

**SFT Guidance on powers of Scottish public bodies to generate/procure heat and electricity supplies, and to supply heat and electricity to third parties, and the constraints on those powers.**

**Appendix 2**

**Legislation referred to in the Universities section.**

## **FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992**

### **45.— Power of Privy Council in relation to designated institutions.**

(1) The Privy Council may by order make such provision as regards designated institutions as is mentioned in this section.

(2) An order of the Privy Council made under this section may—

(a) make provision with regard to the constitution of the governing body of any designated institution;

(b) prescribe the general functions to be discharged by the governing body, and confer on the governing body such powers as they may consider necessary or expedient for the efficient discharge of those functions; and

(c) without prejudice to Part VI of the 1980 Act, revoke, amend or re-enact any provision of any endowment relating to any designated institution, and where an order under this section makes provision with regard to the constitution of the governing body of an institution as mentioned in paragraph (a) above if neither the institution nor the governing body is, immediately before the order is made, a body corporate, the governing body of the institution shall, by virtue of this subsection, be a body corporate.

(3) Without prejudice to the generality of subsection (2) above, an order made under this section may—

(a) prescribe the administrative and other arrangements to be adopted by the governing body for the purpose of discharging its functions and in particular provide for the delegation of such of its functions as may be prescribed in the order to persons or bodies of persons to be appointed in such manner as may be so prescribed;

(b) provide for the appointment, remuneration, discipline and dismissal by the governing body of administrative, teaching and other staff, and for the payment by the governing body of pensions, allowances or gratuities to or in respect of members of such staff on their death or retirement;

(c) prescribe the procedure to be followed in cases of alleged breaches of discipline by students in attendance at any such institution;

(d) provide for the constitution of bodies representative of students in attendance at such institutions and confer on any such bodies such functions as may be prescribed in the order;

and

(e) provide for any of the purposes specified in paragraphs (a) to (d) of section 105(1) of the 1980 Act.

(4) An order made under this section may authorise the governing body to make rules regulating its own procedures and the conduct of the designated institution.

(5) An order made under this section may amend, vary, repeal or revoke the provisions of—

(a) any regulations made under section 77 of the 1980 Act relating to a designated institution as regards which the order is made; and

(b) any enactment (including an enactment contained in a subordinate instrument), any scheme, articles of association, trust deed or other instrument relating to the institution, to the extent that any such provision appears to the Privy Council to be inconsistent with the order.

(6) An order made under this section may contain such incidental, supplementary and consequential provision as appears to the Privy Council to be necessary or expedient.

(7) This section shall apply to a designated institution notwithstanding that its name includes, by virtue of section 49 of this Act, the word “university”.

## **FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 2005**

### **9 Funding of the Council**

(1) The Scottish Ministers may make grants to the Council.

(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—

(a) relate to—

(i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;

(ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;

(b) include the condition referred to in subsection (4) or (5) (or both) ;

(c) include any terms or conditions referred to in sections 9A to 9D.

(4) The condition is that, before the Council makes a payment to a fundable body under section 12(1) of such amount or description as the Scottish Ministers may in the condition specify, the

fundable body —

(a) where it is a fundable post-16 education body, is to comply with any matters concerning fundable post-16 education bodies or any class of them as the Scottish Ministers may specify;

(b) where it is a regional strategic body, is—

(i) to comply with any matters concerning regional strategic bodies generally as the Scottish Ministers may specify .

(ii) ...

(5) The condition is that—

(a) when making a payment to a fundable post-16 education body under subsection

(1) of section 12; and

(b) in such cases as the Scottish Ministers may in the condition specify, the Council is (under subsection (2) of that section) to impose on the body a condition making the requirement referred to in subsection (6).

(6) The requirement is that the post-16 education body to whom the payment is being made

is to secure that the fees paid to the post-16 education body—

(a) by such class of persons as the Scottish Ministers may by order specify; and

(b) in connection with their attending—

(i) such programmes of learning as the Scottish Ministers may by order specify; or

(ii) such courses of education as the Scottish Ministers may by order specify, are equal to such fees as are, in relation to those persons attending those programmes and courses, payable under subsection (7).

