

EXPLANATORY NOTES

Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026 (asp 5)

£8.90

These notes relate to the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026 (asp 5)
which received Royal Assent on 11 March 2026

TERTIARY EDUCATION AND TRAINING (FUNDING AND GOVERNANCE) (SCOTLAND) ACT 2026

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

CROWN APPLICATION

3. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA") provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, technically this Act applies to the Crown in the same way as it applies to everyone else. However, the substantive provisions of the Act will almost exclusively be inserted into the 2005 Act, and also into the Education (Scotland) Act 1980. Those Acts, as they predated ILRA, did not bind the Crown when enacted, and so the amendments to them made by the Act will also not bind the Crown.

OVERVIEW OF THE ACT

4. The purpose of the Act is to reform and simplify the framework for the funding of post-school education and skills training in Scotland. The Act does so primarily by making provision for the Council to take full responsibility for securing the delivery of national training programmes (NTPs) and apprenticeships, a role previously carried out by Skills Development Scotland. The Council already funds the provision of further and higher education through arrangements established under the 2005 Act. The Act also changes some of the Council's governance rules.

5. The Act is in six Parts:

- Part 1 makes provision for a national funding strategy for tertiary education, skills and apprenticeships;
- Part 2 confers new functions on the Council relating to securing and funding the delivery of NTPs, apprenticeships and work-based learning, and also amends and augments several of the Council's supporting functions in Part 1 of the 2005 Act;

- Part 3 makes reforms to the governance arrangements of the Council in schedule 1 of the 2005 Act;
- Part 4 makes provision relating to financial support for students at private providers of further and higher education, extending existing powers under the Education (Scotland) Act 1980, and creating a new power for the Scottish Ministers to designate private providers for the purposes of student financial support;
- Part 5 makes provision for review of the Act;
- Part 6 contains the final and general provisions for the Act.

COMMENTARY ON PROVISIONS

PART 1 – NATIONAL FUNDING STRATEGY

Section 1: National funding strategy

6. Section 1 of the Act requires the Scottish Ministers to prepare a national funding strategy for tertiary education, skills and apprenticeships, setting out Ministers' view of skills needs in Scotland (including in different parts of Scotland); Ministers' priorities for funding further education and higher education, programmes of training for employment (i.e. national training programmes – see section 10 of this Act), Scottish apprenticeships (see section 11) and work-based learning (see section 12); the outcomes which Ministers are seeking to deliver through funding those activities; and, in addition, such other information as Ministers consider appropriate to include in the strategy.

7. The Scottish Ministers must, as soon as reasonably practicable after this section comes into force, publish the strategy and lay it before the Scottish Parliament. They may from time to time revise the strategy, in which case the same obligations apply.

8. The Scottish Ministers must also from time to time prepare a report on the progress being made in delivering the outcomes set out in the strategy, and must publish that report and lay it before the Scottish Parliament too.

PART 2 – FUNCTIONS OF THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL

9. General duties of the Council and the Scottish Ministers

Section 2: General duty of the Council to secure high-quality learning

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

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

Section 3: General duty of the Scottish Ministers to support delivery

12. Section 4 of the 2005 Act places a duty on the Scottish Ministers to provide support for the provision of fundable further and higher education in Scotland by the post-16 education bodies, and the undertaking of research among the post-16 education bodies, through the exercise of their grant-making powers in the 2005 Act, and by such other means as they consider appropriate.

13. Section 3 of this Act amends this duty so that it also extends to supporting the provision of Scottish apprenticeships and work-based learning.

14. When exercising this duty, the Scottish Minsters must have regard to the need for the provision to address current and future economic needs.

15. Review of credit-based funding model

Section 4: Review of credit-based funding model

16. Section 4 of this Act requires the Scottish Ministers, within 12 months of the section being commenced, to undertake a review of the credit-based funding model used by the Council for making payments to colleges and other providers of further education. The review is to consider the provision of fundable further education, including the availability of courses provided across Scotland, and the ability of providers of fundable further education to deliver courses.

17. After completing the review, the Scottish Ministers must publish and lay a report on the review before the Scottish Parliament, setting out the actions, if any, the Scottish Ministers intend to take as a result of the review.

18. Conditions of funding

Section 5: Duty to place conditions on funding: transparency

19. Section 9A of the 2005 Act gives the Scottish Ministers a discretion, when making payments to the Council, to impose a condition that the Council must, when funding a higher education institution, require the institution to comply with any principles of governance which appear to the Council to constitute good practice. Section 5(2) of this Act supplements this by providing that good practice for these purposes includes, in particular, having regard to the need to operate in a way which is transparent and accountable.

