

**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 3**

**Legislation referred to in the Colleges of Further Education section.**

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

### **16.— Transfer of property etc. to boards of management.**

(1) Except as the Secretary of State otherwise directs, on the first transfer date there shall be transferred to and vest in the board of management of each college of further education specified in an order made under section 11 of this Act all property, rights, liabilities and obligations mentioned in subsection (2) below.

### **11.— First transfer of colleges.**

(1) With effect from 1st April 1993 or such other date as the Secretary of State may by order appoint (in this section referred to as “the first transfer date”) each college of further education as may be prescribed shall cease to be under the management of the education authority which, immediately before that date, was responsible for its management, and the college council for each such college shall, with effect from that date, cease to exist.

(2) With effect from the first transfer date there shall be established for each college of further education prescribed by an order made under subsection (1) above a body corporate to be known as “the Board of Management of” that college.

(3) The education authority which, immediately before the first transfer date, was responsible for the management of such a college of further education shall, on that date or as soon as is reasonably practicable thereafter, provide to the board of management of the college all such information held by the authority, or available to it, as relates to the college, its administration, management, fabric, students and staff.

(4) Nothing in subsection (3) above shall require the disclosure of any information in contravention of any provision contained in any enactment (including an enactment contained in a subordinate instrument) restricting or prohibiting the disclosure of such information.

(5) A college of further education shall not be prescribed under subsection (1) above unless it provides at least one full-time programme of further education.

### **12.— Boards of management.**

(1) A board of management shall have the duty of managing and conducting their college.

(a)-(b)

(2) A board of management shall have the power—

(a) to provide or secure the provision of further education (within the meaning of section 1(5)(b) of the 1980 Act);

- (aa) to provide part-time and full-time courses of instruction for persons of school age;
- (b) to charge fees for or in connection with the provision by them of any form of further education or any course of instruction provided under sub-paragraph (aa) ;
- (c) to provide to students of the college such assistance of a financial or other nature (including waiving or granting remission of fees) as they may consider appropriate;
- (d) for the purpose of the administration and management of the college, to receive any property, rights, liabilities and obligations transferred to the board under or in pursuance of any provision of this Part of this Act;
- (e) to provide facilities of any description appearing to the board to be necessary or expedient for the purpose of or in connection with the carrying on of any of the activities mentioned in this subsection or in subsection (1) above (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students who have learning difficulties and disabled staff);
- (f) to supply goods and services;
- (g) subject to subsection (7)(a) below and section 18 of this Act, to acquire, hold and dispose of land and other property;
- (h) to enter into contracts, including in particular—
  - (i) contracts for the employment of teachers and other staff for the purpose of or in connection with the carrying on of any such activities as are mentioned in this subsection or in subsection (1) above; and (ii) contracts with respect to the carrying on by the board of any of such activities;
- (i) to form or promote, or to join with any other person in forming or promoting, companies under the Companies Act 2006 ;
- (j) subject to subsection (7)(a) below and the said section 18, to borrow such sums as the board think fit for the purpose of carrying on any of the activities they have power to carry on or for meeting any liability or obligation transferred to them under or in pursuance of any provision of this Part of this Act and, in connection with such borrowing, to grant such security or give such guarantee or indemnity as they think fit;
- (k) to invest any sums not immediately required by the board for the purpose of their carrying on any of the activities which they have power to carry on or for meeting any liability or obligation transferred to them under or in pursuance of any provision of this Part of this Act;
- (l) subject to subsection (7)(a) below and the said section 18, to raise funds, accept gifts of money, land or other property and apply it to, or hold or administer it in trust for, the purpose of carrying on any of the activities which they have power to carry on; and
- (m) to do all such other things as are calculated to facilitate or are incidental or conducive to the carrying on of any of the activities which the board have power to carry on.

(3) In carrying out their functions under this section a board of management shall have regard to the requirements of persons who have learning difficulties.

(4) A board of management may delegate the performance of any of their functions to their chairman, to any committee appointed by them or to any member of their staff.

(4A) A board of management of a regional college is to pay to the chairing member appointed under paragraph 3(2)(a) of Schedule 2 such remuneration as the Scottish Ministers may in each case determine.

