at 27,875 in 2019-20. The COVID-19 pandemic had a significant impact on the provision of apprenticeships, with starts falling to 18,655 in 2020-21 and thereafter remaining below the 2019-20 peak¹³. The most recent data from Skills Development Scotland shows that there were 25,365 modern apprenticeship starts in 2023/24¹⁴. In the same year, there were around 1,250 Graduate Apprenticeship starts and 5,000 Foundation Apprenticeship starts.

This Bill proposes the consolidation of funding for all types of apprenticeships within the SFC, but does not set the policy or funding level and therefore the Bill does not have a direct impact on the number of apprenticeships to be funded in future years.

The Bill sets up a new legislative framework, including a definition of Scottish apprenticeships. Section 4 sets out that a Scottish apprentice must be in paid employment, and that this employment must involve working for another person or organisation (and so excludes self-employed people from being considered apprentices).

To be considered an apprenticeship, the work must be in an occupation or activity which is included in a Scottish apprenticeship framework. The training that the apprentice receives must meet requirements set out in the relevant framework; for example, it cannot include employer specific onboarding training.

The Bill requires that there is a clear agreement between the employer and the apprentice. The Bill provides the SFC with powers to issue guidance or set conditions of funding,

which could be used to suggest or require the use of model apprenticeship agreements.

The Bill provides Scottish Ministers with powers to set out other criteria in regulations. The Policy Memorandum highlights two areas where stakeholders expressed mixed views for the need for legislation to define:

1. Around the duration of an apprenticeship
2. Around the proportion of training which should take place off site.

The Policy Memorandum⁴ states that the Scottish Government has opted not to define these in the legislation, as allowing flexibility is viewed as a strength of the Scottish apprenticeship system.

Section 4 of the Bill also requires that the SFC must consider any request to prepare or amend a Scottish apprenticeship framework. Scottish Ministers may make regulations to define the process to be followed by the SFC in responding to a request, the amount that the SFC may charge for a request, and the circumstances in which the SFC should waive the fee.

Where the SFC is satisfied that an individual has completed a Scottish apprenticeship, and a certificate is requested, the SFC may issue a certificate. Scottish Ministers may make regulations setting out the process for requesting and receiving a certificate, and the amount that the SFC may charge for this.

Funding for Scottish apprenticeships and work-based learning

Section 5 of the Bill gives Scottish Ministers the power to make grants to the SFC for the purpose of securing the delivery of Scottish apprenticeships and work-based learning. Work-based learning is an activity which takes place in a working environment, and is on the basis of a work-based learning agreement.

The SFC will be responsible for administering all grants made to it for these purposes by the Scottish Government, and the SFC will be able to make grants, loans or other payments to a training provider relating to the delivery of Scottish apprenticeships or work-based learning.

Information sharing

The 2005 Act includes duties on various bodies, including those in receipt of SFC funding (the "[fundable bodies](#)") to provide information to the SFC to support the exercise of the SFC's functions.

Section 6(2) of the Bill modifies the 2005 Act to create a new duty on persons receiving SFC funding under the new NTP, Scottish apprenticeship, or work-based funding to provide information to the SFC. Such information may only be requested in connection with the SFC-funded training or education provided by that person.

Section 17(1) of the 2005 Act requires that the SFC provide information and advice to Scottish Ministers in relation to further and higher education – Section 6(3) of the Bill

expands this provision to cover NTPs, Scottish apprenticeships, and work-based learning.

Notifications to the Council by post-16 education bodies

Section 7 inserts new section 14B into the 2005 Act. This new section enables Scottish Ministers to set out in regulations certain matters that must be notified to the SFC by post-16 education bodies.

The Bill's Explanatory Notes set out that the intention of this is to:

“ ... require notification where there is potentially serious jeopardy to a post-16 education body, for instance an external threat such as a cyberattack, or a material change in their circumstances such as a rapidly worsening financial situation. ¹⁵ ”

New section 14B also requires Scottish Ministers to consult with the SFC, post-16 education bodies and others before laying the draft regulations in Parliament.

Recommendations to fundable bodies

Section 15 of the 2005 Act gives a power to SFC to arrange studies to improve "economy, efficiency and effectiveness" of management or operations of fundable bodies. It also sets out that the fundable body must provide relevant information to a person carrying out such a study. This may include accounts and other documents.