(7) For the purposes of subsection (6), the Scottish Ministers may (in relation to those persons attending those programmes and courses) by order—

(a) specify, by reference to a particular academic year (“year A”), fees payable; and

(b) make provision authorising the Scottish Ministers to determine, in relation to subsequent academic years, fees payable that are—

(i) in each case, no higher than the fees specified by reference to year A; or

(ii) in any case, higher than the fees specified by reference to year A provided that any increase in fees is no greater than is required in order to maintain the value in real terms of the fees specified by reference to year A.

(8) A condition imposed on a fundable post-16 education body by virtue of subsection (5) is to make provision that is to apply if the fundable post-16 education body fails to comply with the requirement referred to in subsection (6).

(9) A condition imposed on a fundable post-16 education body by virtue of subsection (5) does not apply in relation to any fees which are payable, in accordance with regulations under

section 1 (fees at universities and further education establishments) of the Education (Fees and

Awards) Act 1983, by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section.

(10) The Scottish Ministers may not specify programmes or courses under subsection (6)(b) in such a way as to discriminate between different programmes or courses which are—

(a) for the training of persons preparing to be teachers; and

(b) open only to persons holding a degree,

on the basis of the subject in which such training is given.

(11) Terms and conditions imposed under subsection (2) may not, except where imposed in pursuance of subsection (4)(a) or section 9A or 9B, relate to the provision of financial support by the Council or a regional strategic body in respect of activities carried on by any particular body or bodies.

(12) Terms and conditions imposed under subsection (2) may not—

(a) except in so far as provided for in subsections (5) to (7) and in section 9D, be

framed by reference to particular programmes of learning, courses of education or research

(including the contents of such programmes or courses or the manner in which they are

taught, supervised or assessed);

(b) be framed by reference to the criteria for—

(i) the selection or appointment of academic staff;

(ii) ...

(c) except where imposed in pursuance of section 9C, be framed by reference to the criteria for the admission of students.

(13) Before laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must—

(a) lay before the Parliament—

(i) a copy of the proposed draft order; and

(ii) a statement of their reasons for proposing to make the order;

(b) publicise the proposed draft order in such manner as they consider appropriate;

(c) invite written representations on the proposed draft order, in particular from—

(i) the Council;

(ii) at least one body of persons which appears to them to be representative of

students of the post-16 education ; and

(iii) such governing bodies of post-16 education bodies, and such regional strategic bodies, as they consider appropriate; and

(d) have regard to any written representations about the proposed draft order that are made to them within 60 days of the date on which the invitation under paragraph (c) was issued.

(14) When laying a draft of an order under subsection (6) or (7) before the Parliament in pursuance of section 34(4), the Scottish Ministers must also lay a statement summarising–

(a) all representations about the proposed draft order to which they have had regard under subsection (13)(d);

(b) the changes (if any) made to the proposed draft order in light of the representations;

and

(c) any reasons for making, or not making, changes in light of the representations.

(15) The body known as the National Union of Students Scotland is to be invited under subsection (13)(c)(ii) to make representations.

(16) The Scottish Ministers may by order modify subsection (15).

(17) For the purposes of subsection (7)(b)(ii), the Scottish Ministers may have regard to any retail price index.

## **12 Funding of fundable bodies**

(1) The Council may make grants, loans or other payments–

(a) to the governing body of any fundable [ post-16 education] 1 body in respect of expenditure incurred or to be incurred by the body for the purposes of any of the activities specified in subsection (3)(a) and (b) of section 11;

(b) to–

(i) the governing body of any fundable post-16 education body; or

(ii) any other person,

in respect of expenditure incurred or to be incurred by the body or person for the purposes of any of the activities specified in subsection (3)(c) and (d) of that section;

(c) to a regional strategic body.

(2) A payment made under subsection (1) may (in addition to any condition which is imposed by virtue of section 9) be subject to such terms and conditions as the Council considers it appropriate to impose.