20. Section 9B of the 2005 Act makes equivalent provision in relation to colleges of further education. Section 5(3) of this Act supplements this in the same way by providing that good practice for these purposes includes, in particular, having regard to the need to operate in a way which is transparent and accountable.

Section 6: Duty to place conditions on funding: conflict of interest

21. Section 6 of this Act inserts a new section 9F into the 2005 Act.

22. This new section obliges the Scottish Ministers to impose a condition of funding that the Council must, when making a payment to a fundable post-16 education body under section 12(1) of the 2005 Act, require that the fundable body has in place a conflict of interest policy that contains the list of requirements set out in section 9F(1). Section 9F(2) defines a "registrable interest" for these purposes, and the list of such interests is amendable by regulations.

Section 7: Duty to place conditions on funding: whistleblowing

23. Section 7 of this Act inserts a new section 9G into the 2005 Act.

24. This new section empowers the Scottish Ministers to impose a condition of funding that the Council must, when making a payment to a fundable post-16 education body under section 12(1) of the 2005 Act, require that the fundable body has in place a whistleblowing procedure which meets the criteria set out in section 9G(1).

25. Under section 9G(2), a fundable body must notify the Council when it has received information through its whistleblowing procedure that suggests a material risk to continuity of learner provision or financial sustainability. That notification may be made on a confidential basis.

26. Under section 9G(4) the Council must consider whether any action is required as a result of any notification it receives, and record any actions it takes in turn. In addition, the Council's annual report (under paragraph 18 of schedule 1 of the 2005 Act) must include an anonymised summary of the notifications received during the financial year under section 9G(2).

Section 8: Duty to place conditions on funding: engagement with trade unions, students and external partners

27. Section 8 of this Act inserts a new section 9H into the 2005 Act.

28. This new section obliges the Scottish Ministers to impose a condition of funding that the Council must, when making a payment to a fundable post-16 education body under section 12(1)) of the 2005 Act, require that the fundable body takes reasonable steps to inform and consult the persons mentioned in section 9H(2) before implementing any decision that could significantly impact the body's provision for learners, its levels of staffing or its financial sustainability. Those persons include recognised trade unions representing the fundable body's employees, organisations representing the body's students, and any external partners who may be impacted by the decision.

29. In addition, the funding condition must require that the fundable body must, where requested by the Council, submit a report to the Council on the consultation undertaken.

Section 9: Duty to place conditions on funding: prevention of gender-based violence

30. Section 9 of this Act inserts a new section 9I into the 2005 Act.

31. This new section allows Scottish Ministers to impose a condition of funding that the Council must, when making a payment to a fundable post-16 education body under section 12(1) of the 2005 Act, require the body to take action to prevent gender-based violence against its students and staff; to provide support for its students and staff who are experiencing or have experienced gender-based violence; and further to report annually on the action it has taken the previous academic year and the action it intends to take in this regard over the next academic year.

32. Any such funding requirements imposed on fundable post-16 education bodies must be published by the Council, as per section 9I(2). In addition, a duty is imposed under section 9I(3) on the Council to issue guidance to fundable post-16 education bodies on compliance with funding requirements concerning gender-based violence, including on the definition of gender-based violence, after consultation with those listed in subsection 9I(4).

33. Funding for national training programmes

Section 10: Funding for national training programmes

34. This section of the Act inserts two new sections into the 2005 Act, relating to the funding of NTPs.

35. New section 12C(1) gives the Scottish Ministers a power to make grants to the Council for the purpose of securing the delivery of programmes of training for employment, subject to such terms and conditions as Ministers consider it appropriate to impose. Section 12C(3) sets out a non-exhaustive list of what such terms and conditions may require – including requiring that the Council itself impose a specified condition when making a payment to another person under its new power to administer funds in section 12D. Section 12C(4) requires Ministers to publish terms and conditions imposed under subsection (2), together with the reasons for considering them appropriate to impose – or, if Ministers consider that such publication would not be appropriate, to publish instead a statement of their reasons for that decision.