Section 8 of the Bill inserts provisions into section 15 of the 2005 Act stating that:

- a study may include consideration of how student needs and interests are being met
- the SFC may issue recommendations to the fundable body following a study
- recommendations may be published by SFC.

Monitoring of financial sustainability of post-16 education bodies

Section 9 of the Bill adds new section 15A to the 2005 Act. This includes a new duty on the SFC to secure the monitoring of financial sustainability of post-16 education bodies.

Scottish Ministers will be able to request information and advice from the SFC in relation to the financial sustainability of post-16 education bodies and the SFC must provide that information when requested. The SFC can also provide this information and advice whenever it considers it to be appropriate. The Policy Memorandum states:

“ ... this is necessary because unforeseen circumstances may arise of which the Scottish Ministers might otherwise be unaware (and so would not know to enquire). ⁴ ”

Guidance by the Council to fundable bodies

The SFC already issue guidance to fundable bodies, the Policy Memorandum notes that:

“ the SFC has consulted and developed guidance on the implementation of the Tertiary Quality Enhancement Framework. ⁴ ”

This advice is currently not a statutory function of the SFC. The Bill formalises this – Section 10 inserts a new section into the 2005 Act to give the SFC power to issue guidance to fundable bodies and any other person in receipt of funding under the functions conferred by the Bill (national training programmes, apprenticeships and work-based learning). The Bill requires that the SFC consult with Scottish Ministers and the bodies or persons to whom the guidance relates.

Exercise of functions by the SFC

The 2005 Act sets out several matters which the SFC ‘must have regard to’. These issues include skills needs of Scotland, issues affecting the Scottish economy, and social and cultural issues in Scotland.

Skills needs and issues are defined in the 2005 Act as any requirement or desirability for skills or knowledge, or issues which, following consultation with Scottish Ministers, appears to the SFC to:

1. exist for the time being or be likely to exist in the future; and
2. be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

Section 11(2)(a) of the Bill extends this duty to require that the SFC have regard to:

“ the desirability of protecting and promoting the interests of current and prospective learners.”

Section 11(2)(a) of the Bill also inserts a new section into the 2005 Act to require that 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.”

Section 12 of the Bill expands these requirements beyond the SFC's existing functions in respect of further and higher education and research to reflect the wider remit of the SFC proposed in the Bill.

Amendment of lists of fundable bodies

Schedule 2 of the 2005 Act lists fundable further and higher education institutions, splitting these into three categories:

- institutions formerly eligible for funding by the Scottish Further Education Funding

Council

- institutions formerly eligible for funding by the Scottish Higher Education Funding Council
- other institutions.

Despite these headings, the Explanatory Notes of the Bill state there is no difference in how the legislation operates in respect of the various institutions. The Policy Memorandum states current arrangements can lead to confusion:

“ 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. ⁴ ”

Section 13 of the Bill combines the three lists of bodies into one list, with some updating to names and removal of out-of-date references. The aim of this is to provide greater clarity on the status of fundable bodies and remove any confusion related to this matter.

Part 2: Governance of the Council

Part 2 of the Bill deals with governance of the SFC with a particular focus on provisions for the appointment and reappointment of members to the Council.

The 2005 Act provides for appointment of members to the Scottish Funding Council (also referred to as 'the Council' in the 2005 Act). Members of the Council are often collectively referred to as the the SFC Board. The Policy Memorandum explains the current arrangements as follows:

“ 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. ⁴ ”

Membership of the Council

Schedule 1 , paragraph 2 of the 2005 Act sets out provisions for the appointment of Council members. Council membership must consist of the Chief Executive of the SFC, along with a Chair, and between 11 and 14 members. The Chair and Council members are appointed by Scottish Ministers.

Section 14 of the Bill amends the 2005 Act to remove the limitation that reappointments to the Council may only be for a single further period of up to four years.

