Submission on the Function Shift of Further Education and Training (FET)

"For an Equitable Sharing of National Revenue."

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Financial and Fiscal Commission
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LIST OF ACRONYMS

CPI	Consumer Price Index
DHET	Department of Higher Education and Training
FET	Further Education and Training
FFC	Financial and Fiscal Commission
FTE	Full Time Equivalent
MEC	Member of Executive Council
MTEF	Medium Term Expenditure Framework
PFMA	Public Finance Management Act
SETAs	Sector Education and Training Authorities

1. Background

Parliament passed the Further Education and Training (FET) Colleges Act 3 of 2012 on 3 May 2012. In terms of the Act, FET colleges will become the responsibility of the national government (and no longer that of provinces). The Act comes into effect on 1 April 2014. The rationale for this shift is to develop an integrated post-school education and training sector.

On 30 October 2013, the Financial and Fiscal Commission (the Commission) received a letter from the Department of Higher Education and Training (DHET) requesting for advice on the shift of FET functions from the Provincial Governments to Higher Education and Training. In the letter the DHET noted that it would be highly preferable to have the function and funds fully moved to the DHET on or before 1 April 2014. It also noted that currently the discussion among provincial treasuries, provincial education departments and DHET revolves around the actual functions to be shifted and the corresponding amounts to be shifted.

This Submission, made in terms of Section 2(A) of the Financial and Fiscal Commission Act 99 of 1997 presents recommendations on issues for consideration with respect to the full transfer of the FET function taking into account issues raised by the DHET.

2. Legislative Framework and Role of the Commission

When the FET Act is to be implemented by 1 April 2014, the provincial and national budgets have as yet not been aligned to implement the Act. DHET must implement the Act but the provinces sit with some of the funds for FET colleges. Prior to the letter from DHET mentioned above, the Commission had not been consulted either before the enacted of Act 3 of 2012 or the promulgation of regulations bringing the Act into operation and setting the date of 1 April 2014.

In terms of section 3(2A)(c) the assignment has no legal force, unless the organ of state making the assignment has given consideration to the Commission's recommendation or advice. This presupposes that such advice has, in the first instance, been sought. Section 3(2A) is not applicable in this instance because the issue is not one of assignment between two spheres of government. First, Parliament, when enacting Act 3 of 2012, was not assigning any of its legislative power to any other sphere of government in terms of section 44(1)(a)(iii) of the Constitution. It was merely exercising its own, *concurrent*, power over education in terms of section 44(1)(a)(ii) of the Constitution. Second, the focus of section 3(2A) seems to be on the assignment of executive powers or functions, which the national or provincial governments may do in terms of sections 99 and 126 of the Constitution, respectively. Placing FET colleges under the responsibility of DHET was done through the exercise of a concurrent legislative power. Third, the purpose of section 3(2A) is to protect sub national governments from unfunded mandates imposed by the national government. The Municipal Systems Act (section 10) has similar provisions to protect local government from the imposition of unfunded mandates. When the national government exercises a power (in this case asserting is legislative competence in an area of concurrency) it needs no protection.

Having established the validity of the shift, the next issue is a division of revenue act (DORA) alignment problem, for implementation in the next financial year 2014/15. In this respect, relevant pieces of legislation are section 214 of the Constitution, section 9 of the Intergovernmental Fiscal Relations Act (1997) and section 4(4c) of the Money Bills Amendment Procedure and Related Matters Act (Act 9 of 2009) that require the Commission to make recommendations every year on the division of revenue for the coming budget. In its Submission for the Division of Revenue 2014/15, the Commission made recommendations on the implications of the shift of the FET function and budget from provinces to the DHET that will be discussed below.

3. 2014 DORA Budget Alignment And Implementation

The Commission must submit its recommendation for the next DORA ten months before the budget is tabled. This has been done on 24 May 2013 for Government consideration when drafting the 2014 DORA. Can it make an additional recommendation five months later in respect of FET colleges? This seems to be the sticking point of NT; they don't want to effect changes.

In its submission, the Commission raised concerns that provinces did not prioritise FET education equally in their budget allocations. This, it argued, led to unequal participation rates in FET colleges and in provinces. To establish whether funding across provinces is equitable and fair, the Commission calculated an allocation per weighted Full Time Equivalent (FTE) which was the result of dividing the 2013/14 funding allocation per province by the total weighted funded FTE enrolments. The results of this exercise showed huge differences across provinces. The difference between the highest (R26,857 in the Eastern Cape) and lowest allocation (R16,050 in Limpopo) was found to be R10,809. The huge inequities in the allocations across provinces was as a result of the conditional grant being based on historical allocations to the provinces, adjusted only by consumer price index (CPI) increases.