36. New section 12D(1) places responsibility on the Council for administering all grants made to it under section 12C for the purpose of securing the delivery of programmes of training for employment, and section 12D(2) gives the Council a corresponding power to make grants, loans or other payments to any person to deliver training programmes. Such funding may be subject to such terms and conditions as the Council considers it appropriate to impose, which may, in particular, include terms and conditions relating to the repayment of funding, including interest; but such funding must be subject to any terms and conditions imposed by Ministers when making grants to the Council by virtue of new section 12C.

37. Section 3(2) of the Act adjusts the existing duty of the Council in the 2005 Act to administer funds received so that it does not apply to these new functions.

38. Scottish apprenticeships

Section 11: Scottish apprenticeships

39. This section of the Act inserts several new sections into the 2005 Act, creating a new legislative framework for Scottish apprenticeships.

40. New section 12E defines a "Scottish apprenticeship" for the purposes of Part 1 of the 2005 Act. This is defined as an arrangement where an individual apprentice does paid work for an employer in an occupation or activity included in a Scottish apprenticeship framework; the apprentice receives training to meet the relevant requirements in a Scottish apprenticeship framework (see section 12F); and there is an apprenticeship agreement (as defined in section 12E(4)) in place between the apprentice and the employer and any training provider involved in the delivery of the apprenticeship. In addition, Ministers may set additional criteria in regulations (subject to the negative procedure) which must be satisfied here.

41. Section 12E(2) gives Ministers a separate regulation-making power, subject to the affirmative procedure, to change the definition of a Scottish apprenticeship in subsection (1). Before laying a draft of such regulations before the Scottish Parliament, Ministers must consult the persons listed in section 12E(3).

42. New section 12F gives the Council powers to prepare, publish, amend and revoke Scottish apprenticeship frameworks, which are to set out the relevant requirements for a Scottish apprenticeship in respect of particular occupations or activities, including the training and standards required of apprentices.

43. In preparing a framework, and before amending or revoking one, the Council must have regard to the views of the persons listed in subsections (3) and (6) respectively. Section 12F(5) also requires the Council to publish reasons for amending a revoking a framework.

44. Section 12F(7) gives Ministers a regulation-making power to make further provision about the requirements for Scottish apprenticeships which are to be set out in an apprenticeship framework, and the process to be followed by the Council in preparing, publishing, amending and revoking frameworks.

45. New section 12G enables requests to be made to the Council to prepare or revise a Scottish apprenticeship framework for a particular occupation or activity. Section 12G(2) requires the Council to consider any such request made to it. Section 12G(3) allows the Council to charge a reasonable fee to cover the cost of preparing or amending a framework.

46. Section 12G(5) gives Ministers a regulation-making power to make provision about the process to be followed by the Council in responding to requests to prepare or amend an apprenticeship framework; the amount of fee that the Council may charge for preparing or amending a framework; and the circumstances in which the fee must be waived.

47. New section 12H allows apprentices who have completed their training, or someone on their behalf, to apply to the Council for a Scottish apprenticeship certificate. Under subsection (3), the Council may charge a reasonable fee for issuing a Scottish apprenticeship certificate.

48. Section 12H(4) gives Ministers a regulation-making power to make provision about the process to be followed for requesting and issuing apprenticeship certificates, and the amount of fee that the Council may charge for issuing a certificate.

49. Funding for Scottish apprenticeships and work-based learning

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

50. This section of the Act inserts two new sections into the 2005 Act, relating to the funding of Scottish apprenticeships and work-based learning.

51. New section 12I(1) gives the Scottish Ministers a power to make grants to the Council for the purpose of securing the delivery of Scottish apprenticeships and work-based learning, subject to such terms and conditions as Ministers consider it appropriate to impose. Section 12I(2) and (3) define the terms "work-based learning" and "work-based learning agreement", with section 12I(5) giving Ministers a regulation-making power to supplement the meaning of "work-based learning".

52. New section 12J(1) places responsibility on the Council for administering all grants made to it under section 12I for the purpose of securing the delivery of Scottish apprenticeships and work-based learning, and section 12J(2) gives the Council a corresponding power to make grants, loans or other payments to training providers to deliver apprenticeships or work-based learning. Such funding may be subject to such terms and conditions as the Council considers it appropriate to impose. Section 12J(3) defines a "training provider" for the purposes of the section, giving Ministers a regulation-making power, subject to the negative procedure, to set out criteria for a provider to satisfy in order to meet this definition.