(5) A board of management may pay to persons appointed to be members of the board such allowances and expenses as they may determine; and any allowances and expenses to be paid by virtue of this subsection shall be calculated by reference to such criteria as the Secretary of State may determine.

(6) A board of management shall make such reports or returns and give such information to the Secretary of State as he may require for the purposes of the exercise of his powers and the performance of his duties under this Part of this Act.

(7) A board of management shall not, without the prior consent, given in writing, of the Secretary of State—

(a) borrow money from any source, give any guarantee or indemnity or create any trust or security over or in respect of any of their property; or

(b) effect any material change in the character of their college.

(8) The Secretary of State may by order amend the provisions of subsection (2) above by varying, adding to or removing the powers conferred by that subsection.

(9) An order shall not be made under subsection (8) above unless the Secretary of State has consulted such persons or organisations appearing to him to be representative of boards of management and such other persons as appear to him to be appropriate as to the amendments proposed to be made by the order.

(10) Schedule 2 to this Act shall have effect with respect to the constitution and proceedings of and other matters relating to every board of management established in pursuance of any provision of this Part of this Act.

### **18.— Disposal of certain property.**

(1) Subject to subsection (4) below, the board of management of a college of further education shall not dispose of any property to which this section applies without the prior consent, given in writing, of the Secretary of State.

(2) Property to which this section applies is—

(a) property transferred to the board under or in pursuance of any of the provisions of this Part of this Act;

(b) property acquired by the board wholly or partly with assets which represent or in any way derive from any part of the proceeds of or any consideration for the disposal of property so transferred; and

(c) property acquired, improved or maintained wholly or partly, directly or indirectly, out of funds provided under or in pursuance of this Part of this Act by the Secretary of State or from the proceeds of or any consideration for the disposal of any property so acquired, improved or maintained.

(3) The consent of the Secretary of State may be given in respect of a particular disposal of property or of disposals of any class or description and may be given subject to such conditions as the Secretary of State may determine.

(4) The consent of the Secretary of State is not required for the disposal of land which is or forms part of property to which this section applies where the disposal is in consequence of the compulsory acquisition of such land by any authority in pursuance of any power of compulsory acquisition under any enactment; but the board of management shall inform the Secretary of State of any such compulsory acquisition.

(5) Where any property to which this section applies is disposed of, the board of management shall pay to such educational charity as the Scottish Ministers may direct, such portion of the proceeds or value of the consideration for the disposal, after deduction of such expenses as appear to the Secretary of State to have been reasonably incurred in the disposal, as the Secretary of State may, after consultation with the board, determine.

(6) In this section, "*educational charity*" means a body entered in the Scottish Charity Register which has the advancement of education as one of its charitable purposes.

## **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).

## **POST-16 EDUCATION (SCOTLAND) ACT 2013**

### **5 Regional colleges**

(1) After section 7 of the 2005 Act insert—

“7A Regional colleges

(1) The Scottish Ministers may by order designate as a regional college any college of further education whose board of management is (or is to be) established in pursuance of Part 1 of the 1992 Act.

(2) Before making an order under this section, the Scottish Ministers must consult—

(a) the board of management of the college to which the order relates (where that board is already established);

(b) the representatives of any trade union which the college recognises or which otherwise appears to the Scottish Ministers to be representative of its staff;

- (c) the college's students' association;
- (d) the local authority for the area in which the college is situated;
- (e) the Council; and
- (f) any other person appearing to the Scottish Ministers as likely to be affected by the order.”.

(2) After section 23 of the 2005 Act insert—

“Regional Colleges: function

23A Regional college: general duty

(1) It is the duty of a regional college to exercise its functions with a view to securing the coherent provision of a high quality of fundable further education and fundable higher education in the locality of the regional college.

(2) In doing so, the regional college must have regard to any fundable further education and fundable higher education provided by other post-16 education bodies in the locality of the regional college.

23B Regional strategic: planning, consultation and collaboration

(1) A regional college must plan for—

- (a) how it proposes to provide fundable further education and fundable higher education; and
- (b) how it intends to exercise its other functions.

(2) When making plans, a regional college must have regard to the importance of ensuring that funds made available to it under section 12 are used as economically, efficiently and effectively as possible.