The Policy Memorandum accompanying the Bill states that the change is proposed so that:

“ ... appointment and reappointment rounds can be conducted more effectively and the SFC can benefit from better succession planning. ⁴ ”

Schedule 1, paragraph 3 of the 2005 Act sets out the skills and knowledge Scottish

Ministers are required to consider when appointing members to the Council. This currently includes consideration of experience in the provision of further and higher education, industry or financial matters, or any other relevant skills, knowledge or experience Ministers consider relevant in relation to the SFC's functions.

Section 15 of the Bill inserts requirements for Scottish Ministers to consider appointing people with experience of and capacity in the provision of Scottish apprenticeships and work-based learning, or who have held or shown capacity in any position with responsibility for provision of apprenticeships or work-based learning. It also restates the existing requirement to consider those with experience and capacity in relation to research.

The existing requirement for Scottish Ministers to consider the appointment of persons currently engaged in or carrying responsibility for the provision of further and higher education is removed by the Bill. The requirement to consider those currently engaged in research is also removed.

Co-opted members of the Council

Section 16 of the Bill adds new paragraph 2A into Schedule 1 of the 2005 Act. This gives the SFC the ability to appoint up to two co-opted members to the Council, with the approval of Scottish Ministers. The paragraph also sets out that co-opted members can be appointed for no more than one year at a time, but are eligible for reappointment.

Co-opted members can take part in proceedings as determined by the SFC, but cannot vote.

The Policy Memorandum accompanying the Bill states that paragraph 2A is intended to enable the SFC to appoint people with particular knowledge and skills:

“ 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. ⁴ ”

Apprenticeship committee

Section 17 of the Bill requires that the SFC establish an apprenticeship committee. The policy objective is to establish a new apprenticeship committee to provide the SFC with the right structure to manage its new functions in relation to apprenticeships ⁴ .

Skills Development Scotland (SDS) has several existing groups which relate to the delivery of apprenticeships and NTPs:

- The [Standards and Frameworks Group](#) oversee apprenticeship development in

Scotland. The group is comprised of industry representatives, including its Chair, universities, colleges and the Scottish Training Federation.

- The [Apprenticeship Approvals Group](#) has responsibility for approving all Scottish apprenticeships. SDS provide the secretariat, and the group is chaired by employers, with its membership comprising employers, Education Scotland, the Scottish Qualifications Authority, universities and colleges, and the Scottish Training Federation.

Both these groups are part of the [Scottish Apprenticeship Advisory Board \(SAAB\)](#), which is the mechanism for ensuring that industry has a voice in the development of apprenticeship frameworks in Scotland.

The Independent Review of the Skills Landscape¹⁶ highlighted the positive role the SAAB plays in engaging employers with the provision of apprenticeships in Scotland, although the review also highlights the narrower focus that SAAB has:

“ There are, of course, already examples of employer leadership in parts of the system. The SAAB, for example, has done excellent work in influencing the shape of apprenticeships in Scotland ensuring that they are valued by employers. However, SAAB has a narrow focus on apprenticeships. There are many more opportunities for this type of employer-centric process and leadership to be embedded more widely as part of our post-school learning system”

Report of Independent Review of the Skills Delivery Landscape Withers, 2023¹⁶

Section 17 of the Bill inserts a new paragraph to the 2005 Act to require that the SFC establish an apprenticeship committee. The Financial Memorandum assumes this committee will comprise 12 members. The Policy Memorandum states that:

“ 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.”

Tertiary Education and Training (Funding and Governance) (Scotland) Bill, Policy Memorandum Scottish Parliament, 2025⁴

The Bill sets out that the SFC should chair the apprenticeship committee, but does not define its structure, functions or membership. Section 17(4) of the Bill grants Scottish Ministers the powers to provide guidance to the SFC in relation to the composition of the apprenticeship committee and its functions.

Part 3: Student support

Student support is the term used to describe financial support provided to students to cover tuition fees and living costs. An overview of student support and fees arrangements can be found in the SPICe blog, [Student support and fees in Scotland](#).¹⁷

Scottish-domiciled students at college or higher education institutions have their tuition fees paid for them. SAAS currently pays the tuition fees of higher education students while the SFC pays the fees of further education students.