(3) Terms and conditions imposed under subsection (2) may, in particular, relate to—

(a) the repayment (in whole or in part) of a payment in such circumstances as they may specify;

(b) the interest payable in respect of any period during which a sum due to the Council is outstanding.

(4) But terms and conditions imposed under subsection (2) may not relate to the application by the body of any sums which were not derived from the Scottish Ministers.

(5) Before imposing terms and conditions under subsection (2), the Council must—

(a) except where it considers that it is not expedient to do so, consult the governing body of the fundable body to which the payment is to be made; and

(b) if it considers it appropriate to do so, consult such persons as appear to it to represent the interests of post-16 education bodies, or regional strategic bodies, or any class of them.

(6) In making payments under subsection (1), the Council is to have regard to the desirability of—

(a) encouraging fundable bodies to maintain or develop funding from other sources;

(b) preserving any distinctive characteristics of particular fundable bodies.

## **Schedule 2**

### **Fundable bodies**

(Introduced by section 6)

#### **Institutions formerly eligible for funding by the Scottish Further Education Funding Council**

Ayrshire College

Borders College

City of Glasgow College

Coatbridge College

Dumfries and Galloway College

Dundee and Angus College

Edinburgh College

Fife College

Forth Valley College of Further and Higher Education

Glasgow Clyde College

Glasgow Kelvin College

Inverness College

Lewis Castle College

Moray College

New College Lanarkshire

Newbattle Abbey College

North East Scotland College

The North Highland College

Orkney College

Perth College

Sabhal Mòr Ostaig

Shetland College

South Lanarkshire College

West College Scotland

West Highland College UHI

West Lothian College

**Institutions formerly eligible for funding by the Scottish Higher Education Funding Council**

Edinburgh Napier University

Glasgow Caledonian University

Glasgow School of Art

Heriot-Watt University

The Open University (so far as carrying on activities in or as regards Scotland)

Queen Margaret University, Edinburgh

Royal Conservatoire of Scotland



University of Aberdeen

University of Abertay Dundee

University of Dundee

University of Edinburgh

University of Glasgow

University of the Highlands and Islands

University of St. Andrews

University of Stirling

University of Strathclyde

University of the West of Scotland

**Other institutions**

The Robert Gordon University (as established by the Robert Gordon University (Establishment) (Scotland) Order 2006)

SRUC

**3 The Council: general duty**

It is the duty of the Council to exercise its functions for the purposes of securing the–

- (a) coherent provision by the post-16 education bodies (as a whole) of a high quality of fundable further education and fundable higher education; and
- (b) undertaking of research among the post-16 education bodies.

**20 Council to have regard to particular matters**

(1) In exercising its functions, the Council is to have regard to–

- (a) skills needs in Scotland;
- (b) issues affecting the economy of Scotland; and
- (c) social and cultural issues in Scotland.

(2) In exercising its functions, the Council is to–

(a) have regard to the desirability of the achieving of sustainable development; and

(b) in particular, encourage the fundable bodies to contribute (so far as reasonably practicable for them to do so) to the achievement of sustainable development.

(3) In exercising its functions, the Council is to have regard to the—

(a) United Kingdom context; and

(b) international context,

in which any of the post-16 education bodies may carry on their activities.

(4) In exercising its functions, the Council is to have regard to the educational and related needs

(including support needs) of persons who are, and the likely educational and related needs (including support needs) of persons who might wish to become, students of any of the post-16 education bodies.

(4A) In exercising its functions, the Council is to—

(a) have regard to the desirability of enabling, encouraging and improving participation in fundable further education and fundable higher education by persons belonging to any socio-economic group which the Council reasonably considers to be under-represented in such education; and

(b) in particular, promote collaboration and sharing of good practice between the persons mentioned in subsection (4B) in relation to enabling, encouraging and improving such participation.

(4B) Those persons are—

(a) post-16 education bodies;

(b) regional strategic bodies; and

(c) post-16 education bodies and regional strategic bodies.