(3) A regional college must, where it considers it appropriate to do so in the exercise of its functions, consult—

(a) the representatives of any trade union which it recognises or which otherwise

appears to it to be representative of its staff;

(b) its students' association;

(c) the local authority for the area in which the regional college is situated;

(d) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of the regional college;

(e) any other regional college or regional strategic body whom it considers likely to have an interest in the matter concerned;

(f) any person who appears to it to be representative of employers in the locality of the regional college;

(g) any person who appears to it to be representative of the interests of any sector for which the regional college provides specialist education or training;

(h) The Open University;

(i) The Skills Development Scotland Co. Limited;

(j) the Scottish Qualifications Authority; and

(k) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).

(4) Any particular requirement for consultation imposed on a regional college by virtue of this or any other enactment is without prejudice to subsection (3).

(5) A regional college must, so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the regional college of the following persons—

(a) the representatives of any trade union which the regional college recognises or which otherwise appears to it to be representative of its staff;

(b) the regional college's students' association;

(c) the local authority for the area in which the regional college is situated;

(d) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of the regional college;

(e) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;

(f) The Open University;

(g) The Skills Development Scotland Co. Limited;

(h) the Scottish Qualifications Authority; and

(i) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).

(6) The Scottish Ministers may by order modify subsection (3) or (5) by—

(a) adding or removing persons, or types of persons, to which those provisions apply; or

(b) varying the description of any such person or type of person.

(7) But such an order may not modify paragraph (a) or (b) of subsection (3).

23C Regional colleges: improvement of economic and social well-being

(1) A regional college is to exercise its functions with a view to improving the economic and social well-being of the locality of the regional college.

(2) In doing so, the regional college is to have regard to—

(a) social and economic regeneration needs in the locality; and

(b) social cohesion and social inclusion issues in the locality.

(3) For the purposes of subsection (2)(a), “needs” means needs which appear to the regional college—

(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.

(4) For the purposes of subsection (2)(b), “issues” means issues which appear to the regional college—

(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.

23D Regional college to have regard to particular matters

(1) In exercising its functions, a regional college is to have regard to—

(a) skills needs in the locality of the regional college;

(b) issues affecting the economy of the locality of the regional college;

(c) social and cultural issues in the locality of the regional college; and

(d) the needs and issues in relation to Scotland identified by the Council for the purposes of section 20(1).

(2) In exercising its functions, a regional college is to have regard to the desirability of the achieving of sustainable development.

(3) In exercising its functions, a regional college is to have regard to the—

(a) United Kingdom context; and

(b) international context,

in which it carries on its activities.

(4) In exercising its functions, a regional college 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 the college.

(5) In exercising its functions, a regional college is to 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 regional college reasonably considers to be under-represented in such education.



(6) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which appears to the regional college—

(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 (1)(b) and (c), “issues” means issues which appear to the regional college—

(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.

(8) For the purposes of subsection (5), 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.

(9) A regional college may take into account any social or economic characteristics which it considers appropriate when determining which groups are to constitute “socio-economic groups” for the purposes of subsection (5).

(10) A regional college is to have regard to the under-represented socio-economic groups identified by the Council for the purposes of section 20(4A) when determining—

(a) which groups are to constitute “socio-economic groups” for the purposes of subsection (5); and

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

## **6 Colleges: boards of management**

(1) For paragraph 3 of Schedule 2 to the 1992 Act substitute—

“3

(1) The board of a regional college is to consist of no fewer than 15 nor more than 18 members.

(2) The board is to be comprised of—

(a) a person appointed by the Scottish Ministers to chair meetings of the board (the “chairing member”);

(b) the principal of the college;

(c) a person appointed by being elected by the teaching staff of the college from among their own number;

(d) a person appointed by being elected by the non-teaching staff of the college from among their own number;

(e) two persons appointed by being nominated by the students' association of the college from among the students of the college; and

(f) other members appointed by the board.

(3) An appointment made in pursuance of sub-paragraph (2)(f) has effect only if approved by—

(a) the chairing member; and

(b) the Scottish Ministers.

(4) A person is not eligible for appointment as the chairing member under sub-paragraph

(2)(a) if the person is—

(a) a member of the Scottish Parliament;

(b) a member of the House of Lords;

(c) a member of the House of Commons;

(d) a member of the European Parliament; or

(e) the principal of the college,

but such a person may otherwise be appointed as a member of the board.