Table 1 looks at the shortfalls in funding for FTE students. Based on the 2012/2013 enrolment plan, the total MTEF budget for FET college education should have been R5,989 billion. However, the actual budget was R4,845 billion made available through conditional grants. This was based on historical provincial allocations for FET college education, plus annual CPI adjustments. The shortage of R1,144 billion reflects the huge levels of underfunding in certain provinces. According to the computations, provinces with the greatest shortfalls are the Northern Cape (35%), KwaZulu-Natal (34%), Limpopo (28%) and the Free State (27%).

Table 1: Shortfalls in provincial budgets for fully fund programme enrolments (FTE students)

Province	Actual MTEF budget for '2012/13	Total Indicative budget require 2012/13	Shortfall	Shortfall as a % of total budget
Eastern Cape	699 923 000	767 498 306	-67 575 306	-9%
Free State	323 804 000	440 719 024	-116 915 024	-27%
Gauteng	1 133 245 000	1 180 033 316	-46 788 316	-4%
KwaZulu-Natal	858 862 000	1 299 044 247	-440 182 247	-34%
Limpopo	545 768 000	761 528 701	-215 760 701	-28%
Mpumalanga	345 285 000	373 363 379	-28 078 379	-8%
Northern Cape	78 342 000	120 300 902	-41 958 902	-35%
North West	261 789 000	303 224 625	-41 435 625	-14%
Western Cape	597 589 000	743 278 236	-145 689 236	-20%
Total	**4 844 607 000**	**5 988 990 736**	**-1 144 383 736**	**-19%**

Source: DHET (2013) Final Budget Allocations 2012-13

A fairer distribution of funding would mean colleges receive equal rand values per weighted FTEs. Currently, the baseline used for the conditional grant reflects historical allocations to FET college education, which were clearly too low in the Northern Cape, KwaZulu-Natal, Limpopo, Free State and North West provinces. Simply transferring the function without addressing the pre-existing financing challenges could prevent the potential benefits of the function shift from being realised. The financial model must therefore be optimised, including baselines.

On the basis of this analysis, the Commission recommended that:

- The funding model for the FET sector after the function shift ensures that:
  - Baseline funding does not perpetuate past underfunding of the function in certain provinces.
  - Additional allocations are used to achieve a more equitable funding regime across the provinces.

- The transfer of the FET function should include the development of sound systems and uniform templates for financial reporting, designed in a manner that ensures the DHET can proactively monitor the financial health of FET colleges. This should be complemented by holistic interventions to improve fiscal governance in FET colleges including recruitment of appropriate skills, ongoing training, and credible financial systems and processes.

In the letter to the Commission, the DHET also highlighted that the funds to administer the FET functions are still located in the provincial equitable share and the conditional grant still remains as an allocation to the provincial education departments with no discretion available to the DHET. It noted that it has tried to mitigate the lack of full functional information on the shift by proposing a formula approach to the allocation of administration funds, taking into account the equitable share. There have been disagreements among provincial treasuries, provincial education departments and DHET on the actual functions that are associated with the shift and amounts that provinces are indicating should be shifted.

It is important at this point to reiterate that in its response to the Division of Revenue Bill 2010/11, the Commission had noted that an amount of R1 billion over the Medium Term Expenditure Framework (MTEF) had been made to accommodate the shifting of the FET function from provinces to national government. Government had indicated that as part of the preparatory stage to shifting the function, an amount spent by every province on this grant would be ring fenced to create the base line for the new national grant. Because all provinces are guaranteed to receive back the amount ring fenced out of their equitable share there should be no direct impact on the spending to this area.

The Commission then argued that the constitutionality of notionally 'conditionalising' the equitable share in this way could be open to challenge. Government’s response was that the 'conditionalising' part of the equitable share is done in order to prepare for the shift in this function from the provincial to the national sphere of government. Further, it pointed out that skills training through FET had become a national priority and would benefit other schemes such as the Sector Education and Training Authorities (SETAs) and related industrial training. This would mean the grant will increase as the purpose and scope would have widened beyond that which would be the case if it were to remain located at a provincial level.