Under current arrangements enabled by legislation in the 2005 Act and the Student Support Regulations, the SFC provides colleges with funding to distribute to further education students in the form of non-repayable bursaries to cover living costs. Higher education students apply to SAAS for tuition fee and living costs support. Depending on age, level of study and household income, they may qualify for non-repayable bursaries and/or repayable loans.¹⁷

The Scottish Government's policy intention, as part of the overall programme of reform of the funding body landscape, is to transfer the SFC's responsibilities for the administration of further education student support to SAAS. Existing provision within the [the 1980 Act](#) enables Scottish Ministers to direct the SFC (or any other body or person) to administer student support. The policy intention is that a direction to the SFC for this purpose will not be issued in future and SAAS will administer all student support. The Policy Memorandum states:

“ Both sections 19 and 20 [of the Bill] allow for flexibility in the future evolution of the responsibilities for the administration of student support.⁴ ”

Part 3 of the Bill also puts into legislation a [mechanism for private providers of further and higher education to become 'designated providers'](#), approved for the purposes of student support. Currently, there is no mechanism set out in legislation for the procedure to be followed for approving private providers, but there is an approval process for providing student support for individual courses.

Designation of private providers of further and higher education

In addition to [fundable further and higher education bodies](#), there are a number of private providers delivering courses in a range of subjects including the creative arts, information technology and social care.

Private providers do not receive teaching grant funding from the SFC. However, students attending approved courses delivered by private providers can receive funding and support via SAAS for higher education provision.

For higher education students studying approved courses with private providers, SAAS currently provides £1,205 toward the costs of tuition fees for a full-time course. Students are eligible for the same living cost support as those attending publicly funded institutions.¹⁸

Student support arrangements for further education students studying approved courses with private providers are incorrectly described in the Policy Memorandum as being funded by the SFC. The Scottish Government intends to write a letter to the Education, Children and Young People Committee to clarify this matter.

Section 73(f) of the the 1980 Act contains a power enabling Scottish Ministers to make regulations on provision of allowances or loans. The [Student Support \(Scotland\) Regulations 2022](#) (the Student Support Regulations) made under this power give Scottish Ministers broad discretion in designating a course of education as eligible for student support. The Bill provides a regulation-making power that would enable a process to be

set out for the designation of private providers, rather than individual courses.

Section 18 of the Bill inserts new section 74A into the 1980 Act. This includes provisions that will enable Scottish Ministers to designate a private provider of further or higher education as a "relevant education provider" for the purposes of paying allowances or loans to students studying with such a provider. The Policy Memorandum gives the purpose of this as being 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. ⁴ ”

Designation as a private provider will enable:

- the institution to be eligible to receive tuition fee contributions from public funds
- students on courses at the institution to be eligible for student support.

New section 74A(4) gives Scottish Ministers power to make regulations about

- the process for applying to become a designated private provider
- application fees for doing so
- when the fee can be waived
- the process for making and withdrawing designations.

Regulations may also make different provision for different purposes. The Explanatory Notes of the Bill give the example of setting different fee levels for wholly private providers and those in receipt of some public funding. ¹⁵

The power to make these regulations is subject to the negative procedure, as set out at section 133(2) of the 1980 Act.

The Policy Memorandum states that the expectation is that rUK private providers would not need to apply for designation or pay a fee as long as they had been approved to receive public funds by the Office for Students in England, the Medr (Commission for Tertiary Education and Research) for Wales, or the Department for the Economy in Northern Ireland. ⁴

Directions relating to student support

Section 19 of the Bill amends section 73ZA of the 1980 Act (administration of certain sums) to include student support funding for students enrolled at designated private providers by new section 74A, and those studying at an institution in the rest of the UK maintained or assisted by public funds.

Transfer or delegation of functions relating to student support

Section 20 of the Bill amends section 73A of the 1980 Act on transfer or delegation of functions relating to student support to include reference to designated private providers amongst the bodies that can be provided with student support.

Costs of the Bill

The Financial Memorandum (FM) ¹² sets out the anticipated costs associated with the Bill. In total, the FM envisaged that there will be costs of between £2.7 million and £5.3 million over 2025-26 and 2026-27 as the Bill is implemented, followed by ongoing costs of between £510,000 and £1.2 million per year. However, there are possibly significant costs which have not been modelled as part of this estimate which are likely to have a material impact on the total costs associated. These relate to the costs of pension transfers for affected staff, and are discussed in more detail later.