3A

(1) The board of a college which is not a regional college is to consist of no fewer than 13 nor more than 18 members.

(2) The board is to be comprised of—

(a) a person appointed by the regional strategic body to chair meetings of the board

(the "chairing member");

(b) the principal of the college;

(c) a person appointed by being elected by the teaching staff of the college from among their own number;

(d) a person appointed by being elected by the non-teaching staff of the college from among their own number;

(e) two persons appointed by being nominated by the students' association of the college from among the students of the college; and

(f) other members appointed by the regional strategic body.

### 3B

(1) An election to appoint members in pursuance of paragraph 3(2)(c) or (d) or 3A(2)(c) or

(d) is to be conducted in accordance with rules made by the board.

(2) Before making, varying or replacing rules about elections to be held in pursuance of paragraph 3(2)(c) or 3A(2)(c), the board must consult the representatives of any trade union which the board recognises as being, or which otherwise appears to the board to be, representative of the teaching staff of the college.

(3) Before making, varying or replacing rules about elections to be held in pursuance of paragraph 3(2)(d) or 3A(2)(d), the board must consult the representatives of any trade union which the board recognises as being, or which otherwise appears to the board to be, representative of the non-teaching staff of the college.

### 3C

(1) In appointing members under paragraph 3(2) or 3A(2) and in extending the period of appointment of any member so appointed, the board or, as the case may be, regional strategic body must have regard to any guidance issued by the Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).

(2) Before issuing guidance under sub-paragraph (1), the Scottish Ministers must consult—

(a) any board to which the guidance relates;

(b) where it relates to the board of a college which is not a regional college, the regional strategic body for the college;

(c) the local authority for any area in which the board to which the guidance relates is situated;

(d) the relevant students' associations;

(e) the representatives of any trade union which is recognised by a board to which the guidance relates or which otherwise appears to the Scottish Ministers to be representative of its staff;

(f) the Council;

(g) any body which appears to the Scottish Ministers to be representative of colleges of further education;

(h) any body which appears to the Scottish Ministers to be representative of local authorities;

(i) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally; and

(j) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland.

(3) Different guidance may be issued for different purposes.”

(2) The Scottish Ministers may make such arrangements in relation to a board of management of a college of further education as they consider appropriate in connection with the coming into force of subsection (1) and may, in particular—

(a) appoint on terms and conditions determined by them persons who are, from the day on which that subsection comes into force, to hold office as a member of the board as if appointed under paragraph 3(2)(a) or (f) or, as the case may be, 3A(2)(a) or (f) of Schedule 2 to the 1992 Act, or

(b) in the case of persons who are members of the board immediately before that day—

(i) make arrangements for them to continue in office from that day as if appointed under such provision of paragraph 3 or, as the case may be, 3A of Schedule 2 to the 1992 Act as they may determine, or

(ii) remove them from office.

## **7 Colleges: mismanagement**

For section 24 of the 1992 Act substitute—

“24 Mismanagement by boards

(1) This section applies where—

(a) it appears to the Scottish Ministers that the board of management of any college of further education—

(i) have committed or are committing a serious breach of any term or condition of a grant made to them under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”);

(ii) have committed or are committing repeated breaches of such terms or conditions;

(iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;

(iv) have failed, or are failing, to discharge any of their duties properly; or

(v) have mismanaged, or are mismanaging, their financial or other affairs;

or

(b) the Council has informed the Scottish Ministers that a college of further education whose board of management is established in pursuance of this Part is not, or is no longer, a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act.

(2) Where this section applies, the Scottish Ministers may by order—

- (a) remove any or all of the members of the board (other than the principal of the college); and
  - (b) where a removed member was appointed under paragraph 3(2)(a) or (f) or 3A(2)(a) or (f) of Schedule 2, appoint another person in place of the removed member.
- (3) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.
- (4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.
- (5) An appointment made under subsection (2)(b) has effect as if made under the provision of Schedule 2 under which the removed member was appointed.”.

### **8 Regional strategic bodies**

(1) After section 7A of the 2005 Act, inserted by section 5(1), insert—

“7B Regional strategic bodies

(1) In this Act—

- (a) any reference to a regional strategic body is a reference to a body specified in schedule 2A;
- (b) any reference to a regional board is a reference to a body specified in Part 1 of that schedule.