(5) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Scottish Ministers, appears to the Council—

(a) to exist for the time being or be likely to exist in the future; and

(b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

(6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Scottish Ministers, appear to the Council—

(a) to exist for the time being or be likely to exist in the future; and

(b) to be capable of being addressed (wholly or partly) by the provision of fundable further education or fundable higher education.

(7) For the purposes of subsection (4A), a socio-economic group is to be treated as under-represented in fundable further education or fundable higher education if participation in such education by persons in that group is disproportionately low.

(8) The Council may take into account any social or economic characteristics which they consider appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of subsection (4A).

(9) The Council must consult the Scottish Ministers before determining—

(a) which groups are to constitute “socio-economic groups” for the purposes of subsection

(4A); and

(b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.

(10) The Council is to inform each regional college and each regional strategic body of—

(a) the needs and issues in relation to Scotland identified by the Council for the purposes of subsection (1); and

(b) the under-represented socio-economic groups identified by the Council for the purposes of subsection (4A).

## **UNIVERSITIES (SCOTLAND) ACT 1858**

### **6. General councils of the Universities to be constituted.**

There shall be in each University a general council consisting of the Chancellor, of the members of the University court, from and after their first election, of the professors, of all masters of arts of the University, of all doctors of medicine of the University who shall have, as matriculated students of the University, given regular attendance on classes in any of the faculties in the University during four complete sessions, and also of all persons who within three years from and after the passing of this Act shall establish to the satisfaction of the Commissioners herein-after appointed that they have, as matriculated students, given regular attendance on the course of study in the University for four complete sessions, or such regular attendance for three complete sessions in the University, and regular attendance for one such complete session in any other Scottish University, the attendance for at least two of such sessions having been on the course of study in the faculty of arts:

Provided that no person shall be a member of the general council until he has his name registered in a book to be kept for the purpose by each University, which shall be done on payment of such fee as shall be fixed by the said Commissioners; and provided also, that no person shall be a member of the general council while he is a student enrolled in any class of the University; and the said general council shall

assemble twice every year, on such days as may be fixed by the Commissioners herein-after appointed, subject to alteration thereafter from time to time by resolution of the said council, with the approval of the University court; at the meetings of which council the Chancellor, and in his absence the rector, whom failing, the principal or senior principal, whom failing, the senior professor, shall preside, and shall have a deliberative and also a casting vote: It shall be competent to such council to take part in the election of office bearers of the University in manner herein provided, and also to take into their consideration all questions affecting the well-being and prosperity of the University, and to make representations from time to time, on such questions to the University court, who shall consider the same and return to the council their deliverance thereon.

## **CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005**

### **7 The charity test**

(1) A body meets the charity test if—

(a) its purposes consist only of one or more of the charitable purposes, and

(b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.

(2) The charitable purposes are—

(a) the prevention or relief of poverty,

(b) the advancement of education,

(c) the advancement of religion,

(d) the advancement of health,

(e) the saving of lives,

(f) the advancement of citizenship or community development,

(g) the advancement of the arts, heritage, culture or science,

(h) the advancement of public participation in sport,

(i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,

(j) the advancement of human rights, conflict resolution or reconciliation,

(k) the promotion of religious or racial harmony,

(l) the promotion of equality and diversity,

(m) the advancement of environmental protection or improvement,

(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,

- (o) the advancement of animal welfare,
  - (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.
- (3) In subsection (2)–
- (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
  - (b) paragraph (f) includes–
    - (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
  - (c) in paragraph (h), “sport” means sport which involves physical skill and exertion,
  - (d) paragraph (i) applies only in relation to recreational facilities or activities which are–
    - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
    - (ii) available to members of the public at large or to male or female members of the public at large,
  - (e) paragraph (n) includes relief given by the provision of accommodation or care, and
  - (f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).
- (4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if–
- (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,
  - (b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or
  - (c) it is, or one of its purposes is to advance, a political party.
- (5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

## **8 Public benefit**

- (1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.
- (2) In determining whether a body provides or intends to provide public benefit, regard must be had to–
  - (a) how any–
    - (i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
    - (ii) disbenefit incurred or likely to be incurred by the public, in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and

(b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.