53. Section 12J(5) requires the Council must impose conditions on a payment made under section 12J(2) that any person who is contracted by a training provider to deliver the learning or training must also be a training provider within the meaning of section 12J(3); and further that no training provider may retain more than a reasonable percentage of the payment, to be determined by the Council, as a fee for managing the delivery of the learning or training. The purpose of this requirement is to limit the portion of public funding retained by professional managing agents in the delivery of tertiary education and skills training.

54. Section 12(2) of this Act adjusts the existing duty of the Council in the 2005 Act to administer funds received so that it does not apply to these new functions.

55. Transitional measures

Section 13: Statement on financial implications

56. Section 13 of this Act requires the Scottish Ministers, within a 1 year of the section coming to force, to lay before the Scottish Parliament a statement on the financial implications of the Council assuming the functions conferred on it by sections 10 to 12 of this Act.

57. Information sharing

Section 14: Information sharing

58. This section of the Act inserts a new section 12K into the 2005 Act, requiring persons in receipt of funding from the Council under the new powers set out in sections 12D and 12J (see sections 3 and 5 of the Act respectively) to provide the Council with such information as the Council may request relating to the training programme, Scottish apprenticeship or work-based learning (as the case may be) for which the funding is made.

59. In addition, subsection (3) of this section amends section 17 of the 2005 Act so that the Council is obliged, when required to do so by Ministers, to provide information, advice and assistance to Ministers in relation to the provision and funding of training for employment, work-based learning and apprenticeships; otherwise the Council has discretion to provide the Scottish Ministers with information and advice relating to those matters whenever it considers it appropriate to do so.

Section 15: Requirement to promote proactive publication

60. Section 15 of the Act inserts a new section 12L into the 2005 Act. This places a duty on the Council, along with any fundable body that receives funding from the Council under section 12(1), 12D(2) or 12J(2) of the 2005 Act, to take steps to adopt a proactive approach to the publication of data which is considered appropriate for disclosure in the public domain. This duty is defined as including the routine identification and publication of appropriate information without the need for specific requests.

61. Subsection (2) of new section 12L qualifies the duty in subsection (1), providing that it only applies in respect of data which relates to the activities for which the body receives payment under section 12(1), 12D(2) or 12J(2) of the 2005 Act (as the case may be).

62. Notifications to the Council by post-16 education bodies

Section 16: Notifications to the Council by post-16 education bodies

63. This section of the Act inserts a new section 14B into the 2005 Act, placing a requirement on post-16 education bodies to notify the Council of matters specified in regulations made by Ministers. Those regulations may also specify the form and manner in which notifications are to be made to the Council. Ministers must consult with the persons

listed in section 14B(2) before laying the regulations. The intention is to require notification where there is potentially serious jeopardy to a post-16 education body, for instance an external threat such as a cyberattack, or for instance a material change in their circumstances such as a rapidly worsening financial situation.

64. Recommendations to fundable bodies

Section 17: Recommendations to fundable bodies

65. This section of the Act amends section 15 of the 2005 Act, which gives a power to the Council to arrange studies designed to improve economy, efficiency and effectiveness in the management or operations of any fundable body, and places a corresponding obligation on such bodies to share information and documents with the person carrying out a study.

66. New subsection (3) of section 15, as inserted by the Act, provides that a study may include consideration of the extent to which the needs and interests of the students are being met.

67. New subsection (4) provides that a study may include consideration of the extent to which the needs and interests of staff are being met by a fundable body, including in relation to fair work principles of employment. See also section 20(11) of the 2005 Act, as inserted by this Act, under which the Scottish Ministers may give directions to the Council setting out the definition of "fair work principles" for these purposes.

68. New subsection (5) gives the Council a power to issue recommendations to a fundable body following a study carried out under this section. As per new subsection (6), the Council has a discretion to publish any such recommendations as it considers appropriate. The Council must consult the fundable body before publishing any recommendations.

69. Monitoring of financial sustainability of post-16 education bodies

Section 18: Financial sustainability of post-16 education bodies

70. This section of the Act inserts a new section 15A into the 2005 Act on the monitoring of the financial sustainability of post-16 education bodies.

71. New section 15A(1) places a duty on the Council to secure the monitoring of the financial sustainability of those bodies. Section 15A(2) allows the Council to commission an independent examination into the financial sustainability or financial governance of a post-16 education body where it considers it necessary to do so. Under section 15A(3), the governing body of a post-16 education body must provide an independent financial examiner with any information or documents they reasonably require for the purposes of the examination.