(2) The Scottish Ministers may by order—

- (a) modify Part 1 of schedule 2A so as to establish, abolish or re-name a regional board;
- (b) modify Part 2 of schedule 2A by adding, removing or varying any entry relating to a fundable post-16 education body.

(3) Before making an order under subsection (2), the Scottish Ministers must consult—

- (a) the Council;
- (b) the local authority for any area in which post-16 education bodies provide, or are to provide, fundable further education or fundable higher education which is funded, or is to be funded, by the regional strategic body to which the order relates;
- (c) where it relates to a regional strategic body which already exists, the regional strategic body and its colleges; and
- (d) any other person appearing to the Scottish Ministers as likely to be affected by the order.”.

(2) After schedule 2 to the 2005 Act insert—

“SCHEDULE 2A

Regional strategic bodies

(introduced by section 7B(1))

PART 1

Regional boards

Regional Board for Glasgow Colleges

Regional Board for Lanarkshire Colleges

PART 2

Other regional strategic bodies

University of the Highlands and Islands”.

(3) After section 7B of the 2005 Act, inserted by subsection (1), insert—

“7C Assignment of colleges

(1) The Scottish Ministers may by order assign colleges of further education to a regional strategic body.

(2) An order may assign a college which is not, immediately before the order is made,

either—

(a) a fundable post-16 education body; or

(b) assigned to another regional strategic body, only if the Council has proposed, or has approved, the assignment.

(3) For the purposes of considering whether or not to propose or approve any assignment under subsection (2), the Council must have regard to the desirability of ensuring that the college concerned is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).

(4) Without prejudice to section 34(2), the power to make an order under subsection (1) includes power to—

(a) remove from schedule 2 any entry relating to a college to which the order relates;

(b) make such further provision in relation to such a college as the Scottish Ministers consider appropriate.

(5) But an order under subsection (1) may remove an entry relating to a college from schedule 2 only if the Council has proposed, or has approved, the removal.

(6) Before making an order under this section, the Scottish Ministers must consult—

- (a) the regional strategic body (except where not already established);
  - (b) every college to which the order relates (except any not already established);
  - (c) the representatives of any trade union which is recognised by any college to which the order relates or which otherwise appears to the Scottish Ministers to be representative of the staff of such a college;
  - (d) the students' associations of the colleges to which the order relates;
  - (e) the Council;
  - (f) any local authority for an area in which any of the colleges to which the order relates is situated; and
  - (g) any other person appearing to the Scottish Ministers as likely to be affected by the order.
- (7) The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (1) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).
- (8) On completing a review, the Council must provide a report of the review to the Scottish Ministers which—
- (a) sets out the conclusions which it has reached;
  - (b) explains why it has reached those conclusions; and
  - (c) makes any recommendations for action in consequence of those conclusions as it considers appropriate.
- (9) References in this Act to a regional strategic body's colleges are references to the governing bodies of the colleges assigned to it by an order under this section.”.

## **9 Funding of and by regional strategic bodies**

- (1) In section 12 of the 2005 Act—
- (a) in subsection (1)—
    - (i) in paragraph (a), after “fundable” insert “post-16 education”,
    - (ii) in paragraph (b)(i), after “fundable” insert “post-16 education”,
    - (iii) after paragraph (b) insert—  
“(c) to a regional strategic body.”,
  - (b) in subsection (2), omit “subsection (5) of”,

(c) in subsection (5)(b), for “fundable bodies” substitute “post-16 education bodies, or regional strategic bodies.”.

(2) After section 12 of the 2005 Act insert—

“12A Regional strategic bodies: administration of funds

(1) A regional strategic body is, for the purposes of—

(a) providing support (whether financial or otherwise) for the activities specified

in subsection (3); and

(b) exercising its other functions, responsible for administering the funds mentioned in subsection (2).

(2) The funds are—

(a) all funds made available to it under section 12(1)(c); and

(b) any other funds made available to it for those purposes.