The main costs arise due to the anticipated harmonisation of staff terms and conditions, for those staff who move from SDS to the SFC as part of this transfer of responsibility.

There is some uncertainty about the number of staff who will transfer. The FM assumes that there will be somewhere between 148.4 and 174.6 FTE staff who will move from SDS to SFC. The FM notes that:

“ These estimates are based on initial SDS modelling and require significant further work, including engagement with HR, recognised trade unions and affected staff, to convert into a specific staff list. One of the complications is that SDS staff support apprenticeship delivery in a variety of ways. The apprenticeship programme is supported by: staff in the National Training Programme Directorate; staff in other directorates whose role is fully dedicated to apprenticeship delivery (e.g. employer engagement); staff within other directorates whose role is predominately dedicated to apprenticeship delivery (e.g. communication and marketing); and staff in corporate or shared services who dedicate part of their time to supporting the delivery of apprenticeships. This means that the apprenticeship programme is delivered by a certain number of staff who work full-time on the programme and a range of staff who devote a fraction of their time to it. Obviously, fractions of persons cannot be transferred, so there would need to a consolidation of roles which means that that the number of people transferred could be higher or lower than the FTE range.”

Scottish Government, 2025¹²

As of 2024, there are currently 190 staff at the SFC on a FTE basis. This transfer will therefore represent a significant increase to the size of the organisation, which may mean there are cost implications for other teams at the SFC.

The FM also states that the modelling does not reflect the increased costs due to the increase to employer National Insurance contributions announced in the UK Budget on 30 October 2024. This will impact both SDS and the SFC through: 1) a fixed cost of £1,400 per employee; and 2) a variable cost of approximately 1.2% of salary. The FM states that:

“ The first has an impact on the overall pay bill but no impact on the additional cost. The second, broadly speaking, inflates any additional costs arising from staffing (the transition team and pay harmonisation) by up to 1.2%. This has not been taken into account in the modelling; the uncertainties in the estimates are significantly greater than 1%.”

Scottish Government, 2025¹²

In terms of the costs of the transition itself, the FM assumes that a transition team will be established within the Scottish Administration to oversee and manage the structural

change. This is expected to cost between £540,000 and £1 million in 2025-26, and between £1.1 million and £2.1 million in 2026/27.

Pay harmonisation is expected to cost between £200,000 and £210,000 in 2026-27, and these costs will only arise in the second half of that year after the transition date.

An area of uncertainty which is not reflected in these figures is the cost of pension transfers. Staff at SDS are part of the local government pension scheme, while staff at the SFC are part of the civil service pension scheme. Such a transfer would require a shortfall payment, the precise size of which will be determined by the take up of the transfer by staff, and their age and salary. The FM gives five examples of the costs associated with making transfers between these two schemes over the last two decades (in 2024 prices) which vary from £8,000 to £150,000, with an average cost per person of £90,000. The FM notes that if 150 staff were to transfer, then this could suggest costs between £1 million and £23 million. However, as the number and grades of staff to transfer is uncertain, the FM has not modelled a cost and does not include an estimate for this cost. Final costs are therefore likely to be higher than the headline range included in the FM.

The final costs related to staff will only be confirmed after affected staff have received an offer, and the three month period for them to make a decision has passed.

Costs associated with the remaining provisions in Part 1 of the Bill are estimated to be minimal: for example, between £8,000 and £51,000 in 2026-27, rising to between £17,000 and £110,000 by 2030-31.

For Part 2 of the Bill, the FM sets out cost ranging from savings of £48,000 to a cost of £33,000 for 2026-27. For 2030-31, savings of £110,000 or costs of up to £60,000 are estimated. The differences in costings are down to factors such as the number of co-opted members recruited to the Council, the number of meetings of committees, and the costs of recruitment.

Costs arising from Part 3 of the Bill are estimated to be between £6,400 and £15,000 in 2026-27, rising to £14,000 and £33,000 in 2030-31, with much of this falling on private providers applying for status as 'designated providers'. The cost of the Scottish Government's policy intention to move responsibility for the administration of further education student support from the SFC to SAAS is not set out in the FM as this will be achieved administratively, so there is no provision for this within the Bill.

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