72. Section 15A(4) allows Ministers to request the Council to provide them with information and advice in relation to the financial sustainability of post-16 education bodies – and under section 15A(5) the Council is obliged to provide such information and advice when requested by Ministers, although it can also provide such information and advice whenever it considers it appropriate to do so.

73. Guidance by the Council to fundable bodies

Section 19: Guidance to fundable bodies

74. This section of the Act inserts a new section 17A into the 2005 Act, giving the Council a power to issue guidance to fundable bodies and to persons in receipt of funding from the Council under the new powers set out in sections 12D and 12J (see sections 10 and 12 of the Act respectively). The guidance may in particular relate to the topics listed in subsection (2), including for example the needs and interests of current and prospective learners, and the financial sustainability of post-16 education bodies. Guidance about the form and manner of providing information must be consistent with any regulations made by the Scottish Ministers specifying the form and manner in which notifications of specified matters are to be made by post-16 education bodies to the Council under section 14B(1).

75. Under section 17A(4) a person must have regard to any guidance issued by the Council about activities in respect of which the person is in receipt of funding. Guidance which the Council considers it appropriate to issue under this section therefore places recipients under a statutory duty to have careful and proper regard to it. This provision does not have any impact on other guidance that the Council may wish to issue on a non-statutory basis, in respect of which there remains an expectation that recipients would have careful and proper regard to it.

76. Section 17A(5) requires the Council to consult the funded bodies and persons, the Scottish Ministers, and other persons they consider appropriate, before issuing any guidance. Section 17A(6) gives the Council a discretion to publish any guidance as it considers appropriate.

77. Reporting by the Council

Section 20: Reporting by the Council to fundable bodies

78. This section of the Act inserts a new section 19B into the 2005 Act, requiring the Council to report on the financial sustainability of the further and higher education sector in Scotland, and on the performance of any persons involved in the provision of programmes of training for employment (i.e. national training programmes – see section 10 of this Act), Scottish apprenticeships (see section 11) and work-based learning (see section 12). At least once every financial year, the Council must prepare and publish a report on those issues.

79. Section 20 of this Act also give the Scottish Ministers a power to direct the Council to include particular aspects of financial sustainability or performance in a report, or to report on any matter relating to the Council's functions as the Scottish Ministers may determine – and the Council is required to comply.

80. Exercise of functions by the Council

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

81. Section 20 of the 2005 Act sets out certain matters that the Council must have regard to in exercising its statutory functions as a whole. Section 21 of this Act adds four new standalone requirements for the Council to consider here.

82. Firstly, new subsection (1A) requires the Council to have regard to the policy priorities of the Scottish Ministers in exercising its functions.

83. Secondly, new subsection (3A) requires the Council to have regard to the desirability of protecting and promoting the interests of current and prospective learners.

84. Thirdly, new subsection (3B) requires the Council to have regard to the desirability of protecting and promoting fair work principles of employment. The Scottish Ministers are given the power, under new subsection (11), to give directions to the Council on the definition of "fair work principles" for these purposes, and the Council is required to comply with such a direction.

85. Finally, new subsection (4C) requires the Council to have regard to the desirability of facilitating, encouraging and supporting knowledge exchange and innovation from the research of the post-16 education bodies.

86. Section 20 of the 2005 Act also already sets out that the Council must have regard to skills needs in Scotland in the exercise of its functions, issues affecting the economy of Scotland, and social and cultural issues in Scotland. Section 21 of this Act clarifies the meaning of "Scotland" for these purposes, providing that this is to include different parts of Scotland.

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

87. Section 20 of the 2005 Act sets out certain matters that the Council must have regard to in exercising its statutory functions as a whole. This includes, under subsection (1), skills needs in Scotland, issues affecting the economy of Scotland, and social and cultural issues in Scotland.

88. Section 22 of this Act qualifies the meaning of the term "skills needs" to include any requirement or desirability for skills or knowledge which appears to the Council to exist for the time being, or to be likely to exist in the future, and to be capable of being addressed by the provision of programmes of training for employment, Scottish apprenticeships or work-based learning – in addition to further education or higher education. Section 22 of the Act also qualifies the meaning of the term "issues" in section 20 of the 2005 Act in the same way.

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

89. Section 22 of the 2005 Act sets out duties on the Council to consult and collaborate with certain persons. Section 23 of this Act adds, to that list of persons, persons who appear to the Council to be representative of apprentices, employers of apprentices or persons who appear to the Council to be representative of such employers, and also training providers as defined in the new section 12J(3) of the 2005 Act, i.e. persons who provide either work-based learning or the training of an apprentice required under a Scottish apprenticeship framework.