(3) The activities are—

(a) the provision of fundable further education and fundable higher education by

the regional strategic body's colleges;

(b) the undertaking of research among those colleges;

(c) the—

(i) provision of such facilities; and

(ii) carrying on of such other activities, by those colleges or any other person as are necessary or desirable for the purposes of or in connection with an activity specified in paragraph (a) or (b);

(d) the provision of services by those colleges or any other person for the purposes of or in connection with an activity specified in paragraph (a) or (b).

12B Funding of assigned colleges

(1) A regional strategic body may make grants, loans or other payments—

(a) to any of its colleges in respect of expenditure incurred or to be incurred by the college for the purposes of any of the activities specified in subsection (3)(a) and

(b) of section 12A;

(b) to—

(i) any of its colleges; or



(ii) any other person, in respect of expenditure incurred or to be incurred by the college or person for the purposes of any of the activities specified in subsection (3)(c) and (d) of that section.

(2) A payment made under subsection (1) may (in addition to any condition which is imposed in pursuance of conditions imposed on the regional strategic body under section 9) be subject to such terms and conditions as the regional strategic body 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 the regional strategic body may specify;

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

(4) A condition imposed on any of the regional strategic body's colleges in pursuance of section 9(5A) is to make provision that is to apply if the college fails to comply with the requirement referred to in section 9(6).

(5) A condition imposed on any of the regional strategic body's colleges in pursuance of section 9(5A) 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.

(6) Terms and conditions imposed under subsection (2) may not relate to the application

by the college of any sums which were not derived from the Council.

(7) Before imposing terms and conditions under subsection (2), a regional strategic body must—

(a) except where it considers that it is not expedient to do so, consult the college 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 its colleges or any class of them.

(8) In making payments under subsection (1), the regional strategic body is to have regard to the desirability of—

(a) encouraging its colleges to maintain or develop funding from other sources;

(b) preserving any distinctive characteristics of particular colleges.”.

## **10 Regional strategic bodies: functions**

After section 23D of the 2005 Act, inserted by section 5(2), insert—

“Regional strategic bodies: functions

23E Regional strategic bodies: general duty

(1) It is the duty of a regional strategic body to exercise its functions with a view to securing the coherent provision of a high quality of fundable further education and fundable higher education in the localities of its colleges.

(2) In doing so, the regional strategic body must have regard to any fundable further education and fundable higher education provided by other post-16 education bodies in the localities of its colleges.

23F Regional strategic bodies: planning

(1) A regional strategic body must plan for—

(a) how it proposes its colleges should provide fundable further education and fundable higher education; and

(b) how it intends to exercise its functions, and the body's colleges must, where appropriate, have regard to those plans when exercising their functions.

(2) When making plans, a regional strategic body must have regard to the importance of ensuring that funds made available to it under section 12(1)(c) are used as economically, efficiently and effectively as possible.

23G Performance monitoring

(1) A regional strategic body must monitor the performance of its colleges.

(2) This may, in particular, include—

(a) (a) monitoring or assessing the quality of fundable further education and fundable higher education provided by its colleges;

(b) monitoring the impact which providing that education has on the well-being of—

(i) the students and former students of its colleges;

(ii) the localities in which its colleges are situated; or

(iii) Scotland;

(c) monitoring its colleges' financial and other affairs.

(3) A regional strategic body must, when considering whether to take any action under subsection (1), have regard to the desirability of preventing any unnecessary duplication of any action taken, or likely to be taken, by the Scottish Ministers or the Council in relation to the performance of its colleges.

#### 23H Promotion of Council's credit and qualification framework

A regional strategic body is to promote the use by its colleges of such credit and qualification framework as the Council may adopt in pursuance of section 14.

#### 23I Efficiency studies: assigned colleges

(1) A regional strategic body may secure the promotion or carrying out of studies designed to improve economy, efficiency and effectiveness in the management or operations of any of its colleges.

(2) A college must—

(a) provide any person promoting or carrying out studies by virtue of subsection

(1) with such information; and

(b) make available to the person for inspection such accounts and other documents, as the person may reasonably require for the purposes of the studies.

#### 23J Right to address college meetings

Where a regional strategic body is concerned about any matters relating to the financial support which any of its colleges receives (or might receive) from the body, a member of the body is entitled to—

(a) attend any meeting of the college; and

(b) address the meeting on those matters.

#### 23K Regional strategic bodies: improvement of economic and social well-being

(1) A regional strategic body is to exercise its functions with a view to improving the economic and social well-being of the localities of its colleges.