In 2011, the Commission submitted to Parliament comments on the 2011 Appropriations Bill. In the submission, it noted that in 2010/11 and 2011/12 spending was prioritised for FET Colleges and skills development. These programmes received an amount of R 2,027 billion in 2011/12, with R5 million prioritised for teacher bursaries and the remainder for FET Colleges grant and skills development. The FET College grant caters for additional funding for FET College function which is currently being shifted from the provincial to the national sphere. With regards to the shifting of FET Colleges function, the Commission indicated that the basis for the allocation of funds was unclear and the lack of clarity would impact the Provincial Equitable Share and the Division of Revenue Act.

The Commission regrets that in spite of all these advisories it has made, there are still discrepancies and disputes in amounts that provinces are indicating should be shifted and what DHET has calculated. As far back as 2009/10 the Minister and Director-General agreed to the signing of Inter-governmental Protocols with MECs and Heads of Education Departments in the provinces to identify the transferred functions relating to the budget items on the budget of the provincial education departments for the 2012/13 financial year.

As an alternative to the function and funds moving to the DHET on or before 1 April 2014, the DHET has proposed amendments to the FET conditional grant framework for 2014/15. This is to ensure the effective management and monitoring of the grant. Based on the Financial and Fiscal Commission Act and previous position on such grants, it is important to highlight the following:

- The division of revenue guarantees funding through the MTEF allocations. Therefore, the financial and fiscal implications of the FET function shift should be taken into account when funds are allocated through a conditional grant. The criteria for allocating funds through a conditional grant should be equitable, fair and transparent. The DHET should also clearly define minimum norms and standards for monitoring the performance and compliance of provinces to the grant.
- The transfer of the function should also take account of the requirement of Section 42 of the Public Finance Management Act (PFMA) of 1999, which requires that an accounting officer ensures that it draws up an inventory of assets and liabilities to be transferred, provide the accounting officer for the receiving department or other institution with substantiating records, including personnel records of staff to be transferred, and both the transferring and receiving officer sign the inventory and file such with the relevant treasury and the Auditor General.

4. Conclusion And Recommendations

The Commission makes the following recommendations:

- Moving ahead with the shift of funds on 1 April 2014 will in all likelihood destabilise the Provincial Equitable Share and the Division of Revenue Act because decisions on the allocations for 2014/15 have already been made through the budget processes and allocation letters already communicated with respective provinces. The case to shift of funds on 1 April 2014 is also made less compelling by the observation that there is still outstanding work to be done on the exact amounts to be shifted to the DHET. This process of arriving at the exact amounts to be shifted should be completed first.

- The DHET and the provincial education departments would require time to come to agreement on exact amounts to be shifted taking into considerations provinces that were underfunded on the function and huge inequities in the allocations across provinces. These issues should be taken up at the intergovernmental forum for education departments and be resolved in the coming year.
- The DHET should in the interim monitor the performance of provinces in complying with the conditions attached to the grant to ensure that the minimum requirement for the use of the grant is met. The allocation criteria indicated in the proposed 2014/15 draft framework exclude an important aspect which relates to adherence to norms and standard. In its proposed form, the allocation criteria could be questioned on objectivity and transparency grounds. The Commission recommends that this aspect be re-introduced. Other material changes to the grant framework should trigger a grant design and implementation review. The Commission has recommended in the past that more attention should be paid to conditional grant design and the same recommendation applies here. This would obviously include the appropriateness of indicators etc. DHET should comprehensively review the FET conditional grant in the 2014/15 grant framework.
- The funding model for the FET sector after the function shift should ensure that baseline funding does not perpetuate past underfunding of the function in certain provinces. Additional allocations should be used to achieve a more equitable funding regime across the provinces.

- The transfer of the FET function to the DHET should include the development of sound systems and uniform templates for financial reporting, designed in a manner that ensures that DHET can proactively monitor the financial health of FET colleges. This should be complemented by holistic interventions to improve fiscal governance in FET colleges including recruitment of appropriate skills, ongoing training, and credible financial systems and processes.

The Commission supports the shifting of the function from provinces to the DHET as it brings the potential development of a uniform FET sector with a single vision that can be presented to the public. The national focus could also uplift the image, marketing and quality of colleges and improve cooperation between colleges, SETAs and universities.

For and on behalf of the Financial and Fiscal Commission

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