90. Widening access to fundable further and higher education

Section 24: Widening access to fundable further and higher education: sharing of information

91. Section 24 of this Act adds a new section 25B into the 2005 Act.

92. This new section 25B contains a regulation-making power for the Scottish Ministers to require the sharing of specified information about individuals, for the purposes of enabling, encouraging or increasing participation in further and higher education by persons belonging to socio-economic groups Ministers consider to be under-represented in further education and higher education. The outcome of such information-sharing is to be that the specified information is then available to a fundable post-16 education body which is provided funding for the delivery of further or higher education.

93. The provision allows Ministers to set out the details of the information-sharing process in the regulations, including by prescribing the information covered and the persons involved in the process (who may in particular include a post-16 education body within the meaning of the 2005 Act). Regulations under this section are subject to the affirmative procedure.

94. Amendment of lists of fundable bodies

Section 25: Amendment of lists of fundable bodies in schedule 2 of the 2005 Act

95. Schedule 2 of the 2005 Act lists the fundable post-16 education bodies, providing further and higher education, to which the 2005 Act's provisions apply. These bodies appear under three separate headings in schedule 2, but there is no actual difference in legal terms between the bodies listed under the headings. Section 25 of this Act therefore combines the three lists of bodies together with the purpose of trying to avoid any confusion on those grounds.

PART 3 – GOVERNANCE OF THE COUNCIL

96. Membership of the Council

Section 26: Appointment of members of the Council

97. This section of the Act amends paragraph 2 of schedule 1 of the 2005 Act, on the membership of the Council. The current limit on reappointment as a member of the Council for a single further term of up to 4 years is repealed by section 14(2)(a). Instead, sub-paragraph (6), as amended by section 14(2)(b), has the effect that a person who is or has been a member is to be generally eligible for reappointment.

Section 27: Membership of the Council: interests of employers

98. This section of the Act amends paragraph 2 of schedule 1 of the 2005 Act, on the membership of the Council, to provide that its membership must include at least 2 individual members who appear to the Scottish Ministers to represent the interests of employers.

Section 28: Membership of the Council: number of members

99. This section of the Act amends paragraph 2 of schedule 1 of the 2005 Act, on the membership of the Council, to change the maximum number of individual members of the Council from 14 to 16.

Section 29: Skills and experience of members of the Council

100. This section of the Act amends paragraph 3 of schedule 1 of the 2005 Act, on the considerations which the Scottish Ministers must have regard to when appointing members of the Council.

101. A requirement is added for Ministers to have regard to the desirability of appointing persons who have experience of the provision of Scottish apprenticeships or work-based learning, or persons who have held any position carrying the responsibility for the provision of Scottish apprenticeships or work-based learning; persons who appear to be representative of learners undertaking further education, higher education, Scottish apprenticeships (see section 11) or work-based learning (see section 12); persons who appear to be representative of employees of the Council; and persons who appear to be representative of employees of any bodies or persons who are in receipt of funding from the Council.

102. This section is amended to add a further requirement for Ministers, in appointing members, to have regard to the desirability of including persons with such experience of business and apprenticeships as would be appropriate to act as chair of the new apprenticeship committee established by section 31 of this Act.

103. The existing requirement for Ministers to have regard to the desirability of appointing persons with experience of further education or higher education has been removed. The existing requirement to appoint persons with experience relating to research has been kept but relocated in the paragraph to sit alongside the new requirement.

104. Co-opted members of the Council

Section 30: Co-opted members of the Council

105. This section of the Act amends schedule 1 of the 2005 Act to add the ability for the Council to appoint persons as "co-opted members", with the approval of the Scottish Ministers. No more than 2 persons may be appointed as co-opted members at any time, and appointments can only last for a maximum of 1 year. Co-opted members can take part in Council proceedings to the extent the Council decides, but do not have voting rights. Finally, paragraph 4 of schedule 1 on disqualification criteria applies to co-opted members as it does to ordinary members of the Council. Otherwise, co-opted members are not to be treated as though they are members of the Council.

106. Apprenticeship committee

Section 31: Apprenticeship committee

107. This section of the Act amends schedule 1 of the 2005 Act, placing a new requirement on the Council to establish an apprenticeship committee, to advise it on matters concerning apprenticeships and work-based learning.