(2) In doing so, the regional strategic body is to have regard to—

(a) social and economic regeneration needs in those localities; and

(b) social cohesion and social inclusion issues in those localities.

(3) For the purposes of subsection (2)(a), “needs” means needs which appear to the regional strategic body—

(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.

(4) For the purposes of subsection (2)(b), “issues” means issues which appear to the regional strategic body—

(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.

23L Regional strategic body to have regard to particular matters

(1) In exercising its functions, a regional strategic body is to have regard to—

(a) skills needs in the localities of its colleges;

(b) issues affecting the economy of the localities of its colleges;

(c) social and cultural issues in the localities of its colleges; and

(d) the needs and issues in relation to Scotland identified by the Council for the purposes of section 20(1).

(2) In exercising its functions, a regional strategic body is to—

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

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

(3) In exercising its functions, a regional strategic body is to have regard to the—

(a) United Kingdom context; and

(b) international context, in which any of its colleges may carry on its activities.

(4) In exercising its functions, a regional strategic body 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 its colleges.

(5) In exercising its functions, a regional strategic body 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 regional strategic body reasonably considers to be under-represented in such education; and

(b) in particular, promote collaboration and sharing of good practice between its colleges in relation to enabling, encouraging and improving such participation.

(6) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which appears to the regional strategic body—

(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 (1)(b) and (c), “issues” means issues which appear to the regional strategic body—

(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.

(8) For the purposes of subsection (5), 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.

(9) A regional strategic body may take into account any social or economic characteristics which it considers appropriate when determining which groups are to constitute

“socio-economic groups” for the purposes of subsection (5).

(10) A regional strategic body is to have regard to the under-represented socio-economic groups identified by the Council for the purposes of section 20(4A) when determining—

(a) which groups are to constitute “socio-economic groups” for the purposes of subsection (5); and

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

#### 23M Regional strategic bodies: consultation and collaboration

(1) A regional strategic body must, where it considers it appropriate to do so in the exercise of its functions, consult—

(a) its colleges;

(b) the representatives of—

(i) any trade union recognised by any of its colleges; and

(ii) any other trade union which appears to it to be representative of staff of any of its colleges;

(c) the students’ association of any of its colleges;

(d) the local authorities for the areas in which its colleges are situated;

(e) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of any of its colleges;

(f) any other regional college or regional strategic body whom it considers likely to have an interest in the matter concerned;

(g) any person who appears to it to be representative of employers in the same locality as any of its colleges;

(h) any person who appears to it to be representative of the interests of any sector for which any of its colleges provides specialist education or training;

(i) The Open University;

(j) The Skills Development Scotland Co. Limited;

(k) the Scottish Qualifications Authority; and

(l) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).

(2) Any particular requirement for consultation imposed on a regional strategic body by virtue of this or any other enactment is without prejudice to subsection (1).

(3) A regional strategic body must, so far as is consistent with the proper exercise of its functions, seek to secure the collaboration with the body of any or all of the following persons—

(a) its colleges;

(b) the representatives of any trade union recognised by any of its colleges or which otherwise appears to it to be representative of the staff of any of its colleges;

(c) the students' associations of its colleges;

(d) the local authorities for the areas in which its colleges are situated;

(e) the governing body of any other post-16 education body which provides fundable further education or fundable higher education in the locality of any of its colleges;

(f) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;

(g) The Open University;

(h) The Skills Development Scotland Co. Limited;

(i) the Scottish Qualifications Authority; and

(j) Scottish Enterprise or Highlands and Islands Enterprise (as appropriate).

(4) The Scottish Ministers may by order modify subsection (1) or (3)—

(a) by adding or removing persons, or types of persons, to which those provisions apply; or

(b) varying the description of any such person or type of person.

(5) But such an order may not modify paragraph (a), (b) or (c) of subsection (1) or paragraph

(a) of subsection (3).

(6) A regional strategic body must, in relation to the provision of fundable further education and fundable higher education—

(a) promote collaboration between its colleges; and

(b) promote such other collaboration between its colleges and other post-16 education bodies as it considers appropriate.

23N Assigned colleges: information and directions

(1) A regional strategic body's colleges must provide the regional strategic body with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.

(2) A regional strategic body may give such directions to its colleges, or to any of them, as it considers appropriate.

(3) Directions given under this section may be of a general or specific character.

(4) Before giving directions under this section, a regional strategic body must consult—

(a) any college to which the proposed directions relate;

(b) the representatives of any trade union recognised by such a college or which otherwise appears to the regional strategic body to be representative of its staff; and

(c) the students' association of every such college.

(5) A college must comply with directions given to it under this section.

(6) Directions given under this section may be varied or revoked.

(7) Nothing in this section allows a regional strategic body—

(a) to direct a college to transfer any staff, property, rights, liabilities or obligations; or

(b) to give directions to a college whose governing body is not a board of management established in pursuance of Part 1 of the 1992 Act.

23O Transfer of staff and property etc.

(1) A regional strategic body may require any of its colleges to transfer such of its staff, property, rights, liabilities or obligations as may be specified in the requirement—

(a) to another of its colleges; or

(b) to the regional strategic body.

(2) Such a requirement may be made—

(a) for the purpose of transferring responsibility for providing any particular programmes of learning or courses of education from one of the regional strategic body's colleges to another of its colleges;

(b) for the purpose of transferring responsibility for providing any particular service;

or

(c) for any other purpose relating to the functions of the regional strategic body or any of its colleges.

(3) Before making a requirement under subsection (1), the regional strategic body must consult—

(a) any college to which the proposed transfer relates;

(b) the representatives of any trade union recognised by such a college or which otherwise appears to the regional strategic body to be representative of its staff; and

(c) the students' association of every such college.

(4) Consultation under subsection (3)(a) is to be undertaken with a view to seeking the agreement of the college to the proposed transfer.

(5) A requirement under subsection (1) may make such further provision in relation to the transfer as the regional strategic body considers appropriate.

(6) Any transfer of staff effected by virtue of subsection (1) is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

(7) All property and rights transferred by virtue of subsection (1) are to be applied for the purpose of the advancement of education.

(8) Subject to subsection (9), a requirement made under subsection (1) is binding on any college to which it relates.

(9) A requirement made under subsection (1) is binding on a college falling within subsection

(10) only if the college consents to the making of the requirement.

(10) A college falls within this subsection if—

(a) its governing body is not a board of management established in pursuance of Part 1 of the 1992 Act;

(b) it is the college from which staff, property, rights, liabilities or obligations are to be transferred in pursuance of the requirement and the transfer is to be made to a college whose governing body is not a board of management established in pursuance of Part 1 of the 1992 Act; or

(c) the regional strategic body to which it is assigned is a body included in Part 2 of schedule 2A.

(11) The Scottish Ministers may by order modify subsection (10) to provide that a college, or type of college, specified in the order is or is not to fall within that subsection (other than by virtue of paragraph (a) or (b) of that subsection).

(12) Such an order may not modify paragraph (a) or (b) of subsection (10).



(13) Before making an order under subsection (11), the Scottish Ministers must consult—

- (a) any regional strategic body to which the order relates;
- (b) the representatives of any trade union which is recognised by such a regional strategic body or which otherwise appears to the Scottish Ministers to be representative of the staff of such a body;
- (c) any college of further education which is assigned to such a regional strategic body by order made under section 7C(1);
- (d) the students' association of each such college;
- (e) the representatives of any trade union which is recognised by each such college or which otherwise appears to the Scottish Ministers to be representative of the staff of such a college;
- (f) the Council;
- (g) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally;
- (h) any body which appears to the Scottish Ministers to be representative of colleges of further education;
- (i) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and
- (j) any other person whom the Scottish Ministers consider likely to be affected by the order.

(14) Where any of a regional strategic body's staff are transferred to any of its colleges by virtue of any other arrangements made between the regional strategic body and that college, the transfer is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).”.

## **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.

## **FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992, SCHEDULE 5, PARAGRAPH 4**

### **Directions**

#### **4.—**

(1) The Secretary of State may give college councils directions of a general or specific character with regard to the discharge of their functions under this Part of this Act; and it shall be the duty of every college council to whom such directions are given to comply with the directions.

(2) A direction given under this paragraph—

(a) may be varied or revoked by a subsequent direction so given;

(b) may be addressed to one or more than one college council.

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

### **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.