108. Ministers must issue guidance to the Council about the membership of the committee and its functions, and the appointment of the committee chair, and the Council must have regard to guidance about membership of the committee. The Council must also appoint a member to chair meetings of the new apprenticeship committee.

109. In appointing members of the apprenticeship committee, the Council is to have regard to the desirability of including persons who are apprentices or appear to the Council to be representative of apprentices; persons who appear to the Council to be representative of businesses, including small and rural businesses, with an interest in apprenticeships; employers of apprentices or appear to the Council to be representative of such employers; persons who appear to the Council to be representative of the post-16 education bodies; persons who are training providers as defined in the new section 12J(3) of the 2005 Act, i.e. persons who provide or appear to the Council to be representative of persons who provide either work-based learning or the training of an apprentice required under a Scottish apprenticeship framework; and persons representative of any trade union which appears in turn to the Council to be representative of the interests of Scottish apprentices.

110. Furthermore, in appointing members of the committee, the Council is to consult persons who appear to the Council to be representative of apprentices, and persons who appear to be representative of employers of apprentices. In exercising its functions, the apprenticeship committee itself may consult local authorities and have regard to their views.

PART 4 – STUDENT SUPPORT

Section 32: Designation of private providers of further and higher education

111. Section 73(f) of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to make regulations to pay allowances or loans in respect of persons in education. In practice, this is the legislative basis for government funding of student grants and loans in further and higher education.

112. Section 32 of this Act inserts a new section 74A into the 1980 Act. This gives Ministers the power to designate private providers of further and higher education on application: the effect of such a designation is that the provider may apply to the Scottish Ministers for particular courses of education it provides to be approved for the payment of allowances or loans by virtue of regulations made under section 73(f). An equivalent designation elsewhere in the UK equates to automatic designation for a provider under this section too.

113. Section 74A(5) gives the Scottish Ministers a regulation-making power to make provision about the process for applying for a designation; the charging of a fee by Ministers for applications; the process for Ministers to make a designation; the process of applying for particular courses of education to be approved for the payment of student support; and about the withdrawal of a designation and the effect of withdrawal (including provision to ensure continuity of funding for students at a provider whose designation is withdrawn). This power is subject to the negative procedure by virtue of section 133(2) of the 1980 Act.

114. Regulations under subsection (5) may also make different provision for different purposes, so for example could set different fee levels for different kinds of provider (e.g. those with charitable status or those in receipt of some public funds, as opposed to providers that are wholly private).

Section 33: Directions relating to student support

115. Section 73ZA of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to direct the Council and other persons to administer funds for student support and other purposes. Section 33 of this Act amends and extends this power to include student support funding for students undertaking courses of education provided by a body designated under the new section 74A of the 1980 Act (as inserted by section 32 of the Act) or an educational institution in the rest of the UK which is maintained or assisted by public funds.

Section 34: Transfer or delegation of functions relating to student support

116. Section 73A of the Education (Scotland) Act 1980 gives a power to the Scottish Ministers to transfer or delegate functions relating to the funding of student support. Section 34 of this Act extends this power to cover Ministers' new functions under section 74A of the 1980 Act (as inserted by section 32 of the Act).

PART 5 – REVIEW OF ACT PROVISIONS

Section 35: Review of operation of Act

117. This section requires the Scottish Ministers to undertake two discrete reviews of the operation of this Act: the first after 1 year of this section coming into force, and the second after 5 years of this section coming into force.

118. Ministers must prepare a report on each review, publish that report and lay it before the Scottish Parliament. When undertaking a review, Ministers also must consult the persons mentioned in subsection (3).

PART 6 – FINAL PROVISIONS

Section 36: Interpretation

119. This section provides that the Further and Higher Education (Scotland) Act 2005 is referred to throughout the Act as the "2005 Act", and that the Scottish Further and Higher Education Funding Council is referred to throughout as "the Council".

Section 37: Ancillary provision

120. This section gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to, the Act.

121. Subsection (2) allows such regulations to modify any legislation, including the Act itself: if doing so the regulations would be subject to the affirmative procedure. Otherwise they will be subject to the negative procedure.

Section 38: Regulation-making powers

122. This section amends the 2005 Act in order to make the new regulation-making powers listed in subsection (2) subject to the affirmative procedure. Otherwise the powers inserted by the Act into the 2005 Act will be subject to the negative procedure.

Section 39: Commencement

123. This section provides that Part 6 of the Act comes into force on the day after Royal Assent.

124. All other provisions of the Act are to come into force on a day appointed by regulations made by the Scottish Ministers. These regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. These regulations are also required to be laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but they are not otherwise subject to any Parliamentary procedure.

Section 40: Short title

125. This section provides that the Act will be referred to as the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026.

PARLIAMENTARY HISTORY

126. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	**Reference**
Bill as introduced	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [as introduced] Session 6 (2025)
Explanatory Notes	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [explanatory notes] Session 6 (2025)
Policy Memorandum	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [policy memorandum] Session 6 (2025)
Financial Memorandum	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [financial memorandum] Session 6 (2025)
Delegated Powers Memorandum	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [delegated powers memorandum] Session 6 (2025)
Stage 1	
Delegated Powers and Law Reform Committee, 18 March 2025	SP OR Delegated Powers and Law Reform Committee 18 March 2025
Delegated Powers and Law Reform Committee, 29 April 2025	SP OR Delegated Powers and Law Reform Committee 29 April 2025
Education, Children and Young People Committee, 7 May 2025	SP OR Education, Children and Young People Committee 7 May 2025
Education, Children and Young People Committee, 14 May 2025	SP OR Education, Children and Young People Committee 14 May 2025
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 31st report, 2025, Delegated powers in the Tertiary Education and Training (Funding and Governance) (Scotland) Bill at Stage 1 (SPP 784)

Proceedings and reports	**Reference**
Education, Children and Young People Committee, 21 May 2025	SP OR Education, Children and Young People Committee 21 May 2025
Education, Children and Young People Committee, 28 May 2025	SP OR Education, Children and Young People Committee 28 May 2025
Education, Children and Young People Committee, 3 September 2025	SP OR Education, Children and Young People Committee 3 September 2025
Education, Children and Young People Committee report	Education, Children and Young People Committee 9th report, 2025, Stage 1 report on the Tertiary Education and Training (Funding and Governance) (Scotland) Bill (SPP 847)
Chamber, 25 September 2025	SP OR 25 September 2025
Stage 2	
Marshalled List of Amendments for Stage 2	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [marshalled list of amendments for stage 2] Session 6 (2025)
Groupings of Amendments for Stage 2	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [groupings of amendments for stage 2] Session 6 (2025)
Education, Children and Young People Committee, 26 November 2025	SP OR Education, Children and Young People Committee 26 November 2025
Second Marshalled List of Amendments for Stage 2	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [second marshalled list of amendments for stage 2] Session 6 (2025)
Second Groupings of Amendments for Stage 2	SP Bill 57 Tertiary Education and Training (Funding and Governance) (Scotland) Bill [second groupings of amendments for stage 2] Session 6 (2025)
Education, Children and Young People Committee, 3 December 2025	SP OR Education, Children and Young People Committee 3 December 2025
Bill as amended at Stage 2	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [as amended at Stage 2] Session 6 (2025)
Supplementary Delegated Powers Memorandum	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [supplementary delegated powers memorandum] Session 6 (2025)
Supplementary Financial Memorandum	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [supplementary financial memorandum] Session 6 (2025)

These notes relate to the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026 (asp 5)
which received Royal Assent on 11 March 2026

Proceedings and reports	**Reference**
Revised Explanatory Notes	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [revised explanatory notes] Session 6 (2026)
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 5th report, 2026, Delegated powers in the Tertiary Education and Training (Funding and Governance) (Scotland) Bill (as amended at Stage 2) (SPP 959)
Stage 3	
Marshalled List of Amendments for Stage 3	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [marshalled list of amendments for stage 3] Session 6 (2026)
Timed Groupings of Amendments for Stage 3	SP Bill 57A Tertiary Education (Funding and Governance) (Scotland) Bill [timed groupings of amendments for stage 3] Session 6 (2026)
Chamber, 20 January 2026	SP OR 20 January 2026
Bill as passed	SP Bill 57B Tertiary Education and Training (Funding and Governance) (Scotland) Bill [as passed] Session 6 (2026)
Post passage	
Royal Assent, 11 March 2026	Tertiary Education and Training (Funding and Governance) (Scotland) Act 2026

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

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An RRD Company

Published by TSO (The Stationery Office), part of Williams Lea, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
E-mail: customer.services@tso.co.uk
Textphone: 0333 202 5077

ISBN 978-0-10-592106-6

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